

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Peteris Pildegovics and SIA North Star**

**v.**

**Kingdom of Norway**

**(ICSID Case No. ARB/20/11)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Sir Christopher Greenwood, GBE, CMG, QC, President of the Tribunal

The Honourable L. Yves Fortier, CC, OQ, QC, Arbitrator

Professor Donald M. McRae, CC, ONZM, FRSC, Arbitrator

***Secretary of the Tribunal***

Ms. Leah Waithira Njoroge

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12 October 2020

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## **Introduction**

The first session of the Tribunal was held on 28 September 2020, at 12 p.m. Washington, D.C. and Montréal time/ 5 p.m. London time/ 6 p.m. Paris and Oslo time/ 7 p.m. Riga time, by video conference. The session was adjourned at 1:14 p.m. Washington, D.C. and Montreal time/ 6.14 p.m. London time/ 7.14 p.m. Paris and Oslo time/ 8.14 p.m. Riga time.

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

Participating in the conference were:

### **Members of the Tribunal**

Sir Christopher Greenwood, GBE, CMG, QC, President of the Tribunal  
The Honourable L. Yves Fortier, CC, OQ, QC, Arbitrator  
Professor Donald M. McRae, CC, ONZM, FRSC, Arbitrator

### **ICSID Secretariat:**

Ms. Leah Waithira Njoroge, Secretary of the Tribunal  
Ms. Phoebe Ngan, Paralegal

### **Participating on behalf of the Claimants:**

Mr. Pierre-Olivier Savoie, Savoie Laporte  
Mr. Pierre-Olivier Laporte, Savoie Laporte  
Ms. Léna Kim, Savoie Laporte  
Ms. Caroline Defois, Savoie Laporte  
Professor Alina Miron, University of Angers  
Professor Mads Andenaes, QC, Brick Court Chambers  
Mr. Peteris Pildegovics, SIA North Star  
Mr. Kirill Levanidov, SIA North Star

### **Participating on behalf of the Respondent:**

Professor Vaughan Lowe, QC Essex Court Chambers  
Mr. Mubarak Waseem, Essex Court Chambers  
Professor Alain Pellet  
Dr. Ludovic LeGrand, Centre de droit international (CEDIN) of the University Paris Nanterre  
Mr. Helge Seland, Norwegian Ministry of Foreign Affairs  
Mr. Kristian Jervell, Norwegian Ministry of Foreign Affairs  
Mr. Olav Myklebust, Norwegian Ministry of Foreign Affairs  
Ms. Margrethe R. Norum, Norwegian Ministry of Foreign Affairs  
Ms. Kristina K. Nygård, Norwegian Ministry of Foreign Affairs  
Mr. Eirik Sandaa, Norwegian Ministry of Foreign Affairs  
Ms. Anne Havn, Norwegian Ministry of Foreign Affairs  
Ms. Hilde Ruus, The Office of the Attorney General, Norway

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 28 August 2020; and
- The Parties' comments on the Draft Procedural Order received on 21 September 2020, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

### **Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex B. This Procedural Order should be read together with the Tribunal's Decision on Request for Bifurcation and Other Applications of the same date.

#### **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 10 August 2020 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 10 August 2020.
- 2.3. The Members of the Tribunal 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/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

*Arbitration Rules 14(2) and 20(1)(a)*

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication. As far as possible, all Members of the Tribunal should be present in person during any substantive hearings.

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. Procedural rulings shall be made after the Parties have been afforded an adequate opportunity to make representations in relation thereto.

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- 5.3. The Tribunal will draft all rulings within a reasonable time period. If a ruling has not been issued within three months of the final submission on a particular matter, the Tribunal will provide the Parties with status updates every month. If the award has not been issued within six months of the final submissions of the Parties, the Tribunal will provide the Parties with status updates every month.
- 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 electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits  
*Arbitration Rule 26(1)*

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal  
*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Ms. Leah Waithira Njoroge, 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. Leah Waithira Njoroge  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473-7727  
Fax: + 1 (202) 522-2615  
Email: [lnjoroge@worldbank.org](mailto:lnjoroge@worldbank.org)



Paralegal name:

Paralegal email: Ms. Phoebe Ngan [sngan@worldbank.org](mailto:sngan@worldbank.org)

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

Ms. Leah Waithira Njoroge  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
USA  
Tel. 202-458-1534

8. Representation of the Parties  
*Arbitration Rule 18*

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

For Claimants

Mr. Pierre-Olivier Savoie  
Ms. Justine Touzet  
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For Respondent

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Mr. Kristian Jervell  
Mr. Olav Myklebust  
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French Republic

Email:

ludovic.legrandsibeoni@gmail.com

Professor Eirik Bjorge

247 Peach Road

W10 4DX London

United Kingdom

Email: eirik.bjorge@bristol.ac.uk

9. Apportionment of Costs and Advance Payments to ICSID

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

- 9.1. 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.
- 9.2. By letter of 12 August 2020, ICSID requested that each Party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received the Claimants' payment on 9 September 2020 and the Respondent's payment on 3 September 2020.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

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

- 10.1. Paris shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the Parties so agree.



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- 10.3. The Tribunal members may deliberate at any place and by any appropriate means it considers convenient.

11. Procedural Language(s), Translation and Interpretation

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

- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. 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.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the Party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the Parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted, simultaneously if possible.
- 11.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) 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.

12. Routing of Communications

*Administrative and Financial Regulation 24*

- 12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. 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.

- 12.3. 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.
- 12.4. 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.

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

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

- 13.1. By the relevant filing date, the Parties shall:

- 13.1.1. 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 supporting documentation;<sup>1</sup> and
- 13.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the Parties.

- 13.2. Electronic files of pleadings, witness statements and expert reports, and – to the extent practicable – exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.3. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. The format of the date column of the index shall be YYYY-MM-DD. Documentary exhibits and legal authorities are to be labelled in accordance with the naming conventions contained in Annex A.
- 13.4. 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 at the address indicated at §7.1 or 7.3 above and to each Member of the Tribunal at the addresses indicated at §13.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and

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<sup>1</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

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Tribunal decisions and orders to date) with a consolidated hyperlinked index, readable on both Mac and PC, of all documents and authorities.

13.5. The addresses of the Tribunal Members are as follows:

Sir Christopher Greenwood	The Honourable L. Yves	Professor Donald M. McRae
Magdalene College	Fortier QC	University of Ottawa Law
Cambridge CB3 0AG	c/o IMK s.e.n.c.r.l./LLP	School
United Kingdom	Cabinet Yves Fortier	57 Louis Pasteur St.
Phone: +44 1223 332144	Place Alexis Nihon / Tour 2	K1N 6N5 Ottawa, Ontario
Email:	3500, boulevard De	Canada
c.j.greenwood123@gmail.com	Maisonnette Ouest	Phone: +1 613 741 0114
	Bureau 1400	Email: dmcrac@uottawa.ca
	H3Z 3C1 Montréal, Québec,	
	Canada	
	Phone: +1 514 935 4460	
	Email: yves.fortier@yfortier.ca	

13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.

13.7. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

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

14.1. The number, sequence and date of pleadings, and the time intervals between pleadings, are set forth in the Procedural Calendar in Annex B to this Procedural Order No. 1.

15. Production of Documents

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

15.1. Without prejudice to Article 43(a) of the Convention, the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (the “IBA Rules”) may guide the Tribunal and the Parties regarding document production in this case, albeit the IBA Rules shall not be regarded as being strictly legally binding on the Tribunal or the Parties.

15.2. Without prejudice to the voluntary production of documents by either Party, each Party may submit a Request for Production of Documents (“the Request”) one month after the filing of the Respondent’s Counter-Memorial (see Annex B). In

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the event that the Respondent raises jurisdictional objections and the Tribunal decides that the proceedings should be bifurcated, either Party may submit a Request for Production of Documents relating to Jurisdiction one month after the filing of the Claimants' Counter-Memorial on Jurisdiction ("the Jurisdiction Production Request"). A Jurisdiction Production Request shall be strictly limited to documents relevant to such jurisdictional objections as the Tribunal has determined shall be dealt with in a preliminary phase.

- 15.3. Each Request will be set forth in a "Redfern Schedule" (in WORD format, see Annex C), shall precisely identify each document sought, or as narrow and specific a category of documents as is possible in the circumstances, and establish the relevance and materiality to the outcome of the case of the document, or category of documents, sought. For each document (or category of document), a single Document Request shall be completed. Document Requests shall be numbered sequentially. Such a Request shall not be copied to the Tribunal or the Tribunal Secretary. The Redfern Schedule will be comprised of five columns:

15.3.1. Identification of the documents or categories of documents that have been requested;

15.3.2. Rationale for each request;

15.3.3. Objections by the objecting Party to the production of the requested document(s);

15.3.4. Responses from the requesting Party to the objecting Party's objections;

15.3.5. Decision of the Tribunal.

- 15.4. Each Party shall state in writing its responses or objections to the requested documents, in accordance with the timetable in Annex B. The requesting Party shall file its comments in writing on any response or objection made to the document requests, insofar as there are any outstanding disputes relating to such requests. The Parties' aggregate comments, in the form of a completed Redfern Schedule, shall be provided to the Tribunal in accordance with the timetable in Annex B and following the format in Annex C.

- 15.5. Documents produced pursuant to a Request shall be exchanged *inter partes* in electronic format only, need not be translated, and shall only form part of the record if and when they are submitted with the Reply Memorial and the Rejoinder Memorial in respect of each phase of the proceedings, respectively, or as otherwise authorized by the Tribunal.



16. Submission of Documents

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

- 16.1. 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.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. 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 special circumstances exist based on a reasoned written request followed by observations from the other Party.
  - 16.3.1. 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.
  - 16.3.2. 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.
- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
  - 16.5.1. The number of each Exhibit containing a document produced by Claimants 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.
  - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with § 16.5.4.
  - 16.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
  - 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.

- 16.6. 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.
- 16.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports

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

- 17.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 17.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

*Arbitration Rules 35 and 36*

- 18.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.
- 18.2. Five weeks before a hearing, each Party shall notify the other Party, with a copy to the Tribunal, which witnesses and experts of the opposing Party it wishes to cross-examine at the hearing.
- 18.3. Shortly after the Parties' notifications, the Tribunal will indicate the witnesses or experts not called by the Parties whom it wishes to question, if any. The Parties shall also notify the Tribunal and the other Party of which of its own witnesses and



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experts, not called by either the opposing Party or the Tribunal, that it wishes to examine at the hearing.

18.4. The procedure for examining witnesses and experts at the hearing shall be the following:

18.4.1. The Tribunal shall, at all times, have unfettered discretion over the conduct of witness or expert examination.

18.4.2. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).

18.4.3. The witness statement of each witness and expert shall stand in lieu of the examination by the Party producing the witness and expert (“direct examination”), subject to the provisions below.

18.4.4. Witnesses giving oral testimony may first be examined in direct examination. Without leave of the Tribunal, direct examination of fact witnesses shall not exceed 15 minutes and shall be limited to the scope of prior testimony (including any corrections or updating thereof and any testimony responding to matters raised by the Rejoinder).

18.4.5. Experts giving oral evidence shall first give a summary of their report for no longer than 30 minutes, followed by a direct examination.

18.4.6. Without leave of the Tribunal, direct examination of experts shall not exceed 20 minutes and shall be limited to the scope of prior testimony (including any corrections or updating thereof and any testimony responding to matters raised by the Rejoinder).

18.4.7. The direct examination of witnesses and experts is followed by examination by the other Party (“cross-examination”), and subsequently by the Party producing the witness or expert (“redirect examination”).

18.4.8. Under the control of the Tribunal, cross-examination shall generally be limited to matters raised in written and oral testimony of the witness or expert being cross-examined.

18.4.9. The redirect examination shall be limited to matters raised in cross-examination.

18.4.10. The Tribunal may pose questions during or after the examination of any witness or expert.

18.5. Unless the Parties agree, or the Tribunal decides, otherwise, witnesses shall not be

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allowed in the hearing room before giving their testimony and shall not be permitted to read the transcript before testifying. Witnesses who are Parties, or officers, officials or employees of a Party whose presence is necessary to enable instructions to be given to counsel, shall be allowed in the hearing room at any time. Experts shall be allowed in the hearing room at any time unless the Tribunal decides otherwise.

- 18.6. A Party that does not call a witness or expert proffered by the other Party for cross-examination shall not be deemed to have agreed to the correctness of the content of the witness or expert statement.
- 18.7. Examination by video-conference may in exceptional circumstances be permitted at the discretion of the Tribunal.
- 18.8. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the statement of such witness or report of such expert to be struck from the record, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.
- 18.9. Each Party shall be responsible for ensuring the attendance of its own witnesses and experts at the applicable hearing, except when the other Party has waived cross-examination of a witness or expert, the Tribunal does not direct his or her appearance, and the Party decides not to call the witness or expert.
- 18.10. Each Party shall cover the costs of appearance of its own witnesses and experts (except with respect to interpretation, addressed in §11 above). The Tribunal will decide upon the appropriate allocation of such costs in the award or at the time the arbitration is concluded.

19. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*

- 19.1. A pre-hearing organizational meeting shall be held before each hearing at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the Parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings

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

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing may be held in-person or by any other appropriate means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §10 above.
- 20.3. The hearing shall take place not before 6 weeks after the filing of the last written submission for that phase of the proceedings. The exact date of the hearing shall be determined at a later stage by the Tribunal after consultations with the Parties.
- 20.4. The Members of the Tribunal shall endeavour to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. Allocation of time at the hearing shall be agreed upon by the Parties or, alternatively, decided by the Tribunal in consultation with the Parties after the Pre-Hearing Organizational Meeting. In principle, each Party shall have an equal amount of time at its disposal.
- 20.6. Hearings shall be accessible to the public by livestream. Where there is a need to protect confidential information or the integrity of the arbitral process, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection. The Parties shall endeavour to agree arrangements for the protection of confidential information.
- 20.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
  - 20.7.1. A chronology of relevant facts in tabular form;
  - 20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
  - 20.7.3. A list of the substantive issues required to be determined by the Tribunal.

21. Records of Hearings and Sessions

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

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in the procedural language(s) 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, if possible, 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.
- 21.3. 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 court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

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

- 22.1. At the conclusion of the hearing, the Tribunal shall decide after consulting the Parties whether the Parties will file Post-Hearing Memorials. Unless expressly allowed by the Tribunal, any such submission shall not contain any new evidence, documents, legal authorities, sources, declarations or expert reports.
- 22.2. Each Party will submit its Statement of Costs within 4 weeks after the final hearing or the final exchange of Post-Hearing Memorials, if any. The Parties shall file supporting evidence regarding the quantification of the costs together with its Statement of Costs.

23. Publication and Confidentiality

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

- 23.1. For the purposes of this section of the Procedural Order, “confidential information” means information designated as confidential by a Party on the grounds that it is:
  - 23.1.1. business confidential information relating to a Party;
  - 23.1.2. business confidential information belonging to a third party;



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- 23.1.3. information about an identifiable individual who is entitled to have it protected on grounds of personal privacy;
  - 23.1.4. information of a financial, commercial, scientific or technical nature supplied to a Party by a third party, which is regarded as confidential by that third party and which has been supplied to the Party from whom disclosure is sought on the basis that the information will be treated as confidential;
  - 23.1.5. information protected from disclosure under the applicable laws of the Kingdom of Norway.
- 23.2. Business confidential information includes:
- 23.2.1. trade secrets;
  - 23.2.2. financial, commercial, scientific or technical information that is consistently treated as confidential by the party or third party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records;
  - 23.2.3. information the disclosure of which could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the party or third party to which it relates; and
  - 23.2.4. information the disclosure of which could interfere with ongoing or future contractual or other negotiations of the party or third party to which it relates.
- 23.3. Information which is already in the public domain may not be designated as confidential for the purposes of these proceedings.
- 23.4. A Party may designate as confidential information only information which falls within one or more of the categories listed in §23.1 above. Any document or part of a document which a Party wishes to designate as containing confidential information must be clearly labelled “Confidential Information – Unauthorized Disclosure Prohibited”.
- 23.5. If the other Party wishes to contest the designation of information as confidential, it shall inform the Party making that designation within ten working days of receipt of the material so designated. In that event, the Parties shall endeavour to reach agreement. If after a further ten working days they have been unable to do so, the matter shall be referred to the Tribunal for decision. Until the Tribunal gives its decision, both Parties shall treat the information concerned as confidential.
- 23.6. Except as otherwise provided in this Order or determined by the Tribunal, confidential information shall be disclosed only to:

- 23.6.1. The Members and Secretary of the Tribunal, any assistants appointed by the Tribunal and any members of the ICSID Secretariat assisting the Secretary;
- 23.6.2. Counsel acting for a Party in the present proceedings and their support staff;
- 23.6.3. The First Claimant and any officer or employee of the Second Claimant to whom disclosure is necessary for the purposes of the present proceedings;
- 23.6.4. Officials or employees of the Respondent to whom disclosure is necessary for the purposes of the present proceedings;
- 23.6.5. Any independent expert retained or consulted by a Party in connection with these proceedings to the extent that disclosure is necessary for the purposes of that expert's involvement in the proceedings;
- 23.6.6. Any witness or prospective witness to the extent that disclosure is necessary for the purposes of that witness' involvement in the proceedings.
- 23.7. Confidential information disclosed in accordance with §23.6 shall not be used for any purpose other than the present proceedings.
- 23.8. If a Party considers that it is required by law to make disclosure of confidential information to a court or other body, it shall first consult the Tribunal.
- 23.9. The Parties consent to the publication by ICSID of the award and any order or decision of the Tribunal, as well as the request for arbitration and the pleadings of the Parties provided that any confidential information is redacted before publication.
- 23.10. Unless the Parties otherwise agree, the Secretariat shall allow fifteen working days between the transmission of the award, order or decision to the Parties and its publication.

For and on behalf of the Tribunal.

[signed]

Sir Christopher Greenwood  
President of the Tribunal  
Date: 12 October 2020



ANNEX A:

**ELECTRONIC FILE NAMING GUIDELINES**

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

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

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

ANNEX B:

**TIMETABLE OF PROCEEDINGS**

<b>Procedural Step</b>	<b>Due Date</b>
Claimants' Memorial	150 days from date of this Order
Norway's Request for bifurcation (if any)	28 days after filing of Memorial
<b>In the event that a request for bifurcation is made, the following timetable will apply:</b>	
Claimants' response to request	28 days after filing of request
Tribunal's decision on request	Within 28 days of filing of response At the same time as deciding upon the request, the Tribunal will determine a schedule for the subsequent proceedings.
<b>In the event that no request for bifurcation is made:</b>	
Norway's Counter-Memorial and Memorial on Jurisdiction (if jurisdictional objections are made)	150 days from filing of Memorial
Parties' requests for disclosure	14 days from filing of Counter-Memorial
Parties' objections to requests for disclosure	14 days from filing of requests
Parties' responses to objections to disclosure	14 days from filing of objections
Parties' production of documents whose disclosure is not the subject of objection	28 days from date of requests
Tribunal's decision on contested requests for disclosure	14 days from filing of responses to objections
Production of documents subject of contested Requests	14 days from Tribunal's decision

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Claimants' Reply and Counter-Memorial Jurisdiction (if jurisdictional objections are made)	120 days from filing of Counter-Memorial
Norway's Rejoinder and Reply on Jurisdiction (if jurisdictional objections are made)	120 days from filing of Reply
Claimants' Rejoinder on Jurisdiction (if jurisdictional objections are made)	28 days from filing of Rejoinder
Pre-Hearing Conference	Not earlier than 28 days after Norway's Rejoinder or (if jurisdictional objections are made) Claimants' Rejoinder on Jurisdiction and not later than 28 days before the hearing
Hearing	To be determined

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