

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.

v.

Romania

(ICSID Case No. ARB/15/31)

PROCEDURAL ORDER NO. 11

Members of the Tribunal

Prof. Pierre Tercier, President of the Tribunal

Prof. Horacio A. Grigera Naón, Arbitrator

Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal Yetano

Assistant to the Tribunal

Ms. Maria Athanasiou

14 June 2018

I. THE RELEVANT PROCEDURAL STEPS

1. On 26 August 2016, the Tribunal issued Procedural Order No. 1 (“PO 1”) on the procedure of the present arbitration.
2. On 14 November 2016, the Tribunal issued Procedural Order No. 3 (“PO 3”), governing issues of confidentiality in the present arbitration.
3. On 30 June 2017, Claimants filed their Memorial, together with witness statements, expert reports and exhibits.
4. On 22 September 2017, Claimants filed their proposed confidentiality designations for their Memorial, pursuant to PO 3 (see above para. 2). Claimants also submitted that the witness statements, expert reports and exhibits (that were not already in the public domain) filed in support of the Memorial should be kept confidential (Claim. 22.09.17).
5. On 6 October 2017, Respondent objected to certain confidentiality designations proposed by Claimants for the Memorial (see above para. 4). Respondent also proposed to reclassify as non-confidential certain exhibits and certain portions of the witness statements and expert reports (Resp. 06.10.17).
6. On 13 October 2017, Claimants submitted observations in response to Respondent’s 6 October 2017 letter, including their opposition to Respondent’s reclassification proposal (see above para. 5) (Claim. 13.10.17).
7. On 1 November 2017, Respondent submitted certain observations on Claimants’ letter of 13 October 2017 and on the interpretation of PO 3 (see above para. 6) (Resp. 01.11.17).
8. On 6 November 2017, Claimants submitted observations in response to Respondent’s 1 November 2017 letter (see above para. 7) (Claim. 06.11.17).
9. On 16 January 2018, the Tribunal issued Procedural Order No. 7 (“PO 7”), ruling on the proposed confidentiality designations made by Claimants in their Memorial.
10. On 22 January 2018, Claimants objected to the Tribunal’s rulings on certain disputed confidentiality designations in the Memorial in PO 7 (see above para. 9) and requested, *inter alia*, a revision of such rulings (Claim. 22.01.18).
11. On 30 January 2018, the Tribunal issued Procedural Order No. 8 (“PO 8”), ruling on Respondent’s proposal to reclassify certain exhibits as non-confidential and leaving Respondent’s request to reclassify certain portions of witness statements and expert reports as non-confidential (see above para. 5) for a subsequent Procedural Order.
12. Also on 30 January 2018, Respondent submitted its reply and objection to Claimants’ submission of 22 January 2018 (see above para. 10) (Resp. 30.01.18).

13. On 6 February 2018, the Tribunal informed the Parties that the Memorial will not be published on the Centre's website until it had decided on Claimants' requests in its letter of 22 January 2018 (see above para. 10).
14. On 7 February 2018, Ms. Teresa Cheng, the then President of the Tribunal, resigned.
15. On 22 February 2018, Respondent filed its Counter-Memorial, together with witness statements, expert reports and exhibits.
16. On 5 April 2018, Prof. Pierre Tercier was appointed as President of the Tribunal, replacing Ms. Cheng.
17. Also on 5 April 2018, Claimants requested certain clarifications in the Tribunal's decisions in PO 7 and PO 8 (Claim. 05.04.18).
18. Again on 5 April 2018, Claimants provided their comments on the publication of PO 8 (Claim. 05.04.18).
19. On 12 April 2018, Respondent submitted its comments to Claimants' letter of 5 April 2018 and noted the Parties' agreement to defer submission of the proposed redactions and confidentiality designations with respect to the Counter-Memorial (see above para. 17) (Resp. 05.04.18).
20. Also on 12 April 2018, Respondent indicated its agreement with Claimants' approach on the publication of PO 8 and redactions of Annex A of PO 8, noted in the latter's letter of 5 April 2018 (see above para. 18) (Resp. 12.04.18).
21. On 23 April 2018, Claimants reiterated the Parties' agreement on the publication of PO 8 and confirmed their agreement also on the approach concerning the proposed redactions and confidentiality designations in connection with the Counter-Memorial (Claim. 23.04.18).
22. On 30 April 2018, Respondent noted that it does not have further comments in relation to Claimants' letter of 23 April 2018 (see above para. 21).
23. On 16 May 2018, the Tribunal invited the Parties to note whether they wished for another opportunity to comment on the pending confidentiality issues, specifically referring to the first request of Claimants' letter of 22 January 2018 (see above para. 10).
24. On 18 May 2018, Respondent informed the Tribunal that it does not have any further comments in relation to the pending confidentiality issues.
25. On 21 May 2018, Claimants asked the Tribunal to be given an opportunity to comment further on the Tribunal's rulings in PO 7 and its Annex A, prior to the publication by ICSID of the redacted Memorial.

26. On 22 May 2018, the Tribunal gave the Parties a further and final opportunity to make comments on PO 7 and its Annex A, specifically as those may relate to references to the witness statements and/or other references.

The Tribunal clarified that the Parties will not be given a further occasion to comment on the Tribunal's decision on confidentiality once it has been rendered.

27. On 29 May 2018, the Tribunal and the Parties held a conference call, during which they discussed several items, as well as the fact that the Tribunal's decision on confidentiality was forthcoming.

The merits of the Parties' positions on the open confidentiality issues were not discussed during such call.

28. On 30 May 2018, Claimants filed their further comments on PO 7 and its Annex A, pursuant to the Tribunal's letter of 22 May 2018 (see above para. 26) (Claim. 30.05.18).
29. On 6 June 2018, Respondent filed its observations on Claimants' comments of 30 May 2018, pursuant to the Tribunal's letter of 22 May 2018 (see above paras. 26 and 28) (Resp. 06.06.18).

II. THE PENDING REQUESTS

A. The reclassification of the witness statements and expert reports

1. *The requests*

30. On 6 October 2017, Respondent requested that the Tribunal:

“reclassify the exhibits and those portions of the expert reports and witness statements which are not confidential accordingly (as indicated in the enclosed Confidentiality Logs)” [Resp. 1].

31. The Tribunal ruled on Respondent's request to reclassify certain exhibits as non-confidential in its PO 8 (see above para. 11).

32. On 13 October 2017, Claimants requested that the Tribunal:

- a. *“confirm that a request to reclassify witness statements, expert opinions, and exhibits as non-confidential should be for the purpose of responding to a need to disclose the evidence outside the arbitration as contemplated by Section 3.6 of PO 3”* [Claim. 1]; and

- b. *“in any event confirm that the Parties should be guided by Article 3(13) of the IBA Rules on the Taking of Evidence in relation to the evidence submitted or produced”* [Claim. 2].
33. On 1 November 2017, Respondent requested that the Tribunal:
- a. *“grant the requests made by the Respondent in its letter to the Tribunal dated 6 October 2017”* [Resp. 1]; and
- b. *“confirm that, in accordance with the plain language of PO 3, a request to reclassify witness statements, expert opinions, and exhibits as non-confidential pursuant to Section 2.6 is subject only to the procedures provided in Sections 2.4 and 2.5”* [Resp. 2].
34. On 6 November 2017, Claimants requested that the Tribunal:
- a. *“reject Respondent’s request to reclassify the full evidentiary record as not confidential as an unnecessary, disproportionate and burdensome request at this time”* [Claim. 3; see also Claim. 1]; and
- b. *“clarify that documents, witness statements and expert reports submitted in the arbitration may be used solely for purposes of the arbitration unless disclosure is required as contemplated by PO 3 Section 3.6”* [Claim. 1].
35. On 6 June 2018, Respondent requested the Tribunal to:
- a. *“reclassify the exhibits and those portions of the Claimants’ expert reports and witness statements which are not confidential in accordance with the Respondent’s requests”* [Resp. 1];
- b. *“reject the Claimants’ persistent attempts to unjustifiably cloak these proceedings with secrecy”* [Resp. 3]; and
- c. *“ensure that the redaction process proceeds in a manner consistent with the clear language of its procedural orders”* [Resp. 4].

2. The Parties’ positions

i. Respondent

36. Respondent’s position in brief is the following:
- The Tribunal’s duty to safeguard the integrity of the proceedings must be balanced with the interest and the right of the public to access information in a public proceeding (Resp. 06.10.17).

- Under Article 2.6 of PO 3, it is incumbent upon the Tribunal to determine which exhibits and which portions of the witness statements and expert reports should be reclassified as non-confidential (Resp. 06.10.17).
- Section 3.6 of PO 3 bears no relation to Section 2.6 of PO 3 concerning reclassification; Section 2.6 does not require a demonstration of a current legal need (Resp. 06.10.17) or the Parties to justify their requests for reclassification on the basis of necessity, cost or efficiency (Resp. 01.11.17) or that there is a “*compelling need*” (Resp. 06.06.18).
- In any event, this issue has already been settled by the Tribunal in PO 6, with which it has already agreed to the reclassification of the witness statements of Messrs Vaughan, Voinescu and Tănase; Respondent did not have to establish a legal need to disclose evidence nor did Claimants argue that any such showing was required (Resp. 01.11.17; Resp. 06.06.18).
- Article 3(13) of the IBA Rules has no bearing on these proceedings; it cannot override the relevant rules governing confidentiality as set out *inter alia* in Annex C to the Canada-Romania BIT (Resp. 06.10.17; Resp. 01.11.17).
- Unless the produced evidence meets the confidentiality criteria established in Section 1.1 of PO 3, the Parties can have no expectation that the evidence submitted in the arbitration will remain out of the public domain (Resp. 01.11.17).
- There are compelling reasons for the Tribunal to first rule on the confidentiality of the Parties’ exhibits, witness statements and expert reports; the alleged inconsistencies in the Tribunal’s confidentiality designations would have been avoided had the Tribunal, prior to determining the confidential portions of the Memorial, first determined the confidentiality of the exhibits, witness statements, and expert reports cited therein; Respondent therefore trusts that, going forward and for all pleadings after the Memorial, the Tribunal will issue any necessary rulings regarding first the confidentiality of evidence (exhibits, witness statements and expert reports) and only thereafter the related pleading (Resp. 06.06.18).

ii. Claimants

37. Claimants’ position in brief is the following:

- Respondent’s request for reclassification should be rejected for creating a needless and excessive burden on the Parties and the Tribunal (Claim. 13.10.17); no efficiency will be gained (Claim. 13.10.17); decisions can be made as to any needed redactions to the pleadings without having to do the same for the entire evidentiary record (Claim. 06.11.17).

- The witness statements, expert opinions and exhibits should be treated as confidential pursuant to Section 2.6 of PO 3 (Claim. 22.09.17; see also Claim. 30.05.18).
- Their reclassification as non-confidential exists to permit the party to use the statement, report or exhibit at issue to enforce a legal right or to fulfil a legal obligation of disclosure, pursuant to Section 3.6 of PO 3; nothing in Annex C of the Canada-Romania BIT provides otherwise (Claim. 22.09.17; Claim. 13.10.17; Claim. 06.11.17).
- As reflected in Article 3(13) of the IBA Rules, the evidence submitted in the arbitration should only be used for purposes of the arbitration, except to the extent that the Parties have agreed to make aspects of the arbitration public; here, the Parties agreed that during the written phase of the proceeding, the principal pleadings redacted as warranted, will be made public, but that the witness statements, expert reports and exhibits expressly will not be made public (Claim. 06.11.17); the Parties agreed and the PO 1 provides that the Parties and the Tribunal shall be guided by *inter alia* Article 3(13) of the IBA Rules which operates in harmony with Annex C of the Canada-Romania BIT (Claim. 13.10.17; Claim 06.11.17).
- Pursuant to Section 3 of PO 3, the Parties have access to the full record of evidence for purposes of the arbitration and treating the evidence accompanying the principal submissions as confidential does not interfere in any way with the Parties' ability to present their respective cases (Claim. 22.09.17).
- As confirmed in PO 3, where the rules of the arbitration do not provide that all evidence submitted is presumed to be made public, as here, parties reasonably expect that evidence submitted is not *ipso facto* to be introduced in the public domain (Claim. 13.10.17); in accordance with Part I of Annex C of the Canada-Romania BIT, only those documents to be published by the ICSID Secretariat, i.e., the principal submissions are public; this is reinforced by Part II(8) of Annex C of the Canada-Romania BIT (Claim. 06.11.17).
- The fact that Claimants did not object to the request for reclassification of the relatively little evidence submitted during the provisional measures phase is not relevant here (Claim. 06.11.17).

3. *The Tribunal's considerations*

i. The issue

38. The issue before the Tribunal is whether the witness statements and expert reports accompanying the Memorial – considered as confidential pursuant to PO 1 – should be reclassified as non-confidential.
39. *First*, it is undisputed that the confidentiality of witness statements, expert reports and exhibits is governed by the combined reading of Annex C of the Canada-Romania BIT, PO 1 and PO 3.
40. Pursuant to Annex C of the Canada-Romania BIT “[a]ll documents submitted to, or issued by, the tribunal, shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information” (emphasis added).
41. The Parties’ first agreement to exclude certain “documents” from publication, in accordance with Annex C, is found in Section 23.1 of PO 1. Section 23.1 of PO 1 reads as follows:

“In accordance with Annex C of the Canada-Romania BIT, and subject to the procedures for the protection of confidential information that shall be agreed by the parties and established in a subsequent Procedural Order of the Arbitral Tribunal, the ICSID Secretariat will publish all of the principal submissions (but not the supporting witness statements, expert reports, exhibits, or legal authorities) submitted to, and all Procedural Orders issued by, the Tribunal, unless the parties otherwise agree.” (emphasis added).

42. With Section 23.1 of PO 1, therefore, the Parties agreed to exclude from publication witness statements, expert reports, exhibits and legal authorities. They also agreed to establish a procedure on confidentiality, including the possibility for another agreement in relation to the publication (or non-publication) of documents.
43. The procedure on confidentiality was set out in PO 3 (see above para. 2). In this PO 3, the Parties agreed, *inter alia*, the following:

“Except for legal authorities (which are presumed to be in the public domain), supporting witness statements, expert reports, and exhibits shall be presumed to contain confidential information and be treated accordingly. However, either Party may at any time propose to reclassify their own or the other side’s supporting witness statements, expert reports, and exhibits on the grounds that it does not constitute or contain confidential information, and the procedures under Sections 2.4 and 2.5 shall apply.” (emphasis added).

44. It is clear that the Parties agreed in Section 2.6 of PO 3 to bestow upon themselves the right to propose a reclassification as non-confidential, documents that they have already

agreed in PO 1 should be treated confidentially, i.e., the witness statements, expert reports and exhibits, if such documents do not constitute or contain confidential information.

45. In light of the above, the Tribunal considers that Respondent's request to reclassify the witness statements and expert reports accompanying the Memorial as non-confidential (see [Resp. 1]) is admissible and consistent with the Parties' agreement. The Tribunal shall nonetheless determine the criteria that must be satisfied in order to grant such request.

ii. The criteria

46. The provision on the possibility for reclassification (see above para. 43) does not specifically set out the criteria that must be fulfilled to grant a request for reclassification. It does, however, refer to the following: (a) the ground for the request must be the fact that the *agreed* confidential document "*does not constitute or contain confidential information*"; and (b) the application of "*the procedures under Sections 2.4 and 2.5*" of PO 3. Therefore, the Tribunal will consider these two references when determining and assessing the criteria that should apply.
47. *First*, with regard to the ground that a document "*does not constitute or contain confidential information*", the Tribunal notes that, in Section 1.1 of PO 3, the Parties agreed on the information and documents that would be subject to obligations of confidentiality as follows:

"The Parties shall treat as confidential in accordance with the terms of this Order the following categories of information and documents: (i) confidential business information; (ii) information that is privileged; of (iii) information that is otherwise protected from disclosure."

48. When determining Respondent's request for reclassification, the Tribunal may, therefore, consider, *inter alia*, whether the witness statements and expert reports accompanying the Memorial fall under either of the three categories of information and documents of Section 1.1 of PO 3.
49. *Second*, with regard to the reference to the procedure set out in Sections 2.4 and 2.5 of PO 3, the Tribunal notes that this refers to the procedure that already applies to the designation of confidential information and that has been performed by the Parties and the Tribunal so far. Specifically, this procedure sets out the following:

"2.4. If the receiving Party disagrees with all or part of the proposed designation, it shall communicate the reasons for its disagreement to the submitting Party and the Tribunal within two weeks (14 days) of receiving such proposed designation. The submitting Party shall then either withdraw or explain its justification for the challenged designation within one week (7 days)."

2.5. Absent disagreement by the other Party, the designated portions of the principal submissions shall be designated and treated as confidential information. Conversely, if the Parties disagree on a proposed designation, any material subject to such disagreement shall be treated as confidential information until and unless the Tribunal rules otherwise, and the Tribunal shall, after reviewing the Parties' respective submissions, decide within two weeks (14 days) of receiving the Party's reply to the other Party's objections described in Section 2.4 above whether all or part of the designated portions of the principal submissions shall be designated and treated as confidential."

50. It follows from the above that, as with respect to the procedure for designating information and documents as confidential, the Tribunal:

- has the authority to decide the Parties' disagreement on the reclassification of the witness statements and expert reports as non-confidential; and
- in doing so, it may consider, *inter alia*, the three categories of Section 1.1 of PO 3 (see above para. 47).

51. Nothing in Sections 2.4 to 2.6 of PO 3 set forth any other requirement in making this determination. Accordingly, Claimants' arguments in relation to Section 3.6 of PO 3 (see [Claim. 1]) and to Article 3(13) of the IBA Rules (see [Claim. 2]) are not relevant. Specifically:

- Section 3.6 of PO 3 concerns the protection of already designated or classified information or documents as confidential, and the Parties that withhold such information and documents, in the face of another legal proceeding or action. It therefore has no relevance to the criteria that the Tribunal will apply to determine whether it should reclassify a confidential document as non-confidential.
- The IBA Rules and, in particular, Articles 3 and 9, are referred to in Section 15.11 of PO 1. In said Section, the Parties and the Tribunal agreed that they "*are not bound, but shall be guided as appropriate by Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration*". They did so specifically in the context of the agreed procedure on the production of documents (Section 15 of PO 1). They did not do so in relation to the designation and/or reclassification of confidential information and documents. In fact, the IBA Rules are not referred to either in Section 23 of PO 1 (the section governing publication and public access to documents) or in PO 3 itself. The IBA Rules, therefore, have no relevance to the criteria that the Tribunal will apply to determine whether it should reclassify a confidential document as non-confidential.

iii. The assessment

52. It is clear on the face of Respondent's request for reclassification, as well as from the Parties position in relation thereto, that the request or Claimants' opposition thereto is

not based on the existence or otherwise of privileged or confidential business information. In fact, any references to such information have already been addressed by the Tribunal with its decisions on the confidential redactions in the Memorial itself in PO 7. Accordingly, the criteria of Sections 1.1(i) and (ii) of PO 3 are not relevant in the present case.

53. What is questionable, nonetheless, is the relevance of the criterion that documents and information are otherwise to be protected from disclosure (Section 1.1(iii)). *Claimants* argue that, “*the witness statements submitted with the Memorial be treated as confidential documents on the ground that they warrant protection from disclosure in accordance with PO 3 § 1.1 (iii)*” (Claim. 13.10.17, para. 21; see also Claim. 22.09.17, para. 21, Claim. 13.10.17, paras 2-3 and Claim. 06.11.17, para. 4). *Respondent* does not substantively object to *Claimants’* reference to Section 1.1(iii). *Respondent*, however, states the following:

“The Respondent acknowledges that the Tribunal has the duty to safeguard the integrity of the proceedings, as well as the authority to protect information from public disclosure when its dissemination could threaten such integrity. However, in this instance the Tribunal must balance those considerations with the interest and the right of the public to access information in a public proceeding.” (Resp. 06.10.17, para. 1).

54. Although the Tribunal finds the text of Section 1.1(iii) rather broad, it is not clear, based on a textual interpretation or by looking at the Parties’ submissions at this point, whether it is relevant to assessing *Respondent’s* request for reclassification. This being said and without dismissing the provision’s relevance, the Tribunal considers that, in the present situation, it enjoys a degree of discretion, which must be exercised by having the competing interests at play in mind. These are the following: (a) the safeguarding of the proceedings including the participants and the right of a Party to present its case; (b) ensuring procedural economy; and (c) the right to transparency. In the present case, no single interest should override the others.
55. *With respect to the first interest on the safeguarding of the proceedings and the right of a Party to present its case*, the Tribunal considers that there is a genuine concern that, with the publication of the witness statements in particular, witnesses may not be willing to participate, therefore undermining *Claimants’* right to adequately present their case. In contrast, the non-publication of witness statements will not undermine *Respondent’s* right to present its case given that it already has access to all documents submitted in this arbitration and in an unredacted form.
56. *With respect to the second interest on the ensuring of procedural economy*, the Tribunal need only refer to the significant delay and numerous submissions that have taken place so far on account of the Parties’ disputes on confidentiality. It therefore considers that subjecting more documents to this procedure will extend further the disputes between the Parties, delay the proceedings even more and cause significant expense to be

incurred by both Parties. This is in fact contrary to the interests of not only the Parties, but to that of the concerned public itself.

57. *With respect to the right to transparency*, the Tribunal considers that such right is not seriously undermined with the non-publication of witness statements and expert reports. Indeed such right is sufficiently preserved through the publication of the main submissions, orders and decisions of the Tribunal.
58. In light of the above, the Tribunal considers that witness statements and expert reports should not be reclassified as non-confidential.

iv. The decision

59. The Tribunal therefore decides to reject Respondent's request to reclassify those portions of Claimants' expert reports and witness statements which are not confidential [Resp. 1].
60. All other requests not specifically addressed are either now moot or rejected.

B. Claimants' requests of 22 January 2018 concerning PO 7

1. The requests

61. On 22 January 2018, Claimants requested that the Tribunal:
 - a. *"afford the Parties an opportunity to comment further on the Tribunal's rulings in PO 7 and its Annex A as well as the Tribunal's forthcoming decision on the confidentiality of the Memorial witness statements, expert reports, and exhibits, prior to the publication by ICSID of the redacted Memorial"* [Claim. 4];
 - b. *"direct Respondent to confirm in writing that its organs, agencies, and officials will not seek to impose any sanctions on RMGC or any of its current or former representatives for any alleged violation of Romanian law or the confidentiality obligations under the License or Custody Agreement as a result of the disclosure of any unredacted passages contained in the Memorial"* [Claim. 5];
 - c. *"clarify that the items listed above [i.e., items nos 19, 66, 171, 288, 293, 183, 244, 273, 162 and 218 of Annex A to PO 7] should be treated as confidential and revise PO 7 and its Annex accordingly"* [Claim. 6].
62. In relation to [Claim 4], it is noted that, following the appointment of Prof. Tercier as President of the Tribunal and a review of the pending issues on confidentiality by the newly constituted Tribunal, the latter provided the Parties an opportunity to comment further on PO 7 and its Annex A on 16 May 2018 and 22 May 2018. Specifically, on 22 May 2018, the Tribunal clarified that the Parties will not be given a further occasion to

comment on its decision on confidentiality once it has been rendered. The Parties provided their comments on 30 May and 6 June 2018. Therefore, [Claim. 4] is now moot, except as that may relate to Claimants' arguments on the publication of sensitive witness testimony.

63. On 30 January 2018, Respondent requested that the Tribunal:
- a. “dismiss Claimants’ request for reconsideration of its rulings in PO 7 Annex A” [Resp. 5; see also Resp. 3]; and
 - b. “in accordance with Section 2.7 of PO 3, instruct the Secretariat to immediately publish the redacted version of the memorial on the ICSID website” [Resp. 6].
64. On 21 May 2018, Claimants requested that the Tribunal grants them:
- “the opportunity to comment further on the Tribunal’s rulings in Procedural Order No. 7 and its Annex A prior to the publication by ICSID of the redacted Memorial”* [Claim. 4] (see above para. 62).
65. On 6 June 2018, Respondent requested, *inter alia*, that the Tribunal:
- a. “reject the Claimants’ persistent attempts to unjustifiably cloak these proceedings with secrecy” [Resp. 3]; and
 - b. “ensure that the redaction process proceeds in a manner consistent with the clear language of its procedural orders” [Resp. 4].

2. The Parties’ positions

i. Claimants

66. Claimants’ position in brief is as follows:

Publication of sensitive witness testimony

- Certain witness testimony referenced in the Memorial is of a sensitive nature [REDACTED]; it also has the potential of denying Claimants’ ability to present fully their case (Claim. 22.09.17; Joint Witness Statement; Claim 22.01.18; Claim. 30.05.18); if witness statements are designated as not confidential and permitted to be made public by Respondent in response to freedom of information act requests or otherwise, [REDACTED] (Claim. 30.05.18).

- In such circumstances, the Tribunal has the authority to protect information from public disclosure; this is not lessened in the face of transparency provisions (Claim. 22.09.17).
- Claimants do not request that the identity of the witnesses or that all the references to their testimony as contained in the Memorial likewise be treated confidentially; they have identified the references that are particularly sensitive and of concern for the respective witness (Claim. 13.10.17) in accordance with Section 1.1(iii) of PO 3 (Claim. 06.11.17).
- Publication of the redacted Memorial should take place only after the Tribunal renders its forthcoming decision as to the confidentiality of the Memorial witness statements, expert reports and exhibits and the Parties have the opportunity to comment on both decisions if needed; Claimants reserve the right to confer further with their witnesses, taking into account the Tribunal's forthcoming decision, and potentially to revert to the Tribunal as may be necessary in the circumstances (Claim. 22.01.18).

Legal obligation to maintain certain documents confidential

- Claimants' witnesses have also raised concerns that views expressed by Respondent and decisions taken by the Tribunal in PO 7 Annex A (e.g. items nos 1-3, 5, 9, 19, 25, 33, 34, 36, 47, 66, 71, 140, 141, 145, 147, 213, 220, 274 and 275) will result in publishing excerpts of documents that RMGC and its representatives, including [REDACTED], have a legal obligation to maintain as confidential (even if no longer classified) under Romanian law, the License and the Custody Agreement (Claim. 22.01.18).
- Therefore, Respondent should confirm in writing, prior to publication of the redacted Memorial, that Respondent's organs, agencies and officials will not take a conflicting position in Romania as to the confidentiality of any statements contained in the Memorial and, in particular, will not seek to impose any penalties or liability on RMGC or any of its current or former representatives for any alleged violation of Romanian law or the confidentiality obligations under the License or Custody Agreement as a result of the disclosure of any unredacted passages contained in the Memorial (Claim. 22.01.18).

Inconsistencies in the decisions in Annex A of PO 7

- At items nos 19 and 66 of Annex A, the Tribunal ruled respectively that the highlighted quotation of the Roşia Montană License in fn 130 of the Memorial and the highlighted information in fn 516 of the Memorial concerning the Bucium property were not confidential; however, Respondent agreed with Claimants that the referenced passages in the Memorial should be treated as confidential; accordingly, the Parties agree on the confidentiality of those items; considering

Section 2.5 of PO 3 and that the Tribunal accepted the Parties' agreement as to the confidentiality of all other items (see, e.g., items 212, 220, 276, 286), the Tribunal should clarify that the highlighted portions of fns 130 and 516 of the Memorial addressed at items nos 19 and 66 of PO 7 Annex A are confidential and revise PO 7 and its Annex A accordingly (Claim. 22.01.18).

- At item no. 81 of Annex A, the Tribunal ruled that the highlighted statements at para. 336 and fn 624 of the Memorial concerning [REDACTED] are confidential; in contrast, at items nos 171 and 288, it ruled that the highlighted statements concerning [REDACTED], contained at para. 471 and fn 975 and para. 901 and fn 1757 of the Memorial are not confidential (although they are similar to or provide even greater detail than the passages accepted as confidential in para. 336 and fn 624, including for example in that fn 1757 identifies by name the [REDACTED]); consistent with its decision for item no. 81, the Tribunal should clarify that items nos 171 and 288 should be treated as confidential and revise PO 7 and its Annex A accordingly (Claim. 22.01.18).
- In its letter dated 6 October 2017, Respondent agreed that a presentation report (Exh. C-1875) prepared for Gabriel by a third party, [REDACTED], is confidential; in contrast, at item no. 293 of Annex A, the Tribunal ruled that the highlighted references in fn 1795 of the Memorial concerning, among other things, conclusions provided to Gabriel by [REDACTED] in the same presentation report (Exh. C-1875) are not confidential; consistent with Respondent's agreement that Exh. C-1875 is confidential, the Tribunal should clarify that item no. 293 should be treated as confidential and revise PO 7 and its Annex A accordingly (Claim. 22.01.18).
- At items nos 183 and 244 of Annex A, the Tribunal ruled that the highlighted statements at paras 502 and 581 and fns 1029 and 1184 of the Memorial concerning [REDACTED] are not confidential; in contrast, during the provisional measures phase, the Parties agreed and the Tribunal therefore ordered that statements containing similar information (e.g. paras 43 and 51 and fn 56 of Claimants' Second Provisional Measures Request and para. 103 and fn 56 of Claimants' Second Provisional Measures Reply) were confidential and therefore were to be redacted before publication of the Parties' submissions on provisional measures; consistent with its decisions during the provisional measures phase of the case, the Tribunal should clarify that items nos 183 and 244 should be treated as confidential and revise PO 7 and its Annex A accordingly (Claim. 22.01.18).
- At item no. 273 of Annex A, the Tribunal ruled that the highlighted statements at para. 712 and fn 1441 of the Memorial concerning the scope of [REDACTED]

- By initiating this arbitration under the Canada-Romania BIT, which provides for public access to hearings and documents, Claimants knowingly accepted that their submissions would be published including any references therein to the witness statements, and that their publication could prompt public debate, including criticism; Claimants again knowingly assumed this risk when they submitted their Memorial – well after PO 3 had reiterated the principle of transparency of these proceedings and outlined the modalities for the protection of confidential information; Claimants were thus fully aware that any passages in the Memorial referring to witness statements would be published subject to redaction of confidential information; they thus again assumed the risk that there could be public debate about the information disclosed in the Memorial (Resp. 06.06.18).
- Claimants have yet to show why the public’s right to be informed of these proceedings, as enshrined in Annex C of the Canada-Romania BIT, is overridden by speculative and unsubstantiated concerns regarding the [REDACTED] (Resp. 06.06.18).
- The confidentiality of the statements cited in the Memorial has already been decided by the Tribunal in Annex A of PO 7, and there is no reason to assume that the Tribunal’s assessment of the confidentiality of the witness statements and expert reports will be inconsistent with its prior rulings (Resp. 30.01.18).
- Pursuant to PO 3 the redacted versions of the witness statements and expert reports will not be published on ICSID’s website; there are therefore no grounds, whether procedural or substantive, for Claimants to call into question the Tribunal’s decisions, or to delay the publication of the redacted Memorial (Resp. 30.01.18).

Legal obligation to maintain certain documents confidential

- Regarding the alleged publication of excerpts of documents that RMGC and its representatives have a legal obligation to maintain as confidential under Romanian law, Respondent has already designated for redaction all confidential information in the Memorial; there is no basis for Claimants’ concern; Respondent would not be able to impose penalties on RMGC or its representatives for the disclosure of information that Respondent itself designated as appropriate for publication (Resp. 30.01.18).

Inconsistencies in the decisions in Annex A of PO 7

- Respondent objects to Claimants’ request for reconsideration and modification of the Tribunal’s rulings in PO 7 and Annex A (Resp. 30.01.18).

3. *The Tribunal's considerations*

i. The first issue

68. The *first issue* concerns Claimants' request to redact sensitive witness information in the Memorial.
69. *First*, it is recalled that Claimants raised their concerns on the publication of certain sensitive witness testimony referenced in the Memorial on 22 September 2017 (see above para. 4), before the Tribunal issued its PO 7 on the proposed confidentiality designations made by Claimants in their Memorial (see above para. 9). In response to these concerns Respondent made further, on 6 October 2017, the request that certain portions of witness statements and expert reports should be reclassified as non-confidential (see above para. 5). Thereafter, both Parties addressed the issue of redaction of sensitive witness information together with that of reclassification.
70. *Second*, it is further recalled that, on 22 January 2018 and after the Tribunal issued PO 7 (see above para. 9), Claimants objected to certain of the Tribunal's rulings on the disputed confidentiality designations, noting, *inter alia*, their concern that such rulings will result in the publication of sensitive witness testimony that threatens to impair materially Claimants' ability to present their case.
71. *Third*, it is again recalled that, following the reconstitution of the Tribunal with Prof. Tercier's appointment as President of the Tribunal, the new Tribunal afforded both Parties ample opportunity to provide their additional comments on PO 7 and its Annex, particularly as those may relate to witness testimony (see [Claim. 4] and above para. 62).
72. *Fourth*, the Parties' agreement to keep witness statements, expert reports and exhibits as confidential in Section 23.1 of PO 1 has not been superseded by a subsequent order save from the Parties' agreement in PO 3 to possess the right to request reclassification (see above paras 40-44). The Tribunal has already considered Respondent's reclassification request and decided that witness statements and expert reports should not be reclassified as non-confidential (see above para. 58). It did so after considering and balancing three interests at stake, one being *the interest on the safeguarding of the proceedings and the right of a Party to present its case* (see above para. 55). Therefore, the publication of the Memorial without the appropriate redactions of references to witness or expert testimony would defeat the purpose of the Parties' agreement and the Tribunal's decision.
73. As such, the Tribunal considers that any reference to witness statements in the Memorial should be redacted and Annex A to PO 7 should be revised accordingly.
74. At this point, it is important to note that Claimants are not requesting that the identity of the witnesses or that all references to their testimony in the Memorial be treated as confidential (see above para. 66). They have instead identified references that they

consider as sensitive and of concern to their witnesses and to Claimants' right to plead their case.

75. Accordingly, the Tribunal decides that Annex A to PO 7 is revised with Claimants' proposed redactions of references to Claimants' witness testimony accepted.

ii. The second issue

76. The *second issue* concerns the question of whether Respondent may be directed to confirm in writing that its organs, agencies, and officials will not seek to impose any sanctions on RMGC or any of its current or former representatives for any alleged violation of Romanian law or the confidentiality obligation under the License or Custody Agreement as a result of the disclosure of any unredacted passages contained in the Memorial (see [Claim. 5]).
77. The Tribunal notes Respondent's position that there is no basis for Claimants' concern as Respondent has already designated for redaction all confidential information in the Memorial and that Respondent would not be able to impose penalties on RMGC or its representatives for the disclosure of information that Respondent itself designated as appropriate for publication (see above para. 67).
78. The Tribunal accepts Respondent's statement that it will not be able to impose penalties in these circumstances and trusts that the Parties shall act in a manner that is consistent with what they have agreed to in relation to the present proceedings and in good faith.
79. Accordingly, the Tribunal dismisses Claimants' request [Claim. 5].

iii. The third issue

80. The *third issue* concerns several items for which Claimants request clarification and/or revision of the Tribunal's rulings in Annex A of PO 7 because of inconsistencies in the decisions in said Annex.
81. *First*, the Tribunal considers that it may, if circumstances so require and particularly in the face of inconsistencies, revise any of its previous rulings.
82. *Second*, it recalls that the Parties have agreed that redactions in principal submissions shall be made with regard to information that is subject to the obligations of confidentiality as those are set out in Section 1.1 of PO 3 (for the text of Section 1.1 see above para. 47).
83. *Third*, the Tribunal notes that PO 7 and its Annex A do not set out specific reasoning to justify the identified inconsistencies. It further notes that Claimants have provided adequate explanations to support rectification of such inconsistencies and in favour of keeping the identified items as confidential (see above para. 66). These explanations have not been rebutted by Respondent.

84. In light of the above and having considered the indicated inconsistencies set out and explained by Claimants (see above para. 66), the Tribunal decides the following:

- Items nos 19 and 66 of Annex A to PO 7 are confidential.
- Items nos 171 and 288 of Annex A are confidential.
- Item no. 293 of Annex A is confidential.
- Items nos 183 and 244 of Annex A are confidential.
- Item no. 273 of Annex A is confidential.
- Items nos 162 and 218 of Annex A are confidential.

85. Therefore, PO 7 and its Annex A are revised accordingly.

iv. The decisions

86. In light of the above, the Tribunal decides that:

- Annex A to PO 7 is revised with Claimants’ proposed redactions of references to Claimants’ witness testimony accepted.
- Claimants’ request that Respondent be directed to confirm in writing that its organs, agencies, and officials will not seek to impose any sanctions on RMGC or any of its current or former representatives for any alleged violation of Romanian law or the confidentiality obligation under the License or Custody Agreement as a result of the disclosure of any unredacted passages contained in the Memorial is rejected [Claim. 5].
- Items nos 19, 66, 171, 288, 293, 183, 244, 273, 162 and 218 of Annex A to PO 7 are confidential and PO 7 and its Annex are revised accordingly [Claim. 6].

87. All other requests not specifically addressed are either now moot or rejected.

C. Claimants’ requests of 5 April 2018 concerning PO 7 and PO 8

1. The requests

88. On 5 April 2018, Claimants requested that the Tribunal:

- a. “clarify that the Memorial descriptions of and excerpts from Claimants’ confidential exhibits C-574, C-650, C-779, C-781, C-784, C-797, C-814, C-819, C-841, C-876, C-877, C-899, C-914, C-915, C-1422, C-1536, C-1841, C-1842, C-

1846, and C-1866 at items nos. 60, 72, 92-95, 101, 103, 110, 119, 122, 123, 126, 148, 161-163, 165, 271, 287, 291, and 293 of PO 7 Annex A should be redacted prior to publication of the Memorial and revise PO 7 and its Annex A accordingly” [Claim. 7];

- b. *“clarify that Exhibits C-1425, C-1426, C-1469 and C-1470 at items nos. 67, 68, 75, and 76 of PO 8 Annex A should be treated as confidential, and revise PO 8 and its Annex A accordingly” [Claim. 8]; and*
 - c. *“clarify that the Memorial descriptions of and excerpts from Exhibits C-1425, C-1426, C-1469, and C-1470 at items nos. 287 and 291 of PO 7 Annex A should be redacted prior to publication of the Memorial, and revise PO 7 and its Annex A accordingly” [Claim. 9].*
89. On 12 April 2018, Respondent requested that the Tribunal:
- a. *“reject Claimants’ requests that it reconsiders its rulings in PO 7 and PO 8” [Resp. 7]; and*
 - b. *“[i]nsofar as the Tribunal is inclined to entertain Claimants’ requests, the Respondent notes that those requests call for the Tribunal to redact more and disclose less” [Resp. 8].*

2. The Parties’ positions

i. Claimants

90. Claimants’ position in brief is the following:
- The Tribunal ruled in PO 8 Annex A that Exhibits C-574, C-650, C-779, C-781, C-784, C-797, C-814, C-819, C-841, C-876, C-877, C-899, C-914, C-915, C-1422, C-1536, C-1841, C-1842, C-1846 and C-1866 are confidential; in contrast, it ruled in PO 7 Annex A that Memorial passages describing the content of or quoting excerpts from those confidential exhibits are not confidential and should not be redacted; consistent with its decisions at items nos 5, 6, 31-33, 36, 38, 39, 42, 44-46, 48, 49, 66, 77, 82-84 and 90 of PO 8 Annex A, the Tribunal should clarify that the Memorial descriptions of and excerpts from Claimants’ confidential exhibits at items nos 60, 72, 92-95, 101, 103, 110, 119, 122, 123, 126, 148, 161-163, 165, 271, 287, 291 and 293 of PO 7 Annex A should be redacted prior to publication of the Memorial and revise PO 7 and its Annex A accordingly (Claim. 05.04.18).
 - A small number of the Tribunal’s rulings on the confidentiality of market research reports issued by various investment banks appear to be inconsistent; specifically,

Exhibit C-1846 was held confidential, whereas Exhibit C-1425 issued by the same bank and similar to Exhibit C-1846 was held not confidential; Exhibit C-1848 was held confidential, whereas Exhibit C-1426 issued by the same bank and similar to Exhibit C-1848 was held not confidential; and Exhibits C-1841 and C-1842 stated to be intended for “████████████████████” and Exhibit C-1422 stated to be intended for “████████████████████” were held confidential, whereas Exhibits C-1469 and C-1470 stated to be intended “████████████████████” were held not confidential; consistent with its decisions at items nos 66 and 82-85 of PO 8 Annex A, the Tribunal should clarify that Exhibits C-1425, C-1426, C-1469 and C-1470 at items nos 67, 68, 75, and 76 of PO 8 Annex A should be treated as confidential, and revise PO 8 and its Annex A accordingly (Claim. 5.04.18).

- For the same reasons, to the extent that the second request is granted, the Tribunal should also clarify that the Memorial descriptions of and excerpts from these exhibits (of the second request) at items nos 287 and 291 of PO 7 Annex A should be redacted prior to publication of the Memorial, and revise PO 7 and its Annex A accordingly (Claim. 5.04.18).
- A determination as to what warrants confidential treatment should be made without any presumptions (Claim. 23.04.18).
- In terms of sequencing, the pending decisions regarding the treatment of exhibits and the treatment of witness statements and expert reports should be made before redactions to the pleadings should be finally decided (Claim. 23.04.18).

ii. Respondent

91. Respondent’s position in brief is the following:

- There are several outstanding issues that must be resolved in order to bring these proceedings in compliance with the transparency requirements of the Canada-Romania BIT (Resp. 12.04.18).
- Although the factual exhibits, witness statements and expert reports are not published on the ICSID website, their confidentiality (or lack thereof) determines the redactions to a given pleading (Resp. 12.04.18).
- If a particular factual exhibit is deemed confidential, a quotation of that exhibit in a pleading should be redacted; conversely, if a factual exhibit is deemed not confidential, there is no basis to redact a reference to that exhibit (Resp. 12.04.18).
- Determinations as to the confidentiality of factual exhibits, witness statements and expert reports must be made prior to a determination of the redactions to a pleading (Resp. 12.04.18).

- The Tribunal chose to proceed in the reverse order, giving rise to Claimants’ claims of inconsistencies; this risk of inconsistencies would have been avoided, had the Tribunal followed Respondent’s proposed approach (Resp. 12.04.18).
- Respondent argued that the Tribunal should reject Claimants’ requests that it reconsiders its rulings in PO 7 and PO 8 as these matters were decided following extensive correspondence and submissions from the Parties in late 2017 and Claimants have not provided a sufficient basis to reconsider those matters (Resp. 12.04.18).
- Insofar as the Tribunal is inclined to entertain Claimants’ requests, it is noted that such requests call for more redaction and less disclosure; when in doubt and when faced with a possible inconsistency between two of its own rulings, the Tribunal should, in view of the mandatory provisions of the Canada-Romania BIT, favour transparency over confidentiality and rule accordingly (Resp. 12.04.18).

3. *The Tribunal’s considerations*

i. The issue

92. The issue is whether certain exhibits that were held to be confidential in PO 8 Annex A do not appear to have been accorded confidential treatment in Annex A to PO 7 and whether there are inconsistencies in Annex A to PO 8 with regard to the confidentiality of certain exhibits.

ii. The considerations

93. *First*, the Tribunal recalls that it issued PO 7 on Claimants’ proposed confidentiality designations in their Memorial on 16 January 2018 (see above para. 9) and PO 8 on Respondent’s proposal to reclassify certain exhibits as non-confidential on 30 January 2018 (see above para. 11). The Tribunal appreciates that deciding on the proposed redactions first may have inadvertently been the cause of inconsistency with respect to certain of its decisions. Therefore, it agrees with both Parties that it will from now on decide first on any requests for reclassification of exhibits, witness statements and expert reports accompanying a submission, prior to deciding or simultaneously with the decision on the proposed redactions to the main submission. The Parties are therefore requested to liaise and submit a joint proposal to the Tribunal as to the timing of their filing of their proposals and the timing for the Tribunal to decide on such proposals by 28 June 2018.
94. *Second*, it reiterates its considerations above that it may, if circumstances so require and particularly in the face of inconsistencies, revise any of its previous rulings. Further, that redactions in principal submissions shall be made with regard to information that is

subject to the obligations of confidentiality as those are set out in Section 1.1 of PO 3 (see above paras 81-82).

95. *Third*, Respondent's argument, therefore, that the matters were already decided following extensive correspondence and submissions does not negate the fact that there may have been inconsistent rulings by the Tribunal which need to be rectified.
96. *Fourth*, Respondent's further argument that in the face of inconsistencies there should be a ruling in favour of transparency is not appropriate. The Tribunal considers that, as agreed by the Parties, to the extent that there is a basis to rule that a document or information should be treated as confidential, then such ruling must be made accordingly.
97. *Fifth* and as above (see para. 83), the Tribunal notes that neither PO 7 and its Annex A nor PO 8 and its Annex A set out specific reasoning to justify the identified inconsistencies. It further notes that Claimants have provided specific explanations to support rectification of such inconsistencies and in favour of keeping the identified items as confidential (see above para. 90). These explanations have not been rebutted by Respondent.
98. In light of the above and having considered the indicated inconsistencies set out and explained by Claimants (see above para. 90), the Tribunal accepts Claimants' requests to revise PO 7 and its Annex A and PO 8 and its Annex B as specified in [Claim. 7], [Claim. 8] and [Claim. 9].

iii. The decision

99. In light of the above, the Tribunal decides that:
 - The Parties are requested to liaise and submit a joint proposal to the Tribunal as to the timing of their filing of their proposals and the timing for the Tribunal to decide on such proposals by 28 June 2018.
 - The Memorial descriptions of and excerpts from Claimants' confidential exhibits C-574, C-650, C-779, C-781, C-784, C-797, C-814, C-819, C-841, C-876, C-877, C-899, C-914, C-915, C-1422, C-1536, C-1841, C-1842, C-1846 and C-1866 items nos 60, 72, 92-95, 101, 103, 110, 119, 122, 123, 126, 148, 161-163, 165, 271, 287, 291 and 293 of Annex A to PO 7 Annex A should be redacted prior to publication of the Memorial [Claim. 7].
 - Exhibits C-1425, C-1426, C-1469 and C-1470 at items nos 67, 68, 75, and 76 of PO 8 Annex A are confidential [Claim. 8].
 - The Memorial descriptions of and excerpts from exhibits C-1425, C-1426, C-1469 and C-1470 at items nos 287 and 291 of Annex A to PO 7 should be redacted prior to publication of the Memorial [Claim. 9].

100. Therefore, PO 7 and its Annex A and PO 8 and its Annex A are revised accordingly.

101. All other requests not specifically addressed are either now moot or rejected.

III. OTHER ISSUES

A. Publication of PO 8 (and redacted Annex A)

1. The Parties' positions

102. *Claimants* consider that the text of PO 8 does not contain confidential information and does not require any redactions before the ICSID Secretariat publishes it on the ICSID website. However, the content of Annex A accompanying PO 8 should be redacted in its entirety, except for references to the exhibit number of each disputed item and the Tribunal's decisions. Claimants therefore enclosed a redacted version of Annex A (Claim. 05.04.18; see also Claim. 23.04.18).

103. *Respondent* agrees with Claimants' approach to the publication of PO 8 and the redaction of Annex A (Resp. 12.04.18).

2. Decision

104. The Tribunal confirms the Parties' agreement that the text of PO 8 does not contain confidential information and does not require any redactions before publication and that Annex A of PO 8 should be redacted in its entirety except to references to the exhibit number of each disputed item and the Tribunal's decisions.

B. Redactions in the Counter-Memorial

1. The Parties' positions

105. The *Parties* agree to make any proposed redactions and confidentiality designations in connection with the Counter-Memorial after the Tribunal issues its decisions on the pending issues regarding the Memorial, as these decisions will provide guidance to the Parties (Claim. 23.04.18; Resp. 12.04.18; Resp. 30.04.18).

2. Decision

106. The Tribunal confirms the Parties' agreement to make any proposed redactions and confidentiality designations in connection with the Counter-Memorial following the issuance of the present Procedural Order No. 11.

IV. THE TRIBUNAL'S DECISIONS

107. The Arbitral Tribunal hereby orders as follows:

- 1. Respondent's request to reclassify those portions of Claimants' expert reports and witness statements which are not confidential is rejected.*
- 2. Annex A to PO 7 is revised with Claimants' proposed redactions of references to Claimants' witness testimony accepted.*
- 3. Claimants' request that Respondent be directed to confirm in writing that its organs, agencies, and officials will not seek to impose any sanctions on RMGC or any of its current or former representatives for any alleged violation of Romanian law or the confidentiality obligation under the License or Custody Agreement as a result of the disclosure of any unredacted passages contained in the Memorial is rejected.*
- 4. Items nos 19, 66, 171, 288, 293, 183, 244, 273, 162 and 218 of Annex A to PO 7 are confidential and PO 7 and its Annex are revised accordingly.*
- 5. The Parties are requested to liaise and submit a joint proposal to the Tribunal as to the timing of their filing of their proposals and the timing for the Tribunal to decide on such proposals by 28 June 2018 (see above para. 93).*
- 6. The Memorial descriptions of and excerpts from Claimants' confidential exhibits C-574, C-650, C-779, C-781, C-784, C-797, C-814, C-819, C-841, C-876, C-877, C-899, C-914, C-915, C-1422, C-1536, C-1841, C-1842, C-1846 and C-1866 at items nos 60, 72, 92-95, 101, 103, 110, 119, 122, 123, 126, 148, 161-163, 165, 271, 287, 291 and 293 of Annex A to PO 7 Annex A should be redacted prior to publication of the Memorial. PO 7 and its Annex A are revised accordingly.*
- 7. Exhibits C-1425, C-1426, C-1469 and C-1470 at items nos 67, 68, 75 and 76 of PO 8 Annex A are confidential. PO 8 and its Annex A are revised accordingly.*

- 8. *The Memorial descriptions of and excerpts from exhibits C-1425, C-1426, C-1469 and C-1470 at items nos 287 and 291 of Annex A to PO 7 should be redacted prior to publication of the Memorial. PO 7 and its Annex A are revised accordingly.***
- 9. *The Tribunal confirms the Parties' agreement that the text of PO 8 does not contain confidential information and does not require any redactions before publication and that Annex A of PO 8 should be redacted in its entirety except to references to the exhibit number of each dispute item and the Tribunal's decisions.***
- 10. *The Tribunal confirms the Parties' agreement to make any proposed redactions and confidentiality designations in connection with the Counter-Memorial following the issuance of the present Procedural Order No. 11.***
- 11. *All other requests not specifically addressed are either now moot or rejected.***

On behalf of the Tribunal,

_____[Signed]_____
Prof. Pierre Tercier
President of the Tribunal
Date: 14 June 2018