**IN THE MATTER OF INVESTMENT DISPUTE UNDER THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE REPUBLIC OF CYPRUS ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS AND UNDER THE AGREEMENT BETWEEN CANADA AND THE REPUBLIC OF SERBIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

**COROPI HOLDINGS LIMITED AND KALEMEGDAN INVESTMENTS LIMITED (CYPRUS)**

**AND**

**MR. ERINN BERNARD BROSHKO (CANADA)**

*CLAIMANTS*

**– v –**

**THE REPUBLIC OF SERBIA**

*RESPONDENT*

# REJOINDER ON OBJECTIONS TO JURISDICTION, ADMISSIBILITY OR COMPETENCE

26 July 2024

SQUIRE PATTON BOGGS

nstlaw/Stankovic & Partners

**TABLE OF CONTENTS**

# I. INTRODUCTION

## A. Preliminary statement

1. Unable to justify that Claimants' company, Obnova, should get no compensation for the expropriation of its premises, which Obnova itself built in the 1950s and has used ever since, Serbia tries to hide behind a smoke screen of a myriad of jurisdictional objections.[1]

2. Serbia's objections to the Tribunal's jurisdiction are numerous, but meritless. Claimants painstakingly refuted all of them in their Reply, and they will do so again in this Rejoinder on Objections to Jurisdiction, Admissibility or Competence ("**Rejoinder on Jurisdiction**").

3. The Tribunal has jurisdiction *ratione personae* over Cypriot Claimants because they are "*investors*" within the meaning of Article 1(3) of the Cyprus-Serbia BIT as they are incorporated and have their "*seat*" in Cyprus.[2] The term "*seat*" used in Article 1(3) of the Cyprus-Serbia BIT is equivalent to "*registered office*", as correctly held by the tribunal in *Mera v. Serbia*[3] and the dissenting arbitrator, Professor Park, in *CEAC v. Montenegro*.[4] Mr. Agis Georgiades, Claimants' Cypriot law expert, confirms that Cypriot law also equates "*seat*" to "*registered office*".[5] Serbia does not dispute that both Claimants have their registered office in Cyprus.

4. However, both Cypriot Claimants have their "*seat*" in Cyprus even under the more demanding definition of "*seat*" adopted by the *CEAC* majority—and Serbia does not

---

1 Claimants in this arbitration are (*i*) Kalemegdan Investment Limited ("**Kalemegdan**"); (*ii*) Coropi Holdings Limited ("**Coropi**" and, together with Kalemegdan, "**Cypriot Claimants**"); and (*iii*) Mr. Erinn Bernard Broshko ("**Mr. Broshko**" and, together with Cypriot Claimants, "**Claimants**"). Cypriot Claimants assert claims under the Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, which entered into force on 23 December 2005 ("**Cyprus-Serbia BIT**"). Mr. Broshko asserts claims under the Agreement between Canada and the Republic of Serbia for the Promotion and Protection of Investments ("**Canada-Serbia BIT**"; the Canada-Serbia BIT and the Serbia-Cyprus BIT being, together, "**Treaties**"). Claimants' claims relate to their investment in Serbian company Preduzeće za prikupljanje, preradu i promet sekundarnih sirovina Obnova AD Beograd (Stari grad) ("**Obnova**").

2 Reply, ¶¶ 395-398.

3 *Mera Investment Fund Limited v. Republic of Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 91, **RL-020**.

4 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Separate Opinion of William W. Park, 4 July 2016, ¶¶ 19-22, **CL-073**.

5 Agis Georgiades Second Expert Report dated 26 July 2024, ¶ 2.2.2.

argue otherwise.[6] In fact, both Cypriot Claimants have a firm connection to Cyprus, which would satisfy any understanding of the term "*seat*." Their registered office is in Cyprus,[7] they lease easily identifiable premises in a modern office building in Cyprus,[8] for the most of their existence the majority of their directors were Cypriot nationals and residents,[9] the meetings of their directors take place in Cyprus[10] and the companies are tax residents in Cyprus.[11]

5. Thus, even if the Tribunal applied the test proposed by Serbia and concluded that the relevant criterion is the existence of effective management in Cyprus, Cypriot Claimants would still satisfy this condition.

6. Serbia erroneously claims that Cypriot Claimants do not have their "*seat*" in Cyprus because they are holding companies ultimately owned and controlled by Vancouver-based Canadian nationals, Mr. William A. Rand ("**Mr. Rand**") and his family. That proposition finds no support under public international law and/or Cyprus law. Under

---

6 Reply, ¶¶ 395-396.

7 Certificate of registered office for Coropi, 21 February 2024, **C-592**; Certificate of registered office for Kalemegdan, 21 February 2024, **C-591**; Agis Georgiades First Expert Report dated 23 February 2024, ¶ 4.6.1; Georgiades Second ER, ¶ 3.2.7.1.; Contract of Sublease between HLB Cyprus Limited and Coropi, 1 January 2021, **C-551**; Contract of Sublease between HLB Cyprus Limited and Kalemegdan, 1 January 2021, **C-552**.

8 Georgiades First ER, ¶¶ 4.6.3.

9 Corporate Register of Kalemegdan, 31 March 2022, p. 3, **C-063**; Corporate Register of Coropi, 31 March 2022, p. 3, **C-065**; Georgiades Second ER, ¶¶ 3.2.7.7-3.2.7.8.

10 Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-318**; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-341**; Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-350**, Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-351**; Minutes of a meeting of the board of directors of Kalemegdan, 28 January 2019, **C-707**; Minutes of a meeting of the board of directors of Kalemegdan, 23 March 2012, **C-708**; Minutes of a meeting of the board of directors of Kalemegdan, 26 March 2012, **C-709**.

11 Georgiades Second ER, ¶ 3.2.7.14. *See also* Company income tax return 2010 – Coropi, 26 March 2011, **C-664**; Company income tax return 2011 – Coropi, 26 March 2011, **C-665**; Company income tax return 2012 – Coropi, 26 March 2013, **C-666**; Company income tax return 2013 – Coropi, 26 March 2013, **C-667**; Company income tax return 2014 – Coropi, 30 March 2015, **C-668**; Company income tax return 2015 – Coropi, 30 March 2016, **C-669**; Company income tax return 2016 – Coropi, 30 September 2017, **C-670**; Company income tax return 2017 – Coropi, 1 September 2018, C-671; Company income tax return 2018 – Coropi, 1 September 2019, **C-672**; Company income tax return 2019 – Coropi, 1 September 2020, **C-673**; Company income tax return 2020 – Coropi, 1 September 2021, **C-674**; Company income tax return 2012 – Kalemegdan, 26 March 2013, **C-675**; Company income tax return 2013 – Kalemegdan, 26 March 2013, **C-676**; Company income tax return 2014 – Kalemegdan, 30 March 2015, **C-677**; Company income tax return 2015 – Kalemegdan, 30 March 2016, **C-678**; Company income tax return 2016 – Kalemegdan, 30 September 2017, **C-679**; Company income tax return 2017 – Kalemegdan, 1 September 2018, **C-680**; Company income tax return 2018 – Kalemegdan, 1 September 2019, **C-681**; Company income tax return 2019 – Kalemegdan, 1 September 2020, **C-682**.

public international law, even the tribunal in *Alverley v. Romania*, heavily relied on by Serbia, squarely rejected the proposition that the seat of a company "*is located in the place where the ultimate power to control the company resides*."[12] Under Cyprus law, a company is controlled by its directors, not by its owners.

7. In fact, Serbia's argument is nothing short of absurd. Mr. Rand is an international businessman who often travels around the world and spends considerable time—sometimes months at a time—at his estates in Italy and in the U.S.[13] If Serbia's theory were correct—and it is not—the seats of Kalemegdan and Coropi would change as Mr. Rand travels around the world. This simply cannot be the case.

8. The Tribunal also has jurisdiction *ratione materiae* over Cypriot Claimants' nominal and beneficial ownership of a 70% shareholding in Obnova ("**Cypriot Obnova Shares**"). The Cypriot Obnova Shares are a protected investment under the Cyprus-Serbia BIT, which specifically lists "*shares*" amongst the types of qualifying investment.[14] It is undisputed that Kalemegdan has been the registered owner of the Cypriot Obnova Shares since May 2012.[15] Mr. Georgiades confirms that, in March 2012, Coropi acquired beneficial ownership of Kalemegdan.[16]

9. Serbia's illegality objection fails because jurisdictional pleas of illegality must be based on serious violations of a fundamental rule of the host State's law—such as corruption or fraud. The tribunal in *Rand v. Serbia* expressly held that a failure of the obligation to issue a takeover bid does not render the underlying acquisition void or voidable and, thus, it is not serious enough to justify an illegality objection under the Cyprus-Serbia BIT.[17]

---

12 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Award (Excerpts), 16 March 2022, ¶ 233, **RL-007**.

13 Second Witness Statement of Mr. William Archibald Rand dated 25 July 2024, ¶ 39.

14 Cyprus-Serbia BIT, Art. 1(1)(b), **CL-007(a)**.

15 Excerpt from the Central Securities Depository and Clearing House, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, p. 2, bullet point 4, **C-318**.

16 Georgiades First ER, ¶ 5.2.2. In December 2023, Coropi became also the nominal owner of Kalemegdan. *See* Certificate of Kalemegdan's shareholders, 27 December 2023, **C-401**.

17 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 393, **CL-112**.

10. In any event, Claimants' Serbian securities law expert, Ms. Bojana Tomić-Brkušanin, explains that Kalemegdan and Coropi acted in good faith when they did not launch a takeover bid because they relied on an opinion of the Securities Commission of the Republic of Serbia ("**SEC**"), published on 19 July 2007 ("**2007 SEC Opinion**"), which exempted such transactions from the obligation to launch a takeover bid.[18] Kalemegdan contemporaneously notified the SEC of the transaction—and the SEC did not require a takeover bid.[19] Serbia's illegality objection is baseless.

11. Equally baseless is Serbia's objection that the Cypriot Obnova Shares are not a protected investment because of an alleged absence of contribution by Cypriot Claimants. Neither the Cyprus-Serbia BIT, nor the ICSID Convention imposes any requirement of contribution. However, even if the Tribunal concluded that such a requirement applies (*quod non*), it would be satisfied. Kalemegdan's contribution consists of the issuance of its own shares in exchange for the Cypriot Obnova Shares and its participation in Obnova's management. Coropi also contributed by its participation in Obnova's management through Messrs. Rand and Markićević—who are both directors of Coropi.

12. Finally, the Tribunal also has jurisdiction *ratione temporis* under the Cyprus-Serbia BIT because Cypriot Claimants invoke breaches that occurred *years after* the treaty's entry into force and the making of their investment and do not ask the Tribunal to apply the Cyprus-Serbia BIT retroactively. Serbia now accepts that Claimants' claims are not "*based on the events that pre-date the treaty.*"[20] This should be the end of the matter.

13. Serbia's cannot keep its objection *ratione temporis* alive by arguing that Article 12 of the Cyprus-Serbia BIT prevents the Tribunal from even considering any "*matters*" that pre-date the treaty's entry into force. Unsurprisingly, Serbia is unable to refer to any legal authority that would support this interpretation. It is a settled public international law principle that the Tribunal can consider events and matters pre-dating the entry into force of the Cyprus-Serbia BIT as part of the relevant factual background.

---

18 Bojana Tomić-Brkušanin Second Expert Report dated 26 July 2024, ¶ 34.

19 Erinn Broshko First Witness Statement dated 23 February 2024, ¶ 25.

20 Rejoinder, ¶ 313.

14. Thus, there can be no doubt that the Tribunal has jurisdiction over all of Cypriot Claimants' claims under both the Cyprus-Serbia BIT and the ICSID Convention.

15. The same holds true for Mr. Broshko's claims under the Canada-Serbia BIT.

16. The Tribunal has jurisdiction *ratione materiae* over Mr. Broshko's claims because his 10% shareholding in Obnova ("**Canadian Obnova Shares**")—held through his 100% owned Serbian company Maple Leaf Investments d.o.o. Beograd – Stari Grad ("**MLI**")—qualifies as an investment protected under the Canada-Serbia BIT.

17. Mr. Broshko's investment is legal because his purchase of the Canadian Obnova Shares was in line with Serbian law. In any event, even if he had been required, as Serbia alleges, to publish a takeover bid, and to be clear he was not required to do so, the absence of such a bid would not qualify as a violation of fundamental rules of Serbian law that could, in theory, deprive the Tribunal of its jurisdiction. This conclusion was specifically confirmed by the tribunal in *Rand Investments v. Serbia*.[21]

18. Mr. Broshko's claims were also filed timely. The three-year time period for their filing under Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT will lapse only in August 2024.[22] Mr. Broshko's claims are not barred by the fact that he does not control Obnova and cannot procure Obnova's waiver of certain claims. Obnova, in any event, was not and is not pursuing any claims that it would need to waive if it were controlled by Mr. Broshko.

19. Finally, Claimants' claims represent a good faith exercise of their rights under the Treaties[23] and, as such, are clearly admissible. Cypriot Claimants acquired the Cypriot Obnova Shares for tax planning purposes, not to obtain protection under the Cyprus-Serbia BIT, and the present dispute was not foreseeable, let alone with a high probability, at the time of the acquisition. The same holds true for Mr. Broshko, who only claims in connection with Serbia's refusal to pay compensation, which occurred

---

21 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 393, **RL-112**.

22 Cyprus-Serbia BIT, Arts. 22(2)(e)(i) and 22(2)(f)(i), **CL-007(a)**.

23 Reply, § V.

years after his purchase of a minority stake of Obnova's shares on the Belgrade Stock Exchange ("**BSE**") in 2017, and was not foreseeable at the time.

20. Thus, the Tribunal has jurisdiction over all claims brought by Claimants and the claims are admissible. Claimants respectfully request that the Tribunal exercise its jurisdiction and find that Serbia violated the Treaties.

## B. Organization of the Rejoinder on Jurisdiction

21. This Rejoinder on Jurisdiction is structured as follows:

    a. Section I is this Introduction;

    b. Section II explains that the Tribunal has jurisdiction over Cypriot Claimants' claims;

    c. Section III explains that the Tribunal has jurisdiction over Mr. Broshko's claims;

    d. Section IV demonstrates that Claimants' claims are admissible; and

    e. Section V sets out Claimants' Request for Relief.

22. This submission is accompanied by the following witness statements:

    a. second witness statement of Mr. William Archibald Rand dated 26 July 2024;

    b. second witness statement of Mr. Erinn Bernard Broshko dated 26 July 2024; and

    c. second witness statement of Mr. Igor Markićević dated 26 July 2024.

23. This submission is also accompanied by the following expert reports:

    a. second expert report of Mr. Agis Georgiades, a Cyprus law expert addressing the definition and determination of a company's "*seat*" and the creation of trusts under Cyprus law; and

    b. second expert report of Ms. Bojana Tomić-Brkušanin, a Serbian law expert addressing Serbian regulation of takeover bids.

24. This Reply annexes a number of exhibits (*e.g.*, **C-[x]**) and legal authorities (*e.g.*, **CL-[x]**) numbered consecutively following those submitted with Claimants' Request for Arbitration dated 27 April 2022 ("**Request for Arbitration**"), Claimants' Memorial dated 31 March 2023 ("**Memorial**") and Claimants' Reply dated 23 February 2024 ("**Reply**").

## II. THE TRIBUNAL HAS JURISDICTION OVER CYPRIOT CLAIMANTS' CLAIMS

25. Cypriot Claimants' claims relate to their investment in the Cypriot Obnova Shares, *i.e.* 14,142 shares in Obnova representing approximately 70% of Obnova's total share capital.[24] These shares are a direct investment of Kalemegdan, who has been the direct nominal owner of the Cypriot Obnova Shares since April 2012.[25]

26. Simultaneously, the Cypriot Obnova Shares are an indirect investment of Coropi. Coropi had been the 100% beneficial owner of Kalemegdan from Kalemegdan's incorporation in March 2012. In December 2023, Coropi became also the 100% nominal owner of Kalemegdan.[26]

27. In this Section, Claimants demonstrate that the Tribunal has jurisdiction over Cypriot Claimants' claims. Specifically, Claimants show that:

    a. the Tribunal has jurisdiction *ratione personae* under the Cyprus-Serbia BIT (**Section II.A** below);

    b. the Tribunal has jurisdiction *ratione temporis* under the Cyprus-Serbia BIT (**Section II.B** below);

    c. the Tribunal has jurisdiction *ratione materiae* under the Cyprus-Serbia BIT (**Section II.C** below); and

    d. Cypriot Claimants' claims meet the jurisdictional requirements under the ICSID Convention (**Section II.D** below).

### A. The Tribunal has jurisdiction *ratione personae* under the Cyprus-Serbia BIT

28. Serbia argues that the Tribunal lacks jurisdiction *ratione personae* over Cypriot Claimants because they purportedly do not have "*seat*" in Cyprus within the meaning

---

24 Memorial, ¶ 90; Reply, ¶ 282.

25 Excerpt from the Central securities depository and clearing house, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**.

26 Certificate of Kalemegdan's shareholders, 27 December 2023, **C-401**. *See also* William Archibald Rand First Witness Statement dated 23 February 2024, ¶ 66; Broshko First WS, ¶ 54; Igor Markićević First Witness Statement dated 23 February 2024, ¶ 69.

of Article 1(3)(b) of the Serbia-Cyprus BIT.[27] This is allegedly because under international law, the term "*seat*" imports a requirement of "*effective management*". Knowing that the seat of Cypriot Claimants must be somewhere in the world, Serbia alleges that it is in Canada, the place of residence of Mr. Rand, since he controls both Cypriot Claimants.[28] Serbia's objection fails for multiple reasons.

29. Most importantly, Cypriot Claimants have already demonstrated[29] that they have a "*seat*" in Cyprus within the meaning ascribed to this term by the tribunal in *Mera v. Serbia* and Professor Park, the dissenting arbitrator in *CEAC v. Montenegro*, simply because they have their respective registered offices in Cyprus.[30] Cypriot Claimants have also demonstrated that they have a "*seat*" in Cyprus even under the more demanding approach adopted by the *CEAC* majority.

30. In fact, Cypriot Claimants have a firm connection to Cyprus, which satisfies any understanding of the term "*seat*." This is because:

a. both Cypriot Claimants have their registered office in Cyprus[31];

b. both Cypriot Claimants have premises in Cyprus, which: (*i*) are located in a modern office building; (*ii*) are easily identifiable by the companies' nameplates affixed on the building; and (*iii*) hold Cypriot Claimants' books and registers available for inspection;[32]

c. both Cypriot Claimants have the right to use the premises, at which their registered offices are located;[33]

---

27 Rejoinder, ¶ 272.

28 Rejoinder, ¶ 272.

29 Reply, ¶¶ 395-398.

30 *Mera Investment Fund Limited v. Republic of Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶¶ 90-91, 93, **RL-020**; *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Separate Opinion of William W. Park, 26 July 2016, ¶ 22, **CL-073**.

31 Certificate of registered office for Coropi, 21 February 2024, **C-592**; Certificate of registered office for Kalemegdan, **C-591**; Georgiades First ER, ¶¶ 4.6.1-4.6.7; Georgiades Second ER, ¶ 3.2.7.1.

32 Georgiades First ER, ¶¶ 4.6.3-4.6.6.

33 Contract of Sublease between HLB Cyprus Limited and Coropi Holdings Limited, 1 January 2021, **C-551**; Contract of Sublease between HLB Cyprus Limited and Kalemegdan Investments Limited, 1 January 2021, **C-552**.

d. for the most of their existence, the majority of directors of both Cypriot Claimants were Cypriot nationals and residents;[34]

e. the meetings of directors of Cypriot Claimants take place in Cyprus;[35] and

f. both Cypriot Claimants are tax residents in Cyprus.[36]

31. Serbia does not dispute the accuracy of these facts and concedes that Cypriot Claimants have their registered offices in Cyprus.[37] Serbia, however, argues that these facts are irrelevant because according to Serbia, a company has its seat at the place of its effective management and that place is where the ultimate control over the company lies.[38]

32. Serbia's theory must be rejected. It finds no support under the Serbia-Cyprus BIT or previous awards rendered under that treaty (or any other any treaty). It also defies reason. Why would Cyprus—whose economy depends upon and thrives from the hosting of foreign-owned companies, frequently of a holding nature—have sought to exclude such companies from BIT protection?

---

34 Corporate Register of Kalemegdan, 31 March 2022, p. 3, **C-063**; Corporate Register of Coropi, 31 March 2022, p. 3, **C-065**; Georgiades Second ER, ¶ 3.2.7.8.

35 Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-318**; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-341**; Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-350**, Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-351**; Minutes of a meeting of the board of directors of Kalemegdan, 28 January 2019, **C-707**; Minutes of a meeting of the board of directors of Kalemegdan, 23 March 2012, **C-708**; Minutes of a meeting of the board of directors of Kalemegdan, 26 March 2012, **C-709**.

36 Georgiades Second ER, ¶ 3.2.7.14. *See also* Company income tax return 2010 – Coropi, 26 March 2011, **C-664**; Company income tax return 2011 – Coropi, 26 March 2011, **C-665**; Company income tax return 2012 – Coropi, 26 March 2013, **C-666**; Company income tax return 2013 – Coropi, 26 March 2013, **C-667**; Company income tax return 2014 – Coropi, 30 March 2015, **C-668**; Company income tax return 2015 – Coropi, 30 March 2016, **C-669**; Company income tax return 2016 – Coropi, 30 September 2017, **C-670**; Company income tax return 2017 – Coropi, 1 September 2018, C-671; Company income tax return 2018 – Coropi, 1 September 2019, **C-672**; Company income tax return 2019 – Coropi, 1 September 2020, C-673; Company income tax return 2020 – Coropi, 1 September 2021, **C-674**; Company income tax return 2012 – Kalemegdan, 26 March 2013, **C-675**; Company income tax return 2013 – Kalemegdan, 26 March 2013, **C-676**; Company income tax return 2014 – Kalemegdan, 30 March 2015, **C-677**; Company income tax return 2015 – Kalemegdan, 30 March 2015, C-678; Company income tax return 2016 – Kalemegdan, 30 September 2017, **C-679**; Company income tax return 2017 – Kalemegdan, 1 September 2018, **C-680**; Company income tax return 2018 – Kalemegdan, 1 September 2019, **C-681**; Company income tax return 2019 – Kalemegdan, 1 September 2020, **C-682**.

37 Rejoinder, ¶ 304.

38 Rejoinder, ¶¶ 305-306.

33. The tribunal in *Alverley*—Serbia's own authority—explained that it is "*unlikely that Cyprus, which is home to large numbers of holding companies to whom it offers a beneficial taxation and legal regime and which it has worked hard to attract, intended to exclude all holding companies based in its territory from protection under the BIT*."[39]

34. For that reason, the *Alverley* tribunal expressly rejected the argument—on which Serbia's own case relies—that the seat of a company "*is located in the place where the ultimate power to control the company resides*."[40]

35. Similarly, in *WCV and CCL v. Czech Republic*—where the applicable Czech-Cyprus BIT required that the investor has a "*permanent seat*"—the respondent argued that the claimants do not have "*permanent seat*" in Cyprus because "*the 100% shareholder of the companies, is a resident of Monaco, and that Claimants must have been managed from there*." The tribunal dismissed that argument—identical to the one being made here by Serbia—holding that "*[t]he problem with this argument is that the term permanent seat, as used by the Czech Republic in its treaty practice, does not require that a company's central management and control be located there*."[41]

36. Mr. Georgios Iacovou—former Minister of Foreign Affairs of Cyprus and signatory of the Cyprus-Serbia BIT—unequivocally confirmed before the *Mera* tribunal that under the Cyprus-Serbia BIT, "*'seat' means the seat of the legal person, the registered office, the physical location of a company where it can be visited, where service can be made.*"[42] Mr. Iacovou's testimony further comforted the *Mera* tribunal in its unanimous finding that "*the meaning of the term 'seat' must be understood to have been a reference to an actual location, place or address*" and that "*the equivalent of this condition under Cypriot law is the registered office of an entity*."[43]

---

39 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 233, **RL-007**.

40 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 233, **RL-007**.

41 *WCV World Capital Ventures Cyprus Ltd. & Channel Crossings Ltd. v. Czech Republic*, PCA Case No. 2016-12, Interim Award on Jurisdiction, 25 April 2018, ¶ 316, **CL-179**.

42 *Mera Investment Fund Limited v. Republic of Serbia,* ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 91, **RL-020**.

43 *Mera Investment Fund Limited v. Republic of Serbia,* ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 91, **RL-020**.

37. Claimants will explain below that Serbia's attempt to read a requirement of "*effective management*" into Article 1(3)(b) of the Serbia-Cyprus BIT is wrong as a matter of both public international law and Cyprus law and that the term "*seat*" denotes "*registered office*". Claimants will also show again that they have a registered office in Cyprus and that Cyprus is, in any event, also the place of their effective management.

### 1. "*Seat*" is not defined in the Serbia-Cyprus BIT and other sources of international law

38. Serbia claims that the term "*seat*" as used in the Serbia-Cyprus BIT has an autonomous meaning and needs to be interpreted in accordance with international law, which allegedly defines "*seat*" as the "*place of effective management.*"[44] This is incorrect.

39. Contrary to what Serbia appears to argue, the dispute between the parties is not whether, in general, terms used in a treaty should be given an autonomous meaning. They should—but only if such an autonomous meaning is provided for in the treaty itself or another relevant source of public international law. This is not the case here because, as demonstrated below, public international law simply does not define the term "*seat*". Indeed, as confirmed by the International Law Commission in its commentaries to the Draft Articles on Diplomatic Protection, "*international law has no rules of its own for the creation, management and dissolution of a corporation or for the rights of shareholders and their relationship with the corporation, and must consequently turn to municipal law for guidance on this subject*."[45] Thus, the absence of rules in respect of the definition of "*seat*" under public international law directs the Tribunal towards the application of Cypriot domestic law.

40. As Article 38 of the ICJ Statute provides, the main sources of public international law are: (*i*) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (*ii*) international custom, as evidence of a general practice accepted as law; and (*iii*) the general principles of law recognized by

---

44 Rejoinder, ¶¶ 273 *et seq.*

45 Draft Articles on Diplomatic Protection with Commentaries, International Law Commission, United Nations, 2006, p. 37, ¶ 3, **CL-180**.

civilized nations.[46] None of such sources provides any definition of "*seat*" of a corporation.

41. *First*, the Cyprus-Serbia BIT does not a contain any definition of seat and Serbia does not argue otherwise. Serbia does not identify any other treaty which would contain a definition of seat applicable in the present context.

42. However, the treaty practice of both Cyprus and Serbia shows that when these nations wish to use the notion of "*place of effective management*" in their treaties, they do so expressly. The notion of "*place of effective management*" is a well-known term of art, commonly employed in treaties for the avoidance of double taxation ("**DTTs**"), including those concluded by Cyprus and Serbia.[47] Importantly, the 1985 Cyprus-Yugoslavia DTT—to which Serbia succeeded—expressly uses the "*place of effective management*" to determine tax residency.[48]

43. The express use of the term "*place of effective management*" in some treaties concluded by both Cyprus and Serbia—including the 1985 Cyprus-Yugoslavia DTT—is yet another reason why such term cannot be simply read into the Serbia-Cyprus BIT. Both parties were aware of the term and used it in another of their mutual treaties, as well as in their treaties with other nations. If they had intended to use it in the Cyprus-Serbia BIT, they would have done so.

44. *Second*, customary public international law is of no help because there is no customary rule governing the definition of "*seat*". Serbia does not argue otherwise.

---

46 Statute of the International Court of Justice, Art. 38(1)(c), **CL-181**.

47 Convention between Ireland and Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, Arts. 7, 12, 14, **CL-182**; Convention between Canada and the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on Income and on Capital, Art. 4, **CL-183**; Agreement between the Federal Republic of Germany and the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, Arts. 3, 4, 8, 13, 14, 21, Protocol paragraph 1, **CL-184**; Convention between the Government of the Kingdom of Denmark and the Government of the Republic of Serbia for the avoidance of double taxation with respect to taxes on income and on capital, Arts. 3, 4, 8, 13, 15, 22, **CL-185**; Convention between Ireland and the Republic of Serbia for the avoidance of double taxation with respect to taxes on income and on capital, Art. 4, **CL-186**; Convention between the Italian Republic and the Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and capital, Arts. 3, 4, 8, 13, 15, 22, **CL-187**.

48 Convention between the Republic of Cyprus and The Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and on capital, Art. 4(3), **CL-188**.

45. *Third,* the general principles of law recognized by civilized nations are of no help either. No civilized nation defines "*seat*" as a matter of "*general principle*" of its domestic law. Moreover, the test for determining proper law applicable to companies varies significantly amongst jurisdictions. This is confirmed, for example, by the 2016 final report published by the European Commission, titled "*Study on the Law Applicable to Companies*" ("**EC Final Report**").

46. The EC Final Report stated that "*[i]n 14 Member States, the registered office can in effect be a mere postal address at which the company receives mail. In the remaining Member States, there either is an explicit requirement for some level of business activity (beyond the ability to receive mail) at the registered office, or legal uncertainty exists in this regard.*"[49]

47. Thus, the EU Member States more often than not determine the law applicable to companies based on the formal criterion of registered office, whereas more demanding requirements are less frequent and subject to uncertainties.

48. In short, there is no general principle of law of civilized nations defining "*seat*", and certainly not as "*place of effective management*."

49. Accordingly, public international law does not provide for any definition of seat, much less for one applicable under the Serbia-Cyprus BIT. This was confirmed, for example, by Prof. Park in his separate opinion in *CEAC v. Montenegro*, addressing the meaning of "*seat*" under the Cyprus-Serbia BIT, where he observed that none of "*[t]he relevant sources of international law […] [which] include conventions, international custom and general principles of law, as well as judicial decisions and teachings of highly qualified publicists […] provides an 'ordinary meaning' for seat*."[50] Professor Park correctly concluded that "*[i]nternational law as it currently stands provides no uniformly accepted* '*ordinary meaning*' *of corporate seat.*"[51]

---

49 EC Final Report, p. 105, **C-535**.

50 *CEAC Holdings Limited v. Montenegro,* ICSID Case No. ARB/14/8, Separate Opinion of William W. Park, 26 July 2016, ¶ 12, **CL-073**.

51 *CEAC Holdings Limited v. Montenegro,* ICSID Case No. ARB/14/8, Separate Opinion of William W. Park, 26 July 2016, ¶ 18, **CL-073**.

50. The *Mera* tribunal—which also addressed the meaning of "*seat*" under the Cyprus-Serbia BIT—reached the same conclusion in equally unambiguous terms and noted that the term "seat" ought, therefore, to be interpreted by reference to Cyprus law:

> Since there is no definition of "seat" in the ICSID Convention, nor in the BIT, and *no uniform definition under international law*, the Arbitral Tribunal considers *that the term in question must be interpreted by way of renvoi to municipal law*.[52]

51. The tribunal in *Tenaris v. Venezuela,* having reviewed the parties' "*compilation of authorities and instances in international law and practice*,"[53] including scholarly articles and arbitral case-law, also concluded that there is no uniform definition of the term "seat" in international law:

> *Having carefully considered the extensive submissions and voluminous materials provided by both sides on this issue, it is clear that neither term has been used in international law and practice as a consistent "legal term of art", with only one meaning*. On the contrary, the range of references upon which each side has relied indicates that these terms are susceptible of either a formal or substantive meaning.[54]

52. In any event, if the term "*seat*" had a meaning under public international law (*quod non*), it would be that of "*registered office*" and not "*place of effective management*." The case *Orascom v. Algeria*—where the tribunal adopted an "*autonomous meaning*" approach to interpret the term "*siège social*"—proves the point. There, Algeria argued that "*siège social*"[55] should be interpreted as place of "*effective management*". The *Orascom* tribunal categorically rejected Algeria's attempts. It did so on the basis of Article 31(1) of the Vienna Convention on the Law of Treaties. "*[A] good faith*

---

52 *Mera Investment Fund Limited v. Republic of Serbia,* ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 89 (emphasis added), **RL-020**.

53 *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶ 138, **CL-019**.

54 *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶ 144 (emphasis added), **CL-019**.

55 The exact wording of the definition of investor with respect to juridical persons read as follows: "*Les «sociétés», c'est-à-dire, toute personne morale constituée conformément à la législation belge, luxembourgeoise ou algérienne, et ayant son siège social sur le territoire de la Belgique, du Luxembourg ou de l'Algérie*." *See* Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria, ICSID Case No. ARB/12/35, Final Award, ¶ 269, **CL-077**.

*interpretation of the ordinary meaning*" of "*siège social*", the tribunal held, leaves no doubt that the term means "*registered office*"[56]—not "*effective management*".[57]

53. In short: Serbia's lengthy legal theories are futile, because the term "*seat*" under Article 1(3)(b) of the Cyprus-Serbia BIT must be assessed in the light of Cyprus law.

### 2. Arbitral awards rendered under the Serbia-Cyprus BIT demonstrate that the term "*seat*" does not import any requirement of "*effective management*"

54. Arbitral awards rendered under the Serbia-Cyprus BIT also demonstrate that the term "*seat*" does not import any requirement of "*effective management*." The *Mera* tribunal relied on the definition of "*seat*" within the meaning of Cyprus law and concluded that the correct meaning of "*seat*" under Cyprus law—and hence under the Serbia-Cyprus BIT—is the place of a company's registered office.[58] And as Serbia itself concedes, "*[w]ith the Reply, Claimants submitted additional evidence showing that both Coropi and Kalemegdan have registered offices in Cyprus*."[59] It is thus undisputed that Cypriot Claimants have their "*registered office*" in Cyprus.

55. The only other case that considered the term "*seat*" under the Serbia-Cyprus BIT is *CAEC v. Montenegro,* which had been published more than two years before the *Mera* award and was discussed extensively in the *Mera* arbitration.[60] The *CAEC* tribunal was split on the issue of whether or not the claimant's registration of an address with the Cypriot authorities was conclusive evidence of the claimant having a "*registered office*", and thus a "*seat*", in Cyprus. The majority answered this question in the negative, without "*consider[ing] it necessary to determine the precise meaning of the term 'seat'*

---

56 *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Final Award, ¶ 298, **CL-077**.

57 *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Final Award, ¶ 298, **CL-077**.

58 *Mera Investment Fund Limited v. Republic of Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶¶ 90-91, 93, **RL-020**.

59 Rejoinder, ¶ 304.

60 The *CAEC v. Montenegro* case was governed by the same investment treaty because the Cyprus-Serbia BIT was entered into before the split of Serbia and Montenegro. The same BIT, thus, continues to apply both between Serbia and Cyprus and between Montenegro and Cyprus.

*as employed in Article 1(3)(b) of the [Serbia-Cyprus] BIT*".[61] While the majority noted that in the "*vast majority of cases, a company's registered office will be at the address indicated in the certificate of registered office*",[62] it concluded that the "*special circumstances of [that] case*" compelled the finding that the claimant's stated registered office did not exist. [63]

56. These special circumstances included that the address of the alleged registered office: (*i*) was in a vacant private house;[64] (*ii*) had no sign or brass plate of CEAC appended to the building;[65] (*iii*) was not accessible to public;[66] (*iii*) showed no signs of any, much less business, activity; (*iv*) was not amenable to service by mail or courier;[67] and (*v*) did not host the company's books and registers.[68] None of such circumstances exists in the present case. As already shown, the registered offices of both Cypriot Claimants are located at a modern office building, are easily identifiable by the companies' nameplates affixed on the building,[69] are reachable by both the public and couriers during business hours[70] and host the companies' books and registers.[71] It is, thus, obvious that the Cypriot Claimants would have their "*seat*" in Cyprus also under the approach adopted by the *CEAC* majority, and Serbia concedes the point.[72]

---

61 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 148, **RL-011**.

62 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 166, **RL-011**.

63 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶¶ 190, 200, **RL-011**.

64 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 186, **RL-011**.

65 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 198, **RL-011**.

66 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 193, **RL-011**.

67 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 196, **RL-011**.

68 *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8, Award, 26 July 2016, ¶ 197, **RL-011**.

69 Georgiades First ER, ¶ 4.6.3.

70 Georgiades First ER, ¶¶ 4.6.3-4.6.4.

71 Georgiades First ER, ¶ 4.6.5.

72 Rejoinder, ¶ 304 (in which Serbia states: "*With the Reply, Claimants submitted additional evidence showing that both Coropi and Kalemegdan have registered offices in Cyprus*.").

### 3. Authorities cited by Serbia are inapposite

57. Serbia seeks to rely on a handful of investment cases which required "*something more*" than the registered office to locate a company's "*seat*". However, Serbia's reliance on these cases is misguided because they related to interpretation of *differently worded* investment treaties. Furthermore, when read carefully, these awards do not support—but instead refute—Serbia's argument that the term "*seat*" should be interpreted as the place of residence of a company's beneficial owner or the person who otherwise ultimately controls the company.

58. In *Alverley v. Romania*, the tribunal indeed held that the term "*seat*" under the Cyprus-Romania BIT required more than "*registered office*". However, as Claimants already explained, that conclusion was driven by two factors, neither of which are present in the case at hand.

59. *First*, the Cyprus-Romania BIT, which entered into force in 1991, provided that "*seat*" must be "*in the area of the Republic of Cyprus* ***which is under the jurisdiction and the control of the Republic's Government***."[73] It was because of the emphasized language that the *Alverley* tribunal concluded that the term "*seat*" under the Cyprus-Romania BIT cannot be equated to "*registered office*". According to the *Alverley* tribunal, equating "*seat*" with "*registered office*" would mean "*that a company with its registered office in the unoccupied territory but controlled from the occupied area would be included within the protection of the BIT*" and, conversely that "*a company controlled from the unoccupied territory but with a registered office in the occupied area would be excluded.*"[74] According to the tribunal, the reference in the Cyprus-Romania BIT to the area under the jurisdiction and the control of the Republic's Government was intended to prevent such a result. Therefore, the tribunal concluded that the term "*seat*" was used to denote more than simply "*registered office*".

60. The *Alverley* tribunal found an incorrect solution to a non-existent problem. As explained by Mr. Georgiades, from 1974 until 2004, it was not possible for Greek or

---

[73] *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 215 (emphasis added), **RL-007**.

[74] *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶ 225, **RL-007**.

Turkish Cypriots to cross and even communicate from one part of the island to the other, and it was factually impossible for a company with a registered office in the territory controlled by the (Greek) Cypriot Government to be controlled from the (Turkish) occupied area (and *vice versa*).[75]

61. In any event, the Serbia-Cyprus BIT contains no reference to the territory under the jurisdiction and control of the Cypriot Government. Since this language was determinative for the *Alverley* tribunal's reasoning, the *Alverley* award is inapposite.

62. *Second*, the reason why the *Alverley* tribunal "*scrutinize[d] the evidence to see whether the Cyprus holding company is exercising some form of effective management*" was the fact that the ultimate beneficial owner of both Cypriot claimants was a Romanian national, and thus a national of the host State.[76] The tribunal prefaced its analysis of "seat" by stressing it was clearly not "*within the contemplation of the parties to the BIT*" to protect an "*operation*" in which "*all that is happening is that a Romanian investor is recycling funds into an existing Romanian investment through a holding company in Cyprus*."[77] No such considerations arise here because the (correct) factual premise of Serbia's objection is that Cypriot Claimants are controlled by Mr. Rand—a Canadian national.

63. Moreover, in addition to being inapposite, *Averley* also does not help Serbia. This is because the *Averley* tribunal expressly rejected Romania's argument that the "*real seat*" of a claimant is located in the place where the ultimate power to control the company resides:

> *Nor is the Tribunal persuaded by the argument that the "real seat" of a claimant is located in the place where the ultimate power to control the company resides.* Ultimately, every company is controlled by its shareholders, whether they be many or few. In a corporate group, the result is that ultimate control over a subsidiary company resides with its parent. While the shareholders may exercise greater or lesser degrees of control over ordinary decision-making, the fact remains that they have the final say. *This is particularly important to note in relation to a holding company set up to hold the shares in an operational entity on*

---

75 Georgiades Second ER, ¶ 3.2.5.8.

76 *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶ 250, **RL-007**.

77 *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶ 250, **RL-007**.

> *behalf of the holding company's ultimate beneficial owners. Yet it is unlikely that Cyprus, which is home to large numbers of holding companies to whom it offers a beneficial taxation and legal regime and which it has worked hard to attract, intended to exclude all holding companies based in its territory from protection under the BIT*.[78]

64. In light of the above finding, the tribunal concluded that "*the requirements for a 'real seat' are that the* ***direct management of a company, with responsibility for that company's compliance with company and taxation laws, as well as laws relating to such matters as bribery, must be located at the seat***."[79]

65. As shown above, for the most of their existence, the majority of directors of Cypriot Claimants were Cypriot nationals and residents. In addition, Cypriot Claimants' Cypriot directors have always had the responsibility for compliance of the Cypriot Claimants with Cyprus law. Thus, even under the approach advocated by the *Alverley* tribunal, Cypriot Claimants have their "*seat*" in Cyprus.

66. The decision in *ATF v. Slovakia* does not help Serbia either. The *ATF* tribunal required the investor to demonstrate the location of the "*effective center of administration of the business operations*"[80] only because that requirement was mandated by the applicable Swiss-Slovakia BIT, which expressly required that investors have *"their seat,* ***together with real economic activities****, in the territory of [their home State]*."[81] Such wording is not included in the Serbia-Cyprus BIT. Thus, the decision in *ATF v. Slovakia* is inapposite. In fact, the *ATF* decision was rejected by several subsequent tribunals—including the *Alverly* tribunal[82]—as irrelevant for determining the meaning of the term "*seat*".

67. Claimants' position is further reinforced by the findings of the tribunal *WCV and CCL v. Czech Republic*. There, the tribunal interpreted a more demanding definition in

---

78 *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶ 233 (emphasis added), **RL-007**.

79 *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶ 234, **RL-007**.

80 *Alps Finance and Trade AG v. The Slovak Republic*, UNCITRAL, Award (redacted version), 5 March 2011, ¶ 217, **RL-019**.

81 Agreement between the Czech and Slovak Federal Republic and the Swiss Confederation on the promotion and reciprocal protection of investments, 1990, Art. 1(1)(C) (emphasis added), **CL-078**.

82 *Alverley Investments Limited and Germen Properties Ltd v. Romania* (ICSID Case No. ARB/18/30). Excerpts of Award, 16 March 2022, ¶¶ 235-236, **RL-007**.

Cyprus-Czech BIT, which defined "*investor*" as an entity "*incorporated or constituted in accordance with, and recognized as legal person by its laws, having* ***the permanent seat*** *in the territory of that Contracting Party*."[83] Under that more demanding language of the applicable treaty, the tribunal held as follows:

> As a general rule, the Tribunal finds that the term permanent seat requires that the office established in the bylaws of a Cypriot company have substance and be more than a mere façade. The precise requirements necessary to meet this standard are case specific and must be reviewed by tribunals whenever the objection is raised.
>
> *To be more than a mere façade, the seat is typically required to be open for business, accessible to third parties, and regularly used to receive and send communications. In addition, accounts should be kept and audited at the location, the books should be available for inspection, and officers of the company should be able to work from the location.* There is thus a close relationship between a Cypriot company properly and continuously satisfying all legal and compliance requirements imposed by Cypriot law at its office, and the company having its permanent seat in that location.[84]

68. As shown above, the Cypriot Claimants meet all the requirements for a "*permanent seat*" identified by the *WCV* tribunal, and therefore, certainly have "*seat*" in Cyprus, as required by the Serbia-Cyprus BIT.

### 4. Under Cyprus law, the term "*seat*" denotes "*registered office*" and does not import any requirement of "*effective management*"

69. As explained above, the meaning of the term "*seat*" under Article 1(3)(b) of the Serbia-Cyprus BIT is governed by the investor's home State's law, here Cyprus law. Claimants' Cyprus law expert, Mr. Georgiades, conclusively shows that Cyprus law equates "*seat*" with "*registered office*" and that both terms are used interchangeably in both Cypriot statutes and case-law.[85] Serbia's arguments to the contrary—made in reliance on Serbia's expert, Mr. Ioannides—must fail.

---

83 *WCV World Capital Ventures Cyprus Ltd. & Channel Crossings Ltd. v. Czech Republic*, PCA Case No. 2016-12, Interim Award on Jurisdiction, 25 April 2018, ¶ 126, **CL-179**.

84 *WCV World Capital Ventures Cyprus Ltd. & Channel Crossings Ltd. v. Czech Republic*, PCA Case No. 2016-12, Interim Award on Jurisdiction, 25 April 2018, ¶¶ 313-314 (emphasis added), **CL-179**.

85 Georgiades First ER, ¶ 4.5.1; Georgiades Second ER, ¶ 3.1.5.

70. *First*, Mr. Georgiades explains that the "*term 'seat' is used in Cyprus company law interchangeably with, and having the same meaning as, 'registered office.*"[86] While several amendments to the Cyprus Companies Law refer to the term "*seat*" instead of referring to the term "*registered office*", this does not change the conclusion that both terms are interchangeable. Instead, the use of two terms with an identical meaning in the amending laws was merely a result of translation issues in connection with Cyprus's accession to the EU. As Mr. Georgiades further explains, the notion of seat is foreign to—and not defined by—Cyprus company law.[87]

71. Concepts derived from EU law, such as transfer of a company's seat, introduced the term "*seat*"—commonly used in EU legal instruments and literature—into the Cyprus Companies Law as a synonym to the term "*registered office*".[88] The terms "*seat*" and "*registered office*" are, moreover, used interchangeably not only in Cypriot legislation but also in Cypriot case-law.[89]

72. *Second*, the registered office of a company does not necessarily determine that company's place of incorporation. This is because, after incorporation, the registered office may subsequently be transferred to another state.[90] There is, thus, no merit in Serbia's assertion that the terms "*place of incorporation*" and "*registered office*" are interchangeable. They are not. This alone is fatal to Serbia's objection, predicated on the argument that, because the definition of a Cypriot *investor* under the Serbia-Cyprus BIT requires both "*incorporation*" and a "*seat*" in Cyprus, then these terms must necessarily mean something different.[91] Building up on this premise, Serbia argues that because "*incorporation*" equals "*registered office*" under Cyprus law, then "*seat*" must mean something more.[92] That logic fails because "*incorporation*" does *not* equal "*registered office*" under Cyprus law.[93]

---

86 Georgiades First ER, ¶ 4.5.1; Georgiades Second ER, ¶ 3.1.5.

87 Georgiades Second ER, ¶ 2.2.2.

88 Georgiades First ER, ¶ 4.5.2.

89 Georgiades First ER, ¶ 4.5.15.

90 Georgiades First ER, ¶ 4.1.1; Georgiades Second ER, ¶ 3.1.1.

91 Counter-Memorial, ¶ 256.

92 Counter-Memorial, ¶¶ 256, 259.

93 Georgiades First ER, ¶ 4.1.1.

73. *Third*, Serbia argues that the term "*seat*" under Cyprus law should be guided by the practice of English courts—in particular the *Omas* judgment—in corporate tax matters, according to which "*seat*" of a tax resident falls to be determined based on the place of its central management.[94] Serbia's reliance is inapposite. Under the Value Added Tax Law of 1990 applied in the *Omas* judgment, it was possible for a company to have multiple seats.[95] This approach is clearly inapposite under the Serbia-Cyprus BIT.

74. *Finally*, the conclusion that Cyprus law equates "*seat*" to "*registered office*" is further confirmed by the EC Final Report, which clearly found that that Cyprus had "*no*" requirements for "*residence/real seat*", other than having a registered office.[96]

75. If this was not already enough, under Serbian law, the "*seat*" of a company was "*determined by the memorandum of association*" and "*registered in accordance with the law governing the registration of business entities.*"[97] Thus, Serbian law defines "*seat*" as "*registered office*". It is hard to believe that Cyprus and Serbia, which both define "*seat*" as "*registered office*" in their domestic company law, would introduce a substantively different definition of "*seat*" in their BIT.

### 5. Cypriot Claimants have their "*registered office*"—and thus "*seat*"—in Cyprus

76. In sum, the question of whether or not Claimants have their "*seat*" in Cyprus within the meaning of both Cyprus law and Article 1(3)(b) of the Serbia-Cyprus BIT solely depends on whether they have their "*registered office*" there.

---

94 Counter-Memorial, ¶ 263.

95 Georgiades Second ER, ¶ 3.2.3.9.

96 EC Final Report, p. 109, **C-535**.

97 Company Law (Official gazette of the RS, No. 125/2004), Article 16, **C-711**:

"Article 16

(1) The seat of a company is the place from which the company's operations are managed.

(2) The seat of a company is determined by the memorandum of association and is registered in accordance with the law governing the registration of business entities."

Similarly, according to currently applicable Company Law, a "*company seat shall be the place and the address on the territory of the Republic of Serbia from which the company's operations are managed and that has been determined as such by the memorandum of association, articles of association or general meeting's resolution, i.e. by the decision of partners or general partners.*" *See* Company Law (Official Gazette RS, No. 36/2011, 99/2011, 83/2014 –other law, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021), Article 19, **C-716**.

77. As Mr. Georgiades explains, a registered office is an address registered as such by the Registrar of Companies, which can be easily ascertained from its website. An excerpt from the Company Register clearly shows that both Cypriot Claimants have, from the date of their incorporation until today, their registered office on Corner of Prodromos Str & Zinonos Kitieos, Palaceview House, 2064, Nicosia, Cyprus.[98]

78. Indeed, Serbia also admits "*the Company Register records show that the Cypriot Claimants are both registered and have registered offices in Cyprus*."[99] The same is demonstrated by the Cypriot Claimant's certificate of registered office in Cyprus.[100] As Mr. Georgiades confirms, this is conclusive evidence that both companies have their registered offices—and thus their "*seat*"—in Cyprus.

79. In their Counter-Memorial, Serbia, nevertheless, argues that Cypriot Claimants failed to prove that they have a registered office "*in accordance with the applicable requirements*."[101] These alleged requirements include: (*i*) the existence of physical premises ("*a vacant plot will not do*"); (*ii*) accessibility of the premises to public, (*iii*) maintaining the company's books and registers at the place of registered office, (*iv*) accepting delivery by post at the registered office; and (*v*) affixation of the company's name outside the office, "*in letters easily legible*".[102]

80. Serbia no longer raises that argument. In his second report, Mr. Ioannides explained that he did "*not suggest that all these requirements should cumulatively be met, but that at least the existence of physical premises, the right of the company to use the premises and **perhaps** also the ability of the public to access the premises and serve documents on the company are critical requirements.*"[103] Mr. Ioannides' use of "perhaps" clearly

---

98 Corporate Register of Kalemegdan dated 31 March 2022, **C-063**; Excerpt from the Cypriot Company Registry for Kalemegadan, **C-591**; Corporate Register of Coropi dated 31 March 2022, **C-065**. Excerpt from the Cypriot Company Registry for Coropi, **C-592**.

99 Counter-Memorial, ¶ 268.

100 Certificate of registered office for Coropi, 21 February 2024, **C-591**; Certificate of registered office for Kalemegdan, **C-592**.

101 Counter-Memorial, ¶ 252.

102 Ioannides First ER, ¶ 8.33.

103 Ioannides Second ER, ¶ 7.1. (emphasis added).

demonstrate that the test proposed by him is entirely arbitrary and not based on any authority.

81. In any event, Cypriot Claimants have already demonstrated that they meet all of the criteria of the more extensive "test" initially proposed by Serbia and Mr. Ioannides. Serbia expressly agrees that "*both Coropi and Kalemegdan have registered offices in Cyprus.*"[104] Accordingly, it appears undisputed that both Cypriot Claimants have their registered offices in Cyprus.

### 6. In any event, the place of Cypriot Claimants' effective management is in Cyprus

82. Finally, even if the Tribunal were to find that the term "*seat*" under the Cyprus-Serbia BIT somehow implied the requirement of "*effective management*" (*quod non*), the Tribunal would still have jurisdiction *ratione personae* over the Claimants' claims because both Cypriot Claimants are effectively managed from Cyprus—and not Canada, or any other place for that matter.

83. The *Tenaris* tribunal explained that the test to assess the "*effective seat*" of holding companies, such as Cypriot Claimants, must reflect their specific nature. As a result, the *Tenaris* tribunal pointed out that holding companies must not be held to the same standards of "*effective management*" as other companies[105] and only examined whether: (*i*) the meetings of the Board of Directors took place at the purported seat; (*ii*) the books and records were kept at the purported seat; and (*iii*) administrative services were provided at the purported seat.

84. Both Cypriot Claimants satisfy all the requirements identified by the *Tenaris* tribunal. This is because, with respect to both Cypriot Claimants: (*i*) meetings of directors of both Cypriot Claimants took place at their registered office[106]; (*ii*) company books and

---

104 Rejoinder, ¶ 304.

105 *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶ 199, **CL-019**.

106 Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-318**; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, **C-341**; Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-350**, Minutes of a meeting of the board of directors of Kalemegdan, 16 August 2012, **C-351**; Minutes of a meeting of the board of directors of Kalemegdan, 28 January 2019, **C-707**; Minutes of a meeting of the board of directors of Kalemegdan, 23 March 2012, **C-708**; Minutes of a meeting of the board of directors of Kalemegdan, 26 March 2012, **C-709**.

registers were, and are, kept at the place of registered office[107]; and (*iii*) administrative—as well as accounting, auditing, corporate and fiduciary—services were, and are, provided to Cypriot Claimants at the place of their registered office by a professional services firm, HLB Cyprus Limited.[108]

85. Importantly, as confirmed by Mr. Georgiades, it is the directors of a company—and not its shareholders—that exercise its management and control under Cyprus law.[109] The majority of directors in both Cypriot Claimants were, for the most of their existence, Cypriot nationals and residents, whose involvement in the management of Cypriot Claimants included compliance with Cyprus law, such as preparation of financial statements or tax returns.[110] In addition, in exercising their fiduciary duties to Cypriot Claimants, the Cypriot directors have been involved in all other matters regarding Cypriot Claimants, including, without limitation, the decision to commence the present arbitration.[111] As Mr. Georgiades concludes based on a wealth of evidence presented to him, "*both Kalemegdan and Coropi were managed and controlled from Cyprus*."[112]

* * *

86. In sum, the Cypriot Claimants have demonstrated above that they have a "*seat*" in Cyprus withing the meaning of Article 1(3)(b) of the Serbia-Cyprus BIT because: (*i*) public international law does not define the term "*seat*"; (*ii*) Cyprus law equates "seat" with "*registered office*"; and (*iii*) it is undisputed that both Cypriot Claimants have a registered office in Cyprus.

87. Moreover, even if the Tribunal adopted Serbia's theory that public international law provides for an autonomous meaning of "*seat*" such meaning would not be "*place of effective management*" but would instead be place of "*registered office*". And even if

---

107 Georgiades First ER, ¶¶ 4.6.5-4.6.6

108 Markićević Second ER, ¶ 15; Georgiades Second ER, ¶ 4.6.2.

109 Georgiades Second ER, ¶ 3.2.7.12.

110 Markićević Second WS, ¶ 16.

111 Markićević Second WS, ¶ 19.

112 Georgiades Second ER, ¶ 3.2.7.13.

"*seat*" meant "*place of effective management*" (*quod non*), it would not matter because both Cypriot Claimants have always been effectively managed from Cyprus.

88. Serbia's objection thus fails.

## B. The Tribunal has jurisdiction *ratione temporis* under the Cyprus-Serbia BIT

89. In their Reply, Claimants explained that the scope of the Tribunal's temporal jurisdiction under the Cyprus-Serbia BIT is defined in Article 12 of the Cyprus-Serbia BIT.[113] Accordingly, "*provisions of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as after the date of entry into force of this Agreement, but it shall only apply to matters occurring after the entry into force of the present Agreement.*"[114] This means that the Tribunal has jurisdiction over Serbia's measures adopted after the Cyprus-Serbia BIT entered into force on 23 December 2005.[115]

90. Claimants also explained that Cypriot Claimants' claims satisfy this requirement because:

a. the City of Belgrade ("**City**") adopted the 2013 DRP[116] on 20 December 2013, *i.e.* almost eight years after the Cyprus-Serbia BIT's entry into force;[117] and

b. Serbia rejected Obnova's Request for Compensation[118] on 13 August 2021, *i.e.* almost 16 years after the Cyprus-Serbia BIT's entry into force.[119]

91. Serbia disagrees and argues that "*the Tribunal cannot make a decision about the Cypriot Claimants' claims without first making a decision about the matters (and disputes) that*

---

113 Reply, ¶ 429.

114 Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, Art. 12, **CL-007(a)**.

115 Extract from the website of the Law Commissioner of the Republic of Cyprus evidencing the entry into force of the Cyprus-Serbia BIT on 23 December 2005, 6 February 2018, ¶ 19, **C-072**.

116 "Detailed Regulation Plan for Roadways: Dunavska, Tadeuša Košćuška, Dubrovačka, Trolleybus and Bus Terminus in Dorćol, Municiplaity of Stari Grad" ("**2013 DRP**").

117 Memorial, ¶ 171.

118 Obnova's request for compensation dated 19 April 2021 ("**Request for Compensation**"). *See* Obnova's request for compensation, 19 April 2021, **C-052**.

119 Memorial, ¶ 172.

*took place before the treaty entered into force.*"[120] Serbia is wrong. As Claimants show in **Section II.B.3** below, the Tribunal is not asked—and does not need—to make any decisions about matters pre-dating the entry into force of the Cyprus-Serbia BIT. The Tribunal is asked to decide on whether Serbia's conduct post-dating the entry into force of the Cyprus-Serbia BIT violated the treaty. Nothing precludes the Tribunal from examining and opining on events pre-dating the entry into force when making that decision.

92. Serbia's argument that Claimants' claims require retroactive application of the Cyprus-Serbia BIT is equally without merit. According to Serbia, this is because the adoption of the 2013 DRP and rejection of the Request for Compensation are consequences of the registration of the City as the user of Obnova's premises on 22 November 2003 ("**2003 Registration**")[121] and are allegedly "*inevitably tied with the 2003 Registration.*"[122]

93. However, as a matter of public international law, the alleged causal link between Serbia's breaches of the Cyprus-Serbia BIT and events pre-dating its entry into force does not mean that the Tribunal's adjudication of Claimants' claims requires retroactive application of the Treaty. Furthermore, as a matter of fact, the alleged causal link does not exist, or is too weak to be legally relevant. Claimants address these points in detail in **Section II.B.3** below.

94. Finally, Serbia incorrectly argues that the dispute that is before the Tribunal allegedly arose in 2003 or 2004 as the result of:

a. the 2003 Registration;

b. Cadaster's communication with Obnova during its privatization; and

c. rejection of Obnova's requests for legalization in 2004.[123]

---

120 Rejoinder, ¶ 313.

121 Rejoinder, ¶ 347.

122 Rejoinder, ¶ 352.

123 Rejoinder, ¶¶ 332-345.

95. Once again, this is not the case. As Claimants demonstrate in **Section II.B.4** below, none of the above-mentioned events gave rise to any dispute as defined under public international law.

96. In addition, even if the Tribunal concluded that some dispute between Obnova and Serbia arose in 2003 or 2004, such a dispute would necessarily be a different dispute than the one that is before the Tribunal. Claimants demonstrate that this is the case in **Section III.B.4.d** below.

### 1. Cypriot Claimants invoke only breaches post-dating the Cyprus-Serbia BIT's entry into force and Cypriot Claimants' investment

97. In their Reply, Claimants explained that it is for Claimants—*not for Serbia*—to formulate their claims and to identify Serbia's measures that, according to Claimants, constitute breaches of the Cyprus-Serbia BIT.[124] Claimants also explained that this position has been repeatedly confirmed by other investment tribunals.[125] In the same vein, investment tribunals have consistently found that, for the purposes of their assessment of jurisdiction, they must consider presumed or supposed violations of international law *as invoked by the investors*.[126]

98. As Claimants explained both in their Memorial and in their Reply, Cypriot Claimants' claims are based *solely* on:

a. the adoption of the 2013 DRP on 20 December 2013—*i.e.* almost eight years after the Cyprus-Serbia BIT's entry into force; and

b. rejection of Obnova's Request for Compensation on 13 August 2021—*i.e.* almost 16 years after the Cyprus-Serbia BIT's entry into force.[127]

---

124 Reply, ¶¶ 440 *et seq.*

125 *E.g. Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Decision on Jurisdiction, 4 December 2017, ¶ 186, **CL-079**. *See also* Reply, ¶¶ 440-442.

126 *E.g. ECE Projektmanagement v. The Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award, 19 September 2013, ¶ 4.743, **RL-152**; *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 9 June 2023, ¶¶ 440-441, **CL-112**.

127 Memorial, ¶¶ 171-172; Reply, ¶ 439.

99. Both these breaches clearly post-date the entry into force of the Cyprus-Serbia BIT and Cypriot Claimants' investment and, as such, fall within the Tribunal's jurisdiction *ratione temporis.*

100. Importantly, Serbia now accepts that Claimants' claims are not "*based on the events that pre-date the treaty*":

> The truth of the matter is that Respondent's *ratione temporis* objection is built on a simple proposition – the Tribunal cannot make a decision on whether Claimants' alleged entitlements to the Dunavska Plots were expropriated by Respondent's measures in 2013 and 2021 without first determining whether these property entitlements were created, or taken, in the period up to the entry into force of the Cyprus-Serbia BIT in 2005. *This is not saying that Cypriot Claimants' claims are based on the events that pre-date the treaty*. Nor that Cypriot Claimants' claims should be phrased differently, as Claimants also impute.[128]

101. This should be the end of the matter. As Claimants show in **Sections II.B.2** to **II.B.4** below, the additional arguments made by Serbia in its Rejoinder lack any merit.

### 2. Tribunal's jurisdiction over Cypriot Claimants' claims is not precluded by Article 12 of the Cyprus-Serbia BIT

102. While Serbia now accepts that Claimants' claims are not based on events pre-dating the entry into force of the Cyprus-Serbia BIT, it argues that "*the Tribunal cannot make a decision about the Cypriot Claimants' claims without first making a decision about the matters (and disputes) that took place before the treaty entered into force.*"[129] According to Serbia, such "*matters*" include the determination of:

a. whether Obnova had acquired ownership and the right of use over its premises at Dunavska 17-19 and 23; and

b. whether Obnova had been stripped of these rights in 2003-2004.[130]

103. Serbia then argues that the Tribunal is precluded from deciding on these "*matters*" by Article 12 of the Cyprus-Serbia BIT, which states the following:

---

128 Rejoinder, ¶ 313 (emphasis added). *Similarly also* Rejoinder, ¶ 329.

129 Rejoinder, ¶ 313.

130 Rejoinder, ¶ 327.

**Article 12**

**Application of the Agreement**

> The provisions of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as after the date of entry into force of this Agreement, but it shall only apply to matters occurring after the entry into force of the present Agreement.[131]

104. Serbia misinterprets Article 12. This provision merely states that the Tribunal has jurisdiction over Serbia's measures adopted after the Cyprus-Serbia BIT entered into force on 23 December 2005.[132] This, however, does not mean that the Tribunal is in any way precluded from examining events pre-dating the Treaty's entry into force.[133]

105. As Claimants showed already in their Reply, this conclusion has been repeatedly confirmed by other investment tribunals.[134] In addition to the awards already cited in the Reply, the decision in *Tecmed v. Mexico* is particularly instructive.[135] The *Tecmed* tribunal concluded that even though the provisions of the underlying Spain-Mexico BIT cannot apply retroactively, "*it should **not** necessarily follow from this that events or conduct prior to the entry into force of the Agreement are not relevant for the purpose of determining whether the Respondent violated the Agreement through conduct which took place or reached its consummation point after its entry into force.*"[136]

106. The tribunal then went on to confirm that "*conduct, acts or omissions […] though they happened before the entry into force, may be considered a constituting part, concurrent*

---

131 Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, Art. 12, **CL-007(a)**.

132 Extract from the website of the Law Commissioner of the Republic of Cyprus evidencing the entry into force of the Cyprus-Serbia BIT on 23 December 2005, 6 February 2018, ¶ 19, **C-072**.

133 Reply, ¶¶ 464-466.

134 *E.g. M.C.I. Power Group L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, ¶ 93, **CL-081**; *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award of the Tribunal (Corrected), 30 May 2017, ¶ 217, **CL-084**; *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case No. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶¶ 248-249, **CL-083**; *Chevron Corporation and Texaco Petroleum Corporation v. The Republic of Ecuador (I)*, PCA Case No. 2007-02/AA277, Interim Award, 1 December 2008, ¶ 270, **CL-085**.

135 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, **CL-017**.

136 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 66 (emphasis added), **CL-017**.

*factor or aggravating or mitigating element of conduct or acts or omissions of the Respondent which took place after such date [and] do fall within the scope of [the] Arbitral Tribunal's jurisdiction.*"[137]

107. Similarly, the tribunal in *Grand River v. United States*, referring to previous awards in *Feldman* and *Mondev*, concluded that tribunals can consider claims challenging measures adopted after a treaty's entry into force, even if they are "*related to earlier events*":

> In the circumstances here, *the Tribunal has difficulty seeing how NAFTA Articles 1116(2) and 1117(2) can be interpreted to bar consideration of the merits of properly presented claims challenging important statutory provisions that were enacted within three years of the filing of the claim and that allegedly caused significant injury, even if those provisions are related to earlier events*. As the Permanent Court observed, while "a dispute may presuppose the existence of some prior situation or fact. it does not follow that the dispute arises in regard to the situation or fact." *The Mondev and Feldman tribunals both considered the merits of claims regarding events occurring during the three-year limitations period, even though they were linked to, and required consideration of, events prior to the limitations period or to NAFTA's entry into force*. In *Mondev*, the Tribunal considered (and rejected) the Claimant's claim that it had suffered a denial of justice in connection with state court proceedings occurring after NAFTA entered into force, although the dispute underlying the litigation arose years before. In *Feldman*, the Tribunal awarded damages in respect of discrimination occurring during the three-year limitations period, but its analysis of this and other claims again required consideration of earlier events.[138]

108. The same conclusion has been confirmed also in academic writings.[139]

109. Serbia ignores these authorities and repeats its position that Article 12 of the Cyprus-Serbia BIT "*qualifies*" Article 9 of the treaty (the dispute resolution clause) "*with the result that a tribunal constituted under the Cyprus-Serbia BIT does not have temporal jurisdiction to entertain a dispute which has arisen, or a matter which has occurred,*

---

137 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 68, **CL-017**. *See also Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 70, **CL-113**.

138 *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 86 (emphasis added), **CL-190**.

139 *E.g.* Sean D. Murphy, *Special Issue on 20th Anniversary of ARSIWA, Temporal Issues Relating to BIT Dispute Resolution*, ICSID Review, Vol. 37, No. 1-2 (2022), pp. 51–84, p. 57, **CL-148**; James Crawford, *The International Law Comission's Articles on State Responsibility: Introduction, Text and Commentaries*, 2002, p. 134, ¶ 9, **CL-194**.

*before the entry into force of the treaty (in 2005).*"[140] Serbia's interpretation is utterly unsupported and contradicted by the very text of the Cyprus-Serbia BIT.

110. Indeed, Serbia does not refer to a *single* authority that would support its interpretation—no award, no commentary, no article. The fact that Serbia is unable to refer to any authority that could support its interpretation of Article 12 does not come as a surprise. This is because Serbia's interpretation, if accepted, would lead to absurd results.

111. Article 12 expressly states that the Cyprus-Serbia BIT applies to "*investments made by investors of one Contracting Party* ***prior*** *to as well as after the entry into force of this Agreement.*"[141] However, in order to assess whether an investor made an investment pre-dating the Cyprus-Serbia BIT's entry into force, a tribunal must necessarily analyze acts predating the treaty (such as the conditions under which the investment was acquired, etc.).

112. Accepting Serbia's interpretation would mean that Serbia could dispose of any dispute related to an investment pre-dating the treaty's entry into force by simply disputing the existence of the underlying investment. Under Serbia's interpretation of the treaty, a tribunal would not be able to confirm the existence of the investment because it would not be able to make any determinations based on facts pre-dating the treaty—including the facts related to making of an investment.

113. Serbia disagrees and argues that "*there is nothing that would prevent a tribunal from determining existence of an investment which pre-dates the treaty, contrary to what Claimants argue.*"[142] Serbia, however, does not explain how that would be possible under its interpretation of the Cyprus-Serbia BIT. For the reasons explained above, which Serbia simply ignores in its Rejoinder, it would not be possible.

114. It seems—even though Serbia's submission is unclear on this point—that Serbia tries to avoid the absurd consequences of its interpretation by claiming that "*facts*" and

---

140 Rejoinder, ¶ 314.

141 Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, Art. 12 (emphasis added), **CL-007(a)**.

142 Rejoinder, ¶ 319.

"*matters*" have a different meaning.[143] According to Serbia, a matter is "*a subject or situation that you must consider or deal with*" and, as a result, a "*'matter' has a different meaning, and is more complex, than a 'fact'.*"[144]

115. Serbia thus argues that while "*the Tribunal may take into account facts that pre-date the treaty, Article 12 enjoins it from determining, resolving or adjudicating 'matters' (subjects, situations) which occurred before the entry into force of the treaty*."[145] As Claimants explained already in the Reply, this is a distinction without a difference. If one takes relevant facts "*into account*", one necessarily makes "*determinations*" or "*resolutions*" based on such facts.[146]

116. More importantly, even this artificial distinction does not change anything to the fact that Serbia's interpretation would lead to absurd results. As explained above, it is undisputed that the Cyprus-Serbia BIT applies to investment made before the Cyprus-Serbia BIT entered into force. This means that a tribunal applying the Cyprus-Serbia BIT may be asked to decide whether an investment made before the Cyprus-Serbia BIT's entry into force was made.

117. The question of whether an investment has been made is clearly "*a subject or situation that you must consider or deal with*" and thus represents a "*matter*" as defined by Serbia itself.[147] As a result, Serbia's interpretation of the Cyprus-Serbia BIT would again lead to an absurd situation where the treaty covers investments made before its entry into force, but—according to Serbia—tribunals would not be able to assess whether such investments actually were made.

118. Serbia's reliance on the decision of the Permanent Court of International Justice ("**PCIJ**") in *Phosphates in Morocco* is inapposite.[148] *Phosphates in Morocco* concerned

---

143 Rejoinder, ¶¶ 320 *et seq.*

144 Rejoinder, ¶ 321.

145 Rejoinder, ¶ 323.

146 Reply, ¶ 472.

147 Rejoinder, ¶ 321.

148 Reply, ¶¶ 473 *et seq.*

Italy's complaint against the "*monopolization of the Moroccan phosphates*" deposits by a 1925 decision of the Department of Mines ("**1925 Decision**").

119. The PCIJ's jurisdiction was expressly limited to "***disputes which may arise after [September 1931] with regard to situations or facts subsequent to this ratification***"[149] Italy sought to escape this limitation of the PCIJ's jurisdiction by arguing that the alleged "*permanent illegal situation*", while indeed "*brought about by the [1925 Decision]*", was "*maintained in existence at a period subsequent to the crucial date by the denial of justice to the claimants*."[150] The PCIJ rejected that argument and dismissed its temporal jurisdiction, holding that the 1925 Decision "*is always found, in this matter of the dispossession of the Italian nationals, to be the fact with regard to which the dispute arose*."[151]

120. Unlike in *Phosphates in Morocco*, Cypriot Claimants' claims are based solely on Serbia's measures post-dating the Cyprus-Serbia BIT. Serbia accepts that Claimants' claims are not "*based on the events that pre-date the treaty.*"[152] As a result, the PCIJ decision in *Phosphates in Morocco* is not applicable in the present case.

121. Serbia seems to argue that events pre-dating the Cyprus-Serbia BIT's entry into force are relevant for assessment of the extent of Claimants' rights.[153] That, however, is a non-issue.

122. Another PCIJ case, *Electricity Company of Sofia and Bulgaria*, is instructive with respect to this point. In that case, similar as Serbia in the present case, Bulgaria argued that while "*the facts complained of by the Belgian Government […] all date from a period subsequent to [the relevant date], the situation with regard to which the dispute*

---

149 *Phosphates in Morocco, Italy v France,* Preliminary objections, PCIJ Series A/B No 74, ICJ dated 14 July 1938, p. 22 (emphasis added), **RL-034**.

150 *Phosphates in Morocco, Italy v France,* Preliminary objections, PCIJ Series A/B No 74, ICJ dated 14 July 1938, p. 28, **RL-034**.

151 *Phosphates in Morocco, Italy v France,* Preliminary objections, PCIJ Series A/B No 74, ICJ dated 14 July 1938, p. 29, **RL-034**.

152 Rejoinder, ¶ 313.

153 Rejoinder, ¶ 315.

*arose dates back to a period before that date.*"[154] Bulgaria argued the "*centre point of the dispute*" was Belgium's complains related to application of a formula for electricity price established in awards that pre-dated the relevant date.[155]

123. The PCIJ rejected Bulgaria's argument, noting that awards pre-dating the relevant date represented a source of rights, but not a source of the dispute, and as such have no relevance for assessment of the PCIJ's jurisdiction *ratione temporis*:

> It is true that it may be said that the awards of the Mixed Arbitral Tribunal established between the Belgian Electricity Company and the Bulgarian authorities a situation which dates from before March 10th, 1926, and still persists at the present time. Nevertheless, the dispute between the Belgian Government and the Bulgarian Government did not arise with regard to this situation or to the awards which established it. The Court would recall in this connection what it said in the Judgment of June 14th, 1938 (Phosphates in Morocco, Preliminary Objection). *The only situations or facts which must be taken into account from the standpoint of the compulsory jurisdiction accepted in the terms of the Belgian declaration are those which must be considered as being the source of the dispute. No such relation exists between the present dispute and the awards of the Mixed Arbitral Tribunal. The latter constitute the source of the rights claimed by the Belgian Company, but they did not give rise to the dispute, since the Parties agree as to their binding character and that their application gave rise to no difficulty until the acts complained of. It is not enough to say, as it is contended by the Bulgarian Government, that if it had not been for these awards, the dispute would not have arisen, for the simple reason that it might just as well be said that, if it had not been for the acts complained of, the dispute would not have arisen.* It is true that a dispute may presuppose the existence of some prior situation or fact, but it does not follow that the dispute arises in regard to that situation or fact. *A situation or fact in regard to which a dispute is said to have arisen must be the real cause of the dispute. In the present case it is the subsequent acts with which the Belgian Government reproaches the Bulgarian authorities with regard to a particular application of the formula—which in itself has never been disputed—which form the centre point of the argument and must be regarded as constituting the facts with regard to which the dispute arose.* The complaints made in this connection by the Belgian Government relate to the decision of the Bulgarian State Administration of Mines of November 24th, 1934, and to the judgments of the Bulgarian courts of October 24th, 1936, and March 27th, 1937. These are facts subsequent to the material date. Accordingly, the Court

---

154 *Electricity Company of Sofia and Bulgaria (Kingdom of Belgium v. Kingdom of Bulgaria)*, Judgement on Preliminary objections, 4 April 1939, PCIJ Series A/B No 77, p. 17, **CL-149**.

155 *Electricity Company of Sofia and Bulgaria* (*Kingdom of Belgium v. Kingdom of Bulgaria)*, Judgement on Preliminary objections, 4 April 1939, PCIJ Series A/B No 77, p. 17, **CL-149**.

> considers that the argument based on the limitation *ratione temporis* in the Belgian declaration is not well-founded.[156]

124. The PCIJ's conclusions reached in *Electricity Company of Sofia and Bulgaria* are directly applicable in the present case. Serbia accepts that Claimants' claims are not "*based on the events that pre-date the treaty.*"[157] Thus, it is undisputed that the "*real cause of the dispute*" post-dated the entry into force of the Cyprus-Serbia BIT.

125. Serbia itself confirms that the "*matters*", to use Serbia's words, that pre-date the Cyprus-Serbia BIT's entry into force "*concern the creation and existence of Obnova's alleged property entitlements*", *i.e.* the source of Obnova's claimed rights.[158] Same as in *Electricity Company of Sofia and Bulgaria*, Claimants' claims do not arise from these "*matters*".

126. On the contrary, Claimants' position is that the 2003 Registration did not affect Obnova's rights.[159] Obnova's legalization requests were not rejected, but left unanswered, in 2004, as evident from Serbia's failure to ever produce any decision to that effect.[160] In any event, Obnova continued to use its Premises, without any interference from Serbia, also after these events took place.[161]

127. Serbia's argument that the fact that the 2003 Registration did not affect Obnova's rights is irrelevant because "*the real question is not what was the effect of the 2003 Registration on Obnova's rights, but whether the Tribunal can entertain this issue at all without overstepping its jurisdiction ratione personae*" only demonstrates the absurdity of Serbia's position.[162]

128. If Serbia was right, States could dispose of tribunals' jurisdiction simply by raising *any* issues pre-dating the entry into force of a relevant treaty that somehow relate to the extent of investors' rights. According to Serbia, regardless of whether such allegation

---

156 *Electricity Company of Sofia and Bulgaria* (*Kingdom of Belgium v. Kingdom of Bulgaria)*, Judgement on Preliminary objections, 4 April 1939, PCIJ Series A/B No 77, pp. 17-18 (emphasis added), **CL-149**.

157 Rejoinder, ¶ 313.

158 Rejoinder, ¶ 315.

159 Reply, ¶ 447.

160 Reply, ¶¶ 241, 353.

161 Reply, ¶ 447.

162 Rejoinder, ¶ 331.

would have any merit or not, tribunals would not be able to "*entertain*" them and, as a result, would not have jurisdiction. This simply cannot be the case.

129. The fact that "*situations or facts*" relevant to the extent of claimants' rights may pre-date the relevant treaty was confirmed also by the International Court of Justice ("**ICJ**") in the case *Portugal v. India*. In that case, "*India accepted the jurisdiction of the Court 'over all disputes arising after February 5th, 1930, with regard to situations or facts subsequent to the same date.* "'[163] The dispute in that case arose because in 1954, India opposed Portugal's right of passage through some of India's territories. India argued—similar as Serbia in the present case—that the ICJ did not have jurisdiction because one of the disputed issues was existence of Portugal's right—which was acquired before February 1930.[164]

130. The ICJ rejected India's objection. The ICJ explained, with reference to a prior decision in *Electricity Company of Sofia and Bulgaria*, that it is necessary to distinguish between "*the situations or facts which constitute the source of the rights claimed*" and "*the situations or facts which are the source of the dispute*".[165] The ICJ held that only the latter are relevant when assessing jurisdiction *ratione temporis*:

> The facts or situations to which regard must be had in this connection are those with regard to which the dispute has arisen or, in other words, as was said by the Permanent Court in the case concerning the *Electricity Company of Sofia and Bulgaria*, only "those which must be considered as being the source of the dispute", those which are its "real cause". The Permanent Court, in this connection, was unwilling to regard as such an earlier arbitral award which was the source of the rights claimed by one of the Parties, but which had given rise to no difficulty prior to the facts constituting the subject of the dispute. "It is true", it said, "that a dispute may presuppose the existence of some prior situation or fact, but it does not follow that the dispute arises in regard to that situation or fact." (Series A/B, No. 77, p. 82.) *The Permanent Court thus drew a distinction between the situations or facts which constitute the source of the rights claimed by one of the Parties and the situations or facts which are the source of the dispute. Only the latter*

---

163 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, p. 29 (pdf), **CL-150**.

164 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, pp. 31-34 (pdf), **CL-150**.

165 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, p. 31 (pdf), **CL-150**.

> *are to be taken into account for the purpose of applying the Declaration accepting the jurisdiction of the Court*.[166]

131. These conclusions are directly applicable to the present case. The events of 2003 and 2004 invoked by Serbia are, at best, events that relate to the existence of Obnova's rights adversely affected by Serbia's measures impugned by Claimants. As the ICJ expressly stated in *Portugal v. India*, such events are irrelevant for the assessment of jurisdiction *ratione temporis.*[167]

132. In fact, the ICJ went on to explain its conclusions also in the context of the decision in *Phosphates in Morocco.* Specifically, the ICJ explained that distinguishing between the "*the situations and facts*" constituting a source of rights and those constituting the source of a dispute is in line with the decision in *Phosphates in Morocco*:

> A finding that the Court has jurisdiction in this case will not involve giving any retroactive effect to India's acceptance of the compulsory jurisdiction, an effect against which the Permanent Court, in the *Phosphates in Morocco* case, sought to utter a warning as one which would be in conflict with the intention which led to such acceptance (Series A/B, No. 74, p. 24). *The Court indeed will only have to pass upon the existence of the right claimed by Portugal as at July 1954, upon the alleged failure of India, to comply with its obligations at that time and upon any redress in respect of such a failure. The Court has not been asked for any finding whatsoever with regard to the past prior to 5 February 1930.*
>
> It would be idle to argue that the contentions put forward with regard to the existence of a right of passage would, if that question had been argued before 1930, have been the same as when it is today. Apart from the fact that that consideration relates only to a part of the present dispute, it overlooks the fact that the condition to which the Court's jurisdiction is subject does not relate to the nature of the arguments susceptible of being advanced. *The fact that a treaty, of greater or lesser antiquity, that a rule of international law, established for a greater or lesser period, are invoked, is not the yardstick for the*

---

166 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, p. 31 (pdf), **CL-150**. The ICJ confirmed its conclusions also in its later decisions, *e.g. Jurisdictional Immunities of the State (Germany v. Italy)*, Counter-claim, Order of 6 July 2010, 2010 ICJ Rep., p. 318, ¶ 23 ("*Whereas the Court will now examine whether it has jurisdiction ratione temporis under the European Convention;* ***whereas in accordance with the Court's earlier case law, the facts and situations it must take into consideration are those with regard to which the dispute has arisen or, in other words, only those which must be considered as being the source of the dispute, those which are its "real cause" rather than those which are the source of the claimed rights*** *(Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960, p. 35).*") (emphasis added), **CL-174**.

167 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, p. 31 (pdf), **CL-150**.

> *jurisdiction of the Court according to the Indian Declaration. That Declaration is limited to the requirement that the dispute shall concern a situation or facts subsequent to 5 February 1930: the present dispute satisfies that requirement.*[168]

133. Once again, these conclusions are directly applicable in the present case. Same as the Court in *Portugal v. India*, the Tribunal in this case will only have to "*pass upon the existence of the right claimed*" by Claimants as at December 2013, relating to the adoption of the 2013 DRP, and August 2021, relating to Serbia's rejection of Obnova's Request for Compensation. At the same time, as explained above, it is undisputed between the Parties that the dispute before the Tribunal is not "*based on the events that pre-date the treaty.*"[169]

134. Serbia's reliance on a quote from Prof. Douglas's book according to which if "*there is no breach of the obligation without reliance upon the facts occurring prior to the commencement of the tribunal's jurisdiction ratione temporis over the claim, then it must follow that those facts are being relied upon to establish the constituent elements of the breach. Such reliance would be impermissible*" is inapposite.[170]

135. To begin with, under Serbia's own case, "*the Tribunal may take into account facts that pre-date the treaty […]*."[171] According to Serbia, the Tribunal is only precluded from "*determining, resolving or adjudicating 'matters'*" pre-dating the treaty's entry into force.[172] Serbia's argument is, thus, different than the one put forward by Prof. Douglas.

136. More importantly, Prof. Douglas admits that his position is contradictory to that taken by previous investment tribunals. Specifically, Prof. Douglas cites to the award in *Tecmed v. Mexico*. As explained above, the tribunal in that case confirmed that "*conduct, acts or omissions […] though they happened before the entry into force, may be considered a constituting part, concurrent factor or aggravating or mitigating*

---

168 *Right of Passage over Indian Territory (Portugal v. India)*, Judgement on Merits, 12 April 1960, 1960 ICJ Rep., p. 6, pp. 31-32 (pdf) (emphasis added), **CL-150**.

169 Rejoinder, ¶ 313.

170 Rejoinder, ¶ 329; citing Z. Douglas, *The International Law of Investment Claims* (Cambridge, 2009), p. 342, ¶ 639, **RL-037(a)**.

171 Rejoinder, ¶ 323.

172 Rejoinder, ¶ 323.

*element of conduct or acts or omissions of the Respondent which took place after such date [and] do fall within the scope of [the] Arbitral Tribunal's jurisdiction.*"[173]

137. Therefore, Claimants respectfully submit that the events of 2003 and 2004 invoked by Serbia do not deprive the Tribunal of its jurisdiction *ratione temporis* and do not make Claimants claims inadmissible.

### 3. Cypriot Claimants' claims do not require retroactive application of the Cyprus-Serbia BIT

#### a. Cypriot Claimants' claims do not require application of the Cyprus-Serbia BIT to any events pre-dating the treaty's entry into force

138. As explained above, Cypriot Claimants' claims are based *solely* on:

a. the adoption of the 2013 DRP on 20 December 2013—*i.e.* almost eight years after the Cyprus-Serbia BIT's entry into force; and

b. rejection of Obnova's Request for Compensation on 13 August 2021—*i.e.* almost 16 years after the Cyprus-Serbia BIT's entry into force.[174]

139. Both of these measures were adopted years after the entry into force of the Cyprus-Serbia BIT. As a result, their assessment does not require retroactive application of the Cyprus-Serbia BIT.

140. Once again, this should be the end of the matter, for two independent reasons. *First*, the question whether or not the breaches invoked by Cypriot Claimants are a consequence of events taking place before the entry into force of the Cyprus-Serbia BIT is irrelevant. Claimants do not claim that Serbia violated the Cyprus-Serbia BIT in 2003 or 2004. The Tribunal does not need to determine whether the events of 2003 and 2004 violated the Treaty. Therefore, there is no need to apply the Cyprus-Serbia BIT retroactively. *Second*, in any event, Serbia's breaches of the Cyprus-Serbia BIT are not a consequence of the events invoked by Serbia.

---

173 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 68, **CL-017**.

174 Memorial, ¶¶ 171-172; Reply, ¶ 439.

### b. Alleged causal link between Serbia's breaches and events pre-dating the Cyprus-Serbia BIT's entry into force does not mean that the Tribunal's adjudication of Claimants' claims requires retroactive application of the Cyprus-Serbia BIT

141. As explained above, Cypriot Claimants base their claims in this arbitration solely on the adoption of the 2013 DRP in 2013 and rejection of Obnova's request for compensation in August 2021. Both these events took place years after the entry into force of the Cyprus-Serbia BIT.

142. Claimants do *not* ask the Tribunal to apply the Cyprus-Serbia BIT to any event pre-dating its entry into force. Serbia accepts that it is for Claimants to define their claims,[175] as well as that Claimants' claims are not "*based on the events that pre-date the treaty*".[176] Given these facts, Serbia cannot seriously argue that Claimants ask the Tribunal to apply the treaty retroactively.

143. Even if there was some causal link between the events on which Claimants base their claims and events pre-dating the entry into force of Serbia-Cyprus BIT, this would not be an issue. Investment tribunals have repeatedly confirmed that even if events pre-dating a treaty's entry into force represent a constituting part of claimed breach, a tribunal's jurisdiction *ratione temporis* exists if the claim itself is based on events post-dating a treaty's entry into force.

144. For example, in *Tecmed v. Mexico*, the tribunal concluded that even though the provisions of the underlying agreement cannot apply retroactively, "*it should* ***not*** *necessarily follow from this that events or conduct prior to the entry into force of the Agreement are not relevant for the purpose of determining whether the Respondent violated the Agreement through conduct which took place or reached its consummation point after its entry into force.*"[177]

145. The tribunal then went on to confirm that "*conduct, acts or omissions […] though they happened before the entry into force,* ***may be considered a constituting part****, concurrent*

---

175 Rejoinder, ¶ 313.

176 Rejoinder, ¶ 313.

177 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 66 (emphasis added), **CL-017**.

*factor or aggravating or mitigating element of conduct or acts or omissions of the Respondent which took place after such date [and] do fall within the scope of [the] Arbitral Tribunal's jurisdiction.*"[178]

146. Similarly, the tribunal in *Grand River v. United States,* referring to previous awards in *Feldman* and *Mondev* cases, concluded that tribunals can consider claims challenging measures adopted after a treaty's entry into force, even if they are "*related to earlier events*":

> In the circumstances here, the Tribunal has difficulty seeing how NAFTA Articles 1116(2) and 1117(2) can be interpreted to bar consideration of the merits of properly presented claims challenging important statutory provisions that were enacted within three years of the filing of the claim and that allegedly caused significant injury, even if those provisions are related to earlier events. *As the Permanent Court observed, while "a dispute may presuppose the existence of some prior situation or fact. it does not follow that the dispute arises in regard to the situation or fact." The Mondev and Feldman tribunals both considered the merits of claims regarding events occurring during the three-year limitations period, even though they were linked to, and required consideration of, events prior to the limitations period or to NAFTA's entry into force. In Mondev, the Tribunal considered (and rejected) the Claimant's claim that it had suffered a denial of justice in connection with state court proceedings occurring after NAFTA entered into force, although the dispute underlying the litigation arose years before.* In *Feldman,* the Tribunal awarded damages in respect of discrimination occurring during the three-year limitations period, but its analysis of this and other claims again required consideration of earlier events.[179]

147. Similarly, the tribunal in *Freeport-McMoRan v. Peru* concluded that the claimant "*certainly refer[red] to acts or facts pre-dating the entry into force of the Treaty*", but it "*only claim[ed] for State measures that occurred after its entry into force*."[180] Consequently, the tribunal considered that it had jurisdiction *ratione temporis,* because it was not asked to apply the relevant treaty retrospectively.[181] Nonetheless, the tribunal

---

178 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 68 (emphasis added), **CL-017**. *See also Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 70, **CL-113**.

179 *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America,* UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 86 (emphasis added), **CL-190**.

180 *Freeport-McMoRan Inc. v. Republic of Peru,* ICSID Case No. ARB/20/8, Award, 17 May 2024, ¶ 578, **CL-151**.

181 *Freeport-McMoRan Inc. v. Republic of Peru,* ICSID Case No. ARB/20/8, Award, 17 May 2024, ¶ 564, **CL-151**.

considered that it was "***not*** *prevented from taking into consideration any acts or facts that pre-date the entry into force of the Treaty*."[182]

148. However, this discussion is, in any case, purely academic. As Claimants demonstrate in the following **Section III.B.3.c**, as a matter of fact, the breaches invoked by Cypriot Claimants are not a mere consequence of events taking place before the entry into force of the Cyprus-Serbia BIT.

### c. The breaches invoked by Cypriot Claimants are not a mere consequence of events taking place before the entry into force of the Cyprus-Serbia BIT

149. In their Reply, Claimants showed that Serbia's argument that the adoption of the 2013 DRP and rejection of the Request for Compensation are direct consequences of the 2003-2004 events is without merit.[183] Claimants explained that this is because:

a. the 2003 Registration did not impact Obnova's rights to its Premises in any way;[184]

b. Serbia does not refer to any evidence that could support its assertion that the 2003 Registration was determinative for the adoption of the 2013 DRP and rejection of Obnova's Request for Compensation in 2021;[185]

c. evidence on the record shows that despite the incorrect registration of the City, Serbian authorities were clearly aware of and recognized Obnova's rights to its premises at Dunavska 17-19 and 23;[186] and

d. the rejection of Obnova's Request for Compensation was not a consequence of the 2003 Registration either because the Land Directorate could have provided the compensation requested by Obnova despite the incorrect registration.[187]

---

182 *Freeport-McMoRan Inc. v. Republic of Peru,* ICSID Case No. ARB/20/8, Award, 17 May 2024, ¶¶ 583 (emphasis added), **CL-151**.

183 Reply, ¶¶ 444 *et seq*.

184 Reply, ¶ 446.

185 Reply, ¶ 449.

186 Reply, ¶¶ 451-454.

187 Reply, ¶¶ 455-456.

150. Serbia disagrees and claims that "*the 2003 Registration extinguished any rights Obnova might have had over*" its Premises. Serbia also claims "*that both measures invoked by Respondent (the 2013 DRP and the 2021 Letter) are consequences of the 2003 Registration*"[188] and are allegedly "*inevitably tied with the 2003 Registration.*"[189]

151. Serbia's assertions about the effect of the 2003 Registration, as well as its assertion that the 2013 DRP and Serbia's refusal to compensate Obnova are consequences of the 2003 Registration is without merit. Claimants address these points *seriatim* below.

### i. The 2003 Registration did *not*—and could *not*—extinguish Obnova's rights to its Premises

152. As Claimants explained in the Reply,[190] the 2003 Registration did not affect Obnova's rights at all. This fact was expressly confirmed by Claimants' legal experts, Messrs. Živković and Milošević:

> As we explain in detail below, Obnova indeed acquired rights to its premises based on the application of Serbian law. As a result, the above principle affirmed by Prof. Jotanović substantiates that Obnova acquired its rights notwithstanding whether or not such rights were inscribed in public registers.
>
> […]
>
> As noted above, it is undisputed that the City of Belgrade is registered as the owner of certain buildings at Dunavska 17-19. However, this does not mean that Obnova's rights to these buildings were somehow affected. Despite the incorrect registration of the City, Obnova remains the owner of the buildings. Indeed, as we explained both in the First Report and above, Serbia recognizes and protects unregistered ownership.
>
> […]
>
> Obnova acquired the right to conversion *ex lege* upon the adoption of the 2009 Law on Construction and Planning. Registration of the right of use in the Cadastre was only a procedural step in the conversion process—it did not represent a condition for acquiring the conversion right as a matter of substantive law.

188 Rejoinder, ¶ 347.

189 Rejoinder, ¶ 352.

190 Reply, ¶¶ 235, 373, 444-447. *See also* Memorial, ¶ 71.

> As a result, the fact that Obnova's right of use was not registered in the Cadastre did not preclude the existence of Obnova's right to convert its right of use into ownership.[191]

153. Furthermore, Serbia itself now argues that the Cadaster is allegedly "*not a competent authority to determine the legal status of objects.*"[192] If that is the case, the 2003 Registration, which was a registration in the Cadaster, could not affect Obnova's rights.

154. Indeed, the Cadaster itself recognizes that a registration in the Cadaster is "*a strictly technical process, not a legal one*":

> **REGISTRATION IN THE CADASTRE IS A TECHNICAL, NOT A LEGAL PROCEDURE**
>
> Registration in the cadastre is a strictly technical process, not a legal one, and it is carried out in accordance with the law. If you have a legal issue with your documentation, the problem must be resolved outside of the cadastre, precisely where it originated (courts, government authorities, local governments, public enforcement officers, notaries). Any deviation from the prescribed form is prohibited, and even the slightest formal deficiency, although it may seem trivial, can lead to the rejection of the registration.[193]

155. Furthermore, the 2003 Registration did not have any *de facto* effect either. On the contrary, it is undisputed that neither Serbia nor the City attempted to evict Obnova from its Premises after the 2003 Registration—prior to Serbia's unlawful attempt to demolish Obnova's buildings in April 2019.[194] They did not even attempt to collect any rent from Obnova.

156. Serbia's assertion that the 2003 Registration "*created a legal presumption that this right belonged to the City, which could be changed only by court decision in favour of an unregistered owner*" is both incorrect and irrelevant.[195] It is incorrect because the registration could have been changed based on a simple request. As explained by Prof. Živković, a court decision was only required after the lapse of *10 years* from the 2003

---

191 Miloš Živković and Miloš V. Milošević Second Expert Report dated 23 February 2024, ¶¶ 22, 93, 148-149.

192 Rejoinder, ¶ 96.

193 Notification on the Cadaster website, 1 July 2024, **C-688**.

194 Reply, ¶¶ 354 *et seq.*

195 Rejoinder, ¶ 349.

Registration.[196] The assertion is also irrelevant because the creation of a legal presumption did not—and could not—affect Obnova's rights in any way. The relevant conclusions of Prof. Živković are quoted above.

157. The fact that Obnova eventually initiated court proceedings, in which it sought recognition of its rights, is equally irrelevant. It is undisputed that these proceedings were initiated more than a decade after the entry into force of the Cyprus-Serbia BIT. As such, they cannot have any impact on Tribunal's jurisdiction *ratione temporis.*

158. Serbia's observation that "*the City was enjoined from disposing of the objects and land at Dunavska 17-19 by a court injunction issued by the Higher Court in Belgrade in the proceedings for determination of ownership initiated by Obnova*" is correct, but again irrelevant.[197] The injunction was issued in February 2019.[198] As such, it is again completely irrelevant for assessment of the Tribunal's jurisdiction *ratione temporis.*

159. The tribunal in *ConocoPhillips v. Venezuela* confirmed that the relevant date when a breach of an obligation occurs is the date when the measure is in force, *i.e.* applied in breach of the obligation: "*[i]n principle, the Tribunal considers that a breach of obligation does not occur until the law in issue is actually applied in breach of that obligation and that cannot happen before the law in question is in force.*"[199]

160. Because the 2003 Registration had no effect on Obnova's rights, either *de jure* or *de facto*, it has no bearing on the Tribunal's jurisdiction *ratione temporis.* It was only the adoption of the 2013 DRP that represented an actual wrongful infringement of the rights of the Cypriot Claimants and triggered Serbia's responsibility under the Cyprus-Serbia BIT.

161. Furthermore, according to the tribunal in *Azurix v. Argentina*, a treaty violation is deemed to occur "*the day when the interference has ripened into a more or less*

---

196 Miloš Živković and Miloš V. Milošević First Expert Report dated 31 March 2023, ¶ 109.

197 Rejoinder, ¶ 350.

198 Reply, ¶ 354.

199 *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V., ConocoPhillips Gulf of Paria B.V. and ConocoPhillips Company v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, 3 September 2013, ¶ 289, **CL-047**.

***irreversible deprivation of the property***."[200] The 2003 Registration clearly did not have any such effect as Obnova remained the owner of the buildings and retained the right of use over the land. Obnova also continued to use its premises without payment of any rent and without any objections from Serbia predating the Cyprus-Serbia BIT. Given these facts, it is clear that the 2003 Registration did *not* represent an "*irreversible deprivation of the property*."

162. Serbia does not contest the conclusion reached by the *Azurix* tribunal. However, it claims that it is "*inapposite*" because the "*the Azurix pronouncement concerned indirect or creeping expropriation*" while in this case, Obnova's rights were allegedly "*taken*" by the 2003 Registration.[201] As explained above, Serbia's assertion is incorrect as a matter of Serbian law. The 2003 Registration did not affect Obnova's rights.

163. Serbia's assertion also does not address Claimants' point with respect to the *Azurix* case. Claimants rely on the *Azurix* award for the proposition that a treaty violation is deemed to occur "*the day when the interference has ripened into a more or less* ***irreversible deprivation of the property***."[202] The fact that the 2003 Registration does not represent creeping expropriation is irrelevant—what matters is that the 2003 Registration did not irreversibly deprive Obnova of its property.

### ii. Adoption of the 2013 DRP was *not* a consequence of the 2003 Registration

164. Serbia argues that the 2003 Registration is "*inevitably tied*" to the adoption of the 2013 DRP because one of the issues considered during the adoption of the 2013 DRP was ownership of the land. Serbia specifically argues that because "*one of the criteria for selection of the location was the cost of investment, a location that would avoid expropriation costs was to be preferred.*"[203] According to Serbia, the 2003 Registration

---

200 *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶ 417 (citing *Reza Said Malek v. The Government of the Islamic Republic of Iran*, IUSCT Case No. 193, Final Award dated 11 August 1992, ¶ 114 (1992) and *Int'l Technical Prods. Corp. v. Iran*, Partial Award No. 190-302-3 dated 28 October 1985, ¶¶ 240-241) (emphasis added), **CL-029**. *See also* Reply, ¶ 448.

201 Rejoinder, ¶ 351.

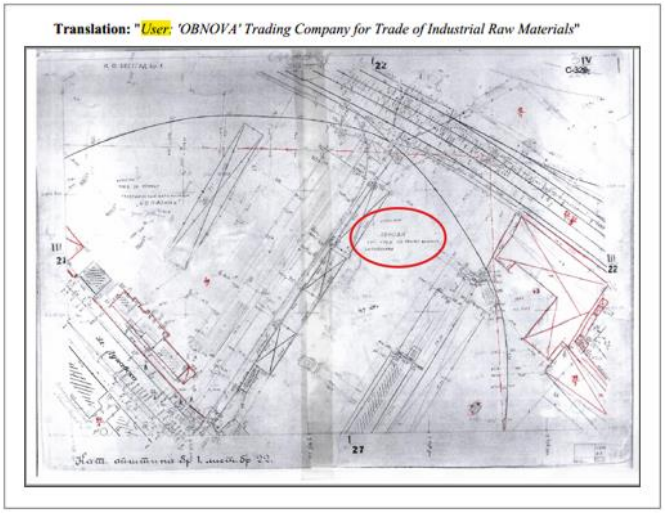
202 *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶ 417 (citing *Reza Said Malek v. The Government of the Islamic Republic of Iran*, IUSCT Case No. 193, Final Award dated 11 August 1992, ¶ 114 (1992) and *Int'l Technical Prods. Corp. v. Iran*, Partial Award No. 190-302-3 dated 28 October 1985, ¶¶ 240-241)(emphasis added), **CL-029**.

203 Rejoinder, ¶ 353.

is relevant with respect to this criterium because, after 2003, Serbia was registered as the owner of the Premises. Serbia's argument is incorrect for a number of reasons.

165. First, Serbia's argument assumes that the only thing relevant for Serbia's assessment of its rights to the premises at Dunavska 17-19 and 23 is the registration in the Cadaster. However, this is not the case. As Claimants showed in their Reply, even though Obnova was not registered in the Cadaster, Serbia was clearly aware of Obnova's rights. This is confirmed by the following:

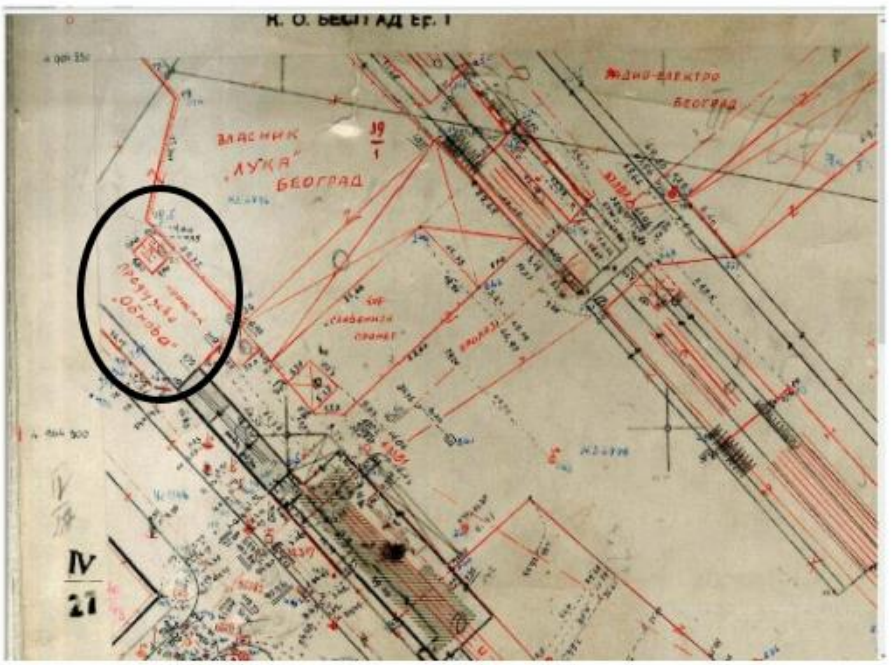
a. Serbia's own map from the 1960s expressly states that Obnova was the "user" of the land at Dunavska 17-19;[204]




b. a sketch of survey no. 3/27 prepared by Serbian authorities in the survey review process in the period 1966-1967 notes with respect to Obnova's premises at Dunavska 23: "*User Company 'Obnova'*";[205]

204 Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, p. 3 (pdf), **C-329**.

205 Information from the Cadaster, 31 July 2023, p. 6 (pdf), **R-043**.



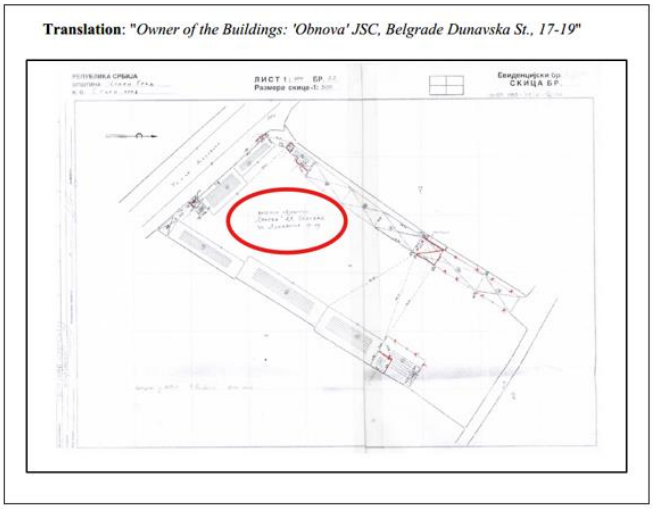
Sketch of the survey no. 3/27 in the survey review process in the period 1966-1967

c. Obnova's privatization program shows that the buildings located at Dunavska 17-19 and Dunavska 23 were built by Obnova and that Obnova was identified as the user of all the buildings listed in the privatization program–*i.e.* the privatization program recognized Obnova's right of use over these buildings;[206]

d. a contemporaneous sketch dated 12 April 2005 states that Obnova is owner of the buildings at Dunavska 17-19;[207]

206 Obnova Privatization Program, July 2003, p. 4 (pdf), **C-015**.

207 Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, p. 4 (pdf), **C-329**.




e. sketch 48/2005, states the following with respect to Obnova's buildings at Dunavska 23: (*i*) "*D. 1. 27, P = 1:500, the owner of the objects: „Obnova" AD Belgrade, Dunavska Street no. 17-19*"; and (ii) "*2.D.1. 36:37, P=1:500, The owner of the object (sic), „Obnova"AD (...) Dunavska 17 (...):*"[208]


f. an early concept of the 2013 DRP envisaged that the costs of construction of the bus loop would include, among other things, payments for expropriated land and buildings[209]—if Serbia believed that the City owned the land and buildings at

208 Information from the Cadaster, 31 July 2023, p. 7 (pdf), **R-043**.

209 2013 DRP, Section B.8, **C-024**; Concept of the 2013 DRP, 2010, pp. 2-3 (pdf), **C-330**.

Dunavska 17-19 and Dunavska 23 (or had the right of use over them), there would have been no need to consider additional payments for their expropriation.

166. Serbia's argument that the concept of the 2013 DRP, which envisages expropriation costs, "*presents costs for the implementation of all activities envisaged by the 2013 DRP not only the cost for the construction of the bus loop*" is inapposite.[210] This is because Serbia does not explain what else—besides Obnova's premises—would need to be expropriated.

167. In their Reply, Claimants explained that Serbia continued to recognize Obnova's rights even after the adoption of the 2013 DRP. Specifically, Claimants explained that in 2018, the Land Directorate recognized that Obnova was entitled to compensation for potential demolition of its buildings as a result of the construction of the bus loop pursuant to the 2013 DRP.[211]

168. Serbia's argument that the Land Directorate allegedly "*merely explained that if Obnova considered it had the right to be compensated, then it would be later on able to resolve this issue, once the inventory of the Objects and their valuation had been carried out*" has no merit.[212] The text of the letter speaks for itself.

169. The letter specifically states that "*the question of compensation for facilities that need to be demolished*" would be discussed.[213] In addition, the letter states that "*expert opinion of experts from the City Institute for Expert Evaluations provided a description and inventory of all relevant facilities, and that valuation of said facilities was carried out by the City Institute for Expert Evaluations and the Secretariat for Public Revenues of the City of Belgrade.*"[214]

170. If the Land Directorate had thought that Obnova had no right to compensation—as Serbia seems to suggest—then the Land Directorate would not have discussed any compensation with Obnova, much less prepared a description, inventory and valuation

---

210 Rejoinder, ¶ 354.

211 Reply, ¶ 453.

212 Rejoinder, ¶ 356.

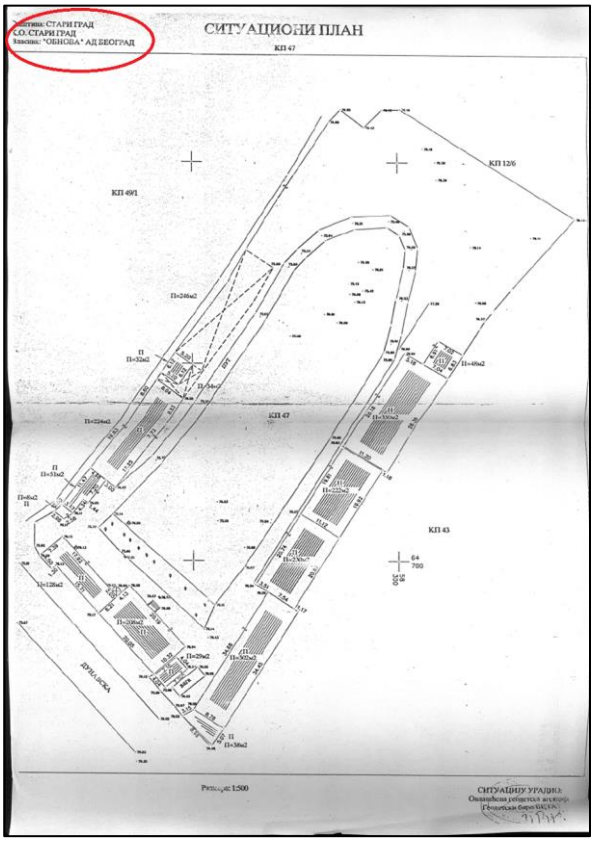
213 Letter from the Land Directorate to Obnova, 19 February 2018, p. 1, **C-328**.

214 Letter from the Land Directorate to Obnova, 19 February 2018, p. 1, **C-328**.

of the premises. If the buildings were owned by Serbia, there would be no need for any valuation because Serbia would not be paying any compensation to itself.

171. Serbia's argument that "*the Land Directorate was not competent to recognize Obnova's ownership over the Objects, so its letter cannot possibly be regarded as 'recognition' of Obnova's rights*" is both incorrect and irrelevant.[215] It is incorrect because, as Claimants demonstrated in the Reply, the Land Directorate was competent to recognize Obnova's rights.[216] However, even if that was not the case, it would change nothing to the fact that the Land Directorate's letter clearly confirms that Serbia was aware of Obnova's rights.

172. Finally, in October 2022, Serbia produced to Claimants the below map of Dunavska 17-19. This map also expressly states that Obnova is the owner of premises at Dunavska 17-19:[217]




215 Rejoinder, ¶ 356.

216 *E.g.* Reply, ¶¶ 360-361, 849, 851, 912.

217 Map provided by Serbia, **C-715**.

173. To conclude, the 2003 Registration was by no means dispositive. Serbia knew full well that Obnova was the owner of the buildings, and had the right of use over the land, at its premises at Dunavska 17-19 and 23. Therefore, Serbia cannot seriously claim that it located the bus loop at those premises because it thought that the premises belonged to Serbia and Obnova did not need to be compensated for their expropriation.

### iii. Rejection of Obnova's Request for Compensation was not a consequence of the 2003 Registration

174. Serbia argues that the rejection of Obnova's Request for Compensation was another consequence of the 2003 Registration because "*the Land Directorate expressly justified its view that Obnova had no right to compensation with the fact that the City of Belgrade was the owner of the Dunavska Plots and the Objects.*"[218] Serbia is again wrong.

175. As explained above, Serbia was aware of Obnova's rights despite the incorrect registration.[219] The fact that the Land Directorate eventually decided to ignore those rights does not mean that its decision was caused by the 2003 Registration. It means that Serbia decided to ignore that despite the 2003 Registration, Obnova had rights to premises at Dunavska 17-19 and 23—as Serbia was well aware.

176. In fact, the incorrect 2003 Registration was merely a convenient pretext for the Land Directorate's *volte-face* and sudden refusal to provide any compensation despite its previous willingness to do so in 2018.[220] The fact that a State may choose to rely on a past event as a convenient pretext for its violations of public international law does not establish a cause-and-effect relationship between the event and the violations.

177. Indeed, as Claimants explained in the Reply, the Land Directorate could have provided the compensation requested by Obnova despite the incorrect registration.[221] Messrs. Živković and Milošević explained that the Land Directorate "*could have addressed*

---

218 Rejoinder, ¶ 357.

219 Letter from the Land Directorate to Obnova, 19 February 2018, p. 1, **C-328**.

220 Reply, ¶ 456.

221 Reply, ¶ 455.

*Obnova's ownership as a preliminary issue and, consequently, agreed on the compensation due.*"[222]

### iv. The 2003 Registration was, at best, the first step in a series of events that culminated only in 2013

178. The above shows that the 2003 Registration was *not* the cause of either the adoption of the 2013 DRP, or the rejection of the Request for Compensation. As Claimants explained already in their Reply, the 2003 Registration was, at best, the first step in a series of events that culminated only in 2013, *i.e.* after the Cyprus-Serbia BIT's entry into force, and that had not given rise to any dispute before that date.[223] The fact that Serbia's conduct culminated only in 2013, after the entry into force of the Cyprus-Serbia BIT, is sufficient to trigger Serbia's responsibility under that treaty.[224]

179. In its Rejoinder, Serbia disagrees and argues that the 2003 Registration is a "*non-continuing act, because it created a permanent legal situation, which was completed at the time of the entry of the registration in the Cadastre*."[225] Serbia is again wrong. The 2003 Registration did not create any "*legal situation*". On the contrary, the 2003 Registration was a technicality that did not impact Obnova's rights.

180. Serbia's argument that the 2013 DRP and rejection of the Request for Compensation were consequences of that situation does not help Serbia.[226] The fundamental reason is that as explained above, neither the 2013 DRP nor the rejection of the Request for Compensation were consequences of the 2003 Registration. Thus, Serbia's argument fails because it is based on a false factual premise.

181. However, Serbia's argument still fails even assuming, for the sake of Serbia's argument, that the 2013 DRP and rejection of the Request for Compensation were consequences of the 2003 Registration (*quod non*). This is because in such a case, the 2003 Registration, the 2013 DRP and the 2021 rejection of the Request for Compensation would jointly constitute a "*composite act*", that is a "*series of actions or omissions*

---

222 Živković Milošević Second ER, ¶ 229; Živković Milošević First ER, ¶ 266.

223 Reply, ¶¶ 457 *et seq*.

224 Reply, ¶¶ 458-462. *Also supra* § II.B.3.b.

225 Rejoinder, ¶ 361.

226 Rejoinder, ¶ 361.

*defined in aggregate as wrongful.*"[227] As explained by the tribunal in *Valle Ruiz v. Spain*, when an investment treaty enters into force in the middle of a composite act, the tribunal has jurisdiction over the components of the composite act that occurred after the entry into force because they may constitute breaches of the treaty: "*the first of the actions or omissions of the series for purposes of liability are those occurring after the date of each of the Claimants' investments*" and "*accordingly, only those acts, and not the earlier ones, could give rise to*" a breach of treaty and fall within the tribunal's jurisdiction *ratione temporis*.[228]

182. Thus, whether or not the 2013 DRP and the rejection of the Request for Compensation were "*consequences"* of the 2003 Registration is irrelevant for the Tribunal's jurisdiction: in either case, the Tribunal lacks jurisdiction *ratione temporis* over pre-treaty conduct (the 2003 Registration) but has jurisdiction over the post-treaty conduct (2013 DRP and rejection of the Request for Compensation).

183. Finally, Serbia claims that Claimants' argument presupposes that "*the 2003 Registration was not wrongful itself, but that gave rise to a breach together with the adoption of the 2013 DRP*", which would be "*in contradiction to Claimants' position taken so far.*"[229] Serbia's misinterprets Claimants' position.

184. Claimants' position is that a continuing act starts before the applicability of a treaty and culminates thereafter. However, even though the start of the continuing act (here the 2003 Registration) is not internationally wrongful, the continuing act can still violate a treaty if it continues and culminates after its entry into force.

---

227 Articles on Responsibility of States for International Wrongful Acts, International Law Commission, United Nations, 2005, Art. 15, **CL-013**.

228 *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, ¶ 408, **CL-191**.

229 Rejoinder, ¶ 364.

### 4. The dispute between Cypriot Claimants and Serbia arose after the Cyprus-Serbia BIT entered into force

185. Serbia argues that the Tribunal does not have jurisdiction to entertain a dispute that had arisen before the Cyprus-Serbia BIT entered into force in 2005.[230] While this might be the case, this observation is irrelevant in the present case. This is for two reasons:

a. there was no dispute between Claimants and Serbia before 2005 (**Section II.B.4.c** below); and

b. even if a dispute related to Obnova's rights existed before 2005, it would be a different dispute than the one that the Tribunal is asked to adjudicate (**Section II.B.4.d** below).

#### a. Definition of a dispute under international law

186. It is undisputed[231] that, as famously held by the PCIJ in the *Mavrommatis* case, a "dispute" is defined as "*a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.*"[232] As Claimants explained in their Reply,[233] in order to establish the existence of a dispute in the sense of the *Mavrommatis* definition, there must be sufficient communication between the Parties. Specifically, there must be a clear expression of a position by one party and rejection of such position by other party.[234]

187. Claimants also showed that investment tribunals have repeatedly held that it is necessary to distinguish between events leading to a dispute and the emergence of a dispute as such. A dispute arises only when there is a *stated* disagreement between the parties—

---

230 Rejoinder, ¶ 314.

231 *E.g.* Counter-Memorial, ¶ 282; Rejoinder, ¶ 337.

232 *Mavrommatis Palestine Concessions (Greece v. U.K.)*, Objection to the Jurisdiction of the Court, Judgment, PCIJ Series A no 2, ICJ, 30 August 1924, p. 13 (pdf), **RL-030**.

233 Reply, ¶¶ 478 *et seq.*

234 Reply, ¶¶ 478-479. *E.g. Lao Holdings N.V. v. Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, 21 February 2014, ¶ 121, **CL-086**; *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction, 18 May 2010, ¶ 129, **CL-087**.

regardless of when the events and actions that may have given rise to a dispute took place.[235]

188. Furthermore, as explained by the ICJ in *Georgia v. Russia*, for a disagreement between parties to be considered a "dispute" within the context of the relevant treaty, it must pertain to the state's obligations under public international law:

> [T]he exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter.[236]

189. As Claimants demonstrated in their Reply,[237] and further show in **Section II.B.4.c** below, the conditions for the existence of a dispute had not been fulfilled before the Cyprus-Serbia BIT entered into force.

#### b. The dispute between Cypriot Claimants and Serbia arose *after* the Cyprus-Serbia BIT entered into force

190. In their Reply, Claimants explained that, pursuant to Article 9(1) of the Cyprus-Serbia BIT, it is for the investor to specify the dispute that it brings to an arbitration.[238] Claimants also stressed that, throughout this arbitration, Cypriot Claimants have made it abundantly clear that they challenge only two measures:

a. the adoption of the 2013 DRP; and

b. the rejection of the Request for Compensation in 2021.[239]

---

235 Reply, ¶¶ 480-483. *E.g. Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, ¶ 96, **CL-088**; *Ioan Micula, Viorel Micula and others v. Romania (I)*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 24 September 2008, ¶¶ 155-156, **CL-089**; *Toto Costruzioni Generali S.p A. v. Lebanese Republic*, ICSID Case No. ARB/07/12, Award, 7 June 2012, ¶ 63, **CL-090**.

236 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment on Preliminary Objections, 2011 ICJ Rep., p. 70, 1 April 2011, ¶ 30, **CL-091**.

237 Reply, ¶¶ 486 *et seq.*

238 Reply, ¶ 486.

239 Reply, ¶ 487.

191. Given that both of these measures were taken by Serbia *years after* the Cyprus-Serbia BIT entered into force, it is clear that any dispute regarding these measures must post-date the treaty's entry into force as well.

### c. No dispute arose in 2003-2004

192. Serbia's assertion that the dispute before the Tribunal is the same as the "*dispute between Obnova and Respondent concerning the former's right of use over the Objects arose already in 2003-2004*" is obviously incorrect.[240] In their Reply, Claimants demonstrated that:

a. there was no dispute in 2003 and 2004—not even as between Obnova and Serbia—because Serbia did not approach Obnova to dispute Obnova's rights to its premises at Dunavska 17-19 and 23, did not require Obnova to pay any rent for the use of its premises and did not ask Obnova to vacate its premises;[241] and

b. the first time that Obnova demanded compensation for the expropriation of its rights was when it submitted the Request for Compensation—the dispute before the Tribunal arose only after Serbia rejected the Request for Compensation in August 2021, *i.e.* well after the entry into force of the Cyprus-Serbia BIT and Cypriot Claimants' investment.[242]

193. Serbia disagrees and argues that a dispute between Obnova and Serbia arose between 2003 and 2004. According to Serbia, this is because "*Obnova and Respondent's authorities held and communicated opposing views concerning Obnova's property entitlements over the Objects and the Dunavska Plots already in 2003 and 2004.*"[243] Serbia is wrong.

194. As explained above, investment tribunals have repeatedly confirmed that a dispute only arises when there is an expressed difference of positions between the parties with respect

---

240 Reply, ¶¶ 488 *et seq.*

241 Reply, ¶ 490.

242 Reply, ¶ 492.

243 Rejoinder, ¶ 333.

to State's obligations under international law. These conditions clearly had not been fulfilled before the entry into force of the Cyprus-Serbia BIT.

### i. The 2003 Registration did not give rise to a dispute

195. Fundamentally, the 2003 Registration did not give rise to a dispute because the Cadaster did not express any views on the ownership and right of use over the premises. The Cadaster itself explains that the proceedings before the Cadaster are "*a strictly technical process, not a legal one*" and the Cadaster does not create, let alone decide on the rights that it registers.[244] Therefore, the 2003 Registration was not an expression of Serbia's view that the ownership right and the right of use belong to Serbia and the City, respectively.

196. Indeed, Serbia itself argues that the Cadaster is "*not a competent authority to determine the legal status of objects.*"[245] Thus, the 2003 Registration did not constitute an expression of Serbia's view on the legal status of Obnova's premises.

197. The 2003 Registration did not have any *de facto* impact either. On the contrary, as explained above, it is undisputed that neither Serbia nor the City attempted to evict Obnova from its Premises after the 2003 Registration or even attempted to collect any rent from Obnova.

198. Serbia's argument that the City "*did not ask Obnova to pay the rent or vacate the premises was that Luka Beograd used the premises in question on the basis of the 1975 Agreement with the City of Belgrade*" is both disingenuous and irrelevant.[246] It is disingenuous because Serbian courts have *repeatedly* confirmed that the 1975 Agreement never entered into force and, thus, cannot create any legal rights and obligations.[247] Serbia cannot seriously make arguments that have been repeatedly refuted by its very own courts.

---

244 Notification on the Cadaster website, 1 July 2024, **C-688**.

245 Rejoinder, ¶ 96.

246 Rejoinder, ¶ 336.

247 Decision of the Second Municipal Court in Belgrade No. 2622/03, 9 December 2004, **C-720**; Decision of the District Court in Belgrade No. Gž 7155/06, 30 October 2006, **C-721**; Judgment of the First Magistrate Court in Belgrade No. 7. P. 79203/10, 1 December 2016, **C-722**; Judgment of the Court of Appeal in Belgrade No. Gž. 6118/18, 21 February 2019, **C-723**; Judgment of the Higher Court in Belgrade No. P

199. In addition, even if the 1975 Agreement were valid—and according to Serbian courts it is not—it only related to the land that Luka Beograd was allowed to use upon its creation in the 1961. There is no evidence showing that Obnova's premises at Dunavska 17-19 and 23 were part of the land that Luka Beograd was ever allowed to use.[248]

200. Serbia's arguments related to the 1975 Agreement are, in any case, only academic. Whether Luka Beograd was allowed to use some land under this agreement or not changes nothing to the fact that there was no dispute between Serbia, the City and Obnova prior to the entry into force of the Cyprus-Serbia BIT. If anything, it confirms that Serbia and the City had no interest in Obnova's premises and no intention to interfere with Obnova's rights.

201. The fact that Obnova continued to use its premises at Dunavska 17-19 and 23 in the same way as it did before the 2003 Registration is important because international tribunals have concluded that certain incidents between parties—related to the rights they claim—do not give a rise to a dispute if the claimed rights continue to be effected.

202. For example, in *Portugal v. India*, the case discussed in detail above, the ICJ concluded that incidents between Portugal and India related to Portugal's right of passage did not give rise to a dispute. The Court explained that this is because, regardless of these incidents, Portugal's right of passage continued to be effected:

> *Up to 1954 the situation of those territories may have given rise to a few minor incidents, but passage had been effected without any controversy as to the title under which it was effected. It was only in 1954 that such a controversy arose and the dispute relates both to the existence of a right of passage to go into the enclaved territories and to India's failure to comply with obligations which, according to Portugal, were binding upon it in this connection*. It was from all of this that the dispute referred to the Court arose; it is with regard to all of this that the dispute exists. This whole, whatever may have been the earlier origin of one of its parts, came into existence only after 5 February 1930. The time-condition to which acceptance of the jurisdiction of 'the Court was made subject by the Declaration of India is therefore complied with.[249]

---

21328/10, 20 December 2019, **C-724**; Judgment of the Court of Appeal in Belgrade No. Gž. 4985/20, 19 November 2020, **C-725**.

248 Decision of the City of Belgrade on the establishment of Preduzeće Pristaništa "Beograd", 27 November 1961, **C-158**.

249 *Right of Passage over Indian Territory (Portugal v. India)*, Judgment on Merits, 12 April 1960, 1960 ICJ Rep. p. 6, p. 31 (pdf)(emphasis added), **CL-150**.

203. Same as in *Portugal v. India*, Obnova's rights to its premises at Dunavska 17-19 and 23 "*had been effected without controversy*" until 2013. As explained above, it is undisputed that neither the City nor Serbia in any way interfered with Obnova's use of its premises before 2013.

204. Serbia's assertion that there was "*a sufficient degree of communication so each party knew the position of the other and it was clear that Obnova's claim was opposed by the authorities*" is incorrect.[250] To support this argument, Serbia relies on the award in *Lao Holdings v. Lao*. According to Serbia, this award confirms that the fact that "*claimant learnt that members of the government opposed its proposal […] was sufficient for a finding that the dispute arose.*"[251] This is not the case.

205. The very paragraph of the award that Serbia cites in its Rejoinder states that: "***the dispute arose*** *on 21 March 2012,* ***when the final decision not to grant a new FTA to Sanum was adopted at the highest level****, in other words, that the dispute arose after the critical date.*"[252] As explained above, no such decision was adopted in the present case prior to the entry into force of the Cyprus-Serbia BIT. The Cadaster simply ignored Obnova's request for registration of its rights and registered Serbia and the City instead.

206. Finally, as explained above, the ICJ confirmed in *Georgia v. Russia* that for a disagreement between parties to be considered a "dispute" within the context of the relevant treaty, it must pertain to the state's obligations under public international law. Specifically, the ICJ noted that the exchange between the Parties showing the existence of a dispute "*must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter.*"[253]

---

250 Rejoinder, ¶ 338.

251 Rejoinder, fn. 617.

252 *Lao Holdings N.V. v Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, 21 February 2014, ¶ 146 (emphasis added), **CL-086**.

253 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment on Preliminary Objections, 2011 ICJ Rep., p. 70, 1 April 2011, ¶ 30, **CL-091**.

207. This condition clearly was not satisfied in 2003. It is undisputed that Obnova did not invoke Serbia's obligations under international law in 2003.

### ii. The Cadaster's communication with Obnova during its privatization did not give rise to a dispute

208. The Cadaster's communications with Obnova during its privatization, in which the Cadaster indicated that, in its view, there was insufficient evidence of Obnova's right of use over its premises at Dunavska 17-19 and 23, did not give rise to a dispute either. To begin with, these "*communications*" did not affect the existence and extent of Obnova's rights.

209. As explained above, Serbia itself argues that the Cadaster is allegedly "*not a competent authority to determine the legal status of objects.*"[254] In addition, the Cadaster itself recognizes that a registration in the Cadaster is "*a strictly technical process, not a legal one.*"[255]

210. The fact that the Cadaster informed Obnova that it considered the evidence submitted by Obnova insufficient for registration of Obnova's rights, does not mean that it "*indicated the authorities' opposition to its claim.*"[256] The Cadaster did not state a single time that the Cadaster, let alone any Serbian authority, considered that Obnova did not have the rights that it sought to have registered. The Cadaster merely stated that it had determined that Obnova had not presented the documents needed for registration of these rights in the Cadaster.

211. In addition, these "*communications*" again did not impact Obnova's use of its premises. Regardless of these "*communications*", Obnova continued to use its premises just as it had before—without any interference from either Serbia or the City.

212. Finally, same as with respect to the alleged dispute related to the 2003 Registration, Obnova did not invoke Serbia's obligations under international law when communicating with the Cadaster during its privatization.

---

254 Rejoinder, ¶ 96.

255 Notification on the Cadaster website, 1 July 2024, **C-688**.

256 Rejoinder, ¶ 339.

### iii. The Cadaster's treatment of Obnova's request for legalization in 2004 did not give rise to a dispute

213. Serbia's failure to legalize Obnova's buildings also did not give rise to a dispute. As Claimants explained already in their Reply, Serbian authorities *never* issued *any* decision with respect to Obnova's 2003 legalization requests.[257]

214. The only document submitted by Serbia in support of its allegation that Obnova's legalization requests were rejected is internal minutes from a meeting of the Committee for Legalization held on 26 November 2004.[258] Neither Claimants nor Obnova had been aware of existence of these minutes before this arbitration.

215. Furthermore, as Claimants showed in the Reply, these minutes do not state anything besides the fact that Obnova's request was "*not included*" in "*building legalization procedure*".[259] The minutes, however, do not explain the procedure they reference or *why* some of the requests—including those submitted by Obnova—were not included in the procedure.[260] Indeed, Serbia confirms that there are no documents to show "*what was the exact reasoning of the Committee for Legalization in denying the request.*"[261]

216. Serbia therefore did not take any position on the issue of either fact or law with respect to Obnova's legalization requests, much less with respect to Obnova's rights to its premises. Serbia's failure to decide on Obnova's legalization requests cannot be considered as giving rise to a dispute, especially since Serbia never treated Obnova's buildings as unlawful.

217. Finally, same as with respect to the 2003 Registration and "*communications*" with Cadaster during the privatization process, Obnova did not invoke Serbia's obligations under international law.

---

257 Reply, ¶¶ 239-244.

258 Minutes of the meeting of the Legalization Committee, 26 November 2004, p. 1, **R-110**.

259 Minutes of the meeting of the Legalization Committee, 26 November 2004, p. 1, **R-110**. *See also* Reply, ¶ 242.

260 Reply, ¶ 243.

261 Counter-Memorial, ¶ 220.

### d. Even if a dispute between Obnova and Serbia existed in 2003-2004, it would be a different dispute than the one before the Tribunal

218. In their Reply, Claimants explained that even if there were a dispute in 2003-2004 (*quod non*), it would be a different dispute than the one before the Tribunal. Claimants relied on the so-called triple identity test and demonstrated that it would not be satisfied because:

a. the parties would be different as the 2003-2004 events concerned only Obnova—which, in addition, did not bring any dispute at the time—while the current dispute is brought by Claimants;

b. the object would be different because the 2003-2004 events concerned registration—but not the existence—of Obnova's property rights, while the current dispute centers around the expropriation of Obnova's rights by the 2013 DRP, Serbia's refusal to provide compensation and their impact on the value of Claimants' shareholding in Obnova; and

c. there would be no identity of the cause of action because the current dispute is based on violations of the Cyprus-Serbia BIT, but the dispute related to the 2003-2004 events, if there were one, would be based on violations of Serbian law.[262]

219. Serbia disagrees. It claims that the triple identity test is not applicable in the context of jurisdiction *ratione temporis* and that the Tribunal should instead focus "*on the substance of disputes.*"[263] Serbia's assertion that the triple identity test cannot be used in context of jurisdiction *ratione temporis* is wrong—as Claimants show below with reference to relevant case law. However, even if Serbia was right, the very test proposed by Serbia shows that a dispute in 2003-2004, if one existed, would be different from the dispute before the Tribunal.

---

262 Reply, ¶¶ 484, 489.

263 Rejoinder, ¶ 343.

### i. The triple identity test is applicable in the context of jurisdiction *ratione temporis*

220. In their Reply, Claimants showed that investment tribunals have previously used the triple identity test in the context of jurisdiction *ratione temporis.* Specifically, Claimants referred to the award in *Railroad Development Corporation v. Guatemala*.[264]

221. Serbia does not dispute that the *Railroad Developments* tribunal applied the triple identity test in the context of the jurisdiction *ratione temporis*. Serbia also does not cite to any authority that would state it is inappropriate do so.[265] Serbia's assertion that "*the 'triple identity test' is not warranted in the present context*" is utterly unsupported.[266]

222. As explained above, the triple identity test clearly confirms that if there was a dispute between Obnova and Serbia in 2003-2004, that dispute was different than the dispute currently before the Tribunal. While Serbia disagrees with application of the triple identity test as such, it does not dispute that its application would lead to this conclusion.

### ii. The substance of a dispute related the 2003-2004 events, if one existed, would in any case be different than the substance of the dispute before the Tribunal

223. Even if the Tribunal were to apply the test proposed by Serbia and examine "*whether or not the facts or considerations that gave rise to the earlier dispute continued to be central to the latter dispute*", it would not change the conclusion that a potential dispute based on the 2003-2004 events would be different than the dispute currently before the Tribunal.[267] This is because the facts that, according to Serbia, gave rise to a potential dispute in 2003-2004 and those that gave rise to the current dispute are clearly different.

224. On Serbia's own case, the dispute that allegedly existed between Obnova and Serbia in 2003-2004 was based on Serbia's failure to register Obnova's rights in the Cadaster and rejection of Obnova's legalization requests.[268] The dispute before the Tribunal, on the other hand, stems from the adoption of the 2013 DRP by the City and the subsequent

---

264 *Railroad Development Corp. (RDC) v. Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction, 18 May 2010, ¶ 131, **CL-087**. *See also* Reply, ¶ 484.

265 Rejoinder, ¶ 342.

266 Rejoinder, ¶ 342.

267 Rejoinder, ¶ 345.

268 Rejoinder, ¶ 333.

refusal of Obnova's request for compensation by the Land Directorate. The "*facts or considerations*" that, according to Serbia "*gave rise to the earlier dispute*" clearly were not "*central to the latter dispute.*"

225. It is therefore clear that both disputes are based on a completely different conduct of completely different Serbia authorities. The tribunal in *Jan de Nul v. Egypt* confirmed that an "*intervention of a new actor*" is a "*decisive factor to determine whether the dispute is a new dispute*"—even if the previous dispute is otherwise the main source of a new dispute:

> Admittedly, the previous dispute is one of the sources of the present dispute, if not the main one. It is clear, however, that the reasons which may have motivated the alleged wrongdoings of the SCA [Suez Canal Authority] at the time of the conclusion and/or performance of the Contract, do not coincide with those underlying the acts of the organs of the Egyptian State in the post-contract phase of the dispute. *Since the Claimants also base their claim upon the decision of the Ismaïla Court, the present dispute must be deemed a new dispute.*
>
> *The intervention of a new actor, the Ismalïa Court, appears here as a decisive factor to determine whether the dispute is a new dispute.* As the Claimants' case is directly based on the alleged wrongdoing of the Ismaïla Court, the Tribunal considers that the original dispute has (re)crystallized into a new dispute when the Ismaïla Court rendered its decision.[269]

226. Furthermore, as Claimants demonstrated in their Reply, and again earlier in this submission, the conduct of Serbian authorities in 2003-2004 was not a cause of their conduct in 2013 and 2021.[270] Serbia's assertion that both disputes "*have the same origin and source*" because they ultimately touch upon Obnova's "*property entitlements*" to its Premises is incorrect.[271] If Serbia was right, any disputes related to any investment would always be the same because it would be always possible to conclude that they ultimately "*have the same origin and source*" because they relate to interference with the investment.

---

269 *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006, ¶¶ 127-128 (emphasis added), **CL-152**.

270 Reply, ¶¶ 444-456.

271 Rejoinder, ¶ 345.

227. Such an interpretation would lead to an absurd conclusion that all potential disputes related to the same investment represent the same dispute. That clearly cannot be the case.

228. Finally, as already explained above, Serbia accepts that Claimants' claims are not "*based on the events that pre-date the treaty*", *i.e.* they are not based on events that took place in 2003-2004.[272] Serbia cannot seriously claim that Claimants' claims are not based on events that took place between 2003-2004 and, at the same time, claim that those events are the "*origin and source*" of the dispute before the Tribunal.

## C. The Tribunal has jurisdiction *ratione materiae* under the Cyprus-Serbia BIT

229. The Tribunal has jurisdiction *ratione materiae* under the Cyprus-Serbia BIT over the claims of both Kalemegdan and Coropi. In this Section, Claimants show that:

a. the Cyprus-Serbia BIT contains a broad definition of investment including "*shares*" and, contrary to Serbia's allegations, does *not* require a positive act of investment by the investor (**Section II.C.1** below);

b. Kalemegdan's direct ownership of the Cypriot Obnova Shares is protected under the Cyprus-Serbia BIT—regardless of whether the Cyprus-Serbia BIT requires a positive act of investment or not (**Section II.C.2** below);

c. Coropi's indirect ownership of the Cypriot Obnova Shares is a protected investment under the Cyprus-Serbia BIT—regardless of whether the Cyprus-Serbia BIT requires a positive act of investment or not (**Section II.C.3** below); and

d. unlike as Serbia incorrectly claims in this arbitration, Cypriot Claimants' acquisition of their investment did not breach Serbian law (**Section II.C.4** below).

230. All these points are addressed *seriatim* below.

---

272 Rejoinder, ¶ 313.

### 1. Cyprus-Serbia BIT contains a broad definition of an investment and does *not* require a positive act of investment by an investor

231. Article 1(1)(b) of the Cyprus-Serbia BIT defines the term "*investment*" as "*every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include […] shares, bonds and other kinds of securities.*"[273] The Cyprus-Serbia BIT, thus, expressly states that any shares represent an investment—without the need to fulfill any additional requirements.[274]

232. Serbia's arguments to the contrary are based on misinterpretation of the Cyprus-Serbia BIT. Specifically, Serbia argues that the phrase "*every kind of asset invested*"—employed in the chapeau of the definition of investment under Article 1(1) of the Cyprus-Serbia BIT—requires a "*positive act of investment in connection with the host State*".[275]

233. This farfetched interpretation has been rejected by several investment tribunals. For example, a similarly worded treaty was interpreted in *Saluka v. Czech Republic*. In that case, the treaty defined "*investments*" as comprising "*every kind of asset invested directly or through an investor of a third State*".[276]

234. The *Saluka* tribunal explained that the word "*invested*" is used to connect the chapeau to the assets listed thereunder, and "*does not require […] the satisfaction of a requirement based on the meaning of 'investing' as an economic process*."[277] The *Saluka* tribunal made it clear that the chapeau cannot be construed to impose further substantive conditions:

> Although the *chapeau* of Article 2 refers to "every kind of asset invested", the use of that term in that place does not require, in addition to the very broad terms in which "investments" are defined in the Article, the satisfaction of a requirement based on the meaning of

---

273 Cyprus-Serbia BIT, Art. 1(1)(b), **CL-007(a)**.

274 Reply, ¶¶ 500, 528-530.

275 Rejoinder, ¶ 369.

276 *Saluka Investments B.V. v. The Czech Republic,* UNCITRAL, Partial Award, 17 March 2006, ¶ 198, **CL-063**.

277 *Saluka Investments B.V. v. The Czech Republic,* UNCITRAL, Partial Award, 17 March 2006, ¶ 211, **CL-063**.

> "investing" as an economic process: the chapeau needs to contain a verb which is apt for the various specific kinds of investments which are listed, and since all of them are being defined as various kinds of investment it is in the context appropriate to use the verb "invested" without thereby adding further substantive conditions.[278]

235. The same wording as in *Saluka* was also interpreted by the tribunal in *Invesmart v. Czech Republic*.[279] The *Invesmart* tribunal explicitly refused to examine whether the consideration paid for the acquisition of the shares was sufficient, because no such requirement existed in the BIT.[280] The tribunal concluded that "*the express inclusion of 'shares' as an investment means that the acquisition of shares constitutes an investment without further inquiry*."[281]

236. Similarly, in *Mytilineos v. Serbia*, the relevant treaty provided that "*investment*" is "*every kind of asset invested by an investor*".[282] Serbia, same as in the present case, argued that this wording indicated that there was an additional requirement of active investing.[283] The *Mytilineos* tribunal rejected Serbia's argument and concluded that the definition of "*investment*" was *not* limited by the requirement that the assets must be actively "*invested*".[284]

237. The *Mytilineos* tribunal concluded that the opposite interpretation (which is advocated by Serbia in the present case) would "*unduly restrict and unpredictably limit the meaning of an otherwise clear and straightforward investment definition*."[285] The tribunal found that "*the core of the definition lies in the characterization of 'every kind of asset' as an 'investment'. The examples of assets added in an illustrative fashion to*

---

278 *Saluka Investments B.V. v. The Czech Republic,* UNCITRAL, Partial Award, 17 March 2006, ¶ 211, **CL-063**.

279 *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award, 26 June 2009, ¶ 186, **RL-182**.

280 *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award, 26 June 2009, ¶¶ 187-189, **RL-182**.

281 *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award, 26 June 2009, ¶ 189, **RL-182**.

282 *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 126, **CL-100**.

283 *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 126, **CL-100.**

284 *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 129, **CL-100**.

285 *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 129, **CL-100.**

*this definition in Article 1(1)(a)-(e) of the BIT and the verb 'invested' do not add to it.*"[286]

238. This interpretation was also confirmed by the English High Court of Justice in *Tatneft v. Ukraine* and in *Dayyani v. Korea.*[287] In *Tatneft*, the relevant treaty provided that an "*investment*" means "*assets and intellectual property of all kinds that are invested by*" an investor.[288] Justice Butcher found that "*the essence of the definition is that all types of assets within the host state which have been lawfully acquired by an investor of the other state are "investments". It is not seeking to limit that definition by a stipulation as to the economic nature of the process by which an investor obtains such assets*."[289]

239. In *Dayyani*, the applicable treaty defined an "*investment*" as "*every kind of property or asset […] invested by the investors*".[290] Same as in *Tatneft*, the judge concluded that he *"[did] not consider that the phrase 'invested by', in the context of Article 1 of the BIT, imports a requirement of the active commitment of resources by the investor*."[291]

* * *

240. All the above authorities confirm that Article 1(1) of the Serbia-Cyprus BIT cannot be interpreted to require investors' active contribution. Article 1(1)(b) of the Cyprus-Serbia BIT defines protected investment as "s*hares*", without any further conditions. Thus, ownership of "s*hares*" is a sufficient proof of the investor's investment.

---

286 *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 129, **CL-100.**

287 *PAO Tatneft (formerly OAO Tatneft) v. Ukraine*, PCA Case No. 2008-8, Judgment of English High Court of Justice I, 13 July 2018, ¶ 72, **CL-153**; *Mohammad Reza Dayyani et al. v. Republic of Korea I*, PCA Case No. 2015-38, Judgment of the English High Court of Justice, 20 December 2019, ¶ 61, **CL-154**.

288 *PAO Tatneft (formerly OAO Tatneft) v. Ukraine*, PCA Case No. 2008-8, Judgment of English High Court of Justice I, 13 July 2018, ¶ 64, **CL-153**.

289 *PAO Tatneft (formerly OAO Tatneft) v. Ukraine*, PCA Case No. 2008-8, Judgment of English High Court of Justice I, 13 July 2018, ¶ 72, **CL-153**.

290 *Mohammad Reza Dayyani et al. v. Republic of Korea I*, PCA Case No. 2015-38, Judgment of the English High Court of Justice, 20 December 2019, ¶ 32, **CL-154**.

291 *Mohammad Reza Dayyani et al. v. Republic of Korea I*, PCA Case No. 2015-38, Judgment of the English High Court of Justice, 20 December 2019, ¶ 61, **CL-154**.

### 2. Kalemegdan's ownership of the Cypriot Obnova Shares is a protected investment under the Cyprus-Serbia BIT

#### a. Ownership of the Cypriot Obnova shares satisfies the definition of investment under Article 1(1)(b) of the Cyprus-Serbia BIT

241. From April 2012, Kalemegdan has been the registered owner of the Cypriot Obnova Shares, which represent 14,142 shares in Obnova (approximately 70% of Obnova's total share capital).[292] The Cypriot Obnova Shares are "*shares*" and thus a protected "*investment*" within the meaning of Article 1(1)(b) of the Cyprus-Serbia BIT.[293]

242. Serbia does not contest that Kalemegdan is the legitimate owner of the Cypriot Obnova Shares. Instead, Serbia argues that Kalemegdan did not make an investment within the meaning of Article 1(1) of the Cyprus-Serbia BIT. According to Serbia, the acquisition of the Cypriot Obnova Shares did not entail any contribution and was not an act of investing, which is allegedly required by the BIT.[294]

243. However, as explained above, the Cyprus-Serbia BIT does not place any additional requirements on the existence of a protected investment in the form of "*shares*". This interpretation was confirmed, for example, by the tribunals in *Saluka, Invesmart* and *Mytilineos*. All of these tribunals interpreted treaties with a wording similar to that of the Cyprus-Serbia BIT. Their conclusion is thus directly relevant for the present case.[295]

244. Serbia simply ignores these authorities and relies on case law which is either inapplicable in the present case or which does not support Serbia's assertion that Cyprus-Serbia BIT requires an act of investing.[296]

245. For example, Serbia heavily relies on the award issued in *Komaksavia v. Moldova.* However, the *Komaksavia* tribunal concluded that "*shareholdings presumptively do satisfy the relevant test, and that in the great majority of cases, this will be the end of*

---

292 Excerpt from the Central Securities Depository and Clearing House, 17 May 2012, **C-005;** Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**.

293 Cyprus-Serbia BIT, Art. 1(1)(b), **CL-007(a)**.

294 Rejoinder, ¶ 376.

295 *Saluka Investments B.V. v. The Czech Republic,* UNCITRAL, Partial Award, 17 March 2006, ¶ 211, **CL-063**; *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award, 26 June 2009, ¶ 186, **RL-182**; *Mytilineos Holdings SA v. The State Union of Serbia & Montenegro and Republic of Serbia I,* UNCITRAL, Partial Award on Jurisdiction, 8 September 2006, ¶ 126, **CL-100.**

296 Reply, ¶ 503.

*the matter. **Ownership of shares** by an investor, be it a physical person or a company, **will in general be considered as sufficient for fostering international protection**.*"[297] The *Komaksavia* tribunal thus confirmed that ownership of shares is sufficient to show the existence of an investment.

246. The *Komaksavia* tribunal added that this general rule may not be applied only "*in unusual circumstances, based on particular facts*".[298] The unusual circumstance in the *Komaksavia* case was that the investor became the holder of respective shares in a transaction labelled by the tribunal as "*murky at best*".[299]

247. No similar circumstances exist in the present case. Cypriot Claimants acquired the Cypriot Obnova Shares through their contribution into the capital of Kalemegdan. There was nothing "*murky*" about this contribution. On the contrary, changes in ownership structure, such as the change in the ownership structure of the Cypriot Obnova Shares, is a common business practice.[300] As Claimants explained in their Reply, the reason for this change was commonplace—tax efficiency.

248. The second case cited by Serbia, *Tokios Tokelés v. Ukraine,* also does not support Serbia's claim. Serbia highlights that the *Tokios Tokéles* tribunal concluded that "*the Claimant must show that it **caused** an investment to be made in the territory of the Respondent*".[301] However, the *Tokios Tokelés* tribunal reached this conclusion based on very particular facts existing in that case.

249. Specifically, the investor was set up, owned and controlled by Ukrainian nationals.[302] Neither Kalemegdan nor Coropi are currently owned or controlled by any Serbian national.

---

297 *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020-074, Final Award, 3 August 2022, ¶ 147 (emphasis added), **RL-084**.

298 *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020-074, Final Award, 3 August 2022, ¶ 148, **RL-084**.

299 *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020-074, Final Award, 3 August 2022, ¶ 175, **RL-084**.

300 R. Dolzer, U. Kriebaum, C. Schreuer, *Principles of International Investment Law,* p. 80, **CL-155**.

301 Rejoinder, ¶ 370 (emphasis added).

302 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶ 21, **RL-054**.

250. While it is true that Kalemegdan used to be nominally owned by a Serbian national—Mr. Obradović—Mr. Obradović never controlled Kalemegdan.[303] In addition, Kalemegdan has always been beneficially controlled by Coropi—another Cypriot national that was in turn owned by The Ahola Family Trust. The Ahola Family Trust is a trust domiciled in Guernsey whose beneficiaries are, and always have been the children of Mr. Rand and Canadian nationals–Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand.[304] Coropi is controlled by Mr. Rand, who is also a Canadian national.[305]

251. Moreover, the *Tokios Tokéles* award dealt with a case where the claimant was the one who made the initial investment by incorporating a wholly-owned subsidiary in Ukraine.[306] The ownership structure of this subsidiary, and thus the investment, never changed. Consequently, the *Tokios Tokéles* award does not comment on a situation where an investment is caused to be made by one entity, and later transferred to another. Therefore, the legal test formulated by the *Tokios Tokéles* decision, even if accepted, is not applicable to the present case.

252. In any case, this discussion about the relevance of the *Tokios Tokéles* case is essentially theoretical, because, as explained below, Kalemegdan "*caused money or effort to be expended*" and thus has an "*investment*".

* * *

253. Accordingly, Kalemegdan's ownership of the Cypriot Obnova Shares is a protected investment under the Cyprus-Serbia BIT.

### b. Even if Article 1(1) of the Cyprus-Serbia BIT required a positive act of investment, Kalemegdan would satisfy this requirement

254. Even if the Tribunal concluded that the Cyprus-Serbia BIT does require an active contribution to establish an "*investment*" (*quod non*), the Tribunal would still have

---

303 Memorial, ¶ 74; Rand First WS, ¶¶ 23, 30.

304 The Ahola Family Trust Indenture, Schedule B, **C-074**.

305 Reply, ¶ 22.

306 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶ 2, **RL-054**.

jurisdiction over Kalemegdan's claim. This is because Kalemegdan has made such an active contribution when: (*i*) it issued shares to Mr. Obradović in exchange for the Cypriot Obnova Shares in 2012;[307] and (*ii*) participated in Obnova's management.

### i. Kalemegdan's issuance of its own shares in exchange for the Cypriot Obnova Shares qualifies as a contribution

255. It is well settled that even in the case where some proof of contribution towards the acquisition of an investment is required, and to be clear that is not required under the Cypriot-Serbia BIT, such a contribution does not have to be monetary.[308] Even Serbia admits that an in-kind contribution of assets can amount to an investment capable of BIT protection.[309]

256. An in-kind contribution can take various forms—including issuance of the investor's own shares. The tribunal in *Quiborax v. Bolivia* confirmed that when the investor "*did issue 26,680 shares*" to acquire the investment, this constituted "*a contribution of assets.*"[310] A contribution in the form of an issuance of shares was also recognized in *Westwater Resources v. Turkey,* where the tribunal found sufficient contribution even though Westwater obtained the investment through a share-swap.[311]

257. It is undisputed that Kalemegdan obtained the Cypriot Obnova Shares from Mr. Obradović against the issuance of shares in Kalemegdan to Mr. Obradović.[312] Therefore, even if a proof of contribution was required from Kalemegdan, there is no doubt that Kalemegdan made such a contribution.

---

307 Rejoinder, ¶ 378.

308 *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297, **CL-099**.

309 Rejoinder, ¶ 380.

310 *Quiborax S.A., Non Metalic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia,* ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012, ¶ 229, **RL-073**. *See also Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine*, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 341, **CL-189**.

311 *Westwater Resources, Inc. v. Republic of Turkey,* ICSID Case No. ARB/18/46, Award, 3 March 2023, ¶¶ 144(i), 148, **CL-156**.

312 Rejoinder, ¶ 377; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, p. 3, **C-318**.

258. Serbia's argument that an investment acquired through restructuring or transfer of assets among corporate entities requires a showing of "*an economic link between the contribution made and the putative investor*" is inapposite.[313] It is obvious that there is an economic link between Kalemegdan and its in-kind contribution of its own shares. Serbia fails to show otherwise.

259. Serbia's assertion that there is no link between Kalemegdan and the funds used to acquire the Cypriot Obnova Shares is a red-herring.[314] There is no requirement to show such a link because Kalemegdan primarily relies on the contribution in the form of issuance of its own shares upon its acquisition of the investment.

260. That being said, Kalemegdan can, in fact, rely also on contributions made by previous owners. Numerous investment tribunals have rejected the suggestion that the current owner of assets must have made an active contribution beyond the contribution of the previous investor.[315]

261. For example, in *Levy de Levi v. Peru*, a father had transferred his investment in the form of shares to his daughter—free of charge. Peru argued that the daughter's ownership of the shares did not amount to an investment. The Tribunal disagreed:

> It is clear that the Claimant acquired her rights and shares free of charge. However, this does not mean that the persons from whom she acquired these shares and rights did not previously make very considerable investments of which ownership was transmitted to the Claimant by perfectly legitimate legal instruments.[316]

262. Investment tribunals and commentators have also specifically confirmed that the acquisition of an existing investment through corporate restructuring satisfies the

---

313 Rejoinder, ¶ 381.

314 Rejoinder, ¶ 383.

315 *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 148, **CL-124**; *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 01 March 2023, ¶ 317, **CL-097**; *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008, ¶ 542, **CL-157**; *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, June 6, 2016, ¶ 158, **CL-096**.

316 *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 148, **CL-124**.

condition of making an investment.[317] For example, in *Gold Reserve v. Venezuela*, the claimant obtained the investment through a restructuring that took place through a share-to-share swap outside of Venezuela. As such, the restructuring did not result in any money transfer or flow of funds into Venezuela.[318] Despite this fact, the tribunal had no problem finding that the claimant made an investment.[319]

263. Serbia's additional argument that "*if anyone financed the investment in Obnova […] it would have been Mr Rand*" is a red herring.[320] The origin of capital is irrelevant when assessing whether an investor made an investment.[321]

264. For example, in the *Tokios Tokeles* case, the case on which Serbia itself relies because of its "*identically worded definition of 'investment' under the Lithuania-Ukraine BIT*",[322] the tribunal did not find any reason to examine the origin of the capital invested in Ukraine.[323] The tribunal was clear that "*neither the text of the definition of 'investment,' nor the context in which the term is defined, nor the object and purpose of the Treaty allow such an origin-of-capital requirement to be implied*."[324]

---

317 Rudolf Dolzer, Ursula Kriebaum, Christoph Schreuer, *Principles of International Investment Law* (3rd edn., 2022), p. 80, **CL-155**.

318 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶ 256, **CL-131**.

319 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶ 270, **CL-131**.

320 Rejoinder, ¶ 389.

321 *Saipem S.p.A. v. People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, ¶ 106, **CL-158**; *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction, 11 April 2007, ¶ 210, **CL-159**; *Eiser Infrastructure Limited and Energia Solar Luxembourg S.À.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2017, ¶ 228, **CL-160**; *Georg Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶¶ 209, 216, **RL-132**; *RENERGY S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/14/18, Award, 6 May 2022, ¶ 581, **RL-066**; *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/5, Decision on Jurisdiction, 12 February 2014, ¶ 249, **CL-161**.

322 Rejoinder, ¶ 370.

323 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶ 77, **RL-054**.

324 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶ 77, **RL-054**.

265. The conclusion reached by the *Tokios Tokelés* tribunal has been confirmed also by numerous other investment tribunals.[325] Therefore, it is irrelevant whether Mr. Obradović financed the initial purchase of the Cypriot Obnova Shares from a loan from Mr. Rand or otherwise.

266. In an attempt to refute the established principle that the origin of capital is not relevant, Serbia invokes the *KT Asia v. Kazakhstan* case.[326] There, the tribunal concluded that KT Asia made no contribution and could not rely on any contribution made by its ultimate beneficial owner.[327] However, Serbia's reliance on *KT Asia v. Kazakhstan* is inapposite because the *KT Asia* tribunal reached its conclusions based on very particular facts of that case. The *KT Asia* tribunal stressed that the facts of that case were "*unusual*"[328] and made it clear that the unusual "*factual matrix of the […] case [was] relevant for the assessment of [contribution]*".[329]

267. Specifically, the ultimate beneficial owner in that case, Mr. Ablyazov, was a Kazakh national—*i.e.* a national of the host state.[330] KT Asia was set up to only temporarily hold Mr. Ablyazov's shares,[331] and obtained the shares for no actual consideration.[332]

---

325 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶ 77, **RL-054**; *Saipem S.p.A. v. People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, ¶ 106, **CL-158**; *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction, 11 April 2007, ¶ 210, **CL-159**; *Eiser Infrastructure Limited and Energia Solar Luxembourg S.À.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2017, ¶ 228, **CL-160**; *Georg Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶¶ 209, 216, **RL-132**; *RENERGY S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/14/18, Award, 6 May 2022, ¶ 581, **RL-066**; *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/5, Decision on Jurisdiction, 12 February 2014, ¶ 249, **CL-161**.

326 Rejoinder, ¶ 387.

327 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶¶ 205-206, **RL-060**.

328 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶ 213, **RL-060**.

329 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶ 175, **RL-060**.

330 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶¶ 7, 176, **RL-060**.

331 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶ 178, **RL-060**.

332 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶¶ 183-186, **RL-060**.

According to the Tribunal, "*the whole purpose of the structure was to conceal Mr. Ablyazov's interest*".[333]

268. On the other hand, the ultimate beneficial owners of Kalemegdan and Coropi are not nationals of Serbia. As explained above, Coropi is owned by The Ahola Family Trust and the sole beneficiaries of The Ahola Family Trust are Mr. Rand's children—Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand—and all are nationals of Canada.[334] In addition, Mr. Rand, who controls Kalemegdan and Coropi, is also a Canadian national.[335]

269. Moreover, unlike KT Asia, Kalemegdan provided a consideration in the form of its shares and was to hold the Cypriot Obnova Shares indefinitely. Kalemegdan was incorporated in Cyprus and obtained the Cypriot Obnova Shares before the events giving rise to these proceedings.[336] Therefore, its incorporation or its acquisition of the Cypriot Obnova Shares cannot be seen as an "*unusual*" attempt to gain the advantage of the protection afforded by the BIT. Therefore, the *KT Asia* case is inapposite to the present case.

### ii. Kalemegdan's participation in Obnova's management qualifies as a contribution

270. It is well recognized that the investor's contribution towards an investment can take any form,[337] This principle was aptly summarized by the tribunal in *Deutsche Bank v. Sri Lanka*:

> A contribution can take any form. It is not limited to financial terms but also includes know-how, equipment, personnel and services. In *RFCC v. Morocco,* the Tribunal found that the investor had made a *"... contribution in cash, kind and labour*". And the Tribunal in *Bayindir v.*

---

333 *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶ 197, **RL-060**.

334 The Ahola Family Trust Indenture, Schedule B, **C-074**.

335 Reply, ¶ 22.

336 *See* Reply, ¶¶ 286-289.

337 *E.g. Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297, **CL-099**; *Consortium R.F.C.C. v. Kingdom of Morocco,* ICSID Case No. ARB/00/6, Decision on Jurisdiction, 16 July 2001, ¶ 61, **CL-109**; *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan,* ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶ 131, **CL-110**; *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, ¶ 73(i), **CL-111**.

> *Islamic Republic of Pakistan* held that the investor had *"... made a significant contribution, both in terms of know-how, equipment and personnel and in financial terms*". In *L.E.S.I. S.p.A. & Astaldi S.p.A. v. People's Democratic Republic of Algeria*, the Tribunal also confirmed that the contributions could "*consist of loans, materials, works, services, as long as they have an economic value. In other words, the contractor must have committed some expenditure, in whatever form, in order to pursue an economic objective*".[338]

271. Tribunals have also repeatedly recognized that one possible form of contribution are managerial services.[339] For example, the tribunal in *Mason Capital v. Korea* found sufficient contribution in the form of "*investment decision-making, management and expertise*".[340] For the tribunal in *Mera v. Serbia*—which interpreted the Cyprus-Serbia BIT—the term "'*making investments' comprises more than the funding and acquisition of investments, but as well, the holding and management of investments.*"[341]

272. Besides issuing its shares, Kalemegdan also contributed management services towards its investment in Obnova. Kalemegdan participated in Obnova's management through Mr. Markićević, who has been Kalemegdan's director since 2013.[342] At the same time, Mr. Markićević was the General Manager and director Obnova. Mr. Markićević—and through him also Kalemegdan—were, thus, continuously involved in Obnova's management and decision making.[343]

---

338 *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297 (emphasis added), **CL-099**.

339 *E.g. Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent's Preliminary Objections, 22 December 2019, ¶ 207, **CL-162**; *Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Decision on Jurisdiction, 13 September 2007, ¶¶ 94, 96, **CL-163**; *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008, ¶ 233, **CL-157**; *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶ 285, **CL-021**; *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 01 March 2023, ¶ 337, **CL-097**. *See also Consortium Groupement L.E.S.I. - DIPENTA v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/03/8, Award, 10 January 2005, ¶ 14(i), p. 21 (pdf): "*contributions could, then, consist of loans, materials, works, or services, provided they have an economic value*", **CL-164**.

340 *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent's Preliminary Objections, 22 December 2019, ¶ 207, **CL-162**.

341 *Mera Investment Fund Limited v. Republic of Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 107, **RL-020**.

342 Rand First WS, ¶ 48; Rand Second WS, ¶ 37.

343 Rand First WS, ¶¶ 45-49; Markićević First WS, ¶¶ 18-21.

273. As Mr. Markićević explains in his witness statement,[344] his contributions to Obnova's management included, among other things, the following:

a. determining Obnova's business strategy and business goals;

b. preparing and filing of various applications and submissions with Serbian authorities, including the following;[345]

c. liaising with external advisors in connection with preparation and filing of various applications and submissions with Serbian authorities; and

d. negotiating and concluding lease agreements between Obnova, as the lessor, and various companies, as the lessees, for Obnova's premises at Dunavska 17-19 and 23.[346]

e. preparing and maintaining of Obnova's business and financial records;[347]

f. acting as a liaison between Obnova and Cypriot directors of Kalemegdan and Coropi;[348] and

g. liaising with Messrs. Rand and Broshko.[349]

274. Moreover, Kalemegdan was involved in Obnova's management also through its Cypriot directors. These directors, for example, approved and executed voting forms with information on how Kalemegdan's representative was to vote its shares during

---

344 Igor Markićević Second Witness Statement dated 26 July 2024, ¶ 8.

345 *E.g.* Obnova's request for legalization, 29 January 2014, **C-034**; Obnova's request for ownership registration in the Cadaster, 18 September 2015, **C-035**; Obnova's appeal, 1 April 2016, **C-037**; Obnova's claim related to Dunavska 17-19, 10 August 2018, **C-048**; Obnova's submission to the Higher Court in Belgrade, 16 July 2019, **C-050**; Obnova's submission to the Higher Court in Belgrade, 13 August 2019, **C-051**; Letter from Obnova to Geodetic Authority of Serbia, 4 February 2021, **C-331**; Obnova's letter to the Secretariat for Inspection Affairs, 13 August 2019, **C-447**; Letter from Obnova to City of Belgrade, 15 July 2019, **C-452**.

346 *E.g.* Real Estate Lease Agreement concluded between Obnova and Lemit, 15 June 2022, **C-416**.

347 *E.g.* Notes to Obnova Balance Sheet as at 31 December 2021, **C-300**.

348 *E.g.* Email communication between Mr. Markićević and Ms. Makri acting on behalf of Mr. Theophylactou, June 2013, **C-370**; Email from Mr. Michaelides, 31 October 2017, **C-378;** Email from Mr. Michaelides, 29 June 2017, **C-374;** Email communication between Mr. Markićević and Ms. Makri, 4 September 2013, **C-409**; Email communication between Mr. Markićević and Ms. Makri, 2013, **C-371**; Email correspondence between Mr. Markićević and Mr. Michaelides, 30 October 2017, **C-410**.

349 *E.g.* Email from Mr. Markićević to Mr. Broshko, 7 September 2014, **C-382**.

Obnova's general meetings. [350] The voting forms dealt with a variety of issues—from approval of Obnova's financial reports and other documents to authorization for Obnova's board to sell certain assets.[351]

275. This contribution of managerial services to Obnova is also sufficient to establish an "*investment*", even if the Tribunal concluded that the Cyprus-Serbia BIT requires it.

### iii. Kalemegdan's contribution has a sufficient territorial link to Serbia

276. Serbia also argues that the phrase "*in the territory of the other Contracting Party*" contained in Article 1(1) of the Cyprus-Serbia BIT means that "*an investor must prove that its act of investment has a connection to Serbia*."[352] However, as the tribunal in *Inmaris v. Ukraine* explained, with reference to other case law, that the territorial link cannot be interpreted narrowly:

> But an injection of funds is by no means the only way that an investment may be made in the territory of a host State. The tribunals in *Fedax v. Venezuela* and *CSOB v. Slovakia*, for example, each found qualifying investments in circumstances where the investor was not shown to have transferred funds into the host State in question. As the Fedax tribunal noted, "*[i]t is a standard feature of many international financial transactions that the funds involved are not physically transferred to the territory of the beneficiary, but put at its disposal elsewhere*."[353]

277. In fact, the acquisition of the Cypriot Obnova Shares by Kalemegdan has a sufficient territorial link to Serbia simply because Obnova is a Serbian company and all its assets are located in Serbia.

278. Indeed, when acquisition of shares is concerned, the fact that the target company is incorporated in the host state and has assets in the host state provide a sufficient

---

350 Markićević Second WS, ¶ 12; Email communication between Mr. Markićević and Ms. Makri acting on behalf of Mr. Theophylactou June 2013, **C-370**; Email communication between Mr. Markićević and Ms. Makri, 2013, **C-371**; Email from Mr. Michaelides to Mr. Markićević, 29 June 2017, **C-374**; Email from Mr. Michaelides to Mr. Markićević, 31 October 2017, **C-378**; Email communication between Mr. Markićević and Ms. Makri, 24 June - 4 September 2013, **C-409**.

351 Markićević Second WS, ¶ 13; Email communication between Mr. Markićević and Ms. Makri acting on behalf of Mr. Theophylactou, June 2013, **C-370**; Email from Mr. Michaelides, 31 October 2017, **C-378**; Email from Mr. Michaelides, 29 June 2017, **C-374**.

352 Rejoinder, ¶ 373.

353 *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, 8 March 2010, ¶ 123, **CL-165**.

territorial link. For example, the tribunal in *Quiborax* held that "*Quiborax paid for 51% of the shares of NMM. Regardless of where payment was made, this qualifies as a contribution of money because the object of the payment and raison d'être of the transaction – the mining concessions – were located in Bolivia.*"[354] The same conclusion was also reached for example in a *Gavrilovic v. Croatia*[355] and in *Gold Reserve v. Venezuela.*[356] The *Gold Reserve* tribunal explained that no cross-border movement of capital is required when acquiring shares:

> According to the ordinary meaning of the words, "making an investment in the territory of Venezuela" does not require that there must be a movement of capital or other values across Venezuelan borders.
>
> If such a condition were inferred it would mean that an existing investment in Venezuela, owned or controlled by a non-Venezuelan entity, would not be protected by the BIT if it were acquired by a third party, with cash or other consideration being paid outside Venezuela, even if the acquiring party then invested funds into Venezuela to finance the activity of the acquired business. Clearly, this was not the intention of the parties to the BIT and nor does it reflect the ordinary meaning of the definition. Whether Claimant made an investment when it acquired the shares in Gold Reserve Corp., is not affected by the fact that the acquisition took place through a share-to-share swap outside Venezuela.[357]

279. The same considerations apply here. The existence of Kalemegdan's investment into the Cypriot Obnova Shares is not affected by the fact that the acquisition took place through a corporate restructuring outside Serbia.

---

354 *Quiborax S.A., Non Metalic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia,* ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012, ¶ 229, **RL-073**.

355 *Georg Gavrilovic & Gavrilovic d.o.o. v. Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶ 205, **RL-132**.

356 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶ 262, **CL-131**.

357 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶¶ 261-262, **CL-131**.

### 3. Coropi's indirect beneficial ownership of the Cypriot Obnova Shares is a protected investment under the Cyprus-Serbia BIT

#### a. Coropi was a beneficial owner of Cypriot Obnova Shares

##### i. Coropi acquired a beneficial interest in Obnova pursuant to Cypriot law

280. Serbia alleges that Coropi failed to establish that it had a beneficial interest in Kalemegdan and, by extension, an indirect interest in Obnova.[358] This is incorrect. As Claimants already explained, Coropi has been the beneficial owner of Kalemegdan since Kalemegdan's establishment in March 2012,[359] based on an oral trust created between Mr. Obradović and Coropi. Importantly, it is undisputed that an oral declaration of a trust is sufficient under Cyprus law, as Cyprus law does not set forth any formal requirements to create a trust.[360]

281. Moreover, not only can a trust be created orally, but its existence can also be proven by oral evidence.[361] The existence of an oral trust between Mr. Obradović and Coropi was confirmed by Mr. Rand, who beneficially owned Kalemegdan and controlled Coropi, an entity beneficially owned by Mr. Rand's three children.[362] As Mr. Rand testifies, "*since Kalemegdan's incorporation, the beneficial owner of its shares has been Coropi.*"[363] This is also confirmed by Mr. Broshko.[364]

282. Serbia, however, argues that the lack of "*clear, unambiguous declaration*" by Mr. Obradović—as the creator of the trust—prevents Coropi from demonstrating beneficial interest in Kalemegdan.[365] However, such a requirement has no basis under Cyprus law.[366] Serbia's theory is also nonsensical because it would mean that trusts created orally cease to have effect—or cease to be provable—with the demise of the

---

358 Rejoinder, ¶ 392.

359 Georgiades First ER, ¶ 5.5.2; Rand First WS, ¶ 38; Broshko First WS, ¶ 19; Markićević First WS, ¶ 14.

360 Ioannides First ER, ¶ 7.5; Georgiades First ER, ¶ 5.1.3.; Georgiades Second ER, ¶ 4.1.1.

361 Georgiades Second ER, ¶ 4.1.2.

362 Rand First WS, ¶ 38.

363 Rand Second WS, ¶ 25.

364 Broshko First WS, ¶¶ 22-23.

365 Rejoinder, ¶ 394 (third bullet point).

366 Georgiades Second ER, ¶ 4.1.2.

settlor. In any event, as Mr. Georgiades explains, "*the evidence of Mr Erinn Bernard Broshko and Mr William Archibald Rand satisfies the evidentiary burden that the Kalemegdan shares were held by Mr Obradović in trust for Coropi, from the date of incorporation of Kalemegdan*."[367]

283. Moreover, Mr. Georgiades further confirms[368] that Coropi's beneficial ownership—including Mr. Obradović's clear intention to create it—is further corroborated by documentary evidence, namely:

a. a letter of instructions issued by Coropi to the directors of Kalemegdan on 26 March 2012, *i.e.* three days after Kalemegdan's incorporation ("**Letter of Instructions**");[369] and

b. trust deeds concluded by Mr. Obradović and Coropi on 26 April 2012 and 16 August 2012 ("**Trust Deeds**").[370]

284. Serbia's attempts to cast doubts over these documents is unavailing.

285. *First*, Serbia argues that the Letter of Instructions lacks necessary certainty as to its subject-matter.[371] This is incorrect, since the Letter of Instructions expressly requires the directors to always obtain "*instructions, directions and written consent*" from Coropi for the implementation of any administration and fiduciary services and states that no "*decisions and resolutions shall be taken regarding*" Kalemegdan without obtaining permission from Coropi.[372]

286. Serbia also cannot discard the Letter of Instructions by arguing that it contravenes Article 12 of Kalemegdan's Articles of Association, which provides that "*no person shall be recognised by the Company as holding any shares on the basis of any trust.*"[373]

---

367 Georgiades Second ER, ¶ 4.1.5; See also Georgiades First ER, ¶ 5.1.3.

368 Georgiades First ER, § 5; Georgiades Second ER, § 4.2.2.

369 Letter of Instructions from 26 March 2012, **C-319**; Georgiades Second ER, ¶ 4.1.6.

370 Trust Deed, 26 April 2012, **C-066**; Trust Deed, 16 August 2012, **C-067**; Georgiades Second ER, ¶ 4.2.2.11.

371 Rejoinder, ¶ 394.

372 Letter of Instructions from 26 March 2012, **C-319.**

373 Memorandum and Articles of Association of Kalemegdan Investments Limited, 19 March 2012, **R-132**.

As explained by Mr. Georgiades, this provision does not preclude the creation of a trust over Kalemegdan's shares but only means that Kalemegdan does not have to recognize a trust and is, therefore, not liable to the beneficial owner.[374] Thus, for example, if a company makes a call on shares, a nominee shareholder cannot resist by arguing that the payment should be made by the beneficial shareholder.[375] This, however, does not affect the validity of the trust.[376] As such, Article 12 of Kalemegdan's Articles of Association does not affect the creation of a trust over Kalemegdan's shares and, therefore, is irrelevant for the existence of Coropi's beneficial ownership over the Cypriot Obnova Shares.[377]

287. In any event, as confirmed by Messrs. Rand, Broshko and Markićević, Kalemegdan's directors accepted the terms of the letter of instructions and have always acted accordingly and followed all instructions provided by or on behalf of Coropi.[378]

288. *Second*, Serbia argues that the Trust Deeds do not confirm Coropi's beneficial ownership. This, too, is incorrect because the Trust Deeds were signed by Mr. Obradović and include a clear representation that Coropi "*is beneficially interested in*" Kalemegdan's shares.[379]

289. In addition, Serbia alleges that there is inconsistency in Claimants' evidence because "*[i]f Coropi had already been the beneficial owner of Kalemegdan since Kalemegdan's incorporation in March 2012, it begs the question why and under what capacity Mr Rand instructed Mr. Obradović on the affairs of Kalemegdan*."[380] That question was already answered by Claimants. Mr. Rand is a director in Coropi and had control over it based on an agreement with Mr. Jennings, the trustee of the Ahola Family Trust, the

---

374 Georgiades Second ER, ¶ 4.2.1.1.

375 Georgiades Second ER, ¶ 4.2.1.3.

376 Georgiades Second ER, ¶ 4.2.1.4.

377 Georgiades ER, ¶ 5.4.1.

378 Rand First WS, ¶ 39; Broshko First WS, ¶ 21; Markićević First WS, ¶ 14.

379 Trust Deed, 26 April 2012, **C-066**; Trust Deed, 16 August 2012, **C-067**; Georgiades Second ER, ¶ 4.2.2.3.

380 Rejoinder, ¶ 395.

nominal owner of Coropi's shares.[381] The beneficiaries of this trust are, and always were, Mr. Rand's three children.[382]

290. In fact, Serbia has been aware of Mr. Rand's control over the Ahola Trust since at least the *Rand* arbitration, where Mr. Jennings testified that he had "*left the management of and control over both Sembi and Coropi to Mr. Rand*"[383] and Serbia itself acknowledged that "*Mr. Jennings, seeks and follows instructions from Mr. Rand in respect of all matters involving the [Ahola Trust]*."[384] Thus, Claimants' evidence in this arbitration is consistent both internally and with the evidence presented in the *Rand* arbitration.

291. Finally, Serbia seeks to draw inapposite "parallels" with two investment cases—*Anglo-Adriatic v. Albania* and *Alverley v. Romania*—dealing with the issues of trusts.[385] However, the relevance of such case law to the present case is limited to the fact that—contrary to Serbia's arguments—public international law grants protection to beneficial ownership, if such beneficial ownership was validly created under the municipal law that governs it.

292. In *Anglo-Adriatic*, the Anglo-Adriatic Group ("**AAG**") relied on four trust deeds that, according to AAG, were supposed to transfer to AAG the beneficial ownership of shares in an Albanian company, Anglo Adriatika Investment Fund ("**AAIF**"). It was undisputed that the text of the trust deeds contemplated—contrary to AAG's alleged intentions—that AAG would transfer the shares, rather than receive them.[386] AAG was aware of this fact and blamed it on "*a mistake when preparing the Trust Deeds*" as the alleged intention of the parties had been to transfer the beneficial ownership of AAIF *from* the "*foreign shareholders*" *to* AAG, rather than from AAG to the "*foreign*

---

381 Rand First WS, ¶ 38, fn. 19.

382 Rand First WS, ¶ 33.

383 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Respondent's Rejoinder, 24 January 2020, ¶ 1002, **C-726**.

384 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Respondent's Rejoinder, 24 January 2020, ¶ 1002, **C-726**.

385 Rejoinder, ¶¶ 397-400.

386 *Anglo-Adriatic Group Limited v. Republic of Albania*, ICSID Case No. ARB/17/6, Award, 7 February 2019, ¶ 233, **RL-051**.

*shareholders*".[387] However, the claimants provided no evidence of this alleged extraordinary mistake. Thus, the *Anglo-Adriatic* tribunal found the claimants' theory unconvincing. This brief summary of the relevant factual background clearly shows that there are strictly no parallels between *Anglo-Adriatic* and the present case.

293. *Alverley v. Romania* does not support Serbia's case either. There, the tribunal found that claimants failed to establish the existence of their beneficial ownership due to circumstances not present here. In *Alverley*, the trust deed was signed by unauthorized persons[388] and there was also another, subsequent trust deed, which related to the same shares as the previous trust deed, but made no reference to the previous one. This subsequent trust deed, in view of the tribunal, cast "*further doubt on the argument that there was a trust at the earlier date*."[389]

294. Neither of these issues exists in the present case. It is undisputed that the persons who signed the Trust Deeds were authorized to do so. Furthermore, while Mr. Obradović and Coropi also signed two trust deeds, the trust deeds relate to different shares. The first trust deed relates to all of Kalemegdan's shares that had been issued by April 2012[390] and the second trust deed relates only to additional shares that were issued between April and August 2012.[391] Thus, unlike the in *Alverley*, the Trust Deeds do not relate to the same shares.

### ii. Serbian law is irrelevant for the Tribunal's jurisdiction over Coropi's beneficial interest in Obnova

295. Serbia argues that Coropi's alleged indirect beneficial ownership of the Cypriot Obnova Shares cannot be protected under the Canda-Serbia BIT, because it "*does not constitute*

---

387 *Anglo-Adriatic Group Limited v. Republic of Albania*, ICSID Case No. ARB/17/6, Award, 7 February 2019, ¶ 235, **RL-051**.

388 *Alverley Investments Limited and Germen Properties Ltd v.* Romania, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 427, **RL-007**.

389 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 429, **RL-007**.

390 Trust Deed, 26 April 2012, **C-066**.

391 Trust Deed, 16 August 2012, **C-067**.

*a property right under Serbian law, which does not recognise beneficial ownership of shares arising under a trust.*"[392] Serbia's objection is both irrelevant and incorrect.

296. It is irrelevant because Coropi does not claim to have any direct rights in Obnova. Instead, Claimants consistently claim that Coropi is only an *indirect* beneficial owner of Obnova—through its direct beneficial (and since December 2023 also nominal) ownership of Kalemegdan.[393] Coropi's direct beneficial ownership in Kalemegdan, and thus indirect beneficial ownership in Obnova, was created under Cyprus law, not Serbian law. Whether or not Coropi's beneficial ownership in Kalemegdan "*constitutes a property right*" under Serbian law—which does not govern the relationship between Coropi and Kalemegdan—is thus utterly irrelevant.

297. The irrelevance of Serbia's objection is evident from its authorities. In *Anglo-Adriatic* and *Alverley*, the tribunals assessed the existence of the respective trusts applying the proper law governing these arrangements—English law and Cyprus law—and not the host State's law.

298. Serbia does not dispute, and rightfully so, that public international law protects beneficial ownership. Serbia should also recognize that the protection of beneficial ownership under international law does not rest upon the recognition of the same under host state's law. In *Saghi,* claimants asserted their standing before the Iran-U.S. Claims Tribunal ("**IUSCT**") based on beneficial ownership of shares in an Iranian company, Novzohour Paper Industries ("**NPI**"). The shares were nominally held by—and registered in the name of—NPI's employees, who held them for the benefit of claimants. Iran argued that Iranian law does not allow for beneficial ownership because Article 40 of the Commercial Code of Iran required that "*the transfer of registered shares must be entered in the share register of the company.*" The IUSCT, however, dismissed Iran's objection, holding that:

> *The Respondent has argued that Article 40 of the Commercial Code of Iran bars the alleged beneficial ownership. However, the issue here is not the validity vel non under Iranian law of beneficial ownership interests vis-a-vis the company or third parties. Rather, it is whether the Government of Iran is responsible, under international law, to*

---

392 Rejoinder, ¶ 402.

393 *E. g.* Memorial, ¶ 166; Reply, ¶ 495.

> *beneficial owners for "expropriations and other measures affecting property rights."*
>
> The Tribunal's awards have recognized that beneficial ownership is both a method of exercising control over property and a compensable property interest in its own right.[394]

299. It is therefore perfectly irrelevant whether a trust can be created under Serbian law or whether it even recognizes it. What matters is whether beneficial ownership was created under Cyprus law (and it was) and whether international law recognizes beneficial ownership (and it does).

300. In any event, Serbia's objection stems from an incorrect legal premise also because Serbian law recognizes beneficial ownership created under foreign law:

i. Article 2(34) of the Law on Capital Markets, which expressly defines a beneficial owner as a "*Person who has the benefits of ownership of a financial instrument either entirely or partially, including the power to direct the voting or disposition of the financial instrument or to receive the economic benefits of ownership of that financial instrument, and yet does not nominally own the financial instrument itself*.[395]

ii. Article 3.10 of the Law on the Prevention of Money Laundering and the Financing of Terrorism provides that: "*Beneficial owner of a party is a natural person who indirectly or directly owns or controls the party; a party from this point includes a natural person.*"[396]

iii. Article 3.6 of the Law on the Prevention of Money Laundering and the Financing of Terrorism defines trust as a "*Foreign legal entity established during the lifetime or after the death of one person, the founder (settlor, trustor), who entrusts the property to a trustee (trustee) for the benefit of beneficiaries (beneficiaries) or for a specifically designated purpose, in such a way that: the property is not part of the founder's trust; the right of ownership of the trust property belongs to the [trustee] who holds, uses, and disposes of the property for the benefit of the beneficiaries or the founder, in accordance with the trust conditions; by a trust agreement, the performance of certain tasks can also be entrusted to a protector (trust protector), whose main role is to ensure that the trust property is managed and disposed of in such a way that the objectives of establishing the trust are fully achieved; the beneficiary is a natural person or a group of individuals for whose benefit the foreign legal entity was established*

---

394 *James M. Saghi, Michael R. Saghi and Allan J. Saghi v. The Islamic Republic of Iran*, IUSCT Case No. 298, Award, 22 January 1993, ¶¶ 25-26 (emphasis added), **CL-192**.

395 2011 Law on Capital Markets, Arts. 2(33) and (34), **C-595**.

396 Law on the Prevention of Money Laundering and the Financing of Terrorism, Official Gazette of Republic of Serbia, No. 113/2017, 91/2019 and 153/2020, Art. 3.10, **JL-011**.

*or operates, regardless of whether that individual or group of individuals is specified or specifiable.*"[397]

301. Serbia's argument that "*[n]one of these provisions recognise or confer indirect beneficial ownership of shares*" is incorrect and irrelevant.[398] The above provisions of Serbian law clearly recognizes beneficial ownership, including trusts. Serbia's assertion is in any event irrelevant because Coropi's beneficial ownership in Kalemegdan does not rely on any right granted by Serbian law—instead, it was created under Cyprus law and is protected under public international law.

302. Finally, beneficial ownership is not only recognized by Serbian law, it is also recognized in the practice of Serbian authorities. For example, as early as in 2003, the Serbian Privatization Agency required potential bidders to disclose their full ownership structure, "*including a summary of any beneficial ownership interests [and] nominee shareholding.*"[399]

303. In sum, Serbian law is entirely irrelevant for the Tribunal's jurisdiction over Coropi's beneficial interest in Obnova and, in any event, Serbian law recognizes beneficial ownership.

### b. Coropi's beneficial ownership of the Cypriot Obnova Shares satisfies definition of investment under Article 1(1)(b) of the Cyprus-Serbia BIT

304. Coropi acquired an indirect beneficial interest in the Cypriot Obnova Shares in 2012—through its acquisition of the beneficial ownership of Kalemegdan. As a result, Coropi has an "*investment*" within the meaning of Article 1(1)(b) of the Cyprus-Serbia BIT in the form of "*shares*" in Obnova.

305. It is a well-established principle of public international law that where ownership title is split between a nominal owner and a beneficial owner, the latter is also entitled to

---

397 Law on the Prevention of Money Laundering and the Financing of Terrorism, Official Gazette of Republic of Serbia, No. 113/2017, 91/2019 and 153/2020, Art. 3.6, **JL-011**.

398 Rejoinder, ¶ 405.

399 Public Invitation for participation in a public tender process for the sale of socially owned capital of Duvanska industrija "Vranje" a.d., p. 2 (emphasis added), **C-727**. *See also* Public Invitation for participation in a public tender process for the acquisition of a controlling interest in Beopetrol a.d. Beograd, **C-729**.

pursue its claims before an international tribunal.[400] Serbia does not dispute that beneficial ownership is protected under public international law in general, or the Cyprus-Serbia BIT in particular.

306. Instead, much like with Kalemegdan, Serbia alleges that "*there is no evidence on the record that Coropi has made a positive act of investing in the territory of Serbia*."[401] As already explained above, this argument is based on misinterpretation of the Cyprus-Serbia BIT. Ownership of "*shares*" is a sufficient proof of the investor's investment under Article 1(1) of the Cyprus-Serbia BIT.

307. This is even more evident in cases involving indirect investors. Numerous tribunals have confirmed that "*there is no need to investigate how a shareholder acquired its interest in the entity holding the investment or whether it satisfies additional conditions to the ownership of shares*."[402]

308. For example, the ICSID tribunal in *Lopez-Goyne v. Nicaragua* dealt with a case where the claimants acquired shares in a subsidiary, which held an investment in Nicaragua. The claimants paid for the shares, but were unable to reconstruct the paper-trail due to the passage of time.[403] The *Lopez-Goyne* tribunal considered that it did not have to investigate whether the claimants satisfied additional conditions to the ownership of shares,[404] and concluded that *"[a]s a matter of fact, ownership of shares generally is considered sufficient, save in special circumstances*."[405] No such "*special*

---

400 Reply, ¶ 508.

401 Rejoinder, ¶ 406.

402 E.g. *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 316, **CL-097**, citing *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008, ¶ 542, **CL-157**; *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 148, **CL-124**; *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, 6 June 2016, ¶ 158, **CL-096**; *Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC v. Republic of Poland* , ICSID Case No. ARB(AF)/11/3, Award, 24 November 2015, ¶ 207, **CL-166**.

403 *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 321, **CL-097**.

404 *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 316, **CL-097**.

405 *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 319, **CL-097**.

*circumstances*" exist in the present case. Therefore, there is no need for the Tribunal to examine anything beyond Coropi's beneficial ownership of the Cypriot Obnova Shares.

309. Moreover, as explained above, even if proof of some economic contribution was required from Coropi, and it is not, it is well recognized that such contribution can take any form.[406] In the present case, there is evidence of both monetary and non-monetary contribution on the part of Coropi.

310. As to the monetary contribution, the two trust deeds between Coropi and Mr. Obradović explicitly refer to "*consideration given*".[407] As explained by Mr. Broshko, he provided a nominal consideration of EUR 10 in Serbian dinar equivalent under each trust deed directly to Mr. Obradović, on behalf of Coropi and following instructions from Mr. Rand.[408] Therefore, Serbia's assertion that Coropi acquired its interest in Obnova "*passively and without any consideration or transfer of value*" is simply false.[409]

311. As to the non-monetary contributions, Claimants explain above that tribunals have repeatedly recognized managerial services as a relevant contribution, including "*investment decision-making, management and expertise*".[410] To recall, the tribunal in *Mera v. Serbia*—which interpreted the Cyprus-Serbia BIT—concluded that the term "'*making investments' comprises more than the funding and acquisition of investments, but as well, the holding and management of investments.*"[411]

---

406 *See* also *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297, **CL-099**; *Consortium R.F.C.C. v. Kingdom of Morocco,* ICSID Case No. ARB/00/6, Decision on Jurisdiction, 16 July 2001, ¶ 61, **CL-109**; *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan,* ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶ 131, **CL-110**; *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, ¶ 73(i), **CL-111**.

407 Trust Deed, 26 April 2012, Preamble, **C-066**; Trust Deed, 16 August 2012, Preamble, **C-067**.

408 Erinn Bernard Broshko Second Witness Statement dated 26 July 2024, ¶ 20. *See* also Rand Second WS, ¶ 27.

409 Rejoinder, ¶ 406.

410 *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent's Preliminary Objections, 22 December 2019, ¶ 207, **CL-162**.

411 *Mera Investment Fund Limited v. Republic of Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 30 November 2018, ¶ 107, **RL-020**.

312. In their Reply, Claimants explained that Coropi participated in Obnova's management through Messrs. Rand and Markićević—both of whom are directors of Coropi.[412] Mr. Markićević is also a director and the General Manager of Obnova. Management services provided to Obnova by Messrs. Rand and Markićević are clearly of economic value and serve to advance Coropi's investment in Obnova.

313. In response, Serbia alleges that Mr. Markićević is a paid employee of the Rand family's companies in Serbia and that such services are different from "*the types of in-kind contributions that investment tribunals and commentators have in mind in relation to the requirement of a contribution*".[413] However, instead of "*tribunals and commentators*", Serbia only refers to a single decision—*Deutche Telekom v. India*—alleging that "*providing services for compensation does not constitute in-kind equity contributions*".[414] Serbia's reliance on this award is inapposite.

314. The *Deutsche Telekom* tribunal reached the cited conclusion in the context of quantum. Specifically, the tribunal concluded that Deutsche Telekom's services provided based on separate agreements, and at arm's length, did not qualify as an "*equity input*". As a result, the tribunal concluded that Deutsche Telekom's services did not justify any upwards adjustments of the valuation of the respective company.[415] The reasoning of the *Deutsche Telekom* tribunal, therefore, has no bearing on the Tribunal's jurisdictional analysis.

315. Furthermore, Claimants' argument in the present case is entirely different. Unlike *Deutsche Telekom*, Claimants do not assert that the services provided to Obnova by Messrs. Rand and Markićević were contributions to Obnova's equity or that they should be considered in valuation of Obnova. As such, the *Deutsche Telekom* case is entirely inapposite.

316. Moreover, Serbia's argument stems from an incorrect factual premise because Mr. Markićević had not been employed or paid by Obnova until 19 July 2023, and he

---

412 Reply, ¶ 531.

413 Rejoinder, ¶ 414.

414 Rejoinder, ¶ 414.

415 *Deutsche Telekom AG v. The Republic of India*, PCA Case No. 2014-10, Final Award dated 27 May 2020, ¶¶ 243, 262, **RL-218**.

has never been an employee of Kalemegdan or Coropi.[416] Therefore, Mr. Markićević was not "*a paid employee*" at the times relevant for the Tribunal's jurisdictional assessment and Serbia's argument falls flat.

317. Finally, Serbia alleges that Messrs. Rand and Markićević participated in the management of Obnova in independent roles, not in their capacity as directors of Coropi.[417] This argument fails as well.

318. The participation of Messrs. Rand and Markićević in the management of Obnova cannot be separated from their other roles in Coropi, Kalemegdan and other companies, as well as from their acting in their strictly personal capacity. Serbia does not refer to any authority that would state that the conduct of people who act as directors and/or officers in various companies can be attributed to only one of such companies at a time.

319. Therefore, Coropi's investment is, in any case, an "*investment*" protected by the Cyprus-Serbia BIT, even if the Tribunal concluded that contribution was a condition for its existence.

* * *

320. It follows from the above that Coropi has an investment in the form of its beneficial ownership of the Cypriot Obnova Shares and this investment is protected under the Cyprus-Serbia BIT.

### 4. The Cypriot Claimants' investment was acquired in accordance with Serbian law

321. Serbia alleges that Cypriot Claimants' acquisition of the Cypriot Obnova Shares in May 2012 ("**2012 Acquisition**") involved a violation of their obligation to issue a takeover bid arising under the Serbian Law on Takeover on Joint Stock Companies ("**Takeover Law**")—in its version as amended on 4 January 2012 ("**2012 Takeover Law**")—and that this purported illegality removes the Tribunal's jurisdiction *ratione materiae* over the Cypriot Obnova Shares.[418]

---

416 Markićević Second WS, ¶ 22.

417 Rejoinder, ¶ 411.

418 Counter-Memorial, ¶¶ 406 *et seq.*; Rejoinder, ¶¶ 452 et seq.

322. Serbia's illegality objection fails for at least three reasons. *First*, the obligation to issue a takeover bid stems from an unexpected interpretation of the 2012 Takeover Law, which the SEC published only on 28 September 2012 ("**2012 SEC Opinion**")[419]—*i.e.* four months after the 2012 Acquisition. In fact, Kalemegdan and Mr. Obradović, represented by a leading Serbian law firm, notified the SEC of the 2012 Acquisition on 23 May 2012, and the SEC did not require them to issue a takeover bid at that, or any later, time. Thus, Cypriot Claimants acted in good faith.

323. *Second*, under Serbian law, a failure to issue a takeover bid does not render the underlying acquisition void or voidable. Thus, the alleged failure to issue a takeover bid in May 2012 has no impact on Cypriot Claimants' direct and indirect ownership of the Cypriot Obnova Shares.

324. *Third*, it is a well settled principle of investment law that only violations of fundamental rules of the law of the host state would deprive an investment tribunal of its jurisdiction. The alleged failure to issue a takeover bid in connection with the 2012 Acquisition clearly is not a violation of a fundamental rule of Serbian law. Therefore, the alleged failure to issue a takeover bid cannot justify Serbia's objection to jurisdiction.

325. Each of these three reasons is discussed below.

#### a. Cypriot Claimants acted in good faith with respect to their obligations under the Takeover Law

326. Claimants' Serbian securities law expert, Ms. Bojana Tomić-Brkušanin, confirms that both Cypriot Claimants acted in good faith with respect to their obligation under the Takeover Law.[420] They relied on the SEC's interpretation of the Takeover Law, set out in the SEC's opinion published on 19 July 2007 ("**SEC 2007 Opinion**"), which exempted transactions like the 2012 Acquisition from the obligation to issue a takeover bid. The SEC changed that interpretation and ceased the exemption for such transactions only in September 2012, four months after the 2012 Acquisition, when it published the 2012 Opinion. Cypriot Claimants' good faith is confirmed by the fact that Kalemegdan and Mr. Obradović, represented by a leading Serbian law firm, notified the

419 SEC Opinion No.: 2/0-03-512/2-12, 28 September 2012, **CE-563**.

420 Tomić-Brkušanin First ER, ¶¶ 25, 36.

SEC of the 2012 Acquisition on 23 May 2012.[421] The SEC did not require a takeover bid.

327. As shown below, the vast majority of relevant issues of fact and Serbian law supporting this conclusion is not disputed between the parties and their legal experts.

328. *First*, it is undisputed that under the interpretation of the Takeover Law presented in the SEC 2007 Opinion, the 2012 Acquisition did not trigger any takeover bid obligation. This is because: (*i*) the 2007 SEC Opinion concluded that a transfer of shares not resulting in a change of control over the target company does not trigger any obligation to issue a takeover bid[422]; and (*ii*) the 2012 Acquisition did not result in a change of control over Obnova.[423]

329. *Second*, it is undisputed that on 23 May 2012, Kalemegdan and Mr. Obradović, represented by a leading Serbian law firm, Karanović and Nikolić, notified the SEC of the 2012 Acquisition.[424]

330. *Third*, it is undisputed that the SEC did not respond to the notification in any manner.

331. *Fourth*, it is undisputed that in the 2012 SEC Opinion, published on 17 October 2012, the SEC adopted a more restrictive interpretation of the Takeover Law than the 2007 SEC Opinion. It explained that transactions not resulting in the change of control over the target company would only be exempted from a takeover-bid obligation if the parties acting in concert issued a takeover bid in the past.[425] It is undisputed that under this more restrictive interpretation of the Takeover Law—post-dating the 2012 Acquisition and its notification to the SEC by several months—Cypriot Claimants would not qualify for the exemption because neither they, nor any parties acting in concert with them, had issued a takeover bid in the past with respect to their acquisition of shares in Obnova.

---

421 Letter from Mr. Obradovic to the SEC regarding the transfer of shares of Obnova, 29 May 2012, **C-358**; Letter from Kalemegdan to the SEC regarding the transfer of shares of Obnova, 23 May 2012, **C-363**.

422 SEC Opinion No.:2/0-03-387/3-07, 19 July 2007, **CE-562**.

423 Tomić-Brkušanin First ER, ¶¶ 27-35.

424 Letter from Mr. Obradovic to the SEC regarding the transfer of shares of Obnova, 29 May 2012, **C-358**; Letter from Kalemegdan to the SEC regarding the transfer of shares of Obnova, 23 May 2012, **C-363**.

425 SEC Opinion No.:2/0-03-512/2-12, 28 September 2012, pp. 3-4, **CE-563**.

332. *Fifth*, it is undisputed that the SEC has never—not even after Serbia raised the present objection in this arbitration—required the Cypriot Claimants, or anyone else, to issue a takeover bid as a result of the 2012 Acquisition. The SEC also never expressed any reservation to the notifications it received in May 2012.

333. The only contested issue regarding Cypriot Claimants' good faith is Serbia's argument that Cypriot Claimants were supposed to anticipate the interpretation provided in the 2012 SEC Opinion because the 2007 SEC Opinion interpreted the Takeover Law as it was in 2007, and not as it was in 2012.[426] However, the 2007 SEC Opinion was based on two general provisions of the Takeover Law—Articles 4 and 5—which remained part of the Takeover Law even after the amendment that entered into force on 4 January 2012.[427] Thus, the public, such as Cypriot Claimants and their counsel, leading Serbian law firm Karanović and Nikolić, could have legitimately expected that the exemption set out in the 2007 SEC Opinion would continue to apply.

334. Importantly, before the SEC published the 2012 Opinion on 17 October 2012—five months after notification by Mr. Obradović and Kalemegdan to the SEC of the 2012 Acquisition—the SEC did not indicate that it would interpret the 2012 Takeover Law as departing from the 2007 SEC Opinion.

335. No such indication was given by the Serbian legislator either. Instead, the statement of reasons to the 2012 Takeover Law provided that the law is "*amended to <u>expand</u> the number of specific situations […] in which the acquirer is not obliged to announce a takeover bid.*"[428] Accordingly, nothing indicated to Cypriot Claimants that the SEC would later interpret the 2012 Takeover Law as restricting—rather than expanding—the universe of exempted transactions. Cypriot Claimants' reliance on the 2007 SEC Opinion was thus legitimate. The SEC's lack of reservation to the notification of the 2012 Acquisition further reinforces the point.

---

426 Rejoinder, ¶¶ 442-443.

427 Law on Takeover of Joint Stock Companies (Official Gazette of the RS No. 46/2006), Arts. 4 and 5, **C-557**; Law on Takeover of Joint Stock Companies (Official Gazette of the RS No. 46/2006, 107/2009 and 99/2011), Arts. 4 and 5, **C-559**.

428 Statement of Reason to the 2012 Takeover Law, **C-712**.

336. In response, Serbia argues that the notification was insufficient because it allegedly followed a wrong template and referred to a wrong legal provision.[429] Serbia's arguments are formalistic and repetitive—Kalemegdan did not file a "*notice of takeover intent*" because it relied in good faith on the 2007 SEC Opinion to conclude that it was not under an obligation to issue a takeover bid.

337. The only information that are to be included in a "*notice of takeover intent"* and were not included in Kalemegdan's notice to the SEC concern the identification of persons acting in concert with Kalemegdan and the number of shares they held in Obnova.[430] That information was, however, irrelevant because no person that allegedly acted in concert with Kalemegdan held any shares in Obnova.

338. Moreover, as Ms. Tomić-Brkušanin explains, the information about Kalemegdan and Obnova's ownership structure was "*not necessary for establishing Kalemegdan's obligation to issue a takeover bid (since Article 6(1) of the 2012 Takeover Law provides a person that acquires 'more than 25% of the voting shares of the target company […] is required to issue a takeover bid') but, quite to the contrary, only for establishing an exception from such an obligation (i.e. that—in line with the 2007 SEC Opinion—the 2012 Acquisition did not trigger any takeover bid obligation because Obnova continued to be under Mr. Rand's control)*".[431] This is another reason why the lack of information on parties acting in concert with Kalemegdan made no difference.

339. *Finally*, while Serbia concedes that the notification was sent to the SEC, it argues that a notice of takeover intent was supposed to be sent also to other bodies—namely to the Multilateral Trading Facility ("**MTF**") and the Central Securities Depository and Clearing House ("**CSD**")—and to the target company, here Obnova. This objection is once again formalistic, and incorrect. As a matter of fact, the notification was also sent to BSE[432], of which the MTF is a part. The CSD was obviously also informed about the 2012 Acquisition because it recorded the transfer of the Cypriot Obnova Shares from

---

429 Rejoinder, ¶ 449.

430 Tomić-Brkušanin Second ER, ¶¶ 22-23.

431 Tomić-Brkušanin Second ER, ¶ 40.

432 Letter from Kalemegdan to the BSE, 23 May 2012, **C-713**; Letter from Mr. Obradovic to the BSE, 29 May 2012, **C-698**.

Mr. Obradović to Kalemegdan.[433] Obnova was, too, obviously aware of the transfer of 70% shares in Obnova from Mr. Obradović to Kalemegdan. Needless to say, neither the BSE, nor the CSD expressed any reservations to the 2012 Acquisition.

340. There can be no doubt that Cypriot Claimants acted in good faith when they concluded that they did not need to issue a takeover bid in connection with the 2012 Acquisition.

### b. The alleged failure to issue a takeover bid does not affect Cypriot Claimants' ownership of the Cypriot Obnova Shares

341. Even assuming, for the sake of Serbia's argument, that the 2012 Acquisition triggered an obligation to issue a takeover bid, the failure to do so did not render the 2012 Acquisition void or voidable under Serbian law. Thus, the alleged illegality has no impact on Cypriot Claimants' ownership of the Cypriot Obnova Shares.

342. Serbia's Rejoinder misrepresents Claimants' position when it alleges that Claimants contend "*that a failure to launch a takeover bid would merely render the transaction voidable (rather than void).*"[434] Claimants contended no such thing in their Reply. In fact, Claimants expressly stated in paragraph 566 of the Reply that a failure to issue a takeover bid "*could not render the 2012 Acquisition void or voidable.*"[435]

343. Paragraph 565 of the Reply, on which Serbia erroneously relies for its misrepresentation,[436] refers to the *Liman Caspian* tribunal and states the legal principle that "*while violations of domestic law rendering the underlying transaction null and void may remove the tribunal's jurisdiction, violations that only make it voidable do not have any jurisdictional consequences*."[437] The *Liman Caspian* tribunal held as follows:

> [T]he scope of Respondent's consent to jurisdiction must be understood to extend also to those investments in respect of which the underlying transaction was made in breach of Kazakh law and was therefore voidable. Since the transfer of the Licence was not invalid, but only voidable, Claimants'

---

433 Excerpt from the Central Securities Depository and Clearing House, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**.

434 Rejoinder, ¶ 454.

435 Reply, ¶ 566.

436 Reply, ¶ 565.

437 Reply, ¶ 565.

> investment does not fall outside the scope of Respondent's consent to jurisdiction.[438]

344. Claimants' reference to the reasoning of the *Liman Caspian* tribunal, which distinguishes between the consequences of voidness and voidability on the tribunal's jurisdiction, does not mean that Claimants contend the alleged failure to issue a takeover bid would make the 2012 Acquisition voidable. They do not.

345. In fact, Serbia provides no legal basis for its contention that "*the failure to launch a takeover bid would indeed merely render the transaction voidable [...]*."[439] This is because there is none.

346. Dr. Lepetić, Serbia's own legal expert, unequivocally confirms that "*[n]ullity **or voidance** of transfer of shares is not and should not be one of the possible consequences of non-compliance with the obligation to launch a takeover bid [...]*."[440] Claimants and their expert, Ms. Tomić-Brkušanin, agree.[441]

347. The tribunal in *Rand v. Serbia* also unequivocally held that " *a failure to issue a takeover bid does not affect the validity of the transfer of shares, nor the ownership of the newly acquired shares*." [442] Like in the present case, Serbia argued in *Rand* that the tribunal should decline jurisdiction due to an alleged failure of Messrs. Rand and Obradović to issue a takeover bid as contemplated under the Takeover Law in acquiring the shares of another Serbian company, BD Agro.[443] The *Rand Investments* tribunal flatly rejected that allegation.

348. The Rand tribunal also noted that Prof. Radović, Serbia's expert in the Rand arbitration, "*did not contest*"[444] the conclusion that "*a failure to issue a takeover bid does not affect*

---

438 *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Excerpts of the Award, 22 June 2010, ¶ 187, **CL-104**.

439 Rejoinder, ¶ 454.

440 Jelena Lepetić Second Expert Report dated 13 June 2024, ¶ 41.

441 Tomić-Brkušanin Second ER, ¶ 44.

442 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 393, **RL-076**.

443 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 374, **RL-076**

444 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, p. 104, fn. 254, **RL-076**.

*the validity of the transfer of shares, nor the ownership of the newly acquired shares*."[445] There is thus a consensus on this central point between Claimants' expert Dr. Tomić-Brkušanin and Serbia's experts Dr. Lepetić and Prof. Radović.

349. The potential consequences under Serbian law of a hypothetical failure to issue a takeover bid are much less serious than voidness or voidability. Dr. Lepetić[446] and Ms. Tomić-Brkušanin [447] agree that they are limited to the following three: (*i*) fine of RSD 1,000,000 to RSD 3,000,000 (EUR 8,600 to EUR 25,800) imposed by the SEC;[448] (*ii*) loss of voting right in respect of the acquired shares; and (*iii*) right of the remaining shareholders of the target company, here Obnova, to request the competent commercial court to order the persons who failed to issue a takeover bid to buy their shareholding under the same conditions as if the takeover bid had been made.[449]

350. It is undisputed that none of these consequences was ever enforced by the SEC. So, too, is it undisputed that the remaining Obnova shareholders did not request Serbian courts to: (*i*) order Kalemegdan to buy out their shares; and/or (*ii*) invalidate any resolution of Obnova's shareholders assembly, based on Kalemegdan's purported loss of its voting rights in Obnova. The lack of action by Obnova's minority shareholders is particularly significant given that, as Dr. Lepetić concedes, "*the protection of minority shareholders through the obligation to publish a takeover bid is the main object and purpose of [the Takeover Law]*."[450]

351. To repeat, as agreed by both Dr. Lepetić[451] and Ms. Tomić-Brkušanin,[452] the potential failure to issue a takeover bid in connection with the 2012 Acquisition did not make the

---

445 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 393, **RL-076**.

446 Jelena Lepetić First Expert Report dated 29 September 2023, ¶¶ 34-37.

447 Tomić-Brkušanin Second ER, ¶ 35.

448 The Law on Takeover of Joint Stock Companies, Official Gazette of Republic of Serbia, No. 46/2006, 107/2009 and 99/2011, Art. 47, **JL-006**.

449 Law on Takeover of Joint Stock Companies (Official Gazette of the RS No. 46/2006, 107/2009 and 99/2011), Art. 41b, **C-559**.

450 Lepetić Second ER, ¶ 43.

451 Lepetić First ER, ¶¶ 34-37.

452 Tomić-Brkušanin Second ER, ¶ 35.

2012 Acquisition void or voidable. Thus, it does not affect Cypriot Claimants' ownership of the Cypriot Obnova Shares.

### c. Even if the Cypriot Claimants were required under Serbian law to issue a takeover bid and failed to do so, this would still not remove the Tribunal's jurisdiction *ratione materiae*

352. Even if Cypriot Claimants were required under the Takeover Law to issue a takeover bid, their failure to do so would not remove the Tribunal's jurisdiction *ratione materiae* over the Cypriot Obnova Shares because such a failure is not a violation of a fundamental rule of Serbian law.

353. The principle that jurisdictional pleas of illegality must be based on serious violations of a fundamental principle of the host State's law—such as corruption or fraud—was endorsed by many tribunals, some of which are cited in Claimants' previous submissions.[453]

354. The tribunal in *Rand v. Serbia* explained the scope of the legality requirement and its application to the obligation to issue a takeover bid under the Takeover Law as follows:

> *[O]nly violations of fundamental rules would deprive a tribunal of its jurisdiction and Serbia has not established that the failure to issue a takeover bid would affect a fundamental principle of Serbian law*. The contrary rather emerges from the fact that a failure to issue a takeover bid does not affect the validity of the transfer of shares, nor the ownership of the newly acquired shares.
>
> As a result, the Tribunal dismisses this Objection.[454]

355. The conclusion of the *Rand* tribunal is particularly instructive because it: (*i*) was based on the very same Treaties (*i.e.* the Serbia-Cyprus BIT, the Canada-Serbia BIT and the ICSID Convention); and (*ii*) involved the very same obligation to issue a takeover bid under the Takeover Law.

---

453 *HOCHTIEF Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Liability, 29 December 2014, ¶ 199, **CL-101**; *Peter A. Allard v. The Government of Barbados*, PCA Case No. 2012-06, Award on Jurisdiction, 13 June 2014, ¶ 94, **CL-102**; *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, 6 October 2023, ¶ 187, **CL-103**; *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶¶ 393-394, **RL-076**.

454 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶¶ 393-394, **RL-076**.

356. Serbia's efforts to diminish the importance of the *Rand* award are in vain.[455] Serbia tries to distinguish the case by observing that the *Rand* tribunal made its finding only under the Canada-Serbia BIT (which does not contain a "legality clause") and not under the Serbia-Cyprus BIT (which includes a "legality clause").[456] This is a half-truth. The *Rand* tribunal indeed refused to "*read into"* the Canada-Serbia BIT a legality clause, "*a requirement that the Contracting Parties have not provided*"[457] and dismissed Serbia's objection on that basis alone.[458] The *Rand* tribunal, however, did not stop there because it expressly stated that even if it "*were to review [Serbia's illegality] objections, it would also dismiss them*."[459] Concerning Serbia's takeover-bid objection, the *Rand* tribunal made the finding quoted above, *i.e.* that: (*i*) only violations of fundamental rules would deprive a tribunal of its jurisdiction; and (*ii*) failure to issue a takeover bid requited under the Takeover Law does not qualify as such fundamental violation.[460]

357. In addition, as held, for example, by the tribunal in *Mabco v. Kosovo*, "*an illegality in an investment that might otherwise disqualify the investment from protection cannot be raised as a jurisdictional defense if the State was aware of the illegality and expressed no objection on that basis.*"[461] Thus, even if Cypriot Claimants had violated the 2012 Takeover Law (*quod non*), and even if that had constituted a serious violation of a fundamental principle of Serbian law (*quod non*), Serbia's plea of illegality still could not prevail because Serbia was duly notified about the 2012 Acquisition and took no action.

---

455 Rejoinder, ¶¶ 458-459.

456 Rejoinder, ¶ 459.

457 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 387, **RL-076**.

458 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 388, **RL-076**.

459 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 389, **RL-076**.

460 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 393, **RL-076**.

461 *Mabco Constructions SA v. Republic of Kosovo*, ICSID Case No. ARB/17/25, Decision on Jurisdiction, 30 October 2020, ¶ 409, **CL-167**.

358. A similar position was taken by the tribunal in *Mamidoil v. Albania*, Serbia's own authority:

> *States must not be allowed to abuse the process by scrutinizing the investment post festum with the intention of rooting out minor or trivial illegalities as a pretext to free themselves of an obligation*. A State must act consistently with its obligations and not resist jurisdiction because it wants to escape the consequences of its standing agreement to arbitrate.[462]

359. Serbia's objection is the epitome of "*post festum*" scrutiny of an alleged illegality about which Serbia knew—and did not care—for more than a decade. Accordingly, for all the above reasons, Serbia's illegality objection must be dismissed.

## D. Cypriot Claimants' claims meet the jurisdictional requirements under the ICSID Convention

360. The conditions for ICSID jurisdiction are set out in Article 25(1) of the ICSID Convention, which provides as follows:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.[463]

361. In the Memorial and Reply, Claimants explained that Cypriot Claimants' claims satisfy all the jurisdictional requirements under the ICSID Convention. Specifically, there is: (*i*) a *legal dispute;* (*ii*) arising directly out of an *investment;* (*iii*) between a *national* of a Contracting State and another Contracting State; and (*iv*) both Parties to the dispute have consented in writing to submit the dispute to ICSID.[464]

362. Serbia accepts that Cypriot Claimants' claims satisfy all but one of these requirements. The one jurisdictional objection of Serbia under the ICSID Convention is that Cypriot Claimants allegedly do not have an "*investment*" under Article 25(1) of the ICSID Convention. According to Serbia, this is because the Cypriot Claimants allegedly did

---

462 *Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, 30 March 2015, ¶ 483 (emphasis added), **RL-061**.

463 ICSID Convention, Art. 25(1), **CL-013**.

464 Memorial, ¶¶ 173 *et seq.*; Reply, ¶¶ 573 *et seq*.

not make a contribution of resources of economic value in Serbia and their investment allegedly did not involve any risk.[465]

363. Serbia is wrong. As Claimants explain in detail below, this is because:

a. Serbia incorrectly reads into the ICSID Convention requirements of contribution and risk—even though the ICSID Convention does not include a definition of an investment and does not require fulfillment of the so-called *Salini* criteria (**Section II.D.1** below); and

b. even if the *Salini* criteria were applicable (*quod non*), Cypriot Claimants' investment would satisfy them (**Section II.D.2** below).

### 1. ICSID Convention does not include any definition of an investment and does not require fulfillment of the so-called *Salini* criteria

364. Contrary to Serbia's claim, the ICSID Convention does not include a definition of investment. Article 25(1) of the ICSID Convention only states that the Centre's jurisdiction "*shall extend to any legal dispute arising directly out of an investment*".[466]

365. Given that the ICSID Convention does not define an "*investment*", ICSID jurisdiction is restricted only by the investment treaty applicable between the parties to a dispute—*i.e.* the Cyprus-Serbia BIT in the present case. This conclusion is supported by ample case law.[467]

366. For example, the tribunal in *M.C.I. Power v. Ecuador* concluded that it was a deliberate decision of the drafters of the ICSID Convention to leave the definition of "*investments*" to the sate-parties to the investment treaties:

> From a simple reading of Article 25(1), the Tribunal recognizes that the ICSID Convention does not define the term "investments". The Tribunal notes that numerous arbitral precedents confirm the statement

---

465 Rejoinder, ¶¶ 417-429.

466 ICSID Convention, Art. 25(1), **CL-013**.

467 *Philippe Gruslin v. Malaysia,* ICSID Case No. ARB/99/3, Award, 27 November 2000, ¶ 13.6, **CL-105**; *Lanco Int'l, Inc. v. Argentine Republic,* ICSID Case No. ARB/97/6, Preliminary Decision on Jurisdiction, 8 December 1998, ¶ 11, **CL-106**; *M.C.I. Power Group L.C. and New Turbine, Inc. v. Republic of Ecuador,* ICSID Case No. ARB/03/6, Award, 31 July 2007, ¶¶ 159-160, **CL-081**; *Ambiente Ufficio SPA and others v. The Argentine Republic,* ICSID Case No. ARB/08/09, Decision on Jurisdiction and Admissibility, 8 February 2013, ¶ 453, **CL-108**.

> in the Report of the Executive Directors of the World Bank that the Convention does not define the term "investments" because it wants to leave the parties free to decide what class of disputes they would submit to the ICSID.[468]

367. Serbia disagrees and argues that only investments satisfying the so-called *Salini* test qualify as investments under the ICSID Convention. To recall, the *Salini* test requires: (*i*) a contribution of resources of economic value in the territory of the host State, (*ii*) that extends over a certain period of time, and (*iii*) involves some risk.[469] Based on this test, Serbia is arguing that the Cypriot Claimants' investment lacks the allegedly required contribution of resources and investment risk.[470]

368. Serbia does so even though over-reliance on the *Salini* test in interpretation of Article 25(1) of the ICSID Convention has been heavily criticized by a number of ICSID tribunals and *ad hoc* committees.[471] The pertinent issue with overreliance on the *Salini* test was notably articulated by the tribunal in *Awdi v. Romania*, which explained that "*the Salini criteria may be useful to describe typical characteristics of an investment, but they cannot, as a rule, override the will of the parties, given the undefined and somewhat flexible term used by the drafters of the ICSID Convention.*"[472]

369. Similarly, the *ad hoc* committee in *Malaysian Historical Salvors v. Malaysia* observed that ignoring the will of the state parties of the BITs risks crippling the ICSID system:

> It is those bilateral and multilateral treaties which today are the engine of ICSID's effective jurisdiction. To ignore or depreciate the importance of the jurisdiction they bestow upon ICSID, and rather to embroider upon questionable interpretations of the term "investment" as found in Article 25(1) of the Convention, risks crippling the institution.[473]

---

468 *M.C.I. Power Group L.C. and New Turbine, Inc. v. Republic of Ecuador,* ICSID Case No. ARB/03/6, Award, 31 July 2007, ¶ 159, **CL-081**.

469 Rejoinder, ¶ 417.

470 Rejoinder, ¶¶ 418-429.

471 *Theodoros Adamakopoulos and others v. Republic of Cyprus*, ICSID Case No. ARB/15/49, Decision on Jurisdiction, 7 February 2020, ¶ 294, **CL-168**; *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 294, **CL-099.**

472 *Mr. Hassan Awdi, Enterprise Business Consultants Inc. and Alfa El Corporation v. Romania*, ICSID Case No. ARB/10/13, Award, 2 March 2015, ¶ 197, **CL-169**.

473 *Malaysian Historical Salvors Sdn, Bhd v. Government of Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009, ¶ 73, **CL-170**.

370. Finally, the tribunal in *Garanti Koza v. Turkmenistan*, following the decisions of *SGS v. Paraguay* and *BIVAC v. Paraguay*, concluded that the definition of an "*investment*" in the BIT should apply as long as the nature of claimant's investment and its definition under the BIT do not exceed "*what is permissible under the Convention' or is 'absurd or patently incompatible with [the] object and purpose' of the ICSID Convention.*"[474]

371. Neither the definition of "*investment*" in the Cyprus-Serbia BIT, nor the nature of the Cypriot Obnova Shares contradicts the limits and object and purpose of the ICSID Convention. It cannot be seriously argued that considering a shareholding in a Serbian joint stock company as an "*investment*" would be in any manner incompatible with the ICSID Convention.

### 2. Even if the *Salini* criteria were applicable, Cypriot Claimants' investment would satisfy them

372. Even if, *arguendo*, the *Salini* test should be applied in the present case (*quod non*), the investment of both Kalemegdan and Coropi would satisfy this test. The only two purported characteristics of an investment which are at dispute between the parties are contribution and investment risk.[475] Both Kalemegdan and Coropi satisfy these requirements.

#### a. Kalemegdan's investment satisfies the requirements of contribution and risk

##### i. Kalemegdan's investment satisfies the requirement of contribution

373. As already explained above, even where a proof of contribution towards the acquisition of an investment is required, such a contribution does not have to be monetary.[476] Serbia admits that in-kind contribution of assets can amount to an "*investment*".[477]

---

474 *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016, ¶ 241, **CL-171**; *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, ¶ 94, **CL-172**; *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. The Republic of Paraguay*, ICSID Case No. ARB/07/9, Decision of the Tribunal on Objections to Jurisdiction, 29 May 2009, ¶ 94, **CL-173**.

475 Rejoinder, ¶¶ 418-429.

476 *See* also *e.g. Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297, **CL-099**.

477 Rejoinder, ¶¶ 380, 420.

374. Claimants also explained that the in-kind contribution can take the form of issuance of investor's shares,[478] as well as contribution to the management of an investment. In addition, the magnitude of the contribution towards a shareholding is not relevant.[479] For example, the tribunal in *Longreef v. Venezuela* resolutely rejected Venezuela's suggestion that "*where a foreign national purchases the shareholding of a company, that person has not made an 'investment' for the purposes of Article 25 of the ICSID Convention unless that person has transferred additional funds to the host country over and above the value of the shareholding*."[480] Similarly the tribunal in *Gavrilovic v. Croatia* concluded that it is "*unnecessary to inquire into the adequacy of consideration*", as the ICSID Convention does not set any such threshold.[481]

375. As Claimants explained in detail above, it is undisputed that Kalemegdan obtained the Cypriot Obnova Shares against the provision of shares issued by Kalemegdan.[482] Therefore, even if a proof of contribution was required from Kalemegdan, there is no doubt that Kalemegdan did make an investment.

376. Moreover, Kalemegdan contributed management services towards its investment in Obnova—both through conduct of Messrs. Rand and Markićević, as well as through conduct of its Cypriot directors.[483] These services have economic value and served to

---

478 *E.g. Quiborax S.A., Non Metalic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012, ¶ 229, **RL-073**; *Westwater Resources, Inc. v. Republic of Turkey*, ICSID Case No. ARB/18/46, Award, 3 March 2023, ¶¶ 144(i), 148, **CL-156**.

479 *Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine*, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 341 ("*In any event, if the demonstration of a 'contribution' were required, Claimants have met this test. A contribution does not need to be monetary. The existence of a nominal price is not a bar to finding that there exists an investment. When the Ukrnafta shares were acquired Claimants allotted their own specially issued shares, which must have had some, albeit nominal, value, for the transaction to take place and be valid*."), **CL-189**.

480 *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/5, Decision on Jurisdiction, 12 February 2014, ¶ 250, **CL-161**.

481 *Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶ 210, **RL-132**.

482 Rejoinder, ¶ 377; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, p. 3, **C-318**.

483 Markićević Second WS, ¶ 12; Email communication between Mr. Markićević and Ms. Makri acting on behalf of Mr. Theophylactou June 2013, **C-370**; Email communication between Mr. Markićević and Ms. Makri, 2013, **C-371**; Email from Mr. Michaelides to Mr. Markićević, 29 June 2017, **C-374**; Email from Mr. Michaelides to Mr. Markićević, 31 October 2017, **C-378**; Email communication between Mr. Markićević and Ms. Makri, 24 June - 4 September 2013, **C-409**.

advance Kalemegdan's investment in Obnova. Therefore, Kalemegdan has, in any case, made an "*investment*" in Serbia for the purposes of the ICSID Convention.

### ii. Kalemegdan's investment satisfies the requirement of risk

377. In the Reply, Claimants explained that the very existence of an investment dispute proves the existence of a risk. This conclusion was upheld by various investment tribunals.[484]

378. Moreover, as the tribunal in *Rand Investments v. Serbia* confirmed, the risk as a characteristic element of an investment under Article 25(1) of the ICSID Convention is satisfied by the existence of an "*inherent risk*" of a decline in the value of an investment.[485] Similarly, the tribunal in *Orascom v. Algeria* found that there is "*risk inherent in holding shares, namely the risk that the value of the shares may decline.*"[486]

379. Kalemegdan's investment in the Cypriot Obnova Shares clearly entails a risk of a decline in their value, which also materialized through Serbia's breaches asserted in this arbitration. The purported criterion of risk would, therefore, be in any case fulfilled by Kalemegdan.

380. Serbia's only argument to the contrary is that since there was allegedly no contribution by Kalemegdan, there was no assumption of risk on its part either.[487] Claimants already explained that Kalemegdan did make a contribution towards its investment in the Cypriot Obnova Shares. Serbia's argument regarding investment risk is therefore moot.

---

484 Reply, ¶ 582; *FEDAX N.V. v. The Republic of Venezuela,* ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, 11 July 1997, ¶ 40, **CL-098**; *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka,* ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 301, **CL-099**.

485 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award 27 October 2023, ¶ 268, **CL-112**. *See* also *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, 6 June 2016, ¶ 158, **CL-096**.

486 *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria,* ICSID Case No. ARB/12/35, Award, 31 May 2017, ¶ 379, **CL-077**.

487 Rejoinder, ¶¶ 422-423, 429.

### b. Coropi's investment satisfies the requirements of contribution and risk

#### i. Coropi's investment satisfies the requirement of contribution

381. As explained above, even if proof of some economic contribution was required from Coropi, it is well recognized that such contribution can be both monetary and non-monetary,[488] and may include "*investment decision-making, management and expertise*".[489]

382. Coropi acquired the beneficial ownership of Kalemegdan through two trust deeds that Coropi and Mr. Obradović entered into in 2012. With the beneficial ownership of Kalemegdan, Coropi also acquired an indirect beneficial interest in the Cypriot Obnova Shares.

383. The two trust deeds between Coropi and Mr. Obradović explicitly refer to "*consideration given*".[490] Specifically, Mr. Broshko provided a nominal consideration of EUR 10 in Serbian dinar equivalent under each trust deed directly to Mr. Obradović, on behalf of Coropi and following instructions from Mr. Rand.[491] As noted above, the magnitude of the contribution is immaterial, as the ICSID Convention does not contain any threshold.[492] Therefore, Coropi had made a sufficient monetary contribution towards its investment.

---

488 *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 297, **CL-099**; *Consortium R.F.C.C. v. Kingdom of Morocco,* ICSID Case No. ARB/00/6, Decision on Jurisdiction, 16 July 2001, ¶ 61, **CL-109**; *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan,* ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶ 131, **CL-110**; *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, ¶ 73(i), **CL-111**.

489 *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent's Preliminary Objections, 22 December 2019, ¶ 207, **CL-162**.

490 Trust Deed, 26 April 2012, Preamble, **C-066;** Trust Deed, 16 August 2012, Preamble, **C-067.**

491 Broshko Second WS, ¶ 20. *See* also Rand Second WS, ¶ 27.

492 *Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶ 210, **RL-132.**

384. Moreover, as explained above, Coropi participated in Obnova's management through Messrs. Rand and Markićević as directors of Coropi.[493] Therefore, Coropi also made a non-monetary contribution towards its investment in the Cypriot Obnova Shares.

385. Serbia's argument that "*there is nothing to show that Mr Rand and Mr Markićević, insofar as they exercised control over and participated in the management of Obnova, acted in their capacity as directors of Coropi*" has also been addressed above.[494] To sum up, both Messrs. Rand and Markićević were managing Obnova's issues precisely because of Mr. Rand's control of Coropi.[495] Mr. Markićević did not distinguish between his role as Obnova's General Manager and director and his role as director of Coropi (and of Kalemegdan).[496] It is not possible to make such distinction in case of a group of companies with common management.

386. Moreover, Serbia argues that Mr. Markićević provided "*paid-for service as opposed to a contribution of economic value to Serbia"*.[497] However, as Mr. Markićević explains, he had not been employed or paid by Obnova until July 2023, nor was he ever an employee of Kalemegdan or Coropi.[498]

387. In light of the above, even if a proof of contribution was required from Coropi, there is no doubt that Coropi did make an investment.

### ii. Coropi's investment satisfies the requirement of risk

388. Same as with Kalemegdan, Coropi bore the risk of its investment in the Cypriot Obnova Shares. This risk is again evidenced by: (*i*) the existence of this investment dispute,[499] which is a result of the risk materializing, and (*ii*) an "*inherent risk*" of a decline in the

---

493 Reply, ¶ 531.

494 Rejoinder, ¶ 427.

495 Markićević First WS, ¶ 19.

496 Markićević Second WS, ¶¶ 9-10.

497 Rejoinder, ¶ 428.

498 Markićević Second WS, ¶ 22.

499 Reply, ¶ 582; *FEDAX N.V. v. The Republic of Venezuela,* ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, 11 July 1997, ¶ 40, **CL-098**; *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka,* ICSID Case No. ARB/09/2, Award, 31 October 2012, ¶ 301, **CL-099**.

value of the Cypriot Obnova Shares, which also materialized.[500] The purported criterion of risk would, therefore, be in any case fulfilled by Coropi as well.

389. Serbia's counterargument is the same as with respect to Kalemegdan—that Coropi allegedly made no contribution and there was hence no associated risk.[501] As explained above, that is not the case.

390. Furthermore, Serbia alleges that "*not having substantiated that it even has an interest in the Obnova shares, Coropi cannot be said to have assumed any risk in relation to Obnova.*"[502] However, Claimants have substantiated—and do so again in this submission—that Coropi has been the beneficial owner of Kalemegdan since Kalemegdan's establishment in March 2012, and, thus, is also the legitimate owner of an indirect beneficial interest in the Cypriot Obnova Shares.

391. In addition, since December 2023, Coropi also has been the nominal owner of Kalemegdan. As such, Coropi is also the indirect nominal owner of Cypriot Obnova Shares. Coropi, thus, clearly has interest in Obnova's shares and bears a risk related to that interest.

* * *

392. Given that the investment of both Cypriot Claimants clearly entailed both sufficient contribution and investment risk, the jurisdiction of the Tribunal under the ICSID Convention is established even if one applies the *Salini* test.

---

500 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award 27 October 2023, ¶ 268, **CL-112**; *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria,* ICSID Case No. ARB/12/35, Award, 31 May 2017, ¶ 379, **CL-077**.

501 Rejoinder, ¶ 428.

502 Rejoinder, ¶ 429.

## III. THE TRIBUNAL HAS JURISDICTION OVER MR. BROSHKO' CLAIMS

### A. The Tribunal has jurisdiction *ratione personae* under the Canada-Serbia BIT

393. In both their Memorial and Reply, Claimants explained that Mr. Broshko qualifies as a protected investor under Article 1 of the Canada-Serbia BIT and can submit claims both on his own behalf and on behalf of MLI.[503] Serbia did not raise any objections concerning jurisdiction *ratione personae* with respect to Mr. Broshko in either its Counter-Memorial or Rejoinder. Claimants therefore understand it is undisputed that the Tribunal has jurisdiction *ratione personae* over Mr. Broshko's claims (both claims on his own behalf and claims on behalf of MLI).

### B. The Tribunal has jurisdiction *ratione materiae* under the Canada-Serbia BIT

#### 1. Mr. Broshko's investment satisfies definition of an investment under the Canada-Serbia BIT

394. According to Article 1 of the Canada-Serbia BIT, a "*covered investment*" is "*an investment in [the host state's] territory that is owned or controlled, directly or indirectly, by an investor of the other Party existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter.*"[504] The same provision also confirms that the term "*investment*" includes, among others, "*a share, stock or other form of equity participation in an enterprise.*"[505]

395. It is in fact undisputed that Mr. Broshko has an investment in the form of his 10% shareholding in Obnova, which he holds indirectly through MLI.[506] This shareholding is clearly a "*covered investment*" under the Canada-Serbia BIT, and Serbia does not argue otherwise.[507]

#### 2. Mr. Broshko's investment was acquired in accordance with Serbian law

396. While Serbia does not dispute that Mr. Broshko's investment satisfies the definition of investment under the Canada-Serbia BIT, it nevertheless argues that this treaty contains

---

503 Memorial ¶¶ 158-162; Reply, ¶¶ 587-592.

504 Canada-Serbia BIT, Art. 1, definition of "covered investment", **CL-001**.

505 Canada-Serbia BIT, Art. 1, definition of "investment", **CL-001.**

506 Broshko First WS, ¶ 40.

507 Rejoinder, § C.II.

an implicit legality requirement, of which Mr. Broshko and MLI ran afoul. Serbia's objection fails *in limine*. As the *Rand* tribunal confirmed, there is no legality requirement under the Canada-Serbia BIT, and none should be read into it.[508]

397. The substance of Serbia's objection is also unavailing. Serbia argues that Mr. Broshko's acquisition of Obnova's shares ("**2017 Acquisition**") violated Serbian law because it was not accompanied by the issuance of a takeover bid by Mr. Broshko and MLI, as purportedly required under then-applicable version of the Takeover Law ("**2016 Takeover Law**").[509]

398. Serbia's objection must be dismissed because: (*i*) MLI and Mr. Broshko did not have an obligation under the 2016 Takeover Law to issue a takeover bid; and (*ii*) even if they had had such an obligation, their non-compliance would have no effect on the Tribunal's jurisdiction.

#### a. Mr. Broshko and MLI did not have an obligation to issue a takeover bid

399. Neither Mr. Broshko nor MLI were required to issue a takeover bid in connection with the 2017 Acquisition. This is because—contrary to Serbia's argument[510]—Mr. Broshko and MLI did not act in concert with Mr. Rand with respect to the 2017 Acquisition.

400. It is undisputed that Mr. Broshko and MLI reached none of the thresholds for the obligation to issue a takeover bid contemplated under the 2016 Takeover Law, the lowest of which is set at 25% of the voting shares in the target company of the voting shares in the target company.[511] Thus, the 2017 Acquisition would have triggered the obligation to issue a takeover bid only if the SEC determined—in supervisory proceedings that the SEC never initiated—that Mr. Broshko and Mr. Rand had an agreement within the meaning of Article 4(1) of the 2016 Takeover Law, i.e. an agreement "*the aim of which is acquisition of shares with voting rights, mutually agreed*

---

508 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 387, **RL-076**.

509 Counter-Memorial, ¶¶ 470-473.

510 Rejoinder, ¶ 508.

511 Law on Takeover of Joint Stock Companies (Official Gazette of the RS No. 46/2006, 107/2009, 99/2011 and 108/2016), Art.6(1), **C-560**.

*exercise of voting rights […].*"[512] There was no such agreement. As Messrs. Broshko and Rand confirm in their witness statements, Mr. Broshko pursued the 2017 Acquisition independently, using his own funds.[513]

401. Serbia seeks to establish a concerted conduct between MLI/Mr. Broshko and Rand Investments/Kalemegdan/Coropi and Mr. Rand, by: (*i*) absurdly chaining several "*irrebuttable presumptions*" under Article 4(2-7) of the 2016 Takeover Law; and (*ii*) pointing to alleged other indicia of concerted conduct (which are not regulated under the 2016 Takeover Law).[514] Both of these lines of argument fail.

402. *First*, Serbia argues that MLI/Mr. Broshko acted in concert with Rand Investments/Kalemegdan/Coropi/Mr. Rand because of five irrebuttable presumptions, purportedly connecting: (*i*) MLI to Mr. Broshko; (*ii*) Mr. Broshko to Rand Investments; (*iii*) Rand Investments to Mr. Rand; (*iv*) Mr. Rand to Kalemegdan and Coropi; and (*v*) Rand Investments to Kalemegdan and Coropi.[515]

403. Serbia's argument rests on an incorrect legal premise. The Takeover Law does not provide for chaining of irrebuttable presumptions, in the sense that a link between person A and B and another link between person B and C does not establish concerted conduct between persons A and C.[516] Such chaining is absurd where the entities so connected are not under common control (whereas MLI is not, and is not argued to be, under Mr. Rand's control). Under Serbia's approach, nieces and nephews of every board member[517] of a company would be acting in concert with any company from the same group of companies, with any board member of any of these companies, and even with third-degree relatives of any of these board members.[518] This cannot be the case.

---

512 Law on Takeover of Joint Stock Companies (Official Gazette of the RS No. 46/2006, 107/2009, 99/2011 and 108/2016), Art.6(1), **C-560**.

513 Broshko First WS, ¶ 40; Rand First WS, ¶¶ 59-60.

514 Rejoinder, ¶ 512 *et seq*.

515 Rejoinder, ¶ 510; Lepetić Second ER, ¶¶ 55-59.

516 Tomić-Brkušanin Second ER, ¶ 57.

517 2016 Takeover Law, Art. 4(7) ("*It is considered that natural persons are acting in concert if they are spouses, parents and descendants, adoptive parents and adoptive children, foster parents, foster children and their descendants, relatives up to the third degree of collateral kinship, including in-law kinship*."), **C-560**.

518 Tomić-Brkušanin Second ER, ¶¶ 57-61.

404. Serbia's argument also fails as a matter of fact. Serbia's analysis is entirely premised on the assertion that Mr. Broshko was a director of Rand Investments, and thus "*member of executive […] board*" of Rand Investments within the meaning of the irrebuttable presumption under Article 4(2)(2) of the 2016 Takeover Law.[519] That factual premise is incorrect, which moots the remainder of Serbia's flawed analysis.

405. As Mr. Broshko explains, his relationship with Rand Investments has always been that of an independent contractor.[520] This is evidenced by agreements on consulting services concluded between Mr. Broshko, Mr. Rand, Rand Investments and Anacott Consulting Inc. ("**Anacott**"—a company owned by Mr. Broshko and his wife). The first consulting agreement was concluded in January 2012 and has been subsequently amended in August 2019, September 2020 and September 2023 ("**Consulting Agreements**").[521]

406. Under the first consulting agreement, Mr. Broshko agreed to provide "*corporate reorganization and business operation services*" to Rand Investments.[522] The subsequent agreements expressly state that Mr. Broshko provides "*legal and management consulting services*" to Rand Investments.[523] All Consulting Agreements also state that "*the only relationship of Anacott and Broshko to Rand Investments created by this Agreement shall for all purposes be that of an independent contractor.*"[524]

407. While Mr. Broshko uses the title of "Managing Director" of Rand Investments for the sake of convenience, he has never been appointed as a director or officer of Rand Investments under British Columbia company law and never exercised any rights of a

---

519 Rejoinder, ¶ 510 (fourth bullet point); Lepetić Second ER, ¶ 55.

520 Broshko Second WS, ¶¶ 8-9.

521 Agreement for Consulting Services, 19 January 2012, **C-692**; Amended and Restated Agreement for Consulting Services, 1 August 2019, **C-693**; Second Amended and Restated Agreement for Consulting Services, 1 September 2020, **C-694**; Third Amended and Restated Agreement for Consulting Services, 1 September 2023, **C-683**.

522 Agreement for Consulting Services, 19 January 2012, Art. 1, **C-692**.

523 Amended and Restated Agreement for Consulting Services, 1 August 2019, Art. 1, **C-693**; Second Amended and Restated Agreement for Consulting Services, 1 September 2020, Art. 1, **C-694**; Third Amended and Restated Agreement for Consulting Services, 1 September 2023, Art. 1, **C-683**.

524 Agreement for Consulting Services, 19 January 2012, Art. 2, **C-692**. *See also* Amended and Restated Agreement for Consulting Services, 1 August 2019, Art. 2, **C-693**; Second Amended and Restated Agreement for Consulting Services, 1 September 2020, Art. 2, **C-694**; Third Amended and Restated Agreement for Consulting Services, 1 September 2023, Art. 2, **C-683**.

director or an officer.[525] Rand Investments was incorporated under the laws of the Province of British Columbia, and the governing law of the Consulting Agreements is specifically agreed by the parties to be British Columbia law. Instead, Mr. Broshko's role was always limited to acting on Mr. Rand's instructions and behalf.

408. *Second*, Serbia argues that the alleged concerted conduct between MLI/Mr. Broshko and Kalemegdan/Coropi/Mr. Rand is demonstrated by the fact: (*i*) "*in 2012, Mr Broshko supervised Mr Rand's investments in Serbia*"; and (*ii*) in 2017, Mr. Broshko also acquired a 10% shareholding in Crveni Signal,[526] another Serbian company whose majority beneficial owner was Mr. Rand. Serbia, however, does not explain why these facts should establish concerted conduct between Messrs. Rand and Broshko.

409. In fact, none of these two circumstances qualifies as an "*irrebuttable presumption*" under Article 4(2-7) of the 2016 Takeover Law, or as a circumstance that the SEC shall "*especially consider*" under 4(8) of the 2016 Takeover Law.[527] Serbia's argument that since there are circumstances that the SEC should "*especially consider*" in supervisory proceedings, there are also other circumstances that the SEC may consider is arbitrary and unsupported.

410. Worse yet, the circumstances identified by Serbia are irrelevant. That Mr. Broshko decided to invest in companies that he oversaw for Mr. Rand, and of which had intimate knowledge of, in no way indicates that the 2017 Acquisition was a result of any concerted conduct. In fact, Mr. Broshko testifies that he "*did not coordinate [the 2017 Acquisition] with Mr. Rand*"[528] and that he financed the 2017 Acquisition from his own funds.[529]

411. In sum, Serbia seeks to demonstrate Mr. Broshko' breach of a non-existent legality requirement under the Canada-Serbia BIT by arguing that, in never-initiated supervisory proceedings, the SEC would have found that Messrs. Broshko and Rand acted in concert

---

525 Broshko Second WS, ¶¶ 10-11; Rand Second WS, ¶ 22.

526 Counter-Memorial, ¶ 472; Rejoinder, ¶ 515.

527 Rejoinder, ¶ 514.

528 Broshko First WS, ¶ 44.

529 Broshko First WS, ¶ 40.

under the 2016 Takeover Law, due to circumstances not contemplated under the 2016 Takeover Law, and thus completely irrelevant under Serbian law.

412. The conclusion is simple: Mr. Broshko and MLI had no obligation to issue a takeover bid as a result of the 2017 Acquisition.

### b. The Tribunal has jurisdiction *ratione materiae* over Mr. Broshko's investment irrespective of whether Mr. Broshko and MLI were required under Serbian law to issue a takeover bid

413. Serbia's illegality objection has no basis under the Canada-Serbia BIT and must be dismissed for that reason alone. The *Rand* tribunal correctly concluded that it cannot "*read into"* the Canada-Serbia BIT a legality clause because it is "*a requirement that the Contracting Parties have not provided*."[530] Serbia's objection should be dismissed for this reason alone.[531]

414. Serbia tries to overcome this obvious flaw in its legal argument by contending that "*tribunals have invoked international legal principles such as international public policy, good faith or some version of unclean hands in order to imply a legality requirement*."[532] Serbia, however, does not explain how the doctrine of "unclean hands" or the doctrine of good faith could possibly target a situation where the investor failed to issue a takeover bid.

415. Even if a legality requirement were to be implied in the Canada-Serbia BIT, and it should not be, it would be subject to, at the very least, the same threshold as express legality clauses. And as Claimants already demonstrated, only a particularly serious violation of domestic law—such as bribery or fraud[533]—are susceptible of removing jurisdiction of an investment tribunal. A failure to launch a mandatory takeover bid

---

530 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 387, **RL-076**.

531 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶¶ 388-389, **RL-076**.

532 Rejoinder, ¶ 507.

533 *ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtundsechzigste Grundstücksgesellschaft mbH & Co v. Czech Republic*, PCA Case No. 2010-5, Award, 19 September 2013, ¶ 3.169, **RL-152**.

plainly does not qualify as such a serious illegality, as the *Rand* tribunal expressly confirmed.[534]

416. Same as with respect to the 2012 Acquisition, it is undisputed that the absence of a takeover bid in connection with the 2017 Acquisition does not render MLI's acquisition of its 10% shareholding in Obnova void or voidable under Serbian law.[535] Similarly, it is undisputed that the SEC never investigated the 2017 Acquisition and did not impose any sanctions. Obnova's minority shareholders did not take any action either.

417. Accordingly, even if Mr. Broshko and/or MLI were required under the Takeover Law to issue a takeover bid (*quod non*), their failure to do so did not affect their ownership of their shareholding in Obnova, did not involve a breach of any fundamental principle of Serbian law and, thus, cannot deprive the Tribunal of jurisdiction *ratione materiae* over Mr. Broshko's claims.

### C. The Tribunal has jurisdiction *ratione temporis* under the Canada-Serbia BIT

418. In their previous submissions, Claimants explained that the Canada-Serbia BIT entered into force on 27 April 2015 and applies to all investments "*existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter*."[536] Furthermore, Claimants clarified that the only breach relied upon by Mr. Broshko is Serbia's express refusal of the Request for Compensation in August 2021, *i.e.* after the entry into force of the Canada-Serbia BIT.[537] Consequently, the Tribunal has jurisdiction *ratione temporis* over the claims submitted by Mr. Broshko.

419. Serbia disagrees and claims that the Tribunal does not have jurisdiction *ratione temporis* because the rejection of the Request for Compensation is a consequence of events that took place before the Canada-Serbia BIT entered into force. Specifically, Serbia argues

---

534 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶¶ 393-394, **RL-076**.

535 Lepetić Second ER, ¶ 41; Tomić-Brkušanin First ER, ¶ 39; Tomić-Brkušanin Second ER, ¶ 75.

536 Canada-Serbia BIT, Art. 1, definition of "covered investment", **CL-001**.

537 Memorial, ¶ 172; Reply, ¶ 602.

that the rejection of the Request for Compensation is a consequence of the 2003 Registration and adoption of the 2013 DRP.[538]

420. In addition, Serbia argues that the Tribunal does not have jurisdiction *ratione temporis* because application of substantive treaty provisions to the events that are consequences of events pre-dating the treaty would represent retroactive application of the treaty.[539]

421. Serbia is wrong. As Claimants demonstrate in **Section III.C.1** below, Serbia does not refer to a single provision of the Canada-Serbia BIT or any other relevant authority that would support its proposed interpretation of the Canada-Serbia BIT. In addition, rejection of the Request for Compensation clearly was *not* a consequence of either the 2003 Registration or the adoption of the 2013 DRP.

422. Serbia's second objection *ratione temporis* is based on the allegation that Mr. Broshko's claims fall outside of the three-year time limit for initiating arbitration proceedings set forth in Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT.[540] These provisions require Mr. Broshko to bring an investment claim no later than three years "*from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.*"[541]

423. Mr. Broshko submitted his claims to arbitration on 27 April 2022.[542] Thus, Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT would operate to exclude Mr. Broshko's claims only if Mr. Broshko first acquired (or should have first acquired) knowledge of Serbia's breaches and knowledge of the loss he suffered as a result of those breaches before 27 April 2019, *i.e.* the date which is three years prior to the date Mr. Broshko submitted his claims to arbitration.

---

538 Rejoinder, ¶ 463.

539 Rejoinder, ¶ 463.

540 Rejoinder, ¶¶ 469 *et seq.*

541 Canada-Serbia BIT, Art. 22(2)(e)(i), **CL-001**. *See also* Canada-Serbia BIT, Art. 22(2)(f)(i), **CL-001**. Article 22(2)(f)(i) of the Canada-Serbia BIT contains similar wording referring to an enterprise.

542 Request for Arbitration.

424. As already explained above, Mr. Broshko's claims are based on Serbia's refusal to provide compensation, which occurred on 13 August 2021. Consequently, Mr. Broshko did not acquire knowledge of Serbia's breach and the resulting loss before 27 April 2019. Claimants address this point in detail in **Section III.C.2.b** below.

### 1. Mr. Broshko's claims are based solely on events post-dating the entry into force of the Canada-Serbia BIT

425. In their Reply, Claimants explained that it is for Claimants—and not for Serbia—to define the breach of the treaty they claim. Article 22(2)(e)(i) of the Canada-Serbia BIT explicitly states that the Tribunal must examine only those claims, which have been raised by the investor. There is, thus, no doubt that the Tribunal must make its jurisdictional assessment on the basis of Mr. Broshko's characterization of his claims.[543]

426. Mr. Broshko does not bring any claims based on either the 2003 Registration or 2013 DRP. His claims are based solely on the rejection of Obnova's Request for Compensation, which took place on 13 August 2021.

427. Serbia disagrees and argues that the Tribunal does not have jurisdiction over Mr. Broshko's claims because the rejection of Obnova's Request for Compensation was allegedly a consequence of the 2003 Registration and the 2013 DRP. According to Serbia "*the Tribunal cannot decide about Mr Broshko's claims without first adjudicating the issue of whether Obnova had acquired property entitlements over the Dunavska Plots and Objects, as well as the 2003 Registration and the 2013 DRP, all of which occurred before the Canada-Serbia BIT entered into force.*"[544] Serbia's objection has no merit.

428. To begin with, Serbia does not explain—much less refer to any authority—that would support its argument that the Tribunal cannot assess the 2003 Registration or the 2013 DRP as a part of its analysis of Mr. Broshko's claim.

429. As Claimants demonstrated above, international tribunals have repeatedly confirmed that it is possible to assess facts and situations pre-dating the relevant treaty if they are

---

543 Canada-Serbia BIT, Art. 22(2)(e)(i), **CL-001**. Article 22(2)(f)(i) of the Canada-Serbia BIT contains similar wording referring to an enterprise. *See also* Reply, ¶¶ 605-607.

544 Rejoinder, ¶¶ 463-464.

a source of rights claimed.[545] That is clearly the case of the 2013 DRP. As Claimants explained in their Reply,[546] Mr. Broshko's claim is based on the very fact that adoption of the 2013 DRP created Obnova's right for compensation—which was subsequently infringed by Serbia's rejection of Obnova's Request for Compensation.

430. Finally, the rejection of Obnova's Request for Compensation in any case was *not* a consequence of the 2003 Registration and/or the adoption of the 2013 DRP. The rejection of Obnova's Request for Compensation was *not* a consequence of the 2003 Registration because:

a. Serbia was aware of Obnova's rights despite the incorrect registration. The fact that the Land Directorate decided to ignore Obnova's rights does not mean that its decision was caused by the 2003 Registration;

b. If anything, the 2003 Registration was merely a convenient pretext for the Land Directorate's *volte face* and sudden refusal to provide any compensation despite its previous willingness to do so in 2018.[547] The fact that a State may choose to rely on a past event as a convenient pretext for its violations of public international law does not establish a cause-and-effect relationship between the event and the violations; and

c. the Land Directorate could have provided the compensation requested by Obnova despite the incorrect registration.[548]

431. The rejection of Obnova's Request for Compensation clearly was not a consequence of the 2013 DRP either. On the contrary, it was the adoption of the 2013 DRP that gave rise to Serbia's obligation to compensate Obnova. Serbia cannot seriously argue that

---

545 *Electricity Company of Sofia and Bulgaria (Kingdom of Belgium v. Kingdom of Bulgaria)*, Judgment (Preliminary objection), PCIJ Series A/B No 77, 4 April 1939, pp. 17-18, **CL-149**; *Right of passage over Indian territory (Portugal v. India)*, Judgment on merits, 12 April 1960, 1960 ICJ Rep., p. 29, **CL-150**; *Jurisdictional Immunities of the State (Germany v. Italy)*, Counter-Claim, Order of 6 July 2010, ICJ Rep. 2010, ¶ 23, **CL-174**.

546 Reply, ¶¶ 602, 608.

547 Reply, ¶¶ 342, 347, 358-359.

548 Reply, ¶ 457.

the very act that gave rise to Obnova's claim for compensation was, at the same time, the reason for Serbia's rejection of Obnova's Request for Compensation.

432. For the avoidance of doubt, even if the rejection of Obnova's Request for Compensation were a consequence of the 2003 Registration or the 2013 DRP, that fact would not require retroactive application of the Canada-Serbia BIT—as Serbia incorrectly claims.[549] Mr. Broshko does not ask the Tribunal to find that either the 2003 Registration or the 2013 DRP represent breaches of the Canada-Serbia BIT.

433. Mr. Broshko's claim requires the Tribunal to apply the Canada-Serbia BIT with respect to a single measure—*i.e.* the rejection of the Request for Compensation—which occurred on 13 August 2021. As a result, Mr. Broshko's claim clearly does not require the Tribunal to apply substantive provisions of the Canada-Serbia BIT retroactively.

### 2. The three-year time limit under Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT had not lapsed before commencement of the arbitration

#### a. Mr. Broshko did not—and could not—have knowledge about the alleged breach before 13 August 2021

434. The only violation of the Canada-Serbia BIT claimed by Mr. Broshko is Serbia's rejection of Obnova's Request for Compensation, which occurred on 13 August 2021. Since Mr. Broshko solely relies on the rejection of Obnova's Request for Compensation as the basis for his claims, there is no doubt that the three-year deadline set forth in Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT has been met.[550] Three years from 13 August 2021 will lapse only in the future, on 13 August 2024.

435. In response, Serbia merely repeats its argument that the rejection of Obnova's Request for Compensation was "*intrinsically linked to the 2003 Registration and the 2013 DRP*."[551] According to Serbia, because the 2003 Registration and the 2013 DRP took place before the three-year limitation period and because Mr. Broshko learned about these events before the three-year limitation period, he failed to comply with the

549 Rejoinder, ¶ 310.

550 Reply, ¶ 612.

551 Rejoinder, ¶ 471.

limitation period under the Canada-Serbia BIT.[552] Serbia's argument is based on a clear misinterpretation of the Canada-Serbia BIT.

436. Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT state the following:

> (e) in the case of a claim submitted under Article 21(1):
>
> (i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby,

[…]

> (f) in the case of a claim submitted under Article 21(2):
>
> (i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

437. These provisions make it clear that the three-year limitation period commences from the date on which an investor and/or an enterprise acquired knowledge of: (*i*) the *alleged breach*; and (*ii*) the incurred loss. The reference to the "alleged breach" means that, in the words of the tribunal in *Rand v. Serbia*, "*the Tribunal must assess its jurisdiction on the basis of the claims as pled*":

> The Tribunal tends to agree with the Claimants. Article 22(2)(e)(i) of the Canada-Serbia BIT reproduced above provides that an investor may submit a claim to arbitration if not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach. *The use of the word "alleged" to qualify the breach suggests that the Tribunal must assess its jurisdiction on the basis of the claims as pled*. Other tribunals, interpreting similarly worded investment agreements, have reached the same conclusion.[553]

552 Rejoinder, ¶¶ 471-472.

553 *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award 29 June 2023, ¶ 441 (emphasis added), **CL-112**.

438. The tribunal in *Infinito Gold v. Costa Rica* reached the same conclusion. The tribunal also confirmed that to proceed otherwise would lead to "*breaching the claimant's due process rights*":

> The Tribunal considers that this conclusion is supported by the express language of Article XII(3)(d) of the BIT, which stipulates that "[a]n investor may submit a dispute as referred to in paragraph (1) to arbitration […] only if […] (d) in cases where Costa Rica is a party to the dispute, no judgment has been rendered by a Costa Rican court regarding the measure that is *alleged* to be in breach of this Agreement" (emphasis added). *The Tribunal is persuaded that the ordinary meaning of the term "alleged," which is used as a verb in this context, is "pleaded" or "claimed." Further, at the jurisdictional stage, a tribunal must be guided by the case as put forward by the claimant in order to avoid breaching the claimant's due process rights.* To proceed otherwise is to incur the risk of dismissing the case based on arguments not put forward by the claimant, at a great procedural cost for that party.
>
> *Accordingly, the Tribunal must assess the case before it focusing on the measures that the Claimant has deemed fit to challenge, and determine its jurisdiction*, the admissibility of these claims and, if appropriate, the *prima facie* existence of rights to be protected at the merits phase, on that basis. It is a different question whether, assuming there is jurisdiction and admissibility, the claims as raised are founded or not. This is a matter for the merits stage where the Claimant will have to establish that the claims as presented arise from breaches of the BIT and caused a compensable loss.[554]

439. Another tribunal that reached a similar conclusion was the tribunal in *Glamis Gold v. USA*. In that case, the tribunal expressly concluded that the "*basis of the claim is to be determined with reference to the submissions of Claimant*." The tribunal also explained that while a claim must be brought based on events that occurred after the cut-off date, claimants can rely on "background facts" or "factual predicates" that took place earlier:

> The Tribunal in this instance, however, is presented with a preliminary question. In particular, does Claimant bring its claim on the basis of the events referred to by Respondent? *Both Claimant and Respondent state that a claim brought on the basis of an event properly within the time limit of Article 1117(2) may cite to earlier events as "background facts" or "factual predicates." The Tribunal agrees. It is necessary that any action be preceded by other steps, but such factual predicates are not per se the legal basis for the claim.*
>
> *The basis of the claim is to be determined with reference to the submissions of Claimant.* Claimant argues that the events listed by Respondent are not the basis of its claim but rather form "the factual

554 *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Decision on Jurisdiction, 4 December 2017, ¶¶ 186-187 (emphasis added), **CL-079**.

> predicate of the unlawful and now rescinded January 17, 2001 Secretarial Record of Decision denying the Imperial Project, and are thus the context for the substantial damage flowing from that decision and the failure of the federal and state government authorities to comply with the law and approve Glamis's Plan of Operation on a timely basis."
>
> The Tribunal has reviewed the submissions of Claimant and finds that Claimant does not in its Notice of Arbitration, nor its subsequent filings, bring a claim on the basis of the earlier events listed by Respondent. The Tribunal denies Respondent's objection.[555]

440. As explained above, in the present case, Mr. Broshko pleads only a single "*alleged breach*"—*i.e.* the rejection of Obnova's Request for Compensation. The three-year limitation period, thus, commenced on the date when Mr. Broshko acquired knowledge of this rejection—*i.e.* 13 August 2021.

441. The 2003 Registration and the 2013 DRP represent, at best, "background facts" for Mr. Broshko's claim. As confirmed by the *Glamis Gold* tribunal, nothing precludes the Tribunal from relying on "background facts" pre-dating the cut-off date under the Canada-Serbia BIT.

442. Serbia's reference to the award in *Corona Materials v. Dominican Republic* is inapposite.[556] As Claimants explained already in their Reply, Corona relied on a series of measures that represented a continuous breach. These measures started before the cut-off date and continued thereafter.[557] That is not the case here. Serbia does not seem to dispute this fact.[558]

443. Instead, in its Rejoinder, Serbia relies on a single paragraph in the *Corona* award, in which the tribunal reproduced a submission made by the United States in *Grand River v. USA*. In that submission, the United States argued that "*[w]here a 'series of similar and related actions by a respondent State' is at issue, an investor cannot evade the limitations period by basing its claim on 'the most recent transgression in that series'.*

---

555 *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, 8 June 2009, ¶¶ 348-350 (emphasis added), **RL-166**.

556 Rejoinder, ¶ 473.

557 Reply, ¶ 617.

558 Rejoinder, ¶ 473.

*To allow an investor to do so would, as the tribunal in Grand River recognized, 'render the limitations provisions ineffective.'*"[559]

444. Regardless of whether the United States' submission had any merit in that case, it is irrelevant in the present case. Mr. Broshko's claim is *not* based on "*series of similar and related actions*" by Serbia. It is based on a single measure— *i.e.* the rejection of Obnova's Request for Compensation.

445. Unlike Serbia seems to suggest in its Rejoinder, the rejection of the Request for Compensation cannot represent "*the most recent transgression*" in the series of "*similar and related actions*" starting with the adoption of the 2013 DRP or even the 2003 Registration.[560] For the purposes of Mr. Broshko's claim, the adoption of the 2013 DRP does not represent a "*transgression*". On the contrary, it only represents the basis for Obnova's right to compensation—which Serbia interfered with by rejecting of the Request for Compensation in August 2021.

446. Similarly, the 2003 Registration did *not* affect Obnova's rights—either *de jure* or *de facto*. Claimants explained this fact in detail above.

447. The situation in the present case is, thus, completely different from that in *Corona*, where—as Serbia itself agrees—the tribunal faced several "*transgressions*" constituting a composite breach, with some of these measures appearing before and some after the relevant cut-off day. As a result, the reasoning of the *Corona* tribunal is inapplicable in the present case.

### b. Mr. Broshko did not—and could not—acquire knowledge of the loss caused by the rejection of the Request for Compensation before 27 April 2019

448. In their Reply, Claimants explained that both the knowledge of a *breach* and the knowledge of a *loss* are necessary to trigger the three-year period under Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT. In case knowledge of these two

---

559 *Corona Materials, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award, 31 May 2016, ¶ 215, **RL-110**.

560 Rejoinder, ¶ 473.

issues is not acquired on the same date, the three-year period starts to run on the *later* of these two dates.[561]

449. Mr. Broshko undisputedly acquired knowledge of both Serbia's breach of the Canada-Serbia BIT and the knowledge of the resulting loss after the cut-off date of 27 April 2019, namely when the Land Directorate issued the letter where it expressly refused to compensate Obnova for Serbia's unlawful expropriation of its premises. This letter was issued on 13 August 2021.[562]

450. In its Rejoinder, Serbia argues that Mr. Broshko acquired knowledge of the claimed loss "*in 2017, if not earlier*". According to Serbia, this is because Mr. Broshko "*admits*" that, at the time of his investment, he expected that Obnova "*would be provided with compensation due under Serbian law*" for the loss caused by the adoption of the 2013 DRP.[563] Serbia either does not understand Mr. Broshko's claim or purposefully tries to misinterpret it.

451. It is undisputed that at the time of his investment, Mr. Broshko was aware that Obnova had the right to compensation for the loss caused by the adoption of the 2013 DRP.[564] However, that is not the loss claimed by Mr. Broshko in the present case. The loss claimed by Mr. Broshko in the present case is the loss caused by the fact that Serbia rejected Obnova's Request for Compensation due to Obnova under Serbian law.

452. The loss caused by this rejection could not have been known to Mr. Broshko in 2017 because, at that time, he could not have known that Serbia would reject the Request for Compensation.

453. Finally, Serbia's argument that "*Mr Broshko fails to explain why he considered that Obnova would receive compensation, despite the 2003 Registration*" is a red herring.[565]

---

561 Reply, ¶ 618.

562 Reply, ¶ 619.

563 Rejoinder, ¶ 474.

564 Broshko Second WS, ¶ 27.

565 Rejoinder, ¶ 475.

This question is entirely irrelevant for the determination of when Mr. Broshko acquired knowledge of the loss claimed in this arbitration.

454. In any case, Mr. Broshko explains that the first time he had heard that the 2003 Registration could have any impact on Obnova's right for compensation was when he read this argument in Serbia's submission. Before this arbitration, no one informed Mr. Broshko that that could be the case.[566]

## D. The Tribunal has jurisdiction *ratione voluntatis* under the Canada-Serbia BIT

455. Serbia argues that the Tribunal does not have jurisdiction *ratione voluntatis* because Mr. Broshko failed to submit a waiver from Obnova allegedly required under Articles 22(2)(f)(ii) and 22(2)(e)(iii) of the Canada-Serbia BIT. Serbia is wrong because the plain text of these provisions shows that the waiver was not required in the present case.

456. The relevant provisions state the following:

> 2. An investor may submit a claim to arbitration under Article 21 only if:
>
> […]

> (e) in the case of a claim submitted under Article 21(1):
>
> (i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby,
>
> (ii) the investor waives its right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21, and
>
> (iii) if the claim is for loss or damage to an interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waives the right referred to under subparagraph (ii);
>
> (f) in the case of a claim submitted under Article 21(2):
>
> (i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and
>
> (ii) both the investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21.

457. Article 22(2)(f) applies to claim brought under Article 21(2) of the Canada Serbia BIT, *i.e.* claims brought on behalf of a local enterprise. Mr. Broshko does not bring any claims on behalf of Obnova. As a result, he is not obliged to submit a waiver under Article 22(2)(f)(ii). It is also undisputed that Mr. Broshko did provide a waiver on his own behalf. Claimants address these points in detail in **Section III.D.1** below.

458. With respect to Article 22(2)(e) of the Canada-Serbia BIT, as explained above, it is undisputed that Mr. Broshko submitted a waiver on his own behalf. Serbia's argument that he should also submit a waiver on behalf of Obnova is without merit. It is undisputed that Mr. Broshko is a minority shareholder of Obnova and has *no* control over Obnova.

459. Mr. Broshko approached the majority shareholder of Obnova and tried to obtain a waiver but was not successful. There is nothing more that Mr. Broshko could do. As Claimants show in **Section III.D.2** below, when interpreting similar provisions,

investment tribunals have confirmed that the requirement to submit such a waiver does not apply to minority shareholders which do not control the target company.

460. Finally, as Claimants show in **Section III.D.3** below, even if Mr. Broshko were required to submit a waiver on behalf of Obnova (*quod non*), the absence of such a waiver would not affect the Tribunal's jurisdiction. Investment tribunals have held that the requirement of a waiver is merely procedural, and its absence does not deprive the investment tribunal of jurisdiction—especially if the local enterprise did not engage in any parallel proceedings (which is the exact situation in the present case).

### 1. Mr. Broshko is not required to submit a waiver on behalf of Obnova under Article 22(2)(f) of the Canada-Serbia BIT

461. As Claimants explained already in their Reply,[567] Mr. Broshko is not obliged to submit a waiver on behalf of Obnova under Article 22(2)(f) of the Canada-Serbia BIT because he is *not* bringing a claim on behalf of Obnova. Claimants also explained that the tribunal in *Kappes v. Guatemala* confirmed that a waiver on behalf of a local company is required only if an investor brings a claim on behalf of the local company:

> Respondent's third related ground for dismissal is that the Tribunal does not have jurisdiction to determine claims for "Exmingua's losses," because Claimants did not submit a waiver by Exmingua pursuant to DR-CAFTA Article 10.18.2. *In the Tribunal's view, recasting the issue as about whether proper waivers were submitted does not advance the debate beyond the core jurisdictional question presented. That is because, on its face, Article 10.18.2 does not require an enterprise waiver for claims submitted to arbitration under Article 10.16.1(a), but only for those submitted on behalf of an enterprise under Article 10.16.1(b), i.e., the alternative avenue that Claimants concededly have not pursued.* In consequence, the issue of waivers will become moot upon determination of the core jurisdictional issue the Tribunal has identified. Stated flatly: if there is jurisdiction for Claimants to proceed as they have done under Article 10.16.1(a), then they have submitted sufficient waivers to do so - and if there is no jurisdiction to proceed under Article 10.16.1(a), then it would not matter what waivers they submitted, as an additional waiver would not cure the fundamental problem of lack of consent.[568]

---

567 Reply, ¶¶ 621 *et seq.*

568 *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent's Preliminary Objections, 13 March 2020, ¶ 121 (emphasis added), **CL-116**. *Similarly also Copper Mesa Mining Corporation v. The Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶¶ 5.50-5.53, **CL-175**.

462. While Serbia seems to suggest that a waiver on behalf of Obnova under Article 22(2)(f) of the Canada-Serbia BIT is also required, it does not provide any explanation for why this should be the case.[569] It is undisputed that Mr. Broshko is only bringing claims on behalf of MLI, and not on behalf of Obnova. Mr. Broshko submitted a waiver on behalf of MLI and there is simply no reason for why a waiver on behalf of Obnova should be required under Article 22(2)(f) of the Canada-Serbia BIT.

### 2. Mr. Broshko cannot be required to submit a waiver on behalf of Obnova under Article 22(2)(e) of the Canada-Serbia BIT because he does not control Obnova

463. Claimants also explained that Mr. Broshko cannot be required to submit a waiver on behalf of Obnova under Article 22(2)(e) of the Canada-Serbia BIT because he does not control Obnova. It is undisputed that Mr. Broshko is only a minority (10%) indirect shareholder in Obnova. As such, he has no control over Obnova and would only be able to obtain a waiver from Obnova in case Kalemegdan, being the controlling shareholder of Obnova, would approve the issuance of such a waiver.[570] Claimants explained that Mr. Broshko attempted to obtain such an approval, but was not successful.[571]

464. Requiring Mr. Broshko to submit a waiver would, thus, mean requiring Mr. Broshko to do the impossible— *i.e.* force a company that he does not control to do something. Needless to say, the Canada-Serbia BIT cannot be interpreted in a manner to require something impossible from Mr. Broshko.

465. The award of the tribunal in *Webuild v. Argentine* is instructive on this point. In that case, the tribunal concluded that the provision in a BIT requiring the parties to "*take any such measures as may be necessary to dismiss any pending court proceedings*" was "*a best efforts obligation*". The tribunal also concluded that the fulfillment of this obligation cannot be required from a minority investor, who does not have control over the local subsidiary:

> The Tribunal agrees. *The law does not require the impossible, and Salini Impregilo was not in a position to withdraw proceedings to which it was not a party*. A 'best efforts' interpretation of Article 8(4) is

569 Rejoinder, ¶¶ 480-481.

570 Reply, ¶¶ 624-625, 627.

571 Reply, ¶ 626.

> consistent with the Tribunal's conclusion as to the flexible characterization of 'dispute'. *To hold otherwise would place minority shareholders at a serious disadvantage in seeking to uphold their rights under the BIT.*[572]

466. These findings are directly applicable in the present case. Mr. Broshko also "*does not hold the majority of the shares in such subsidiary*" and, thus, is unable to obtain a waiver from Obnova. Requiring Mr. Broshko to submit a waiver from Obnova would "*require the impossible*" and, as a result, would place Mr. Broshko "*at a serious disadvantage in seeking to uphold [his] rights under the BIT.*"

467. Serbia's argument that "*it is evident that Serbia did not hinder Mr Broshko's […] control over [his] investments at all relevant times*" because "*in 2018, MLI purchased receivables from two of Obnova's creditors for EUR 20,000*"[573] is borderline absurd. The fact that MLI purchased receivables from Obnova's creditors says strictly nothing about Mr. Broshko's control over Obnova.

468. Serbia's argument that Mr. Rand keeps the ultimate control over Obnova is also inapposite. As Claimants explained already in the Reply, after Mr. Broshko decided to pursue the claim against Serbia, he approached Mr. Rand and inquired whether he would be willing to make Obnova issue the waiver. Mr. Rand, however, declined.[574] As a result, Mr. Broshko has been unable to provide a waiver on behalf of Obnova.

### 3. Even if Mr. Broshko were required to submit a waiver on behalf of Obnova, the absence of the waiver would not affect the Tribunal's jurisdiction

469. Claimants also explained that even if Mr. Broshko were required to submit a waiver on behalf of Obnova (*quod non*), the absence of such a waiver would not affect the Tribunal's jurisdiction. This is because, even though Obnova did not submit a formal waiver, Obnova is and was not pursuing any proceedings that would have been subject to the waiver. Specifically, Obnova is and was not engaged in any proceedings in which

---

572 *Webuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Argentine Republic*, ICSID Case No. ARB/15/39, Decision on Jurisdiction and Admissibility, 23 February 2018, ¶ 148 (emphasis added), **CL-176**.

573 Rejoinder, ¶ 493.

574 Reply, ¶ 626.

it could obtain compensation for the losses that it sustained as a result of Serbia's refusal of the Request for Compensation.[575]

470. Claimants also explained that investment tribunals have held that the requirement of a waiver is merely procedural, and its absence does not deprive the investment tribunal of jurisdiction—especially if the local enterprise did not engage in any parallel proceedings.[576]

471. In its Rejoinder, Serbia continues to take the formalistic view that regardless of whether Obnova initiated any local proceedings or not, the Tribunal does not have jurisdiction if a formal waiver is not submitted.[577] In doing so, Serbia ignores the legal authorities to the contrary cited by Claimants in their Reply.

472. Specifically, Claimants explained that in *Thunderbird v. Mexico*, a NAFTA tribunal expressly emphasized that the local enterprises that did not provide the waiver did not engage in any parallel proceedings and, thus, effectively complied with the purpose of the waiver as required under Article 1121 NAFTA (which was the equivalent under NAFTA of Article 22 of the Canada-Serbia BIT):

> In construing Article 1121 of the NAFTA, one must also take into account the rationale and purpose of that article. The consent and waiver requirements set forth in Article 1121 serve a specific purpose, namely to prevent a party from pursuing concurrent domestic and international remedies, which could either give rise to conflicting outcomes (and thus legal uncertainty) or lead to double redress for the same conduct or measure. *In the present proceedings, the Tribunal notes that the EDM entities did not initiate or continue any remedies in Mexico while taking part in the present arbitral proceedings. Therefore, the Tribunal considers that Thunderbird has effectively complied with the requirements of Article 1121 of the NAFTA.*[578]

473. The fact that the local enterprises in *Thunderbird* eventually submitted their waivers is irrelevant,[579] as it does not affect the conclusion that the relevant question is whether

---

575 Reply, ¶¶ 630 *et seq.*

576 *E.g. International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Arbitral Award, 26 January 2006 ¶ 118, **CL-117**. *See also* Reply, ¶ 631.

577 Rejoinder, ¶¶ 486-489, 492.

578 *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Arbitral Award, 26 January 2006 ¶ 118 (emphasis added), **CL-117**.

579 Rejoinder, ¶ 497.

there are any pending local proceedings or not. The fact that the formal requirement was eventually fulfilled as well, does not change that conclusion. This is especially the case where, as in the present case, the claim is brought by a minority shareholder who has no control over the local company and cannot secure the required waiver.

#### 4. Serbia's objection is belated

474. Finally, as Claimants demonstrated in the Reply, Serbia's objection based on the absence of Obnova's waiver must in any case be dismissed because it was raised belatedly.[580] As Claimants explained in their Reply, according to Rule 41(1) of the ICSID Arbitration Rules, jurisdictional objections must be raised as early as possible.[581] However, Serbia raised its objection more than a year after Claimants submitted the Request for Arbitration.

475. Claimants also explained that numerous ICSID tribunals have confirmed the mandatory nature of the requirement to raise jurisdictional objections as early as possible as well as the fact that States are bound to raise their objections before filing their Counter-Memorial if the reasons for objection were or ought to have been manifest at an earlier time.[582] Specifically, Claimants relied on awards in: (*i*) *Pac Rim v. El Salvador*;[583] and (*ii*) *Desert Line v. Yemen*.[584]

### E. Mr. Broshko's claims meet the jurisdiction requirements under the ICSID Convention

476. In their Memorial, Claimants explained that Mr. Broshko' claims satisfy all the jurisdictional requirements under the ICSID Convention because the dispute brought by Mr. Broshko is: (*i*) a *legal dispute;* (*ii*) arising directly out of an *investment;* (*iii*) between

---

580 Reply, ¶¶ 633 *et seq.*

581 Reply, ¶¶ 634-635.

582 Reply, ¶¶ 636-639.

583 *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Award, 14 October 2016, ¶¶ 5.42, 5.49, **CL-118**.

584 *Desert Line Projects LLC v Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, ¶ 97, **CL-119**.

a *national* of a Contracting State and another Contracting State; and (*iv*) both Parties to the dispute have consented in writing to submit the dispute to ICSID.[585]

477. Serbia does not dispute that the above requirements are satisfied—with the exception of Serbia's consent to the dispute,[586] which has been separately addressed in the previous section.

585 Memorial, ¶¶ 173-182, 186-195; Reply, ¶ 621.

586 Reply, ¶¶ 622 *et seq*; Rejoinder, ¶¶ 480 *et seq.*

## IV. CLAIMANTS' CLAIMS ARE ADMISSIBLE

478. Claimants' claims represent a good faith exercise of their rights under the Treaties.[587] Serbia's assertion that Claimants' claims are not admissible because they represent an abuse of process is without merits. As Claimants demonstrate in this Section, Serbia's assertion is based on misinterpretation of international law and, in addition, utterly unsupported by *any* relevant evidence.

479. As Claimants explained in their Reply, relevant authorities confirm that for an abuse of process to exist, at least the following two conditions are met:

a. the sole or determining purpose of a corporate restructuring was to acquire treaty protection; and

b. a specific dispute is foreseeable with "*a very high probability*" at the time of a restructuring.[588]

480. Claimants address investment law authorities confirming the existence of these two conditions, as well as Serbia's comments related to these authorities, in **Section IV.A** below. Subsequently, in **Sections IV.B** and **IV.C** below, Claimants demonstrate that neither of the conditions for an abuse of process to exist is met in the present case.

481. Specifically, Claimants show that Cypriot Claimants acquired their investment in Obnova in 2012, when Mr. Rand decided to change the ownership structure of the Serbian companies beneficially owned by the Rand family—including Obnova ("**Serbian companies**").[589]

482. Mr. Rand did *not* do so to acquire treaty protection. On the contrary, the sole purpose of the restructuring was tax efficiency. In addition, Mr. Rand changed the ownership structure of his Serbian companies at the time when no dispute was foreseeable.

483. The same holds true for Mr. Broshko's claim. It is undisputed that Mr. Broshko acquired Obnova's shares on the Belgrade Stock Exchange. Mr. Broshko's acquisition of

---

587 Reply, § V.

588 Reply, ¶¶ 648-665.

589 The other five companies were Crveni signal a.d., PIK Pešter a.d., Beotrans a.d., Inex a.d. Nova Varoš and Kalemegdan Investments d.o.o. *See* Rand First WS, ¶¶ 10, 34; Broshko First WS, ¶ 17.

Obnova's shares, thus, did *not* represent any corporate restructuring. Indeed, as Claimants demonstrated in their Reply, there is no reason to suspect an abuse of process in arm's length transactions.[590]

484. Furthermore, Mr. Broshko's claim relates *solely* to the rejection of Obnova's Request for Compensation. It is, again, undisputed that Serbia rejected Obnova's Request for Compensation in August 2021—*i.e.* almost four years *after* Mr. Broshko acquired his investment. Mr. Broshko thus clearly could not have expected this rejection at the time when he made his investment in 2017.

## A. An abuse of process can exist only if an investment is made for the sole purpose of acquiring a treaty protection at the time when a specific dispute is foreseeable with high probability

485. As a threshold matter, Claimants reiterate[591] that an abuse of process may occur only in *very exceptional circumstances* and the finding of an abuse of process is subject to a *high threshold*:

> As for any abuse of right, the *threshold for a finding of abuse of process is high*, as a court or *tribunal will obviously not presume an abuse, and will affirm the evidence of an abuse only "in very exceptional circumstances"*.[592]

486. To show that such exceptional circumstances exist in the present case, Serbia would need to establish that: (*i*) the sole, or at the very least determining, purpose of Claimants' acquisition of Obnova's shares was to acquire treaty protection; and (*ii*) the dispute before the Tribunal was foreseeable with "*a very high probability*" at the time when Claimants acquired their investment. As Claimants show below, neither of these conditions is met in the present case.

---

590 Reply, ¶¶ 697 *et seq*.

591 Reply, ¶¶ 648-650.

592 *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶ 186 (emphasis added), **RL-121**. *See also Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, 1 December 2008, ¶ 143, **CL-085**; *Mercuria Energy Group Limited v. Republic of Poland (II)*, SCC Case No. 2019/126, Final Award, 29 December 2022, ¶ 626, **RL-095**; *Ipek Investment Limited v. Republic of Turkey*, ICSID Case No. ARB/18/18, Award, 8 December 2022, ¶ 324, **RL-126**.

## B. Claimants did not acquire their investment in Obnova to obtain treaty protection

### 1. Case law of investment tribunals confirms that an abuse of process can exist only when the sole or determinative reason for acquisition of investment is obtaining of treaty protection

487. Cases in which Tribunals found an abuse of process typically involve investors who acquired their investment through corporate restructuring with the sole aim of obtaining treaty protection that was not available under the original ownership structure.[593] However, as Claimants demonstrated already in the Reply, not any corporate restructuring resulting in obtaining of treaty protection represents an abuse of process.[594]

488. On the contrary, investment tribunals have repeatedly confirmed that a corporate restructuring can represent an abuse of process only if the acquisition of treaty protection is its *sole purpose*. This principle was formulated in the seminal decision in *Phoenix v. Czech Republic*:

> The Tribunal has to ensure that the ICSID mechanism does not protect investments that it was not designed for to protect, because they are in essence domestic investments disguised as international investments for the *sole* purpose of access to this mechanism.[595]

489. The conclusion reached by the *Phoenix* tribunal was subsequently upheld by other investments tribunals. For example, in *Gremcitel v. Peru*, the tribunal rejected jurisdiction because it found that "*the **only** purpose of the transfer [to Mrs. Renée Rose Levy] was to obtain access to ICSID/BIT arbitration, which was otherwise precluded*."[596]

490. A minority of cases held that an abuse of process may exist also if a restructuring served several purposes, but that the aim to acquire treaty protection was its *determinative* or *principal* purpose. For instance, the tribunal in *Alverley v. Romania*—on which Serbia repeatedly relies for other purposes in its Rejoinder—held "*that the correct test is*

---

593 Reply, ¶¶ 651-660.

594 Reply, ¶¶ 651-660.

595 *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 144 (emphasis added), **RL-043**.

596 *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶ 191 (emphasis added), **RL-121**.

*whether a determinative or principal purpose was to gain the protection of the treaty*."[597]

491. In its Rejoinder, Serbia disagrees with all of these decisions and argues that it is enough if gaining treaty protection was just one of the purposes of the restructuring.[598] To support this statement, Serbia refers to a *single* decision—the award in *Tidewater v. Venezuela*, which states, in a single paragraph, that "*it suffices for the Tribunal to accept for present purposes that one of the two reasons for the reorganization was a desire to protect Tidewater from the risk of expropriation*."[599] Neither this statement, nor the rest of the *Tidewater* award, confirms Serbia's assertion. In fact, the *Tidewater* award disproves it.

492. To begin with, the *Tidewater* decision did not deal with the question of whether the acquisition of treaty protection must be a determinative purpose or not. The *Tidewater* tribunal concluded that there was no abuse of process because the dispute was not foreseeable at the time when Tidewater restructured its investment. In such circumstances, the tribunal had no reason to assess whether the purpose of the restructuring was "*determinative or principal*", as required by the *Alverley* tribunal as such a finding would not alter the tribunal's conclusion that there was no abuse of process.

493. Furthermore, the *Tidewater* tribunal recognized that "*it is a perfectly legitimate goal, and no abuse of an investment protection treaty regime, for an investor to seek to protect itself from the general risk of future disputes with a host state*".[600] Thus, the *Tidewater* tribunal actually confirmed that corporate restructuring cannot—on its own—give rise to an abuse of process.

494. Finally, unlike Claimants in the present case, Tidewater did not dispute that the restructuring of its investment "*was motivated both by tax considerations and also by*

---

597 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 376, **RL-007**.

598 Rejoinder, ¶ 521.

599 *Tidewater Inc., Tidewater Investment SRL, Tidewater Caribe, C.A., et al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 183, **RL-127**.

600 *Tidewater Inc., Tidewater Investment SRL, Tidewater Caribe, C.A., et al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 184, **RL-127**.

*'risk-mitigation perspectives'*" due to "*nationalizations by the Venezuelan government in 2007 and 2008*."[601] However, even this admission did not lead the *Tidewater* tribunal to conclude that there was an abuse of process.

* * *

495. The above makes it clear that an abuse of process may occur only when the sole—or at least, principal—purpose for which an investor acquires an investment is to gain treaty protection. As Claimants demonstrate in **Sections IV.B.2** and **IV.B.3** below, this is clearly not the case in this arbitration.

### 2. The change in the ownership structure of the Serbian companies was implemented for tax reasons—*not* to acquire investment protection

496. Cypriot Claimants acquired their investment in Obnova in 2012 when Mr. Rand decided for tax reasons to change the ownership structure of Obnova—together with his remaining *five* Serbian companies.[602]

497. The 2012 change of ownership structure followed an earlier change, in 2008, of the ownership structure of BD Agro, the largest of Mr. Rand's companies in Serbia. Mr. Rand changed the ownership structure of BD Agro because the Lundin family—which had provided loans for purchase and development of BD Agro—wanted to exit that project. Mr. Rand replaced the Lundins' funds with his own funds, channeled through Sembi.[603] While doing so, he took that opportunity to also restructure BD Agro's ownership.

498. When planning the new ownership structure of BD Agro, Mr. Rand obtained tax advice from Thorsteinssons LLP, a leading Canadian tax law firm, that it would be beneficial for Mr. Rand to structure his ownership of BD Agro through Cyprus.[604] Based on this

---

601 *Tidewater Inc., Tidewater Investment SRL, Tidewater Caribe, C.A., et al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 183, **RL-127**.

602 Reply, ¶¶ 669-674.

603 Rand Second WS, ¶¶ 29-31; Broshko Second WS, ¶ 17.

604 Rand First WS, ¶ 33.

advice, Mr. Rand channeled his beneficial ownership of BD Agro through a Cypriot holding company called Sembi Investment Limited.[605]

499. Later, in 2012, Mr. Rand went back to Thorsteinssons which confirmed their previous advice. As a result, Mr. Rand decided to change the ownership structure of his remaining Serbian companies as well—so that they would, like BD Agro, be held by a Cypriot holding company. Mr. Rand designated Kalemegdan to be that holding company.

500. Serbia's argument that Mr. Rand received the original tax advice in 2008, but he did not change the ownership structure of the Serbian companies until 2012, is a red herring.[606] As explained above, Mr. Rand restructured BD Agro's ownership structure in 2008 because the Lundin family wanted to exit the project. This reason, however, did not apply to Obnova (or any other of the Serbian companies for that matter), because their acquisition and operation was not funded by the Lundin family.[607]

501. The change in the ownership structure of the Serbian companies beneficially owned by the Rand family, therefore, was *not* motivated by the desire to acquire investment protection. Indeed, to this date, Serbia did not submit a single piece of contemporaneous evidence to the contrary.

502. Serbia's speculation that "*is likely that [Mr. Rand], with the benefit of external advice he receives, was aware of the advantages and benefits of investment treaty protection*"[608] is exactly that—a speculation. Mr. Rand expressly confirmed in his first witness statement that the "*possibility of investment treaty protection did not even cross [his] mind.*"[609] Serbia does not refer to *any* evidence to the contrary.

503. In its Rejoinder, Serbia criticizes Claimants' evidence, arguing that "*the only evidence Claimants offer in support of their allegation that the restructuring was conducted for*

---

605 Rand Second WS, ¶ 23.

606 Rejoinder, ¶ 542.

607 Rand Second WS, ¶ 32. *See also* Request for the removal of the pledge of shares, 13 March 2012, **C-684**; Decision of the Privatization Agency, 22 March 2012, **C-685**; Confirmation of payment of purchase price, 23 September 2003, **C-730**.

608 Rejoinder, ¶ 542.

609 Rand First WS, ¶ 42.

*tax purposes are the witness statements of Mr Rand and Mr Broshko*."[610] This is inappropriate—Serbia states—because "*both Mr Rand and Mr Broshko are directly interested in the outcome of the present proceedings*" and thus "*their statements about the purpose of the restructuring are not reliable and should be disregard*."[611]

504. In support of this *novel* argument, Serbia invokes one unrelated decision of the ICJ in *Nicaragua* case and Latin legal maxim: *Testis nemo in sua causa esse potest* (No one can be a witness in his own cause).[612] Neither helps Serbia's case.

505. To begin with, Serbia's reliance on the *Nicaragua* case is inapposite because it was based on substantially different facts. In the *Nicaragua* case, the ICJ was tasked to consider the veracity of evidence given by a member of the Government of the State involved in the case. The ICJ concluded that it would rely only on such parts "*of the evidence given by Ministers […] as may be regarded as contrary to the interests or contentions of the State to which the witness owes allegiance, or as relating to matters not controverted.*"[613] However, the ICJ made this conclusion given "*the special circumstances of this case*", due to which the ICJ "*believe[d] this approach to be the more justified in view of the need to respect the equality of the parties in a case where one of them is no longer appearing*."[614] No similar circumstances exist in the present case.

506. As for the maxim *testis nemo in sua causa esse potest*, it is inapplicable in the field of international arbitration. Tellingly, Serbia does not offer a *single* international arbitral authority that would show the contrary. This is because it is perfectly common for parties and their representatives to act as witnesses in international arbitration.

507. The IBA Rules on the Taking of Evidence in International Arbitration specifically state that "***[a]ny person** may present evidence as a witness, **including a Party or a Party's***

---

610 Rejoinder, ¶ 536.

611 Rejoinder, ¶ 537.

612 Rejoinder, ¶ 537.

613 *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Judgment of 27 June 1986, ¶ 70, **RL-231**.

614 *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Judgment of 27 June 1986, ¶ 70, **RL-231**.

***officer, employee or other representative***."[615] This is only logical because often, parties or their officers, employees or representatives, possess unique information about matters highly relevant to the issues in dispute.

508. And indeed, investment tribunal routinely rely on evidence provided by the parties or their representatives. By way of example, Messrs. Ioan and Viorel Micula—claimants in the well-known *Micula v. Romania* arbitration—also testified as witnesses in their own case.[616] And even though Romania argued that claimants' testimony was unreliable, the tribunal squarely rejected such argument and considered their evidence like any other.[617]

509. In fact, investment tribunals often expect to be provided with evidence from the parties and their representatives.[618]

510. Serbia's proposition that the Tribunal should "*disregard*" the testimonies of Mr. Rand and Mr. Broshko is nonsensical and must be squarely rejected. Indeed, if Messrs. Rand or Broshko were not putting themselves forward as witnesses in this arbitration, Serbia would almost certainly be arguing that Claimants' claims should be rejected by the Tribunal due to the unwillingness of such involved persons to testify and be subject to cross examination.

511. Investment tribunals have repeatedly confirmed that all relevant circumstances must be taken into consideration when assessing whether a corporate restructuring satisfies the high threshold for finding of the abuse of process.[619] Such circumstances include,

---

615 IBA Rules, Art. 4(2), **CL-193**.

616 *Ioan Micula, Viorel Micula and others v. Romania,* ICSID Case No. ARB/05/20, FinAward, 11 December 2013, ¶ 80, **CL-060**.

617 *Ioan Micula, Viorel Micula and others v. Romania,* ICSID Case No. ARB/05/20, Final Award, 11 December 2013, ¶ 724, **CL-060**.

618 *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 265, **CL-075**.

619 *E.g. Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶ 185, **RL-121**; *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶¶ 135-144, **RL-043**; *Tidewater Inc., Tidewater Investment SRL, Tidewater Caribe, C.A., et al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 147, **RL-127**.

among other things, the timing of the actual investment claim brought after the restructuring.

512. Specifically, investment tribunals have confirmed that an abuse of process is more probable when an investment claim is brought shortly after the restructuring. On the other hand, if the actual claim is brought several years after the restructuring, it is an indication that the restructuring did not represent an abuse of process.[620] By way of example, the tribunal in *Levy de Levi v. Peru*, rejected Peru's arguments related to alleged abuse of process because the restructuring "*occurred in July 2005*" but "*it was not until five years later that the Claimant decided to resort to ICSID arbitration*".[621] Based on these facts, the *Levy* tribunal concluded that it was "*impossible to determine […] that the assignment of shares in 2005 was an attempt to 'manufacture' ICSID jurisdiction*."[622]

513. In the present case, Cypriot Claimants brought their claim *ten years after* the acquisition of Cypriot Obnova Shares, *i.e.* five years later than in *Levy de Levi v. Peru.* Furthermore, this arbitration was initiated *almost nine years after* the adoption of the 2013 DRP. If Cypriot Claimants had acquired ownership in Obnova for the sole purpose of bringing an investment dispute—as Serbia argues—they would not have waited for an additional nine years to bring the claim.

514. In its Rejoinder, Serbia again relies on the *Averley* tribunal for a proposition that "*the passage of time is not decisive*."[623] However, the *Averley* award is heavily redacted and, as a result, it is impossible to analyze how the Tribunal arrived at certain conclusions presented in the award. This is especially relevant given that the *Averley* tribunal itself expressly recognized the unusual nature of that case.[624] Without knowing the facts of

---

620 Reply, ¶ 692.

621 *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 154, **CL-124**.

622 *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 154, **CL-124**.

623 Rejoinder, ¶ 558.

624 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 444, **RL-007**.

the case, Serbia's reliance on the findings made in an "*unusual*" case is not convincing. Furthermore, even if the passage of time was not decisive, it would still be relevant.

515. Indeed, numerous investment tribunal considered the passage of time when deciding on the existence of the abuse of process.[625] For example, the *Phoenix* tribunal expressly stated that the "*timing of the investment is a first factor to be taken into account to establish whether or not the Claimant's engaged in an abusive attempt to get access to ICSID.*"[626]

* * *

516. In conclusion, actual evidence on the record confirms that Mr. Rand changed the ownership structure of his remaining Serbian companies in 2012 for tax purposes. Serbia's allegation that Mr. Rand changed the ownership structure of the Serbian companies to acquire treaty protection is, on the other hand, wrong, utterly unsupported and based on pure speculation.

### 3. Mr. Broshko acquired his investment through an arm's-length transaction on the Belgrade Stock Exchange—*not* through corporate restructuring

517. It is undisputed[627] that Mr. Broshko acquired his shares in Obnova through an arm's-length transactions on the Belgrade Stock Exchange.[628] This transaction was not part of any corporate restructuring, and it did not lead to acquisition of treaty protection for Mr. Broshko's investment that was not protected before. These facts make it clear that Mr. Broshko's acquisition of Obnova's shares does not—and cannot—represent an abuse of process.

518. Serbia's attempt to argue otherwise is based on a single—heavily redacted—decision issued in investment arbitration *Cascade Investments v. Turkey*. As Claimants showed

---

625 *E.g. Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶ 185, **RL-121**; *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶¶ 135-144, **RL-043**; *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, ¶ 154, **CL-124**.

626 *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 136, **RL-043**.

627 *E.g.* Counter-Memorial, ¶ 506.

628 Confirmation of MLI's purchase of Obnova's shares, 14 November 2017, **C-003**.

already in their Reply,[629] and as they further demonstrate in this submission, Serbia's reliance on this decision is entirely misplaced.

519. To begin with, the *Cascade* tribunal specifically confirmed that arm's length market transactions do not give rise to an abuse of process:

> Of course, in a true arm's-length sale of an existing investment for fair value, there generally will be no reason to suspect that the acquiror is not acquiring the investment for normal business purposes, with the intention of engaging on an ongoing basis in some real economic activity in the host State.[630]

520. This should be the end of Serbia's case. As explained above, it is undisputed that Mr. Broshko acquired his shares in Obnova on the Belgrade Stock Exchange. Serbia does not even suggest that this purchase would not represent "*a true arm's-length sale of an existing investment for fair value*."

521. Serbia relies on one isolated statement from the *Cascade* award, in which the tribunal noted that if circumstances of a transaction are unusual, "*it remains appropriate for a tribunal to consider the suspicious circumstances*."[631] However, the circumstances of the transaction assessed by the *Cascade* tribunal were entirely different from the circumstance of the present case.

522. As Claimants explained in their Reply, the *Cascade* tribunal was concerned that the transaction in that case was part of a broader scheme aimed at gaining international protection for certain assets owned by the so called "*Gülen movement*" in Turkey. Publicly available information appears to support this conclusion because according to various news articles, the *Cascade* dispute related to steps taken by the Turkish Government against the Gülen movement.[632]

523. Specifically, on 14 December 2014, the Turkish police arrested more than two dozen senior journalists and media executives allegedly connected to this movement. In

---

629 Reply, ¶¶ 698-708.

630 *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 354, **RL-123**.

631 *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 354, **RL-123**.

632 Reply, ¶¶ 703-704.

response to this crackdown, the Gülen movement started to transfer its Turkish assets to foreign companies—including the claimant in the Cascade case. Publicly available sources confirm that Cascade Investments NV "*may have been established by members of the Gülen movement, with assets from Gülenist businesses in Turkey having been transferred to the company*." These transfers allegedly took place in 2015, only few months after the December 2014 crackdown.[633]

524. It thus seems that the "*suspicious circumstances*" found by the *Cascade* tribunal referred to transfers of Gülen movement's assets in Turkey to related foreign entities amid threatening state intervention and for a fraction of their real value. This is entirely different from the present case where there are no "*suspicious circumstances*" that would suggest the existence of an abuse.

525. Mr. Broshko acquired his investment in Obnova because he believed that, despite the adoption of the 2013 DRP, Obnova represented an interesting investment opportunity. Specifically, he believed that Obnova would either resolve the issue with the 2013 DRP or, at least, would be provided with the compensation equal to the market value of Obnova's premises.[634]

526. Serbia's argument that the "*fact that Mr Broshko acted on behalf of, or in concert with, Mr Rand shows that Mr Broshko's investment was 'simply a rearrangement of assets within a family'*" is borderline absurd.[635] Mr. Broshko did not act "*on behalf of, or in concert with, Mr. Rand*". His purchase of Obnova's shares was not a "*rearrangement of assets.*"

527. Serbia's next speculation is even more divorced from reality. Specifically, Serbia claims that "*the motive for Mr Broshko's investment was to gain (additional) investment treaty protection under the Canada-Serbia BIT for Mr Rand's purported beneficial ownership, without Mr Rand having to prove his beneficial ownership and its eligibility*

633 Reply, ¶ 705.

634 Broshko First WS, ¶ 42.

635 Rejoinder, ¶ 569.

*for treaty protection, or to even appear as the investor*."[636] This assertion simply does not make sense.

528. To begin with, Mr. Broshko's acquisition of 10% shareholding in Obnova did not—and could not—create any additional protection for the 70% shareholding held by Kalemegdan and Coropi since 2012.

529. Furthermore, if Mr. Rand wanted to acquire additional shares in Obnova, he could easily do so himself or, in alternative, through any holding company in Serbia.[637] By so doing, Mr. Rand would have acquired an additional 10% shareholding that would have been protected under the Canada-Serbia BIT.

530. Finally, as explained above, investment tribunals confirmed that one of the relevant circumstances, which should be taken into consideration when assessing whether the high threshold for finding of an abuse of process is satisfied, is the passage of time between the acquisition of interest and the commencement of the dispute. Mr. Broshko brought his claim more than four years after he acquired his investment. If Mr. Broshko had acquired his investment only so that he could bring an investment claim, he would have had no reason to wait for four years to do so.

* * *

531. The above clearly shows that neither Cypriot Claimants nor Mr. Broshko acquired their investment with the aim to obtain treaty protection. Furthermore, even if the Tribunal concluded otherwise (*quod non*), the acquisition of the treaty protection clearly was not determinative, much less the sole purpose for which Claimants acquired their investment. For this reason alone, neither Cypriot Claimants nor Mr. Broshko bring their claims in an abuse of process.

---

636 Rejoinder, ¶ 571.

637 Rand Second WS, ¶ 44.

## C. No dispute was foreseeable at the time when Claimants acquired their investment

### 1. An abuse of process may occur only if a specific dispute is foreseeable with "*a very high probability*" at the time of investment

532. A corporate restructuring may lead to an abuse of process only if it was done at a time when a *specific future dispute* was foreseeable with *a very high probability*. A mere "*possibility*" that the dispute will arise is not enough. This conclusion was expressly confirmed by the tribunal in *Pac Rim v. El Salvador*:

> In the Tribunal's view, *the dividing-line occurs when the relevant party can see an actual dispute or can foresee a specific future dispute as a very high probability and not merely as a possible controversy*. In the Tribunal's view, before that dividing-line is reached, there will be ordinarily no abuse of process; but after that dividing-line is passed, there ordinarily will be. The answer in each case will, however, depend upon its particular facts and circumstances.[638]

533. The tribunal in *MNSS v Montenegro* similarly found that for an abuse of process to occur, an investor must see "*an actual dispute or can foresee a specific future dispute as a very high probability and not merely as a possible controversy*":

> As held by other tribunals, to structure an investment with the aim to seek protection of a BIT is not per se in breach of the good faith expected of an investor. Tribunals have found that an investor would not qualify for the protection of the BIT concerned only if the nationality is changed after the dispute has arisen or "*when the relevant party can see an actual dispute or can foresee a specific future dispute as a very high probability and not merely as a possible controversy*.[639]

534. Serbia disagrees and claims that it is sufficient to find that there is "*a reasonable prospect*" that the State would adopt "*some adverse state measure against the investment, which might give rise to a treaty claim*."[640] Serbia's position is untenable.

---

638 *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, ¶ 2.99 (emphasis added), **RL-046**.

639 *MNSS B.V. and Recupero Credito Acciaio N.V. v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, ¶ 182 (emphasis added), **CL-123**.

640 Rejoinder, ¶ 531.

535. To support its position that it is sufficient if there is "*a reasonable prospect*" of future dispute, Serbia relies on the findings of tribunals in *Philip Morris v. Australia* and *Alverley v. Romania*.[641] Serbia's reliance on these two cases is misplaced.

536. The *Alverley* award is heavily redacted and, as a result, it is impossible to analyze how the Tribunal arrived at certain conclusions presented in the award. This is especially important given that the *Alverley* tribunal itself recognized the unusual nature of that case.[642] It is impossible to rely on the *Alverley* award without knowing the factual background of that case and the unusual circumstances that motivated that tribunal's decision.

537. The *Philip Morris v. Australia* case is easily distinguishable on its facts. As Claimants explained in their Reply, this case related to Australia's adoption of the Tobacco Plain Packaging Act, a tobacco control legislation that removed brands from cigarette packs. During the legislative process that ultimately led to the adoption of the Act, the Philip Morris group restructured to make a company registered in Hong Kong the parent company of the group's Australian subsidiaries.[643] The fact that the adoption of the Tobacco Plain Packaging Act would interfere with Philip Morris' business and lead to a dispute was obvious at the moment when the Australian government announced its intention to pass such legislation.[644]

538. This is nowhere near the present case. When Cypriot Claimants acquired their investment, there was no expectation, and clearly no certainty that the bus loop would be placed at Obnova's premises. Similarly, it was not foreseeable that Serbia would reject Obnova's Request for Compensation. The latter was unforeseeable also in 2017, when Mr. Broshko acquired his investment.

539. Tellingly, most recent investment awards do not follow the conclusions reached by the tribunals in *Alverley* and *Philip Morris*. For example, the tribunal in *BRIF v. Serbia* in

---

641 Rejoinder, ¶¶ 527-528.

642 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 444, **RL-007**.

643 Reply, ¶ 658.

644 *Philip Morris Asia Limited v. The Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015, ¶¶ 556-557, 566, **RL-122**.

its recent award, rendered in January 2023—*i.e.* after both *Philip Morris v. Australia* and *Alverley v. Romania*, concluded that "*the level of foreseeability is 'when the relevant party can see an actual dispute or can foresee a specific future dispute as a very high probability and not merely as a possible controversy.'*"[645] The *BRIF* tribunal therefore endorsed the findings of *Pac Rim v. El Salvador* tribunal cited by Claimants.[646]

540. The same holds true for *Gramercy v. Peru*—also post-dating both *Philip Morris v. Australia* and *Alverley v. Romania*. In *Gramercy*, the tribunal confirmed that an abuse can occur only if an investor was, at the relevant time, "*aware that the asset is burdened by an existing dispute with the host State*" or could "*foresee a specific future dispute – with 'very high probability and merely as a possible controversy'*":

> The case law indicates that the dividing line between a legitimate investment (or a legitimate restructuring of an existing investment) and abuse occurs when the investor, at the relevant time,
>
> - is aware that the asset is burdened by an existing dispute with the host State,
>
> - or can foresee a specific future dispute – with "very high probability and not merely as a possible controversy" as the Pac Rim tribunal correctly said.[647]

541. Finally, while Serbia suggests that it is sufficient if there is "*a reasonable prospect*" of a future dispute, Serbia does not even attempt to explain what this means and why this condition is supposedly satisfied in the present case. According to the *Philip Morris v. Australia* tribunal, "*a reasonable prospect*" requires more than a mere possibility.[648] Moreover, legal dictionaries explain that "*a reasonable prospect*" requires that "*there is a 51% or greater chance*"[649] that something—here "*some adverse state measure against*

---

645 *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, 30 January 2023, ¶ 207, **CL-177**.

646 *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, 30 January 2023, ¶ 207, **CL-177**.

647 *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶ 360, **CL-178**.

648 *Philip Morris Asia Limited v. The Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015, ¶ 554, **RL-122**.

649 "Reasonable prospects", *Law Insider Dictionary*, https://www.lawinsider.com/dictionary/reasonable-prospects (last accessed on 26 July 2024), **C-728**.

*the investment, which might give rise to a treaty claim*"—would materialize. That is not the case here.

542. In support of its proposition that it is sufficient if "*some adverse state measure against the investment, which might give rise to a treaty claim*"[650] is foreseeable—rather than a specific dispute—Serbia relies solely on a single case—the *Cascade Investments v. Turkey*.[651] Specifically, Serbia relies on the part of the award in which the *Cascade* tribunal purported to rely on certain alleged findings of the tribunal in *Philip Morris v. Australia*:

> [W]hat must be reasonably foreseeable is that the State will take some adverse action against the investment, on account of a disagreement or conflict of interests with the investor, which – when it transpires – will impact the investor's rights and therefore be "susceptible of being stated in terms of a concrete claim." This understanding is consistent with the Philip Morris tribunal's conclusion that "a dispute is foreseeable when there is a reasonable prospect … that a measure which may give rise to a treaty claim will materialise."[652]

543. There are several issues with Serbia's reliance on the *Cascade* award. To begin with, same as the *Alverley* award, the *Cascade* award is heavily redacted. It is therefore impossible to determine what circumstances the tribunal considered unusual in reaching its conclusions presented in the award.

544. In addition, while the *Cascade* award purports to rely on the findings of the *Philip Morris* tribunal, it in fact misrepresents those findings. The *Alverley* tribunal explained that: "*[t]here is a considerable difference between a case such as Philip Morris, in which* ***the dispute was clearly defined*** *by the nature of the announcement of pending legislation to require clear packaging of cigarettes with the attendant denial of the right to use a trademarked brand name, and a case such as the present, in which the dispute evolves over time*."[653] Thus, the *Alverley* tribunal confirms that a specific "*clearly defined*" dispute was foreseeable in the *Philip Morris* case.

---

650 Rejoinder, ¶ 531.

651 Rejoinder, ¶ 530.

652 *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 351, **RL-123**.

653 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 385 (emphasis added), **RL-007**.

545. Therefore, the controversial and highly redacted *Cascade Investments v. Turkey* award appears to be the only authority that supports Serbia's proposition that foreseeability shall be tied to "*some adverse state measure against the investment, which might give rise to a treaty claim*,"[654] rather than a specific dispute. Claimants respectfully submit that this is not a correct description of the standard of foreseeability. The actual standard of foreseeability requires that a *specific future dispute* is foreseeable with *a very high probability*.

* * *

546. The above confirms that in order for the abuse of process to exist, one must establish that an investor restructured an investment at the time when a specific dispute was foreseeable with a high probability. This condition is clearly not satisfied in the present case.

547. As Claimants demonstrate in **Section IV.C.2** below, *no* dispute was foreseeable at the time when Cypriot Claimants acquired their investment—much less a specific dispute that would be foreseeable with high level of probability.

548. Furthermore, as Claimants show in **Section IV.C.3** below, when Mr. Broshko made his investment in 2017, he could not foresee a dispute with Serbia either. This is because the dispute between Mr. Broshko and Serbia relates solely to the rejection of Obnova's Request for Compensation in August 2021—*i.e.* almost four years *after* Mr. Broshko acquired his investment. It is clear that this dispute could not have been foreseeable when Mr. Broshko made his investment in 2017—much less with the high probability.

### 2. The present dispute was not foreseeable in April 2012, when Cypriot Claimants acquired their investment

549. Cypriot Claimants' claims relate to two measures adopted by Serbia in 2013 and 2021, namely: (*i*) the adoption of the 2013 DRP on 20 December 2013; and (*ii*) the refusal of Obnova's Request for Compensation on 13 August 2021. These measures were adopted *years after* Cypriot Claimants acquired their investment in 2012.[655]

---

654 Rejoinder, ¶ 531.

655 Reply, ¶ 676.

550. It is therefore clear that no dispute related to these two measures could have been foreseeable when Cypriot Claimants made their investment. In order to conclude otherwise, one would need to conclude that in April 2012, it was foreseeable—with high probability—that:

a. Serbia would adopt the 2013 DRP;

b. the 2013 DRP would place a bus loop on Obnova's premises;

c. Serbia's decision to place the bus loop on Obnova's premises would be adopted in such a way that breaches Claimants' rights under the Cyprus-Serbia BIT; and

d. Serbia would refuse to compensate Obnova for this measure.

551. Even Serbia itself does not argue that this was the case. Unable to show that the specific dispute before the Tribunal was foreseeable with high probability in 2012, Serbia attempts to lower the required threshold and argues that it is sufficient that some adverse state measure was foreseeable in 2012.[656] As amply demonstrated in the previous section, this is not the applicable test.

552. However, even if the Tribunal concluded that the test proposed by Serbia is correct (*quod non*), Serbia's case would still fail. This is because Serbia failed to show that there was a "*reasonable prospect*", whatever it may mean, that "*some adverse state measure against the investment, which might give rise to a treaty claim*" would be adopted by Serbia.

553. Specifically, Serbia argues that this test was fulfilled based on "*a series of facts*" that, according to Serbia "*by themselves, and taken together, pointed to an emerging dispute with Serbia concerning Obnova's alleged property rights over the Dunavska Land and Objects.*"[657] As Claimants demonstrate below, this is not the case. None of the facts relied upon by Serbia suggests that there was a "*reasonable prospect*" that "*some adverse state measure against the investment, which might give rise to a treaty claim*" would be adopted by Serbia.

---

656 Rejoinder, ¶ 532.

657 Rejoinder, ¶ 546.

### i. No dispute was foreseeable based on the 2003 Registration

554. The first fact relied upon by Serbia is the 2003 Registration. According to Serbia, the fact that "*[i]n March 2003, Obnova unsuccessfully sought to be inscribed in the Cadastre Books as the holder of the right of use over the Objects*"[658] allegedly "*pointed to an emerging dispute with Serbia concerning Obnova's alleged property rights over the Dunavska Land and Objects.*"[659] Serbia is wrong. No dispute could be foreseeable based on the 2003 Registration because the 2003 Registration did not impact Obnova's rights—either *de jure* or *de facto.*

555. The 2003 Registration did not impact Obnova's rights *de jure* because, as confirmed by Claimants' legal experts, Messrs. Živković and Milošević, the 2003 Registration did not affect Obnova's rights:

> As noted above, it is undisputed that the City of Belgrade is registered as the owner of certain buildings at Dunavska 17-19. However, this does not mean that Obnova's rights to these buildings were somehow affected. Despite the incorrect registration of the City, Obnova remains the owner of the buildings. Indeed, as we explained both in the First Report and above, Serbia recognizes and protects unregistered ownership.
>
> […]
>
> Obnova acquired the right to conversion *ex lege* upon the adoption of the 2009 Law on Construction and Planning. Registration of the right of use in the Cadastre was only a procedural step in the conversion process—it did not represent a condition for acquiring the conversion right as a matter of substantive law.
>
> As a result, the fact that Obnova's right of use was not registered in the Cadastre did not preclude the existence of Obnova's right to convert its right of use into ownership.[660]

556. Indeed, Serbia itself now argues that the Cadaster is allegedly "*not a competent authority to determine the legal status of objects.*"[661] In addition, the Cadaster itself recognizes that a registration in the Cadaster is "*a strictly technical process, not a legal*

---

658 Rejoinder, ¶ 546.

659 Rejoinder, ¶ 546.

660 Živković Milošević Second ER, ¶¶ 93, 148-149.

661 Rejoinder, ¶ 96.

*one*"[662] If that is the case, then the 2003 Registration—done by the Cadaster—does not represent any determination of Obnova's rights and, thus, cannot have any effect on Obnova's rights.

557. The 2003 Registration also did not affect Obnova *de facto.* After the 2003 Registration, Obnova continued to use its premises at Dunavska 17-19 and 23 without any objections from either Serbia or the City. Neither Serbia nor the City requested any rent payments from Obnova, or tried to evict Obnova from its premises at any point before 2012. Therefore, Obnova had every reason to believe that the 2003 Registration stemmed from simple administrative error due to the huge volume of information that the Cadaster had to register *de novo* in 2003.

558. In its Rejoinder, Serbia does not even attempt to argue otherwise. Rather, Serbia merely states that "*Claimants try to underplay the accuracy and importance of the Cadastre inscriptions, but no reasonable owner would sit tight if someone else were inscribed as the owner on their property*."[663] Therefore—Serbia argues—"*a reasonable investor, let alone a sophisticated one, would have had concerns and would have reacted*."[664]

559. This argument is irrelevant. What is relevant is whether any dispute was foreseeable or not.

560. Furthermore, Cypriot Claimants acquired Obnova only in 2012, *i.e.* nine years after the 2003 Registration. Even though nine years had passed since the 2003 Registration, the 2003 Registration did *not* impact Obnova in any way. There was absolutely no reason to believe that after these nine years, the 2003 Registration would suddenly start to impact Obnova.

561. As a result, the 2003 Registration clearly does not confirm that the specific dispute that is before the Tribunal was foreseeable—especially with high probability—in 2012, when Cypriot Claimants acquired the Cypriot Obnova Shares. The 2003 Registration

662 Notification on the Cadaster website, 1 July 2024, **C-688**.

663 Rejoinder, ¶ 548.

664 Rejoinder, ¶ 548.

did not affect Obnova's rights and there was no reason to believe that it would lead to any dispute—much less a dispute that is currently before the Tribunal.

562. Indeed, as Claimants already showed in **Sections II.B.3.c.ii** and **II.B.3.c.iii** above, the 2003 Registration is unrelated to the disputed measures in the present case, *i.e.* the adoption of the 2013 DRP and rejection of Obnova's Request for Compensation.

563. The 2003 Registration also does not satisfy the foreseeability test proposed by Serbia. The 2003 Registration did not create any "*reasonable prospect*" that Serbia would adopt "*some adverse state measure against the investment, which might give rise to a treaty claim.*"[665] As explained above, the 2003 Registration is unrelated to the measures disputed in the present case.

564. At the same time, Serbia does not explain what other "*adverse state measure against the investment, which might give rise to a treaty claim*" could be adopted based on the 2003 Registration—much less shows that there was a "*reasonable prospect*" that such a measure would be adopted.

#### ii. No dispute was foreseeable based on Obnova's privatization program

565. Serbia also argues that a dispute was foreseeable because "*Obnova's Privatisation Program from July 2003 expressly stated that Obnova had no land in its ownership nor the right of use over any construction land.*"[666] This argument is, once again, without merit.

566. To begin with, it is undisputed that Obnova did not own the land at Dunavska 17-19 and 23 at the time of its privatization—simply because the construction land in Serbia could not be privately owned at that time.[667] Thus, to the extent that the privatization program confirmed that Obnova did not own any construction land, such confirmation clearly could not herald any potential dispute or an adverse state measure.

---

665 Rejoinder, ¶ 531.

666 Counter-Memorial, ¶ 494.

667 Reply, ¶ 251.

567. Moreover, the fact that the privatization program lacked information about Obnova's right of use again did not have any *de jure* or *de facto* consequences for Obnova. Indeed, Serbia itself argues that the "*Privatisation Program is not valid evidence of ownership rights*"[668] or "*the permanent right of use*."[669] Thus, accepting Serbia's own argument, no reasonable investor would foresee a future dispute or adverse State measure just because Obnova's ownership right and right of use were not registered in a document that has no relevance for their existence.

568. The fact that the privatization program lacked information about Obnova's right of use also did not have any *de facto* consequences for Obnova. Obnova has been using its premises at Dunavska 17-19 and 23 without any objections from either Serbia or the City. In addition, neither Serbia nor the City has ever requested any rent payments from Obnova, or tried to evict Obnova from its premises. Again, no reasonable investor would foresee a future dispute or an adverse State measure in a situation when its rights to use certain premises are not affected in any way.

569. Thus, same as with respect to the 2003 Registration, no dispute was foreseeable based on the contents of the privatization program—much less a specific dispute related to the adoption of the 2013 DRP and/or rejection of the Request for Compensation.

570. Furthermore, the text of the privatization program also did not give rise to any "*reasonable prospect*" that some "*adverse state measure against the investment, which might give rise to a treaty claim*" would be adopted. The privatization program is unrelated to the disputed measures in the present case, *i.e.* the adoption of the 2013 DRP and the rejection of Obnova's Request for Compensation.

571. At the same time, again same as with respect to the 2003 Registration, Serbia does not explain what other "*adverse measure*" could be adopted based on the privatization program nor why there was a "*reasonable prospect*" that any such measure would be adopted.

---

668 Rejoinder, ¶ 183; Decision of the Appellate Court in Belgrade, No. Gz 15525/2010, 19 July 2012, **R-045**.

669 Rejoinder, ¶ 184.

### iii. No dispute was foreseeable based on Serbia's failure to respond to Obnova's requests for legalization

572. Serbia also argues that a dispute was foreseeable because Obnova's legalization request from 2003 was allegedly denied.[670] This argument is both factually incorrect and irrelevant.

573. This argument is factually incorrect because Serbia did not reject Obnova's request. Obnova did not receive *any* decision on its legalization request from 2003 (and Serbia did not submit any such decision in this arbitration). It is therefore difficult to see how a dispute was to be foreseeable, let alone with "*a very high probability*."[671] It is likewise difficult to see how this fact could create "*a reasonable prospect*" that Serbia would adopt "*some adverse state measure against the investment, which might give rise to a treaty claim*."[672]

574. In any event, even if Serbia rejected Obnova's request for legalization (*quod non*), that would not make it foreseeable, let alone with a high level of probability, that Serbia would adopt the 2013 DRP and refuse to compensate Obnova in breach of its obligations under the Cyprus-Serbia BIT.

575. Serbia also cannot seriously argue that the rejection of the legalization request created "*a reasonable prospect*" that Serbia would adopt "*some adverse state measure against the investment, which might give rise to a treaty claim*."[673] Same as with respect to the other facts invoked by Serbia, Serbia fails to explain what potential adverse measure giving rise to a treaty claim could be adopted based on the rejected legalization request, much less why there was a "*reasonable prospect*" that any such measure would be adopted.

576. Serbia's arguments that "*Obnova could not have succeeded with any of its requests for legalization because it did not supply any evidence of its ownership over the Objects, as required*" or that "*Obnova did not even initiate court proceedings to establish its alleged*

---

670 Rejoinder, ¶ 546.

671 Reply, ¶ 684.

672 Rejoinder, ¶ 531.

673 Rejoinder, ¶ 531.

*ownership before it submitted its new request for legalization in 2010*"[674] are red herrings. Neither of these issues is relevant for whether a dispute was foreseeable or not.

577. For the sake of completeness, Serbia's argument is also factually wrong. As Claimants demonstrated in their Reply, Obnova satisfied the conditions for legalization of its buildings.[675]

#### iv. No dispute was foreseeable based on the adoption of the decision on drafting of a detailed regulation plan for the broader Dorćol area on 6 March 2006

578. Serbia further argues that a dispute was foreseeable because on 6 March 2006, the City adopted the 2006 Decision on the drafting of a detailed regulation plan for the area where the Dunavska Plots were located.[676] Serbia is, once again, wrong.

579. The adoption of the 2006 Decision did not indicate any potential dispute. The decision merely stated that a new regulation plan would be adopted. However, it did not provide any details about the contents of the plan and its impact on Obnova's premises.[677]

580. Thus, the 2006 Decision cannot in any way indicate a specific future dispute or "*a reasonable prospect*" of "*some adverse state measure against the investment, which might give rise to a treaty claim*."[678]

#### v. No dispute was foreseeable based on rumors about the location of the bus loop

581. Serbia's final argument is that a dispute was foreseeable because after Obnova "*learned that the City of Belgrade envisaged a public transportation loop on its premises at Dunavska 17-19, Obnova wrote to the City of Belgrade on 27 March 2008, asking for 'relocat[ion of] the tram turnaround and to adapt the land to the development land* in

674 Rejoinder, ¶ 550.

675 Reply, ¶ 351.

676 Rejoinder, ¶ 546.

677 Memorial, ¶¶ 76-79; Reply, ¶ 265.

678 Rejoinder, ¶ 531.

*order for the business facilities to be built.*"[679] Same as Serbia's other arguments addressed above, this arguments is without merit.

582. It is true that in 2008, Obnova heard rumors that the City might be planning to put a bus loop on Obnova's premises. After hearing these rumors, Obnova reached out to the City.[680] In its letter, Obnova stressed its rights to premises at Dunavska 17-19 and 23 and asked the City to "*relocate the tram turnaround and to adapt the land to the development land in order for the business facilities to be built*."[681]

583. The City (specifically its Secretariat for Urban Planning and Construction) confirmed that Obnova's premises were "*located in areas intended for commercial activities and urban centers*"[682] and instructed the Urban Planning Institute, which was bound by the City's instructions, to consider this fact, as well as Obnova's letter, when preparing the 2013 DRP.[683]

584. Since the Urban Planning Institute was bound by the City's instructions to consider Obnova's rights,[684] no reasonable investor would objectively foresee that the City would subsequently disregard those very rights when it adopted the 2013 DRP. The 2008 exchange between the City and Obnova thus was the exact opposite of an indication of a future dispute. It confirmed to Obnova that its rights would be respected.[685]

585. In its Rejoinder, Serbia argues that Claimants' interpretation of this event is "*at odds with contemporaneous documents.*"[686] According to Serbia, this is because the City's instruction to the Urban Planning Institute was allegedly "*not an instruction*" and the City "*simply forwarded Obnova's 'initiative' to the Urban Planning Institute and asked*

---

679 Rejoinder, ¶ 546.

680 Letter from Obnova to City of Belgrade, 27 March 2008, **C-314**.

681 Letter from Obnova to City of Belgrade, 27 March 2008, **C-314**.

682 Letter from City of Belgrade to Secretariat for Urban Planning and Construction, 23 April 2008, **C-315**.

683 Memorial, ¶ 79; Reply, ¶ 687.

684 Reply, ¶ 688.

685 Reply, ¶ 688.

686 Rejoinder, ¶ 551.

*the latter to consider its merits*" without "*tak[ing] any position concerning Obnova's property rights*."[687]

586. The text of the City's letter clearly states that "*attached with the letter, we submit the subject initiative* ***for the purpose of evidencing and considering its justifiability in the course of forming a solution within the aforementioned Draft of the plan***."[688] The City therefore clearly told the Urban Planning Institute that Obnova's letter should be considered when working on the 2013 DRP.

587. If the City disagreed with Obnova's letter—for example because it believed that it itself had the right of use over the land in question—it surely would not have forwarded Obnova's letter to the Institute but, instead, would have informed Obnova that its request had no merit. The City, however, did not do that. Neither did the City object to Obnova's use of its (*i.e*. Obnova's) premises in any other way.

588. Serbia's assertion that the 2008 letter from the City "*does not in any way indicate the City's position on the question of ownership over the land*" fails for the same reason.[689] If the City had believed that Obnova did not have rights to the land at Dunavska 17-19 and 23, it would have said so in response to Obnova's letter. It would not have forwarded the letter to the Institute and asked the Institute to act on it.

589. Serbia's argument that the City did not "*instruct*", but only "*asked*" the Urban Planning Institute to take Obnova's letter into consideration is a distinction without difference. As Claimants explained in their Reply, the City confirmed that Obnova's premises were "*located in areas intended for commercial activities and urban centers*" and asked the Secretariat for Urban Planning and Construction to consider this fact, as well as Obnova's letter, when preparing the detailed regulation plan.[690] Since the Urban Planning Institute was obliged to follow directions from the City with respect to the

---

687 Rejoinder, ¶ 553.

688 Letter from City of Belgrade to Secretariat for Urban Planning and Construction (emphasis added), 23 April 2008, **C-315**.

689 Rejoinder, ¶ 355.

690 Reply, ¶¶ 271, 451, 687.

preparation of the 2013 DRP, it is strictly irrelevant whether the City "*asked*" or "*instructed*" the Institute to do something.

590. Finally, Serbia notes that Obnova "*remained completely passive and expressed no interest whatsoever in what happened with its 'Initiative'*" because it "*did not even participate in the public inspection of the draft DRP*."[691] To begin with, even if Serbia was correct, this fact would have no relevance for an assessment of whether or not a dispute was foreseeable on the basis of the rumors about the location of the bus loop at Obnova's premises. In fact, Obnova's alleged passivity would, if anything, indicate that Obnova did not foresee any dispute and, thus, did not feel a need to do anything.

591. And indeed, Serbia does not explain what it was that Obnova should have allegedly done. Obnova heard a rumor, Obnova addressed the City with respect to this rumor and the City assured Obnova that its rights would be taken into consideration. Given that there was no further indication of any activities being taken with respect to the construction of the bus loop, there was nothing else to be done by Obnova.

592. Finally, Serbia's assertion that Obnova "*did not even participate in the public inspection of the draft DRP*" is also irrelevant as it in no way relates to the question whether any dispute was foreseeable in April 2012, when Cypriot Claimants acquired the Cypriot Obnova Shares. Indeed, the public inspection only took place between September and October 2012—*i.e.* several months *after* the Cypriot Claimants acquired their investment.[692]

593. Furthermore, as Claimants demonstrated in the Reply, the beginning of the public inspection period was announced only in two tabloid journals and the draft was only made available in hard copy at a Government building. As a result, almost no one actually learned about the public inspection process and the draft of the 2013 DRP.[693]

594. Given the above, it is once again clear that no specific dispute was foreseeable based on the 2008 rumors—much less with a high probability. In addition, there was also no

691 Rejoinder, ¶ 554.

692 Reply, ¶ 319.

693 Reply, ¶ 320.

"*reasonable prospect*" that Serbia would adopt "*some adverse state measure against the investment, which might give rise to a treaty claim*."[694]

595. On the contrary, as explained above, the City assured Obnova that its right would be taken into consideration. Thus, even if Obnova could expect adoption of the 2013 DRP in 2008 (*quod non*), it would have expected that the 2013 DRP would not infringe upon Obnova's rights—and thus, there was no basis for expecting that the 2013 DRP would "*give rise to a treaty claim*."

#### vi. No dispute could be foreseeable even if the individual issues invoked by Serbia would be "*taken together*"

596. As explained above, *no* dispute could be foreseeable based on *any* of the individual issues invoked by Serbia. For the avoidance of doubt, no dispute would be foreseeable at the time of Cypriot Claimants' investment even if all these issues were "*taken together*"—as Serbia incorrectly suggests in its Rejoinder.[695]

597. While Serbia claims that when "*taken together*" the above-facts "*pointed to an emerging dispute with Serbia*", it does not provide any explanation for why that would be the case. Indeed, it would not. The fact that *none* of the above facts made any dispute foreseeable does not change by simply viewing these facts together.

* * *

598. The above makes it clear that Serbia's case on foreseeability of the present dispute at the time of Cypriot Claimants' investment lacks any merit. None of the events relied upon by Serbia could—either in isolation or together—indicate that any adverse measure, much less the specific dispute before the Tribunal, was foreseeable at the time of Cypriot Claimants' investment.

694 Rejoinder, ¶ 551.

695 Rejoinder, ¶ 546.

### 3. The dispute before the Tribunal was not foreseeable in November 2017, when Mr. Broshko made his investment—much less with a high probability

599. Mr. Broshko's claim is based solely on Serbia's rejection of Obnova's Request for Compensation—which took place five years *after* Mr. Broshko's investment. This rejection was not foreseeable at the time of Mr. Broshko's investment. On the contrary, Mr. Broshko expected Obnova would either resolve the issue with the 2013 DRP or, if not, that Obnova would be properly compensated, as required under Serbian law.[696]

600. In its Rejoinder, Serbia notes that "*[a]ll this, of course, is completely unconvincing*" because "*Mr Broshko was intimately familiar with disagreements over property rights, as well as about legal proceedings, between Obnova and Respondent's authorities concerning Dunavska Plots and Objects*."[697] At the same time, Serbia repeats that "*it is sufficient that some adverse state measure against the investment, which might give rise to a treaty claim, is reasonably foreseeable by the investor*."[698]

601. Claimants already explained that Serbia's formulation of the foreseeability requirement is unsupported by case law of investment tribunals. However, even if this was not the case, Serbia's argument would still fail. This is because Mr. Broshko's claim is based solely on Serbia's rejection of Obnova's Request for Compensation—which took place five years after Mr. Broshko's investment. Thus, even if Mr. Broshko was aware of the incorrect 2003 Registration, adoption of the 2013 DRP, or rejection and pendency of Obnova's legalization requests,[699] none of these facts indicated that Serbia would reject Obnova's Request for Compensation. On the contrary, Mr. Broshko expected Obnova would either resolve the issue with the 2013 DRP or, if not, that Obnova would be properly compensated, as required under Serbian law.[700]

602. The same holds true for Serbia's proposition that "*Mr Broshko was aware that Obnova might not receive compensation if its property claims concerning the Dunavska Plots and Objects failed, primarily because Obnova's property claims at that point in time*

---

696 Broshko First WS, ¶ 42.

697 Rejoinder, ¶ 575.

698 Rejoinder, ¶ 576.

699 Counter-Memorial, ¶¶ 509-513.

700 Reply, ¶ 718.

*depended on administrative (legalization) and court (determination of property rights) proceedings where a losing party does not receive any compensation*."[701]

603. Serbia's argument, however, does not hold water because as already explained by Claimants, the Land Directorate could have addressed the ownership as a preliminary question and reached a decision on this specific point. The registration in the Cadaster is not determinative to establish ownership (or any other rights and facts registered in the Cadaster). The pending proceedings, therefore, did not represent an obstacle for providing compensation to Obnova.[702]

604. Finally, same as with respect to Cypriot Claimants' claim, one of the issues that should be taken into consideration when assessing potential abuse of process is the timing of the investment claim. Mr. Broshko initiated his ICSID arbitration *five years after* his acquisition (through MLI) of the Canadian Obnova Shares, *i.e.* the same time period as in *Levy de Levi v. Peru*, where the tribunal found no abuse of process.

605. In response, Serbia repeats its argument that in *Alverley*, "*the passage of five years between the investment and initiation of arbitration – similar to the case of Mr Broshko – was not considered an obstacle to finding an abuse of process*."[703] As explained above, Serbia's reliance on *Alverley* is unconvincing because the award is heavily redacted and, as a result, it is impossible to analyze how the Tribunal arrived to certain conclusions presented in the award. This is all the more true as the *Alverley* tribunal itself expressly recognized the unusual nature of that case, stating: "*[t]he present case is unusual in that it does not concern a single act of taking (as with the legislation in Philip Morris) but a drawn-out series of steps involving the courts and the prosecutors*."[704] Without knowing the facts of the case, Serbia cannot seriously argue that *Alverley* is "*similar to the case of Mr Broshko*."

---

701 Rejoinder, ¶ 576.

702 Memorial, ¶ 147.

703 Rejoinder, ¶ 572.

704 *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Excerpts of Award, 16 March 2022, ¶ 444, **RL-007**.

606. Serbia's argument that "*as in Alverley, investment of Mr Broshko was preceded by a number of legal and court proceedings concerning the property in question, thus '[a]dvance planning therefore made every sense*'" is equally misplaced.[705]

607. Unlike in *Alverley*, there was no "*advance planning*" in Mr. Broshko's acquisition. Advance planning in the context of restructuring means that investor restructures its existing investment in a way to prepare for a potential dispute. But here, before his arm's-length acquisition of Obnova's shares, Mr. Broshko had no existing investment. Therefore, there can be no discussion of "*advance planning*" in the present case. This is, therefore, yet another instance where Serbia merely quotes isolated statements from investment awards that are factually absolutely unrelated to the present case.

705 Rejoinder, ¶ 573.

## V. REQUEST FOR RELIEF

608. Claimants request that the Tribunal issues an award:

a. upholding the Tribunal's jurisdiction over Claimants' claims;

b. declaring that Serbia has breached the Cyprus-Serbia BIT with respect to Kalemegdan and Coropi;

c. declaring that Serbia has breached the Canada-Serbia BIT with respect to Mr. Broshko and MLI;

d. ordering Serbia to pay compensation to Claimants in the amount to be determined in next part of these proceedings;

e. ordering Serbia to pay the costs of these proceedings, including costs of legal representation; and

f. ordering such other relief as the Tribunal may deem appropriate in the circumstances.

609. Claimants reserve the right to supplement or otherwise amend their claims and the relief sought.

Submitted on behalf of Kalemegdan, Coropi and Mr. Broshko

[signed]

Rostislav Pekař
Stephen Anway
Luka Misetic
Matej Pustay
SQUIRE PATTON BOGGS

Nenad Stanković
STANKOVIC & PARTNERS