

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Discovery Global LLC**

**Claimant**

**v.**

**Slovak Republic**

**Respondent**

**(ICSID Case No. ARB/21/51)**

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**PROCEDURAL ORDER NO. 1**

*Members of the Tribunal*

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal  
Mr. Stephen L. Drymer, Arbitrator  
Professor Philippe Sands, Arbitrator

*Secretary of the Tribunal*

Ms. Jara Minguez Almeida

*Assistant to the Tribunal*

Dr. Magnus Jesko Langer

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28 March 2022

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**Introduction**

The first session of the Tribunal was held on 25 March 2022, at 17:00 CET, by videoconference. The session was adjourned at 17:35 CET.

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 Gabrielle Kaufmann-Kohler, President of the Tribunal  
Mr. Stephen L. Drymer, Arbitrator  
Professor Philippe Sands, Arbitrator

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Tribunal

Assistant to the Tribunal:

Dr. Magnus Jesko Langer

Attending on behalf of the Claimant:

*Counsel*

Mr. Neil Newing	Signature Litigation LLP
Mr. Ryan Cable	Signature Litigation LLP
Mr. Colin Grech	Signature Litigation LLP
Mr. Mark Tushingham	Twenty Essex

*Party representatives*

Mr. Alexander Fraser	Discovery Global LLC
Mr. Michael Lewis	Discovery Global LLC

Attending on behalf of the Respondent:

*Counsel*

Mr. Stephen Anway	Squire Patton Boggs
Mr. Rostislav Pekař	Squire Patton Boggs
Ms. Tatiana Prokopová	Squire Patton Boggs
Mr. Douglas Pilawa	Squire Patton Boggs

*Party representatives*

Ms. Andrea Holíková	Ministry of Finance
Mr. Julián Kupka	Ministry of Finance
Ms. Zuzana Ješkova	Ministry of Finance
Ms. Katarína Hlinková	Ministry of Finance
Mr. Róbert Baláž	Ministry of Finance

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The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 23 February 2022; and
- The Parties' comments on the Draft Procedural Order received on 17 and 24 March 2022, 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.

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.

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

- 2.1. The Tribunal was constituted on 31 January 2022 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.
- 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 31 January 2022.
- 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*

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- 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/her 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. 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.
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 possible reconsideration of such decision by the full Tribunal.
  - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with regular status updates.
  - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

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- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

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 as necessary or appropriate.
- 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.
- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in Annex B and (ii) the Tribunal is informed before the original limit to be extended has lapsed.

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 Mínguez Almeida  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 458-0831  
Fax: + 1 (202) 522-2615  
Email: [jminguez@worldbank.org](mailto:jminguez@worldbank.org)  
Paralegal name: Ana Cecilia Chamorro  
Paralegal email: [achamorro@worldbank.org](mailto:achamorro@worldbank.org)

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

Ms. Jara Mínguez Almeida  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
USA  
Tel. 202-458-1534

8. Appointment of a Tribunal Assistant

8.1. By letter of 23 February 2022, the ICSID Secretariat, acting on instructions of the President of the Tribunal, noted that it would assist the overall cost and time efficiency of the proceedings if the Tribunal had an Assistant. In the same letter it was proposed that Dr. Magnus Jesko Langer of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. Dr. Langer's *curriculum vitae* and a disclosure were distributed to the Parties on that same date.

8.2. The Secretariat's letter also set out the tasks which may be assigned to the Assistant and noted that the Assistant was subject to the same confidentiality obligations as the Members of the Tribunal. Dr. Langer has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 23 February 2022.

8.3. The Parties agree to the appointment of Dr. Langer as Assistant to the Tribunal and that he will receive US\$ 280 for each hour of work performed in connection with the case or pro rata. Dr. Langer will also receive subsistence allowances and be reimbursed for his travel and other expenses in the limits prescribed by ICSID Administrative and Financial Regulation 14.

8.4. The contact information of the Assistant is as follows:

Dr. Magnus Jesko Langer  
Lévy Kaufmann-Kohler  
3-5 rue du Conseil-Général, 1205 Geneva  
Switzerland  
Email: magnusjesko.langer@lk-k.com

9. Representation of the Parties  
*Arbitration Rule 18*

- 9.1. 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

Mr. Elliott Phillips  
Mr. Neil Newing  
Mr. Ryan Cable  
Mr. Colin Grech  
Signature Litigation LLP  
138 Fetter Lane  
London  
EC4A 1BT  
United Kingdom  
Tel. +44 20 3818 3500  
Email:  
[Colin.Grech@signaturelitigation.com](mailto:Colin.Grech@signaturelitigation.com);  
[Neil.Newing@signaturelitigation.com](mailto:Neil.Newing@signaturelitigation.com);  
[Ryan.Cable@signaturelitigation.com](mailto:Ryan.Cable@signaturelitigation.com);  
[Elliott.Phillips@signaturelitigation.com](mailto:Elliott.Phillips@signaturelitigation.com)

Mr. Mark Tushingam  
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London  
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United Kingdom  
Tel. +44 20 7842 1200  
Email: [mtushingam@twentyessex.com](mailto:mtushingam@twentyessex.com)

For Respondent

Ms. Andrea Holíková  
Department of Specific Legal Relations  
National Reporting Section  
Ministry of Finance of the Slovak  
Republic  
Štefanovičova 5  
P.O. Box 82, 817 82 Bratislava 15  
Slovak Republic  
Email: [andrea.holikova@mfsr.sk](mailto:andrea.holikova@mfsr.sk);  
[arbitration@mfsr.sk](mailto:arbitration@mfsr.sk)

Mr. Stephen Anway  
Mr. Rostislav Pekař  
Mr. David Alexander  
Ms. Tatiana Prokopová  
Mr. Mark Stadnyk  
Ms. Eva Cibulková  
Mr. Douglas Pilawa  
Mr. Jakub Kamenický  
Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas  
New York, NY 10036  
United States of America  
Tel. + 1 212 407 0146

**Group Email:**

[DiscoverySK@squirepb.com](mailto:DiscoverySK@squirepb.com)

10. Advance Payments to ICSID and Third Party Funding  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

- 10.1. 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.



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- 10.2. By letter of 1 February 2022, ICSID requested that each Party pay US\$150,000.00 to cover the initial costs of the proceeding. ICSID received the Claimant's payment on 24 February 2022 and the Respondent's payment on 7 March 2022.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 10.4. Each Party shall either (i) declare that itself or its counsel do not benefit from the provision of funds or other material support for the pursuit or defense of its case in these proceedings, by a natural or juridical person that is not a party to the dispute nor a corporate affiliate of a Party ("third-party funder"), or (ii) disclose to the Centre, the Tribunal and the other Party, that it has third-party funding and identify the third-party funder. The Tribunal may seek such other information about the funding arrangements that it deems appropriate. For the purpose of this provision, the term "third-party funder" does not include shareholders, parent or affiliated entities.
- 10.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.
11. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*
- 11.1. Washington D.C. shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate after consultation with the Parties.
- 11.3. After consultation with the Parties, it may also determine that hearings will be conducted online through an appropriate videoconferencing platform. In such case, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 11.4. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.
12. Procedural Language, Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
- 12.1. English is the procedural language of the arbitration.

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- 12.2. Documents filed in any other language must be accompanied by a translation into English.
  - 12.3. 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. Upon determination from the Tribunal, either *proprio motu* or at the request of one Party, the author of any translation shall be identified by name and capacity and shall confirm that, to the best of his or her knowledge, the translation accurately reflects the contents of the original document. It shall not be improper for counsel to provide their own translations, provided that such circumstance is indicated.
  - 12.4. 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 of the whole translation or of the relevant parts.
  - 12.5. Documents exchanged between the Parties in a language other than English under § 16 below (Production of Documents) need not be translated.
  - 12.6. 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 if possible.
  - 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see § 20 below), which witnesses or experts require interpretation.
  - 12.8. 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.
13. Routing of Communications  
*Administrative and Financial Regulation 24*
- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
  - 13.2. 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 and the Assistant.
  - 13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party, the Tribunal and the Assistant.

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13.4. 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.

14. Number of Copies and Method of Filing of Parties' Pleadings  
*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

14.1. By the relevant filing date, the Parties shall:

14.1.1. submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements and expert reports; and

14.1.2. within five business days of the filing, upload the pleading with all of the supporting documentation and updated index to the file sharing platform that will be created by ICSID for the purposes of this case, except that English translations of documents exhibited to a party's pleadings in an original language other than English may be uploaded within ten business days of the filing.<sup>1</sup>

14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).

14.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. (Please follow the naming conventions contained in **Annex A**).

14.4. 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 at the address indicated at § 9.1 or 7.3 above and to each Member of the Tribunal at the addresses indicated at § 14.5 below 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 hyperlinked index of all documents.

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

Prof. Gabrielle Kaufmann-Kohler  
Lévy | Kaufmann-Kohler

Mr. Stephen L. Drymer,  
Woods LLP

Professor Philippe Sands  
Matrix Chambers

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

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3-5, rue du Conseil-Général  
P.O. Box 552  
CH-1211 Geneva 4  
Switzerland

2000, McGill College  
Bureau 1700  
Montreal, Quebec H3A 3H3  
Canada

Grays Inn  
London WC1 R 5LN  
United Kingdom

- 14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.7. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

- 15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex B, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.
- 15.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 15.3. In their second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing Party's last submission.
- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.5. All written submissions shall be divided into consecutively numbered paragraphs.
- 15.6. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

16. Production of Documents

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

- 16.1. The Tribunal shall be guided by Articles 3 and 9 of the 2010 IBA Rules on the Taking of Evidence in International Arbitration.
- 16.2. Within the time limit set in Annex B, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control. Such a request for production shall identify each document or narrow category of documents sought with precision, in the form of a Redfern Schedule as attached in Annex C hereto, in both Word and .pdf format, specifying why the document sought is relevant to the dispute and material to the outcome of the case. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
- 16.3. Within the time limit set forth in Annex B, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.4. Within the time limit set forth in Annex B, the requesting Party may seek an order for the production of the documents requested sought and not produced, in which case it shall reply to the other Party's objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
- 16.5. The Parties shall make no submissions in respect of the steps set out in §§ 16.2 to 16.4 above other than those incorporated in the Redfern Schedules.
- 16.6. On or around the date set forth in Annex B, the Arbitral Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof.
- 16.7. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Arbitral Tribunal. Documents so communicated shall not be considered to be on record unless and until the requesting Party subsequently files them as exhibits in accordance with § 17 below.
- 16.8. In addition, the Arbitral Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Arbitral Tribunal in accordance with § 17 below and shall be considered to be on record.
- 16.9. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may

deem, in light of all circumstances including the reasons advanced by a Party to explain its inability to produce any given document, that the document is adverse to the interests of that Party.

17. Submission of Documents

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

17.1. Documents, including exhibits and legal authorities, shall be submitted together with the memorial or written submission that refers to them in conformity with §§ 15.2 and 15.3 above.

17.2. 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 special circumstances exist based on a reasoned written request followed by observations from the other Party.

17.2.1. Should a Party request leave to file additional or responsive documents, it may not annex the documents that it seeks to file to its request.

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

17.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

17.4. The documents shall be submitted in the following form:

17.4.1. The number of each Exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

17.4.2. Factual and legal exhibits shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document and shall be incorporated into the file name in accordance with § 17.4.4.

17.4.3. A Party may produce several documents relating to the same subject matter within one exhibit, numbering each page of such exhibit separately and consecutively.

- 17.4.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.5. 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.
- 17.6. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 17.7. Demonstrative exhibits (such as charts, tabulations, etc. compiling evidence that is in the record but not in that form) may be used at any hearing, provided they contain no new evidence and each demonstrative exhibit indicates the number of the exhibit(s) from which it is derived. Each Party shall number its demonstrative exhibits consecutively and provide them in electronic form to the other Party, the Tribunal Members, the Assistant, the Tribunal Secretary, the court reporter(s) and interpreter(s) (i) in advance of the hearing in case of demonstrative exhibits used in opening argument and (ii) during the hearing in case of demonstrative exhibits used for expert presentations (in both cases, at a time to be specified in the pre-hearing procedural order).
- 17.8. Each Party may use a PowerPoint presentation in support of its opening statement, provided it contains no new evidence. The Powerpoint presentation must be provided in electronic form to the participants listed in § 17.7 at the beginning of the oral argument, with the exception of slides that contain demonstrative exhibits, which must be provided as specified in § 17.7.
18. Witnesses  
*Convention Article 43(a); Arbitration Rules 24, 35 and 36*
- 18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 18.2. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Arbitral Tribunal, unless a person refuses or is unable to provide such a statement. A person who has not submitted a written witness statement may provide testimony to the Tribunal only in exceptional circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
- 18.3. Each witness statement shall state the witness's name, date of birth, and involvement in the case.

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- 18.4. Witness statements shall be submitted in English or with a translation into English.
- 18.5. In accordance with §§ 15.2 and 15.3 above, each Party will submit its witness statements together with its written submissions. In the event that a Party does not file a witness statement with its written submission, it shall indicate when filing the submission the reasons for which a statement cannot be filed for a particular witness. When considering whether to admit any witness statement presented after the filing of the Party's written submission, the Tribunal shall take into account whether there were exceptional circumstances which prevented the production of the statement together with the written submission. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second".
- 18.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.7. On the date provided in Annex B, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine.
- 18.8. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Arbitral Tribunal does not direct his or her appearance.
- 18.9. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.10. If it deems it necessary, the Tribunal may call upon the Parties to produce as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.11. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.12. The Tribunal may allow a witness to be examined by videoconference (in the context of an online hearing or otherwise) and will issue appropriate directions.
- 18.13. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-



examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.

18.14. At the hearing, the examination of each witness shall proceed as follows:

- 18.14.1. During his/her examination, the witness is only allowed to have regard to a clean copy of his/her statement, and clean copies of any document filed in the arbitration must be made available to the witness or expert to the extent useful for his/her examination. All witnesses or experts shall be required to affirm they will tell the truth and will be warned of the sanctions, including a prosecution for perjury, existing under the applicable law.
  - 18.14.2. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements;
  - 18.14.3. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement. During the pre-hearing organizational meeting mentioned in § 20, the Tribunal will address the conduct of cross-examinations;
  - 18.14.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination;
  - 18.14.5. Re-cross examination may exceptionally be allowed in the Tribunal's discretion; and
  - 18.14.6. The Tribunal may ask its questions at any time, likely mainly at the end.
- 18.15. Subject to other arrangements during the pre-hearing telephone conference, (i) fact witnesses shall be examined prior to expert witnesses, the Claimant's fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimant's expert for each topic being examined first.
- 18.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. As a further exception, for each Party, one Party representative who is also a fact witness may attend the hearing at all times, being understood that such witness will be identified at the latest at the pre-hearing organizational meeting and heard as early as possible in the course of the hearing.

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18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

18.17.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant;

18.17.2. Direct that a witness be recalled for further examination at any time; or

18.17.3. Provide that the witnesses may be examined together (“witness conferencing”), in which case it will give appropriate directions.

19. Experts

*Convention Article 43(a), Arbitration Rules 35 and 36*

19.1. Each Party may retain and produce evidence of one or more experts.

19.2. To the extent possible, the experts on the same subject matter on both sides should liaise before the hearing to identify disputed and undisputed issues. The Tribunal may order experts on the same subject matter to produce joint expert reports identifying disputed and undisputed issues.

19.3. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Arbitral Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

19.4. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties’ submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in § 12 above.

19.5. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.

19.6. After consultation with the Parties, the Tribunal may request non-legal experts to give a presentation summarizing their methodology and conclusions in lieu of direct examination, which shall not last longer than fifteen minutes.

19.7. The Tribunal shall not consider the expert evidence of an expert witness who fails to appear when summoned to a hearing, unless exceptional circumstances warrant his/her non-appearance (*e.g.*, circumstances beyond the expert’s control or the control of the Party presenting the expert).

- 19.8. Unless inconsistent with this Section, all the rules set forth in § 18 above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts.
20. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*
- 20.1. A pre-hearing organizational meeting shall be held on the date provided in Annex B.
21. Hearings  
*Arbitration Rules 20(1)(e) and 32*
- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall take place on the dates set in Annex B.
- 21.3. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.
- 21.4. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be discussed at the pre-hearing organizational meeting and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.
22. Records of Hearings and Sessions  
*Arbitration Rules 13 and 20(1)(g)*
- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties, the Tribunal Members and the Assistant.
- 22.2. Verbatim transcripts in the procedural 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, if possible, 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.
- 22.3. The Parties shall agree on any corrections to the transcripts within 30 days after the end of the hearing. The agreed corrections may be entered in the transcript by the court reporter ("revised transcripts"). The Tribunal shall decide upon any

disagreement between the Parties and any correction adopted by the Tribunal shall be entered in the revised transcripts by the court reporter.

23. Post-Hearing Memorials and Statements of Costs

*Convention Article 44; Arbitration Rule 28(2)*

23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for preparing, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave from or on request of the Tribunal.

23.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

24. Transparency

24.1. The Tribunal will issue a separate order on transparency.

25. Publication

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

25.1. Subject to the rules governing the transparency of these proceedings, the Parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

26. Data Protection and Cybersecurity

26.1. The Members of the Tribunal, the Assistant, and the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of these arbitration proceedings.

26.2. The Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.

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- 26.3. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber-security of arbitration-related information and the Parties confirm that communications may be sent by email.

[signed]

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Gabrielle Kaufmann-Kohler  
President of the Tribunal  
Date: 28 March 2022

ANNEX A

**ELECTRONIC FILE NAMING GUIDELINES**

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 used 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	<b>Title of Pleading–LANGUAGE</b>
	<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	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	<b>CL-####–LANGUAGE</b>
	<b>RL-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S LEGAL AUTHORITIES</b>
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>

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	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	<b>WITNESS/EXPERT INITIALS-###</b>
	<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>
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
<b>OTHER APPLICATIONS</b>	<b>Name of Application-[Party]-LANGUAGE</b>
	<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>	

ANNEX B

PROCEDURAL TIMETABLE

	<b>Procedural step</b>	<b>Author</b>	<b>Interval</b>	<b>Date</b>
1.	Claimant's Memorial	Claimant	25 weeks from First Procedural Meeting	16 September 2022
2.	Respondent's Counter-Memorial	Respondent	25 weeks from C's Memorial	10 March 2023
3.	Document production requests	Parties	5 weeks after R's Counter-Memorial	14 April 2023
4.	Objections to document requests and/or voluntary production of documents	Parties	A. 2 weeks after (3) B. 4 weeks after (3)	28 April 2023 12 May 2023
5.	Replies to objections to document requests	Parties	2 weeks after step (4A)	12 May 2023
6.	Decision on the Parties' requests for production of documents	Tribunal	2 weeks after step (5)	26 May 2023
7.	Production of documents ordered by the Tribunal	Parties	4 weeks after step (6)	23 June 2023
8.	Consulting with Parties and decision on format of hearing	Tribunal and Parties	1 week after step (7)	30 June 2023
9.	Claimant's Reply	Claimant	12 weeks after step (7)	15 September 2023
10.	Respondent's Rejoinder	Respondent	12 weeks after step (9)	8 December 2023
11.	Identification of witnesses and experts to be called at the hearing	Parties	2 weeks after step (10)	22 December 2023



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Procedural Order No. 1 – Annex B

12.	Pre-hearing telephone conference	Parties and the Tribunal		10 January 2024 (at 7 am ET, 12 pm GMT, 1 pm CET)
13.	Hearing	All		1-7 February 2024, with 4 February being a day off
14.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties	To be determined	
15.	Cost Submissions	Parties	To be determined	

ANNEX C

**REDFERN SCHEDULE**

<b>Document Request No.</b>	
<b>Identification of documents or category of documents requested</b>	
<b>Relevance and materiality according to requesting party, including reference to submissions</b>	
<b>Responses and/or Objections by disputing party to production of requested documents</b>	
<b>Reply to objections</b>	
<b>Decision of the Tribunal</b>	