

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Pawlowski AG and Projekt Sever s.r.o.**

**v.**

**Czech Republic**

**(ICSID Case No. ARB/17/11)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Prof. Juan Fernández-Armesto, President of the Tribunal  
Mr. John Beechey, CBE, Arbitrator  
Prof. Vaughan Lowe, QC, Arbitrator

***Secretary of the Tribunal***

Ms. Lindsay Gastrell

***Assistant to the Tribunal***

Mélanie Riofrio Piché

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February 13, 2018

**Contents**

1. Applicable Arbitration Rules .....	4
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3. Fees and Expenses of Tribunal Members .....	4
4. Presence and Quorum .....	5
5. Rulings of the Tribunal .....	5
6. Power to Fix Time Limits .....	6
7. Secretary of the Tribunal .....	6
8. Assistant to the Tribunal .....	6
9. Representation of the Parties .....	8
10. Apportionment of Costs and Advance Payments to ICSID.....	9
11. Place of Proceeding.....	9
12. Procedural Language(s), Translation and Interpretation .....	9
13. Routing of Communications .....	10
14. Number of Copies and Method of Filing of Parties' Pleadings.....	10
15. Number and Sequence of Pleadings .....	12
16. Production of Documents .....	13
17. Submission of Documents .....	13
18. Witness Statements and Expert Reports .....	15
19. Examination of Witnesses and Experts.....	16
20. Application of the IBA Rules on the Taking of Evidence in International Arbitration.	17
21. Pre-Hearing Organizational Meetings .....	17
22. Hearings .....	17
23. Records of Hearings and Sessions .....	18
24. Post-Hearing Memorials and Statements of Costs.....	18
25. Publication .....	18
26. Other Matters .....	18
<b>ANNEX A</b> .....	20
<b>ANNEX B</b> .....	23

## **Introduction**

The first session of the Tribunal was held on January 24, 2018<sup>1</sup>, at 17:00 CET, by telephone conference. The session was adjourned at 18:10 CET.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

### Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal  
Mr. John Beechey CBE, Arbitrator  
Prof. Vaughan Lowe, Arbitrator

### ICSID Secretariat

Lindsay Elizabeth Gastrell

### Assistant to the Tribunal

Mélanie Riofrio Piché

### Participating on behalf of the Claimants:

Prof. Felix Dasser, Homburger  
Ms. Kirstin Dodge, Homburger  
Dr. Simon Vorburger, Homburger  
JUDr. Jan Havlíček, Havlíček Law Offices  
Mr. Sebastian Pawlowski, Pawlowski AG / Projekt Sever s.r.o.

### Participating on behalf of the Respondent:

Dr. Eduardo Silva Romero, Dechert (Paris) LLP  
Ms. Erica Stein, Dechert (Paris) LLP  
Ms. Marie Talašová, Ministry of Finance of the Czech Republic  
Ms. Anna Bilanová, Ministry of Finance of the Czech Republic  
Ms. Kateřina Heroutová, Ministry of Finance of the Czech Republic

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on January 9, 2018;
- The Draft Procedural Order circulated by the Tribunal Secretary on January 9, 2018;  
and

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<sup>1</sup> Both Parties agreed to hold the first session after the 60-day period specified in ICSID Arbitration Rule 13. See Claimants' email dated November 22, 2017 and Respondent's email dated November 24, 2017.

- The Claimants and Respondent's [hereinafter jointly referred to as the "Parties"] comments on the Draft Agenda and the Draft Procedural Order were received on January 17, 2018, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, 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 Procedural Timetable is attached as Annex A.

### 1. Applicable Arbitration Rules

*Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

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

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on November 6, 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). The ICSID Secretariat distributed copies of these declarations to the Parties on November 6, 2017.
- 2.3. The Members of the Tribunal have each confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

### 3. Fees and Expenses of Tribunal Members

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

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

- 3.2. Under the current Schedule of Fees, each Tribunal Member 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* (US\$ 375 for each hour of work performed other than on days of meetings); and
    - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
  - 3.3. Each Tribunal Member 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, including by any appropriate means of communication, constitutes a quorum for the Tribunal's sittings.
5. Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*
- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
  - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence. In circumstances where the matter is urgent, the President may decide procedural matters alone, subject to possible reconsideration of the decision by the full Tribunal.
  - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period.
  - 5.4. The President is authorized to issue Procedural Orders and other procedural decisions on behalf of the Tribunal.
  - 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary 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. The Parties may also agree amongst themselves to short extensions of time, on the basis of mutual courtesy, as long as these extensions do not materially affect the timetable and the Tribunal is informed of such extensions in advance.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Ms. Lindsay Gastrell, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Lindsay Gastrell  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 458-0419  
Fax: + 1 (202) 522-2615  
Email: [lgastrell@worldbank.org](mailto:lgastrell@worldbank.org)  
Paralegal email: [nmaisel@worldbank.org](mailto:nmaisel@worldbank.org)

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

701 18th Street, N.W. ("J Building")  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-1534

8. Assistant to the Tribunal

- 8.1. With the consent of the Parties, the Tribunal appoints the following Assistant to the Tribunal (the “Assistant”):

Mélanie Riofrio Piché  
ARMESTO & ASOCIADOS  
General Pardiñas, 102, 8vo izq.  
28006 Madrid, Spain  
Tel: +34 91 562 16 25  
Fax: +34 91 515 91 45  
E-mail: mrp@jfarmesto.com

- 8.2. The Assistant works for Armesto & Asociados, the same firm of arbitrators to which the President belongs. Armesto & Asociados’ professional activity is limited to acting as arbitrators. The Parties have received the Assistant’s *curriculum vitae* and declaration of independence and impartiality on January 9, 2018.
- 8.3. The Members of the Tribunal will personally make all decisions required to adjudicate the merits of the present dispute and all procedural issues. To personally fulfill its decision-making functions, the Tribunal may draw on the help of the Assistant. The Assistant’s tasks will be performed upon the Tribunal’s specific instructions, under its direct supervision and responsibility, and will not release the Tribunal from any of its decision-making duties relating to the reading of papers and the making of decisions.
- 8.4. When instructed by the President on behalf of the Tribunal, the Assistant may perform the following tasks in order to assist the Tribunal:
- Organize and maintain the President’s arbitral file;
  - Attend meetings, hearings and deliberations; take notes;
  - Draft summaries of submissions and reviews of evidence and authorities, conduct legal research, write notes or memoranda on factual and legal issues, prepare preliminary drafts of decisions or sections of awards under the specific instruction and continuous control and supervision of the Tribunal.
- 8.5. The Assistant shall be bound by the same duties of confidentiality, independence and impartiality as the members of the Tribunal.
- 8.6. The Assistant will be remunerated directly by the President, without causing any additional cost to the Parties, save that the Assistant will be entitled to justified reasonable personal disbursements for attending hearings and meetings.
- 8.7. The Tribunal may remove the Assistant at its discretion. The Tribunal will remove the Assistant if the Assistant ceases to work for Armesto & Asociados.

The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

9. Representation of the Parties

*Arbitration Rule 18*

9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Prof. Dr. Felix Dasser  
Ms. Kirstin Dodge, J.D.  
Dr. Simon Vorburger

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[simon.vorburger@homburger.ch](mailto:simon.vorburger@homburger.ch)

and

JUDr. Jan Havlíček  
Havlíček Law Offices  
Masarykovo náměstí 110/64  
CZ-58601 Jihlava  
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For Respondent

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Ms. Anna Bilanová  
Ms. Kateřina Heroutová

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and

Dr. Eduardo Silva Romero  
Ms. Erica Stein  
Mr. Audrey Caminades

Dechert (Paris) LLP  
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France

Tel: +33 1 57 57 80 80

E-mail: [ALLPAWLOWSKI@dechert.com](mailto:ALLPAWLOWSKI@dechert.com)

10. Apportionment of Costs and Advance Payments to ICSID

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

- 10.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. By letter of November 7, 2017, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received the Respondent's payment on November 30, 2017 and the Claimants' payment on December 29, 2017.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding

*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*

- 11.1. The Parties have agreed that Paris shall be the place of the proceeding.
- 11.2. The Tribunal may hold hearings at any other place that it considers appropriate.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation

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

- 12.1. English is the procedural language of the arbitration.
- 12.2. Documents filed in any other language must be accompanied by a translation into English.
- 12.3. 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.
- 12.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 12.5. Documents exchanged between the Parties in a language other than English under § 16 below (Production of Documents) need not be translated.

- 12.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously or consecutively, to be determined by the Tribunal in due course.
- 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require interpretation.
- 12.8. The costs of the interpreters 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. Interpretation shall be arranged by the ICSID Secretariat, but the Parties will be consulted about which interpreters are proposed.

13. Routing of Communications

*Administrative and Financial Regulation 24*

- 13.1. Written communications in the case shall be transmitted by email or other electronic means to the Parties, the Tribunal Secretary, and the Tribunal.
- 13.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall, upon receipt of both Parties' communications, send them to the opposing party and the Tribunal.
- 13.3. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:

Mr. Juan Fernández-Armesto  
[jfa@jfarmesto.com](mailto:jfa@jfarmesto.com)

Mr. John Beechey  
[jb@beecheyarbitration.com](mailto:jb@beecheyarbitration.com)

Mr. Vaughan Lowe  
[vlowe@essexcourt.net](mailto:vlowe@essexcourt.net)

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:
  - 14.1.1. submit by email to the Tribunal, the Tribunal Secretary and the opposing party an electronic version of the pleading together with witness statements, expert reports (without annexes) and an index of all the

supporting documentation submitted with the pleading (which index shall include witness statements, expert reports, exhibits and legal authorities)<sup>2</sup>; and

14.1.2. upload the pleading, with all the supporting documentation and the corresponding index to the file sharing platform that will be created by ICSID for purposes of this case.

14.2. Four business days following the electronic filing, the Parties shall courier to the Tribunal Secretary:

14.2.1. one unbound hard copy in A4/Letter format<sup>3</sup> of the entire submission,<sup>4</sup> including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (including exhibits but excluding legal authorities) and the index; and

14.2.2. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the index of all the supporting documentation.

14.3. Also four business days following the electronic filing, the Parties shall courier to the opposing party at the addresses indicated at §9.1 above and to each Member of the Tribunal at the addresses indicated at §14.4 below:

14.3.1. for Mr. Armesto, one hard copy, double sided in A4 format, spiral bound of only the following parts of the submission: pleading, witness statements, expert reports and the index of documents;

14.3.2. for Mr. Beechey and Prof. Lowe, one hard copy, double sided in A5 format, spiral bound with soft covers of only the following parts of the submission: pleading, witness statements, expert reports and the index of documents;

14.3.3. for the opposing party, one hard copy, double sided in A4 format, in hard binders, the entire submission excluding legal authorities; and

14.3.4. one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, all exhibits, legal authorities and the index of all the supporting documentation.

14.4. The addresses of the Tribunal Members are:

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<sup>2</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

<sup>3</sup> The A4/Letter format is required for ICSID's archiving.

<sup>4</sup> 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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United Kingdom  
Tel: +44 20 7813 8000

John Beechey  
Arbitration Chambers  
Lamb Building (3<sup>rd</sup> Floor  
South)  
Temple  
London EC4Y 7AS  
UK  
Tel: +44(0) 207 167 2040

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- 14.5. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 14.6. Within two weeks after submission of each pleading, the Party submitting the pleading shall send to the Tribunal, the Tribunal Secretary and the opposing party an updated index hyperlinked to all supporting documentation submitted by the party up to that date. The index shall indicate the document number, the name of the document, the date of the document and the pleading with which it was submitted.
- 14.7. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time that the Tribunal or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a joint consolidated and updated hyperlinked index of all documents.
- 14.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
- 14.9. A filing shall be deemed timely if sent by a party by midnight, Central European Time, on the relevant date.

15. Number and Sequence of Pleadings

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

- 15.1. The proceedings shall consist of a written phase followed by an oral phase.
- 15.2. The schedule of the proceedings is set out in Annex A hereto.
- 15.3. The Parties' first submissions shall set forth the facts, the legal argumentation and

the relief sought. The Parties' subsequent submissions shall be limited to replying to the arguments that the counterparty has raised in its previous submission, except that the Claimants may update the quantum of their claim to account for the passage of time since their prior submission (e.g. interest).

- 15.4. Neither party shall be permitted to submit additional pleadings with regard to the merits outside of the Procedural Timetable, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

#### 16. Production of Documents

*Convention Article 43(a); Arbitration Rules 24, 33 and 34*

- 16.1. The Tribunal shall issue, in due course and after consultation with the Parties, a Procedural Order with specific instructions for the production of documents.

#### 17. Submission of Documents

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

- 17.1. The Arbitral Tribunal and the Parties shall adhere to the following guidelines on the numbering of submissions and documents:

- 17.1.1. The Tribunal's communications will be numbered A1, *et seq.*;

- 17.1.2. The Claimants' communications shall be numbered C1, *et seq.*; the Request for Arbitration is hereby renumbered as C1. The Claimant's next communication shall be numbered C2. Documents from Claimant will be numbered sequentially Doc. C1, Doc. C2, *etc.*

- 17.1.3. The Respondents' communications shall be numbered R1 *et seq.* Documents from Respondents will be numbered sequentially Doc. R1, Doc. R2, *etc.*

- 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 and form set forth in §14 above.

- 17.4. Neither party shall be permitted to submit additional or responsive documents outside of the Procedural Timetable, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

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

- 17.4.2. 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 shall be numbered consecutively throughout these proceedings and the pages of any exhibit over five pages in length shall be numbered consecutively, but only in the event the particular exhibit does not already contain page numbers.
- 17.6.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc. This rule applies also to documents submitted together with witness statements. Documents submitted together with expert reports may have separate sequential numbering.
- 17.6.3. Exhibits shall also be submitted in PDF format and the file names shall start with the number “C-0001” and “R-0001,” respectively, following the naming conventions contained in **Annex B**.
- 17.7. 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.
- 17.8. The Parties shall file all supporting documents only once, along with their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements. A Party referring to a document already submitted by the other Party shall refer to the exhibit number of the document that is already in the record rather than resubmitting the same document.
- 17.9. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at a time to be decided at the pre-hearing organizational meeting.

18. Witness Statements and Expert Reports

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

- 18.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 18.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §17.4).
- 18.3. Each witness statement shall be signed and dated by the witness and include:
  - 18.3.1. A disclosure statement detailing any past and present relations of the witness with any party, counsel or the Tribunal;
  - 18.3.2. A description of the witness's position and qualifications, as well as his or her CV, if relevant;
  - 18.3.3. A full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
  - 18.3.4. A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing; and
  - 18.3.5. An affirmation of the truth of the witness statement.
- 18.4. Witness Statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. It shall not be improper for a party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 18.6. Expert Reports shall be dated and signed by the expert or experts and contain:
  - 18.6.1. The full name of the expert;
  - 18.6.2. A disclosure statement detailing any past and present relations of the expert with any party, counsel or the Tribunal;

- 18.6.3. A brief description of the expert's qualifications and his or her CV;
  - 18.6.4. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
  - 18.6.5. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
  - 18.6.6. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
  - 18.6.7. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
  - 18.6.8. The documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report (which may have their own sequential numbering);
  - 18.6.9. An affirmation of his or her genuine belief in the opinions expressed in the report.
- 18.7. Expert Reports shall be submitted in a searchable electronic file format and have consecutive numbering of pages, headings and paragraphs, as well as a detailed table of contents.

19. Examination of Witnesses and Experts

*Arbitration Rules 35 and 36*

- 19.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 19.2. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video-conference may be permitted in exceptional circumstances for justified reasons at the discretion of the Tribunal.
- 19.3. The Parties shall notify the opposing party which witnesses and experts it intends to call for cross-examination on the date specified in the Procedural Timetable. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.
- 19.4. The facts included in a witness' statement who has not been called for cross-examination will not be considered established due to the mere fact that the witness was not called for cross-examination. Unless the Tribunal decides that

the witness should be heard at the hearing, the Tribunal will evaluate the weight of the witness' statement taking into account the entire record and all other relevant circumstances.

- 19.5. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.
- 19.6. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness may conduct a brief direct examination at the hearing. Experts may summarize their reports and findings, either through direct examination or in the form of a brief presentation not exceeding 45 minutes. Any witness or expert called for direct examination may be cross-examined by the other party and questioned by the Tribunal.
- 19.7. As a general rule the scope of cross-examination will be limited to the contents of the witness statement or expert report. Re-direct examination shall as a general rule be limited to the subject of cross-examination. At the request of any party and for good cause, the Tribunal may expand the scope of the cross-examination or the re-direct examination.

## 20. Application of the IBA Rules on the Taking of Evidence in International Arbitration

- 20.1. Without prejudice to applicable provisions of the ICSID Arbitration Rules, the Tribunal may take into consideration the International Bar Association Rules for the Taking of Evidence in International Arbitration (2010) (the "IBA Rules").

## 21. Pre-Hearing Organizational Meetings

### *Arbitration Rule 13*

- 21.1. A pre-hearing organizational meeting shall be held on the date specified in the Procedural Timetable 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. Following the pre-hearing organizational meeting, a Procedural Order will be issued by the Tribunal reflecting the decisions made in preparation for the hearing.

## 22. Hearings

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

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. The hearing shall be held at a place to be determined in accordance with §11

above.

22.3. The hearing shall take place on the date indicated in Annex A.

22.4. 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.

22.5. The hearings may be open to the public.

23. Records of Hearings and Sessions

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

23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

23.2. Verbatim transcript in English shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on the same-day.

24. Post-Hearing Memorials and Statements of Costs

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

24.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

25. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

25.1. The Parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

26. Other Matters

A Party shall disclose to the Tribunal and the other Party, without delay, of the existence of any agreement related to the financing of the arbitration which it may have executed with a third Party.

[signed]

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Juan Fernández-Armesto  
President of the Tribunal  
Date: February 13, 2018

**ANNEX A  
PROCEDURAL TIMETABLE**

	<b>Procedural action</b>	<b>Party required to act</b>	<b>Deadline</b>
	Memorial on the Merits	Claimants	27 June 2018
	Respondent's confirmation as to whether it will file a request for bifurcation (4 weeks from the Memorial)*	Respondent	25 July 2018
	Procedural Order on Document Production according to para. 16.1 of PO n° 1	Tribunal	25 July 2018
<b><u>Procedural Timetable A: Respondent does not submit a Request for Bifurcation</u></b>			
	Counter-Memorial on the Merits [and Memorial on Preliminary Objections] (20 weeks from the Memorial)	Respondent	14 November 2018
Document Production			
	Request for Production of Documents (4 weeks from Counter-Memorial)	Both Parties	12 December 2018
	Production of Non-Contested Documents, and/or Objections to Requests for Production of Documents (5 weeks)	Both Parties	16 January 2019
	Reply to Objections to the Request for Production of Documents – Sent to Tribunal (3 weeks)	Both Parties	6 February 2019
	Decision on Objections to Request for Production of Documents (3 weeks)	Tribunal	27 February 2019
	Production of Documents Ordered by the Tribunal (2 weeks)	Both Parties	13 March 2019
End of Document Production			
	Reply on the Merits [and Counter-Memorial on Preliminary Objections] (12 weeks from the Tribunal's Decision on DPRs)	Claimants	22 May 2019
	Rejoinder on the Merits [and Reply on Preliminary Objections] (18 weeks from the Reply)	Respondent	25 September 2019
	[Rejoinder on Preliminary Objections] (4 weeks)	Claimants	23 October 2019
	Notification of Witnesses/Experts for Cross-Examination	Both Parties	30 October 2019
	Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	15 November 2019
	Pre-Hearing Organizational Meeting	All	26 November 2019

	<b>Procedural action</b>	<b>Party required to act</b>	<b>Deadline</b>
	Hearing	All	27-31 January 2020
	Simultaneous Post-Hearing Briefs (to be determined)	Both Parties	TBD
	Simultaneous Statements on Costs	Both Parties	TBD
<b><u>Procedural Timetable B: Respondent submits a Request for Bifurcation</u></b>			
	Memorial on Preliminary Objections and Request for Bifurcation (12.5 weeks from the Memorial)	Respondent	24 September 2018
	Observations on Request for Bifurcation (3.5 weeks from Memorial on Jurisdiction)	Claimants	17 October 2018
	Hearing on bifurcation by teleconference, if needed	All	Morning, 23 October 2018
	Decision on Bifurcation	Tribunal	7 November 2018
<b><u>Procedural Timetable B1: Proceedings not bifurcated</u></b>			
	Counter Memorial on the Merits (12 weeks from the Decision on Bifurcation)	Respondent	30 January 2019
Document Production			
	Request for Production of Documents (3 weeks from Counter Memorial)	Both Parties	20 February 2019
	Production of Non-Contested Documents, and/or Objections to Requests for Production of Documents (3 weeks)	Both Parties	13 March 2019
	Reply to Objections to the Request for Production of Documents – Sent to Tribunal (2 weeks)	Both Parties	27 March 2019
	Decision on Objections to Request for Production of Documents (2 weeks)	Tribunal	10 April 2019
	Production of Documents Ordered by the Tribunal (2 weeks)	Both Parties	24 April 2019
End of Document Production			
	Counter-Memorial on Preliminary Objections and Reply on the Merits (11 weeks from the Decision on Objections to Request for Production of Documents)	Claimants	26 June 2019
	Reply on Preliminary Objections and Rejoinder on the Merits (16 weeks from the Reply)	Respondent	16 October 2019
	Rejoinder on Preliminary Objections (3 weeks)	Claimants	6 November 2019

	<b>Procedural action</b>	<b>Party required to act</b>	<b>Deadline</b>
	Notification of Witnesses/Experts for Cross-Examination	Both Parties	13 November 2019
	Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	21 November 2019
	Pre-Hearing Organizational Meeting	All	26 November 2019
	Hearing	All	27-31 January 2020
	Simultaneous Post-Hearing Briefs (to be determined)	Both Parties	TBD
	Simultaneous Statements of Costs	Both Parties	TBD
<b><u>Procedural Timetable B2: Proceedings bifurcated</u></b>			
The proceeding on the merits is stayed until the Tribunal issues a Decision on Jurisdiction. The timetable for the merits proceeding will be revised after that Decision, with periods agreed herein to apply in principle.			
	Counter Memorial on Bifurcated Issues (5 weeks from the Decision on Bifurcation)	Claimants	12 December 2018
	Reply on Bifurcated Issues (5 weeks)	Respondent	16 January 2019
	Rejoinder on Bifurcated Issues (3 weeks)	Claimants	6 February 2019
	Notification of Witnesses/Experts for Cross-Examination	Both Parties	13 February 2019
	Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	22 February 2019
	Pre-Hearing Organizational Meeting	All	26 February 2019
	Hearing on Bifurcated issues	All	June 24-28, 2019
	Simultaneous Post-Hearing Briefs (to be determined)	Both Parties	TBD
	Simultaneous Statements of Costs	Both Parties	TBD

**ANNEX B**  
**ELECTRONIC FILE NAMING GUIDELINES**

Please follow these guidelines when naming electronic files. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case. For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES	DATE
<b>MAIN PLEADINGS</b>	<b>Title of Pleading–LANGUAGE</b>	
	<i>Memorial on Jurisdiction-FR</i>	
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>	
	<i>Reply on Annulment-FR</i>	
<b>SUPPORTING DOCUMENTATION</b>  Exhibits to the main pleadings and witness statements	<b>C-####–LANGUAGE</b>	
	<b>R-####–LANGUAGE</b>	
	To be produced sequentially throughout the case.	
	<b>CLAIMANT’S FACTUAL EXHIBITS</b>	
	<i>C-0001-ENG</i>	
	<i>C-0002-SPA</i>	
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>	
	<i>R-0001-FR</i> <i>R-0002-SPA</i>	
Legal Authorities	<b>CL-####–LANGUAGE</b>	
	<b>RL-####–LANGUAGE</b>	
	To be produced sequentially throughout the case.	
	<b>CLAIMANT’S LEGAL AUTHORITIES</b>	
	<i>CL-0001-ENG</i>	
	<i>CL-0002-FR</i>	
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>	
	<i>RL-0001-SPA</i> <i>RL-0002-ENG</i>	
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>	
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>	
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>	
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>	
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>	

	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>	
Legal Opinions	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>	
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>	
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>	
Exhibits to Expert Reports and Legal Opinions	<b>WITNESS/EXPERT INITIALS-###</b>	
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>	
	<i>MJ-0001</i>	
	<i>MJ-0002</i>	
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>	
	<i>TK-0001</i>	
	<i>TK-0002</i>	
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>	
	<i>LS-0001</i>	
<i>LS-0002</i>		
<b>INDEXES</b>	<b>Consolidated Hyperlinked Index</b>	
	<b>Index of Exhibits-C-#### to C-####</b>	
	<i>Index of Exhibits-C-0001 to C-0023</i>	
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>	
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>	
<b>OTHER APPLICATIONS</b>	<b>Name of Application-[Party]-LANGUAGE</b>	
	<i>Preliminary Objections under Rule 41(5)-SPA</i>	
	<i>Request for Bifurcation-ENG</i>	
	<i>Request for Provisional Measures-[Respondent]-SPA</i>	
	<i>Request for Production of Documents-[Claimant]-SPA</i>	
	<i>Request for Stay of Enforcement-FR</i>	
	<i>Request for Discontinuance-[Claimant]-ENG</i>	
	<i>Post-Hearing Brief-[Claimant]-SPA</i>	
	<i>Costs Submissions-[Respondent]-ENG</i>	
	<i>Observations to Request for [XX]-[Claimant]-SPA</i>	