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By email

Geneva, 12 July 2018

Prof. Christian Doutremepuich and Mr Antoine Doutremepuich vs. The Republic of Mauritius – Place of arbitration and language of the proceedings

Dear Madame President,
Dear Members of the Tribunal,

As invited by the Tribunal in its letter dated 30 June 2018, the Respondent sets out below its position on the place of the arbitration and the language of these proceedings.

1 PLACE OF ARBITRATION

It is well established that the key criterion in determining a seat of arbitration, in particular in investment arbitration, is the neutrality of the seat to both parties. Other criteria, such as sound legal framework for international arbitration, suitable facilities and practical convenience, are relevant but not determinative.¹

It is precisely because of its neutrality that the Republic of Mauritius has proposed Geneva, Switzerland, to the Claimants and maintains its proposal in this submission. The place suggested thus far by the Claimants, namely Paris, is clearly not appropriate, the Claimants being both French nationals and French residents. Alternatively, the Respondent is prepared to agree to another neutral and convenient seat such as London.

Notwithstanding its proposal for Geneva (or alternatively London) as the legal seat of the arbitration, the Republic of Mauritius would have no objection to hearings being held at the PCA's facilities in The Hague, as allowed by Article 16(2) of the UNCITRAL Rules. The Parties have indeed accepted that the PCA administers their deposits on costs, the Respondent has proposed that the PCA also carries out administrative tasks on behalf of the Tribunal,² and the PCA offers convenient hearing facilities that would be available either free-of-charge or at reasonable costs.

2 LANGUAGE OF THE PROCEEDINGS

The Respondent submits that the language of the proceedings should be English, which is the only official language of Mauritius, even if French (as well as

¹ Article 3(a)22 of the UNCITRAL Notes on Organizing Arbitral Proceedings provides: “*Various factual and legal factors influence the choice of the place of arbitration, and their relative importance varies from case to case. Among the more prominent factors are: (a) suitability of the law on arbitral procedure of the place of arbitration; (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced; (c) convenience of the parties and the arbitrators, including the travel distances; (d) availability and cost of support services needed; and (e) location of the subject-matter in dispute and proximity of evidence.*”

² See both Parties' comments on Article X of the draft Terms of Appointment submitted on 6 July 2018.

Creole) is used day to day by many Mauritians, in particular in oral and informal communications.³

English is the language used for all official and legal matters in Mauritius, except when reference is made to French civil law. It is the official language of the Mauritian National Assembly⁴ and the language used in all legislative and regulatory texts.

The Claimants are aware of this since they drafted their official correspondence to the Mauritian authorities in English.⁵ In turn, the official communications by the relevant Mauritian authorities in this case, including the Prime Minister's Office, the Ministry of Finance and Economic Development, the Economic Development Board and the Board of Investment, were all drafted in English.⁶

There is therefore no justification whatsoever for this case to be conducted in a language other than English or to be conducted in both English and French, with the additional costs that this would entail, in particular if the Tribunal is required to draft all of its communications, orders and awards in both English and French.

However, the Republic of Mauritius could agree that the evidence and legal authorities available in their original version in French be submitted without an English translation and be referred to in their original French version in submissions and in any communication, order and award from the Tribunal, provided that this is agreeable to the Tribunal.

We remain available for any clarification that the Tribunal may require and reserve the Respondent's right to respond to the Claimants' submission on the above matters.

³ See the Government of Mauritius' official Website: "*English is the official language. French is extensively used and Creole is widely spoken. Asian languages also form part of the linguistic mosaic.*" at <http://www.govmu.org/English/ExploreMauritius/Geography-People/Pages/Language.aspx>

⁴ See Article 49 of the Constitution of the Republic of Mauritius "*The official language of the Assembly shall be English but any member may address the chair in French*".

⁵ See e.g. Claimant's counsel registered letter to the Prime Minister's Office dated 20 March 2017, submitted as Exhibit No. 13 of the Notice of Arbitration and Claimant's counsel registered letter to the Mauritius Ministry of Finance and Economic Development dated 19 May 2017, submitted as Exhibit No. 15.

⁶ Only certain non-official email communications were exchanged in French, see Exhibit No. 2 of the Notice of Arbitration.

Yours sincerely,



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