

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc.

v.

Republic of Panama

(ICSID Case No. ARB/16/34)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal

Mr. Horacio A. Grigera Naón, Arbitrator

Mr. J. Christopher Thomas, QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

11 July 2017

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Introduction

The First Session of the Tribunal was held on 6 June 2017, by video conference, starting at 9:00 AM (EDT). Participating were:

Members of the Tribunal

Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal

Mr. Horacio A. Grigera Naón, Arbitrator

Mr. J. Christopher Thomas, QC, Arbitrator

ICSID Secretariat:

Ms. Luisa Fernanda Torres, Secretary of the Tribunal

Attending on behalf of Claimants:

Mr. Justin Williams, Akin Gump Strauss Hauer and Feld LLP

Mr. Stephen Kho, Akin Gump Strauss Hauer and Feld LLP

Ms. Katie Hyman, Akin Gump Strauss Hauer and Feld LLP

Mr. Johann Strauss, Akin Gump Strauss Hauer and Feld LLP

Ms. Areej Al Naqbi, Akin Gump Strauss Hauer and Feld LLP

Mr. Tom Kingsbury, Assistant Secretary, Bridgestone Licensing Services, Inc; and Chief Counsel, Intellectual Property, Bridgestone Americas, Inc.

Attending on behalf of Respondent:

Mr. Whitney Debevoise, Arnold & Porter Kaye Scholer

Ms. Gaela Gehring Flores, Arnold & Porter Kaye Scholer

Ms. Mallory Silberman, Arnold & Porter Kaye Scholer

Ms. Katelyn Horne, Arnold & Porter Kaye Scholer

Mr. Kelby Ballena, Arnold & Porter Kaye Scholer

Mr. Michael Rodriguez, Arnold & Porter Kaye Scholer

Mr. Aristides Valdonedo, Arnold & Porter Kaye Scholer

Ms. Geniva Escobar, Arnold & Porter Kaye Scholer

Ms. Linda Castillo, Arnold & Porter Kaye Scholer

The following was considered:

- the Draft Agenda circulated by the Secretary of the Tribunal on 16 May 2017 as amended by the Parties¹ on 1 June 2017;
- the Draft Procedural Order circulated by the Secretary of the Tribunal on 16 May 2017; and
- the Parties' comments on the Draft Agenda and the Draft Procedural Order received on 1 June 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

¹ In this Procedural Order, the term "Parties" is used to refer to the Claimants and the Respondent in this proceeding, and the term "Party" is used to refer to either the Claimants or the Respondent.

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The First Session was adjourned at 11:10 AM (EDT). An audio recording was made and deposited in the archives of ICSID. The recording and written transcription thereof was subsequently distributed to the Members of the Tribunal and the Parties.

Following the First Session, the Tribunal received and considered communications from the Parties dated 26, 29 and 30 June 2017; and sent to the Parties communications dated 20, 28 June 2017 and 2 July 2017.

Following the above, the Tribunal now issues the present order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached at Annex A.

1. Applicable Arbitration Rules
Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006 except to the extent modified by the United-States Panama Trade Promotion Agreement signed on 28 June 2007, in force on 31 October 2012 (“US-Panama TPA”).

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

2.1. The Tribunal was constituted on 27 April 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed at the First Session that the Tribunal was properly constituted and that neither Party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 5 December 2016, 3 January 2017 and 27 April 2017.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

2.4. The contact details for the Members of the Tribunal are:

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**Lord Nicholas Phillips Baron of
Worth Matravers**
Brick Court Chambers
7-8 Essex Street
London WC2R 3LD
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Mr. J. Christopher Thomas, QC
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National University of Singapore
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Singapore 259770
jcthomas@thomas.ca

3. Fees and Expenses of Members of the Tribunal

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Member of the Tribunal shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Member of the Tribunal receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Tribunal shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings.
- 4.2. The physical attendance of all Members of the Tribunal shall be required at all sittings of the Tribunal at which evidence will be heard or submissions on jurisdiction, merits or damages will be advanced.
- 4.3. Subject to §20.1, the presence of all Members of the Tribunal by any appropriate means of communication, including telephone and video links,

² At the First Session, the President of the Tribunal explained that Ms. Trott is purely an administrative aid, and inquired whether her email could be included merely for organizational purposes. Neither Party objected.

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shall be required at meetings during which only procedural issues will be addressed.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal, and its decisions shall be issued in writing except where rulings are made in the context of a hearing. Except as indicated below in §5.2, the Tribunal may take decisions by correspondence among its Members, or by any other appropriate means, provided that all Members are consulted, in accordance with ICSID Arbitration Rule 16(2).

5.2. Where a matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

5.3. In circumstances where the Tribunal's deadline for issuing a decision or Award is not established in the U.S.-Panama TPA, the Tribunal will draft all rulings, including the Award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every three months.

5.4. Subject to §5.2, so long as all Members of the Tribunal are consulted, the President is authorized to issue Procedural Orders on behalf of the Tribunal. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal in the form of a letter or email.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

7.1. The Secretary of the Tribunal is Ms. Luisa Fernanda Torres, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

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- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Luisa Fernanda Torres
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-5018
Fax: + 1 (202) 522-2615
Email: ltorresarias@worldbank.org

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

Ms. Luisa Fernanda Torres
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-5018

8. Representation of the Parties
Arbitration Rule 18

- 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 Secretary of the Tribunal promptly of such designation. Each Party reserves its right to object to any change in counsel that would threaten the integrity of the Tribunal.

For Claimants

Mr. Justin Williams
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Ten Bishops Square
London, E1 6EG,
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For Respondent

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and
Mr. Whitney Debevoise
Ms. Gaela Gehring Flores
Ms. Mallory Silberman
Ms. Amy Endicott
Ms. Katelyn Horne
Mr. Kelby Ballena

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Katelyn.Horne@apks.com
Kelby.Ballena@apks.com
xBridgestone@apks.com

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of 8 May 2017, ICSID requested that each Party pay US\$ 150,000.00 to cover the initial costs of the proceeding. ICSID received Claimants' payment on 25 May 2017. During the First Session, Respondent confirmed its intention to pay, observing that the payment was in process and agreeing to provide the Tribunal and ICSID with an estimated date of payment. By letter of 26 June 2017, Respondent estimated that the payment would be made by 17 July 2017.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); US-Panama TPA, Article 10.20(1)

- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. Hearings shall be held in Washington, D.C.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of the arbitration.

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- 11.2. Documents filed in any other language must be accompanied by a translation into English, filed within 10 Washington, D.C. business days after the original non-English document is submitted.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the Party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the Parties under §16 below (Production of Documents) in a language other than English need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously into English.
- 11.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §20 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Secretary of the Tribunal, who shall send them to the Tribunal. In urgent situations, a Party may send copies directly to the Tribunal and to the other Party with a copy to the Secretary of the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only. In such cases, the Secretary will confirm receipt promptly with the transmitting Party, but will wait until receiving both Parties' communications before proceeding to transmit them to the Tribunal and the other Party.
- 12.4. The Secretary of the Tribunal shall not be copied on direct communications between the Parties when such communications are not intended to be

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transmitted to the Tribunal.

13. Written and Oral Procedures

Arbitration Rule 29

13.1. The proceedings shall consist of a written phase, followed by an oral phase.

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

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

14.1. By the relevant filing date, the Parties shall (i) submit by email to the Secretary of the Tribunal and the opposing Party an electronic version of the pleading, witness statements, expert reports and a list of exhibits and legal authorities (but not the exhibits or legal authorities themselves),³ and (ii) upload the pleading with all the supporting documentation to the folder created by ICSID for this case in the World Bank's electronic file sharing platform (the "Electronic Filing").

14.2. Within five business days (Washington, D.C.) of the Electronic Filing (and, in the case of filings that require the submission of documents translated into English, on the same day that the translated documents are due), the Parties shall courier to the Secretary of the Tribunal:

14.2.1. one unbound hard copy in A4/Letter format⁴ in labeled redweld folders of the entire submission (both in original language and translations), including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities); and

14.2.2. two labeled, unencrypted USB drives with full copies of the entire submission (both in original language and translations), including the pleading, the witness statements, expert reports, exhibits, and legal authorities. The USB shall also contain a hyperlinked index and, if possible, a pleading that is hyperlinked to the supporting documentation.

14.3. Within five business days (Washington, D.C.) of the Electronic Filing (and, in the case of filings that require the submission of documents translated into English, on the same day that translated documents are due), the Parties shall courier to the opposing Party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §2.4 above:

14.3.1. one hard copy in A5 format of the entire submission (both in original

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

⁴ The A4/Letter format is required for ICSID's archiving. The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

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language and translations) including the pleading, the witness statements, expert reports, and exhibits (but not including legal authorities); and

14.3.2. one labeled, unencrypted USB drive with a full copy of the entire submission (both in original language and translations), including the pleading, the witness statements, expert reports, exhibits, and legal authorities. The USB shall also contain a hyperlinked index and, if possible, a pleading that is hyperlinked to the supporting documentation.

14.4. For purposes of this Procedural Order, the term “legal authorities” means “any document unrelated to a party or witness, offered in support of legal arguments and precedent; not related to factual issues or position in the case,” and the term “exhibits” means “any document related to a party or witness, offered in support of factual assertions.”

14.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

14.6. Electronic versions of pleadings, witness statements and expert reports shall be text searchable (i.e., OCR PDF or Word), without password or print restrictions. Each document submitted shall be in its own separate electronic file.

14.7. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal.

14.8. A filing shall be deemed timely if sent by a Party by 11:59 PM, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

15.1. These shall be as set out in Annex A.⁵

16. Production of Documents

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

16.1. The Tribunal and the Parties will be guided by the International Bar Association’s Rules on the Taking of Evidence (2010) (“IBA Rules”). In the event of any conflict between the IBA Rules and this Order, the latter shall

⁵ The Procedural Calendar set forth in **Annex A** of this Procedural Order concerns only the procedure for the Expedited Objections. Should the Expedited Objections be dismissed, the Tribunal will determine the subsequent Procedural Calendar (including the dates for the document production phase) following consultation with the Parties.

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prevail.

16.2. By the relevant dates to be set forth by the Tribunal in due course:⁶

16.2.1. Each Party may serve a request for production of documents on the other Party. Any request for production of documents must identify with precision each document or category of documents sought and establish their relevance and materiality to the outcome of the case. Such requests shall not be sent to the Tribunal or the ICSID Secretariat.

16.2.2. Each Party shall produce those documents requested that are in its possession, custody or control (and not in the other Party's possession, custody or control), and to which it does not object. Documents shall be produced in electronic format only. The documents produced shall be organized, to the extent feasible, according to the request(s) they are responsive to.

16.2.3. If and to the extent that a Party objects to any request for production, such Party shall state its objections to any request in writing to the requesting Party *only*.

16.2.4. The Party which made the request shall respond in writing to any objection and submit the completed table referred to in §16.3 below to the Secretary of the Tribunal, with a copy to the other Party (in both Word and PDF formats).

16.2.5. The Tribunal shall decide on any objections to the production of requested documents.

16.2.6. The Parties shall produce all documents for which no objection is sustained by the Tribunal. Documents shall be produced in electronic format only. The documents produced shall be organized, to the extent feasible, according to the request(s) they are responsive to.

16.3. The requests, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions referred to in this Section shall be recorded in a schedule in the form below:

⁶ See *supra* n.5.

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1	2	3		4	5	6
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Responses / Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			

16.4. Further requests for the production of documents sought by either Party outside of the timeframe referenced above in §16.2, if any, may be made only in exceptional circumstances, such as where a Party's submission(s) filed after the other Party has had the opportunity to make its primary document request raise(s) substantial new factual allegations. The request must be substantiated. If the Parties dispute whether such exceptional circumstances exist and/or whether the additionally requested documents should be produced or in what timeframe, the Tribunal shall decide.

16.5. The disclosure of documents under this Section shall be made electronically through an FTP (or similar) secure site, which can be accessed by counsel to the disputing Parties, in bates-stamped, text-searchable PDF format. Each disputing Party shall provide the other disputing Party, on the date of the production, an index of the documents that it is producing, indicating which documents (by bates stamp number) are responsive to which document requests.

16.6. Any Excel (or similar spreadsheet format) documents shall be produced in native format.

16.7. Correspondence or documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal or the Secretary of the Tribunal, except as set out in this Procedural Order or otherwise ordered by the Tribunal.

16.8. Where documents are protected by privilege or protected on the grounds of special political or institutional sensitivity, their disclosure does not operate as a waiver, and they must be promptly returned to the disclosing disputing Party.

16.9. Where a disputing Party receives a document or documents from the other

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disputing Party which it reasonably believes may be protected by privilege or protected on the grounds of special political or institutional sensitivity, it shall promptly inform the disclosing disputing Party of the disclosure of the document(s), and seek confirmation that such disclosure was intentional. If the disclosing disputing Party declares that the disclosure was not intentional, the documents shall be promptly returned to the disclosing disputing Party.

16.10. Any Party producing a document that has been redacted or otherwise altered from its original form shall indicate such redaction or alteration on each affected document page.

16.11. Documents produced as part of a document production but not submitted as exhibits do not form part of the record.

17. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

17.1. The rules set out in the present Section shall apply *mutatis mutandis* in any bifurcated or expedited proceedings scenario.

17.2. 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.

17.3. The documents shall be submitted in the manner set forth in §14 above.

17.4. 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 exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.

17.4.1. Should a Party request leave from the Tribunal to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.

17.4.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

17.5. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

17.6. The documents shall be submitted in the following form:

17.6.1. Exhibits and legal authorities shall be numbered consecutively

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throughout these proceedings.

- 17.6.2. The number of each exhibit submitted by Claimants shall be preceded by the letter “C-”. Each legal authority submitted by Claimants shall be preceded with the letters “CLA”. Each exhibit submitted by the Respondent shall be preceded by the letter “R-”. Each legal authority submitted by the Respondent shall be preceded with the letters “RLA”.
- 17.6.3. The Parties shall submit all exhibits in files with a separate tab for each exhibit. The tab shall include the exhibit number.
- 17.6.4. For purposes of the Electronic Filing, exhibits shall also be submitted in PDF format and start with the number “C-0001” or “R-0001,” respectively. The numbering shall also indicate the language of the document, *e.g.*, C-0001(ENG) for a document submitted in English, C-0001(SPA) for a document submitted in Spanish and C-0001(ENG/SPA) for a document submitted in both Spanish and English.
- 17.6.5. Legal authorities also shall be submitted in PDF format and start with the number “CLA-0001” and “RLA-0001,” respectively. The numbering shall also indicate the language of the document, *e.g.*, CLA-0001(ENG) for a document submitted in English, CLA-0001(SPA) for a document submitted in Spanish, and CLA-0001(ENG-SPA) for a document submitted in both English and Spanish.
- 17.6.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.7. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements or expert reports, even if referred to in such statements or reports.
- 17.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence, and are based on documents in the record. Each Party shall number its demonstrative exhibits consecutively, “CD-” for Claimants and “RD-” for Respondent, and indicate on each demonstrative exhibit the number of the document(s) in the record from which it is derived. The Party submitting such demonstrative exhibits shall provide them in hard copy to the other Party, the Tribunal Members, the Secretary of the Tribunal, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

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18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24; US-Panama TPA, Article 10.24

- 18.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 18.2. Unless the Tribunal determines (following receipt of a reasoned, written request by one Party, and after allowing the other Party to address the request) that exceptional circumstances exist, neither Party shall be permitted to submit any testimony that has not been filed with the written submissions. The provisions of §§17.4.1 and 17.4.2 shall apply *mutatis mutandi* to an application to submit additional testimony.
- 18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 19.1. The Tribunal and the Parties will be guided by the IBA Rules. In the event of any conflict between the IBA Rules and this Order, the latter shall prevail.
- 19.2. Each witness and expert shall be available for examination at the hearing, subject to the provisions of this Order.
- 19.3. No later than 45 days prior to the commencement of each hearing at which witnesses are to be heard, or on such other date as the Tribunal may establish, each Party shall notify simultaneously the other Party, with a copy to the Tribunal (via the Secretary of the Tribunal), which of the witnesses and experts of the opposing Party it wishes to cross-examine at the hearing. A decision by either Party not to call a witness or expert to appear for cross-examination at a hearing shall not be considered a concession as to the substance of the statement of the witness or report of the expert.
- 19.4. Shortly after the Parties' notifications, the Tribunal may indicate whether it wishes to question any witness or expert not called by the Parties.
- 19.5. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal. Any Party that wishes to examine a witness or expert by video-conference shall notify the Tribunal at least three (3) weeks in advance of the hearing at which that witness or expert's testimony is to be presented is to be examined, unless exceptional circumstances exist which would warrant a later notification.
- 19.6. If a witness or expert who has been called for cross-examination fails, without sufficient justification, to appear at the hearing, the Tribunal may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.

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- 19.7. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).
- 19.8. The procedure for examining witnesses and experts at the hearing shall be the following:
- 19.8.1. The witness statement of each witness and expert report of each expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below and any agreement of the Parties or direction of the Tribunal.
- 19.8.2. The Party presenting the witness or expert may conduct a brief direct examination of a witness or expert, which should be limited to the scope of prior testimony (including any corrections or updating thereof and any testimony responding to matters raised after the date of the witness’s or expert’s last statement or report.)
- 19.8.3. Absent leave from the Tribunal, direct examination of a witness shall not exceed 15 minutes and direct examination of an expert shall not exceed 30 minutes.
- 19.8.4. The direct examination of a witness or expert will be followed by examination by the other Party (“cross-examination”), and subsequently, by the party producing the witness or expert (“redirect examination”).
- 19.8.5. The scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report and/or (ii) impeachment of the witness, unless for good cause shown the Tribunal agrees to a broader cross examination.
- 19.8.6. The redirect examination of a witness or expert shall be limited to matters raised in cross-examination.
- 19.8.7. Witnesses and experts shall be examined by each Party under the control of the President of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.
- 19.9. Unless the Parties and the Tribunal agree otherwise, witnesses of fact shall not be allowed in the hearing room before giving their oral evidence. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.
- 19.10. A Party that does not call a witness or expert for cross-examination at the hearing shall not be deemed thereby to have agreed to the correctness of the content of the witness or expert written testimony.

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- 19.11. Counsel may meet witnesses and potential witnesses to establish the facts and assist with the preparation of witness statements and oral examinations.
- 19.12. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the pre-hearing organizational meeting.
- 19.13. Any other matter regarding the examination of witnesses and experts shall be addressed at a later stage in this arbitration.

20. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 20.1. A pre-hearing organizational meeting shall be held at a date to be determined by the Tribunal after consultation with the Parties by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. Hearings

Arbitration Rules 20(1)(e) and 32; US-Panama TPA, Article 10.21(2)

- 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 at a place to be determined in accordance with §10 above.
- 21.3. The date of the hearing on the Expedited Objections is set forth in Annex A. The date for any other hearing (if any) shall be determined at a later stage.
- 21.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.5. The total amount of time allocated to the presentation of argument and examination of witnesses and experts during hearings shall be further discussed during a pre-hearing organizational meeting by telephone conference to take place at least 40 days prior to the first day of the hearing.
- 21.6. In accordance with Article 10.21(2) of the U.S.-Panama TPA, hearings shall be open to the public.

22. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 22.1. Complete sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

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- 22.2. Verbatim transcript(s) in the procedural language shall be made of any hearing and session other than sessions on procedural issues only. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 22.3. Unless the Tribunal orders otherwise, the Parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties 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 Rule 28(2)

- 23.1. The Parties agree that the topic of Post-Hearing Submissions will be addressed at a later stage in the arbitration.
- 23.2. In accordance with Arbitration Rule 28(2) and upon request of the Tribunal, the Parties shall submit respective statements of costs.

24. Decision or Award on Liability
US-Panama TPA, Article 10.20(9)(a)

- 24.1. The Parties acknowledge that Article 10.20(9)(a) of the US-Panama TPA is applicable to this proceeding.
- 24.2. At the First Session, the Parties confirmed their joint understanding that this provision applies only to a ruling (decision or Award) on liability, as distinguished from a ruling on jurisdiction.

25. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), US-Panama TPA, Article 10.21(1)

- 25.1. The Parties consent to ICSID publication of the materials set out in Article 10.21(1) of the US-Panama TPA.
- 25.2. Absent any objection under the provisions in Article 10.21(4) of the US-Panama TPA, the Parties agree that the materials may be published 14 days after the filing date of the pleading, memorial, brief, or submission; the date of issuance of the order, decision or award; or the date of transmission of the final version of the minutes or hearing transcript in question.
- 25.3. The Tribunal records the Parties’ joint understanding expressed in their

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communications of 26 June 2017 that, for purposes of §25.1. *supra*, the reference in Article 10.21(1)(c) of the US-Panama TPA to “pleadings, memorials, and briefs” does not include accompanying material (*i.e.* witness statements, expert reports, exhibits, and legal authorities).

26. Submissions of the “non-disputing Party”⁷ and “amicus curiae”⁸ Submissions
US-Panama TPA, Articles 10.20(2) and (3); Arbitration Rule 37(2)

- 26.1. The Parties acknowledge that Articles 10.20(2) and (3) of the US-Panama TPA and Arbitration Rule 37(2) are applicable to these proceedings.
- 26.2. In accordance with US-Panama TPA Article 10.20(3), the Tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a Party to this proceeding.
- 26.3. The Parties shall have a reasonable opportunity to make submissions on any application for leave to file a submission in this arbitration by an intending *amicus curiae*.
- 26.4. If an application for permission to file an *amicus curiae* submission is granted, the Parties shall have a reasonable opportunity to present their observations on such submission.

27. Transparency
US-Panama TPA, Article 10.21

- 27.1. The Parties acknowledge that the terms of Article 10.21 of the US-Panama TPA are applicable to the present proceeding.

For and on behalf of the Tribunal,

[Signed]

Lord Nicholas Phillips Baron of Worth
Matravers President of the Tribunal
Date: 11 July 2017

⁷ In this Section, the term “non-disputing Party” is used in the sense of Article 10.29 of the US-Panama TPA, in the present case, the United States of America.

⁸ In this Section, the term “*amicus curiae*” is used in the sense of Article 10.20(3) of the US-Panama TPA, namely, a person or entity different from Claimants or Respondent.

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Annex A – Timetable

Procedural Calendar for the Expedited Objections Phase

Date	Lapse	Party / Tribunal	Description
30 May 2017		RESPONDENT	Expedited Objections
24 July 2017	55 days	CLAIMANTS	Response on Expedited Objections
7 August 2017	14 days	RESPONDENT	Reply on Expedited Objections
14 August 2017	7 days	CLAIMANTS	Rejoinder on Expedited Objections
21 August 2017	7 days	CLAIMANTS AND RESPONDENT	Finalization of Agreement on Index for Hearing Bundle ⁹
25 August 2017	4 days	CLAIMANTS AND RESPONDENT	Hearing Bundle Index Circulation
TBD ¹⁰	TBD	TRIBUNAL (OR ITS PRESIDENT) AND THE PARTIES	Pre-Hearing Conference
4-6 September 2017 ¹¹	21 days (from Rejoinder)	ALL	Hearing on Expedited Objections

Should the Expedited Objections be dismissed, the Tribunal shall determine the subsequent Procedural Calendar following consultation with the Parties.

⁹ As instructed by the Tribunal on 2 July 2017, “the Parties should co-operate in building up the hearing bundle as pleadings are exchanged.”

¹⁰ The requirement in §21.5 *supra* that the pre-hearing conference be scheduled at least 40 days prior to the hearing (*i.e.* before **26 July 2017**) does not apply in connection with the Expedited Objections proceeding. The Parties and the Tribunal will strive to schedule the pre-hearing conference as soon as possible after the last written submission on 14 August 2017.

¹¹ The exact duration of the hearing will be determined at the pre-hearing conference.