

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE AGREEMENT ON RECIPROCAL
PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE CARIBBEAN COMMUNITY AND
THE DOMINICAN REPUBLIC AND THE UNCITRAL ARBITRATION RULES (1976)**

MICHAEL ANTHONY LEE-CHIN

v.

THE DOMINICAN REPUBLIC

(ICSID Case. No. UNCT/18/3)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Prof. Diego P. Fernández Arroyo, Presiding Arbitrator

Prof. Christian Leathley, Arbitrator

Prof. Marcelo Kohen, Arbitrator

Secretary of the Tribunal

Ms. Marisa Planells-Valero

October 23, 2018

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Introduction

The preliminary procedural consultation between the Arbitral Tribunal and the parties was held on September 25, 2018, by telephone conference.

Participating in the conference call were:

Members of the Tribunal:

Prof. Diego P. Fernández Arroyo, Presiding Arbitrator
Prof. Christian Leathley, Arbitrator
Prof. Marcelo Kohen, Arbitrator

ICSID Secretariat:

Ms. Marisa Planells-Valero, Secretary of the Tribunal

Participating on behalf of the Claimant:

- Mr. Richard C. Lorenzo, Hogan Lovells US LLP
- Ms. Maria Eugenia Ramirez, Hogan Lovells US LLP
- Ms. Juliana de Valdenebro Garrido, Hogan Lovells US LLP

Participating on behalf of the Respondent:

- Mr. Marcelo A. Salazar, Director, Office for the Administration of International Trade Agreements and Treaties (DICOEX), The Dominican Republic
- Ms. Leidylin Contreras, Deputy Director, DICOEX, The Dominican Republic
- Ms. Maria Amalia Lorenzo, Analyst, DICOEX, The Dominican Republic
- Ms. Patricia Abreu, Vice Minister of Cooperation and International Affairs, Ministry of Environment and Natural Resources, The Dominican Republic
- Ms. Rosa Otero, Director of the Vice Ministry of Cooperation and International Affairs, Ministry of Environment and Natural Resources, The Dominican Republic
- Ms. Johanna Montero, Counsel of the Office of Cooperation, Trade and Environment, Ministry of Environment and Natural Resources, The Dominican Republic
- Mr. Enmanuel Rosario, Ministry of Environment and Natural Resources, The Dominican Republic

- Ms. Claudia Frutos-Peterson, Curtis, Mallet-Prevost, Colt & Mosle LLP
- Ms. Gabriela Álvarez Ávila, Curtis, Mallet-Prevost, Colt & Mosle LLP
- Ms. Elisa Botero, Curtis, Mallet-Prevost, Colt & Mosle LLP

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The Presiding Arbitrator opened the session at 11:35 a.m., Eastern Daylight Time, and welcomed the participants. The Presiding Arbitrator introduced the Tribunal and the Secretary of the Tribunal (Tribunal Secretary) and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on September 7, 2018; and
- The comments on the Draft Procedural Order submitted by the parties on September 20, 2018.

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

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

Order

This first Procedural Order sets out Procedural Rules that shall govern this arbitration and the agreements reached by the parties during the preliminary procedural consultation.

1. Applicable Arbitration Rules

Article I UNCITRAL Arbitration Rules (1976)

1.1. These proceedings shall be conducted in accordance with the UNCITRAL Arbitration Rules (1976).

2. Constitution of the Tribunal

Section II UNCITRAL Arbitration Rules (1976)

2.1. The Tribunal was constituted on August 7, 2018 in accordance with the UNCITRAL Arbitration Rules. The parties confirmed that the Tribunal was properly constituted, that each Member of the Tribunal made disclosures under Article 9 of the UNCITRAL Arbitration Rules, and that neither party has any objection to the appointment of any Member of the Tribunal based on such disclosures or any other information known to such party at the time the appointment was made.

2.2. Respondent underscored that all points in this Procedural Order are without prejudice to its objections to jurisdiction.

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2.3. Claimant underscored that he reserves all rights to oppose Respondent's objections to jurisdiction and to object to the bifurcation of these proceedings.

3. Fees and Expenses of Tribunal Members

Article 39 UNCITRAL Arbitration Rules (1976); ICSID Schedule of Fees; Regulation 14 of the ICSID Administrative and Financial Regulations

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 will receive:

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. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Decisions and Procedural Rulings of the Tribunal

Articles 31 and 32 of the UNCITRAL Arbitration Rules (1976)

4.1. The presence of all Members of the Tribunal is required at all sittings and deliberations of the Tribunal.

4.2. Any award or other decisions of the Tribunal shall be made by a majority of the arbitrators. In the case of questions of procedure, when there is no majority or when the Tribunal so authorizes, the Presiding Arbitrator may decide on its own, subject to revision, if any, by the Tribunal.

4.3. The award shall be made in writing and be final and binding on the parties.

4.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

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5. Power to Set Time Limits

Article 23 of the UNCITRAL Arbitration Rules (1976)

5.1. The Tribunal has the power to extend time limits if it concludes that an extension is justified.

6. Administering and Appointing Authorities

Article 41(3) of the UNCITRAL Arbitration Rules (1976)

6.1. On July 20, 2018, the parties confirmed their agreement to the designation of the International Centre for Settlement of Investment Disputes (ICSID) as the Administering Authority. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID's services shall be included in the costs of the arbitration.

6.2. Work carried out by ICSID as Administering Authority shall be billed annually in accordance with the ICSID Schedule of Fees in force at the time the fees are incurred. Currently, the annual fee for ICSID services is US\$ 42,000 (forty-two thousand dollars of the United States of America).

6.3. By agreement of the parties, the Secretary-General of ICSID shall act as the Appointing Authority in this arbitration proceeding.

6.4. The Tribunal Secretary is Ms. Marisa Planells-Valero, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

6.5. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Marisa Planells-Valero
ICSID – The World Bank
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-9273
Email: mplanellsvalero@worldbank.org

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

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Marisa Planells-Valero
701 18th St, NW (“J Building”)
2rd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-9273

7. Representation of the Parties
Article 4 UNCITRAL Arbitration Rules (1976)

7.1. Each party shall be represented by its respective counsel and representatives listed below and may designate additional persons by promptly notifying such designation in writing to the other party, the Tribunal and the Tribunal Secretary.

(i) For Claimant: Michael A. Lee Chin

Hogan Lovells US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
United States of America
Telephone: +13054596500

- Richard C. Lorenzo (richard.lorenzo@hoganlovells.com)
- Maria Eugenia Ramirez (maria.ramirez@hoganlovells.com)
- Mark Cheskin (mark.cheskin@hoganlovells.com)
- Javier Peral II (javier.peral@hoganlovells.com)
- Juliana De Valdenebro (juliana.devaldenebro@hoganlovells.com)

(ii) For Respondent

- Marcelo A. Salazar, Director, DICOEX, The Dominican Republic (marcelo.salazar@mic.gob.do)
- Leidylin Contreras, Deputy Director, DICOEX, The Dominican Republic (leidylin.contreras@mic.gob.do)
- Patricia Abreu, Vice Minister of Cooperation and International Affairs, Ministry of Environment and Natural Resources, The Dominican Republic (P.Abreu@ambiente.gob.do)
- Rosa Otero, Director of the Vice Ministry of Cooperation and International Affairs, Ministry of Environment and Natural Resources, The Dominican Republic (Rosa.Otero@ambiente.gob.do)
- Maria Amalia Lorenzo, Analyst, DICOEX, The Dominican Republic (maria.lorenzo@mic.gob.do)

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- Raquel De La Rosa, Analyst, DICOEX, The Dominican Republic (raquel.delarosa@mic.gob.do)
- Johanna Montero, Counsel of the Office of Cooperation, Trade and Environment, Ministry of Environment and Natural Resources, The Dominican Republic (Johanna.Montero@ambiente.gob.do)
- Lourdes Perez, Legal Counsel to the Mayor of Santo Domingo Norte, The Dominican Republic (lupevi@hotmail.com)

Curtis, Mallet-Prevost, Colt & Mosle LLP

1717 Pennsylvania Avenue, N.W.

Suite 1300

Washington, D.C. 20006

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Fax: +1.202.452.7333

- George Kahale, III (gkahale@curtis.com)
- Claudia Frutos-Peterson (cfrutos-peterson@curtis.com)
- Gabriela Álvarez Ávila (galvarez@curtis.com)
- Fernando Tupa (ftupa@curtis.com)
- Luis Parada (lparada@curtis.com)
- Elisa Botero (ebotero@curtis.com)
- Natalia Linares (nlinares@curtis.com)

8. Deposits of Costs

Articles 38 - 41 UNCITRAL Arbitration Rules (1976)

- 8.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs, pursuant to Article 40 of the UNCITRAL Arbitration Rules (1976).
- 8.2. By letter of August 13, 2018, ICSID requested that each party pay US\$ 150,000 to defray the initial costs of the proceeding. ICSID received Claimant's payment on September 17, 2018. The Respondent's payment has not been received as of the date of this order.
- 8.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account.
- 8.4. After the award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

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9. Place of Arbitration

Article 16 UNCITRAL Arbitration Rules (1976)

- 9.1. Washington, D.C. shall be the place of the proceeding.
- 9.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 9.3. The Tribunal may deliberate at any place and by any means it considers convenient.
- 9.4. The award shall be deemed to have been made at the place of arbitration.

10. Procedural Languages and Translation

Articles 17 and 25 UNCITRAL Arbitration Rules (1976)

- 10.1. English and Spanish are the procedural languages of the arbitration.

For Parties' Pleadings and Oral Presentations

- 10.2. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either English or Spanish.
- 10.3. Each party shall be responsible for the costs associated with the translation of any of the documents listed in §10.2 which the party deems necessary, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs. There shall be no need for such translation to be transmitted to the opposing party, to the Secretary of the Tribunal, nor to the Tribunal. However, the parties shall be free, if they so desire, to submit courtesy translations (either into English or into Spanish) of any of the documents listed in §10.2. In case of any inconsistencies, the original-language versions shall prevail.
- 10.4. Documents filed in a language other than Spanish or English must be accompanied by a translation into English or Spanish. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 10.5. Documents in English or Spanish exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.
- 10.6. Oral presentations by the parties may be made in either English or Spanish. Each party is free to select which of the two procedural languages it will use in the oral proceeding, and in any other meeting or conference call with the Tribunal.

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For Hearing

- 10.7. Simultaneous interpretation from English to Spanish and from Spanish to English shall be available throughout all in-person hearings when necessary.
- 10.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish language shall be interpreted simultaneously.
- 10.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting, in which language each witness or expert will give evidence.
- 10.10. The costs of the interpreters 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.

For Tribunal's Documents Except the Award

- 10.11. The Tribunal shall make any order or decision in either English or Spanish. Both language versions shall be equally authentic.

For Tribunal's Award

- 10.12. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be authentic.

For Secretariat Correspondence

- 10.13. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in either procedural language.

11. Routing of Written Communications
Article 15(3) UNCITRAL Arbitration Rules (1976)

- 11.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 11.2. Electronic versions of communications, pleadings or filings ordered by the Tribunal to be filed *simultaneously* shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal after both parties' submissions have been received.

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11.3. 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.

12. Number and Sequence of Pleadings
Article 21 UNCITRAL Arbitration Rules (1976)

12.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as **Annex A**, unless the Tribunal, upon a showing of good cause by either party or on its own initiative, decides that this Procedural Timetable has to be amended.

13. Number of Copies and Method of Filing of Parties' Pleadings
Article 15(3) UNCITRAL Rules (1976)

13.1. By the relevant filing date, the parties shall:

- (i) submit by email to the Tribunal Secretary, the Tribunal, and the opposing party an electronic version of the pleading with witness statements and expert reports, without supporting documentation;¹ and
- (ii) upload to the file sharing platform that will be created by ICSID for purposes of this case the pleading, witness statements, and expert reports, together with all exhibits (including legal authorities) and the updated index of all the supporting documentation (not *hyperlinked*).

13.2. Three (3) business days following the electronic filing of the original submission, the parties shall courier to the Tribunal Secretary:

13.2.1. one unbound hard copy in A4 or Letter format of the entire submission², including signed originals of the pleading, witness statements, and expert reports, together with all exhibits (but not including legal authorities) and the updated index of all the supporting documentation;

13.2.2. two USB drives with full copies of the entire submission, including the pleading, witness statements, expert reports, exhibits, legal authorities and the updated *hyperlinked* index of all the supporting documentation.

13.3. Further, three (3) business days following the electronic filing of the original

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

² The Secretariat's copy will be kept in the official repository of ICSID and is not intended to be used at hearings.

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submission, the parties shall courier to the opposing counsel at the address(es) indicated at §7.1 the following:

- 13.3.1. one hard copy in Letter format of the entire submission, including the pleading, witness statements, expert reports, and any other supporting documentation (but not including legal authorities), and the updated index of all the supporting documentation; and
 - 13.3.2. 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.
- 13.4. Additionally, three (3) business days following the electronic filing of the original submission the parties shall courier to the members of the Tribunal at the addresses indicated below the following:
- 13.4.1. For **Prof. Fernández Arroyo**:
 - 13.4.1.1. One hard copy in A4 format of the pleadings, without supporting documentation, and
 - 13.4.1.2. 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.
 - 13.4.2. For **Prof. Leathley**:
 - 13.4.2.1. one hard copy in A4 or Letter format of the entire submission, including the pleading, witness statements, expert reports, and any other supporting documentation (but not including legal authorities); and
 - 13.4.2.2. 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.
 - 13.4.3. For **Prof. Kohen**:
 - 13.4.3.1. one hard copy in A5 format of the pleadings, without supporting documentation; and
 - 13.4.3.2. 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.

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

Prof. Diego Fernández Arroyo
4 rue Rollin
75005 Paris
France
diego.fernandezarroyo@dpfa-
arb.com

Prof. Christian Leathley
Herbert Smith Freehills LLP
450 Lexington Ave
New York, NY 10017
United States of America
christian.leathley@hsf.com

Prof. Marcelo G. Kohen
The Graduate Institute of
International and Development
Studies
P.O. Box 1672,
CH-1211, Geneva 21
Switzerland
marcelo.kohen@graduateinstitute.ch

13.6. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.7. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

13.8. All pleadings shall be accompanied by an updated index of supporting documentation. The index shall indicate the document number and the pleading with which it was submitted. A *hyperlinked* version of the updated index shall be included in electronic submissions in USB drive form.

13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Evidence and Submission of Documents
Article 24 of the UNCITRAL Arbitration Rules (1976)

14.1. In addition to the relevant provisions of the UNCITRAL Arbitration Rules and this Procedural Order, the Tribunal may use, in this proceeding and as an additional guideline, the IBA Rules on the Taking of Evidence in International Arbitration 2010.

14.2. Written pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.

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- 14.3. The documents shall be submitted in the manner and form set forth in §13 above and subject to the considerations set forth in this section.
- 14.4. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.
 - 14.4.1. 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 for leave.
 - 14.4.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 14.5. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 24 of the UNCITRAL Arbitration Rules (1976).
- 14.6. The documents shall be submitted in the following form:
 - 14.6.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 14.6.2. The number of each exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits. The number for each exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits.
 - 14.6.3. Each Exhibit shall have a divider with the exhibit identification number on the tab.
 - 14.6.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such exhibit separately and consecutively.
 - 14.6.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “CL-0001”, or “R-0001” and “RL-0001” respectively.
 - 14.6.6. 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.

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- 14.7. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 14.8. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at the 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 hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing prior to their being used at the hearing.

15. Production of Documents

- 15.1. The parties shall be entitled to document production if they deem it necessary.
- 15.2. Documents exchanged between the parties may be produced in the original language and need not be translated.
- 15.3. Every request for production of documents shall identify each document or category of documents sought and its relevance. The requests shall be recorded in a Redfern Schedule and submitted in both Word and PDF formats. These requests shall not be sent to the Tribunal or the Secretary of the Tribunal. The document production phase shall consist of the following stages:
- 15.3.1. Request for production of documents.
- 15.3.2. Responses and objections to requests for production.
- 15.3.3. Reply on objections to requests for production.
- 15.3.4. Voluntary production of requested documents.
- 15.3.5. Tribunal decides on objections to requests for production.
- 15.3.6. Ordered production of requested documents based on the Tribunal's decision.
- 15.4. Other than as set forth in the Procedural Timetable attached hereto as **Annex A**, further requests for production of documents sought by either party, if any, shall be permitted only at the discretion of the Tribunal in exceptional circumstances. Such request(s) to the Tribunal must be substantiated.
- 15.5. Documents produced by a party to the other party, either voluntarily or under order

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of the Tribunal, shall not be sent to the Tribunal or otherwise enter the record of the arbitration unless and until a party files it as an exhibit.

16. Witness Statements and Expert Reports

Article 24 of the UNCITRAL Arbitration Rules (1976)

- 16.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 16.2. 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.
- 16.3. Each written witness statement and expert report shall be signed and dated by the witness or expert.

17. Examination of Witnesses and Experts

Articles 25 and 27(4) of the UNCITRAL Arbitration Rules (1976)

- 17.1. Articles 25 and 27(4) of the UNCITRAL Arbitration Rules (1976) shall govern the examination of witnesses and experts.
- 17.2. At a date to be determined by the Tribunal, but no later than by the pre-hearing organizational meeting, each party will identify the witnesses and experts it intends to call at the hearing for examination and cross-examination.
- 17.3. The waiver by a party of its right to cross-examine a witness or expert shall not imply acceptance of the content of the corresponding witness statement or expert report.
- 17.4. If a witness or expert has been called to testify by the adverse party but the witness or expert does not appear for examination, that witness's or expert's testimony shall be stricken from the record unless extraordinary circumstances exist that prevent him or her from testifying. The Tribunal may examine the witness or expert at any time, either before, during or after examination by one of the parties.
- 17.5. Without prejudice to the power of the Tribunal to request or allow the parties to produce further evidence at any stage of the proceedings, written witness statements and expert reports shall be submitted together with the written submissions which they support and shall constitute the direct testimony of each factual or expert witness, respectively. Notwithstanding, expert witnesses shall be permitted to make a presentation summarizing their respective expert report(s). The length of

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such presentation shall be decided by the Tribunal after consultation with the parties at the pre-hearing organizational meeting.

- 17.6. Witnesses and experts shall be examined by each party under the control of the Tribunal. Before giving evidence, witnesses shall make a declaration of truthfulness, and experts shall make a declaration of sincere belief. The Tribunal may examine the witness or expert at any time during the oral procedure.
- 17.7. The party presenting the witness or expert at the hearing may conduct a brief direct examination merely to introduce the witness or expert, confirm the accuracy and completeness of the witness's or expert's written statement(s) or expert report(s), and offer any corrections to the witness's or expert's written statement(s) or expert report(s) that may be necessary. The opposing party shall cross-examine the witness or expert. Thereafter, the party presenting the witness or expert shall be entitled to conduct re-direct examination which shall be limited to the scope of cross-examination.
- 17.8. Prior to his or her examination, a fact witness shall not be present in the hearing room; discuss the oral arguments or the testimony of any other witness who has already testified prior to giving his or her testimony; read any transcript of oral arguments or oral testimony; or listen to or watch any audio or video recording of the oral arguments or oral testimony. These restrictions do not apply to non-testifying representatives of a Party.
- 17.9. Notwithstanding the paragraph above, prior to his or her examination, a fact witness who is a Party and any testifying representatives of a Party may be present in the hearing room during the Parties' opening statements, shall exit the hearing room after opening statements, and shall be called to give their testimony before any other witnesses or experts are called. Upon giving his or her testimony, a fact witness who is a Party and any testifying representatives of a Party may remain in the hearing room throughout the duration of the hearing.
- 17.10. Expert witnesses shall be allowed in the hearing room at any time.
- 17.11. Other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal having consulted with the parties at a pre-hearing organizational meeting.

18. Pre-Hearing Organizational Meeting

- 18.1. A pre-hearing organizational meeting shall be held by telephone at a date determined by the Tribunal after consultation with the parties between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural,

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administrative, and logistical matters in preparation for the hearing.

19. Hearing

Articles 15(2) and 25 of the UNCITRAL Arbitration Rules (1976)

- 19.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 19.2. The hearing(s) shall be held in Washington, D.C., unless the parties agree otherwise.
- 19.3. The hearing(s) shall take place not before 45 days after the filing of the last written submission.
- 19.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing(s) to determine the next steps and to hold deliberations.
- 19.5. Hearings shall be open to the public.
- 19.6. Unless the parties agree otherwise, the total hearing time shall be split evenly between the Parties, subject to the time the Tribunal intends to reserve for itself for questions and other matters. Time shall be documented and measured using a chess clock with the Secretary of the Tribunal responsible for time-keeping.

20. Records of Hearing and Sessions

Article 25(3) of the UNCITRAL Arbitration Rules (1976)

- 20.1. Sound and video recordings shall be made of the hearing and sessions. The sound and video recordings shall be provided to the parties and the Tribunal Members.
- 20.2. Verbatim transcripts in the procedural languages shall be made of the hearing and sessions 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. The Secretariat will arrange for court reporting services.
- 20.3. The parties shall agree on any corrections to the transcripts within 30 days following the receipt of the final sound recordings, video recordings, or the transcripts, whichever is later. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”) following review by the court reporter. The Tribunal shall decide upon any disagreement between the parties and

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

21. Post-Hearing Memorials and Statements of Costs

Article 38 of the UNCITRAL Arbitration Rules (1976)

21.1. At or in advance of the pre-hearing organizational meeting, the parties shall indicate their preference as to whether post-hearing briefs shall be filed. At the conclusion of the hearing, following consultation with the parties, the Tribunal shall decide whether post-hearing briefs shall be filed, and if so, the length, format, content and timing. No additional evidence may be produced together with the post-hearing submission, except with leave from or on the request of the Tribunal.

21.2. Further, at the conclusion of the hearing, following consultation with the parties, the Tribunal will issue directions on the parties' statements of costs.

22. Publication

Article 32(5) of the UNCITRAL Arbitration Rules (1976)

22.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

On behalf of the Tribunal:

[signed]

Prof. Diego P. Fernández Arroyo
Presiding Arbitrator
Date: October 23, 2018

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ANNEX A - Procedural Timetable

I. Preliminary Phase

Procedural Step	Lapse
Claimant's Memorial	90 days (following the issuance of Procedural Order No. 1)
Respondent's Request for Bifurcation	+ 15 days
Claimant's Observations on Respondent's Request for Bifurcation	+ 15 days
Tribunal's decision on the bifurcation of the proceeding	+ 15 days

II. Continuation of the Arbitral Proceeding

Option I (the Tribunal rejects the Request for Bifurcation)

Procedural Step	Lapse
Respondent's Counter-Memorial	90 days (from the date of issuance of the Tribunal's Decision on the Request for Bifurcation)
Parties' Requests for Production of Documents	+ 21 days
Parties' Responses and Objections to Requests for Production of Documents	+ 15 days
Parties' Reply on Objections to Requests for Production of Documents	+ 7 days
Parties' Voluntary Production of Requested Documents	30 days (from the date of the Requests for Production of Documents)

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Tribunal's Decision on Parties' Objections to Requests for Production of Documents	+ 15 days
Parties' Production of Documents ordered by the Tribunal	+ 21 days
Claimant's Reply	+ 60 days (from the date of completion of the document production phase)
Respondent's Rejoinder	+ 60 days
Pre-Hearing organizational telephone conference between the Parties and the Tribunal	TBD
Hearing	TBD. No sooner than 45 days after the last written submission
Parties' Post-Hearing Briefs (if applicable) and Statement of Costs	TBD

Option II (the Tribunal grants the Request for Bifurcation)

Procedural Stage	Lapse
Respondent's Memorial on objections to Jurisdiction	60 days (from the date of issuance of the Tribunal's Decision on the Request for Bifurcation)
Parties' Requests for Production of Documents	+ 21 days
Parties' Responses and Objections to Requests for Production of Documents	+ 15 days
Parties' Reply on Objections to Requests for Production of Documents	+ 7 days

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Parties' Voluntary Production of Requested Documents	30 days (from the date of the Requests for Production of Documents)
Tribunal's Decision on Objections to Requests for Production of Documents	+ 15 days
Parties' Production of Documents based on Tribunal's Decision	+ 21 days
Claimant's Counter-Memorial on Jurisdiction	+ 60 days (from the date of completion of the document production phase)
Respondent's Reply on Jurisdiction	+ 45 days
Claimant's Rejoinder on Jurisdiction	+ 45 days
Pre-Hearing organizational telephone conference between the Parties and the Tribunal	TBD
Hearing	TBD. No sooner than 45 days after the last written submission
Parties' Post-Hearing Briefs (if applicable) and Statement of Costs	TBD
Tribunal's Decision on Jurisdiction	TBD
If the Tribunal decides that it has jurisdiction, the Tribunal will fix the calendar for the merits in consultation with the Parties on the basis of Option I	TBD