

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Vasilisa Ershova and Jegor Jeršov**

v.

**Republic of Bulgaria**

**(ICSID Case No. ARB/22/29)**

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**PROCEDURAL ORDER NO. 2**

***Members of the Tribunal***

Prof. Juan Fernández-Armesto, President of the Tribunal

Prof. Jan Paulsson, Arbitrator

Mr. Toby Landau KC, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Holloway

***Assistant to the Tribunal***

Ms. Francisca Seara Cardoso

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September 22, 2023

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## **Introduction**

The first session of the Tribunal was held on June 23, 2023, at 8:00 a.m. EST, by videoconference [“**Session**”]. The Session was adjourned at 10:39 a.m. EST.

A 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 Session were:

### Members of the Tribunal:

Prof. Juan Fernández-Armesto, President of the Tribunal  
Prof. Jan Paulsson, Arbitrator  
Mr. Toby Landau KC, Arbitrator

### ICSID Secretariat:

Ms. Anna Holloway, Secretary of the Tribunal  
Ms. Izabela Chabinska, Legal Counsel  
Mr. Chintan Nirala, Intern

### Assistant to the Tribunal

Ms. Francisca Seara Cardoso  
Ms. Andrea Pastrana Ochoa

### On behalf of Claimants:

Mr. Parvan P. Parvanov, Esq., International Arbitration Chambers New York  
Prof. Dr. Berk Demirkol, International Arbitration Chambers New York  
Dr. Eda Cosar Demirkol, International Arbitration Chambers New York  
Mr. Nikolay A. Ouzounov, Esq., International Arbitration Chambers New York

### On behalf of Respondent:

Ms. Abby Cohen Smutny, White & Case LLP  
Mr. Petr Polášek, White & Case LLP  
Mr. Brody Greenwald, White & Case LLP  
Mr. Lazar Tomov, Tomov & Tomov  
Ms. Sylvia Steeva, Tomov & Tomov  
Ms. Yoana Yovnova-Vlahova, Tomov & Tomov  
Mr. Ivan Kondov, Ministry of Finance of the Republic of Bulgaria  
Mr. Vilian Betsov, Ministry of Finance of the Republic of Bulgaria

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on May 30, 2023; and

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- The Parties' comments on the Draft Procedural Order received on June 21, 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

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Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The Procedural Timetable is attached as **Annex A**. Amendments to the Procedural Timetable will be made by reissuing **Annex A**.

**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<sup>1</sup>.

**2. Constitution of the Tribunal and Tribunal Members' Declarations**

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on May 4, 2023, 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 May 4, 2023.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next twenty-four (24) months to dedicate to this case.
- 2.4. The contact details for the Members of the Tribunal are:

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<sup>1</sup> Procedural Order No. 1.

**Prof. Juan Fernández-Armesto**  
Armesto & Asociados  
General Pardiñas, 102  
Madrid 28006  
Spain

**Prof. Jan Paulsson**  
Gudabiya Palace  
Bani Otbah Avenue  
Building 101, Road 351, Block 325  
Manama  
Kingdom of Bahrain

**Mr. Toby Landau KC**  
Duxton Hill Chambers  
19 Duxton Hill  
Singapore 089602

### **3. Fees and Expenses of Tribunal Members**

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses*

- 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 in force at the time the fees and expenses are incurred.
- 3.2. Pursuant to ICSID Administrative and Financial Regulation 14, under the Memorandum on Fees and Expenses in force on the date of this procedural order, each Tribunal Member is entitled to:
  - 3.2.1. US\$500 per hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings;
  - 3.2.2. US\$900 as a per diem for each day spent away from their city of residence while traveling in connection with a proceeding when overnight lodging is required. This covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation, laundry, personal communications and internet;
  - 3.2.3. US\$250 for each hour of travel and a per diem allowance of US\$200 for travel to and from a hearing on a day when lodging is not required. For work performed during travel, Members may charge the hourly rate for work (US\$500) in lieu of the hourly rate for travel. For day trips not requiring overnight lodging, Members are also entitled to a per diem of US\$200; and
  - 3.2.4. Reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 3.3. The Parties shall reimburse the members of the Tribunal for any actual non-refundable expenses incurred due to postponement or cancellation of a hearing due to reason other than the lack of availability of the arbitrator who has incurred the expense. If a hearing is postponed or canceled due to the conduct of one Party or both Parties, the Party/Parties whose conduct has caused the postponement or

cancellation as determined by the Tribunal shall bear the Tribunal's related non-refundable expenses.

- 3.4. Each Member of the Tribunal shall submit his detailed claims for fees and expenses to the ICSID Secretariat on a quarterly basis or more frequently. Claims for work performed must be declared in a detailed, itemized format and appended to the Claim for Fees and Expenses form.

#### **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.
- 5.4. The President is authorized to sign 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 by 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. A time limit shall be satisfied if a procedural step is taken or a document is received by the Tribunal Secretary on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, with the day of such announcement being excluded from the calculation.

## **7. Secretary of the Tribunal**

### *Administrative and Financial Regulation 28*

- 7.1. The Tribunal Secretary is Ms. Anna Holloway, 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. Anna Holloway  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
U.S.A.  
Tel.: + 1 (202) 473 7762  
Fax: + 1 (202) 522-2615  
Email: aholloway1@worldbank.org  
Paralegal name: Ms. Ekaterina Minina  
Paralegal email: eminina@worldbank.org

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

Ms. Anna Holloway  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3<sup>rd</sup> Floor  
Washington, D.C. 20036  
U.S.A.  
Tel.: +1 (202) 458-1534



## **8. Assistant to the Tribunal**

- 8.1. On May 30, 2023, the Tribunal proposed to the Parties that Ms. Francisca Seara Cardoso be appointed as Assistant of the Tribunal. Ms. Cardoso's *curriculum vitae* was distributed to the Parties on that day. She is a senior associate at Armesto & Asociados, the President's law firm. The Tribunal explained to the Parties that it considered that the appointment of an Assistant of the Tribunal would decrease the overall cost and improve time efficiency of the proceedings. On the same day, the Tribunal proposed to the Parties that Ms. Andrea Pastrana Ochoa substitute Ms. Cardoso while she is on maternity leave<sup>2</sup>. Ms. Pastrana's *curriculum vitae* was distributed to the Parties on that day. She also works at Armesto & Asociados, the President's law firm.
- 8.2. As stated in the Tribunal's communication of May 30, 2023, the Assistant of the Tribunal shall work at all times under the specific instructions and continuous control and supervision of the Tribunal, and the Members of the Tribunal will not delegate to the Assistant of the Tribunal any of the duties and obligations incumbent on them as arbitrators.
- 8.3. The Assistant of the Tribunal shall undertake only such specific tasks as are assigned to her by the Tribunal, including:
  - 8.3.1. Attending meetings, hearings and deliberations, taking notes;
  - 8.3.2. Summarizing submissions, reviewing authorities, conducting legal research, writing notes or memoranda on factual and legal issues, preparing preliminary drafts of decisions or sections of awards, under the specific instruction and continuous control and supervision of the Tribunal.
- 8.4. The Tribunal shall ensure that the Assistant of the Tribunal does not duplicate the tasks of the ICSID Secretariat.
- 8.5. The Assistant of the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Arbitral Tribunal, and shall sign a declaration to that effect.
- 8.6. The Parties received Ms. Cardoso and Ms. Pastrana's declarations of independence and impartiality on May 30, 2023. With the express agreement of the Parties, the Tribunal hereby appoints Ms. Francisca Seara Cardoso as Assistant of the Tribunal and Ms. Andrea Pastrana Ochoa as her substitute.
- 8.7. Ms. Cardoso's contact details are the following:

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<sup>2</sup> Ms. Seara Cardoso will be on maternity leave starting from August 2023.

Ms. Francisca Seara Cardoso  
Armesto & Asociados  
General Pardiñas, 102  
28006 Madrid  
Spain  
Tel.: +34 915 621 625  
Email: [fsc@jfarmesto.com](mailto:fsc@jfarmesto.com)

- 8.8. Ms. Pastrana's contact details are the following:

Ms. Andrea Pastrana Ochoa  
Armesto & Asociados  
General Pardiñas, 102  
28006 Madrid  
Spain  
Tel.: +34 915 621 625  
Email: [anp@jfarmesto.com](mailto:anp@jfarmesto.com)

- 8.9. The Assistant to the Tribunal will be remunerated directly by the President of the Tribunal, without causing any additional cost to the Parties, save that the Assistant of the Tribunal will be entitled to reimbursement of reasonable expenses related to a Hearing, session or meeting, as follows: (i) actual expenses of overnight lodging and other charges when traveling to an ICSID hearing, session or meeting held away from his/her residence up to but not exceeding US\$900 per day; and (ii) reimbursements for the costs of air (at one class above economy class) and ground transportation to and from the city where the hearing, session or meeting is held.
- 8.10. The Tribunal may remove the Assistant of the Tribunal at its discretion. The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

## **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 Claimants

Mr. Parvan P. Parvanov, Esq.  
Prof. Dr. Berk Demirkol  
Dr. Eda Cosar Demirkol  
Mr. Nikolay A. Ouzounov, Esq.  
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York  
415 Main Street  
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and  
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For Respondent

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and  
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Mr. Petr Polášek  
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and  
Mr. Lazar Tomov  
Ms. Sylvia Steeva  
Ms. Yoana Yovnova-Vlahova  
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Tel. +359 2 843 76 62  
l.tomov@tomov.com  
s.steeva@tomov.com  
y.yovnova@tomov.com

**10. Apportionment of Costs and Advance Payments to ICSID**

*Convention Article 61(2); Administrative and Financial Regulation 15; 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. Following registration of the Request for Arbitration, by letter of November 16, 2023, ICSID requested that Claimants pay US\$150,000 to cover the initial costs of the proceeding through the first session. ICSID received Claimants' payment on December 16, 2023. Upon the constitution of the Tribunal, by letter of May 10, 2023, ICSID requested that the Parties pay US\$300,000 to defray the estimated costs of the subsequent phase of the proceeding. Payment made by Claimants on December 16, 2023, is considered a partial payment toward that sum. ICSID received Respondent's payment on May 30, 2023.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account. To allow the Parties sufficient time to process such requests, ICSID will give the Parties at least thirty (30) days advance notice of the issuance of a request for further advances. In light of the fact that ICSID Administrative and Financial Regulation 16(2)(a) requires payment within 30 days of such a request, the provision of advance notice means that the Parties shall have at least sixty (60) days' notice before any payment due date.

## **11. Place of Proceeding**

*Convention Articles 62 and 63; Arbitration Rule 13(3)*

- 11.1. Arbitration proceedings shall be held at the seat of the Centre in Washington except as hereinafter provided.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate, if the Parties so agree. At the appropriate stage, the Tribunal will propose to the Parties that the hearing on the merits be held at a convenient venue in Europe.
- 11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

## **12. Procedural Language(s), Translation and Interpretation**

*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.

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- 12.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the partial translation does not distort the meaning of the document. 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 pursuant to §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 or sequentially at the request of the Tribunal if needed to ensure accuracy. ICSID will consult the Parties prior to the pre-hearing organizational meeting concerning the selection and identity of the interpreter(s).
- 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 interpretation 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, once both Parties' communications are received.
- 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**

*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 (which index includes a list of exhibits and legal authorities)<sup>3</sup>.
- 14.2. Within three (3) business days of the email filing, the Parties shall upload the pleading with all the supporting documentation and updated index to the folder that has been created by ICSID for purposes of this case in ICSID's Box file sharing platform [the "**Electronic Filing**"]. The document exchange platform shall be accessible to the Parties, the Tribunal, the Assistant, and ICSID.
- 14.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word). Any spreadsheet or Excel table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source. Audio and video recordings shall be submitted as a file (e.g., WAV/MP3 for audio and MP4/MOV for video) together with a written transcript.
- 14.4. All pleadings shall contain consecutively numbered paragraphs, shall include a table of contents, and 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 [ "**cumulative index**"]. The cumulative index shall indicate the document number and the pleading with which it was submitted and shall follow the naming conventions contained in **Annex B**.
- 14.5. Seven (7) days after the submission of the pleading, the Parties shall also submit an index of all the exhibits attached to the pleading, and any prior pleadings made by that Party, organized in chronological order [ "**chronological index**"]. This chronological index shall be updated for each pleading.
- 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 provide to the Tribunal and the Tribunal Secretary 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. To ensure operation of the hyperlinked index, the entire case file shall be housed within one folder and then uploaded to BOX as a single zip file.

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<sup>3</sup> Please note that the World Bank server does not accept emails larger than 25 MB. Supporting documentation shall be uploaded as individual files, not in zip format.

- 14.7. 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.
- 14.8. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

## **15. Number and Sequence of Pleadings – Procedural Timetable**

*Arbitration Rules 20(1)I, 20(1)(e), 29 and 31*

- 15.1. The proceedings shall consist of a written phase followed by an oral phase. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in **Annex A**. Any amendment to the Procedural Timetable shall be reflected in an updated **Annex A**.
- 15.2. The Parties' first submissions shall set forth the facts, the legal argumentation and the relief sought. The Parties should endeavor to discharge their burden of proof in their first submissions and should not rely on later submissions to provide evidence for unsupported allegations made in the first submissions. The Parties' subsequent submissions shall be limited to replying to the arguments that the counterparty has raised in its previous submission, except if strictly required to rebut arguments and evidence submitted with the previous submission and/or if evidence has arisen from the document production or access to relevant evidence was impeded at the time of the first submission despite reasonable effort of the Party to obtain it. Furthermore, these pleadings shall be shorter than the first exchange of pleadings.
- 15.3. The Parties agree that the first round of memorials (*i.e.*, Claimants' Memorial and Respondent's Counter-Memorial) be limited to 105,000 words each and the second round of memorials (*i.e.*, Claimants' Reply and Respondent's Rejoinder) be limited to 70,000 words each<sup>4</sup>. In the event of calendar Scenario 1 or Scenario 2 set forth in **Annex A**, these word limits shall be increased as follows for addressing preliminary objections: an additional 28,000 words for the Parties' Memorial and Counter-Memorial respectively on Preliminary Objections; and an additional 17,500 words for the Reply and Rejoinder respectively on Preliminary Objections.
- 15.4. Neither Party shall be permitted to submit additional pleadings outside of the Procedural Timetable, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §17.5).

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<sup>4</sup> Word count shall be based on the word count function in Microsoft Word to include text above the line and footnotes, but excluding the title page, the table of contents, any glossary e.g. of definitions, and the signature page.

## **16. Production of Documents**

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

### **A. Documents**

- 16.1. The Parties agree to be guided by the International Bar Association Rules on the taking of Evidence in International Arbitration (2010) [the “**IBA Rules**”] for the production of documents in this arbitration.
- 16.2. The “Definitions” section of the IBA Rules includes the following definition of document:
- “‘*Document*’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”.
- 16.3. This definition must also be used by the Parties in their respective requests for document production.

### **B. Requests for document production**

- 16.4. At the date established in **Annex A** the Parties shall submit a Document Production Schedule [“**DPS**”], using the draft model attached hereto as **Annex C**. For each Document (or category of Documents) a single Document Request shall be completed. Document Requests shall be numbered sequentially. The Parties are kindly requested to adhere to the word limit defined for each cell.
- 16.5. The number of Document Requests per Party is limited to 50.
- 16.6. Each Party will deliver its DPS directly to the counterparty, without copying the Tribunal.
- 16.7. Each Document Request must meet the following cumulative requirements [“**R**”]:
- “**R1**”: Identification of each Document or description of a narrow and specific category<sup>5</sup>
- 16.8. If the request is for a particular Document, the description must be in sufficient detail to identify the requested Document.

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<sup>5</sup> Art. 3.3(a)(i) and (ii) IBA Rules.



- 16.9. If the request is for a category of Documents, the following additional requirements must be met:
- A clear and well-defined characterization of a narrow and specific category must be provided,
  - A *prima facie* demonstration of the putative existence of the category must be made,
  - The name of the person, authority or entity which has issued the category of Documents must be provided (when known), and
  - The initial and the final date of the period during which the Documents belonging to the category were issued must be identified.
- 16.10. Any request which does not comply with these requirements shall be rejected *in limine*.
- 16.11. In order to assist the Parties, the Tribunal gives some examples of what shall not be considered a narrow and defined category of Documents:
- “All documents and any correspondence exchanged internally or externally between the Claimant and any of the entities in its group structure, in relation to the construction of the mine”.
- “All documents concerning Respondent’s decision not to renew Claimant’s license, including but not limited to internal emails, correspondence, analysis, memoranda, e-mails, or other reports, produced between 2006 and 2016”.
- “Documents establishing the loss of significant future business of Claimant as a result of Law 4563, created between May 2015 and June 2018”.
- “All resolutions of the Board of Directors or internal communications between Board members of Claimant or any entity within its group structure, discussing the decision to purchase the shares in Company X, created between January 2016 and January 2018”.
- “R2”: Relevant and material<sup>6</sup>**
- 16.12. The requesting Party must prove that the Documents are relevant to the case and material to its outcome and identify the specific paragraphs in the submission for which evidentiary support by way of document production is requested.
- 16.13. Any request which does not comply with this requirement shall be rejected *in limine*.

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<sup>6</sup> Arts. 3.3(b) and 9.2(a) IBA Rules.

16.14. Documents:

- Referred to in other Documents that have already been submitted,
  - Mentioned in witness statements or in expert reports, or
  - Relied upon by experts to prepare their expert reports (but excluding working papers used by experts),
- will, as a general rule, be considered relevant.

16.15. It is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof, since failure to discharge such burden will by itself lead to dismissal. Production with the purpose of disproving the counterparty's allegations will only be ordered in exceptional circumstances.

16.16. Any analysis by the Tribunal regarding the relevance and materiality of requested Documents is made *prima facie*, without prejudging any final decision that the Tribunal may adopt once all evidence has been marshalled.

**“R3”: Not in the possession, custody or control of the requesting Party<sup>7</sup>**

16.17. The requesting Party must aver that the Documents sought are not in its possession, custody or control, and explain why it assumes that the Documents are in the possession, custody or control of the counterparty.

16.18. The request will be rejected if the Documents are located in the premises or under the control of a third party, to which the requesting Party has access. Similarly, a Document shall be considered to be in possession of the requesting Party if it is already on the record of the arbitration or if it is publicly available (and the counterparty is not in a significantly more favourable position to obtain such a Document).

16.19. Documents which are located in the premises or under the control of a third party, to which the requested Party has access or exercises control directly or indirectly or holds minority or other rights that provide right to access upon request, shall generally be considered to be in its “possession, custody or control”, unless otherwise proven by the requested Party.

### **C. Objections**

16.20. The IBA Rules provide for a number of objections to the production of Documents. Further to alleging failure to satisfy any of the previously established requirements

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<sup>7</sup> Art. 3.3(c)(i) and (ii) IBA Rules.

(R1 to R3), a Party may object to a request for production in the following cases [“O”]<sup>8</sup>:

“O1”: Legal or settlement privilege<sup>9</sup>

- 16.21. A requested Party may invoke legal privilege with regards to Documents prepared by or addressed to counsel, containing legal advice, and given or received with the expectation that such Documents would be kept confidential.
- 16.22. In general, a Document needs to meet the following requirements in order to be granted special protection under legal privilege<sup>10</sup>:
- The Document has to be drafted by or addressed to a lawyer acting in his or her capacity as lawyer;
  - A relationship based on trust must exist as between the lawyer (in-house or external legal advisor) and the client;
  - The Document has to be elaborated for the purpose of requesting or giving legal advice;
  - The client and the lawyer, when requesting or giving legal advice, must have acted with the expectation that in a contentious situation the advice would be kept confidential.
- 16.23. A requested Party may also invoke privilege regarding Documents prepared in connection with settlement negotiations<sup>11</sup>, including:
- Oral or written statements submitted to the other party during negotiations;
  - Internal Documents prepared specifically for negotiations; and
  - Drafts or final versions of any settlement agreements.
- 16.24. If the requested Party raises an objection under O1 and, if challenged, the Tribunal confirms it, the requested Party shall deliver the requested Documents with the privileged information redacted.
- 16.25. In those cases in which the asserted privilege cannot be adequately safeguarded through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a “**Privilege Log**”, drafted in accordance with **Annex D**,

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<sup>8</sup> Art 3.5 IBA Rules.

<sup>9</sup> Art. 9.2(b) IBA Rules.

<sup>10</sup> *Vito G. Gallo v The Government of Canada*, NAFTA-UNCITRAL, Procedural Order No. 3, April 8, 2009, para. 47.

<sup>11</sup> Art. 9.2(b) IBA Rules.

- identifying in chronological order the date, the issuer and the recipient of the Document (specifying whether he/she is an attorney of the party),
- providing a summary description of the Document, plus
- an explanation of the reasons which justify that the Document be withheld in full.

16.26. Any dispute as to the applicability of privilege will be settled by the Tribunal.

**“O2”: Production is unreasonably burdensome<sup>12</sup>**

16.27. The requested Party may object to the production of Documents on the basis that it would impose an unreasonable burden. In making its decision, the Tribunal will weigh time and cost of producing the Documents against their expected evidentiary value. The Tribunal may also reduce the scope of production to avoid unreasonable burden.

**“O3”: Loss, destruction or inexistence<sup>13</sup>**

16.28. The requested Party may object to the production of Documents if it shows, with reasonable likelihood, that they have been lost or destroyed, or do not exist for other reasons. If the requested Party’s objection is based on the destruction of documents, it shall explain that this has been done in compliance with the applicable local regulations.

16.29. In such a case, the Tribunal shall take note of the requested Party’s declaration. The requesting Party may make the inferences it deems appropriate in its following written submission.

**“O4”: Technical or commercial confidentiality<sup>14</sup>**

16.30. A Party may request that a Document should not be produced, alleging compelling grounds of technical or commercial confidentiality.

16.31. If the requested Party raises an objection under O4 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect the confidentiality of the Documents. Absent such agreement, the requested Party shall deliver the Documents with the confidential information redacted.

16.32. In those cases in which the confidential information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested

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<sup>12</sup> Art. 9.2(c) IBA Rules.

<sup>13</sup> Art. 9.2(d) IBA Rules.

<sup>14</sup> Art. 9.2(e) IBA Rules.

Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with **Annex D**,

- identifying in chronological order the date, the issuer and the recipient of the Document (specifying whether he/she is an attorney of the party),
- providing a summary description of the Document, plus
- an explanation of the reasons which justify that the Document be withheld in full.

16.33. Any dispute as to the applicability of confidentiality will be settled by the Tribunal.

**“O5”: Grounds of special political or institutional sensitivity<sup>15</sup>**

16.34. A Party may request that a Document should not be produced, alleging compelling grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution).

16.35. If the requested Party raises an objection under O5 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect the sensitive information. Absent such agreement, the requested Party shall deliver the production of such Documents with the political or institutionally sensitive information redacted.

16.36. In those cases in which sensitive information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with **Annex D**,

- Identifying in chronological order the date, the issuer and the recipient of the Document (specifying whether he/she is an attorney of the party),
- Providing a summary description of the Document, plus
- An explanation of the reasons which justify that the Document be withheld in full.

16.37. Any dispute as to the applicability of special political or institutional sensitivity will be settled by the Tribunal.

**“O6”: Production would affect the fairness or equality of the procedure<sup>16</sup>**

16.38. Documents will not be ordered to be produced when the Tribunal finds considerations of procedural economy, proportionality, fairness or equality of the Parties that it determines to be compelling.

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<sup>15</sup> Art. 9.2(f) IBA Rules.

<sup>16</sup> Art. 9.2(g) IBA Rules.

**D. Procedure**

**DPS Response**

16.39. On the date identified in **Annex A**, each Party shall return directly to the counterparty the initial DPS (without copying the Tribunal), indicating which requests it will voluntarily comply with, and which requests it rejects [the “**DPS Response**”]:

- Arguing that such requests do not meet any or some of the Requirements R1 through R3; or
- Raising one or more of the Objections O1 through O6.

**Delivery of Non-Contested Documents**

16.40. On the same date, each requested Party shall produce all documents which it has voluntarily accepted to deliver [the “**Non-Contested Documents**”]. Non-Contested Documents shall only be delivered to the requesting Party, without copying the Tribunal. The requesting Party may submit any of these Non-Contested Documents as evidence with the following written submissions.

16.41. The requested Party should not deliver at this stage Documents for which it has raised an Objection; such Documents shall only be delivered (or a Privilege Log submitted) once the Tribunal has issued its decision.

**DPS Response to Objections**

16.42. On the date identified in **Annex A**, the requesting Party shall file a response to the Objections O1 through O6 raised by the counterparty. The requesting Party may withdraw or limit its requests on account of the Objections raised.

16.43. The requesting Party shall formalize its response in the DPS [“**DPS Response to Objections**”].

16.44. For the avoidance of doubt, the requesting Party shall refrain from replying to the arguments raised by the requested Party regarding Requirements R1 to R3.

16.45. On that same date, each Party shall submit its DPS (including its own requests, the objections of the counterparty and its own responses to the objections) to the Tribunal.

16.46. When submitting the DPS to the Tribunal, the Parties are kindly requested to refrain from making additional submissions. The Parties are expected to strictly adhere to the rules set out in the present Procedural Order.

**Decision on DPS**

16.47. The Tribunal will endeavour to issue its decision by the date established in **Annex A**. Such decision will be formalized in the requesting Party's DPS.

**Production of Contested Documents or Privilege Log**

16.48. Each Party shall produce all "**Contested Documents**", in compliance with the decision adopted by the Tribunal, on the date established in **Annex A**. Contested Documents shall only be delivered to the counterparty, without copying the Tribunal. The receiving Party may marshal any of such Contested Documents as evidence with the subsequent written submissions.

16.49. The same rule shall apply if the requested Party has raised, and the Tribunal has accepted, Objections O4 or O5 with regard to certain Documents, and the Parties have reached a confidentiality agreement.

16.50. Absent such agreement, or if Objection O1 has been pleaded and accepted, the requested Party shall deliver the Documents with the privileged information redacted.

16.51. In those cases in which the privileged information cannot be adequately safeguarded through redaction, the requested Party shall produce to the counterparty (without copying the Tribunal) a Privilege Log, drafted in accordance with **Annex D**,

- identifying in chronological order the date, the issuer and the recipient of the Document specifying whether he/she is an attorney of the party),
- providing a summary description of the Document, plus
- an explanation of the reasons which justify that the Document be withheld in full.

**E. Delivery of Affidavits**

16.52. On the same date, each Party will deliver to its counterparty and to the Tribunal, the following "**Affidavits**":

- A first Affidavit signed by an authorized representative of such Party drafted in accordance with **Annex E**, and
- A second Affidavit signed by the head external legal counsel to such Party drafted in accordance with **Annex F**.

16.53. If a Party, without satisfactory explanation, and in contravention of the Tribunal's instructions, fails to produce a Document, the Tribunal may infer that such Document is adverse to the interest of that Party. Likewise, if a Party absent

satisfactory explanation fails to deliver any of the Affidavits, the Tribunal will make appropriate inferences.

**F. Allocation of costs**

16.54. In its decision on costs, the Tribunal will make a special allocation of costs with regard to the Document production exercise, taking into consideration the reasonableness of the Requests and Objections and each Party's willingness to produce the Documents under its control and the relative success of each Party with respect to document production.

16.55. Parties shall identify separately in their statements of costs, the costs incurred in preparing their DPS Requests and DPS Responses, and the costs incurred in the search and delivery of the requested Documents.

**17. Submission of Documents**

*Convention Article 44; Arbitration Rule 24*

17.1. 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.

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

17.3. Following each factual allegation made in a submission or pleading, the Parties shall make specific reference to the evidence that supports that allegation. If an exhibit consists of more than one page, the Parties shall refer to the specific page and paragraph number upon which they rely. For lengthy documents that do not contain page numbers or contain more than a single row of page numbers, the Parties may add their own consecutive page numbering.

17.4. All documents and other evidence shall be referenced in the Parties' respective pleadings. Parties shall refrain from marshalling evidence without a specific reference in the submission with which the evidence is tendered.

17.5. Neither Party shall be permitted to submit additional or responsive documents or other evidence outside of the submissions agreed to in the Procedural Timetable attached as **Annex A**, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other Party.



- 17.5.1. Should a Party request leave to submit additional or responsive evidence, that Party may not annex to its request the evidence that it seeks to submit.
- 17.5.2. If the Tribunal grants such an application for submission of additional or responsive evidence, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such evidence and to submit further responsive evidence if appropriate.
- 17.6. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.7. Evidence shall be submitted in the following form:
- 17.7.1. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings.
- 17.7.2. The number of each exhibit containing a document submitted by Claimants shall be preceded by the letter “C-” for factual exhibits and “CLA-” for legal exhibits containing authorities etc. The number of each exhibit containing a document submitted by Respondent shall be preceded by the letter “R-” for factual exhibits and “RLA-” for legal exhibits containing authorities etc. The Parties’ witnesses and experts shall use a separate numbering (e.g., for exhibits filed with the Witness Statement of [Maria Jones] - MJ-0001, MJ-0002 etc).
- 17.7.3. Each document marshalled shall have an individual exhibit number. The Parties should not tender multiple documents under one exhibit number, except that attachments should be included as part of the same exhibit.
- 17.7.4. Exhibits and legal authorities shall be submitted in PDF format and shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CLA-001” and “RLA-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 §17.7.5.
- 17.7.5. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex B**.
- 17.7.6. Exhibits should be submitted in a searchable electronic file format, whenever possible.
- 17.8. 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.

- 17.9. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements and expert reports even if referred to in such statements or reports.
- 17.10. During hearings, the Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not include information not in the record.
- 17.10.1. An electronic copy of each demonstrative exhibit, and each PowerPoint slide deck, shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunals, the Tribunal Secretary, the Assistant to the Tribunal, to the court reporter and to the interpreters as necessary at a time to be decided at the pre-hearing organizational meeting. For the avoidance of doubt, this requirement is limited to demonstratives derived or extracted from exhibits, and does not apply to PowerPoint slides reproducing exhibits or containing arguments of counsel. For hearings, such PowerPoint slide decks shall be distributed by each Party to the other Party and to the Tribunal in hard copy immediately prior to their use at the hearing, the precise time to be agreed during the pre-hearing scheduling.
- 17.10.2. Promptly after the conclusion of the Hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding “CD-” number for Claimants or “RD-” number for Respondent.
- 17.11. No new evidence or calculations may be presented at the Hearing except with leave of the Tribunal. Should the Tribunal grant leave to a Party to present or reference new evidence in the course of the Hearing, it will grant the other Party the opportunity to introduce new evidence to rebut it.

## **18. Witness Statements and Expert Reports**

*Convention Article 43(a); Arbitration Rule 24*

- 18.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.
- 18.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §17.5).

- 18.3. Each witness statement shall be signed and dated by the witness and include:
- 18.3.1. A disclosure statement detailing any past and present relations of the witness with any Party, counsel or Member of the Tribunal;
  - 18.3.2. A description of the witness' position and qualifications, if relevant;
  - 18.3.3. A full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
  - 18.3.4. Any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as documents);
  - 18.3.5. A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing; and
  - 18.3.6. An affirmation of the truth of the witness statement.
- 18.4. Witness Statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 18.6. Expert Reports shall be dated and signed by the expert or experts and contain:
- 18.6.1. The full name of the expert;
  - 18.6.2. A disclosure statement detailing any past and present relations of the expert with any Party, counsel or Member of the Tribunal;
  - 18.6.3. A brief description of the expert's qualifications;
  - 18.6.4. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
  - 18.6.5. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
  - 18.6.6. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;

- 18.6.7. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
  - 18.6.8. The documents relied on by the expert in the preparation of his or her report; any spreadsheet or table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source;
  - 18.6.9. An affirmation of his or her genuine belief in the opinions expressed in the report.
- 18.7. Expert Reports shall be submitted in a searchable electronic file format and have consecutive numbering of pages, headings and paragraphs, as well as a detailed table of contents.

## **19. Examination of Witnesses and Experts**

### *Arbitration Rules 35 and 36*

- 19.1. 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.
- 19.2. Each Party shall take all measures necessary to ensure the appearance at the hearing of its witnesses and experts who have been called to testify. 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.
- 19.3. The Parties shall notify the opposing Party which witnesses and experts they intend to call for cross-examination on the date specified in the Procedural Timetable. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.
- 19.4. Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.
- 19.5. Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness or expert may conduct a brief direct examination at the Hearing limited to introducing the witness or expert by name and position and correcting any clerical errors in the written witness statement or expert report. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.

- 19.6. As a general rule the scope of cross-examination will be limited to the contents of the witness statement or expert report. Re-direct examination shall as a general rule be limited to the subject of cross-examination. At the request of any Party and for good cause, the Tribunal may expand the scope of the cross-examination or the re-direct examination or may allow a brief re-cross examination in relation to any new matters or issues arising out of the re-direct examination.
- 19.7. Fact witnesses shall be examined before experts. In principle, Claimants' fact witnesses shall be examined first, followed by the Respondent's fact witnesses, followed by Claimants' experts, followed by Respondent's experts, subject to reconsideration at the pre-hearing organizational meeting. In hearings on bifurcation or interim measures, the fact witnesses of the party that has applied for bifurcation or interim measures shall be examined first, followed by the responding party's witnesses, followed by the applicant party's experts, followed by the responding party's experts.
- 19.8. Any person appearing before the Tribunal as a fact witness shall not be allowed to attend, or read the transcript of, any part of the hearings before his/her testimony is completed. No exceptions shall apply for fact witnesses who are "Party representatives". Expert witnesses shall be allowed in the hearing room at all times.
- 19.9. Each Party shall bear the costs of appearance in respect of its own witnesses and experts, subject to the final allocation of the costs of proceedings by the Tribunal in the Award.

## **20. Application of soft law**

- 20.1. Without prejudice to applicable provisions of the ICSID Arbitration Rules (2006), the Tribunal may take into consideration the International Bar Association Rules for the Taking of Evidence in International Arbitration (2020) and the International Bar Association Guidelines on Party Representation in International Arbitration (2013).

## **21. Pre-Hearing organizational meeting**

### *Arbitration Rule 13*

- 21.1. A pre-hearing organizational meeting shall be held on a date determined by the Tribunal after consultation with the Parties, within four (4) to eight (8) weeks before the hearing, as indicated in **Annex A**. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the Parties and should address 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.
- 21.3. Following the pre-hearing organizational meeting, a Procedural Order will be issued by the Tribunal reflecting the decisions made in preparation for the Hearing.

## **22. Preparation for the Hearing**

- 22.1. The two weeks prior to the Hearing shall be considered preparation time for the Parties and the Tribunal. Therefore, during that period, no procedural incident (except for force majeure events or purely organizational matters related to the Hearing) will be admitted and will be considered rejected *a limine*. However, the Party may present such incident at the beginning of the Hearing and the Tribunal will adopt the appropriate decision after hearing the counterparty.

## **23. Hearings**

### *Arbitration Rules 20(1)(e) and 32*

- 23.1. The oral procedure shall consist of a Hearing for examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The Hearing may be held in-person or by any other means of communication 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.
- 23.3. Having due regard to the views of the Parties and the specific circumstances of the case, including any relevant travel restrictions and/or social distancing measures or public health/security, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 23.4. The Hearing shall take place on the dates shown in the Procedural Timetable set forth in **Annex A**.
- 23.5. The Members of the Tribunal shall reserve at least one day after the Hearing to determine the next steps and to hold deliberations.
- 23.6. The principle of equal time shall be observed with flexibility at the Hearing.
- 23.7. The Hearings shall be closed to the public.

## **24. Records of Hearings and Sessions**

### *Arbitration Rules 13 and 20(1)(g)*

- 24.1. Audio and video recordings shall be made of all hearings and sessions. The video recordings will only be provided to the Center, which will safeguard them and make them available to the Tribunal. If any of the Parties makes a reasoned request to access the video recording, the Tribunal, after hearing the other Party, will take the appropriate decision.
- 24.2. 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 and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 24.3. The Parties shall agree on any corrections to the transcripts within thirty (30) days of the later of the dates of the receipt of the sound recordings and transcripts indicating (i) corrections of the text in track-changes where the Parties were able to agree and (ii) portions of the text where the Parties were not able to agree, accompanied by a note setting out each Party's proposed text and supporting rationale.
- 24.4. Corrections to the hearing transcripts shall include corrections to material errors of interpretation, so that the corrected transcripts faithfully render in English what was said at the hearing in the original language. Where necessary for an appreciation of the nature of the interpretation error or subsequent developments at the hearing, the transcript may in addition reproduce the incorrect interpretation, identified as such.
- 24.5. The agreed corrections may be entered by the court reporter in the transcripts [**“revised transcripts”**].
- 24.6. 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.

## **25. Post-Hearing Briefs and Statements of Costs**

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

- 25.1. 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 briefs and a statement of costs, including argument on allocation of costs.

**26. Publication**

*Convention Article 48(5); Administrative and Financial Regulation 25; Arbitration Rule 48(4)*

26.1. The Parties consent to publication by ICSID of the Award following the conclusion of the proceeding and any order or decision issued in the present proceeding.

**27. Data Privacy and Cybersecurity**

27.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

27.2. The Members of the Tribunal, 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 proceeding, 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.

27.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

On behalf of the Tribunal,

[signed]

Prof. Juan Fernández-Armesto  
President of the Tribunal  
Date: September 22, 2023



**(Annex A) Procedural Timetable**

I. Respondent’s Rule 41.5 preliminary objection

|    | <b><u>Date</u></b> | <b><u>Lapse (in days)</u></b>                         | <b><u>Party / Tribunal</u></b> | <b><u>Description</u></b>  |
|----|--------------------|---|--------------------------------|--|
| 1. | May 30, 2023       | N/A   | Respondent                     | Respondent’s Preliminary Objection under ICSID Arbitration Rule 41(5)    |
| 2. | June 30, 2023      | One (1) month from Respondent’s Preliminary Objection | Claimants                      | Claimants’ Observations on Respondent’s Rule 41(5) Preliminary Objection |
| 3. | July 25, 2023      |   | Tribunal                       | Tribunal’s Decision on Rule 41(5) Preliminary Objection                  |

II. Substantive steps in the arbitration [**Scenario 1**]:

|     | <u>Date</u>                        | <u>Lapse (in days)</u>   | <u>Party / Tribunal</u> | <u>Description</u>   |
|-----|------------------------------------|--|-------------------------|--|
| 1.  | Fri., Mar. 1, 2024                 | Seven months and one week from the Decision on Rule 41(5)  | Claimants               | Claimants' Memorial  |
| 2.  | Tues., Oct. 8, 2024                | Seven months and one week  | Respondent              | Counter-Memorial on the Merits and Memorial (if any) on Preliminary Objections |
| 3.  | Fri., Nov. 8, 2024                 | One (1) month  | Parties                 | DPS Requests   |
| 4.  | Mon., Dec. 9, 2024                 | One (1) month  | Parties                 | DPS Response and delivery of Non-Contested Documents                           |
| 5.  | Mon., Jan. 6, 2025                 | Three (3) weeks accounting for holidays  | Parties                 | DPS Response to Objections and submission of DPS to the Tribunal               |
| 6.  | Mon., Jan. 27, 2025                | Within ~three (3) weeks  | Tribunal                | Decision on DPS  |
| 7.  | Thurs., Feb. 27, 2025              | ~One (1) month   | Parties                 | Production of Contested Documents, of Privilege Log and Affidavits             |
| 8.  | Mon., May 12, 2025                 | Two (2) months and (2) two weeks from Production as Ordered and seven (7) months from Counter-Memorial | Claimants               | Reply on the Merits and Counter-Memorial (if any) on Preliminary Objections    |
| 9.  | Tues., Oct. 14, 2025               | Five (5) months  | Respondent              | Rejoinder on the Merits and Reply (if any) on Preliminary Objections           |
| 10. | Tues., Nov. 25, 2025               | Six (6) weeks  | Claimants               | Rejoinder (if any) on Preliminary Objections                                   |
| 11. | Tues., Dec. 9, 2025                | Two (2) weeks  | Parties and Tribunal    | Identification of witness and experts to be called at the hearing              |
| 12. | Fri., Jan. 9, 2026                 | Within one (1) month   | All                     | Pre-hearing videoconference  |
| 13. | Mon., Feb. 9 – Fri., Feb. 13, 2026 | Within one (1) month   | All                     | Hearing  |
| 14. | To be determined                   | Within one (1) month   | Parties                 | Post hearing briefs (to be discussed at the end of the hearing)                |
| 15. | To be determined                   | Within two (2) months  | Parties                 | Costs Submission   |

III. The following timetable shall apply in the event preliminary objections are raised [Scenarios 2 and 3]:

|    | <u>Date</u>         | <u>Lapse (in days)</u> | <u>Party / Tribunal</u> | <u>Description</u>   |
|----|---------------------|------------------------|-------------------------|--|
| 1. | Fri., Mar. 1, 2024  | N/A                    | Claimants               | Claimants' Memorial  |
| 2. | Fri., Mar. 15, 2024 | Two (2) weeks          | Respondent              | Notice of intention to request Bifurcation                                 |
| 3. | Fri., Apr. 12, 2024 | Four (4) weeks         | Respondent              | Request for Bifurcation  |
| 4. | Fri., May 24, 2024  | Six (6) weeks          | Claimants               | Observations on Request for Bifurcation                                    |
| 5. | Fri., June 14, 2024 | Within three (3) weeks | Tribunal                | Decision on bifurcation or joinder of preliminary objections to the merits |

IV. The following timetable shall apply in the event the Tribunal decides to join the preliminary objections to the merits [**Scenario 2**]:

|     | <b><u>Date</u></b> | <b><u>Lapse (in days)</u></b>                     | <b><u>Party / Tribunal</u></b> | <b><u>Description</u></b>   |
|-----|--------------------|---|--------------------------------|---|
| 1.  | January 21, 2025   | 7 months and 1 week from Decision on Bifurcation  | Respondent                     | Counter-Memorial and Preliminary Objections                                 |
| 2.  | February 21, 2025  | One month   | Parties                        | DPS Requests  |
| 3.  | March 14, 2025     | 3 weeks   | Parties                        | DPS Response and delivery of Non-Contested Documents                        |
| 4.  | April 4, 2025      | 3 weeks   | Parties                        | DPS Response to Objections and submission of DPS to the Tribunal            |
| 5.  | April 25, 2025     | 3 weeks   | Tribunal                       | Decision on DPS   |
| 6.  | May 27, 2025       | One month   | Parties                        | Production of Contested Documents, of Privilege Log and Affidavits          |
| 7.  | August 11, 2025    | 2.5 months from Production of Contested Documents | Claimants                      | Reply on the Merits and Counter-Memorial (if any) on Preliminary Objections |
| 8.  | January 12, 2026   | 5 months  | Respondent                     | Rejoinder on the Merits and Reply (if any) on Preliminary Objections        |
| 9.  | February 23, 2026  | 6 weeks   | Claimants                      | Rejoinder (if any) on Preliminary Objections                                |
| 10. | March 9, 2026      | 2 weeks   | Parties and Tribunal           | Identification of witness and experts to be called at the hearing           |
| 11. | April 9, 2026      | One month   | All                            | Pre-hearing videoconference   |
| 12. | May 11 – 15, 2026  | One month   | All                            | Hearing   |
| 13. | To be determined   | To be determined                                  | Parties                        | Post hearing briefs (to be discussed at the end of the hearing)             |
| 14. | To be determined   | To be determined                                  | Parties                        | Costs Submission  |

V. The following timetable shall apply in the event the Tribunal decides to bifurcate **[Scenario 3]**:

|     | <b><u>Date</u></b>              | <b><u>Lapse (in days)</u></b>                 | <b><u>Party / Tribunal</u></b> | <b><u>Description</u></b>   |
|-----|---------------------------------|---|--------------------------------|---|
| 1.  | Fri., June 28, 2024             | Within two (2) weeks                          | All                            | Procedural Conference on Further Steps in the Proceedings         |
| 2.  | Mon., Sept. 16, 2024            | Three (3) months from Decision on Bifurcation | Respondent                     | Memorial on Preliminary Objections                                |
| 3.  | Mon., Dec. 16, 2024             | Three (3) months                              | Claimants                      | Counter-Memorial on Preliminary Objections                        |
| 4.  | Mon., Jan. 27, 2025             | One (1) month adjusted for holidays           | Respondent                     | Reply on Preliminary Objections                                   |
| 5.  | Mon., Mar. 3, 2025              | One (1) month                                 | Claimants                      | Rejoinder on Preliminary Objections                               |
| 6.  | Mon., Mar. 17, 2025             | Two (2) weeks                                 | Parties                        | Identification of witness and experts to be called at the hearing |
| 7.  | Tues., Apr. 22, 2025            | Within one (1) month                          | All                            | Pre-hearing videoconference                                       |
| 8.  | Mon. June 2 – Fri. June 6, 2025 | Within one (1) month                          | All                            | Hearing   |
| 9.  | To be determined                | Within one (1) month                          | Parties                        | Post hearing briefs (to be discussed at the end of the hearing)   |
| 10. | To be determined                | Within two (2) months                         | Parties                        | Costs Submission  |

**(Annex B) 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><br><i>Rejoinder on Quantum-ENG</i>  |
| SUPPORTING DOCUMENTATION<br><br>Exhibits, including to pleadings, witness statements, and expert reports | <b>C-####-LANGUAGE</b><br><b>R-####-LANGUAGE</b>   |
|  | To be produced sequentially throughout the case.   |
|  | <b>CLAIMANTS’ FACTUAL EXHIBITS</b>   |
|  | <i>C-0001-ENG</i>  |
|  | <i>C-0002-SPA</i>  |
|  | <b>RESPONDENT’S FACTUAL EXHIBITS</b>   |
|  | <i>R-0001-FR</i><br><i>R-0002-SPA</i>  |
| Legal Authorities  | <b>CLA-####-LANGUAGE</b><br><b>RLA-####-LANGUAGE</b>   |
|  | To be produced sequentially throughout the case.   |
|  | <b>CLAIMANTS’ LEGAL AUTHORITIES</b>  |
|  | <i>CLA-0001-ENG</i>  |
|  | <i>CLA-0002-FR</i>   |
|  | <b>RESPONDENT’S LEGAL AUTHORITIES</b>  |
|  | <i>RLA-0001-SPA</i><br><i>RLA-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><br><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><br><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><br><i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>         |
| Exhibits to Witness Statements, Expert Reports,  | <b>WITNESS/EXPERT INITIALS-###</b>   |
|  | <i>For exhibits filed with the Witness Statement of [Maria Jones]</i><br><i>MJ-0001</i>  |

*Vasilisa Ershova and Jegor Jeršov v. Republic of Bulgaria*  
(ICSID Case No. ARB/22/29)

Procedural Order No. 2- Annex B

|   |   |
|---|---|
| Legal Opinions  | <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>  |
| <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-[Claimants]-SPA</i>        |
|   | <i>Request for Stay of Enforcement-FR</i>                         |
|   | <i>Request for Discontinuance-[Claimants]-ENG</i>                 |
|   | <i>Post-Hearing Brief-[Claimants]-SPA</i>                         |
|   | <i>Costs Submissions-[Respondent]-ENG</i>                         |
| <i>Observations to Request for [XX]-[Claimants]-SPA</i> |   |

**(Annex C) Document Production Schedule**

**DOCUMENT PRODUCTION SCHEDULE**

**Requesting Party:**

Requesting party

**Requested Party:**

Requested party

| Document Request No. 1.   |                         |                 |
|---|-------------------------|-----------------|
| R1: Description of requested Documents (max. 200 words)                   |                         |                 |
| <u>Requesting party</u>   | <u>Requested party</u>  | <u>Tribunal</u> |
| Time frame of issuance  |                         |                 |
|   |                         |                 |
| R2: Relevance and materiality (max. 250 words)                            |                         |                 |
| <u>Requesting party</u>   | <u>Requested party</u>  | <u>Tribunal</u> |
| Reference in Memorial (paras.)  |                         |                 |
|   |                         |                 |
| R3: Not in possession of requesting party (max. 100 words)                |                         |                 |
| <u>Requesting party</u>   | <u>Requested party</u>  | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O1: Legal or settlement privilege (max. 250 words)                        |                         |                 |
| <u>Requested party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O2: Production is unreasonably burdensome (max. 200 words)                |                         |                 |
| <u>Requested party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O3: Loss or destruction (max. 100 words)                                  |                         |                 |
| <u>Requested party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O4: Technical or commercial confidentiality (max. 200 words)              |                         |                 |
| <u>Requested party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O5: Special political or institutional sensitivity (max. 250 words)       |                         |                 |
| <u>Requested Party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| O6: Production affects fairness or equality of procedure (max. 100 words) |                         |                 |
| <u>Requested party</u>  | <u>Requesting party</u> | <u>Tribunal</u> |
|   |                         |                 |
|   |                         |                 |
| Tribunal's Decision   |                         |                 |
|   |                         |                 |



| <b>Document Request No. 2.</b>   |                         |                 |
|--|-------------------------|-----------------|
| <b>R1: Description of requested Documents (max. 200 words)</b>                   |                         |                 |
| <u>Requesting party</u>  | <u>Requested party</u>  | <u>Tribunal</u> |
|  |                         |                 |
| <b>Time frame of issuance</b>  |                         |                 |
|  |                         |                 |
| <b>R2: Relevance and materiality (max. 250 words)</b>                            |                         |                 |
| <u>Requesting party</u>  | <u>Requested party</u>  | <u>Tribunal</u> |
|  |                         |                 |
| <b>Reference in Memorial (paras.)</b>  |                         |                 |
|  |                         |                 |
| <b>R3: Not in possession of requesting party (max. 100 words)</b>                |                         |                 |
| <u>Requesting party</u>  | <u>Requested party</u>  | <u>Tribunal</u> |
|  |                         |                 |
| <b>O1: Legal or settlement privilege (max. 250 words)</b>                        |                         |                 |
| <u>Requested party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>O2: Production is unreasonably burdensome (max. 200 words)</b>                |                         |                 |
| <u>Requested party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>O3: Loss or destruction (max. 100 words)</b>                                  |                         |                 |
| <u>Requested party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>O4: Technical or commercial confidentiality (max. 200 words)</b>              |                         |                 |
| <u>Requested party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>O5: Special political or institutional sensitivity (max. 250 words)</b>       |                         |                 |
| <u>Requested Party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>O6: Production affects fairness or equality of procedure (max. 100 words)</b> |                         |                 |
| <u>Requested party</u>   | <u>Requesting party</u> | <u>Tribunal</u> |
|  |                         |                 |
| <b>Tribunal's Decision</b>   |                         |                 |
|  |                         |                 |

*Copy and paste blank table for each new document production request.*

**(Annex D) Privilege Log**

Requesting party: Requesting party

Requested party: Requested party

| <b>Doc. No.</b> | <b>Date of issuance<br/>(in chronological<br/>order)</b> | <b>Author/Sender<br/>(identifying any<br/>attorney to the<br/>Requested party)</b> | <b>Recipient(s)<br/>(including any<br/>individuals in copy)</b> | <b>Brief description of the<br/>Document or Category<br/>of the Documents</b> | <b>Asserted privilege<br/>(O1, O4, O5)</b> | <b>Reasons for objection</b> |
|-----------------|--|--|---|---|--|------------------------------|
|                 |  |  |   |   |  |                              |
|                 |  |  |   |   |  |                              |
|                 |  |  |   |   |  |                              |

**(Annex E) Affidavit**

**AFFIDAVIT**

My name is Full name, Position of Requested party. This Affidavit is issued in accordance with Procedural Order No. 2 in the arbitration between *Vasilisa Ershova and Jegor Jeršov v. Republic of Bulgaria*, ICSID Case No. ARB/22/29. The terms defined in Procedural Order No. 2 have the same meaning when used in this Affidavit.

I declare that, to the best of my knowledge and belief:

- (i) Requested party has carried out a reasonable search of the Documents which it was ordered or voluntarily undertook to produce;
- (ii) No Document which Requested party was ordered or voluntarily undertook to produce has been destroyed or concealed;
- (iii) All Documents for which legal or settlement privilege has been claimed, meet the requirements established in Procedural Order No. 2;
- (iv) Requested party has produced all Documents which it was ordered or voluntarily undertook to produce (except for the privileged or confidential Documents duly identified in the Privilege Log).

Date: Date

\_\_\_\_\_  
Full name

**(Annex F) Affidavit – External Counsel**

**AFFIDAVIT**

My name is Full name, external legal counsel of Requested party. This Affidavit is issued in accordance with Procedural Order No. 2 in the arbitration between *Vasilisa Ershova and Jegor Jeršov v. Republic of Bulgaria*, ICSID Case No. ARB/22/29. The terms defined in Procedural Order No. 2 have the same meaning when used in this Affidavit.

I declare that:

- (i) I have explained to the Requested party (a) its obligation not to destroy or conceal any Document potentially relevant to the above-referred arbitration, and (b) the necessity of producing, and the potential consequences of the failure to produce, any Document which Requested party has been ordered or voluntarily has undertaken to produce;
- (ii) I have advised Requested party to carry out a reasonable search, and to produce all Documents it was ordered or it voluntarily undertook to produce (except for the privileged or confidential Documents duly identified in the Privilege Log);
- (iii) All Documents for which legal or settlement privilege has been claimed, meet the requirements established in Procedural Order No. 2.

Date: Date

\_\_\_\_\_  
Full name