

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE AGREEMENT ON RECIPROCAL
PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE CARIBBEAN COMMUNITY AND
THE DOMINICAN REPUBLIC AND THE UNCITRAL ARBITRATION RULES (1976)**

MICHAEL ANTHONY LEE-CHIN

v.

THE DOMINICAN REPUBLIC

(ICSID Case. No. UNCT/18/3)

**PROCEDURAL ORDER No. 3
(HEARING ORGANIZATION)**

Members of the Tribunal

Prof. Diego P. Fernández Arroyo, Presiding Arbitrator
Prof. Christian Leathley, Arbitrator
Prof. Marcelo Kohen, Arbitrator

Secretary of the Tribunal

Ms. Marisa Planells-Valero

February 11, 2020

I. PROCEDURAL HISTORY

1. Pursuant to Section 18.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by telephone conference on January 28, 2020 (the “**Pre-Hearing Call**”). Participating in the telephone conference were:

Arbitral Tribunal:

Prof. Diego P. Fernández Arroyo, President of the Tribunal
Prof. Christian Leathley, Arbitrator
Prof. Marcelo G. Kohen, Arbitrator

ICSID Secretariat:

Ms. Marisa Planells-Valero, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Richard Lorenzo, Hogan Lovells US LLP
Ms. Maria Eugenia Ramirez, Hogan Lovells US LLP
Mr. Javier Peral, Hogan Lovells US LLP

On behalf of the Respondent:

Ms. Claudia Frutos-Peterson, Curtis, Mallet-Prevost, Colt & Mosle LLP
Ms. Gabriela Alvarez Avila, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Fernando Tupa, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Marcelo A. Salazar, DICOEX
Ms. Leidylin Contreras, DICOEX
Ms. Raquel De La Rosa, DICOEX
Ms. Mary Estefany Díaz, DICOEX
Ms. Nathalie Hernández, Consultoría Jurídica del Poder Ejecutivo
Ms. Sara Patnella, Consultoría Jurídica del Poder Ejecutivo
Ms. Rosa Otero, Ministerio de Medio Ambiente y Recursos Naturales
Ms. Johanna Montero, Ministerio de Medio Ambiente y Recursos Naturales

2. During the Pre-Hearing Call, the Parties and the Tribunal discussed the draft agenda for the Pre-Hearing Call circulated to the Parties on January 13, 2020, and the Parties joint statement of January 23, 2020 advising the Tribunal of any agreements reached on the agenda open items, as well as their respective positions where no agreement was reached. Upon invitation from the Tribunal, on February 1, 2020 the Parties submitted an agreed calendar for the Hearing.
3. An audio recording of the Pre-Hearing Call was made and deposited in the archives of ICSID. The recording was made available to the Members of the Tribunal and the Parties on January 28, 2020.
4. Having considered the Parties’ positions, this Order sets out the Procedural Rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORDER

A. Date and Venue

5. The Hearing is scheduled to take place from February 27 to 28, 2020 at the ICSID facilities in Washington, DC.

B. Daily Schedule

6. The Parties have agreed that each day of the Hearing will commence at 8:30 AM. The first day will conclude by 5:35 PM and the second day will conclude by 5:30 PM. There will be two coffee breaks of 15 minutes each (one in the morning and one in the afternoon), and a lunch break of 1 hour the first day and of 2 hours and 15 minutes the second day.

C. Time Allocation

7. Total number of hours reserved for the Hearing: **18 hours and 5 minutes** (including 4 hours and 15 minutes for breaks).
8. Total number of hours reserved for each Party: 5 hours and 20 minutes for Claimant and 6 hours and 30 minutes for Respondent (including Opening and Closing Statements). Each Party may use up to 2 hours for Opening Statements and up to 1 hour for Closing Statements.
9. Total number of hours reserved for the Tribunal: 2 hours for time spent by the Tribunal in questioning witnesses and experts and for general housekeeping and other procedural discussions. Time spent during questions posed by the Tribunal and on answers to those questions, as well as time for administrative or organizational matters will not be counted against the time of any Party. Time spent dealing with objections from a Party shall not be counted against any Party's time.
10. Time shall be kept using the chess-clock method. The Secretary of the Tribunal will keep the time and report at the end of each morning and afternoon session the total time that each Party has used and the amount it has remaining.

D. Order of Proceedings

11. General Order (sequence of presentations and examinations): As agreed by the Parties, the Order will be as follows: (i) Respondent's Opening Statement, (ii) Claimant's Opening Statement, (iii) Claimant's Fact Witnesses, (iii) Claimant's Expert Witness, (iv) Respondent's Closing Statement, and (v) Claimant's Closing Statement. The general structure of the Hearing will be as indicated in **Annex A**.

E. Interpretation

12. In accordance with Section 10.7 of Procedural Order No. 1, there shall be simultaneous Spanish-English and English-Spanish interpretation throughout the Hearing.

13. As agreed by the Parties, the Claimant's fact witnesses and expert witness shall testify in the language in which the witness statement or expert report was submitted.

F. Witness and Expert Examinations

14. The Parties have provided notice of the witnesses and expert to be examined in accordance with the Procedural Calendar in accordance with Section 17.2 of Procedural Order No. 1 and the Tribunal's instructions of December 3, 2019.

15. The rules and procedure concerning the conduct of examinations are established in paragraphs 17.5 to 17.10 of Procedural Order No. 1, and as follows:

a. Only one attorney from each side shall ask questions of or otherwise address any witness/expert during his cross-examination.

b. Scope of Examination:

- Direct testimony of the fact witnesses may proceed for a period of up to 10 minutes and the direct testimony of the expert may proceed for a period of up to 30 minutes. This time shall be used to introduce the witness or expert, confirm the accuracy and completeness of the witness's or expert's written statements or expert report, and offer any corrections to the witness's or expert's written statements or expert report that may be necessary. The expert may make a presentation summarizing his report.
- The witness or expert may then be examined by counsel for the opposing Party ("cross-examination"), under the control of the Arbitral Tribunal for a period of up to 60 minutes for the witnesses and 90 minutes for the expert. Cross-examination shall be limited to the scope of the written and oral direct testimony of the relevant witness or expert. If a Party wishes to examine a witness or expert outside the scope of his written and oral direct testimony, it shall submit an application to that effect to the Tribunal, which will decide on the request after hearing the other Party.
- Subsequently counsel for the Party offering the witness or expert may examine the witness or expert limited to matters that arose during cross-examination ("redirect examination") for a period of up to 30 minutes.
- The Tribunal may ask a fact witness or expert questions either during cross-examination or re-direct examination, or at the conclusion of both. At the conclusion of the Tribunal's questions, either Party may request the Tribunal for permission to ask additional questions arising specifically out of an inquiry from the Tribunal. Where the Tribunal asks no questions of the witness or expert, no questions may be asked following the re-direct examination.

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c. Sequestration:

- Prior to his examination, a fact witness shall not be present in the hearing room; discuss the oral arguments or the testimony of any other witness who has already testified prior to giving his or her testimony; read any transcript of oral arguments or oral testimony; or listen to or watch any audio or video recording of the oral arguments or oral testimony. These restrictions do not apply to non-testifying representatives of a Party.
- Expert witnesses may attend the hearing at any time, including during opening argument.
- If a witness or expert's examination is interrupted and must continue on the following session, the witness or expert may not speak or contact any of the Parties, their representatives or counsel until the examination is completed.

G. Documents for Use at the Hearing

1. Electronic Core Bundle

16. As agreed by the Parties, there shall be a single Electronic Core Bundle in USB form, to be prepared jointly by the Parties.
17. The Electronic Core Bundle shall contain all pleadings, witness statements, exhibits and legal authorities on file to date, with a unified hyperlinked index. It shall not contain any document not previously filed.
18. The Parties shall distribute the Electronic Core Bundle USB at the onset of the Hearing to: each Member of the Tribunal (3 copies); the Secretary of the Tribunal (1 copy); opposing counsel (1 copy); witnesses or expert (1 copy); court reporters (2 copies), and interpreters (1 copy).
19. There shall be no hard copy Core Bundle.

2. Examination Bundles

20. At the beginning of each witness or expert direct examination, the Party who is putting forward the witness or expert will provide the witness or expert with copies of his or her signed statements or reports.
21. The Party using Examination Bundles shall have 7 copies available for distribution to: each Member of the Tribunal (3 copies); the Secretary of the Tribunal (1 copy); opposing counsel (1 copy); witnesses or expert (1 copy); court reporters (2 copies), and interpreters (1 copy).
22. The Examination Bundles shall be distributed at the beginning of the relevant examination.

3. Demonstrative Exhibits

23. Section 14.8 of Procedural Order No. 1 concerning Demonstrative Exhibits applies.
24. The Parties will provide a hard copy of any Demonstrative Exhibits at the beginning of the respective argument or presentation, to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the other Party (1 copy), the court reporters (2 copies), and the interpreters (1 copy).
25. The Parties understand that Demonstrative Exhibits are not an opportunity to submit, nor should they resemble supplementary briefs. Demonstrative Exhibits shall indicate the source of the information contained therein through references to the record.
26. In addition, promptly after the conclusion of the Hearing day in which the corresponding Demonstrative Exhibit is used, the Parties shall upload each Demonstrative Exhibit to the case folder in the electronic file sharing system (“BOX”), with the required CD-__ or RD-__ number.

H. Sound Recordings and Transcripts

27. Pursuant to Section 20.1 of Procedural Order No. 1, sound recordings will be made of the Hearing in the two procedural languages. The sound recordings shall be provided to the Parties and the Tribunal.
28. ICSID has also made arrangements to have English and Spanish verbatim transcripts available in real-time using Live Note or a similar software during the Hearing.
29. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
30. The Parties shall agree on any major corrections to the transcripts within 30 days of the date of receipt of the sound recordings or transcripts, whichever is last. The agreed corrections may be entered by the court reporters in the transcripts. The Tribunal shall decide upon any disagreement between the Parties on this matter and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

I. Travel Certificates

31. No travel certificates will be required by the Parties.

J. Post-Hearing Briefs

32. The Tribunal does not anticipate the need for Post-Hearing Briefs.

K. Statement on Costs

33. Pursuant to Section 21.2 of Procedural Order No. 1, the Tribunal will provide guidance as to the approach and level of detail required for the Statement of Costs at the end of the Hearing.

L. Transparency

34. As agreed by the Parties, the Hearing will be made public via *real-time* streaming in the English and Spanish languages on the ICSID Website. An announcement to this effect shall be published on the ICSID Website.

M. Logistical Details

35. The logistical details (*e.g.*, confirmation of Hearing room and break-out room, list of Hearing participants, set up details, court reporting arrangements, internet access, audio-visual equipment and catering orders) will be handled through correspondence directly by the ICSID Hearing Organization Team.

N. Other Items

36. Parties are invited to send in advance translations of documents whose translated versions are not yet included in the file. If short non-official translations are submitted by one of the Parties during the examination of a witness or expert, the other Party shall have an opportunity to review such translations prior to the use of that document. Non-official translations of documents comprising more than 3 pages shall be sent to the other Party and to the Tribunal at least 24 hours in advance of their intended use.

For and on behalf of the Tribunal,

[*Signed*]

Prof. Diego P. Fernández Arroyo
President of the Tribunal
Date: February 11, 2020

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ANNEX A_SCHEDULE
HEARING ON JURISDICTION

Day 1: Thursday, 27 February 2020

| TIME | PROCEDURAL STEP |
|---------------------------------|--|
| 8:30-8:45 am¹ | Tribunal questions regarding open procedural/organizational matters |
| 8:45-10:45 am | Respondent's Opening Statement |
| 10:45-11:00 am | Break |
| 11:00-1:00 pm | Claimant's Opening Statement |
| 1:00-2:00 pm | Lunch |
| 2:00-2:10 pm | Direct Examination of Claimant's Fact Witness One |
| 2:10-3:10 pm | Cross-examination of Claimant's Fact Witness One |
| 3:10-3:40 pm | Re-direct Examination of Claimant's Fact Witness One |
| 3:40-3:55 pm | Break |
| 3:55-4:05 pm | Direct Examination of Claimant's Fact Witness Two |
| 4:05-5:05 pm | Cross-examination of Claimant's Fact Witness Two |
| 5:05-5:35 pm | Re-direct Examination of Claimant's Fact Witness Two |

Day 2: Friday, 28 February 2020

| TIME | PROCEDURAL STEP |
|-----------------------|--|
| 8:30-8:45 am | Tribunal questions regarding open procedural/organizational matters |
| 8:45-9:15 am | Presentation by Professor Joost H.B. Pauwelyn |
| 9:15-10:45 am | Cross-examination of Professor Joost H.B. Pauwelyn |
| 10:45-11:00 am | Break |
| 11:00-11:30 am | Re-direct Examination of Professor Joost H.B. Pauwelyn |

¹ The times denoted in this Schedule are good-faith estimates, but are subject to change as necessary during the course of the Hearing on Jurisdiction and at the Tribunal's discretion. The Parties, however, shall abide by the overall time limitations specified in this Schedule (e.g., if a Party has xx total hours of time set aside for direct examinations, cross-examinations or re-direct examinations, it may only use such total hours for the examinations).

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| | |
|-----------------------|---------------------------------------|
| 11:30-12:30 pm | Tribunal Questions |
| 12:30-2:45 pm | Break and Lunch |
| 2:45-3:45 pm | Respondent's Closing Arguments |
| 3:45-4:00 pm | Break |
| 4:00-5:00 pm | Claimant's Closing Arguments |
| 5:00-5:30 pm | Tribunal Questions |