

**IN THE MATTER OF AN ARBITRATION UNDER THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF
CHINA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE ON THE
PROMOTION AND PROTECTION OF INVESTMENTS**

- between -

**ASIAPHOS LIMITED AND NORWEST CHEMICALS PTE LTD
(the “Claimants”)**

and

**PEOPLE’S REPUBLIC OF CHINA
(the “Respondent”)**

(ICSID Case No. ADM/21/1)

PROCEDURAL ORDER NO. 1 (Updated)

Members of the Tribunal

Dr. Klaus Sachs, President of the Tribunal

Dr. Stanimir Alexandrov, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

Secretary of the Tribunal

Geraldine R. Fischer

13 July 2021/14 September 2022 (Updated)

Table of Contents

1. Applicable Arbitration Rules	3
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3. Administering Authority, Appointing Authority and Secretary of the Tribunal	5
4. Fees and Expenses of Tribunal Members	6
5. Appointment of an Assistant to the Tribunal.....	6
6. Apportionment of Costs and Advance Payments	7
7. Presence and Quorum	8
8. Rulings of the Tribunal	8
9. Power to Fix Time Limits	9
10. Representation of the Parties	9
11. Place of Arbitration.....	10
12. Procedural Language	10
13. Routing of Communications	11
14. Number of Copies and Method of Filing of Parties' Pleadings.....	11
15. Objections to Jurisdiction and/or Admissibility	12
16. Number and Sequence of Pleadings	13
17. Production of Documents	13
18. Submission of Documents	15
19. Witness Statements and Expert Reports	16
20. Examination of Witnesses and Experts.....	16
21. Pre-Hearing Organizational Meetings	17
22. Hearings	17
23. Records of Hearings and Sessions	18
24. Post-Hearing Memorials and Statements of Costs.....	19
25. Confidentiality and Publication	19
26. Immunity of the Tribunal.....	19
ANNEX A.....	20
ANNEX B.....	22

Introduction

The first session of the Tribunal was held on 26 May 2021 by videoconference.

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

Dr. Klaus Sachs, President of the Tribunal

Dr. Stanimir Alexandrov, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Legal Counsel

Attending on behalf of the Claimants:

Mr Edward G. Kehoe, King & Spalding LLP

Ms. Elodie Dulac, King & Spalding LLP

Ms. Jia Lin Hoe, King & Spalding LLP

Dr. Ong Hian Eng, AsiaPhos, CEO and Director

Simon Ong, AsiaPhos, Director

Jaime Chiew, AsiaPhos, CRO

Chia Chin Hau, AsiaPhos, CFO

Attending on behalf of the Respondent:

Mr. SUN Zhao, Ministry of Commerce, the People's Republic of China

Mr. Wang Yi, Ministry of Commerce, the People's Republic of China

Mr. XING Xiusong, Global Law Office

Mr. ZHANG Xin, Global Law Office

Mr. REN Qing, Global Law Office

Ms. WANG Heng, Global Law Office

Ms. XU Zheng, Global Law Office

Ms. LI Yalin, Global Law Office

Ms. HUO Ningxin, Global Law Office

Ms. CHENG Shuang, Global Law Office

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 27 April 2021; and

- The Parties' comments on the Draft Procedural Order received on 19 May 2021 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

This first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex B.

1. Applicable Arbitration Rules

- 1.1. This arbitration proceeding shall be conducted in accordance with the provisions of this Procedural Order No 1. If any question of procedure arises which is not covered by this Procedural Order No 1, the Arbitral Tribunal shall decide the question.
- 1.2. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, which entered into force on 14 October 1966 ("ICSID Convention") does not apply to this proceeding. However, in accordance with Article 13(6) of the Agreement between the Government of the People's Republic of China and the Government of the Republic of Singapore on the Promotion and Protection of Investments ("**China-Singapore BIT**"), the Arbitral Tribunal shall determine the arbitral procedure with reference to the ICSID Convention and the ICSID Arbitration Rules in force as of April 2006, to the extent that an application of such provisions is not specifically tailored to arbitration proceedings conducted under the ICSID Convention.
- 1.3. For greater clarity, the Parties agree that Articles 52 and 53 of the ICSID Convention and corresponding provisions of the ICSID Arbitration Rules, among others, are not applicable in this arbitration. In this regard, the Claimant considers Articles 54 and 55 of the ICSID Convention apply to this proceeding, while the Respondent disagrees. The Tribunal notes that in accordance with the Parties' agreement, any award rendered in this proceeding will not be rendered pursuant to the ICSID Convention, and accordingly Articles 54 and 55 are also not applicable in this arbitration.
- 1.4. The Tribunal will take into account any mandatory provisions of the applicable arbitration law of the place of arbitration.

2. Constitution of the Tribunal and Tribunal Members' Declarations

- 2.1. In their Request for Arbitration dated 7 August 2020, the Claimants appointed Dr. Stanimir Alexandrov as their party-appointed arbitrator. His contact details are as follows:

Dr. Stanimir Alexandrov
Stanimir A. Alexandrov PLLC
1501 K Street N.W., Suite C-072
Washington D.C., 20005
United States of America
Phone: +1 (202) 736-8186
Email: salexandrov@alexandrovlaw.com

- 2.2. On 21 October 2020, the Respondent informed the Claimants that it had appointed Prof. Albert Jan van den Berg as its party-appointed arbitrator. His contact details are as follows:

Prof. Albert Jan van den Berg
Hanotiau & van den Berg (HVDB)
IT Tower (9th Floor)
480 Avenue Louise, B9
1050 Brussels
Belgium
Phone: +32 (0)2 290 39 13
Email: ajvandenberg@hvdb.com

- 2.3. On 10 February 2021, the two party-appointed arbitrators appointed Prof. Dr. Klaus Sachs as the Chairman and both parties confirmed their acceptance of such appointment on the same date. His contact details are as follows:

Prof. Dr. Klaus Sachs
CMS Hasche Sigle
Nymphenburger Straße 12
80335 Munich
Germany
Phone: +49 89 23807 109
Email:klaus.sachs@cms-hs.com

- 2.4. The Parties confirm that the Members of the Tribunal have been duly and validly appointed in accordance with the China-Singapore BIT.

- 2.5. The Members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the Members of the Tribunal confirms that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to

justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.

- 2.6. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 2.7. The Parties confirm that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them.

3. Administering Authority, Appointing Authority and Secretary of the Tribunal

- 3.1. On 10 March 2021, ICSID relayed its acceptance of the Parties' appointment as the Administering Authority. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Arbitration Rules. The cost of ICSID's services shall be included in the costs of the arbitration.
- 3.2. 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\$42,000.00 (forty-two thousand United States dollars).
- 3.3. The Claimants and the Respondent have agreed that the Secretary-General of ICSID shall act as the Appointing Authority in this arbitration proceeding.
- 3.4. The Tribunal Secretary is Ms. Geraldine R. Fischer, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 3.5. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Geraldine Fischer
ICSID – The World Bank
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-1534
Email: gfisher1@worldbank.org
Paralegal Email: pmagarino@worldbank.org

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

Ms. Geraldine Fischer
1225 Connecticut Avenue, N.W. ("C Building")
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: + 1 (202) 458-1534

4. Fees and Expenses of Tribunal Members

- 4.1. The fees of each Tribunal Member shall be US\$375.00 per hour until 30 June 2022 and US\$500 per hour as of 1 July 2022. The Tribunal fees and expenses shall be determined and paid in accordance with the ICSID Schedule of Fee and ICSID Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 4.2. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 4.3. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

5. Appointment of an Assistant to the Tribunal

- 5.1. The Parties have agreed to the appointment of Ms. Susanne Schwalb as Assistant to the Tribunal.
- 5.2. As stated in the Tribunal's communication of 22 April 2021, the Tribunal will not delegate to the Assistant of the Tribunal any of the duties and obligations incumbent on the Members of the Tribunal as arbitrators. The Assistant of the Tribunal shall undertake only such specific tasks as are assigned to her by the Tribunal, including:
 - Organizing of the case documents and assisting with the organization of procedural matters, under the supervision of the President;
 - Attending hearings, meetings and deliberations; and
 - Carrying out research of specific issues of law, summarizing submissions, reviewing authorities as well as assisting the Tribunal in preparing first drafts of decisions and procedural orders, always under the strict supervision of the President and following the President's specific instructions.

- 5.3. As stated in the Tribunal's communication of 28 April 2021, the Tribunal confirmed that the Assistant's tasks will not include assisting the Tribunal in preparing first drafts of documents deciding jurisdiction and/or admissibility issues.
- 5.4. The Assistant of the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Arbitral Tribunal. The Parties received the Assistant's declaration of confidentiality, independence and impartiality dated 29 April 2021.
- 5.5. Ms. Susanne Schwalb's contact details are the following:
- Susanne Schwalb
CMS Hasche Sigle
Nymphenburger Straße 12
80335 Munich
Germany
susanne.schwalb@cms-hs.com
- 5.6. As stated in the Tribunal's communication of 22 April 2021, no fee will be charged for Ms. Susanne Schwalb's work. However, she will receive reimbursement of reasonable expenses, in particular related to oral hearing(s), in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.
- 5.7. The Tribunal may remove the Assistant of the Tribunal at its discretion. The Tribunal may appoint a substitute with the prior consent of both Parties, in which case Sections 5.2, 5.3, 5.4 and 5.6 shall apply.

6. Apportionment of Costs and Advance Payments

- 6.1. 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, in accordance with Article 13(10) of the China-Singapore BIT. If the amounts requested are not paid in full within 30 days, ICSID shall inform both Parties of the default and give an opportunity to either of them to make the required payment. At any time 15 days after such information is sent by ICSID, if payment is still outstanding, the Arbitral Tribunal may stay the proceeding. If the proceeding is stayed for non-payment for a consecutive period of six months, the Arbitral Tribunal may discontinue the proceeding.
- 6.2. In accordance with Article 13(10) of the China-Singapore BIT, each Party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the Tribunal shall be borne equally by the Parties concerned. The Tribunal may, however, in its decision direct that a higher

proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

- 6.3. By letter of 17 March 2021, ICSID requested that each Party pay US\$150,000.00 (one hundred and fifty thousand United States dollars) to defray the initial costs of the proceeding. Payment shall be made within 30 days after the receipt of the request. Claimants made the requested payment on 14 April 2021, and Respondent made the requested payment on 16 April 2021.
- 6.4. The Tribunal may request supplementary deposits from the Parties as needed. Such requests will be accompanied by an interim statement of account.
- 6.5. After the final 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.

7. Presence and Quorum

- 7.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

8. Rulings of the Tribunal

- 8.1. In accordance with Article 13(7) and 13(9) of the China-Singapore BIT, decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal, and the Tribunal shall state the basis of its decision and state reasons.
- 8.2. 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.
- 8.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If an award has not been issued within six months after the final submission on a particular matter (whether oral or written, as the case may be), the Tribunal will provide the Parties with status updates every two months thereafter.
- 8.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal, provided that the content of the Procedural Orders is agreed to by a majority of the Tribunal, subject to paragraph 8.2.
- 8.5. 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.
- 8.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

9. Power to Fix Time Limits

- 9.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 9.2. 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.

10. Representation of the Parties

- 10.1. 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. Any intended change or addition by any Party to its legal representatives shall be notified promptly in writing by that Party to all other Parties and the Tribunal Secretary, to then be transmitted to the Tribunal. The Tribunal may take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new representative from participating in all or part of the arbitral proceedings in the exceptional circumstance where the new representative could compromise the composition of the Tribunal or the finality of any decision or award on the grounds of possible conflict.

For Claimants

Mr. Arif Hyder Ali
Mr. Alexandre de Gramont
Ms. Kirsten Teo
Mr. David L. Attanasio
Mr. Henry Defriez
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chengshuang@glo.com.cn
zhoumengdi@glo.com.cn

11. Place of Arbitration

- 11.1. Geneva, Switzerland shall be the place of arbitration.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the Parties so agree.
- 11.3. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language

- 12.1. English is the procedural language of the arbitration.
- 12.2. Documents filed in any other language must be accompanied by a translation into English on the same day.
- 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.

- 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.
- 12.5. Documents exchanged between the Parties in a language other than English under §17 below (Production of Documents) need not be translated.
- 12.6. The testimony of a witness and/or an expert called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted consecutively.
- 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 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

- 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 to the Tribunal.
- 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 to the Tribunal.
- 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

- 14.1. By the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness

statements, expert reports and an index of all supporting documentation (“the electronic filing”).¹

- 14.2. Within three business days following the filing date, the Parties shall upload the pleading with all the supporting documentation and hyperlinked index to the file sharing platform that has been created by ICSID for purposes of this case.
- 14.3. Within three business days following the electronic filing, the Parties shall courier to Dr. Sachs at the address indicated at §2.3 above, a double-sided A5 hard copy of the pleading, the factual exhibits, the witness statements and expert reports (without exhibits). Dr. Alexandrov and Prof. van den Berg request that the Parties do not send them any hard copies.
- 14.4. Electronic files of pleadings, witness statements, expert reports, and, to the extent possible, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 14.5. All pleadings shall be accompanied by a index hyperlinked to all the supporting documentation for the particular 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**).
- 14.6. 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 above and to each Member of the Tribunal at the addresses indicated at §§ 2.1-2.3 above 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.
- 14.7. The addresses of the Tribunal Members are contained in §§ 2.1-2.3.
- 14.8. 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.
- 14.9. A filing shall be deemed timely if sent by a Party by midnight of the place of arbitration on the relevant date.

15. Objections to Jurisdiction and/or Admissibility

- 15.1. Any objection to jurisdiction and/or admissibility that the Respondent contends should be heard as a preliminary matter shall be made in accordance with the Timetable at Annex B.

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

- 15.2. The Tribunal may, upon receipt of such objection referred in § 15.2, deal with the objection as a preliminary question or join it to the merits of the dispute.
- 15.3. §§15.1 to 15.2 and the Timetable for Scenario 2 in Annex B shall not preclude the Respondent from raising objections to jurisdiction and/or admissibility in the Counter-Memorial if it does not contend that such objections should be heard in a bifurcated procedure as a preliminary matter.

16. Number and Sequence of Pleadings

- 16.1. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in Annex B. Any amendment to the Procedural Timetable shall be reflected in an updated Annex B.
- 16.2. Each pleading shall include all factual and legal arguments, as well as all documentary evidence (exhibits and legal authorities), witness statements and experts reports, if any, in support thereof.
- 16.3. All written submissions must contain consecutively numbered pages and paragraphs, and shall include a table of contents.

17. Production of Documents

- 17.1. By the relevant dates set forth separately in the agreed timetable in Annex B:
 - i. Each Party may serve a request for production of documents on the other Party. Such a request for production should comply with the rules set forth in Article 3.3 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) (“IBA Rules”). Such requests shall not be sent to the Tribunal or the Tribunal Secretary.
 - ii. Each Party shall produce those documents requested that are in its possession, custody or control (and not in the other Party’s possession, custody or control), and to which it does not object. Documents shall be produced in electronic format only. The documents produced shall be organised according to the request(s) they are responsive to.
 - iii. If and to the extent that a Party objects to any request for production, such Party shall state its reasoned objections to any request in writing to the requesting Party only.
 - iv. The Party which made the request shall respond in writing to any objection, and if disagreements cannot be resolved, submit the completed table

Procedural Order No. 1- Updated

referred to in §17.2 below to the Tribunal Secretary, with a copy to the other Party (in both Word and PDF formats).

- v. The Tribunal shall decide on any objection to the production of requested documents in a timely manner upon receiving the schedule, with reference to Articles 3.3, 9.2, 9.3, 9.4 and 9.5 of the IBA Rules.
- vi. The Parties shall produce all documents for which no objection is sustained by the Tribunal. Documents shall be produced in electronic format only. The documents produced shall be organised according to the request(s) they are responsive to.
- vii. Neither Party shall be permitted to submit additional requests for the production of documents, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

17.2. The requests, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions referred to in this Section shall be recorded in a *Redfern* schedule in the form below:

No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party (1) para ref to submissions (2) comments	Responses / Objections to Document Requests	Replies to Responses / Objections to Document Requests	Tribunal's Decisions

17.3. The Tribunal may, upon the application of one of the Parties or on its own initiative, order a Party to produce a document relevant to the dispute, provided that such document is identified with reasonable particularity and that it is in the Party's possession, custody, or control.

17.4. Documents produced pursuant to a request for document production by the other Party or pursuant to an order from the Tribunal under § 0 shall be exchanged between the Parties only and shall form part of the record only if and when they are submitted as factual exhibits.

17.5. If a Party fails without satisfactory explanation to produce any document requested

in a request for production to which it has not objected in due time or fails to produce any document ordered to be produced by the Tribunal, the Tribunal may infer that such document would be adverse to the interests of that Party.

18. Submission of Documents

18.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.

18.2. The documents shall be submitted in the manner and form set forth in §14 above.

18.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.

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

18.3.2. 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.

18.4. The Tribunal may call upon the Parties to produce documents or other evidence.

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

18.5.1. 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 containing authorities etc. 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 containing authorities etc.

18.5.2. Exhibits and legal authorities 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 Annex A.

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

- 18.6. 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.
- 18.7. 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.
- 18.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively (preceded by "CD-" for Claimants, and "RD-" for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

19. Witness Statements and Expert Reports

- 19.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 19.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §18.3).
- 19.3. Each witness statement and expert report shall be signed and dated by the witness.

20. Examination of Witnesses and Experts

- 20.1. The Tribunal may be guided, but not bound by Articles 4, 5 and 8 of the IBA Rules in relation to the examination of witnesses and experts.
- 20.2. A Party may be called upon by the opposing Party to produce at the Hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 20.3. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.

- 20.4. The Parties shall notify the opposing Party which witnesses and experts they intend to call for cross-examination on the date specified in Annex B. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.
- 20.5. The Tribunal shall, at all times, have complete control over the evidentiary hearing as set forth in IBA Rules Article 8(3). The Tribunal may question the witness or expert at any time during the oral procedure.
- 20.6. Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness may conduct a brief direct examination at the hearing of no more than 10 minutes. Experts may summarize their reports and findings, either through direct examination or in the form of a presentation of no more than 30 minutes. Any witness or expert called for direct examination may be cross-examined by the other Party. After cross-examination, the Party presenting the witness may briefly re-examine the witness or expert on matters within the scope of cross-examination (re-direct examination).
- 20.7. Counsel may meet witnesses and potential witnesses to establish the facts and assist with the preparation of witness statements and oral examinations.
- 20.8. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the pre-hearing organizational meeting.

21. Pre-Hearing Organizational Meetings

- 21.1. A pre-hearing organizational meeting shall be held as indicated in Annex B. It shall comprise a teleconference/videoconference between the Tribunal, or its President, and the Parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 21.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

22. Hearings

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

Procedural Order No. 1- Updated

- 22.2. The hearing may be held in-person and/or by any other means of communication, for instance videoconference facilities, as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §11 above.
- 22.3. The hearing shall take place on the dates set out in the applicable Timetable as indicated in Annex B.
- 22.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 22.5. Allocation of time at the Hearing shall be addressed in the pre-hearing procedural order, but in principle shall be equal between the Parties.
- 22.6. All Hearings shall be closed to the public.
- 22.7. On the date indicated in Annex B, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
 - A chronology of relevant facts in tabular form;
 - A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
 - A list of the substantive issues required to be determined by the Tribunal.

23. Records of Hearings and Sessions

- 23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 23.2. Verbatim transcript(s) 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.
- 23.3. The Parties shall agree on any corrections to the transcripts within a time limit to be fixed by the Tribunal counting from the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

24.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

25. Confidentiality and Publication

25.1. The Parties consent to ICSID publication of the award(s) issued in the present proceeding after the final award is rendered.

26. Immunity of the Tribunal

26.1. The Parties agreed that no Member of the Tribunal shall be liable to any Party howsoever for any act or omission in connection with this arbitration, save: (i) where the act or omission is shown by that Party to constitute conscious and deliberate wrongdoing committed by the member of the Tribunal alleged to be liable to that Party; or (ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

26.2. The Parties agreed that no member of the Tribunal shall be under any legal obligation to make any statement to any Party or any person about any matter concerning the arbitration; nor shall any party seek to make a witness or participant in any legal or other proceedings arising out of or in connection with the arbitration.

(Signed)

Dr. Klaus Sachs
President of the Tribunal
Date: 13 July 2021/14 September 2022 (Updated)

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.

For documents in an original language other than the procedural language (i.e., English) and the corresponding translations, they shall indicate the LANGUAGE in which they are submitted (e.g. CH = Chinese). 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).

The “LANGUAGE” designation may be omitted for documents submitted in English only.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES	
MAIN PLEADINGS	Title of Pleading	
	<i>Memorial on Jurisdiction</i>	
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction</i>	
	<i>Reply on Annulment</i>	
	<i>Rejoinder on Quantum</i>	
SUPPORTING DOCUMENTATION Exhibits	C-####-LANGUAGE (if not in English) R-####-LANGUAGE (if not in English) To be produced sequentially throughout the case.	
	CLAIMANT’S FACTUAL EXHIBITS	
	<i>C-0001</i>	
	<i>C-0002-CH</i>	
	RESPONDENT’S FACTUAL EXHIBITS	
	<i>R-0001-</i>	
	<i>R-0002-CH</i>	
	Legal Authorities	CL-####-LANGUAGE (if not in English) RL-####-LANGUAGE (if not in English) To be produced sequentially throughout the case.
		CLAIMANT’S LEGAL AUTHORITIES
		<i>CL-0001-CH</i>
<i>CL-0002</i>		
RESPONDENT’S LEGAL AUTHORITIES		
<i>RL-0001</i>		
<i>RL-0002</i>		

Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE (if not in English)
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-CH</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE (if not in English)
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-CH</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE (if not in English)
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-CH</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-##### to C-#####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]
	<i>Preliminary Objections under Rule 41(5)</i>
	<i>Request for Bifurcation-</i>
	<i>Request for Provisional Measures-[Respondent]</i>
	<i>Request for Production of Documents-[Claimant]</i>
	<i>Request for Stay of Enforcement</i>
	<i>Request for Discontinuance-[Claimant]</i>
	<i>Post-Hearing Brief-[Claimant]</i>
	<i>Costs Submissions-[Respondent]</i>
<i>Observations to Request for [XX]-[Claimant]</i>	

ANNEX B

SCENARIO 1: PROCEDURAL TIMETABLE WITHOUT A REQUEST FOR BIFURCATION

Date	Lapse (in days)	Party / Tribunal	Description
26 May 2021	N/A	ALL	First Session
23 September 2021	120 DAYS	CLAIMANTS	Memorial on the Merits
21 January 2022	120 DAYS	RESPONDENT	Counter-Memorial on the Merits (and Memorial on Jurisdiction and/or Admissibility, if any)
11 February 2022	21 DAYS	CLAIMANTS AND RESPONDENT	Request for Production of Documents (to be exchanged between the Parties only)
11 March 2022	28 DAYS	CLAIMANTS AND RESPONDENT	Production of Uncontested Documents, and Responses and/or Objections to the Request for Production of Documents (to be exchanged between the Parties only)
25 March 2022	14 DAYS	CLAIMANTS AND RESPONDENT	Reply to Objections to the Request for Production of Documents (to be sent to the Tribunal and opposing Party)
15 April 2022	21 DAYS	TRIBUNAL	Decision on Objections to Request for Production of Documents
16 May 2022	31 DAYS	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal

Procedural Order No. 1 – Annex B

Date	Lapse (in days)	Party / Tribunal	Description
1 August 2022	77 DAYS	CLAIMANTS	Reply on the Merits (and Counter-Memorial on Jurisdiction and/or Admissibility, if any)
17 October 2022	77 DAYS	RESPONDENT	Rejoinder on the Merits (and Reply on Jurisdiction and/or Admissibility, if any)
17 November 2022	31 DAYS	CLAIMANTS	Rejoinder on Jurisdiction and/or Admissibility (if any)
10 January 2023	54 DAYS	CLAIMANTS AND RESPONDENT	Notification of Witnesses and Experts to be Cross-Examined
20 January 2023	10 DAYS	Tribunal	Call of Witnesses/Experts not Called by the Parties, if any
1 February 2023	12 DAYS	ALL	Pre-Hearing Organizational Meeting
15 February 2023	14 DAYS	CLAIMANTS AND RESPONDENT	Submissions Under § 22.7 of Procedural Order No. 1
20-24 March 2023 (with 27-28 March held in reserve)	TBD	ALL	Hearing

SCENARIO 2: PROCEDURAL TIMETABLE WITH A REQUEST FOR BIFURCATION

<u>Date</u>	<u>Lapse (in days)</u>	<u>Party / Tribunal</u>	<u>Description</u>
26 May 2021	N/A	ALL	First Session
23 September 2021	120 DAYS	CLAIMANTS	Memorial on the Merits
12 November 2021	50 DAYS	RESPONDENT	Memorial on Preliminary Objections and Request for Bifurcation
26 November 2021	14 DAYS	CLAIMANTS	Response on Bifurcation
23 December 2021	27 DAYS	TRIBUNAL	Decision on Bifurcation

Scenario 2A: PROCEDURAL TIMETABLE IF BIFURCATION IS GRANTED

<u>BIFURCATION</u>			
<u>Date</u>	<u>Lapse (in days)</u>	<u>Party / Tribunal</u>	<u>Description</u>
11 February 2022	50 DAYS	CLAIMANTS	Counter-Memorial on Preliminary Objections
14 March 2022	31 DAYS	RESPONDENT	Reply on Preliminary Objections
14 April 2022	31 DAYS	CLAIMANT	Rejoinder on Preliminary Objections
28 April 2022	14 DAYS	CLAIMANTS AND RESPONDENT	Notification of Witnesses and Experts to be Cross-Examined
9 May 2022	11 DAYS	Tribunal	Call of Witnesses/Experts not Called by the Parties, if any
25 May 2022	16 DAYS	ALL	Pre-Hearing Organizational Meeting

Procedural Order No. 1 – Annex B

25 May 2022		CLAIMANTS AND RESPONDENT	Submissions Under 22.5 of Procedural Order No. 1
30 June - 1 July 2022 (2 days maximum)	36 DAYS	ALL	Hearing on Preliminary Objections

Scenario 2B: PROCEDURAL TIMETABLE IF BIFURCATION IS NOT GRANTED

<u>NO BIFURCATION</u>			
<u>Date</u>	<u>Lapse (in days)</u>	<u>Party / Tribunal</u>	<u>Description</u>
22 April 2022	120 DAYS	RESPONDENT	Counter-Memorial on the Merits
13 May 2022	21 DAYS	CLAIMANTS AND RESPONDENT	Request for Production of Documents (to be exchanged between the Parties only)
10 June 2022	28 DAYS	CLAIMANTS AND RESPONDENT	Production of Uncontested Documents, and Responses and/or Objections to the Request for Production of Documents (to be exchanged between the Parties only)
24 June 2022	14 DAYS	CLAIMANTS AND RESPONDENT	Reply to Objections to the Request for Production of Documents (to be sent to the Tribunal and opposing Party)
15 July 2022	21 DAYS	TRIBUNAL	Decision on Objections to Request for Production of Documents
15 August 2022	31 DAYS	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal

Procedural Order No. 1 – Annex B

14 October 2022	60 DAYS	CLAIMANTS	Reply on the Merits and Counter Memorial on Preliminary Objections
13 December 2022	60 DAYS	RESPONDENT	Rejoinder on the Merits and Reply on Preliminary Objections
12 January 2023	30 DAYS	CLAIMANTS	Rejoinder on Preliminary Objections
26 January 2023	14 DAYS	CLAIMANTS AND RESPONDENT	Notification of Witnesses and Experts to be Cross-Examined
2 February 2023	7 days	Tribunal	Call of Witnesses/Experts not Called by the Parties, if any
16 February 2023	14 DAYS	ALL	Pre-Hearing Organizational Meeting
16 February 2023		CLAIMANTS AND RESPONDENT	Submissions Under §22.7 of Procedural Order No. 1
20-24 March 2023 (with 27-28 March held in reserve)	TBD	ALL	Hearing