

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bay View Group LLC and The Spalena Company LLC

v.

Republic of Rwanda

(ICSID Case No. ARB/18/21)

**PROCEDURAL ORDER NO. 8
PROTOCOL FOR REDACTIONS TO THE AWARD**

Members of the Tribunal

Rt. Hon. Lord Phillips KG, PC, President of the Tribunal
Mr. J. Truman Bidwell, Jr., Arbitrator
Ms. Barbara Dohmann QC, Arbitrator

Secretary of the Tribunal

Mr. Alex B. Kaplan

10 March 2022

I. INTRODUCTION

1. On 12 December 2018, the Tribunal issued Procedural Order No. 1, which memorialized the Parties' agreements and the Tribunal's rulings on the procedural framework for this arbitration. In that Order, at Section 24 titled "Transparency", the Tribunal set out a framework for the publication of case-related materials in keeping with the publication requirements contained in the Article 29 of the Treaty Between the United States of America and Rwanda Concerning the Encouragement and Reciprocal Protection of Investment.
2. In addition to regulating the publication of case-related materials, Section 24 of Procedural Order No. 1 also prescribed the procedure for the redaction of "non-disclosure information", as defined in Section 23 of that Order, from case-related materials prior to their publication.
3. At Section 24.5.3 of Procedural Order No. 1, the Tribunal prescribed the procedure, reproduced below, for the redaction of non-disclosure information contained in the Award, which the Tribunal envisages will be dispatched before the end of March 2022.
4. The present Order, a draft of which was circulated to the Parties for their comment prior to issuance, expands on this protocol.

II. REDACTION PROTOCOL FOR THE AWARD

5. As stated in Section 24.5.3 of Procedural Order No. 1, the Award shall be redacted prior to publication as follows:

The parties shall within 14 days of dispatch by the ICSID Secretariat submit redacted versions that do not contain any "non-disclosure information". Within 14 days of the date that the redacted versions are submitted to the Tribunal, each party shall notify the other party and the Tribunal whether it objects to any of the redactions. If there are objections, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 days and on the request of either party, then the Tribunal will decide the issue.

The Tribunal hereby reconfirms this procedure and expands on it, as set out below.

6. First, the Parties confirm their understanding that upon the dispatch of the Award, the Tribunal will become *functus officio*—i.e., there will no longer be a Tribunal constituted in this arbitration proceeding. Nevertheless, the Parties agree that the power to decide on any objections to proposed redactions shall reside solely with the former Members of the Tribunal.
7. Second, following a decision by the former Members of the Tribunal on any objections to proposed redactions, the Parties shall jointly prepare a redacted copy of the Award reflecting these decisions.
8. Third, as the proceeding will conclude upon dispatch of the Tribunal's Award, any costs incurred after the dispatch of the Award (e.g., fees incurred by counsel and / or former Members of the Tribunal for time spent addressing objections to proposed redactions) will not be considered part of the costs of the proceeding pursuant to Article 61(2) of the ICSID Convention. As a consequence, the Parties confirm their understanding that these fees will not be subject to any further or revised ruling on the allocation of costs appearing in the Award. Thus, counsel will bear their post-Award costs related to the redaction procedure, and fees incurred by former Members of the Tribunal for the post-Award redaction procedure will be paid out from the case trust account, which will remain open after the dispatch of the Award for the sole purpose of paying the arbitrator's fees, if any.
9. The three former Members of the Tribunal may submit claims for such fees at the same hourly rate and through the same process used during the proceeding, and the claims will be paid from the advance payments made by the Parties. ICSID will close the case trust account once the former Members of the Tribunal have submitted their claims for fees relating to the resolution of disputes over redactions of the Award, if any.
10. Finally, the Tribunal observes that to date in this proceeding the Parties have not objected to any proposed redactions appearing in case-related materials. The Tribunal applauds the cooperation of the Parties in this regard and notes that it issues the present

Order out of an abundance of caution and with every expectation that the Parties' cooperation with regard to redactions will continue as to the Award.

For the Tribunal:

[signed]

Rt. Hon. Lord Phillips KG, PC
President of the Tribunal
Date: 10 March 2022