

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PETERIS PILDEGOVICS AND SIA NORTH STAR

v.

KINGDOM OF NORWAY

(ICSID Case No. ARB/20/11)

PROCEDURAL ORDER No. 4

SCHEDULE OF PLEADINGS AND CONFIDENTIALITY

Members of the Tribunal

Sir Christopher Greenwood, GBE, CMG, QC, *President*
The Honourable Yves L. Fortier, CC, OQ, QC, *Arbitrator*
Professor Donald M. McRae, CC, ONZM, FRSC, *Arbitrator*

Secretary of the Tribunal

Ms Leah Waithira Njoroge

30 June 2021

I. INTRODUCTION

1. The Tribunal has before it two distinct matters:-
 - (a) the schedule of pleadings following the Tribunal's decision on bifurcation in Procedural Order No. 3; and
 - (b) the manner in which the Parties are to deal with the designation of information as confidential in accordance with paragraph 23 of Procedural Order No. 1.

II. SCHEDULE

2. In paragraph 24 of Procedural Order No. 3, the Tribunal stated that it would issue a fresh schedule for pleadings in the light of proposals from the Parties.
3. On 14 June 2021, the Parties wrote to the Secretary attaching an agreed draft schedule.
4. The Tribunal considers that the Parties' draft schedule is acceptable and hereby adopts it. The schedule is attached as Annex A to this Order.

III. CONFIDENTIALITY

5. The Tribunal has received numerous communications from the parties regarding the proposed designation of particular documents and pieces of information as confidential. These communications have culminated in a request, dated 25 June 2021, from the Respondent for further guidance from the Tribunal.
6. Paragraph 23 of Procedural Order No. 1 makes provision for a Party to designate information as confidential and for the other Party to contest such designation. The Parties differ as to whether it is for the Party which designates information as confidential to indicate the particular section of paragraph 23 on which it relies and to summarise why it considers that the information in question falls within that provision, or for the Party contesting the designation of that information as confidential to demonstrate that the information in question does not fall within the scope of the provisions of paragraph 23.
7. The Tribunal starts from the premiss that the proceedings are public and that the pleadings should be a matter of public record. Paragraph 23 of Procedural Order No. 1 creates a system by which, as an exception, parts of the pleadings may be designated as confidential.
8. Paragraph 23.4 of Procedural Order No. 1 provides:

A Party may designate as confidential information only information which falls within one or more of the categories listed in paragraph 23.1, above. ...

9. Since the right to designate information as confidential is limited to information which falls within one of the categories listed in Paragraph 23.1, it follows that it is for the Party which designates information as confidential to indicate the category in Paragraph 23.1 which it considers to be applicable. That should be done at the time when the designation is made. The Tribunal also considers that the Party which designates information as confidential should, when doing so, briefly indicate why it considers that that information falls within the relevant category and should thus be treated as

confidential. That will enable the other Party to make an informed decision about whether or not to oppose the designation.

10. In conclusion, the Tribunal wishes to remind the Parties that the issue of whether or not information is to be treated as confidential must not be allowed to become a protracted procedural battleground. The designation of information as confidential should be treated as exceptional and, where possible, used in relation to specific and clearly identified pieces of information, rather than entire documents.

For and on behalf of the Tribunal,

[signed]

Sir Christopher Greenwood
President of the Tribunal
30 June 2021

ANNEX A

PARTIES' AGREED TIMETABLE OF PROCEEDINGS IN LIGHT OF THE TRIBUNAL'S PROCEDURAL ORDER NO. 3

Procedural Step	Date
Respondent's Counter-Memorial and Memorial on Jurisdiction (if jurisdictional objections are made); any request for bifurcation by Respondent	29 October 2021
Parties' requests for disclosure	12 November 2021 (14 Days from filing of Counter-Memorial)
Parties' objections to requests for disclosure; submission by each party of a privilege log listing documents withheld by the parties on the basis of privilege (such as cabinet confidences or another similar type of privilege)	26 November 2021 (14 Days from filing of requests)
Parties' production of documents whose disclosure is not subject to objection	10 December 2021 (28 Days from date of request)
Parties' responses to objections to disclosure	10 December 2021 (14 Days from filing of objections)
Tribunal's decision on contested requests for disclosure	24 December 2021 (14 Days from filing of responses to objections)
Production of documents subject of contested Requests	14 January 2022 (21 Days from Tribunal's decision)
Claimants' Reply and Counter-Memorial Jurisdiction (if jurisdictional objections are made); comments on any request for bifurcation made by Respondent; possibility	28 February 2022 (122 Days from filing of Counter-Memorial (as 120 days falls on a Saturday))

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for Claimants of submitting a request for bifurcation	
If no request for bifurcation is made by either Party:	
Respondent's Rejoinder and Reply on Jurisdiction	30 June 2022 (122 Days from filing of Reply)
Claimants' Rejoinder on Jurisdiction (if jurisdictional objections are made)	28 July 2022 (28 Days from filing of Rejoinder)
Pre-Hearing Conference	Starting from 25 August 2022 Not earlier than 28 Days after Respondent's Rejoinder or (if jurisdictional objections are made) Claimants' Rejoinder on Jurisdiction and not later than 28 Days before the hearing
Hearing	To be determined
If a request for bifurcation is made only by Respondent:	
Respondent's reply to any comments made by the Claimants on the Respondent's request for bifurcation	14 March 2022 (14 Days from Claimants' Reply)
Claimants' rejoinder to any request for bifurcation made by the Respondent	28 March 2022 (14 Days from Respondent's reply to comments by Claimants on any request for bifurcation by Respondent)
Tribunal's decision on bifurcation	11 April 2022 (14 days from Claimants' rejoinder to a reply by Respondent regarding any request for bifurcation by Respondent) If bifurcation is granted: a new calendar is to be established

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	If bifurcation is refused, the following calendar applies:
Respondent's Rejoinder and Reply on Jurisdiction	30 June 2022 (122 Days from filing of Reply)
Claimants' Rejoinder on Jurisdiction (if jurisdictional objections are made)	28 July 2022 (28 Days from filing of Respondent's Rejoinder)
Pre-Hearing Conference	Starting from 25 August 2022 Not earlier than 28 Days after Respondent's Rejoinder or (if jurisdictional objections are made) Claimants' Rejoinder on Jurisdiction and not later than 28 Days before the hearing
Hearing	To be determined
If a request for bifurcation is made by Claimants:	
Respondent's comments on bifurcation	28 March 2022 (28 Days from Claimants' request)
Tribunal' decision on bifurcation	25 April 2022 (28 Days from Respondent's comments) If bifurcation is granted: a new calendar is to be established If bifurcation is refused, the following calendar applies:
Respondent's Rejoinder and Reply on Jurisdiction	30 June 2022 (122 Days from filing of Reply)

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Claimants' Rejoinder on Jurisdiction (if jurisdictional objections are made)	28 July 2022
	(28 Days from filing of Rejoinder)
Pre-Hearing Conference	Starting from 25 August 2022 Not earlier than 28 Days after Respondent's Rejoinder or (if jurisdictional objections are made) Claimants' Rejoinder on Jurisdiction and not later than 28 Days before the hearing
Hearing	To be determined