

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Burimi S.R.L. and Eagle Games S.H.A.**

Claimants

**v.**

**Republic of Albania**

Respondent

**ICSID Case No. ARB/11/18**

---

**Procedural Order No. 1 and Decision on Bifurcation**

---

Rendered by an Arbitral Tribunal composed of:

Mr. Daniel M. Price, President

Prof. Bernardo M. Cremades, Arbitrator

Prof. Ibrahim Fadlallah, Arbitrator

Secretary of the Tribunal:

Marco Tulio Montañés-Rumayor

Date: April 18, 2012

## **I.- PROCEDURAL HISTORY**

On December 5, 2011, the Tribunal invited the Parties to submit a joint statement advising the Tribunal of their agreement on the items of the first session agenda (Draft Agenda) and of their respective positions where they were unable to reach an agreement.

On December 20, 2011, the Claimants submitted a separate statement regarding the Draft Agenda. On December 23, 2011, the Respondent requested an extension to submit its statement. On December 30, 2011, the Tribunal granted the requested extension, but only until Friday, February 3, 2012.

The Tribunal did not receive the Parties' joint statement by the due date, i.e., February 3, 2012. Therefore, on February 7 and 9, 2012, the Tribunal renewed its request that the Parties should present a joint document addressing the first session agenda items without further delay.

The Parties submitted their comments to the Draft Agenda on February 10, 2012 (Respondent) and February 20, 2012 (Claimants).

On February 21, 2012, the Tribunal requested the Parties to confirm their agreement that the first session be held outside of the 60-day period prescribed in Arbitration Rule 13(1). On February 22, 2012, the Parties confirmed their agreement to extend the 60-day period by 60 additional days.

The Tribunal prepared a procedural order taking into consideration the comments made by the Parties. On February 23, 2012, the Tribunal submitted the procedural order to the Parties in draft form and invited them to comment on it.

On March 2, 2012, the Parties filed their comments on the draft procedural order. The Parties filed further comments on the draft order on March 7, 8, 19, and April 4, 2012.

On March 30, 2012, the Respondent filed its preliminary objections to jurisdiction and its request for bifurcation. On April 13, 2012, the Claimants filed their response to the request for bifurcation. The Tribunal notes that these pleadings were filed in accordance with the schedule set by the Tribunal through correspondence with the Parties.

On April 17, 2012, the Tribunal held its first session by telephone conference with the Parties, in accordance with Arbitration Rule 13. During that session, the Tribunal noted that the Parties, through their various prior comments, had reached agreement on most of the Draft Agenda items, leaving open for the Tribunal's decision only a few issues concerning time limits for pleadings and the question of bifurcation (item 13.2).

After consideration of the prior submissions of the Parties and deliberation among its Members, the Tribunal adopts and issues this Procedural Order which consolidates its rulings of March 6 and 12, 2012, records the areas of the Parties' agreement, and resolves the outstanding issues.

## **II.- PROCEDURAL ORDER**

### **1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)**

The Parties agree that the Tribunal was properly constituted on November 22, 2011.

The Parties acknowledge that the Members of the Tribunal have signed the declarations required under Arbitration Rule 6(2) and that copies of the declarations have been sent to the Parties by the Secretary by way of letter dated November 22, 2011.

### **2. Representation of the Parties (Arbitration Rule 18)**

The Claimants are represented by, and all notices and communications addressed to the Claimants in connection with this proceeding shall be sent, to the following, and such other person as may be designated by the Claimants:

Patrizia Di Nunno  
Attorney at Law  
Via Vittorio Venete, n. 108  
25128, Brescia  
Italy  
dinunnopatrizia@virgilio.it

The Respondent is represented by, and all notices and communications addressed to the Respondent in connection with this proceeding shall be sent, to the following and such other person as may be designated by Respondent:

c/o Ms. Ledina Mandia  
General State Advocate  
Ministry of Justice  
Tirana, Albania  
oltion.toro@avokaturashtetit.gov.al

Dr. Hamid Gharavi  
Derains & Gharavi  
25 Rue Balzac  
75008 Paris  
France  
Email: [hgharavi@derainsgharavi.com](mailto:hgharavi@derainsgharavi.com)

### **3. Applicable Arbitration Rules (Convention Article 44)**

The Parties agree that ICSID's Rules of Procedure for Arbitration Proceedings in force as of 10 April 2006 shall apply to this arbitration.

**4. Place of Proceedings (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))**

The Parties agree that the place of proceedings shall be Paris, without prejudice to the Tribunal holding sessions with the Parties at any other place with the Parties' agreement. The Tribunal may meet without the Parties at any place convenient to its Members.

**5. Procedural Language (Arbitration Rules 20(1)(b) and 22)**

5.1 The Parties agree that the language of the proceedings shall be English. Therefore, there is no need for the Claimants to file correspondence and pleadings in Italian.

5.2 Any document filed in a language other than English must be accompanied by a translation. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts, which must be precisely specified, are translated.

The Tribunal reiterates its request for professional quality translations. Translations need not be certified. Should a dispute arise about the accuracy of a translation, the parties shall seek first to resolve the matter between themselves, which may include obtaining certified translations. If such a dispute cannot be resolved, the matter shall be decided by the Tribunal.

5.3 If a witness or expert intends to give oral testimony in a language other than English, advance notice of at least four weeks shall be given to the ICSID Secretariat so that simultaneous interpretation into English can be provided. The costs of such interpretation shall form part of the costs of the proceedings.

If the Claimants or their counsel require interpretation from English into Italian or Italian into English during the hearings, the Claimants shall, in consultation with the Secretary, arrange at their expense for simultaneous, not consecutive, interpretation. The costs of such interpretation shall be borne by the Claimants.

**6. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28)**

The Parties agree that they should contribute to the costs of the proceeding in equal parts, in accordance with Convention Article 61, Administrative and Financial Regulation 14, and Arbitration Rule 28, without prejudice to the Tribunal's decision on the apportionment of costs.

**7. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)**

The Parties agree that the fees and expenses of the Tribunal shall be set in accordance with Article 60 of the Convention and Administrative and Financial Regulation 14 and are limited to what is provided in the Centre's prevailing fee schedule.

**8. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a))**

The Parties agree that a quorum for any meeting or session of the Tribunal shall require the three Members of the Tribunal.

**9. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2))**

The Parties agree that the Tribunal may take decisions, including on issues of procedure, by correspondence among its members or by any other appropriate means of communication, provided that all of its members are consulted.

**10. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1))**

The Parties agree that the Tribunal may delegate to the President of the Tribunal the power to fix time limits, if required.

**11. Means of Communication and Copies of Instruments (Arbitrations Rules 20(1)(d) and 23; Administrative and Financial Regulation 24 and 30)**

The Parties agree that all communications with the Members of the Tribunal, outside of hearings, shall be through the Centre. Correspondence shall be submitted to the Centre by email, with simultaneous copies to the other Party. The Secretary shall acknowledge receipt and forward such correspondence to the Tribunal as soon as possible.

Pleadings (i.e. written submissions other than correspondence) shall be filed by dispatching, on or before the date on which the filing is due, an original and four paper copies, as well as 4 CD-ROM, DVD-ROM, or USB flash drive copies, of the pleadings and all accompanying witness statements, expert reports, and exhibits for delivery to the Centre via an international express courier service.

In addition, the submitting Party shall on the date of filing submit by email to the Centre and to the other Party electronic copies of the pleadings and any accompanying witness statements or expert reports (but not accompanying exhibits). The electronic copy of the pleading shall be a searchable copy.

With respect to exhibits or other supporting documentation, a certified true copy may be filed with the Centre instead of an original. It is sufficient for the submitting Party to provide an umbrella certification with a pleading, certifying all copies of supporting documentation, to the best of its knowledge.

Each Party shall provide the other Party with one paper copy of the pleading and all accompanying witness statements, expert reports, and exhibits, as well as three CD-ROM, DVD-ROM, or USB flash drive copies of the same. These shall be sent to the addresses requested by the receiving Party.

**12. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29)**

The Parties agree that the proceedings shall, unless otherwise agreed, consist of a written phase followed by an oral hearing before the Tribunal.

**13. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31)**

13.1 The written phase shall consist of the pleadings filed in the sequence described below.

A Party's responsive written submissions should generally be limited to responding to or rebutting matters raised by the other Party's first written submission. The paragraphs of written submissions shall be numbered.

Supporting documentation shall be filed together with the instrument to which it relates, and in any case within the time limit fixed for the filing of such instrument. All exhibits shall be sequentially numbered, with each Party using a single numbering series beginning with C-1 or R-1, respectively.

The Parties are not required to submit copies of publicly-available investment treaty awards or decisions, International Court of Justice judgments, or other publicly-available international (i.e. non-domestic) legal authorities, so long as full citations to those authorities are included in the written submission, except that the submitting Party will furnish an electronic copy to the Tribunal or upon request of the other Party for a particular legal authority or authorities. The electronic copy will be provided by the submitting Party within two working days of the request.

13.2 Regarding the Respondent's request for bifurcation, the Tribunal believes that substantial questions on jurisdiction were raised, but that they are inextricably tied to issues of the merits (liability) and are best appreciated in that context.

Therefore, after deliberation among its Members, the Tribunal has decided to join the issue of jurisdiction to that of the merits (liability). However, given the significance of the jurisdictional questions, the Tribunal will defer consideration of damages until after it has reached a decision (or award) on jurisdiction and merits.

Accordingly, and taking into account the views of the Parties, the Tribunal modifies the sequence and timing of the proceedings as follows:

<b>Date</b>	<b>Party/Tribunal</b>	<b>Description</b>
4 June 2012	Claimants	Memorial on Jurisdiction and Merits (liability)
17 September 2012	Respondent	Counter-Memorial on Jurisdiction and Merits (liability)
22 October 2012	Claimants	Reply on Jurisdiction and Merits (liability)
26 November 2012	Respondent	Rejoinder on Jurisdiction and Merits (liability)
10 December 2012	Claimants and Respondent	Witness and Experts Notification
TBD	Presiding Arbitrator, Claimants and Respondent	Telephone conference regarding organization of Hearing
21-23 January 2013		Hearing in Paris (to cover issues of jurisdiction and merits, but not damages)

The Tribunal will fix the damages calendar in due course, should it be necessary to reach that phase.

13.3 Extensions of time shall, upon the application of a Party before the expiry of a time limit, be granted by the Tribunal in exceptional cases only, as determined by the Tribunal at its discretion or as agreed between the Parties.

**14. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36)**

The Parties agree as follows:

- (a) The Parties shall include with their written submissions not only their legal arguments, but also all of the evidence on which they intend to rely in support of the legal arguments advanced therein, including written witness statements, expert witness reports, documents, and all other evidence in whatever form. All witness statements or expert reports shall be signed by the submitting witnesses or experts and shall contain a disclosure of the relationship, if any, of such witness or expert to the Parties.
- (b) In any Reply or Rejoinder submissions, the Parties may include only additional written witness testimony, expert opinion testimony, documents or other evidence that respond to or rebut matters raised by the other Party's preceding submission.

- (c) The Tribunal shall not receive any documentary evidence that has not been introduced in writing and attached to the Memorial, the Counter-Memorial, the Reply or the Rejoinder, unless the Tribunal determines that exceptional circumstances are present that requires the admission of the additional evidence. A Party that considers such exceptional circumstances are present may request leave from the Tribunal to introduce the evidence. The requesting Party shall not introduce said evidence unless it has obtained express authorisation from the Tribunal.
- (d) The Parties shall submit any evidence in chief on which they may rely in the form of written witness statements, expert reports, and supporting documentation, in accordance with the time limits specified in Item 14 above (or as and when otherwise agreed or instructed by the Tribunal).
- (e) Before any hearing and within time limits to be agreed by the Parties or announced by the Tribunal, each Party shall have the right to call upon the other Party to produce at the hearing for cross-examination any witness or expert whose written testimony has been advanced. The Party whose witness or expert has been called for cross-examination must make the witness or expert available for the hearing. In the event of a failure to do so, without good cause, the Tribunal shall strike the witness's or expert's testimony from the record.
- (f) A Party that does not call for cross-examination of a particular witness or expert, whose evidence has been submitted by the opposing Party, shall not be deemed thereby to accept the evidence given in the relevant statement or report.
- (g) Written witness statements, expert reports, and supporting documentation shall stand as each Party's evidence in chief and, in the case of witness statements and expert reports, as the witnesses' or experts' direct examination.

A Party may not examine its own witness or expert, except that, at any hearing the Party presenting a witness or expert who has been called for cross-examination by the opposing Party may conduct a very brief direct examination of the witness or expert (not to exceed 15 minutes, absent leave of the Tribunal).

- (h) A witness (other than a witness who is a representative or employee of a Party) or expert who will offer testimony at a hearing shall not be present in the hearing room prior to his testimony.
- (i) The Tribunal shall issue more specific directions concerning the order of proceeding for examination of witnesses and experts in advance of any hearing.

**15. Records of Hearings (Arbitration Rule 20(1)(g))**

The Parties agree that verbatim transcripts and complete sound recordings shall be made for all hearings.

For any substantive hearing, such transcripts shall be prepared on a same-day basis. In addition, the Parties may later agree that “real time” or “LiveNote” transcription be used.

For any procedural hearing, such transcripts need not be prepared on a same-day basis. In addition, the Secretary of the Tribunal shall keep minutes of each procedural hearing in summary form, which shall be circulated to the Parties for review and comments prior to being submitted to the Tribunal.

The costs of any transcripts and recordings shall form a part of the costs of the proceedings.

**16. Pre-Hearing Conference (Arbitration Rule 21)**

The Tribunal proposes that a pre-hearing conference call be held at a time to be determined.

**17. Dates of Subsequent Sessions (Arbitration Rule 13(2))**

The Parties anticipate a hearing on January 21-23, 2013.

**18. Publication of Decisions and Award (Arbitration 48(4))**

The Parties agree to the application of Arbitration Rule 48(4).

On behalf of the Tribunal

[signed]

Daniel M. Price  
President