

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Kurt Harald Grüninger, Alexandra Grüninger, and Sascha Spittel

v.

Republic of Costa Rica

(ICSID Case No. ARB/23/16)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Ms. Lucinda Low, President of the Tribunal

Mr. Adolfo E. Jiménez, Arbitrator

Professor Mónica Pinto, Arbitrator

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

February 7, 2024

Contents

1. Applicable Arbitration Rules	3
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	3
3. Fees and Expenses of Tribunal Members	4
4. Presence and Quorum	4
5. Rulings of the Tribunal	4
6. Power to Fix Time Limits	5
7. Secretary of the Tribunal	6
8. Representation of the Parties	6
9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances	7
10. Third-Party Funding.....	8
11. Place of Proceeding and Hearings	8
12. Procedural Language(s), Translation and Interpretation	9
13. Routing of Communications	10
14. Number of Copies and Method of Filing of Parties' Pleadings.....	10
15. Number and Sequence of Pleadings – Procedural Calendar.....	12
16. Production of Documents	12
17. Submission of Documents	14
18. Witness Statements and Expert Reports	16
19. Examination of Witnesses and Experts.....	18
20. Pre-Hearing Organizational Meetings	20
21. Hearings	21
22. Recordings and Transcripts of Hearings and Sessions	21
23. Post-Hearing Memorials and Statements of Costs.....	22
24. Transparency Matters.....	22
25. Data Privacy and Cybersecurity.....	22
26. Amicable Dispute Settlement	23
Annex A – Electronic File Naming Guidelines.....	24
Annex B – Schedule	26
Annex C – Redfern Schedule for [Claimants/Respondent] Document Requests.....	28

Introduction

The first session of the Tribunal was held on January 19, 2024, at 10 am (EST time), by video conference. The session was adjourned at 11:12 am (EST time).

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 conference were:

Members of the Tribunal:

Ms. Lucinda Low, President of the Tribunal
Mr. Adolfo E. Jimenez, Arbitrator
Professor Mónica Pinto, Arbitrator

ICSID Secretariat:

Ms. Elisa Méndez Bräutigam, Secretary of the Tribunal, ICSID

On behalf of the Claimants:

Francisco A. Rodriguez, Reed Smith LLP
Gilberto A. Guerrero-Rocca, Reed Smith LLP
Ana R. Ulseth, Reed Smith LLP

On behalf of the Respondent:

Ms. Adriana González, Ministry of Foreign Trade (COMEX)
Ms. Arianna Arce, Ministry of Foreign Trade (COMEX)
Ms. Marisol Montero, Ministry of Foreign Trade (COMEX)
Mr. Gabriel Chaves, Ministry of Foreign Trade (COMEX)
Mr. Stephan Adell, Adell & Merizalde
Mr. Juan Felipe Merizalde, Adell & Merizalde
Ms. Sofía Galindo, Adell & Merizalde
Ms. Gabriela Santana, Adell & Merizalde
Ms. María José Monroy, Adell & Merizalde
Ms. Carmen Haché, Adell & Merizalde

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on November 27, 2023; and
- The parties' comments on the Draft Procedural Orders received on January 16, 2024, 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:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.¹

1.2. The Claimants invoke as the instrument of consent to ICSID Arbitration the “*Tratado entre Alemania y Costa Rica sobre Fomento y Recíproca Protección de Inversiones*”, signed on September 13, 1994 (the “**BIT**”). The Respondent reserves its right to raise objections to the Tribunal’s jurisdiction.

1.3. The Tribunal may be guided by:

1.3.1. The International Bar Association (“**IBA**”) Guidelines on Conflicts of Interest in International Arbitration (adopted by a resolution of the IBA Council on October 23, 2014).

1.3.2. The IBA Rules on the Taking of Evidence in International Arbitration (adopted by a resolution of the IBA Council on December 17, 2020).

1.3.3. The IBA Guidelines on Party Representation in International Arbitration (adopted by a resolution of the IBA Council on May 25, 2013).

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on October 31, 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 19(3)(b). Copies of these declarations were distributed to the parties by the ICSID Secretariat upon acceptance of each

¹ By communications of July 3, 2023, the Parties agreed to apply the 2022 ICSID Arbitration Rules to this arbitration.

Procedural Order No. 1

arbitrator's appointment on August 21, 2023, September 11, 2023, and October 31, 2023.

- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions, and the Award, in accordance with ICSID Arbitration Rule 12(1).

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. Each member of the Tribunal shall submit their payment requests for fees and expenses in a detailed manner before the ICSID Secretariat. The payment requests shall be presented regularly and at least every trimester. The payment requests for work performed must be presented in detail and shall be attached to the Fees and Expenses Request Form.
- 3.3. Non-refundable expenses incurred in connection with the hearing, as a result of its postponement or cancellation, shall be paid.

4. Presence and Quorum

Arbitration Rule 33

- 4.1. The presence of all Members of the Tribunal shall constitute a quorum for their meetings and deliberations.
- 4.2. The participation of a majority of the Members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, and hearings, except as otherwise provided in the ICSID Arbitration Rules or unless the parties agree otherwise.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.

Procedural Order No. 1

- 5.3. The Award shall be signed by the Members of the Tribunal that voted in favor of it. Orders, decisions and the Award may be signed electronically. (See ICSID Arbitration Rule 59(2)).
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When 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.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use its best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will notify the parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2). With respect to the Award, if it has not been issued within the applicable time limit prescribed by the ICSID Arbitration Rule 58, the Tribunal will provide the parties with updates every six (6) weeks regarding the status of the issuance of the Award.
- 5.8. 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 Rules 10 and 11

- 6.1. The arbitration process will be subject to the procedural calendar that is approved by this Procedural Order (Annex B), in accordance with Arbitration Rules 10(1) and 10(2). However, the President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding in accordance with Arbitration Rules 10(3) and 11(4), seeking to always consult with the other Members of the Tribunal.
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the parties to the extent possible. If the matter is urgent, the President may fix time limits without consulting the parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Elisa Méndez Bräutigam, 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. Elisa Méndez Bräutigam
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 473-2851
Fax: + 1 (202) 522-2615
Email: emendezbrautigam@worldbank.org
Paralegal name: Paulina Alvarado
Paralegal email: palvarado@worldbank.org
ICSID case address: ARB/23/16@icsidcases.worldbank.org

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

Ms. Elisa Méndez Bräutigam
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Representation of the Parties

Arbitration Rule 2

- 8.1. 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 Claimants

Mr. Francisco A. Rodríguez
Mr. Gilberto A. Guerrero-Rocca

For the Respondent

Ms. Adriana González
Ms. Arianna Arce

Procedural Order No. 1

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Mr. Stephan Adell
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and
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Ms. Sofia Galindo
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mjmonroy@adellmerizalde.com

9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice on the final decision of the Tribunal as to the allocation of costs.
- 9.2. Following registration of the Request for arbitration, by letter of May 18, 2023, ICSID requested that the Claimants pay US\$150,000 to cover the initial costs of the proceeding through the first session. ICSID received the Claimants' payment on June 12, 2023. Upon the constitution of the Tribunal, by letter of November 7, 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 the Claimants on June 12, 2023, is considered a partial payment toward that sum. ICSID received the Respondent's full payment on December 4, 2023.

- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Third-Party Funding
Arbitration Rule 14

10.1. A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“**third-party funding**”). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person. The party receiving the funds shall immediately notify the Secretary-General of any changes to the information in the notice.

10.2. By letter dated June 20, 2023, the Claimants informed ICSID that they had entered into a funding agreement with the following entity:

Longford Capital Fund III, LP (funding entity)
35 West Wacker Drive, Suite 3700.
Chicago, Illinois 60601
United States of America
Phone: +1 (312) 212-8240

10.3. The Claimants also reported that Longford Capital Fund III, LP is controlled by Longford Capital Management, LP, and both legal entities have their offices and permanent establishment at the address indicated in §10.2 above.

10.4. Given the disclosure by the Claimants, the Members of the Tribunal, the Respondent, and its representatives shall disclose if they have any direct or indirect links with the aforementioned funding entities.

11. Place of Proceeding and Hearings
Convention Articles 62 and 63; Arbitration Rule 32

11.1. Washington D.C., United States of America, shall be the place of the proceeding.

11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate after consultation with the parties. The method of holding a hearing will be determined in accordance with §21.2.

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
Administrative and Financial Regulation 32; Arbitration Rule 7

12.1. Spanish is the procedural language of the arbitration.

For Documents and Communications

12.2. The Tribunal and the Secretariat shall communicate with the parties in Spanish.

12.3. Pleadings, expert opinions and witness statements may be filed in English, provided that a translation of such document into Spanish is filed within 3 weeks thereafter.

12.4. Documentary exhibits and legal authorities originally drafted in English may be submitted in that language without the need for translation into Spanish.

12.5. Documents filed in any language that is not Spanish or English must be translated into Spanish within 3 weeks from its filing.

12.6. It is sufficient to translate only the relevant part of a supporting document, provided that the translated portion is sufficient to allow a complete understanding of its text and context, unless the Tribunal orders a party to provide a fuller or a complete translation.

12.7. Translations need not be certified, unless the translation is disputed, and the Tribunal orders a party to provide a certified translation.

12.8. Documents exchanged between the parties in a language other than Spanish or English under §16 below (Production of Documents) need not be translated.

For Hearing

12.9. The hearing shall be conducted in Spanish.

12.10. The parties may make any oral presentation and/or conduct any examination in English, provided that it is interpreted into Spanish simultaneously.

12.11. The parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing (see Schedule in Annex B below) and as soon as possible.

Procedural Order No. 1

12.12. The testimony of a witness called for examination during the hearing who is required to give evidence in a language other than in Spanish shall be interpreted, simultaneously if possible.

12.13. The costs of interpretation and stenographers 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. The ICSID Secretariat will hire the interpreters and stenographers for the hearing, but the parties will be consulted regarding the interpreters whose hiring is proposed.

For Tribunal's Documents

12.14. The Tribunal shall render any order, decision, and the Award in Spanish.²

13. Routing of Communications

Arbitration Rule 6

13.1. The ICSID Secretariat shall be the channel for 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.

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 and the Tribunal.

13.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

Arbitration Rules 4, 5 and 9

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.³

14.2. Within the next five (5) business days the parties shall upload the pleading with all the supporting documentation and updated index to the file sharing platform that

² Procedural Orders Nos. 1 and 2 will be issued in English and Spanish given that the drafts of both Orders circulated to the parties for their comments were provided in English.

³ Please note that the World Bank server does not accept emails larger than 25 MB.

Procedural Order No. 1

has been created by ICSID for purposes of this case (the “**Electronic Filing**”).⁴ This includes the memorial, witness statements, expert reports, documental annexes, legal authorities and consolidated annexes with hyperlinks that will allow the Tribunal to review the page of the annex or authority that is cited in each corresponding footnote.

14.3. Within five (5) business days of the electronic filing, the parties shall courier to Ms. Lucinda Low at the address indicated at §14.5:

14.3.1. one hard copy in A5 format of the entire submission, including the pleading, the witness statements, and expert reports, but not including exhibits and legal authorities; and

14.3.2. one USB or hard drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities, and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

14.4. Upon request, the parties will provide hard copies of specific documents (i.e., spreadsheets, plans, maps, etc.) or submissions required by the Tribunal.

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

Ms. Lucinda Low	Mr. Adolfo E. Jimenez	Prof. Mónica Pinto
Steptoe & Johnson LLP	Holland & Knight LLP	Avenida Santa Fe
1330 Connecticut	701 Brickell Avenue,	4860-3 E, C1425 BHX
Avenue, NW	Suite 3300	Buenos Aires
Washington, DC 20036	Miami, FL 33131	The Argentine Republic
United States of America	United States of America	

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

14.7. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted and shall follow the naming conventions contained in **Annex A**.

14.8. 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 upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness

⁴ Supporting documentation shall be uploaded as individual files, not in .zip format.

Procedural Order No. 1

statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.⁵

- 14.9. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.10. A filing shall be deemed timely if sent by a party by midnight (11:59 pm), 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 Calendar

Arbitration Rule 30

- 15.1. The number and sequence of the pleadings shall be as provided in Annex B (Schedule). The parties will submit the pleadings by the deadlines established in the Schedule.
- 15.2. In the first exchange of submissions (Memorial and Counter-Memorial), the parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of factual and legal arguments shall be presented in a detailed and comprehensive manner.
- 15.3. In their second exchange of submissions (Reply and Rejoinder), the parties shall limit themselves to responding to allegations of factual and legal arguments made by the other party in its previous submission, unless new facts have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments.
- 15.4. For each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation, in accordance with Section 17 below. Following each legal argument, the parties shall, whenever possible, identify the legal authority adduced in support of that argument.
- 15.5. A hearing will take place in accordance with the terms of Section 21 below and Annex B (Schedule).

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The IBA Rules on the Taking of Evidence in International Arbitration (adopted by a resolution of the IBA Council on December 17, 2020) (the “**IBA Rules**”) will be

⁵ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

used as a non-binding guidance in this case by the Tribunal and the parties for any evidentiary question.

- 16.2. Within the time limit set out in the Schedule in Annex B, a party may submit to the other party (without copying the Members of the Tribunal or the Tribunal Secretary) a request to produce a limited number of documents or narrow categories of documents within the other party's possession, custody, or control, in accordance with the IBA Rules. The request shall identify with precision each document or narrow category of documents sought and establish its relevance to the case and materiality to the outcome.
- 16.3. The requests to produce, responses, and replies and any applications to the Tribunal shall be made in the form of a Redfern Schedule in the format set out in Annex C hereto. An electronic MS Word version of the Redfern Schedule is to be transmitted to the party to whom the request is made and, when requesting the Tribunal's decision, to the Tribunal.
- 16.4. Each request for a document shall contain:
 - 16.4.1. A description that is sufficient to identify the specific document and its subject matter, or else a sufficiently detailed description of the specific category of documents reasonably believed to exist;
 - 16.4.2. A precise declaration as to why the documents sought are relevant to the dispute and material to the outcome of the case; and
 - 16.4.3. A declaration that the documents sought are not available to the requesting party or within its possession, custody, or control, as well as a declaration stating the requesting party's reasons for believing that the documents sought are within the other party's possession, custody, or control.
- 16.5. Within the time limit set out in Annex B, using the Redfern Schedule provided by the first party (the "**Requesting Party**"), the party to whom the request is made (the "**Requested Party**") shall either confirm that it will produce the requested documents that are in its possession, custody, or control; or set forth its objections to the production sought and the reasons for such objections. At this stage, the Redfern Schedule should be sent to the Requesting Party only (not to the Tribunal or the Tribunal Secretary).
- 16.6. Within the time limit set out in Annex B, the Requesting Party shall reply to the Requested Party's objections in that same Redfern Schedule. The reply shall be limited to answering specific objections regarding (i) legal impediment, privilege, confidentiality, or political sensibility, and/or (ii) unreasonable and/or overburdensome nature of the production, such as the production of publicly available documents, and other fairness-related considerations.

- 16.7. The Tribunal shall endeavor to resolve any contested document requests on or before the relevant date set out in the Schedule (Annex B), having regard to all the surrounding circumstances, as well as the requirements under this Section and the IBA Rules (particularly, but not limited to specificity, materiality, and any rules on legal privilege and confidentiality).
- 16.8. Within the time limit set out in Annex B, documents shall be produced which are responsive to requests for which no objection has been made, and where objections have been made, documents shall be produced to the extent directed by the Tribunal. Documents shall be produced to the Requesting Party without copying the Tribunal.
- 16.9. Documents produced in accordance with this Section (either voluntarily or pursuant to Tribunal order) shall not be considered part of the record unless and until a party subsequently files them as exhibits in accordance with Annex B or with any other applicable procedural order or decision.
- 16.10. The Tribunal shall have discretion to order a party to produce documents or other evidence without regard to whether the documents or evidence have been requested by the other party. In the event the Tribunal intends to exercise that discretion, it will give due notice to the parties and provide them with an opportunity to make submissions as to whether the Tribunal should exercise its discretion in the particular circumstances.
- 16.11. In case of the failure by a party, without satisfactory explanation, to comply with an order of the Tribunal to produce a document, or a category of documents, the Tribunal may make any inferences it deems appropriate in light of the relevant circumstances.
- 16.12. At any time in the proceeding, upon good cause shown, a party can request the production of documents either by agreement of the parties or by applying to the Tribunal.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 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.

Procedural Order No. 1

- 17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.
- 17.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
- 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the other party shall be afforded the opportunity to make its observations concerning such document.
- 17.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.5. Documents shall be submitted in the following form:
- 17.5.1. The number of each Exhibit containing a document produced by the Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “CR-” for factual exhibits and “CRL-” for legal exhibits containing authorities etc.
- 17.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “CR-0001,” and “CL-001” and “CRL-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 §17.5.4.
- 17.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.6. Copies of documentary evidence shall be assumed to be authentic and complete, unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 17.7. The parties shall file all documents only once by submitting them with their pleadings.
- 17.8. 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 contain information not in the record.

17.9. If a party intends using demonstrative annexes, an electronic copy of each demonstrative exhibit, other than PowerPoint slides, 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, to the court reporter and to the interpreters as necessary by no later than 1 hour before its intended use.

17.10. In addition, 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-__ or CRD-__ number.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

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 special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §17.3).

18.3. Each witness statement shall contain numbered paragraphs, 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 detailed description of the facts, and source of the witness' information as to those facts, sufficient to serve as that witness' direct evidence in the matter in dispute;

18.3.4. 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;

18.3.5. any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering, as part of the relevant party's pleading); 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 contain numbered paragraphs, be signed and dated, 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 the facts on which he or she is basing his or her expert opinions and conclusions;
 - 18.6.6. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
 - 18.6.7. the documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report (which may have their own sequential numbering); any spreadsheet or table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source;
 - 18.6.8. an affirmation of his or her genuine belief on the opinions expressed in the report; and
 - 18.6.9. if the expert report has been signed by more than one person, an attribution of the entirety or specific parts of the expert report to each author.
- 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.

- 18.8. Personal privacy data shall be minimized where possible in witness and expert statements. Birthdates, passport numbers, tax identification numbers and personal identification numbers shall not be necessary unless specifically ordered by the Tribunal.

19. Examination of Witnesses and Experts

Arbitration Rule 38

- 19.1. Each party shall notify the other party, with copy to the Tribunal, of the witnesses and/or experts it intends to cross-examine by the date set out in the Schedule in Annex B. The Tribunal may identify the remaining witnesses or experts (if any) that it wishes to call for examination at the latest by January 5, 2026.
- 19.2. Any person may present evidence as a witness, including a party or a party's officer, employee, or other representative. 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.
- 19.3. In accordance with Section 18.1 above, each party will submit its witness statements together with its written submission. The witness statement shall be numbered independently from other documents and properly identified. If a party submits more than one witness statement by the same witness, the subsequent witness statement shall be identified as "Second Witness Statement," "Third Witness Statement," and so on.
- 19.4. Each party shall be responsible for securing the appearance of its own witnesses at the hearing, except when the other party has waived cross-examination of a witness, and the Tribunal does not direct his or her appearance. If the expert report has been signed by more than one person, all signatories must appear at the hearing. If a witness or expert who was presented by a party has not been called by the other party or by the Tribunal for examination at the hearing, the presenting party may not call such witness or expert to testify at the hearing, except for good cause shown (for example, where a party seeks to present a witness not otherwise called to offer corrections or clarifications that may be necessary to prevent a misunderstanding of that witness's written statement or to address facts that occurred after the witness signed the witness statement). If a witness or expert who has been called by the other party or by the Tribunal for examination at the hearing is not available for the hearing, the Tribunal shall decide what weight, if any, to give to the witness statement or expert report, taking into account the entire record and all the relevant circumstances, including the fact that the witness was not subject to cross-examination.
- 19.5. The facts contained in the written statement of a witness or expert whose cross-examination has been waived by the other party, or not called by the Tribunal, shall not be deemed to have been accepted or established by the sole fact that no cross-

Procedural Order No. 1

examination has been requested. The Tribunal will assess the weight of the witness statement or expert report taking into account the entire record and all the relevant circumstances.

- 19.6. 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 Award.
- 19.7. The Tribunal may allow a witness to appear and be examined by videoconference, provided there exist valid and exceptional reasons that prevent the witness from appearing in person. In such an event, the Tribunal will issue appropriate directions for the witness' examination by videoconference.
- 19.8. The order in which the witnesses and experts shall be heard shall be discussed at the pre-hearing organizational meeting.
- 19.9. At the hearing, the examination of each witness shall proceed as follows:
 - 19.9.1. A factual witness shall make the declaration provided in ICSID Arbitration Rule 38(6), while an expert witness shall make the declaration set out in ICSID Arbitration Rule 38(8).
 - 19.9.2. Witnesses giving oral testimony may first be examined in direct examination. Direct examination of factual witnesses shall be brief (e.g., 10 minutes) and limited to introducing the witness, confirming the accuracy of and completeness of the witness' written statement(s), offering any corrections or clarifications that may be necessary to prevent a misunderstanding of that witness's written direct testimony, highlighting briefly the key points of his or her witness statement, and addressing any relevant development that occurred after the witness signed the witness statement. In lieu of direct examination, an expert may provide a brief presentation of the key points of his or her report.
- 19.10. Cross-examination shall not go beyond the subject matter of the witness statements and matters affecting the witness' credibility.
- 19.11. The party who has presented the witness may then re-examine the witness only with respect to any matters or issues arising out of the cross-examination ("**redirect examination**").
- 19.12. The Tribunal may examine the witness at any time, either before, during, or after examination by one of the parties.
- 19.13. Subject to a different agreement by the parties or decision of the Tribunal, a fact witness (other than the Claimants or a party representative), prior to his or her

examination, shall not be present in the hearing room during oral testimony and arguments, read the transcript of oral testimony or argument, or be informed of its contents. Expert witnesses shall be allowed in the hearing room at any time, including during the cross-examination of other factual or expert witnesses. Party representatives who are also fact witnesses may be present during opening arguments, but not during the testimony of facts witnesses testifying before him or her. Such party representatives should testify first, to the extent possible.

19.14. The Tribunal shall, at all times, have complete control over the procedure for the examination of witnesses. In particular, but not limiting to, the Tribunal may in its discretion:

19.14.1. 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; or

19.14.2. Direct that a witness be recalled for further examination at any time.

19.15. The rules set forth above with respect to the examination of witnesses shall apply *mutatis mutandis* to the examination of party-appointed experts, except that in lieu of direct examination, the expert may provide a brief presentation of the key points of his or her report and shall be allowed to be present in the hearing room at any time.

20. Pre-Hearing Organizational Meetings *Arbitration Rule 31*

20.1. The Tribunal may order organizational meetings with the parties in conformity with ICSID Arbitration Rule 31 with the intention of: (i) identifying non-controverted facts (for example, via a joint chronology of the facts); (ii) clarifying and reducing the issues of the dispute (for example, via questions of the Tribunal, a decision tree, a working plan, a table and/or scheme of arguments); or (iii) address any other procedural or substantive matter related to the dispute settlement (for example, appointing an expert designated by the Tribunal, and evidence presentation).

20.2. A pre-hearing organizational meeting shall be held on the date set out in the Schedule in Annex B. 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.

20.3. 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. Hearings

Arbitration Rule 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 be held in-person. This in-person hearing shall be held at a place to be determined in accordance with §10 above.
- 21.3. Having due regard to the views of the parties and the specific circumstances of the case such as travel restrictions or public health, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 21.4. The hearing shall take place no less than six weeks after the filing of the last written submission.
- 21.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.6. In principle, each party shall have equal time to be used during the hearing, subject to a discussion in the pre-hearing organizational meeting, taking into account the number of witnesses and experts, the time available for the hearing, and any adjustment if due process so requires. Without prejudice to the above, the issues relative to time distribution and the calculation of time will be agreed by the parties before the hearing and, in absence of an agreement, decided by the Tribunal.
- 21.7. Hearings shall be open to the public via live streaming. If there is a need to protect confidential information during the hearing, at the pre-hearing organizational meeting the Tribunal and the parties will discuss measures to safeguard such confidential information, (e.g., by using deferred streaming and/or implementing a protocol governing public access to the hearing and the non-disclosure of confidential and protected information).

22. Recordings and Transcripts of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 22.2. Stenographic transcript(s) will be made in the language of the proceeding (Spanish) of any hearing and session, other than decisions 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.

- 22.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“**Revised Transcripts**”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the Revised Transcripts.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. In consultation with the parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing submissions. If so, the Tribunal will address the filing date, length, format, and content of the post-hearing submissions, after hearing the parties. No additional evidence may be produced together with the post-hearing brief, except with leave from or on the request from the Tribunal.
- 23.2. The Tribunal will issue directions on the parties’ statements of costs at the end of the hearing.

24. Transparency Matters

Convention Article 48(5), Arbitration Rules 62-66

- 23.1. The parties agree that the transparency regime governing this proceeding is addressed in Procedural Order No. 2. Insofar as it does not contradict Procedural Order No. 2, the parties shall be subject to the provisions on Transparency and Confidentiality included in ICSID Arbitration Rules 62 to 66.

25. Data Privacy and Cybersecurity

- 25.1. 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.
- 25.2. 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.
- 25.3. 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.

26. Amicable Dispute Settlement

- 26.1. The Tribunal notes that the parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. If the parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2).

On behalf of the Tribunal,

[Signed]

Ms. Lucinda Low
President of the Tribunal
Date: February 7, 2024

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.
	CLAIMANTS’ FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>CR-0001-FR</i>
	<i>CR-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE RL-####–LANGUAGE To be produced sequentially throughout the case.
	CLAIMANTS’ LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>CRL-0001-SPA</i>
	<i>CRL-0002-ENG</i>
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement–Maria Jones–Memorial on Jurisdiction-SPA</i> <i>Witness Statement–Maria Jones–Reply on Jurisdiction–[Second Statement]–ENG</i>
Expert Reports	Expert Report–Name of Expert–Type–Name of Submission–LANGUAGE
	<i>Expert Report–Lucia Smith–Valuation–Memorial on Quantum-ENG</i> <i>Expert Report–Lucia Smith–Valuation–Reply on Quantum–[Second Report]–ENG</i>
Legal Opinions	Legal Opinion–Name of Expert–Name of Submission–LANGUAGE
	<i>Legal Opinion–Tom Kaine–Counter-Memorial on the Merits-FR</i> <i>Legal Opinion–Tom Kaine–Rejoinder on the Merits–[Second Opinion]–FR</i>
Exhibits to	WITNESS/EXPERT INITIALS –###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>

Procedural Order No. 1 – Annex A

Witness Statements, Expert Reports, Legal Opinions	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application–[Party]-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-[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 B – Schedule

Schedule				
Description	By	Days	Date	PO1 §
First Session	All		January 19, 2024	Introduction
Memorial on the Merits	Claimants	6 months	August 1, 2024	§17.1
Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	6 months	February 3, 2025	§17.1
Production of Documents Phase				
Requests for Production of Documents	Claimants and Respondent	3 weeks	February 24, 2025	§16
Production of Non-Objected Documents and Objections	Claimants and Respondent	3 weeks	March 17, 2025	§16
Responses to Objections - Sent to Tribunal	Claimants and Respondent	3 weeks	April 7, 2025	§16
Decision on Requests	Tribunal	3 weeks	April 28, 2025	§16
Production as Ordered	Claimants and Respondent	3 weeks	May 19, 2025	§16
Reply on the Merits and Counter-Memorial on Jurisdiction	Claimants	2.5 months	August 4, 2025	§17.1
Rejoinder on the Merits and Reply on Jurisdiction	Respondent	2.5 months	October 20, 2025	§17.1
Rejoinder on Jurisdiction	Claimants	1 month	November 20, 2025	§17.1
Notification of Witnesses and Experts	Claimants and Respondent	30 days	December 22, 2025	§19.1

Procedural Order No. 1 – Annex B

CMC on Hearing Organization	All	TBD later		§20
Hearing	All	At least 6 weeks after the last Rejoinder filed (on Jurisdiction)	Week of February 2, 2026	§21
Corrections to Hearing Transcripts	Claimants and Respondent	30 days		§22.3
Simultaneous Costs Submissions	Claimants and Respondent	1 month		§23.1
Award	Tribunal	240 days		§5.7

Annex C – Redfern Schedule for [Claimants/Respondent] Document Requests

No.	Document(s) or Category of Documents Requested	Relevance and Materiality according to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decision
		Ref. to submissions	Comments			