

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ipek Investment Limited

v.

Republic of Turkey

(ICSID Case No. ARB/18/18)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Professor Campbell McLachlan QC, President of the Tribunal

The Hon. L. Yves Fortier QC, Arbitrator

Dr. Laurent Lévy, Arbitrator

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

Date of dispatch to the Parties : 19 November 2018

Procedural Order No. 1

Contents

1. Applicable Arbitration Rules	4
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3. Fees and Expenses of Tribunal Members	5
4. Presence and Quorum	6
5. Rulings of the Tribunal	6
6. Power to Fix Time Limits	7
7. Secretary of the Tribunal	7
8. Representation of the Parties	8
9. Apportionment of Costs and Advance Payments to ICSID.....	10
10. Place of Proceeding.....	10
11. Procedural Language, Translation and Interpretation.....	10
12. Routing of Communications	11
13. Number of Copies and Method of Filing of Parties' Pleadings.....	12
14. Number and Sequence of Pleadings	14
15. Production of Documents	14
16. Submission of Documents	15
17. Witness Statements and Expert Reports	17
18. Examination of Witnesses and Experts.....	17
19. Pre-Hearing Organizational Meetings	19
20. Hearings	20
21. Records of Hearings and Sessions	20
22. Post-Hearing Memorials and Statements of Costs.....	21
23. Publication	21
24. Other Matters	21
ANNEX A: PROCEDURAL TIMETABLE (§14).....	23
ANNEX B: SPECIMEN DOCUMENT PRODUCTION SCHEDULE (§15)	26
ANNEX C: ELECTRONIC FILE NAMING GUIDELINES (§16).....	27
ANNEX D: LIST OF PUBLIC HOLIDAYS 2019/2020/2021.....	29

Procedural Order No. 1

Introduction

The first session of the Tribunal was held in-person on 10 November 2018, at 11:00 a.m, at the World Bank facilities in Paris, France. The session was adjourned at 4:35 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal

Professor Campbell McLachlan QC, President of the Tribunal
The Hon. L. Yves Fortier QC, Arbitrator
Dr. Laurent Lévy, Arbitrator

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Tribunal

Attending on behalf of the Claimant:

Gibson, Dunn & Crutcher UK LLP:
Ms. Penny Madden QC, Partner
Ms. Besma Grifat-Spackman, Associate
Ms. Nadia Wahba, Associate

Attending on behalf of the Respondent:

King & Spalding International LLP:
Mr. Thomas K. Sprange QC
Mr. Sajid Ahmed
Mr. Viren Mascarenhas
Ms. Ema Vidak Gojkovic
Ms. Lisa Wong

Lexist:

Mr. Eyüp Kul
Mr. Murat Erbilin
Mr. Turgut Aycan Özcan

Ms. Sena Baldoğan, TMSF (Savings Deposit Insurance Fund)

The Presidency of the Republic of Turkey, Directorate of Administrative Affairs, General Directorate of Law and Legislation:

Procedural Order No. 1

Assoc. Prof. Dr. Atike Eda Manav Özdemir
Ms. Açelya Şahin
Ms. Özlem Öner

The Tribunal and the Parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on 10 October 2018 as amended by the Parties on 2 November 2018.
- The Draft Procedural Order circulated by the Tribunal Secretary on 10 October 2018; and
- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on 2 November 2018, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.
- 1.2. If Article 44 of the ICSID Convention, the Arbitration Rules and this Procedural Order do not address a specific procedural issue, the Tribunal shall, after consultation with the Parties, determine the applicable procedure.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on 19 September 2018 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.

Procedural Order No. 1

- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 19 September 2018.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Each Member of the Tribunal shall receive a fee equivalent to 50% of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both Parties less than four weeks prior to commencement of the hearing. As regards the Tribunal, the Parties are jointly and severally liable for this fee, which shall be paid from the case account. As between the Parties *inter se*, the 50% fee shall be borne by the Party that has cancelled or postponed the hearing. If both Parties request cancellation or postponement of the hearing, the fee shall be shared equally between the Parties.
- 3.5. Non-refundable expenses incurred in connection with the hearing as a result of such postponement or cancellation shall be reimbursed. Where the postponement or cancellation is at the joint request of the Parties, the Parties shall bear the expenses in equal amounts. Where the postponement or cancellation is at the request of one Party, that Party shall bear the whole of the expenses.

Procedural Order No. 1

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
- 4.2. The physical attendance of all Members of the Tribunal shall be required at all sittings of the Tribunal at which evidence will be heard or submissions on jurisdiction, merits or quantum will be advanced.
- 4.3. While the presence of all Members of the Tribunal shall be required at meetings during which only procedural issues will be addressed, such attendance can be effected via virtual means of communication, including telephone and video links.
- 4.4. The Parties may also agree that a particular procedural meeting be conducted by the President alone and confirm their joint view that such representation of the Tribunal by its President would often be beneficial.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to subsequent reconsideration of such decision by the full Tribunal if requested by the other Members or one of the Parties.
- 5.3. The Tribunal will render all rulings, including the Award, within a reasonable time. The Tribunal will provide the Parties with status updates: (i) every month if a ruling, other than a decision on jurisdiction or the Award, has not been issued within two months after the final submission on a particular matter; and (ii) every three months if the decision on jurisdiction or Award has not been issued within six months after the final submission.
- 5.4. All requests with respect to procedural issues shall be made in writing except during a hearing, when such requests can be made orally. Unless otherwise agreed by the Parties or ordered by the Tribunal, the other Party shall have five business days, not including the day on which the request was made, to reply. No further submissions on a request shall be made by either Party without the express authorization of the Tribunal in advance.
- 5.5. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

Procedural Order No. 1

- 5.6. Any Procedural Order of the Tribunal may, at the request of a Party or at the Tribunal's own initiative, be varied by the Tribunal if the circumstances so require.
- 5.7. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary by email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal. To the extent possible, the Party requesting the extension shall do so three business days (as understood at §14.3) before the submission is due, and provide reasons for requesting the extension.
- 6.3. The Parties may also agree short extensions of time between themselves, on the basis of mutual courtesy, as long as they do not materially affect the timetable and the Tribunal is informed in advance.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Jara Mínguez Almeida, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Jara Minguez Almeida
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
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Tel.: + 1 (202) 458-0831
Fax: + 1 (202) 522-2615
Email: jminguez@worldbank.org

Procedural Order No. 1

Paralegal email: eminina@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Ms. Jara Mínguez Almeida
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-1534

8. Representation of the Parties

Arbitration Rule 18

8.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

Ms. Penny Madden QC
Mr. Cyrus Benson
Ms. Meghan Higgins
Ms. Besma Grifat-Spackman
Ms. Nadia Wahba
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For Respondent

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Mr. James Cockburn
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Procedural Order No. 1

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Procedural Order No. 1

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9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of 20 September 2018, ICSID requested that each Party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received the Claimant's payment on 16 and 18 October 2018, and the Respondent's payment on 18 October 2018.
- 9.3. ICSID shall request further advances as needed, in accordance with Administrative and Financial Regulation 14(3). Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. The unused balance held on deposit at the end of the arbitration shall be returned to the Parties in proportion to the payments that they advanced to ICSID, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Paris, France shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate after consultation with the Parties.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.

Procedural Order No. 1

- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the Party disputing the translation specifically requests a certified version. In that event, the Tribunal shall, after hearing both Parties, determine the procedure to decide the disputed translation.
- 11.5. Documents exchanged between the Parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The full hearing will be interpreted from English into Turkish.
- 11.9. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. All written communications in the case by the Parties, the Tribunal, and the Tribunal Secretary, except for decisions and Awards, shall be transmitted via email alone. In addition to formal transmittal as required by the applicable procedural rules, including Art. 49(1) of the Convention and Arbitration Rule 16, decisions and Awards shall also be transmitted by email.
- 12.2. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.3. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.4. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send

Procedural Order No. 1

them to the opposing Party and the Tribunal.

- 12.5. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports (but not exhibits or legal authorities) and the updated corresponding index of all the supporting documentation attached to the pleading (including witness statements, expert reports, exhibits and legal authorities).¹
- 13.2. Within three business days following the electronic filing, the Parties shall upload the pleading, with all the supporting documentation and the corresponding (updated) hyperlinked index to the file sharing platform that will be created by ICSID for purposes of this case, and notify the Tribunal Secretary and the opposing Party by email.
- 13.3. Within seven calendar days following the electronic filing, the Parties shall courier to the Tribunal Secretary:
- 13.3.1. one unbound hard copy in A4/Letter format² of the entire submission³, including the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including legal authorities) and the updated index; and
- 13.3.2. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 13.4. Also within seven business days following the electronic filing, the Parties shall courier to the opposing Party at the addresses indicated at §8.1 above (for the Claimant: to the attention of Ms. Penny Madden, QC; and for the Respondent: to the attention of Mr. Tom Sprange, QC):
- 13.4.1. one hard copy in A4 format of the entire submission including the pleading, witness statements, expert reports, together with any other supporting documentation (but not including legal authorities) and the (updated) index;

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

³ The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

Procedural Order No. 1

and

13.4.2. one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits, legal authorities and the (updated) hyperlinked index of all the supporting documentation.

13.5. At the same time, the Parties shall courier copies to the members of the Tribunal in the following format: one A5 hard copy of the pleading, witness statements and expert reports only, together with an electronic copy (USB) of the complete filing, including exhibits and legal authorities. For the sake of clarity, the Parties shall upload the exhibits and legal authorities to the file sharing platform pursuant to §13.2 above in a timely manner.

13.6. The addresses of the Tribunal Members are as follows:

Prof. Campbell McLachlan QC Victoria University of Wellington Law School c/o Tribunal Secretary, ICSID	The Hon. L. Yves Fortier QC Cabinet Yves Fortier 1 Place Ville Marie, Suite 2822 Montréal H3B 4R4 Québec Canada Tel.: +514 286 2013	Dr. Laurent Lévy Lévy Kaufmann-Kohler 3-5, rue du Conseil-Général P.O. Box 552 1211 Geneva 4 Switzerland Tel.: +41 22 809 62 00
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13.7. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.8. Electronic versions of pleadings, witness statements, expert reports, factual exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word) and unlocked.

13.9. All pleadings shall be accompanied by the (updated) index hyperlinked to the supporting documentation where applicable. The index shall indicate the document number, the pleading with which it was submitted. Please follow the naming conventions contained in Annex C.

13.10. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated and updated hyperlinked index of all documents.

13.11. The official date of receipt of a pleading or communication shall be the day on

Procedural Order No. 1

which the electronic version is sent to the Tribunal Secretary by email.

- 13.12. Submissions and correspondence shall be deemed timely if sent via email by a Party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29, 31 and 41

- 14.1. The Parties agree to bifurcate the proceedings. The number, sequence and date of pleadings, and the time intervals between pleadings, shall be as provided in the Procedural Timetable in Annex A.
- 14.2. Within 14 calendar days after the first round of written submissions and prior to their requests for production of documents, the Parties shall confer and prepare a joint draft List of Issues for submission to the Tribunal. Within 14 calendar days after the second round of written submissions, the Parties shall confer and prepare a revised joint draft List of Issues for submission to the Tribunal. The Parties shall revise this List, as necessary, and submit it to the Tribunal in final form 30 calendar days prior to the hearing. The draft List of Issues shall be prepared in accordance with the Procedural Timetable contained in Annex A.
- 14.3. Where a time period ends for a relevant Party on a Saturday, a Sunday or a public holiday observed at the place where counsel for a relevant Party is based or where the Party is based, as indicated at §8.1 above, the relevant date shall be adjusted to the next business day at the relevant place. A list of public holidays in England & Wales and in Turkey is attached as Annex D.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. Without prejudice to Article 43(a) of the Convention, and absent contrary agreement of the Parties, the International Bar Association Rules for Taking of Evidence in International Arbitration (2010) (the “IBA Rules”) may guide the Tribunal and the Parties regarding document production in this case, albeit the IBA Rules shall not be regarded as being strictly legally binding on the Tribunal or the Parties.
- 15.2. Without prejudice to any voluntary production of documents, the Parties have leave to exchange Requests for Production of Documents in the proceedings (the “Requests”) on the dates specified in Annex A. As the Parties agreed that the proceedings shall be bifurcated, there will be two rounds of Requests. The first round of Requests shall relate to the bifurcated Preliminary Objections. The second round, if the proceedings are not terminated at this stage, shall relate to liability and quantum. The dates for the exchange of these Requests are specified

Procedural Order No. 1

in Annex A.

- 15.3. The Requests shall precisely identify each document sought, or as narrow and specific category of documents as possible in the circumstances, and establish its relevance and materiality to the outcome of the case. The Requests shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.4. Each Party shall state, in the Redfern Schedule provided in Annex B, its responses or objections to the requested documents, in accordance with the timetable provided in Annex A. In the same Redfern Schedule, the requesting Party shall state its comments in writing on any response or objection made to the document requests, insofar as there are any outstanding disputes relating to such requests. The Parties' aggregate comments, in the form of a completed Redfern Schedule, shall be provided to the Tribunal, the Tribunal Secretary and the opposing Party (in Word format).
- 15.5. The Tribunal shall rule promptly (within 21 calendar days) upon any objections to the production of documents or categories of documents.
- 15.6. Documents so disclosed shall not be considered part of the record unless and until one of the parties submits them in evidence to the Tribunal pursuant to §16.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder. To the extent the Parties make other submissions that rely on documentary evidence, they should submit such evidence with those submissions as well as legal authorities. Examples of such submissions include an application for security of costs or an application for provisional measures.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.
 - 16.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or

Procedural Order No. 1

responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. Factual exhibits and legal authorities shall be numbered consecutively throughout these proceedings.
 - 16.5.2. The number of each document submitted by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each document submitted by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.
 - 16.5.3. Each factual exhibit and legal authority shall have a divider with the identification number on the tab.
 - 16.5.4. Electronic filings and the accompanying indexes shall follow the naming conventions contained in Annex C.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The Parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting. Following the hearing, each Party shall submit by email to the Tribunal Members, the Tribunal Secretary and the opposing Party an electronic version of the demonstrative exhibits used at the hearing and upload the exhibits to the file sharing platform.

Procedural Order No. 1

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 17.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §16.3).
- 17.3. If a Party wishes to request leave for the Tribunal to authorize a witness or expert to testify anonymously, it must apply no later than 60 days before the witness or experts' testimony is due to be filed on the record. In the event that such an application is timely made, the Tribunal will, having consulted both Parties, determine the appropriate procedure by which to decide it.
- 17.4. The Parties shall hereafter confer regarding the confidentiality arrangements that would need to be put in place in the event that a witness or expert were to testify anonymously and shall report the outcome of their consultations to the Tribunal.
- 17.5. Subject to the provisions of any order that may be made under §17.3 above, each witness statement and expert report shall be signed and dated by the witness or expert.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1. On the date and time determined by the Tribunal after consulting with the Parties and no later than six weeks prior to any hearing, each Party shall notify simultaneously the other Party, with a copy to the Tribunal, which factual witnesses and expert witnesses of the opposing Party it intends to cross-examine at the hearing. Shortly (and in any event no more than two weeks) after the Parties' notifications, the Tribunal will indicate the witnesses and experts not called by the Parties that it wishes to question, if any.
- 18.2. A witness whom either Party or the Tribunal wishes to hear orally shall appear in person at the hearing. Examination by videoconference shall only be permitted in exceptional cases on application for justified reasons at the discretion of the Tribunal. Party representatives and counsel of the opposing Party may be present at the place where the videoconference examination of the witness is taking place. Provided however that in the event that the Tribunal were to authorize a witness or expert to testify anonymously pursuant to §17.3 above, safeguards shall be put in

Procedural Order No. 1

place to ensure that witness/expert anonymity is preserved.

- 18.3. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justification, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.
- 18.4. Witnesses and experts shall be examined by each Party under the control of the President. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 18.5. The witness statement of each witness and expert shall stand in lieu of the examination by the Party producing the witness and expert (“direct examination”), provided, however, that (i) the witness or expert shall be entitled to make corrections to his or her statement at the outset of the examination, (ii) any witness giving oral testimony may first be examined in direct examination for no longer than 10 minutes, and (iii) any experts may give a summary of their report either directly, using demonstrative slides, and/or through direct examination for no longer than 60 minutes. The purpose of the direct examination is to introduce the witness or expert, confirm the accuracy and completeness of his or her witness statements(s) or expert report(s), or deal with any new issues arising since the filing of the witness’s statement(s) or expert report(s). The other Party may then cross-examine the witness or expert on his or her witness statement or expert report, after which the Party presenting the witness or expert may then re-examine the witness or expert in relation only to matters arising out of the cross-examination. Any further examination shall proceed only with the leave of the Tribunal. The Tribunal shall decide upon any request for re-cross examination from the Parties.
- 18.6. A Party that does not call a particular witness or expert, whose evidence has been submitted by the opposing Party, for cross-examination shall not be deemed thereby to accept the evidence given in the relevant statement or report.
- 18.7. Unless the Parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room until all witnesses have given their respective testimony and shall not be permitted to read the transcript before testifying. A fact witness that is also the representative of a Party and expert witnesses shall be allowed in the hearing room at any time. The Party representative means the individual designated by a Party to act as its agent and give instructions to counsel at the hearing.
- 18.8. The witnesses and experts shall be examined in the order agreed by the Parties. If not agreed by the Parties, the Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the

Procedural Order No. 1

pre-hearing organizational meeting in §19 below.

- 18.9. Parties' counsel shall be authorized to meet and discuss with witnesses and potential witnesses to establish the facts and prepare their testimony.
- 18.10. If the circumstances so require, the Tribunal may determine, after consulting with the Parties, that the experts, if any, shall meet or otherwise communicate with each other with a view to discussing the differences between them as set forth in the experts' reports and identifying those issues upon which they are able to agree and those issues on which they disagree. Any such discussions shall be without prejudice and shall not be referred to in the proceedings. The participants in any such discussions shall be limited to the experts themselves and (at their respective discretions) their assistants.
- 18.11. Following any such meetings or discussions, the Tribunal may determine, after consulting with the Parties, that no later than 30 calendar days prior to the hearing, the experts shall prepare a brief joint report, setting out those matters on which they have been able to agree and those on which they disagree and summarising their respective positions on the matters on which they disagree. The draft of this report shall be without prejudice. The experts shall use their best endeavours to produce an open joint report.

19. Pre-Hearing Organizational Meetings

Arbitration Rules 13 and 21

- 19.1. A pre-hearing organizational meeting shall be held by teleconference at a date determined by the Tribunal after consultation with the Parties between the Tribunal and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing and to fix a timetable for the hearing.
- 19.2. Prior to this meeting, the Parties shall collaborate to prepare, in draft:
 - 19.2.1. A List of Issues (see §14.2);
 - 19.2.2. A chronology of key events and *dramatis personae*;
 - 19.2.3. A pre-reading list of no more than 20 contemporaneous documents from each Party
 - 19.2.4. A chronological list of all factual exhibits.; and,
 - 19.2.5. A core bundle of key factual exhibits (or relevant extracts thereof) in chronological order numbering no more than 500 pages.

Procedural Order No. 1

- 19.3. Following discussion with the Tribunal, these documents shall be finalized for use in the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with §10 above.
- 20.3. The hearing shall take place on the dates set out in Annex A.
- 20.4. Allocation of time at the hearing shall be agreed upon by the Parties, or alternatively, decided by the Tribunal in consultation with the Parties after the Pre-Hearing Organizational Meeting. The principle of equality of time shall be applied with flexibility and proportionality in light of the circumstances of the case. The amount of time available to each side for use at the hearing will be set by the Tribunal after consultation with the Parties during the Pre-Hearing Organizational Meeting.
- 20.5. The Tribunal shall reserve one day after the hearing to determine the next steps and to hold deliberations.
- 20.6. The hearings shall be closed to the public unless the Parties agree otherwise.

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 21.2. Verbatim transcripts in the English language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 21.3. The Parties shall agree on any corrections to the transcripts within 30 calendar days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The President shall decide upon any disagreement between the Parties

Procedural Order No. 1

and any correction adopted by the President shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 22.1. The question whether post-hearing memorials are required and, if so, their scope, will be discussed between the Tribunal and the Parties at the conclusion of the hearing.
- 22.2. Within 30 calendar days after the conclusion of the hearing or the final exchange of post-hearing memorials (if any), each Party shall submit a detailed itemized Statement of Costs together with any submission that it may wish to make as to costs.
- 22.3. The Tribunal may, if it deems it necessary, call for documentation supporting the Parties' claims for costs.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

- 23.1. The ICSID Secretariat will publish the award and any order or decision in the present case where both Parties consent to publication subject to the redaction of confidential information if the Parties so request. Otherwise, ICSID will publish excerpts of the award pursuant to Arbitration Rule 48(4) and include bibliographic references to rulings made public by other sources on ICSID's website and in its publications.

24. Other Matters

- 24.1. The timetable for the Claimant's application for provisional measures shall be the following:
 - 24.1.1. The Claimant's Application for provisional measures shall be filed by 15 November 2018.
 - 24.1.2. The Respondent's Response regarding provisional measures shall be filed by 1 March 2019.
 - 24.1.3. The Claimant's Reply regarding provisional measures shall be filed by 2 May 2019.

Procedural Order No. 1

- 24.1.4. The Respondent's Rejoinder regarding provisional measures shall be filed by 14 June 2019.
- 24.2. The timeline for the Respondent's application for security for costs shall be the following:
- 24.2.1. The Respondent's Application for security for costs shall be filed by 21 December 2018.
- 24.2.2. The Claimant's Response regarding security for costs shall be filed by 1 March 2019.
- 24.2.3. The Respondent's Reply regarding security for costs shall be filed by 2 May 2019
- 24.2.4. The Claimant's Rejoinder regarding security for costs shall be filed by 14 June 2019.
- 24.3. A hearing concerning both Applications shall take place in Paris on 24 to 26 July 2019 in Paris, France.



Professor Campbell McLachlan QC
President of the Tribunal
19 November 2018

Procedural Order No. 1 – Annex A

ANNEX A: PROCEDURAL TIMETABLE (§14)

Submission	Interval Period	Date
First Session		10 November 2018
Claimant's Application for provisional measures		15 November 2018
Respondent's Application for security for costs		21 December 2018
Respondent's Response regarding provisional measures		1 March 2019
Claimant's Response regarding security for costs		1 March 2019
Respondent's Memorial on Preliminary Objections, including a draft List of Issues	+ 20 weeks from First Session	29 March 2019
Claimant's Reply regarding provisional measures		2 May 2019
Respondent's Reply regarding security for costs		2 May 2019
Respondent's Rejoinder regarding provisional measures		14 June 2019
Claimant's Rejoinder regarding security for costs		14 June 2019
Hearing on provisional measures and security for costs		24 to 26 July 2019
Claimant's Statement of Defense on Preliminary Objections, including a draft List of Issues	+ 18 weeks from Memorial	2 August 2019
Document Production Requests related to Preliminary Objections only	+ 2 weeks	16 August 2019
Draft list of issues		16 August 2019
Responses to Requests, including Objections to Requests (if any)	+ 2 weeks	2 September 2019
Completed Redfern schedule, including replies to objections, sent to Tribunal and voluntary production of documents for Requests to which Parties did not make objections	+ 2 weeks	16 September 2019
Tribunals' Decision on Objections to Requests	+ 3 weeks	7 October 2019
Supplemental production of documents following Tribunal's Decision on Objections to Requests	+ 4 weeks	4 November 2019]
Respondent's Reply on Preliminary Objections	+ 12 weeks	17 January 2020
Claimant's Rejoinder on Preliminary Objections	+ 12 weeks	27 March 2020
Witness notification related to Preliminary Objections (if any)		20 April 2020

Ipek Investment Limited v. Republic of Turkey
(ICSID Case No. ARB/18/18)

Procedural Order No. 1 – Annex A

Submission of final list of issues, chronology of key events, <i>dramatis personae</i> , and joint report of experts (if applicable)		1 May 2020
Pre-Hearing Organizational Meeting	at least four weeks before the hearing	On or before 1 May 2020
Hearing on Preliminary Objections		1-5 June 2020

Procedural Order No. 1 – Annex A

If the Tribunal decides it has jurisdiction over all or some of the Claimant’s claims, the following procedural calendar will in principle apply subject to the Tribunal’s review of the procedure following the issuance of the Tribunal’s Decision on Jurisdiction:

Claimant’s Memorial on Liability/Quantum	+ 120 days
Respondent’s Statement of Defense on Liability/Quantum	+ 120 days
Draft List of Issues	+ 2 weeks
Document Production Requests	+ 3 weeks
Responses to Requests, including Objections to Requests (if any)	+ 3 weeks
Completed Redfern schedule, including replies to objections, sent to Tribunal and voluntary production of documents for Requests to which Parties did not make objections	+ 6 weeks
Tribunals’ Decision on Objections to Requests	+ 3 weeks
Supplemental production of documents following Tribunal’s Decision on Objections to Requests	+ 60 days
Claimant’s Reply on Liability/Quantum	+ 18 weeks
Respondent’s Rejoinder on Liability/Quantum	+ 18 weeks
Witness notification	at least six weeks before the hearing
Pre-Hearing Organizational Meeting	at least four weeks before the hearing
Submission of final list of issues, chronology of key events, <i>dramatis personae</i> , and joint report of experts (if applicable)	at least 30 days before hearing
Hearing	

Procedural Order No. 1 – Annex B

ANNEX B: SPECIMEN DOCUMENT PRODUCTION SCHEDULE (§15)

Document Request No	
A. Documents requested	
B. Relevance and materiality: (1) Para ref to memorials (2) Comments	
C. Summary of disputing Party's objections to production	
D. Reply	
E. Decision of the Tribunal	

Procedural Order No. 1 – Annex C

ANNEX C: ELECTRONIC FILE NAMING GUIDELINES (§16)

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name use to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE R-####–LANGUAGE To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE RL-####–LANGUAGE To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
	<i>RL-0002-ENG</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>

Ipek Investment Limited v. Republic of Turkey
(ICSID Case No. ARB/18/18)

Procedural Order No. 1 – Annex C

Legal Opinions	<i>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</i>
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Procedural Order No. 1 – Annex D

ANNEX D: LIST OF PUBLIC HOLIDAYS 2019/2020/2021

Date	Name of Public Holiday	Jurisdiction
2019		
1 January 2019	New Year's Day	England & Wales, Turkey
19 April 2019	Good Friday	England & Wales
22 April 2019	Easter Monday	England & Wales
23 April 2019	Children's Day	Turkey
1 May 2019	Labour Day	Turkey
6 May 2019	May Day	England & Wales
19 May 2019	Youth and Sports Day	Turkey
27 May 2019	Spring Bank Holiday / Memorial Day	England & Wales
5 June to 7 June 2019 (4 June 2019 half day)	Ramadan Feast	Turkey
15 July 2019	Democracy and National Solidarity Day	Turkey
11 August to 14 August 2019	Sacrifice Feast	Turkey
26 August 2019	August Bank Holiday	England & Wales
30 August 2019	Victory Day	Turkey
28 - 29 October 2019 (28 October 2020 half day)	Republic Day	Turkey
25 December 2019	Christmas Day	England & Wales
26 December 2019	Boxing Day	England & Wales
2020		
1 January 2020	New Year's Day	England & Wales, Turkey
10 April 2020	Good Friday	England & Wales
13 April 2020	Easter Monday	England & Wales

Ipek Investment Limited v. Republic of Turkey
(ICSID Case No. ARB/18/18)

Procedural Order No. 1 – Annex D

Date	Name of Public Holiday	Jurisdiction
23 April 2020	Children’s Day	Turkey
1 May 2020	Labour Day	Turkey
4 May 2020	May Day	England & Wales
19 May 2020	Youth and Sports Day	Turkey
24 May to 26 May 2020	Ramadan Feast	Turkey
25 May 2020	Spring Bank Holiday / Memorial Day	England & Wales
15 July 2020	Democracy and National Solidarity Day	Turkey
31 July to 3 August 2020 (30 July 2020 half day)	Sacrifice Feast	Turkey
30 August 2020	Victory Day	Turkey
31 August 2020	August Bank Holiday	England & Wales
28-29 October 2020 (28 October 2020 half day)	Republic Day	Turkey
25 December 2020	Christmas Day	England & Wales
26 December 2020	Boxing Day	England & Wales
28 December 2020	Substitute Day for Boxing Day (which falls on a weekend)	England & Wales
2021		
1 January 2021	New Year’s Day	England & Wales, Turkey
2 April 2021	Good Friday	England & Wales
5 April 2021	Easter Monday	England & Wales
23 April 2021	Children’s Day	Turkey
1 May 2021	Labour Day	Turkey
3 May 2021	Early May Bank Holiday	England & Wales

Ipek Investment Limited v. Republic of Turkey
(ICSID Case No. ARB/18/18)

Procedural Order No. 1 – Annex D

Date	Name of Public Holiday	Jurisdiction
12 May to 15 May 2021 (12 May 2021 half day)	Ramadan Feast	Turkey
19 May 2021	Youth and Sports Day	Turkey
31 May 2021	Spring Bank Holiday / Memorial Day	England & Wales
15 July 2021	Democracy and National Solidarity Day	Turkey
19 July to 23 July 2021 (19 July half day)	Sacrifice Feast	Turkey
30 August 2021	August Bank Holiday	England & Wales
30 August 2021	Victory Day	Turkey
28-29 October 2020 (28 October 2020 half day)	Republic Day	Turkey
25 December 2021	Christmas Day	England & Wales
26 December 2021	Boxing Day	England & Wales
27 December 2021	Substitute Day for Christmas Day	England & Wales
28 December 2021	Substitute Day for Boxing Day	England & Wales