

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. 4

**REASONED DECISION ON THE CLAIMANT'S REQUEST
TO AMEND THE REQUEST FOR ARBITRATION**

Members of the Tribunal

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

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Mr. Paolo Busco

15 May 2019

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I. INTRODUCTION

1. On 2 May 2017, the Claimant filed a Request for Arbitration with ICSID (“**Request for Arbitration**”). The ICSID Secretariat acknowledged receipt of the Request for Arbitration and transmitted it to Respondent that same day. On 4 May 2017, the Secretariat sent the Claimant a list of questions relating to the Request for Arbitration.
2. On 9 May 2017, the Claimant’s then counsel, Dentons LLP in Beijing, informed ICSID that it had withdrawn and would no longer represent the Claimant in the arbitration. On 6 June 2017, Dr. Florian Dupuy and Dr. Joseph Schwartz, of Wagner Arbitration in Berlin, informed ICSID that the Claimant had retained their firm to represent it in these proceedings.
3. By letter of 19 June 2017, the Claimant provided its responses to the Secretariat’s questions of 4 May 2017. On 21 June 2017, the Respondent filed comments on the Claimant’s responses. Later that day, the ICSID Secretary-General registered the Request for Arbitration and notified the Parties.
4. On 4 December 2017, the Claimant filed an application for provisional measures. The Parties subsequently filed two rounds of written submission addressing that application. In its submissions, the Claimant indicated that it would be seeking an additional form of relief not mentioned in the Request for Arbitration. In addition, the Claimant’s submissions suggested that its underlying case might be broader in scope than that set forth in the Request for Arbitration.
5. On 8 January 2018, the Tribunal was constituted in accordance with Article 37(2)(a) of the ICSID Convention.
6. The first session was held on 1 February 2018 by teleconference. During the first session, in response to a question from the President of the Tribunal, the Claimant confirmed that it was planning to file an application to amend its request for relief set forth in the Request for Arbitration. The President noted that such an application would need to be filed in an expeditious fashion.

7. Following the first session, an audio recording and written transcript of the teleconference were provided to the Tribunal and the Parties.
8. On 26 February 2018, the Claimant filed what it described as “Clarifications to the Request for Arbitration” by which it applied to clarify and/or amend certain aspects of its Request for Arbitration. Notwithstanding its title, this constituted an application by the Claimant, through its new counsel of record, to be permitted to extensively revise and extend the Claimant’s original Request for Arbitration. For purposes of its analysis and decision, the Tribunal accordingly describes the Claimant’s 26 February 2018 application as the Claimant’s Request for Arbitration Revision Request (“**RfA Revision Request**”).
9. On 9 March 2018, the Tribunal issued Procedural Order No.1 addressing the procedural organisation of the arbitration.
10. Pursuant to the invitation of the Tribunal, on 22 March 2018, the Respondent filed its Observations on the Claimant’s Application to Amend the Request for Arbitration (“**Observations**”).
11. By letter from the Tribunal Secretary of 10 April 2018, the Tribunal communicated to the Parties its decision accepting the Claimant’s RfA Revision Request, together with summary reasons for so doing. The present Procedural Order sets out the Tribunal’s fully reasoned and elaborated Decision, reflecting the conclusions contained in the Tribunal’s letter of 10 April 2018.
12. The Tribunal’s letter of 10 April 2018 also communicated to the Parties the Tribunal’s decision, and summary reasons therefor, denying the Claimant’s request for provisional measures. The Tribunal’s fully reasoned and elaborated decision on the Claimant’s provisional measures request was subsequently addressed in Procedural Order No.2 of 10 August 2018.
13. On 17 December 2018, the Tribunal issued Procedural Order No.3 denying the Respondent’s request for the proceedings to be bifurcated to enable its objections to jurisdiction and admissibility to be addressed at a preliminary phase. By that Procedural

Order, the Respondent's objections to jurisdiction and admissibility were joined to the proceedings in the merits.

II. THE REQUESTED CLARIFICATIONS AND AMENDMENTS

14. In this section, the Tribunal (a) provides an overview of the Claimant's case as pleaded in the Request for Arbitration, and (b) identifies the amendments the Claimant seeks to make to its case.

A. The Request for Arbitration

15. In the Request for Arbitration, the Claimant invokes the Agreement between the Federal Republic of Germany and the People's Republic of China on the Encouragement and Reciprocal Protection of Investments (the "**BIT**") as the Respondent's written consent to ICSID arbitration.
16. The dispute described in the Request for Arbitration arises out of the Claimant's alleged investment in the People's Republic of China (the "**PRC**") through a wholly owned subsidiary, Ji'nan Hela Schwarz Food Co., Ltd. ("**JHSF**"), which was established in 1996.¹ In 2001, JHSF was granted the legal right to use a parcel of state-owned industrial land in Shandong Province (the "**Land**") for 50 years, until 29 July 2051.² After receiving this right, JHSF built a series of buildings on 4821.18 square meters of the Land (the "**Buildings**").³
17. On 11 September 2014, the Jinan Municipal Government issued a Housing Expropriation Decision to expropriate the Land and the Buildings (the "**Expropriation Decision**").⁴ JHSF challenged the Expropriation Decision through an administrative process of the Shandong Provincial Government,⁵ and then through a lawsuit against the Jinan Municipal

¹ Request for Arbitration, ¶ 8. The dispute is summarised in the Tribunal's Procedural Order No. 2, which addresses Claimant's request for provisional measures. Only the main points are recalled in this section.

² Request for Arbitration, ¶ 9; **Exhibit C-1**, The People's Republic of China State-Owned Land Use Certificate, 2001.

³ Request for Arbitration, ¶ 10.

⁴ Request for Arbitration, ¶ 11.

⁵ Request for Arbitration, ¶ 12; **Exhibit C-2**, Application for Administrative Review, 2 July 2014.

Government at the Intermediate People’s Court.⁶ None of these challenges was successful.⁷

18. In August 2016, the Jinan Municipal Government issued a Housing Expropriation Compensation Decision, in which it offered to pay compensation to JHSF in the amount of Rmb 32,954,380 (about US\$ 5 million).⁸
19. The Request for Arbitration states that the Claimant “strongly objects to the expropriation and compensation believing [that] the expropriation is illegitimate and the compensation amount has been largely undervalued”.⁹ The Claimant alleges that the expropriation was not carried out for the public benefit, and that the compensation offered in the Compensation Decision was much lower (on a per meter basis) than the price of four other expropriated pieces of surrounding land. In this regard, the Request for Arbitration refers to Article 9 of the BIT (“Expropriation and Compensation”).
20. The Claimant formulated its request for relief in the Request for Arbitration as follows:
 - “a) ORDER that the Respondent pay justifiable expropriation compensation;
 - b) ORDER that the Respondent pay all costs of this arbitration, including the lodging fee, all fees and expenses of the Tribunal, and all costs and expenses incurred by the Claimant in prosecuting these proceedings, including legal fees, internal management costs, and all associated expenses;
 - c) ORDER any further or other relieves as the Tribunal in its discretion sees fit.”¹⁰

⁶ Request for Arbitration, ¶ 13; **Exhibit C-4**, Administrative Complaint, 3 May 2016.

⁷ Request for Arbitration, ¶¶ 12-13; **Exhibit C-3**, Administrative Reconsideration Decision, The People’s Government of Shandong Province, 15 April 2015; **Exhibit C-5**, Administrative Ruling, Shandong Jinan Intermediate People’s Court, 19 July 2016; **Exhibit C-6**, Administrative Ruling, Shandong Higher People’s Court, 6 December 2016.

⁸ Request for Arbitration, ¶ 14; **Exhibit C-7**, Expropriation Compensation Decision No. 5, Jinan Municipal Government, 29 August 2016.

⁹ Request for Arbitration, ¶ 15.

¹⁰ Request for Arbitration, ¶ 36.

21. The Request for Arbitration further states:

“Hela reserves its right to supplement, expand upon, or amend the factual and legal claims, arguments and evidence it has submitted in the present Request in the course of the arbitral proceedings, consistent with the ICSID Convention and other Rules and directions by the Tribunal.”¹¹

B. Requested Clarifications and Amendments

22. The Claimant states that the claims set forth in the Request for Arbitration must be clarified and expanded upon. The Claimant seeks to amend the Request for Arbitration to include the following allegations:

- a. The expropriation described in the Request for arbitration was an *unlawful* expropriation. Thus, “the dispute is not solely about the determination of the amount of proper compensation for the Expropriation, but also about the lawfulness of the Expropriation”.¹²
- b. There was both a direct and an indirect expropriation. The direct expropriation of JHSF’s land-use right and the demolition of its Buildings resulted in an indirect expropriation of the Claimant’s business in the PRC.¹³
- c. The Respondent’s actions breached its obligation to accord fair and equitable treatment to the Claimant’s investment under Article 3 of the BIT.¹⁴
- d. The Respondent’s actions were contrary to Article 2 of the BIT, which sets forth the Respondent’s duty in to refrain from taking any arbitrary or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the Claimant’s investment.¹⁵

¹¹ Request for Arbitration, ¶ 37.

¹² RfA Revision Request, ¶ 9

¹³ RfA Revision Request, ¶¶ 14-16.

¹⁴ RfA Revision Request, ¶ 17.

¹⁵ RfA Revision Request, ¶ 17.

- e. The Respondent may have failed to accord the same level of treatment to the Claimant's investment as to the investments of Chinese investors, in violation of Article 3 of the BIT.¹⁶
 - f. The Respondent breached its procedural duties, including the obligation to refrain from aggravating the dispute while arbitration proceedings are pending, by allowing local authorities to take over and demolish JHSF's premises in December 2017.¹⁷
23. With regard to the relief requested, the Claimant now seeks relief beyond compensation based on the fair market value of the Land, as stated in the Request for Arbitration. In particular, the Claimant now requests restitution of its rights and damages for the loss in value of its investment. The Claimant indicates that the amendments will "result in a considerable increase as compared to the figures mentioned in the Request for Arbitration".¹⁸
24. According to its expanded request for relief in the RfA Revision Request, the Claimant intends to seek:
- “(a) A declaration that the Respondent has breached Article 4 of the BIT by unlawfully expropriating the Claimants' investment;
 - (b) A declaration that the Respondent has breached Articles 2 and 3 of the BIT;
 - (c) A declaration that the Respondent has breached its procedural duties by deliberately aggravating the dispute while these proceedings were pending;
 - (d) Restitution of Jinan Hela Schwarz's land-use right and damages for the loss of value of its investment caused by the physical taking of its premises by the Chinese authorities;

¹⁶ RfA Revision Request, ¶ 18.

¹⁷ RfA Revision Request, ¶¶ 19-20.

¹⁸ RfA Revision Request, ¶ 21.

- (e) Alternatively, if restitution is no longer possible, full reparation, i.e. compensation for the expropriation of the land-use right and damages for the loss of value of the Claimant’s investment, including lost profits.”¹⁹

25. The Claimant states that its formal request for relief in the Memorial shall not be limited by the statements in the RfA Revision Request, and that it reserves the right to claim moral damages.²⁰

26. Finally, the Claimant identifies corrections to clerical errors in paragraphs 9 and 25 of the Request for Arbitration.²¹

III. THE PARTIES’ POSITIONS

A. The Claimant’s RfA Revision Request

27. The Claimant submits that the purpose of the RfA Revision Request is to “provide some clarifications as to the scope of the Claimant’s claims” so that the Tribunal has a more accurate understanding of the dispute “for purposes of procedural planning”.²²

28. According to the Claimant, it is not seeking to redefine the subject matter of the dispute identified in the Request for Arbitration. Rather, its expanded claims arise out of the same measures taken by the Respondent’s authorities in relation to the expropriation of the Land and Buildings beginning in 2014, which Claimant raised in the Request for Arbitration.²³

¹⁹ RfA Revision Request, ¶ 22.

²⁰ RfA Revision Request, ¶¶ 23-24. The Claimant set out the following request for relief in ¶ 545 of its Memorial dated 29 June 2018: “the Claimant respectfully requests that the Arbitral Tribunal issue an award: (a) DECLARING that the Respondent has breached Articles 3(1), 4(2) and 9 of the Treaty; (b) ORDERING the Respondent to fully repair the loss it has caused to the Claimant by, *either*, ORDERING the restitution of the entirety of the Claimant’s investment, in particular by the grant of a new production facility of the same value, *or, alternatively*, ORDERING the Respondent to pay the Claimant a sum exceeding EUR 25,000,000.00 including pre-award interest, or such other sum as the Tribunal determines will ensure full reparation of the Claimant’s loss; (c) ORDERING the Respondent to pay post-award interest in an amount yet to be determined; (d) AWARDING such other relief as the Tribunal considers appropriate; and (e) ORDERING the Respondent to pay all of the costs and expenses of this arbitration, including the Claimant’s legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal, and ICSID’s costs.”

²¹ RfA Revision Request, ¶¶ 25-29.

²² RfA Revision Request, ¶¶ 2, 4.

²³ RfA Revision Request, ¶ 6.

While the RfA Revision Request refers to events that occurred *after* the Request for Arbitration (namely, the physical taking and demolition of JHSF's premises by authorities in December 2017), the Claimant considers these events to be a "continuation" of the behaviour discussed in the Request for Arbitration.²⁴

29. The Claimant sees no reason why the clarifications and amendments to the Request for Arbitration would not be permitted. In the Claimant's view, a request for arbitration need not contain a full description of the claimant's case or even a request for relief.²⁵ The Claimant cites ICSID Institutional Rule 2, which sets out the required contents of a request for arbitration.²⁶ The only information required with respect to the substance of the dispute is "information concerning the issues in dispute indicating that there is, between the parties, a legal dispute arising directly out of an investment".

B. The Respondent's Observations

30. The Respondent asks the Tribunal to deny the Claimant's request to amend the Request for Arbitration. Its position is summarised as follows:

"While labelling its application a "*clarification*", the Claimant has essentially rewritten its Request for Arbitration by changing its factual assertions, legal theory, quantification and request for relief almost a year into this arbitration. These sweeping and unpredictable changes are an invitation to undermine the integrity and orderly conduct of these proceedings."²⁷

31. The Respondent accepts that a request for arbitration does not have to state the claimant's claims in full.²⁸ However, in the Respondent's view, the request for arbitration is a fundamental step in an ICSID proceeding which "defines the scope of the dispute".²⁹ It provides the Secretary-General with the information needed to screen requests in

²⁴ RfA Revision Request, ¶¶ 7, 14, 17, 20.

²⁵ RfA Revision Request, ¶ 3.

²⁶ RfA Revision Request, ¶ 3.

²⁷ Observations, ¶ 7.

²⁸ Observations, ¶ 14.

²⁹ Observations, ¶ 14.

accordance with Article 36(3) of the ICSID Convention. It also allows the respondent to begin preparing its defence against the claimant’s case. In addition, it is the basis on which the tribunal is selected and the initial procedural directions are formulated.³⁰

32. The Respondent observes that there is limited binding authority regarding how an ICSID tribunal should assess a party’s request to “re-plead” its case after the request for arbitration.³¹ Yet the Respondent points to certain general principles that it considers relevant to the Tribunal’s decision on the Application, including the following:
- a. Tribunals must conduct proceedings properly, fairly and efficiently.
 - b. A claimant has a duty “to bring forward its whole case and not reveal or modify this piecemeal as it sees fit”.³²
 - c. Respondents have an expectation that the case they are defending against will not change without good reason.
 - d. In accordance with the principle of equality of arms, any prejudice caused by permitting the amendment must be outweighed by the prejudice of excluding the amendment.³³
 - e. Amendments should be permitted only when necessary to ensure that the real dispute between the parties can be adjudicated. They should be excluded when “motivated by tactical considerations or attempts to improve upon earlier unwillingness or a lack of reasonable diligence”.³⁴
33. The Respondent argues that the Claimant bears the “heavy burden” of demonstrating that the requested amendments are justified in light of these principles.³⁵ In the Respondent’s view, the Claimant has failed to meet this burden for three main reasons.

³⁰ Observations, ¶ 15.

³¹ Observations, ¶ 10.

³² Observations, ¶ 11.

³³ Observations, ¶ 11.

³⁴ Observations, ¶ 12.

³⁵ Observations, ¶ 13.

34. First, the Respondent contends that the Claimant has not offered a satisfactory explanation for any of the requested amendments. With regard to the addition of restitution to the Claimant’s request for relief, the Respondent suspects that this was no more than a tactical move employed by the Claimant to bolster its request for provisional measures.³⁶ Further, according to the Respondent, the Claimant has offered no justification for the various other amendments identified in the RfA Revision Request, even though each of these amendments must be assessed on its own merits.³⁷
35. Second, the Respondent argues that it would suffer serious injustice if the RfA Revision Request were granted, which could not be fully compensable by a costs award in its favour.³⁸ For example, the Respondent would be deprived of the opportunity to object to the new claims under ICSID Arbitration Rule 41(5) because the applicable deadline has expired. In addition, the Respondent was not able to reply to the new issues in its submissions on provisional measures. More generally, the changes would impede the Respondent’s preparations for this arbitration.³⁹ The Respondent states that, as a result, granting the amendments would “[a]t the very least, [] require further pleadings and, most likely, evidence collection and presentation”.⁴⁰
36. Third, the Respondent considers the RfA Revision Request is “inappropriately vague and unspecific”, such that the Respondent is unable to “consider further arguments in response to the Claimant’s present application, including estoppel or waiver”.⁴¹
37. Thus, the Respondent requests that the Tribunal:

“(1) REFUSE the Claimant’s application for permission to amend its Request for Arbitration; and

³⁶ Observations, ¶ 20.

³⁷ Observations, ¶ 21.

³⁸ Observations, ¶¶ 22-24.

³⁹ Observations, ¶ 24.

⁴⁰ Observations, ¶ 22.

⁴¹ Observations, ¶ 25.

- (2) ORDER the Claimant to bear all costs incurred in connection with this application.”⁴²

IV. THE TRIBUNAL’S ANALYSIS

38. The Tribunal has given careful consideration to the Parties’ submissions. As noted above, the Tribunal’s decision on the Claimant’s RfA Revision Request, including the reasons therefor set out in summary form, was communicated to the Parties by correspondence from the Secretary of the Tribunal dated 10 April 2018. This Procedural Order reflects that correspondence and constitutes the fully elaborated Decision of the Tribunal.
39. Of material relevance to the assessment of the RfA Revision Request, Article 46 of the ICSID Convention and Rule 40 of the ICSID Arbitration Rules provide as follows:

Article 46, ICSID Convention

“Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.”

Rule 40, Ancillary Claims

“(1) Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre.

(2) An incidental or additional claim shall be presented not later than in the reply and a counter-claim no later than in the counter-memorial, unless the Tribunal, upon justification by the party presenting the ancillary claim and upon

⁴² Observations, ¶ 33.

considering any objection of the other party, authorises the presentation of the claim at a later stage in the proceedings.

(3) The Tribunal shall fix a time limit within which the party against which an ancillary claim is presented may file its written observations thereon.”

40. It follows from these provisions that incidental or additional claims arising directly out of the subject-matter of the dispute are presumptively admissible provided they are within the scope of the consent of the parties and otherwise within the Tribunal’s jurisdiction. In such circumstances, and subject to timely procedural notification, the Tribunal “shall” determine such claims.
41. The Tribunal notes that the Claimant’s new counsel of record signalled at an early stage, after having been appointed, that the Claimant would be seeking an additional form of relief not mentioned in the Request for Arbitration. The RfA Revision Request was thereafter made reasonably expeditiously, on 22 February 2018, following the first procedural hearing on 1 February 2018, and before Procedural Order No.1 was issued on 9 March 2018. The RfA Revision Request was accordingly made before the submission of the Claimant’s Memorial. In the Tribunal’s view, the RfA Revision Request was made in a timely manner.
42. As noted in Section II above, the scope of the Claimant’s proposed revisions is extensive. The Claimant seeks to enlarge the ambit of its case beyond the claim of expropriation advanced in the original Request for Arbitration to include claims of discriminatory treatment and for breach of the fair and equitable treatment provisions of the BIT, as well as claims alleging a breach of procedural duties by the Respondent in consequence of the demolition of the Claimant’s JHSF premises during the pendency of this arbitration.
43. The first question to consider is whether the Claimant’s proposed extensive revisions of its Request for Arbitration constitute incidental or additional claims that can properly be said to arise directly out of the subject-matter of the dispute. If they are, the Claimant is entitled to advance such claims, provided that it does so in a timely procedural manner, and the Tribunal is required to determine those claims. If, however, the proposed revisions cannot

properly be said to arise directly out of the subject-matter of the dispute, or if they were not notified in a timely procedural manner, the matter would fall to be considered by reference to general principles of procedural fairness and efficiency governing the conduct of the arbitration, having regard, *inter alia*, to Articles 41, 44 and 46 of the ICSID Convention, and Rule 40 of the ICSID Arbitration Rules.

44. Although the proposed revisions are extensive, the Tribunal considers that they are properly to be regarded as additional claims arising directly from the subject-matter of the dispute. Notwithstanding the scope of the proposed revisions, they would not, if admitted, transform the dispute into one of a fundamentally different nature to that of which the Tribunal is already seised, in the sense of going beyond the subject-matter of the original Request for Arbitration, as opposed to adding new legal claims. The Tribunal considers therefore that the proposed revisions come within the implicit scope of Article 46 of the ICSID Convention and Rule 40 of the ICSID Arbitration Rules in that they are to be construed as ancillary claims that the Claimant would be entitled to advance and that the Tribunal would be expected to determine in the normal course of the exercise of its functions.
45. The Respondent submits that it would suffer serious injustice if the proposed revision of the Request for Arbitration were to be accepted and that to do so would undermine the integrity and orderly conduct of these proceedings.
46. The Tribunal notes, however, that the RfA Revision Request was made at an early stage, and before the submission of the Claimant's Memorial, and that, as such, accepting the request would give rise to little, if any, disadvantage, cost or inconvenience to the Respondent. The Tribunal notes further that denying the Claimant's RfA Revision Request would have the effect of requiring the Claimant to submit a fresh request for arbitration notifying the new legal claims in a manner that would not be in the interests of an efficient and effective adjudicatory procedure.
47. It follows from the preceding that, in the Tribunal's view, the proposed revision of the Request for Arbitration would not alter the character of the claim submitted by the Claimant, for the reason that the proposed revisions address additional claims arising

directly out of the subject-matter of the dispute, and that it was notified in a timely manner, such as would neither give rise to material, if any, hardship or disadvantage to the Respondent nor undermine the integrity or orderly conduct of the arbitration proceedings. For completeness, the Tribunal considers that general principles of procedural fairness and efficiency governing the conduct of the arbitration in any event militate in favour of acceptance of the RfA Revision Request.

48. The preceding notwithstanding, there remains to be considered the question of whether the Claimant's proposed revisions come "within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre", as stated in Article 46 of the ICSID Convention and Rule 40 of the ICSID Arbitration Rules regarding the determination of ancillary claims.
49. The Respondent, in email correspondence to the ICSID Secretariat dated 21 June 2017, before the Tribunal was constituted on 8 January 2018, raised certain objections which were jurisdictional in character. The fact of these objections was addressed in §16 of Procedural Order No.1, adopted on 9 March 2018, which established a procedure in respect of objections to jurisdiction and/or admissibility, whether subject to a request that they be heard as a preliminary matter or that fell to be addressed as part of the proceedings on the merits. The Respondent thus indicated at an early stage, before the Claimant's RfA Revision Request, albeit only in headline terms at that point, that it contested the Tribunal's jurisdiction and, implicitly, that it would be submitting preliminary objections to jurisdiction.
50. The Tribunal considers that the requirement in Article 46 of the ICSID Convention that the Tribunal "shall ... determine" any additional claims arising directly out of the subject-matter of the dispute "provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre" does not impose a threshold test for the admission of additional claims, by way of revision of a request for arbitration, that otherwise meets the requirement of "arising directly out of the subject-matter of the dispute". Rather, it addresses the Tribunal's substantive determination of the merits of such claims.

51. This being the case, the Tribunal considers that the fact or actuality of objections to jurisdiction cannot operate as a bar to the revision of a request for arbitration. Equally, however, the admission of the Claimant's proposed revisions to its Request for Arbitration cannot prejudice the Respondent's latitude to raise objections to jurisdiction or admissibility.
52. In its letter to the Parties of 10 April 2018 communicating its decision to accept the Claimant's RfA Revision Request, the Tribunal noted that its decision was without prejudice to any objection to jurisdiction or preliminary objection that the Respondent may wish to advance. Although these developments post-dated the Tribunal decision as communicated in its letter of 10 April 2018, the Tribunal notes that the Respondent, in accordance with the procedural timetable established in Procedural Order No.1, submitted a Memorial on Preliminary Objections and Request for Bifurcation ("Bifurcation Request") on 1 October 2018. By that Bifurcation Request, the Respondent raised four objections to jurisdiction and one objection to the admissibility of the claim.
53. Following the Parties' submissions, the Tribunal, in Procedural Order No.3 of 17 December 2018, denied the Respondent's Bifurcation Request and joined the Respondent's objections to jurisdiction and admissibility to the proceedings on the merits. For the avoidance of doubt, those objections remain for determination by the Tribunal, as would any objections going to jurisdiction or admissibility that may properly be advanced as the proceedings progress.

V. DECISION

54. For the above reasons, the Tribunal decides as follows:

- a. The Claimant's application to revise its Request for Arbitration as set out in its RfA Revision Request is granted.
- b. The Tribunal defers any question of costs in connection with the RfA Revision Request for consideration at a later stage.

On behalf of the Tribunal,

[signed]

Sir Daniel Bethlehem QC
President of the Tribunal

Date: 15 May 2019