

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

*Raymond Charles Eyre and Montrose Development (Private) Limited*

v.

*Democratic Socialist Republic of Sri Lanka*

**(ICSID Case No. ARB/16/25)**

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**PROCEDURAL ORDER NO. 5**

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*Members of the Tribunal*

Prof. Lucy Reed, President of the Tribunal

Prof. Julian D.M. Lew, Q.C., Arbitrator

Prof. Brigitte Stern, Arbitrator

*Secretary of the Tribunal*

Ms. Geraldine R. Fischer

**Date: 2 October 2018**

## I. HEARING ORGANIZATION

1. Having considered the Parties' submissions presented in correspondence dated 21 September 2018 and made during the Pre-Hearing Organizational Meeting on 28 September 2018, the Tribunal **orders** as follows:
  - a. **Time Allocation/Manner of Time-Keeping:** The Tribunal adopts the Parties' proposed Hearing Schedule (Annex 1). The ICSID Secretary will keep track of the time used by the Parties and the Tribunal.
  - b. **Closing Submissions:** Each Party will have up to 4 hours of closing submissions and 15 minutes of rebuttal.
  - c. **Witness and Expert Examinations:** As agreed by the Parties, the fact witnesses will be sequestered. The scope of direct examination, cross-examination and re-direct examination is established in Sections 18.4 through 18.6 of Procedural Order No. 1.
  - d. **Hearing Bundles:** The Members of the Tribunal confirm that they require only an electronic hearing bundle, which should use the same exhibit numbers as the ones designated in the submissions.
  - e. **Demonstrative Exhibits:** The Tribunal notes the Parties' apparently differing approaches to the use of demonstrative exhibits. To the extent that demonstrative exhibits contain information in a form not already existing in the Parties' submissions (i.e., charts or graphs based on material in the record), such demonstrative exhibits are to be shared with the other Party by 18:00 on the day before the relevant presentation. All other demonstrative exhibits (slides quoting or excerpting material in the record) should be shared at the beginning of the relevant presentation. The Tribunal notes that Section 16.7 of Procedural Order No. 1 contains additional requirements for demonstrative exhibits.

- f. **Post-Hearing Briefs:** The Tribunal will address the question of Post-Hearing Briefs at the close of the Hearing.

## II. THE RESPONDENT'S DISCLOSURE REQUEST

2. On 18 September 2018, the Respondent applied for leave from the Tribunal to make one additional document disclosure request for “documents containing and/or evidencing any discussion and/or negotiation concerning the terms of the MOU and any alleged developments and/or changes in those terms, subsequent to the signature of that document” (*Disclosure Application*).
3. Further to the Tribunal’s Procedural Order No. 4, the Claimants responded to the Disclosure Application by letter dated 27 September 2018, arguing that the Disclosure Application is “ill-founded” as it would require the Tribunal to pre-judge the merits of a disputed issue without submissions and evidence.<sup>1</sup> Asserting that the Disclosure Application is premised on the “allegation that the Claimants’ assertion ... that the July 2010 Memorandum of Understanding ... was non-binding ... is not evidenced and that the Claimants must provide further disclosure if they are permitted to maintain it,” the Claimants contend that there is supporting evidence in the record as demonstrated in Mr. Eyre’s Witness Statement of 2 August 2017 and “the fact that the transfer of the Montrose Land clearly did not take place according to the MOU - a point the Respondent does not contest.”<sup>2</sup> In any event, say the Claimants “they do not have in their possession or control any documents that are responsive to the request set out in the Disclosure Application.”<sup>3</sup>
4. Having deliberated and considered the Parties’ submissions presented in correspondence and made during the Pre-Hearing Organizational Meeting, the Tribunal **orders** as follows:

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<sup>1</sup> Claimants’ Letter of 27 September 2018, para. 2.1.

<sup>2</sup> Claimants’ Letter of 27 September 2018, paras 1 and 2.2.

<sup>3</sup> Claimants’ Letter of 27 September 2018, para. 4.

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- a. The Respondent's Disclosure Application is **granted**.
- b. The Claimants are directed to initiate a further search for "documents containing and/or evidencing any discussion and/or negotiation concerning the terms of the MOU and any alleged developments and/or changes in those terms, subsequent to the signature of that document", to produce any responsive documents to the Respondent immediately, and to report (by email) to the Tribunal on their search results by **8 October 2018**.

On behalf of the Tribunal,

[signed]

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Professor Lucy Reed  
President of the Tribunal  
Date: 2 October 2018

## **Schedule**

### **Hearing Timings**

#### **Day 1**

9:30am – Housekeeping (15 mins).  
9:45am – Respondent’s opening (1 hr 15 mins).  
11am – Break (15 mins).  
11.15am – Claimants’ opening (1 hr 15 mins).  
12:30pm – Lunch (1 hr).  
1:30pm – Claimants' witness: Ray Eyre’s testimony (3 hrs total).  
3pm – Break (15 mins).  
3.15pm - Claimant's witness: Ray Eyre’s testimony (continued) (3 hrs total).  
4.45pm – Break (15 mins).  
5pm - Claimant's witness: Sanjeewa Wijeratne’s testimony (1 hr)  
6pm - Hearing adjourns.

#### **Day 2**

9:30am – Respondent’s witness: Narissa Chen’s testimony (1 hr).  
10:30am – Break (15 mins).  
10:45am – Respondent’s closing (4 hrs total). (On the assumption that the Respondent’s proposal for closings is to be preferred)  
12:45pm – Lunch (1 hr).  
1:45pm – Respondent’s closing (continued) (4 hrs total).  
3:45pm – Break (15 mins).  
4:00pm – Claimant’s closing (4 hrs total).  
5:30pm – Hearing adjourns.

#### **Day 3**

9:30am – Claimants’ closing (continued) (4 hrs total).  
11:00am – Break (15 mins).  
11:15am – Claimants’ closing (continued) (4 hrs total).  
12:15pm – Lunch (1 hr).  
1:15pm – Housekeeping and/or Tribunal questions (1 hr)  
2.15pm – Hearing closes