

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ACP Axos Capital GmbH

v.

Republic of Kosovo

(ICSID Case No. ARB/15/22)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Mr. Philippe Pinsolle, President of the Tribunal

Dr. Michael Feit, Arbitrator

Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal

Ms. Celeste Mowatt

6 March 2017

Introduction

On 23 February 2017, the Parties sent to the Arbitral Tribunal the exchange of responses to objections to any document(s) requested in the document production phase in the form of a Redfern Schedule in accordance with the procedural schedule set forth in Procedural Order No. 1, dated 10 February 2016, as amended by the agreement of the Parties on 18 August 2016 and 10 February 2017.

The following order is based on the Redfern Schedules provided by both parties on 23 February 2017.

It should be reminded also that although the Tribunal is not bound by the IBA Rules on the Taking of Evidence in International Arbitration (“the IBA Rules”), these rules serve the purpose of guiding the Arbitral Tribunal in its decision.

Wherever a Party is ordered to produce documents, it has until 21 March 2017 to do so.

By this present Procedural Order No. 2, the Arbitral Tribunal hereby gives its decision on Claimant’s and Respondent’s Request for document production by completing the last column of the Redfern Schedule provided to it by the Parties, and directs as follows.

Privilege

Both Parties have objected to the production of certain documents based on the assertion of various privileges. The Tribunal makes the following decision regarding the privileges claimed by both parties. This decision is applicable to the specific requests and will be referred to in the decisions for each applicable request.

As a general principle, the Tribunal accepts the widely recognized principle that legal advice provided by external legal counsel is covered by privilege and does not need to be justified. Therefore, the documents falling within this description of the **legal privilege** are excluded from production.

However, the Parties have also asserted other types of privilege, as well as differing characterizations of legal privilege that do not fall within the above-stated definition. To the extent either Party wishes to rely on any privilege, other than the above-defined **legal privilege**, the source of the privilege must be specified and each category falling within that privilege must be identified.

The same applies when a Party relies upon an expectation of confidentiality that is not based on privilege but arises under a contract with a third-party or otherwise.

Documents containing partially privileged information or information partially confidential may be redacted with the claimed privilege or confidentiality clearly indicated. Documents withheld or redacted on grounds of privilege or confidentiality must be identified in a privilege log as seen in Appendix 3.

Every reference to privilege or confidentiality in the Tribunal's decisions to the specific requests exclude only those documents that comply with the above decision.

[signed]

Philippe Pinsolle
President of the Tribunal
Date: 6 March 2017

Appendix 1: Claimant's Document Requests
Appendix 2: Respondent's Document Requests
Appendix 3: Template Privilege Log