

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Winshear Gold Corp.

v.

United Republic of Tanzania

(ICSID Case No. ARB/20/25)

DRAFT PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Judge O. Thomas Johnson, Arbitrator
Mr. Edward William Fashole Luke II, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

17 March 2021

Contents and Agenda for the First Session

1.	Applicable Arbitration Rules	4
2.	Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3.	Fees and Expenses of Tribunal Members	4
4.	Presence and Quorum	5
5.	Rulings of the Tribunal	5
6.	Power to Fix Time Limits	5
7.	Secretary of the Tribunal	5
8.	Appointment of a Tribunal Assistant.....	6
9.	Representation of the Parties	7
10.	Apportionment of Costs and Advance Payments to ICSID.....	8
11.	Place of Proceeding.....	8
12.	Procedural Language, Translation and Interpretation.....	8
13.	Routing of Communications	9
14.	Number of Copies and Method of Filing of Pleadings	9
15.	Number and Sequence of Pleadings	10
16.	Production of Documents	11
17.	Submission of Documents	12
18.	Witnesses	13
19.	Experts	15
20.	Pre-Hearing Organizational Meetings	16
21.	Hearings	16
22.	Records of Hearings and Sessions	16
23.	Post-Hearing Memorials and Statements of Costs.....	17
24.	Data Protection and Cybersecurity	17
	ANNEX A.....	18
	ANNEX B.....	20

Introduction

The first session of the Tribunal was held on 16 March 2021, at 8 am Washington DC time, 1 pm Geneva time, and 3 pm Dar Es Salaam time, by video conference. The session was adjourned at 2:25 pm Geneva time.

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:

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Judge O. Thomas Johnson, Arbitrator
Mr. Edward William Fashole Luke II, Arbitrator

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal

Tribunal Assistant:

Dr. Magnus Jesko Langer

Participating on behalf of the Claimant:

Mr. Richard Williams – CEO of Winshear Gold Corp.
Mr. Mark Sander – President of Winshear Gold Corp.
Dr. Marc Veit – Lalive
Mr. Timothy Foden – Lalive
Mr. Augustin Barrier – Lalive
Mr. Robert Denison – Lalive
Mr. Nicolas Pralica – Lalive
Ms. Eden Jardine - Lalive

Participating on behalf of the Respondent:

Mr. Gabriel Malata – Hon. Solicitor General
Dr. Boniphace Luhende – Deputy Solicitor General
Ms. Salome Magesa – Office of the Solicitor General
Ms. Angelina Ruhumbika – Office of the Solicitor General

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 8 March 2021; and
- The parties' comments on the Draft Procedural Order were received on 12 March 2021 from the Claimant and on 15 March 2021 from the Respondent, 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 April 10, 2006.

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

2.1. The Tribunal was constituted on 2 February 2021 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 2 February 2021.

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

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.
- 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.
- 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 the procedural timetable to be issued shortly (the "Procedural Timetable") and (ii) the Tribunal is informed.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Ella Rosenberg, 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. Ella Rosenberg
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7756
Fax: + 1 (202) 522-2615
Email: erosenberg@worldbank.org
Paralegal name: Ms. Elizabeth Starkey
Paralegal email: estarkey@worldbank.org

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

Ms. Ella Rosenberg
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 March 8, 2021, 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 was 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 March 8, 2021.
- 8.3. The parties agree to the appointment of Dr. Langer as Assistant to the President and that he will receive US\$ 280 for each hour of work performed in connection with the case or pro rata. Dr. Langer would 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:

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 the Claimant

Dr. Marc Veit
Mr. Timothy L. Foden
Mr. Robert Denison
Mr. Nicolas Pralica
LALIVE (London) LLP
9 Cloak Lane
London EC4R 2RU
United Kingdom
Tel.: +44 20 3880 1540
Email: mveit@lalive.law
tfoden@lalive.law
rdenison@lalive.law
npralica@lalive.law

Mr. Augustin Barrier
LALIVE SA
Rue de la Mairie 35
1207 Geneva
Switzerland
Tel. +41 58 105 2000
Email: abARRIER@lalive.law

Ms Esra Ogut Oehri
LALIVE SA
Stampfenbachplatz 4
8006 Zürich
Switzerland
Tel: +41 58 105 21 00
Email: eogut@lalive.law

For the Respondent

Mr. Gabriel P. Malata – Hon. Solicitor
General
Dr. Boniphace Luhende
Mr. George Mandepo
Ms. Salome Magesa
Ms. Consesa Kahendaguza
Mr. Andrew Rugarabamu
Ms. Lydia Thomas
Ms. Angelina Ruhumbika
Mr. Edwin Igenge
Mr. Ayub Y. Mwenda
Ms. Gift Kweka
Mr. Aron Raturagara
Office of the Solicitor General
P.O. Box 71554
10 Kivukoni Road
Dar Es Salaam
United Republic of Tanzania
Tel.: +255 22 2127384
Email: gabriel.malata@osg.go.tz
salome.magesa@osg.go.tz
consesa.kahendaguza@osg.go.tz
boniphace.luhende@osg.go.tz
george.mandepo@osg.go.tz
salome.magesa@osg.go.tz
consesa.kahendaguza@osg.go.tz
andrew.rugarabamu@osg.go.tz
lydia.thomas@osg.go.tz
angelina.ruhumbika@osg.go.tz
edwin.igenge@madini.go.tz
ayub-mwenda@tumemadini.go.tz
ceo@tumemadini.go.tz
gift.kweka@agctz.go.tz
aron.raturagara@tumemadini.go.tz

10. Apportionment of Costs and Advance Payments to ICSID

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.
- 10.2. By letter of 3 February 2021, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on 24 February 2021 and did not receive the Respondent's payment to date.
- 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. It is understood that in-person hearings may take elsewhere, in particular in Europe, such as in Paris. The Tribunal will consult the Parties sufficiently in advance about the location of the hearing venue.
- 11.3. After consultation of the parties, it may also determine that hearings will be conducted on line 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 it considers 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.
- 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.
- 12.4. Translations need not be certified unless there is a dispute as to the content of a translation 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 § 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.
- 12.7. The parties will notify the Tribunal, if possible when filing a witness statement or expert report 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.
- 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 Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 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 (including factual exhibits, legal

authorities and documents appended to the witness statements and expert reports);¹ and

- 14.2. Within five (5) business days following the filing by email, the Parties shall upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.
- 14.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word and hyperlinked to the supporting documentation).
- 14.4. 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**).
- 14.5. 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.
- 14.6. 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, 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.

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

- 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 the Procedural Timetable, 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 B 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. The Arbitral Tribunal recommends that the number of requests per party not exceed 20, including sub-parts. A party wishing to exceed this number shall announce it two weeks before the submission of the Redfern Schedule (as set out in Annex B to this Procedural Order), explaining the reasons and need for a number higher than recommended.
- 16.4. Within the time limit set forth in the Procedural Timetable, 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).
- 16.5. Within the time limit set forth in the Procedural Timetable, 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.
- 16.6. The parties shall make no submissions in respect of the steps set out in §§ 16.2, 16.4, and 16.5 above other than those incorporated in the Redfern Schedules.
- 16.7. On or around the date set forth in the Procedural Timetable, 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.
- 16.8. 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.
- 16.9. 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.

- 16.10. 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 documents after the filing of its last written submission on an issue, 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 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 Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing legal authorities. 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.
- 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 factual or legal exhibit 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 indices 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 already in the record need not be resubmitted with witness statements even if referred to in such statements.
- 17.7 Demonstrative exhibits, such as charts and tabulations that compile information present on the record but not in such form, may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the Assistant, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

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.
- 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 the Procedural Timetable, 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. If a witness or expert is not called for cross-examination or directed by the Arbitral Tribunal to appear, the Party presenting the witness or expert may call him or her at the hearing for direct examination. In such a case, even if the other Party has initially waived cross-examination, it may cross-examine the witness or expert.

- 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 The party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after the last opportunity for the party who presented the witness to file witness statements (direct examination). In principle, direct examination shall not exceed 10 minutes;
 - 18.14.2 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;
 - 18.14.3 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;
 - 18.14.4 Re-cross examination may exceptionally be allowed in the Tribunal's discretion;
 - 18.14.5 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, fact witnesses shall be examined prior to expert witnesses, the Claimants' fact (and expert) witnesses

being examined prior to the Respondent's fact (and expert) witnesses and each party determining the order of the fact witnesses whom it presents.

- 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. Party representatives who are also fact witnesses may be present during opening submissions.
- 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 Expert reports shall include a statement of independence and disclose any relationship with members of the Tribunal or the Parties.
- 19.7 Unless otherwise inconsistent with this Section, the rules set forth in § 18 above shall apply by analogy to the evidence of party- and Tribunal-appointed experts.
- 19.8 In lieu of direct examination, a non-legal expert giving oral evidence may, give a

presentation summarizing her or his expert report(s) and/or addressing evidence adduced or pleadings made since his/her last report.

- 19.9 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).

20 Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 20.1 A pre-hearing organizational meeting shall be held on the date provided in the Procedural Timetable.

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 the Procedural Timetable.
- 21.3 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.
- 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 and the Tribunal Members.
- 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 two weeks after the end of the hearing. The agreed corrections may be entered in the transcripts 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 and Publication

24.1 The Tribunal will issue a separate order on these matters.

25 Data Protection and Cybersecurity

25.1 The Arbitrators, parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of these arbitration proceedings.

25.2 The Arbitrators, 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.

25.3 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 Arbitral 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]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 17 March 2021

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	Title of Pleading–LANGUAGE
	<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 Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission- LANGUAGE
	<i>Witness Statement-Maria Jones- SPA</i>
	<i>Witness Statement-Maria Jones- [Second Statement]-ENG</i>
Expert Reports	<i>Expert Report-Name of Expert-Type-LANGUAGE</i>

	<i>Expert Report-Lucia Smith-Valuation-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-[Second Report]-ENG</i>
Legal Opinions	<i>Legal Opinion-Name of Expert-LANGUAGE</i>
	<i>Legal Opinion-Tom Kaine-Counter-FR</i>
	<i>Legal Opinion-Tom Kaine-[Second Opinion]-FR</i>
Exhibits to Expert Reports, Legal Opinions	EXPERT INITIALS-###
	<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]-LANGUAGE
	<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

REDFERN SCHEDULE

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