

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Hela Schwarz GmbH

v.

People's Republic of China

(ICSID Case No. ARB/17/19)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Sir Daniel Bethlehem QC, President of the Tribunal

Mr. Roland Ziadé, Arbitrator

Professor Campbell McLachlan QC, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Mr. Paolo Busco

9 March 2018

Contents

1. Applicable Arbitration Rules	5
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	5
3. Fees and Expenses of Tribunal Members	6
4. Presence and Quorum	7
5. Rulings of the Tribunal	7
6. Power to Fix Time Limits	7
7. Secretary of the Tribunal	8
8. Assistant to the Tribunal	8
9. Representation of the Parties	9
10. Apportionment of Costs and Advance Payments to ICSID.....	10
11. Place of Proceeding.....	11
12. Procedural Language, Translation and Interpretation.....	11
13. Routing of Communications	12
14. Number of Copies and Method of Filing of Parties' Pleadings.....	12
15. Provisional Measures	14
16. Objections to Jurisdiction and/or Admissibility	15
17. Number and Sequence of Pleadings	15
18. Production of Documents	15
19. Submission of Documents	16
20. Witness Statements and Expert Reports	18
21. Examination of Witnesses and Experts.....	18
22. Pre-Hearing Organizational Meetings	19
23. Hearings	20
24. Records of Hearings and Sessions	20
25. Post-Hearing Briefs and Statements of Costs	21
26. Document Security.....	21
27. Publication	21
Annex A	22
Annex B	27
Annex C	28

Introduction

The first session of the Tribunal was held on 1 February 2018,¹ beginning at 7:00 GMT, by telephone conference. The session was adjourned at 9:00 GMT.

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

The following individuals participated in the conference:

Tribunal

Sir Daniel Bethlehem QC, President
Mr. Roland Ziadé, Arbitrator
Professor Campbell McLachlan QC, Arbitrator

Tribunal Assistant

Mr. Paolo Busco, 20 Essex Street Chambers

Tribunal Secretary

Ms. Lindsay Gastrell, ICSID Secretariat

Claimant

Counsel:

Mr. Philipp K. Wagner, WAGNER Arbitration
Mr. Florian Dupuy, WAGNER Arbitration
Mr. Petrit Elshani, WAGNER Arbitration

Respondent

Counsel:

Prof. Emmanuel Gaillard, Shearman & Sterling LLP
Dr. Nils Eliasson, Shearman & Sterling LLP
Mr. Emmanuel Jacomy, Shearman & Sterling LLP
Mr. Jeremy Sharpe, Shearman & Sterling LLP
Mr. Marc Jacob, Shearman & Sterling LLP
Mr. Eric Li, Shearman & Sterling LLP
Mr. Xiusong Xing, Global Law Office
Mr. Xin Zhang, Global Law Office
Mr. Qing Ren, Global Law Office
Ms. Heng Wang, Global Law Office
Ms. Yalin Li, Global Law Office

¹ Both Parties agreed to hold the first session after the 60-day period specified in ICSID Arbitration Rule 13. See Parties' letters of 15 January 2018.

Procedural Order No. 1

Parties:

Mr. Chenghua Jiang, MOFCOM

Mr. Youyou Wang, MOFCOM

Mr. Zhao Sun, MOFCOM

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 12 January 2018;
- The Parties' letters dated 26 January 2018, providing their comments on the Draft Procedural Order, and the annotated Procedural Order submitted by the Respondent;
- The Draft Procedural Order circulated by the Tribunal Secretary on 29 January 2018, which consolidated the Parties' comments and set out the Tribunal's observations and initial proposals on certain matters; and
- The Draft Agenda circulated by the Tribunal Secretary on 29 January 2018.

Following the session, on 2 February 2018, the Tribunal Secretary circulated a revised Draft Procedural Order to the Parties for comment. Having considered the Parties' comments, 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, alongside the ICSID Arbitration Rules, 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 10 April 2006.

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

- 2.1. The Tribunal was constituted on 8 January 2018 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). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 8 January 2018.

- 2.3. In order for the Members of the Tribunal to fulfil their continuing disclosure obligations, the Tribunal seeks the cooperation of each Party in promptly drawing to the Tribunal's attention any such circumstances known to that Party in respect of which it considers that further information would be appropriate as soon as such circumstances become known to that Party.
 - 2.4. The Members of the Tribunal have 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*; 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.
 - 3.5. In the event of a cancellation or postponement of a hearing in consequence of a request or decision of the Parties less than one week prior to the scheduled start date of the hearing, or at any time during the hearing, the Tribunal may charge to the Parties 75% of its notional sitting rate based on an 8-hour day multiplied by the number of days reserved for the hearing. In the event of cancellation or postponement of a hearing in consequence of a request or decision of the Parties less than four weeks but more than one week prior to the scheduled start date of the hearing, the Tribunal may charge to the Parties 50% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing. In the event of a cancellation or postponement of a hearing in consequence of a request or decision of the Parties more than four weeks but less than 12 weeks before the scheduled start date, the Tribunal may charge to the Parties 30% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days

Procedural Order No. 1

reserved for the hearing. This paragraph is without prejudice to any decision by Tribunal on the award of costs.

- 3.6. The preceding §3.5 shall not apply in the case of the cancellation of the hearing in consequence of *force majeure*, including as regards the Tribunal. Issues concerning fees, costs and other expenses associated with the cancellation of the hearing, and whether a matter falls within the scope of *force majeure* for purposes of this provision, shall be addressed by the Tribunal on an interlocutory basis after affording the Parties an opportunity to present their views.

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, including by any appropriate means of communication.

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 except that, where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. 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 month thereafter. If an award has not been issued within six months, the Tribunal will provide the Parties with status updates every three months thereafter.
- 5.4. The President is authorized to issue Procedural Orders 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

Procedural Order No. 1

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 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:

Ms. 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
Paralegal's email: cferguson2@worldbank.org

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

Ms. Lindsay Gastrell
701 18th Street, N.W. ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-0419

8. Assistant to the Tribunal

8.1. The Tribunal considers that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. By letter of 12 January 2018, the President proposed, with the approval of the other members of the Tribunal, that Mr. Paolo Busco be appointed as Assistant to the Tribunal. Mr. Busco's *curriculum vitae* was provided to the Parties.

8.2. The Parties subsequently approved the appointment of the Assistant.

8.3. Mr. Busco will (i) undertake only such specific tasks as are assigned to him by the President of the Tribunal, including the monitoring of the case correspondence, research, organization of materials, and similar matters, and (ii) undertake such tasks in support of the ICSID Secretary of the Tribunal as the Secretary of the Tribunal and the President of the Tribunal may consider appropriate. Mr. Busco

will not undertake any functions incumbent upon the President as arbitrator, nor duplicate the tasks of the ICSID Secretary of the Tribunal.

- 8.4. The Assistant shall be subject to the same confidentiality obligations as the Members of the Tribunal and sign a declaration to that effect.
- 8.5. Mr. Busco shall receive: (a) US\$ 150 for each hour of work performed in connection with the case or pro rata; (b) a flat rate of US\$ 1,200 per day of hearing; and (c) reimbursement of reasonable expenses related to the hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses. The fees and expenses of Mr. Busco will be paid from the advance payments made by the parties.
- 8.6. Mr. Busco's contact details are: 20 Essex Street, London WC2R 3AL, United Kingdom; pbusco@20essexst.com; Tel: +44-20-7842-1200.

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 Claimant

WAGNER ARBITRATION
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For Respondent

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Prof. Emmanuel Gaillard
Dr. Nils Eliasson
Mr. Emmanuel Jacomy

Procedural Order No. 1

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zhangxin@glo.com.cn
renqing@glo.com.cn

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 9 January 2018, ICSID requested that each Party pay US\$200,000 to cover the initial costs of the proceeding. ICSID confirmed having received the Claimant's payment on 8 February 2018 and confirmed having received the Respondent's payment on 2 February 2018.
- 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. London shall be the place of the proceeding.
- 11.2. The Tribunal may hold hearings at any other place that it considers appropriate, or by video or telephone conference, if the Parties so agree. The Tribunal notes the Parties' suggestion that the Tribunal should in due course consider holding hearings in Paris for reasons of cost and convenience to the Parties.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language, 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. The Party relying on a document shall provide a translation. Translations need not be certified. If the other Party does not agree to the translation, it may object, stating its alternative translation. In such cases, the Parties shall then endeavour to reach agreement on an authentic translation. Failing agreement between the Parties, following an application to the Tribunal to do so, showing the materiality of the translation in dispute, the Tribunal shall commission an official translation of the document, or of relevant extracts identified by the Parties, at the expense of the case file.
- 12.5. Documents exchanged between the Parties in a language other than English under §18 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. The form of interpretation (simultaneous or consecutive) shall be determined by the Tribunal and set out in a subsequent order after consultation with the Parties.
- 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §22 below), which witnesses or experts require interpretation.

Procedural Order No. 1

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.

13. Routing of Communications

Administrative and Financial Regulation 24

13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.

13.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.

13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal.

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

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

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

14.1. By midnight, Washington, D.C. time, on the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading (including witness statements, expert reports, exhibits and legal authorities).²

14.2. Within three business days, the Parties shall upload the pleading, with all the supporting documentation and the corresponding updated hyperlinked index to the file sharing platform that will be created by ICSID for purposes of this case.

14.3. Within three business days following the electronic filing, the Parties shall courier to the Tribunal Secretary:

14.3.1. one unbound hard copy in A4/Letter format³ of the entire submission,⁴ including signed copies of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including legal authorities) and the index; and

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

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

⁴ The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

Procedural Order No. 1

- 14.3.2. two USB drives with an electronic copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and an updated hyperlinked index of all supporting documentation submitted by that Party to date.
- 14.4. Within three business days following the electronic filing, the Parties shall courier to the opposing Party at the addresses indicated at §9.1 above one USB drive with an electronic copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and an updated hyperlinked index of all supporting documentation submitted by that Party to date.
- 14.5. Also within three business days following the electronic filing, the Parties shall courier to each Member of the Tribunal at the addresses indicated at §14.4 below, and to Mr. Busco at the address indicated in §8.6 above:
- 14.5.1. for Sir Daniel, one hard copy in A5 format of the pleading, witness statements and expert reports (but not including exhibits and legal authorities, which should be provided in electronic format only, together with an updated hyperlinked index);
- 14.5.2. for Mr. Ziadé, one hard copy in A5 format of the pleading, witness statements and expert reports, including exhibits (exhibits and legal authorities should also be provided in electronic format, together with an updated hyperlinked index);
- 14.5.3. for Prof. McLachlan, one hard copy in A5 format of the pleading, witness statements and expert reports (but not including exhibits and legal authorities, which should be provided in electronic format only, together with an updated hyperlinked index);
- 14.5.4. for Mr. Busco, one hard copy in A5 format of the pleading, witness statements and expert reports, including exhibits (exhibits and legal authorities should also be provided in electronic format, together with an updated hyperlinked index).
- 14.5.5. one USB drive (both PC / Mac *and* iPad compatible, e.g., using a Leef iBridge 3 or SanDisk USB drive) with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 14.6. The addresses of the Tribunal Members are as follows:

Procedural Order No. 1

Sir Daniel Bethlehem, QC 20 Essex Street London WC2R 3AL Unite Kingdom +44 20 7842 1200	Prof. Campbell McLachlan QC Victoria University of Wellington Law School Old Government Buildings 15 Lambton Quay Wellington 600 New Zealand +64 4 463 6347	Mr. Roland Ziadé Linklaters LLP 25 rue de Marignan 75008 Paris France +33 1 56 43 28 34
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- 14.7. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal. For the avoidance of doubt, legal authorities submitted in electronic form shall take the form of a soft pdf copy of the full text of the authority in question rather than simply a hyperlink or a reference to an external internet source.
- 14.8. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 14.9. All pleadings shall be accompanied by the updated index hyperlinked to the supporting documentation submitted by the Party to date. The index shall indicate the document number and the pleading with which it was submitted.
- 14.10. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat, each Member of the Tribunal and the Tribunal Assistant 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 consolidated hyperlinked index of all documents.
- 14.11. 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.
- 14.12. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

15. Provisional Measures

Convention Article 47; Arbitration Rule 39

- 15.1. The Tribunal may order provisional measures in accordance with the Article 47 of the ICSID Convention and ICSID Arbitration Rule 39.
- 15.2. On 4 December 2017, the Claimant submitted a Request for Provisional Measures (which was updated on 6 December 2017). In accordance with the briefing schedule set by the Secretary-General, the Respondent submitted its Observations on the Request for Provisional Measures on 13 December 2017, the Claimant submitted

Procedural Order No. 1

its Reply on 18 December 2017, and the Respondent submitted its Rejoinder on 22 December 2017.

- 15.3. Further procedural matters concerning the Claimant's Request for Provisional Measures will be addressed as appropriate in a separate Procedural Order.

16. Objections to Jurisdiction and/or Admissibility

Arbitration Rule 41

- 16.1. Subject to §§16.2 to 16.4 below, the Tribunal will be guided by ICSID Arbitration Rule 41 in respect of any objections to jurisdiction and/or admissibility.
- 16.2. The Respondent having raised certain objections in correspondence of 21 June 2017 which may be considered jurisdictional in character, any objection to jurisdiction and/or admissibility that the Respondent contends should be heard as a preliminary matter shall be made as soon as possible following receipt of the Claimant's Memorial and in any event not later than 3 months after receipt of that Memorial. Such objection shall include a reasoned application for the matter to be addressed in a preliminary procedure.
- 16.3. The Tribunal shall determine the subsequent procedure after affording the Claimant an opportunity to present its views on the question of bifurcation.
- 16.4. The procedural schedule set out in Annex A addresses the alternative scenarios in which the Tribunal either does or does not order a bifurcated procedure.
- 16.5. §§16.2 to 16.4 above shall not preclude the Respondent from raising objections to jurisdiction and/or admissibility in the Counter-Memorial if it does not contend that such objections should be heard in a bifurcated procedure.

17. Number and Sequence of Pleadings

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

- 17.1. The number and sequence of the Parties' pleadings are set out in the schedule at Annex A hereto.

18. Production of Documents

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

- 18.1. The Parties affirm that they have sought to preserve all documents relating to the matters in issue in this arbitration and that they are not aware of the destruction, deletion, or alteration of any such documents. The Parties further undertake to take all necessary steps to ensure the preservation of all documents relating to the matters in issue in this arbitration.
- 18.2. The Tribunal shall be guided by Articles 3 and 9 of the International Bar

Procedural Order No. 1

Association Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules”) in relation to document production in this case.

- 18.3. On the date provided in Annex A, each Party may serve a request for production of documents on the other Party. Such a request for production shall comply with the rules set forth in Article 3 of the IBA Rules. The request shall be made in the form of the Schedule attached in Annex B, in both Word and PDF format, and shall not be copied to the Tribunal or the Tribunal Secretary.
- 18.4. On the date provided in Annex A, the other Party shall, using the schedule provided by the first Party, provide the requesting Party with reasoned objections for its refusal to produce responsive documents.
- 18.5. On the date provided in Annex A, the other Party shall produce the requested documents to which it has not filed any objection.
- 18.6. On the date provided in Annex A, the requesting Party shall reply to the other Party’s objections in that same schedule, and if disagreements cannot be resolved, shall submit the schedule to the Tribunal, with a copy to the other Party (in both Word and PDF formats).
- 18.7. The Tribunal will make its best efforts to rule on the objections in a timely manner upon receiving the schedule.
- 18.8. Documents shall be communicated directly to the Requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §19 below.
- 18.9. Neither Party shall be permitted to submit additional requests for the production of documents, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

19. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rules 24 and 34

- 19.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 19.2. 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 it is fair and reasonable to do so based on a reasoned written request followed by observations from the other Party.

Procedural Order No. 1

- 19.2.1. 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.
- 19.2.2. 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.
- 19.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 19.4. The documents shall be submitted in the following form:
 - 19.4.1. Exhibits shall be numbered consecutively throughout these proceedings, beginning with the number 0001.
 - 19.4.2. 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.
 - 19.4.3. Each factual exhibit filed in hardcopy shall have a divider with the Exhibit identification number on the tab.
 - 19.4.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 19.4.5. Factual and legal exhibits shall also be submitted in PDF format, following the naming guidelines contained in Annex C.
- 19.5. 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.
- 19.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 19.7. Demonstrative exhibits (such as charts, tabulations, or any other manipulations of exhibits, including if used in PowerPoint slides) 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

Procedural Order No. 1

provide them in hard and soft copy to the other Party, the Tribunal Members, the Tribunal Secretary and the Tribunal Assistant no later than at the start of the hearing session at which demonstrative exhibit is addressed. Copies of demonstrative exhibits shall be provided to the court reporter(s) and interpreter(s) sufficiently in advance of the hearing session in which they will be addressed to enable the court reporter(s) and interpreter(s) an adequate opportunity to familiarise themselves with the demonstrative exhibits.

20. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 20.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 20.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines it is fair and reasonable to do so based on a reasoned written request followed by observations from the other party (following the procedure outlined in §19.2).
- 20.3. Each witness statement and expert report shall be signed and dated by the witness.

21. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 21.1. Unless otherwise decided by the Tribunal, IBA Rules Articles 4, 5 and 8 apply to the examination of fact and expert witnesses, respectively.
- 21.2. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 21.3. On the date indicated in Annex A, each Party shall notify to the other Party, with a copy to the Tribunal, which witnesses or experts it wishes to cross examine at the hearing.
- 21.4. Within 2 weeks after the Parties' notification, the Tribunal will indicate to the Parties whether it wishes any witnesses or experts who have not been designated to testify to appear at the hearing.
- 21.5. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will ultimately decide upon the appropriate allocation of such costs.
- 21.6. As regards (i) the appearance and non-appearance of witnesses and experts and the consequences thereof; (ii) the availability of videoconference for witness testimony; and (iii) expert conferencing, the Tribunal will be guided by Articles

Procedural Order No. 1

4.7, 4.8, 5.4, 5.5, 5.6 and 8.1 of the IBA Rules.

- 21.7. Subject to further discussion at the pre-hearing organizational meeting, the examination of each witness shall proceed as follows at the hearing:
- 21.7.1. Before giving evidence, fact witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and expert witnesses shall make the declaration in ICSID Arbitration Rule 35(3).
- 21.7.2. Factual and expert witness statements shall stand as examination in chief of the witness at the hearing. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after that witness's written statement was signed (direct examination). After consultation with the Parties, the Tribunal may also request non-legal experts to give a presentation lasting no longer than thirty minutes before the start of their cross-examination summarizing their methodology and conclusions.
- 21.7.3. Direct examination shall be followed by cross-examination. After cross-examination, the Party presenting the witness may briefly re-examine the witness on matters within the scope of cross-examination (re-direct examination).
- 21.7.4. The Tribunal may examine the witness at any time, before, during or after examination by one of the Parties.
- 21.8. Subject to a different agreement of the Parties or a different determination of the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, prior to his or her examination. Fact witnesses may be in the hearing room after completion of their testimony. This limitation does not apply to expert witnesses, who shall not be sequestered.
- 21.9. In the event that a Party Representative is also a fact witness who is to be examined, the Party may apply to the Tribunal for that Representative to be present in the hearing room and to have access to a transcript. After consultation with the Parties, the Tribunal shall decide on the appropriate arrangements to be put in place in respect of any such witness.
- 21.10. The Tribunal shall, at all times, have complete control over the evidentiary hearing as set forth in IBA Article 8(2).

22. Pre-Hearing Organizational Meetings
Arbitration Rule 13

Procedural Order No. 1

22.1. A pre-hearing organizational meeting shall be held at a date 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.

23. Hearings

Arbitration Rules 20(1)(e) and 32

23.1. The oral procedure shall consist of a hearing, or hearings, as appropriate, for examination of witnesses and experts, if any, and for oral arguments.

23.2. Hearings shall take place at a location and on dates to be determined by the Tribunal, in consultation with the Parties, in a timely manner following the close of the written phase of the proceedings to which the hearing relates. The Tribunal and the Parties shall maintain the hearing dates set out in the schedule in Annex A.

23.3. The Members of the Tribunal shall endeavour to reserve at least one day after the hearings to determine the next steps and to hold deliberations.

23.4. The allocation of time for each hearing will be addressed in the pre-hearing organizational meeting.

23.5. The Parties agree that hearings shall be closed to the public.

24. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

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

24.2. Verbatim transcript(s) 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 a same-day basis.

24.3. The Parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties or the court reporter in the transcripts. The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties or the court reporter in the revised transcripts.

25. Post-Hearing Briefs and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 25.1. Towards the end of the hearing, the Tribunal will consult with the Parties on the issue of the need for and submission of Post-Hearing Briefs and, as appropriate, will determine the additional details regarding such briefs, including whether additional evidence may be submitted.
- 25.2. The Parties shall submit their cost submissions at a date agreed by the Parties in due course or as directed by the Tribunal.

26. Document Security

- 26.1. The Parties affirm that they will take such steps as are appropriate to ensure a high standard of document security, having regard to proper concerns to safeguard government and commercial confidentiality. In the event of specific concerns about document security, any Party may, at any time during the proceedings, request that the Tribunal issue a Confidentiality Order in respect of any particular document/s that contain sensitive information or a procedural order concerning document security or confidentiality more generally. The Tribunal will consult with the Parties before making any such order.

27. Publication

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

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

[signed]

Sir Daniel Bethlehem QC
President of the Tribunal
Date: 9 March 2018

Annex A

PROCEDURAL TIMETABLE

Alternative Schedule 1 – The following timetable shall apply if the Respondent does not raise preliminary objections under Arbitration Rule 41(1) or does not request bifurcation for the hearing of any such objection/s:

Description	Party / Tribunal	Final date / period
Application to Amend the Request for Arbitration, if any	Claimant	22 February 2018 <i>3 weeks after the First Session</i>
Observations on any Application to Amend the Request for Arbitration	Respondent	22 March 2018
Decision on any Application to Amend the Request for Arbitration	Tribunal	13 April 2018
Memorial on the Merits	Claimant	29 June 2018
Counter-Memorial on the Merits and Memorial on Preliminary Objections	Respondent	30 November 2018
Request for Production of Documents	Parties	21 December 2018 <i>3 weeks after Counter-Memorial</i>
Production of Non-Contested Documents, and/or Objections to Requests for Production of Documents	Parties	18 January 2019 <i>4 weeks after the Request for the Production of Documents</i>
Reply to Objections to the Request for Production of Documents – Sent to Tribunal	Parties	11 February 2019 <i>3 weeks after Objections to Production</i>

Hela Schwarz GmbH v. People's Republic of China
(ICSID Case No. ARB/17/19)

Procedural Order No. 1 – Annex A

Description	Party / Tribunal	Final date / period
Decision on Objections to Request for Production of Documents	Tribunal	11 March 2019 <i>4 weeks after Document Production Application sent to the Tribunal</i>
Production of Documents Ordered by the Tribunal	Parties	8 April 2019 <i>4 weeks after Tribunal's Decision on Document Production</i>
Reply on the Merits [and Counter-Memorial on Preliminary Objections]	Claimant	8 July 2019 <i>3 months after the Production of Documents</i>
Rejoinder [and Reply on Preliminary Objections]	Respondent	8 October 2019 <i>3 months after the Reply</i>
[Rejoinder on Objections to Jurisdiction, Admissibility or Competence]	Claimant	8 November 2019 <i>1 month after the Rejoinder on the Merits and Reply on Preliminary Objections</i>
Notification of Witnesses/Experts for Cross-Examination	Parties	<i>10 weeks before hearing</i>
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	<i>Within 2 weeks of Notification by Parties</i>
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing	All	22 June to 1 July 2020 <i>5 to 8 day hearing, as appropriate</i>
[Post-Hearing Briefs]	Parties	<i>TBD</i>
Statements on Costs	Parties	<i>TBD</i>
Award	Tribunal	<i>TBD</i>

Alternative Schedule 2 – The following timetable shall apply if the Respondent raises preliminary objections under Arbitration Rule 41(1) and requests bifurcation:

Description	Party / Tribunal	Final date / period
Application to Amend the Request for Arbitration, if any	Claimant	22 February 2018 <i>3 weeks after the First Session</i>
Observations on any Application to Amend the Request for Arbitration	Respondent	22 March 2018
Decision on any Application to Amend the Request for Arbitration	Tribunal	13 April 2018
Memorial on the Merits	Claimant	29 June 2018
Memorial on Preliminary Objections and Request for Bifurcation	Respondent	1 October 2018 <i>3 months after Memorial</i>
Observations on Request for Bifurcation	Claimant	29 October 2018 <i>4 weeks after Request for Bifurcation</i>
Reply on Bifurcation	Respondent	5 November 2018 <i>1 week after Observations on Request for Bifurcation</i>
Rejoinder on Bifurcation	Claimant	12 November 2018 <i>1 week after Reply on Bifurcation</i>
Decision on Bifurcation	Tribunal	17 December 2018 <i>5 weeks after Observations on Bifurcation</i>
IF NO BIFURCATED HEARING Counter-Memorial on the Merits	Respondent	17 April 2019 <i>4 months after Decision on Bifurcation rejecting bifurcation</i>
Request for Production of Documents	Parties	8 May 2019 <i>3 weeks after Counter-Memorial</i>

Hela Schwarz GmbH v. People's Republic of China
(ICSID Case No. ARB/17/19)

Procedural Order No. 1 – Annex A

Description	Party / Tribunal	Final date / period
Production of Non-Contested Documents and/or Objections to Requests for Production of Documents	Parties	5 June 2019 <i>4 weeks after the Request for the Production of Documents</i>
Reply to Objections to the Request for Production of Documents – Sent to Tribunal	Parties	26 June 2019 <i>3 weeks after Objections to Production</i>
Decision on Objections to Request for Production of Documents	Tribunal	24 July 2019 <i>4 weeks after Document Production Application sent to the Tribunal</i>
Production of Documents ordered by the Tribunal	Parties	21 August 2019 <i>4 weeks after Tribunal's Decision on Document Production</i>
Reply on the Merits and Counter-Memorial on Preliminary Objections	Claimant	21 November 2019 <i>3 months after the Production of Documents</i>
Rejoinder on the Merits and Reply on Preliminary Objections	Respondent	21 February 2020 <i>3 months after the Reply on the Merits</i>
Rejoinder on Objections to Jurisdiction, Admissibility or Competence	Claimant	23 March 2020 <i>1 month after the Reply on Preliminary Objections</i>
Notification of Witnesses/Experts for Cross-Examination	Parties	<i>10 weeks before hearing</i>
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	<i>Within 2 weeks of Notification by Parties</i>
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing	All	22 June to 1 July 2020 <i>5 to 8 day hearing, as appropriate</i>
[Post-Hearing Briefs]	Parties	<i>TBD</i>
Statements on Costs	Parties	<i>TBD</i>

Hela Schwarz GmbH v. People's Republic of China
(ICSID Case No. ARB/17/19)

Procedural Order No. 1 – Annex A

Description	Party / Tribunal	Final date / period
Award	Tribunal	<i>TBD</i>

Alternative Schedule 3 – The following timetable shall apply if the Tribunal decides to bifurcate the proceedings:

Description	Party / Tribunal	Final period / date
Counter-Memorial on Preliminary Objections	Claimant	18 March 2019 <i>3 months Decision on Bifurcation</i>
Reply on Preliminary Objections	Respondent	18 April 2019 <i>1 month after Counter-Memorial on Preliminary Objections</i>
Rejoinder on Preliminary Objections	Claimant	20 May 2019 <i>1 month after Reply on Preliminary Objections</i>
Notification of Witnesses/Experts for Cross-examination, if any	Parties	<i>10 weeks before hearing</i>
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	<i>Within 2 weeks of Notification by Parties</i>
Pre-Hearing Organizational Meeting	All	<i>TBD</i>
Hearing on Preliminary Objections	All	25 to 27 November 2019 <i>3-day hearing</i>
[Post-Hearing Briefs]	Parties	<i>TBD</i>
Statements of Costs	Parties	<i>TBD</i>
Decision/Award on Preliminary Objections	Tribunal	<i>TBD</i>

If any issues remain after the Tribunal's Decision on Preliminary Objections, the Tribunal will fix the schedule for further proceedings in consultation with the Parties.

Annex B

DOCUMENT PRODUCTION SCHEDULE TEMPLATE

Document Request No.	
A. Documents or category of documents requested	
B. Relevance and materiality: (1) para ref to submissions (2) comments	
C. Summary of objections by disputing Party to production of requested documents	
D. Reply	
E. Decision of the Tribunal	

Annex C

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

Procedural Order No. 1 – Annex C

	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<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>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[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>	