

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Adel A Hamadi Al Tamimi v. Sultanate of Oman
(ICSID Case No. ARB/11/33)

PROCEDURAL ORDER NO. 1

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Ms. Aïssatou Diop

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Introduction

The first session of the Arbitral Tribunal was held on June 18, 2012 by telephone conference.

Participating in the conference were:

Members of the Tribunal

Professor David A. R. Williams QC, President of the Tribunal

Judge Charles N. Brower, Arbitrator

Mr. J. Christopher Thomas QC, Arbitrator

ICSID Secretariat

Ms. Aïssatou Diop

Participating on behalf of the Claimant

Mr. Adel Al Tamimi

Mr. Arif Hyder Ali

Mr. Theodore R. Posner

Ms. Samaa Haridi

Ms. Patricia Saiz

Participating on behalf of the Respondent

Ms. Claudia Salomon

Ms. Kiera Gans

Mr. Leon Skornicki

The President of the Tribunal (President) opened the session at 4:04 p.m. E.S.T. and welcomed the participants. The President introduced the Tribunal and the Secretary of the Tribunal (Secretary) and asked the parties to introduce their respective teams.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on June 15, 2012;
- The Draft Procedural Order (Annex 2) circulated by the Secretary on June 12, 2012; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on June 15, 2012 (Annex 3), indicating the items on which they agreed and their respective positions regarding the items on which they did not agree. On the 15th of June, the parties produced a further revised draft Procedural Order No. 1, which was a draft jointly agreed between the parties.

The Tribunal and the parties discussed the items on the Agenda in order.

The parties' agreements and the Tribunal's decisions are reflected in the Procedural Order below.

The session was adjourned at 4:44 p.m.

An audio recording of the session was made and deposited in the archives of the Centre. CD-ROM(s)/USB drive(s) containing the recording was/were subsequently distributed to the Members of the Tribunal and the parties.

Order

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent have agreed and the Arbitral Tribunal has determined shall govern this arbitration.

1. Applicable Arbitration Rules *Convention Article 44*

1.1. The parties agree that this arbitration shall be governed by the ICSID Arbitration Rules in effect as of April 2006, as well as the procedural rules set forth in Section B of Chapter 10 of the Agreement Between the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area ("U.S.-Oman FTA").

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

2.1. The Tribunal was constituted on April 25, 2012 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that, as of the date hereof, they had no 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). The parties acknowledge having received copies of the declarations signed by the three arbitrators according to Rule 6(2).

3. Fees and Expenses of the Tribunal Members *Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

3.1. The fees and expenses of each arbitrator 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 arbitrator 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 Regulation 14 of the ICSID Administrative and Financial Regulations.
- 3.3. The Members of the Tribunal shall submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Each Member of the Tribunal shall receive a fee equivalent to 25% of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than 30 days prior to commencement of the hearing. Non-refundable expenses incurred in connection with the hearing as a result of such postponement or cancellation 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.

5. Decisions of the Tribunal
Arbitration Rule 16

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal. The Tribunal's decisions shall be in writing.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.
- 5.3. The President may sign Procedural Orders on behalf of the Tribunal.

6. Delegation of Power to Fix Time Limits

Arbitration Rule 26(1)

6.1. The President has the power to 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 all Members of the Tribunal except that where the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.

7. Representation of the Parties

Arbitration Rule 18

7.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the ICSID Secretariat of such designation.

For the Claimant

Arif H. Ali (arif.ali@weil.com)
Theodore R. Posner
(ted.posner@weil.com)
Patricia Saiz (patricia.saiz@weil.com)
Lindsay A. Bourne
(lindsay.bourne@weil.com)
Glenda Bleiberg
(glenda.bleiberg@weil.com)

Weil Gotshal & Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Tel: + 1 202 682 7000
Fax: + 202 857 0940

For the Respondent

Claudia T. Salomon
(claudia.salomon@dlapiper.com)
Kiera S. Gans (kiera.gans@dlapiper.com)
Leon C. Skornicki
(leon.skornicki@dlapiper.com)

DLA Piper LLP
1251 Avenue of the Americas
New York, NY 10020
Tel: + 1 212 335 4500
Fax: +1 212 335 4501

and

Samaa A. Haridi
(samaa.haridi@weil.com)

Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Tel: +1 212 310 8000
Fax: +1 212 310 8007

8. Apportionment of Costs and Advance Payments to the Centre
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 8.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 8.2. By letter of April 27, 2012, the Centre requested that each party pay US\$75,000 to defray the initial costs of the proceeding. The Centre received both parties' payments on May 29, 2012.
- 8.3. The Centre shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
9. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 9.1. Pursuant to Article 62 of the ICSID Convention and Article 10.19.1 of the U.S.-Oman FTA, the parties agree that the legal place of the arbitration is the seat of the Centre in Washington, D.C. If, by the parties' agreement, any hearing or other proceedings are to be held elsewhere, such venue shall be finally approved by the Tribunal in consultation with the Centre. The Tribunal may deliberate at any place it deems convenient.
10. Procedural Language(s)
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 10.1. English is the procedural language of the arbitration. Documents filed in any other language must be accompanied by a translation into English. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation. Translations need not be certified, unless required by the Tribunal. The translations shall be submitted at the time of the filing of the corresponding submission. The translations shall clearly indicate what text is hand-written and what is typed on the original document.
- If a party wishes to challenge the translation of a document, it shall submit a new translation that clearly identifies the differences. The Tribunal shall decide on such challenges, including on which version shall prevail.

10.2. A witness may testify in a language other than the procedural language with simultaneous interpretation into the procedural language.

10.3. Simultaneous interpretation shall be arranged by the ICSID Secretariat and charged to the case account, without prejudice to the Tribunal's final allocation of costs. The parties shall inform the ICSID Secretariat of interpretation requirements at least four weeks in advance of the hearing. The parties shall provide advance notice of at least three weeks prior to the date of any testimony in language(s) other than English, so that simultaneous interpretation in English can be arranged.

11. Means of Communication and Copies of Instruments

Administrative and Financial Regulations 24 and 30; Arbitration Rules 20(1)(d) and 23

a) Communications:

11.1. The Centre shall be the channel of written communications between the parties and the Tribunal. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the ICSID Secretariat, which shall send them to the Tribunal. Routine, administrative or procedural correspondence may be transmitted to and from the ICSID Secretariat by email only, as long as it does not exceed 50 pages in total. Communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the ICSID Secretariat only, which shall send them to the Tribunal and to the parties. The Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal. The parties agree that there shall be no *ex parte* communications between any party and any arbitrator regarding any matter in these proceedings and that all communications by one party to the Tribunal shall be copied simultaneously to the other party.

Correspondence between Parties and the Tribunal shall be confined to requests for rulings and administrative matters. Argumentation shall be reserved for written submissions lodged in relation to issues under consideration by the Tribunal or for hearings before the Tribunal.

b) Instruments/Submissions:

11.2. The parties shall:

11.2.1. by the relevant filing date, submit by email to the ICSID Secretariat and the opposing party an electronic version without exhibits of pleadings, witness statements, and expert reports,¹ and upload these documents with exhibits to the FTP server;

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

11.2.2. courier to the ICSID Secretariat by the following business day:

11.2.2.1. one unbound hard copy in A4/Letter format of the entire submission, including copies of the signed originals of the pleading, witness statements, and expert reports, together with exhibits;

11.2.2.2. four minimum hard copies in A5 format of the entire submission, including the pleading, witness statements, expert reports, and exhibits; and

11.2.2.3. five minimum USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, and exhibits. Each party shall number the accompanying documentation consecutively throughout the entire proceeding.

11.2.3. at the same time, courier to the opposing party:

11.2.3.1. two hard copy in A4/Letter format of the entire submission, including the pleading, witness statements, expert reports, and exhibits. All hard copies for a party shall be dispatched to that party's lead counsel at the address indicated in Item 2 above; and

11.2.3.2. one minimum USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, and exhibits.

11.3. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aïssatou Diop
ICSID
MSN U3-301
3301 Pennsy Dr.
Landover, MD 20785-1606
USA
Tel.: + 1 (202) 458-9833
Fax: + 1 (202) 522-2615
Email: adiop3@worldbank.org

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

Ms. Aïssatou Diop
1800 G Street, NW ("U Building")
3rd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-9833

- 11.5. The Tribunal may request hard copies of any document submitted electronically at any time.
- 11.6. Legal authorities shall be submitted in electronic version only.
- 11.7. Electronic versions of pleadings and exhibits shall be text searchable (i.e., OCR PDF or Word).
- 11.8. Pleadings shall be accompanied by an index hyperlinked to the exhibits and legal authorities.
- 11.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Centre.
- 11.10. A filing shall be deemed timely if sent by a party by midnight (Washington, D.C.) on the relevant date.
- 11.11. The Tribunal's decisions on procedural matters may be communicated to the parties through the Secretariat.

12. Written and Oral Procedures
Arbitration Rules 20(1)(e) and 29

- 12.1. The proceeding shall consist of a written phase followed by an oral phase. The written phase shall consist of four rounds of pleadings (Memorial, Counter-Memorial, Reply and Rejoinder).

13. Schedule for Submission of Pleadings
Arbitration Rules 20(1)(c) and 31

- 13.1. The parties have agreed the following sequence for the written submissions in this arbitration:
 - 13.1.1. Claimant shall submit its Memorial on the Merits ("Memorial"), fact witness statements, legal expert reports, and any supporting documentary evidence no later than October 1, 2012.
 - 13.1.2. Respondent shall file any Request for Production ("RROP") no later than October, 12 2012. The RROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Respondent may wish to present.
 - 13.1.3. Subject to any objections that it may wish to put forward, Claimant shall produce all documents responsive to the RROP ("RROP Response"), no later than November 2, 2012. Any objections shall be clearly set forth in

the Redfern Schedule, and any accompanying submission that Claimant may wish to present.

- 13.1.4. Respondent shall file any responses it may have to the objections raised by Claimant to the RROP no later than November 16, 2012. Such responses shall be clearly set forth in the Redfern Schedule, and may be accompanied by whatever additional written submissions Respondent may wish to present.
- 13.1.5. On or before November 23, 2012, the Tribunal shall rule on Claimant's objections to the RROP ("Second Production Order"). Claimant shall comply with the Tribunal's ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal's ruling.
- 13.1.6. Respondent shall file its Counter-Memorial, fact witness statements, legal expert reports, and any supporting documentary evidence, including any objections to jurisdiction no later February 15, 2013. The parties have agreed that the proceedings will not be bifurcated and that any jurisdictional objections to be lodged by Respondent will be joined to the merits.
- 13.1.7. Claimant shall file its Request for Production ("CROP") on or before March 1, 2013. The CROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Claimant may wish to present.
- 13.1.8. On or before March 22, 2013, subject to any objections that it may wish to put forward, Respondent shall produce all documents responsive to the CROP ("CROP Response"). Any objections shall be clearly set forth in the Redfern Schedule, and any accompanying submission that Respondent may wish to present.
- 13.1.9. On or before April 5, 2013, Claimant shall file any responses it may have to the objections raised by Respondent to the CROP. Such responses shall be clearly set forth in the Redfern Schedule, and may be accompanied by whatever additional written submission Claimant may wish to present.
- 13.1.10. On or before April 12, 2013, the Tribunal shall rule on Respondent's objections to the CROP ("First Production Order"). Respondent shall comply with the Tribunal's ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal's ruling.
- 13.1.11. Claimant shall file its Reply, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Reply no later than May 23, 2013.

- 13.1.12. Respondent shall file its Rejoinder, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Rejoinder no later than September 19, 2013.
- 13.1.13. Claimant and/or Respondent may file additional Requests for Production on or before October 4, 2013. The Requests shall be limited in scope to any new issues raised in the Reply and/or Rejoinder. The deadline for production of these documents shall be agreed upon by the parties, with the help of the Tribunal if necessary. From the documents produced, if a party wishes to place on record any new evidence for use at the hearing, it shall do so no later ten (10) days before the hearing.
- 13.1.14. A schedule for post-hearing written submissions and/or proceedings shall be set forth in a separate order.
- 13.2. The Tribunal may extend any of the time limits as necessary or appropriate. The Tribunal shall extend a time limit only as an exception and provided that the request for an extension is made without undue delay, that is, as soon as the reason for the extension occurs. The Tribunal will extend a time limit if the other party agrees to the extension and the procedural timetable is not disrupted.
14. Written Submissions
Written submissions by the parties shall comply with the following:
- 14.1. In all written submissions, the parties shall divide their allegations into consecutively numbered paragraphs.
- 14.2. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.
- 14.3. Each pre-hearing written submission shall be filed with accompanying exhibits, witness statements, and expert reports referenced in such submission. Any additional submissions of exhibits, witness statement and expert reports shall require leave from the Tribunal.
15. Document Production
Convention Article 43(a); Arbitration Rule 34
- 15.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) may guide the Tribunal and the parties regarding document production in this case.

As provided in Item 13 above, the parties shall include with their respective rounds of written submissions all the facts, legal arguments, and documentary evidence on which they rely, including witness statements, expert opinions

and other documentary evidence. In each party's second written submissions (respectively, Reply and Rejoinder), the party shall include only additional facts, legal arguments, written witness statements, expert opinion and documentary evidence responding to or rebutting the matters raised by the other party's prior written submissions, except if new facts have arisen.

16. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation

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

- 16.1. The parties shall include all of the evidence on which they intend to rely, including written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.
- 16.2. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Tribunal deems the certification necessary.
- 16.3. Each party shall number the accompanying documentation consecutively throughout the entire proceeding (C-001 or R-001 for documentary evidence and CLA-001 or RLA-001 for legal sources).

The parties shall submit all exhibits in binders or bound volumes with a separate tab for each exhibit. A list of exhibits, identifying each exhibit by a number, date, type of document, author and primary recipient(s) (as applicable), shall be placed in each binder or bound volume

The parties shall submit each exhibit or legal authority with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to a previously numbered exhibit or legal authority do not need to resubmit such exhibit or legal authority. All exhibits and legal authorities shall be consecutively numbered such that new exhibits or legal authorities submitted with later filings shall start with the next number following the number of the last exhibit previously filed.

In exceptional cases, the Tribunal may permit a party to submit further exhibits after all pre-hearing written submissions have been exchanged, but only upon good cause shown, such as that the exhibit has become relevant as a result of the last written submission by the other party.

All exhibits shall be submitted in the original language. If the original language is other than English, a translation into English shall be provided, in accordance with Item 7 of this Order. In the case of lengthy and/or technical documents, the party submitting the exhibit may translate only the relevant part(s), but with sufficient context so that the overall meaning of the text is not distorted.

For the Tribunal's ease of reference, the parties shall paginate any translation

in the same manner as the original document.

All documents - originals and copies - submitted to the Tribunal shall be deemed to be authentic and complete, unless disputed by the other party.

Documents and exhibits other than demonstrative exhibits may not be introduced for the first time at the hearing, absent special circumstances and by leave of the Tribunal upon application by a party.

All documents are produced to the Tribunal on the basis that each document:

- is what it purports to be;
- was signed by any purported signatory shown on its face;
- was sent by the purported author and/or received by any purported addressee shown on its face; and,
- if a copy, is a true copy of the original.

If there are any documents in respect of which authenticity is disputed or challenged, the originals of such documents shall be produced and included in a separate bundle, and the Tribunal will rule on them at the hearing.

- 16.4. In their subsequent written submissions, the parties shall include only additional written witness testimony, expert opinion testimony, documents or other evidence that responds to or rebuts matters raised by the other party's prior written submission. The parties shall submit each witness statement with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to previously submitted statement(s) do not need to include such witness statement(s).
- 16.5. The Tribunal shall not admit any testimony or other evidence that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 16.6. All witness statements or expert reports shall be signed by the submitting witness or expert.
- 16.7. Before a hearing and within time limits to be set by the Tribunal, a party may be called upon by the Tribunal or the other party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been advanced with the written submissions.

Each party shall be responsible for summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal has not directed the witness' appearance.

The fact that a witness was not called by a party to appear at the hearing for cross-examination will not be deemed to imply that the facts set forth in that

witness statement are correct or proven. The Tribunal will assess in its discretion, taking all circumstances into account, the weight of the written statement of a witness who does not testify at the hearing. As a general rule, if a party has waived cross-examination of a witness, the other party may not present that witness for direct examination and questioning unless requested to do so by the Tribunal.

- 16.8. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 16.9. The Tribunal may consider the witness statement of a witness who fails to appear when summoned to a hearing only in exceptional circumstances, and upon good cause shown.
- 16.10. Witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 16.11. The direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination as described below in paragraph 17.2.
- 16.12. Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence. Experts shall be allowed in the hearing room at any time, including during the examination of other experts.
- 16.13. Other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal at a later stage and in advance of any hearing.

Each Party shall advance the costs of appearance of its own witnesses. The Tribunal shall decide upon the appropriate allocation of such costs in any partial or final award.

It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

Each Party may retain and submit to the Tribunal the evidence of one or more experts.

17. Hearings (including Pre-Hearing Organizational Meetings)
Arbitration Rule 13(2)

Hearing

- 17.1. Dates of subsequent sessions shall be determined at a later stage.
- 17.2. A final hearing of two weeks shall be held on October 21 - November 1, 2013, provided that at least 4 weeks have elapsed between the filing of the last written submission and the first day of the hearing.

The hearing shall include opening statements of equal time for both parties; brief direct testimony of witnesses (as elaborated below); cross examination, re-direct examination, and re-cross examination of witnesses; questions to counsel by the Tribunal. The parties and the Tribunal shall decide on the need for closing statements, and/or post-hearing briefing prior to the closure of the hearing.

The direct testimony of any witness shall be set forth in a written statement submitted together with the corresponding pleading. The Parties agree that the statement of any witness or the report of any expert shall stand as that person's evidence in chief. At the hearing the party offering the witness' testimony may engage in brief direct oral examination, which shall be confined to the witness confirming, with or without corrections, his or her witness statement and dealing with any new matters contained in the witness statements, reports, or instruments/submissions lodged after date of that witness statement. In the event that either party intends for a witness in direct testimony to expand upon a prior witness statement to deal with a new matter contained in the witness statements, reports, or instruments/submissions lodged after the date of that witness statement, that party shall provide advance notice to the other party, no later than 10 days prior to the hearing, of the general topics that were not previously addressed in that witness' witness statements and that the party intends for that witness to cover during direct testimony.

At the conclusion of the direct oral examination the witness may be cross-examined on matters referred to in his or her witness statement and on any additional matter raised during direct testimony. Parties are further permitted to question the witness on issues of credibility during cross-examination provided that in doing so the party utilizes only documents available in the record. At the conclusion of the cross-examination the witness may be re-examined but the re-examination must be confined to matters raised in the course of the cross-examination.

Other details of the hearing or post-hearing proceedings shall be set forth in a subsequent procedural order.

No later than 14 days prior to the commencement of the hearing the Parties shall submit to the Tribunal an agreed draft hearing schedule along the lines of

the sample attached to this Procedural Order No. 1.

The hearing shall proceed as far as possible on the basis of an equal sharing of the available hearing time.

The hearing of expert witnesses (if any) may be grouped according to subject matter.

Absent special leave from the Tribunal for good cause shown, on any given topic witnesses shall be examined by no more than one lawyer from each side.

Pre-Hearing Organizational Meeting

17.3. There shall be a Pre-Hearing Organizational meeting between the Tribunal and the parties at least 4 to 6 weeks before each hearing. Such meetings may be conducted by telephone or video link.

18. Records of Hearings
Arbitration Rule 20(1)(g)

18.1. Sound recordings shall be made of all sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

18.2. The Secretary may prepare summary minutes of hearings or sessions upon request.

18.3. Verbatim transcript(s) in English shall be made of any sessions other than sessions on procedural issues. Verbatim transcripts shall be maintained using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

18.4. The parties shall attempt to agree on any proposed corrections to the transcripts within 15 days of the receipt of both the sound recordings and transcripts. The agreed upon corrections shall be entered by the court reporter in the transcripts (“revised transcripts”). In case of disagreement between the parties, the Tribunal shall decide and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

Without prejudice to the Tribunal’s final allocation of costs, the costs of transcription and sound recording shall be borne by the parties in equal shares.

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

19.1. The Centre shall publish all procedural orders, decisions, and award related to the proceeding.

[signed]

On behalf of the Tribunal
Professor David A. R. Williams QC
President of the Tribunal
Date: July 13, 2012

ANNEX 1

Adel A Hamadi Al Tamimi

v.

Sultanate of Oman

(ICSID Case No. ARB/11/33)

First Session of the Arbitral Tribunal

Date: June 18, 2012

Method: Audio Conference

Time: 10:30am EST

Draft Agenda

1. Applicable Arbitration Rules (Convention Article 44)
2. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)
3. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)
4. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a))
5. Decisions of the Tribunal (Arbitration Rule 16)
6. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1))
7. Representation of the Parties (Arbitration Rule 18)
8. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28)
9. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))
10. Procedural Language(s) (Arbitration Rules 20(1)(b) and 22)
11. Means of Communication and Copies of Instruments (Administrative and Financial Regulations 24 and 30; Arbitration Rules 20(1)(d) and 23)
12. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29)
13. Schedule for Submission of Pleadings (Arbitration Rules 20(1)(c) and 31)
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15. Document Production (Convention Article 43(a); Arbitration Rule 34)
16. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation (Convention Article 43(a); Arbitration Rules 24 and 33-36)
17. Hearings (including Pre-Hearing Organizational Meetings) (Arbitration Rule 13(2))
18. Records of Hearings (Arbitration Rule 20(1)(g))
19. Publication (Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4))

ANNEX 2

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Adel A Hamadi Al Tamimi v. Sultanate of Oman
(ICSID Case No. ARB/11/33)

PROCEDURAL ORDER NO. 1

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Ms. Aïssatou Diop

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Introduction

The first session of the Arbitral Tribunal was held on June 10, 2012 by telephone conference.

Participating in the conference were:

Members of the Tribunal

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

ICSID Secretariat

Ms. Aïssatou Diop

Participating on behalf of the Claimant

Mr. Adel Al Tamimi
Mr. Arif Hyder Ali
Ms. Samaa Haridi
Ms. Patricia Saiz
Mr. Ted Posner (not confirmed)

Participating on behalf of the Respondent

Ms. Claudia Salomon
Mr. Leon Skornicki
Ms. Kiera Gans (not confirmed)

The President of the Tribunal (President) opened the session at [insert time] and welcomed the participants. The President introduced the Tribunal and the Secretary of the Tribunal (Secretary) and asked the parties to introduce their respective teams.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on [insert date]

Or

that includes the items proposed by the parties in addition to the ones of the Draft Agenda circulated by the Secretary on [insert date];

- The Draft Procedural Order (Annex 2) circulated by the Secretary on [insert date];
and

- The parties' comments on the Draft Agenda and the Draft Procedural Order received on [insert date(s)], (Annex 3), indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The Tribunal and the parties discussed the items on the Agenda in order.

The parties' agreements and the Tribunal's decisions are reflected in the Procedural Order below.

The session was adjourned at [insert time].

An audio recording of the session was made and deposited in the archives of the Centre. The recording was subsequently uploaded to the FTP server established for the case for access by the Members of the Tribunal and the parties.

Or

CD-ROM(s)/USB drive(s) containing the recording was/were subsequently distributed to the Members of the Tribunal and the parties.

Order

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent have agreed and the Arbitral Tribunal has determined shall govern this arbitration.

1. Applicable Arbitration Rules *Convention Article 44*

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 2006.

Parties' proposal at para. 5: The parties agree that this arbitration shall be governed by the ICSID Arbitration Rules in effect as of April 2006, as well as the procedural rules set forth in Section B of Chapter 10 of the Agreement Between the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area ("U.S.-Oman FTA").

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

2.1. The Tribunal was constituted on April 25, 2012 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that, as of the date hereof, they had no 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). The parties acknowledge

having received copies of the declarations signed by the three arbitrators according to Rule 6(2).

3. Fees and Expenses of the Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each arbitrator 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.

Parties' proposal at para. 4.1: "The fees and expenses of the Tribunal Members shall be determined and paid in accordance with the ICSID Schedule of Fees dated January 2012."

3.2. Under the current Schedule of Fees, each arbitrator 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 Regulation 14 of the ICSID Administrative and Financial Regulations.

3.3. The Members of the Tribunal shall submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Each Member of the Tribunal shall receive a fee equivalent to [25%] of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than 30 days prior to commencement of the hearing. Non-refundable expenses incurred in connection with the hearing as a result of such postponement or cancellation shall be reimbursed.

4. Presence and Quorum

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

a) Option 1

4.1. The presence of two Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].

b) Option 2

- 4.2. The presence of all Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].

Parties' proposal at para. 10: Quorum for all meetings of the Tribunal will be constituted by all three of its Members at any sitting of the Tribunal. The President may act for the Tribunal in respect of routine procedural matters.

5. Decisions of the Tribunal
Arbitration Rule 16

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal. **Parties' proposal at para. 11.1:** The Tribunal's decisions shall be in writing.

- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence [except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.] **Parties' proposal at para. 11.1:** The Tribunal may take decisions by correspondence among its Members, or by any other appropriate means, provided that all Members are consulted.

Parties' proposal at para. 11.2: The President may sign Procedural Orders on behalf of the Tribunal.

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

- 6.1. The President has the power to 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 all Members of the Tribunal except that where the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.

7. Representation of the Parties
Arbitration Rule 18

- 7.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the ICSID Secretariat of such designation.

For the Claimant

For the Respondent

Arif H. Ali (arif.ali@weil.com)
Theodore R. Posner
(ted.posner@weil.com)
Patricia Saiz (patricia.saiz@weil.com)
Lindsay A. Bourne
(lindsay.bourne@weil.com)
Glenda Bleiberg
(glenda.bleiberg@weil.com)

Weil Gotshal & Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Tel: + 1 202 682 7000
Fax: + 202 857 0940

Claudia T. Salomon
(claudia.salomon@dlapiper.com)
Kiera S. Gans (kiera.gans@dlapiper.com)
Leon C. Skornicki
(leon.skornicki@dlapiper.com)

DLA Piper LLP
1251 Avenue of the Americas
New York, NY 10020
Tel: + 1 212 335 4500
Fax: +1 212 335 4501

and

Samaa A. Haridi
(samaa.haridi@weil.com)

Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Tel: +1 212 310 8000
Fax: +1 212 310 8007

8. Apportionment of Costs and Advance Payments to the Centre
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 8.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 8.2. By letter of April 27, 2012, the Centre requested that each party pay US\$75,000 to defray the initial costs of the proceeding. The Centre received both parties' payments on May 29, 2012.
- 8.3. The Centre shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
9. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26;

Arbitration Rule 13(3)

- 9.1. [Insert city and state/province] shall be the place of the proceeding. The Tribunal can hold hearings at any other place that it deems appropriate after consulting with the parties. The Tribunal may deliberate at any place it deems convenient.

Parties' proposal at para. 6.1: Pursuant to Article 62 of the ICSID Convention and Article 10.19.1 of the U.S.-Oman FTA, the parties agree that the legal place of the arbitration is the seat of the Centre in Washington, D.C. If, by the parties' agreement, any hearing or other proceedings are to be held elsewhere, such venue shall be finally approved by the Tribunal in consultation with the Centre.

10. Procedural Language(s)

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

- 10.1. [insert language] is the procedural language of the arbitration. Documents filed in any other language must be accompanied by a translation into [insert language]. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation. Translations need not be certified, unless required by the Tribunal. **Parties' proposal at para. 7.1:** The translations shall be submitted at the time of the filing of the corresponding submission. The translations shall clearly indicate what text is hand-written and what is typed on the original document.

Parties' proposal at para. 7.2: If a party wishes to challenge the translation of a document, it shall submit a new translation that clearly identifies the differences. The Tribunal shall decide on such challenges, including on which version shall prevail.

- 10.2. A witness may testify in a language other than the procedural language with simultaneous interpretation into the procedural language.
- 10.3. Simultaneous interpretation shall be arranged by the ICSID Secretariat and charged to the case account, without prejudice to the Tribunal's final allocation of costs. The parties shall inform the ICSID Secretariat of interpretation requirements at least four weeks in advance of the hearing. **Parties' proposal at para. 7.3:** The parties shall provide advance notice of at least three weeks prior to the date of any testimony in language(s) other than English, so that simultaneous interpretation in English can be arranged.

11. Means of Communication and Copies of Instruments

Administrative and Financial Regulations 24 and 30; Arbitration Rules 20(1)(d) and

23

a) Communications:

11.1. The Centre shall be the channel of written communications between the parties and the Tribunal. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the ICSID Secretariat, which shall send them to the Tribunal. **Parties' proposal at para. 9.5: Routine, administrative or procedural correspondence may be transmitted to and from the ICSID Secretariat by email only, as long as it does not exceed 50 pages in total. [Communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the ICSID Secretariat only, which shall send them to the Tribunal and to the parties.]** The Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal. **Parties' proposal at para. 9.1: The parties agree that there shall be no *ex parte* communications between any party and any arbitrator regarding any matter in these proceedings and that all communications by one party to the Tribunal shall be copied simultaneously to the other party.**

[Correspondence between Parties and the Tribunal shall be confined to requests for rulings and administrative matters. Argumentation shall be reserved for written submissions lodged in relation to issues under consideration by the Tribunal or for hearings before the Tribunal.]

b) Instruments/Submissions:

11.2. The parties shall:

11.2.1. by the relevant filing date, submit by email to the ICSID Secretariat and the opposing party an electronic version without exhibits of pleadings, witness statements, and expert reports,¹ and upload these documents with exhibits to the FTP server;

11.2.2. courier to the ICSID Secretariat by the following business day:

11.2.2.1. one unbound hard copy in A4/Letter format of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits;

11.2.2.2. [four minimum] hard copies in [A5] format of the entire submission, including the pleading, witness statements, expert reports, and exhibits; and

11.2.2.3. [five minimum] USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

statements, expert reports, and exhibits. **Parties' proposal at para. 9.6: Each party shall number the accompanying documentation consecutively throughout the entire proceeding.**

11.2.3. at the same time, courier to the opposing party:

11.2.3.1. two hard copy in A4/Letter format of the entire submission, including the pleading, witness statements, expert reports, and exhibits **parties' proposal at para. 9.2: All hard copies for a party shall be dispatched to that party's lead counsel at the address indicated in Item 2 above; and**

11.2.3.2. **[one minimum]** USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, and exhibits.

11.3. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aïssatou Diop
ICSID
MSN U3-301
3301 Pennsy Dr.
Landover, MD 20785-1606
USA
Tel.: + 1 (202) 458-9833
Fax: + 1 (202) 522-2615
Email: adiop3@worldbank.org

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

Ms. Aïssatou Diop
1800 G Street, NW ("U Building")
3rd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-9833

11.5. The Tribunal may request hard copies of any document submitted electronically at any time.

11.6. Legal authorities shall be submitted in electronic version only.

11.7. Electronic versions of pleadings and exhibits shall be text searchable (i.e., OCR PDF or Word).

11.8. Pleadings shall be accompanied by an index hyperlinked to the exhibits and legal authorities.

11.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Centre.

11.10. A filing shall be deemed timely if sent by a party by midnight (Washington, D.C.) on the relevant date. **Parties' proposal at para. 9.4:** A written submission shall be considered timely submitted if the submission is transmitted in electronic form by e-mail on the due date by 11:59 p.m. EST/EDT (USA).

11.11. The Tribunal's decisions on procedural matters may be communicated to the parties through the Secretariat.

12. Written and Oral Procedures

Arbitration Rules 20(1)(e) and 29

12.1. The proceeding shall consist of a written phase followed by an oral phase.

Parties' proposal at para. 13.1: The written phase shall consist of four rounds of pleadings (Memorial, Counter-Memorial, Reply and Rejoinder).

13. Schedule for Submission of Pleadings

Arbitration Rules 20(1)(c) and 31

Parties' proposal at para. 16: The schedule shall be as follows:

13.1. The parties have agreed the following sequence for the written submissions in this arbitration:

13.1.1. Claimant shall submit its Memorial on the Merits ("Memorial"), fact witness statements, legal expert reports, and any supporting documentary evidence no later than 1 October 2012.

13.1.2. Respondent shall file any Request for Production ("RROP") no later than 12 October 2012. The RROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Respondent may wish to present.

13.1.3. Subject to any objections that it may wish to put forward, Claimant shall produce all documents responsive to the RROP ("RROP Response"), no later than 2 November 2012. Any objections shall be clearly set forth in the Redfern Schedule, and any accompanying submission that Claimant may wish to present.

13.1.4. Respondent shall file any responses it may have to the objections raised by Claimant to the RROP no later than 16 November 2012. Such responses shall be clearly set forth in the Redfern Schedule, and may be

accompanied by whatever additional written submissions Respondent may wish to present.

- 13.1.5. On or before 23 November 2012, the Tribunal shall rule on Claimant's objections to the RROP ("Second Production Order"). Claimant shall comply with the Tribunal's ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal's ruling.
- 13.1.6. Respondent shall file its Counter-Memorial, fact witness statements, legal expert reports, and any supporting documentary evidence, including any objections to jurisdiction no later 15 February 2013.
- 13.1.7. Claimant shall file its Request for Production ("CROP") on or before 1 March 2013. The CROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Claimant may wish to present.
- 13.1.8. On or before 22 March 2013, subject to any objections that it may wish to put forward, Respondent shall produce all documents responsive to the CROP ("CROP Response"). Any objections shall be clearly set forth in the Redfern Schedule, and any accompanying submission that Respondent may wish to present.
- 13.1.9. On or before 5 April 2013, Claimant shall file any responses it may have to the objections raised by Respondent to the CROP. Such responses shall be clearly set forth in the Redfern Schedule, and may be accompanied by whatever additional written submission Claimant may wish to present.
- 13.1.10. On or before 12 April 2013, the Tribunal shall rule on Respondent's objections to the CROP ("First Production Order"). Respondent shall comply with the Tribunal's ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal's ruling.
- 13.1.11. Claimant shall file its Reply, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Reply no later than 23 May 2013.
- 13.1.12. Respondent shall file its Rejoinder, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Rejoinder no later than 19 September 2013.
- 13.1.13. Claimant and/or Respondent may file additional Requests for Production on or before 4 October 2013. The Requests shall be limited in scope to any new issues raised in the Reply and/or Rejoinder. The deadline for production of these documents shall be agreed upon by the parties, with the help of the Tribunal if necessary. From the documents produced, if a party wishes to place on record any new evidence for use at

the hearing, it shall do so no later ten (10) days before the hearing.

13.1.14. The hearing will be held on [TBD].

13.1.15. A schedule for post-hearing proceedings shall be set forth in a separate order.

13.2. The Tribunal may extend any of the time limits as necessary or appropriate. The Tribunal shall extend a time limit only as an exception and provided that the request for an extension is made without undue delay, that is, as soon as the reason for the extension occurs. The Tribunal will extend a time limit if the other party agrees to the extension and the procedural timetable is not disrupted.

14. **Parties' proposal at para. 14: Written Submissions**

In addition to Item 9 of this Order, written submissions by the parties shall comply with the following:

14.1. In all written submissions, the parties shall divide their allegations into consecutively numbered paragraphs.

14.2. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.

14.3. Each pre-hearing written submission shall be filed with accompanying exhibits, witness statements, and expert reports referenced in such submission. Any additional submissions of exhibits, witness statement and expert reports shall require leave from the Tribunal.

15. **Document Production**

(Convention Article 43(a); Arbitration Rule 34)

15.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) may guide the Tribunal and the parties regarding document production in this case.

Parties' proposal at para. 202.2: As provided in Item [16]13] above, the parties shall include with their respective rounds of written submissions all the facts, legal arguments, and documentary evidence on which they rely, including witness statements, expert opinions and other documentary evidence. In each party's second written submissions (respectively, Reply and Rejoinder), the party shall include only additional facts, legal arguments, written witness statements, expert opinion and documentary evidence responding to or rebutting the matters raised by the other party's prior written submissions, except if new facts have arisen.

16. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation

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

- 16.1. The parties shall include all of the evidence on which they intend to rely, including written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.
- 16.2. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Tribunal deems the certification necessary.
- 16.3. Each party shall number the accompanying documentation consecutively throughout the entire proceeding (C-001 or R-001 for documentary evidence and CLA-001 or RLA-001 for legal sources).

Parties' proposal at para. 15.b: The parties shall submit all exhibits in binders or bound volumes with a separate tab for each exhibit. A list of exhibits, identifying each exhibit by a number, date, type of document, author and primary recipient(s) (as applicable), shall be placed in each binder or bound volume

Parties' proposal at para. 15.d-i: The parties shall submit each exhibit or legal authority with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to a previously numbered exhibit or legal authority do not need to resubmit such exhibit or legal authority. All exhibits and legal authorities shall be consecutively numbered such that new exhibits or legal authorities submitted with later filings shall start with the next number following the number of the last exhibit previously filed.

In exceptional cases, the Tribunal may permit a party to submit further exhibits after all pre-hearing written submissions have been exchanged, but only upon good cause shown, such as that the exhibit has become relevant as a result of the last written submission by the other party.

All exhibits shall be submitted in the original language. If the original language is other than English, a translation into English shall be provided, in accordance with Item 7 of this Order. In the case of lengthy and/or technical documents, the party submitting the exhibit may translate only the relevant part(s), but with sufficient context so that the overall meaning of the text is not distorted.

For the Tribunal's ease of reference, the parties shall paginate any translation in the same manner as the original document.

All documents - originals and copies - submitted to the Tribunal shall be

deemed to be authentic and complete, unless disputed by the other party.

Documents and exhibits other than demonstrative exhibits may not be introduced for the first time at the hearing, absent special circumstances and by leave of the Tribunal upon application by a party.

[All documents are produced to the Tribunal on the basis that each document:

- is what it purports to be;
- was signed by any purported signatory shown on its face;
- was sent by the purported author and/or received by any purported addressee shown on its face; and,
- if a copy, is a true copy of the original.

If there are any documents in respect of which authenticity is disputed or challenged, the originals of such documents shall be produced and included in a separate bundle, and the Tribunal will rule on them at the hearing.]

- 16.4. In their subsequent written submissions, the parties shall include only additional written witness testimony, expert opinion testimony, documents or other evidence that responds to or rebuts matters raised by the other party's prior written submission. **Parties' proposal at para. 17.2:** The parties shall submit each witness statement with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to previously submitted statement(s) do not need to include such witness statement(s).
- 16.5. The Tribunal shall not admit any testimony or other evidence that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist. **Parties' proposal at para. 17.1:** For each witness, a written and signed witness statement shall be submitted to the Tribunal in accordance with item [13] above, unless a party cannot obtain such a statement from a witness for a legitimate reason and obtains leave from the Tribunal.
- 16.6. All witness statements or expert reports shall be signed by the submitting witness or expert.
- 16.7. Before a hearing and within time limits to be set by the Tribunal, a party may be called upon by the Tribunal or the other party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been advanced with the written submissions. The Tribunal has discretion to disregard the statement of any such witness or expert who does not appear for examination and cross-examination at the hearing.

Parties' proposal at para. 17.2: Each party shall be responsible for

summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal has not directed the witness' appearance.

Parties' proposal at para. 17.4: The fact that a witness was not called by a party to appear at the hearing for cross-examination will not be deemed to imply that the facts set forth in that witness statement are correct or proven. The Tribunal will assess in its discretion, taking all circumstances into account, the weight of the written statement of a witness who does not testify at the hearing. As a general rule, if a party has waived cross-examination of a witness, the other party may not present that witness for direct examination and questioning unless requested to do so by the Tribunal.

- 16.8. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 16.9. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. **Parties' proposal at para. 17.3:** The Tribunal may consider the witness statement of a witness who fails to appear when summoned to a hearing only in exceptional circumstances, and upon good cause shown.
- 16.10. Witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 16.11. The direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination. There is no limitation on the scope of the cross-examination to the contents of the witness statement or expert report. Re-direct examination shall be limited to the subject of cross-examination.
- 16.12. Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence. Experts shall be allowed in the hearing room at any time, including during the examination of other experts.
- 16.13. Other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal at a later stage and in advance of any hearing.

Parties' proposal at paras. 17.5-17.7: Each Party shall advance the costs of appearance of its own witnesses. The Tribunal shall decide upon the appropriate allocation of such costs in any partial or final award.

It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

Each Party may retain and submit to the Tribunal the evidence of one or more experts.

17. Hearings (including Pre-Hearing Organizational Meetings)
Arbitration Rule 13(2)

Hearing

17.1. Dates of subsequent sessions shall be determined at a later stage.

17.2. A final hearing of [insert number] days shall be held on [insert date], [provided that at least 4 weeks have elapsed between the filing of the last written submission and the first day of the hearing].

Parties' proposal at para. 13

The hearing shall include opening statements of equal time for both parties; brief direct testimony of witnesses (as elaborated below); cross examination, re-direct examination, and re-cross examination of witnesses; questions to counsel by the Tribunal. The parties and the Tribunal shall decide on the need for closing statements, and/or post-hearing briefing prior to the closure of the hearing.

The direct testimony of any witness shall be set forth in a written statement submitted together with the corresponding pleading. The Parties agree that the statement of any witness or the report of any expert shall stand as that person's evidence in chief. At the hearing the party offering that witness's testimony may engage in brief direct oral examination (i.e., no more than 15 minutes). Except with advanced leave of the Tribunal, the witness's direct oral testimony shall be within the scope of his or her previously submitted witness statements.

Other details of the hearing or post-hearing proceedings shall be set forth in a subsequent procedural order.

[No later than 14 days prior to the commencement of the hearing the Parties shall submit to the Tribunal an agreed draft hearing schedule along the lines of the sample attached to this Procedural Order No. 1.

The hearing shall proceed as far as possible on the basis of an equal sharing of the available hearing time.

The hearing of expert witnesses (if any) may be grouped according to subject matter.

Absent special leave from the Tribunal for good cause shown, on any given topic witnesses shall be examined no more than one lawyer from each side.]

Pre-Hearing Organizational Meeting

17.3. There shall be a Pre-Hearing Organizational meeting between the Tribunal and the parties at least 4 to 6 weeks before each hearing. Such meetings may be conducted by telephone or video link.

18. Records of Hearings
Arbitration Rule 20(1)(g)

18.1. Sound recordings shall be made of all sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

18.2. The Secretary may prepare summary minutes of hearings or sessions upon request.

18.3. Verbatim transcript(s) in English shall be made of any sessions other than sessions on procedural issues. Verbatim transcripts shall be maintained using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

18.4. The parties shall attempt to agree on any proposed corrections to the transcripts within 15 days of the receipt of both the sound recordings and transcripts. The agreed upon corrections shall be entered by the court reporter in the transcripts (“revised transcripts”). In case of disagreement between the parties, the Tribunal shall decide and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts. **Parties’ proposal at para. 8.32:** Except as provided by the Tribunal, the final transcript prepared by a professional service shall serve as the official transcript of any hearing.

Parties’ proposal at para. 8.3: Without prejudice to the Tribunal’s final allocation of costs, the costs of transcription and sound recording shall be borne by the parties in equal shares.

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

a) Option 1

19.1. The Centre shall publish all procedural orders, decisions, and award related to the proceeding.

b) Option 2

19.2. The Centre shall not publish any procedural order, decision, or award related

to the proceeding without the consent of the parties. However, the parties consent to the Centre publishing the texts of any procedural order, decision, or award in these proceedings previously published by any other source.

19.3. The Centre shall promptly publish excerpts of the legal reasoning of the Tribunal's award unless it is already in the public domain.

Other Matters

On behalf of the Tribunal
Professor David A. R. Williams QC
President of the Tribunal
Date:

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Adel A Hamadi Al Tamimi v. Sultanate of Oman
(ICSID Case No. ARB/11/33)**

PROCEDURAL ORDER NO. 1

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Ms. Aissatou Diop

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Introduction

The first session of the Arbitral Tribunal was held on June 14, 2012 by telephone conference.

Participating in the conference were:

Members of the Tribunal

Professor David A. R. Williams QC, President of the Tribunal

Judge Charles N. Brower, Arbitrator

Mr. J. Christopher Thomas QC, Arbitrator

ICSID Secretariat

Ms. Aïssatou Diop

Participating on behalf of the Claimant

Mr. Adel Al Tamimi

Mr. Arif Hyder Ali

Ms. Samaa Haridi

Ms. Patricia Saiz

Mr. Ted Posner ~~(not confirmed)~~

Participating on behalf of the Respondent

Ms. Claudia Salomon

~~Mr. Leon Skornicki~~

Ms. Kiera Gans ~~(not confirmed)~~

~~Mr. Leon Skornicki~~

The President of the Tribunal (President) opened the session at [insert time] and welcomed the participants. The President introduced the Tribunal and the Secretary of the Tribunal (Secretary) and asked the parties to introduce their respective teams.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on [insert date] June 15, 2012;
~~Or~~
~~that includes the items proposed by the parties in addition to the ones of the Draft Agenda circulated by the Secretary on [insert date];~~
- The Draft Procedural Order (Annex 2) circulated by the Secretary on [insert date] June 12, 2012; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on [insert date(s)] June 15, 2012 (Annex 3), indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The Tribunal and the parties discussed the items on the Agenda in order.

The parties' agreements and the Tribunal's decisions are reflected in the Procedural Order below.

The session was adjourned at [insert time].

~~An audio recording of the session was made and deposited in the archives of the Centre. The recording was subsequently uploaded to the FTP server established for the case for access by the Members of the Tribunal and the parties.~~

~~Or~~

An audio recording of the session was made and deposited in the archives of the Centre. CD-ROM(s)/USB drive(s) containing the recording was/were subsequently distributed to the Members of the Tribunal and the parties.

Order

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent have agreed and the Arbitral Tribunal has determined shall govern this arbitration.

1. Applicable Arbitration Rules
Convention Article 44

~~1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 2006.~~

1.1. ~~Parties' proposal at para. 5.~~ The parties agree that this arbitration shall be governed by the ICSID Arbitration Rules in effect as of April 2006, as well as the procedural rules set forth in Section B of Chapter 10 of the Agreement Between the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area ("U.S.-Oman FTA").

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

2.1. The Tribunal was constituted on April 25, 2012 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that, as of the date hereof, they had no 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). The parties acknowledge having received copies of the declarations signed by the three arbitrators according to Rule 6(2).

3. Fees and Expenses of the Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each arbitrator 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.

~~Parties' proposal at para. 4.1: "The fees and expenses of the Tribunal Members shall be determined and paid in accordance with the ICSID Schedule of Fees dated January 2012."~~

3.2. Under the current Schedule of Fees, each arbitrator 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 Regulation 14 of the ICSID Administrative and Financial Regulations.

3.3. The Members of the Tribunal shall submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Each Member of the Tribunal shall receive a fee equivalent to **25%** of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than 30 days prior to commencement of the hearing. Non-refundable expenses incurred in connection with the hearing as a result of such postponement or cancellation shall be reimbursed.

4. Presence and Quorum

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

a) Option 1

~~4.1. The presence of two Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].~~

b) Option 2

4.1. ~~4.2.~~ The presence of all Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].

~~Parties' proposal at para. 10: Quorum for all meetings of the Tribunal will be constituted by all three of its Members at any sitting of the Tribunal. The President may act for the Tribunal in respect of routine procedural matters.~~

5. Decisions of the Tribunal

Arbitration Rule 16

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal. ~~Parties' proposal at para. 11.1:~~ The Tribunal's decisions shall be in writing.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence ~~[except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.]~~ ~~Parties' proposal at para. 11.1: The Tribunal may take decisions by correspondence among its Members, or by any other appropriate means, provided that all Members are consulted.~~
- 5.3. ~~Parties' proposal at para. 11.2:~~ The President may sign Procedural Orders on behalf of the Tribunal.

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

- 6.1. The President has the power to 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 all Members of the Tribunal except that where the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to reconsideration of such decision by the full Tribunal if time permits.

7. Representation of the Parties
Arbitration Rule 18

- 7.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the ICSID Secretariat of such designation.

For the Claimant

Arif H. Ali (arif.ali@weil.com)
Theodore R. Posner
(ted.posner@weil.com)
Patricia Saiz (patricia.saiz@weil.com)
Lindsay A. Bourne
(lindsay.bourne@weil.com)
Glenda Bleiberg
(glenda.bleiberg@weil.com)

For the Respondent

Claudia T. Salomon
(claudia.salomon@dlapiper.com)
Kiera S. Gans (kiera.gans@dlapiper.com)
Leon C. Skornicki
(leon.skornicki@dlapiper.com)

DLA Piper LLP
1251 Avenue of the Americas
New York, NY 10020

Weil Gotshal & Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Tel: + 1 202 682 7000
Fax: + 202 857 0940

Tel: + 1 212 335 4500
Fax: +1 212 335 4501

and

Samaa A. Haridi
(samaa.haridi@weil.com)

Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Tel: +1 212 310 8000
Fax: +1 212 310 8007

8. Apportionment of Costs and Advance Payments to the Centre
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 8.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 8.2. By letter of April 27, 2012, the Centre requested that each party pay US\$75,000 to defray the initial costs of the proceeding. The Centre received both parties' payments on May 29, 2012.
- 8.3. The Centre shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
9. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- ~~9.1. [Insert city and state/province] shall be the place of the proceeding. The Tribunal can hold hearings at any other place that it deems appropriate after consulting with the parties. The Tribunal may deliberate at any place it deems convenient.~~
- 9.1. ~~Parties' proposal at para. 6.1:~~ Pursuant to Article 62 of the ICSID Convention and Article 10.19.1 of the U.S.-Oman FTA, the parties agree that the legal place of the arbitration is the seat of the Centre in Washington, D.C.

If, by the parties' agreement, any hearing or other proceedings are to be held elsewhere, such venue shall be finally approved by the Tribunal in consultation with the Centre. The Tribunal may deliberate at any place it deems convenient.

10. Procedural Language(s)

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

10.1. ~~{insert language}~~English is the procedural language of the arbitration. Documents filed in any other language must be accompanied by a translation into ~~{insert language}~~English. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation. Translations need not be certified, unless required by the Tribunal. **Parties' proposal at para. 7.1:** The translations shall be submitted at the time of the filing of the corresponding submission. The translations shall clearly indicate what text is hand-written and what is typed on the original document.

Parties' proposal at para. 7.2: If a party wishes to challenge the translation of a document, it shall submit a new translation that clearly identifies the differences. The Tribunal shall decide on such challenges, including on which version shall prevail.

10.2. A witness may testify in a language other than the procedural language with simultaneous interpretation into the procedural language.

10.3. Simultaneous interpretation shall be arranged by the ICSID Secretariat and charged to the case account, without prejudice to the Tribunal's final allocation of costs. The parties shall inform the ICSID Secretariat of interpretation requirements at least four weeks in advance of the hearing. **Parties' proposal at para. 7.3:** The parties shall provide advance notice of at least three weeks prior to the date of any testimony in language(s) other than English, so that simultaneous interpretation in English can be arranged.

11. Means of Communication and Copies of Instruments

Administrative and Financial Regulations 24 and 30; Arbitration Rules 20(1)(d) and 23

a) Communications:

11.1. The Centre shall be the channel of written communications between the parties and the Tribunal. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the ICSID Secretariat, which shall send them to the Tribunal. **Parties' proposal at para. 9.5:** Routine, administrative or procedural correspondence may be transmitted to and from the ICSID Secretariat by email only, as long

as it does not exceed 50 pages in total. ~~{Communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the ICSID Secretariat only, which shall send them to the Tribunal and to the parties.}~~ The Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal. ~~Parties' proposal at para. 9.1:~~ The parties agree that there shall be no *ex parte* communications between any party and any arbitrator regarding any matter in these proceedings and that all communications by one party to the Tribunal shall be copied simultaneously to the other party.

~~{Correspondence between Parties and the Tribunal shall be confined to requests for rulings and administrative matters. Argumentation shall be reserved for written submissions lodged in relation to issues under consideration by the Tribunal or for hearings before the Tribunal.}~~

b) Instruments/Submissions:

11.2. The parties shall:

11.2.1. by the relevant filing date, submit by email to the ICSID Secretariat and the opposing party an electronic version without exhibits of pleadings, witness statements, and expert reports,¹ and upload these documents with exhibits to the FTP server;

11.2.2. courier to the ICSID Secretariat by the following business day:

11.2.2.1. one unbound hard copy in A4/Letter format of the entire submission, including copies of the signed originals of the pleading, witness statements, and expert reports, together with exhibits;

11.2.2.2. ~~{four minimum}~~ hard copies in [A5] format of the entire submission, including the pleading, witness statements, expert reports, and exhibits; and

11.2.2.3. ~~{five minimum}~~ USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, and exhibits. ~~Parties' proposal at para. 9.6:~~ Each party shall number the accompanying documentation consecutively throughout the entire proceeding.

11.2.3. at the same time, courier to the opposing party:

11.2.3.1. two hard copy in A4/Letter format of the entire submission, including the pleading, witness statements, expert reports, and exhibits ~~parties' proposal at para. 9.2:~~ All hard copies for a party shall be dispatched to that party's lead counsel at the address indicated in Item

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

2 above; and

11.2.3.2. ~~{one minimum}~~ USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, and exhibits.

11.3. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aïssatou Diop
ICSID
MSN U3-301
3301 Pennsy Dr.
Landover, MD 20785-1606
USA
Tel.: + 1 (202) 458-9833
Fax: + 1 (202) 522-2615
Email: adiop3@worldbank.org

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

Ms. Aïssatou Diop
1800 G Street, NW (“U Building”)
3rd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-9833

11.5. The Tribunal may request hard copies of any document submitted electronically at any time.

11.6. Legal authorities shall be submitted in electronic version only.

11.7. Electronic versions of pleadings and exhibits shall be text searchable (i.e., OCR PDF or Word).

11.8. Pleadings shall be accompanied by an index hyperlinked to the exhibits and legal authorities.

11.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Centre.

11.10. A filing shall be deemed timely if sent by a party by midnight (Washington, D.C.) on the relevant date. ~~Parties’ proposal at para. 9.4: A written submission shall be considered timely submitted if the submission is transmitted in electronic form by e-mail on the due date by 11:59 p.m. EST/EDT (USA).~~

11.11. The Tribunal’s decisions on procedural matters may be communicated to the

parties through the Secretariat.

12. Written and Oral Procedures

Arbitration Rules 20(1)(e) and 29

12.1. The proceeding shall consist of a written phase followed by an oral phase.

~~Parties' proposal at para. 13.1:~~ The written phase shall consist of four rounds of pleadings (Memorial, Counter-Memorial, Reply and Rejoinder).

13. Schedule for Submission of Pleadings

Arbitration Rules 20(1)(c) and 31

~~Parties' proposal at para. 16: The schedule shall be as follows:~~

13.1. The parties have agreed the following sequence for the written submissions in this arbitration:

13.1.1. Claimant shall submit its Memorial on the Merits ("Memorial"), fact witness statements, legal expert reports, and any supporting documentary evidence no later than 1 October 2012.

13.1.2. Respondent shall file any Request for Production ("RROP") no later than 12 October 2012. The RROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Respondent may wish to present.

13.1.3. Subject to any objections that it may wish to put forward, Claimant shall produce all documents responsive to the RROP ("RROP Response"), no later than 2 November 2012. Any objections shall be clearly set forth in the Redfern Schedule, and any accompanying submission that Claimant may wish to present.

13.1.4. Respondent shall file any responses it may have to the objections raised by Claimant to the RROP no later than 16 November 2012. Such responses shall be clearly set forth in the Redfern Schedule, and may be accompanied by whatever additional written submissions Respondent may wish to present.

13.1.5. On or before 23 November 2012, the Tribunal shall rule on Claimant's objections to the RROP ("Second Production Order"). Claimant shall comply with the Tribunal's ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal's ruling.

13.1.6. Respondent shall file its Counter-Memorial, fact witness statements, legal expert reports, and any supporting documentary evidence, including any objections to jurisdiction no later 15 February 2013.

- 13.1.7. Claimant shall file its Request for Production (“CROP”) on or before 1 March 2013. The CROP shall be clearly set forth in a Redfern Schedule, and any accompanying submission that Claimant may wish to present.
- 13.1.8. On or before 22 March 2013, subject to any objections that it may wish to put forward, Respondent shall produce all documents responsive to the CROP (“CROP Response”). Any objections shall be clearly set forth in the Redfern Schedule, and any accompanying submission that Respondent may wish to present.
- 13.1.9. On or before 5 April 2013, Claimant shall file any responses it may have to the objections raised by Respondent to the CROP. Such responses shall be clearly set forth in the Redfern Schedule, and may be accompanied by whatever additional written submission Claimant may wish to present.
- 13.1.10. On or before 12 April 2013, the Tribunal shall rule on Respondent’s objections to the CROP (“First Production Order”). Respondent shall comply with the Tribunal’s ruling, including by producing any documents required to be produced pursuant thereto, within 2 weeks of the date of the Tribunal’s ruling.
- 13.1.11. Claimant shall file its Reply, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Reply no later than 23 May 2013.
- 13.1.12. Respondent shall file its Rejoinder, together with any fact witness statements, legal expert reports, and any supporting documentary evidence in support of its Rejoinder no later than 19 September 2013.
- 13.1.13. Claimant and/or Respondent may file additional Requests for Production on or before 4 October 2013. The Requests shall be limited in scope to any new issues raised in the Reply and/or Rejoinder. The deadline for production of these documents shall be agreed upon by the parties, with the help of the Tribunal if necessary. From the documents produced, if a party wishes to place on record any new evidence for use at the hearing, it shall do so no later ten (10) days before the hearing.
- ~~13.1.14. The hearing will be held on [TBD].~~
- 13.1.14. 13.1.15.—A schedule for post-hearing written submissions and/or proceedings shall be set forth in a separate order.
- 13.2. The Tribunal may extend any of the time limits as necessary or appropriate. The Tribunal shall extend a time limit only as an exception and provided that the request for an extension is made without undue delay, that is, as soon as the reason for the extension occurs. The Tribunal will extend a time limit if the other party agrees to the extension and the procedural timetable is not disrupted.

14. ~~Parties' proposal at para. 14:~~ Written Submissions
~~In addition to Item 9 of this Order, written~~ Written submissions by the parties shall comply with the following:
- 14.1. In all written submissions, the parties shall divide their allegations into consecutively numbered paragraphs.
 - 14.2. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.
 - 14.3. Each pre-hearing written submission shall be filed with accompanying exhibits, witness statements, and expert reports referenced in such submission. Any additional submissions of exhibits, witness statement and expert reports shall require leave from the Tribunal.
15. Document Production
~~(Convention Article 43(a); Arbitration Rule 34)~~
- 15.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) may guide the Tribunal and the parties regarding document production in this case.
- ~~Parties' proposal at para. 202.2:~~ As provided in Item ~~[1613]~~ 13 above, the parties shall include with their respective rounds of written submissions all the facts, legal arguments, and documentary evidence on which they rely, including witness statements, expert opinions and other documentary evidence. In each party's second written submissions (respectively, Reply and Rejoinder), the party shall include only additional facts, legal arguments, written witness statements, expert opinion and documentary evidence responding to or rebutting the matters raised by the other party's prior written submissions, except if new facts have arisen.
16. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation
Convention Article 43(a); Arbitration Rules 24 and 33-36
- 16.1. The parties shall include all of the evidence on which they intend to rely, including written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.
 - 16.2. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Tribunal deems the certification necessary.
 - 16.3. Each party shall number the accompanying documentation consecutively

throughout the entire proceeding (C-001 or R-001 for documentary evidence and CLA-001 or RLA-001 for legal sources).

~~Parties' proposal at para. 15.b:~~ The parties shall submit all exhibits in binders or bound volumes with a separate tab for each exhibit. A list of exhibits, identifying each exhibit by a number, date, type of document, author and primary recipient(s) (as applicable), shall be placed in each binder or bound volume

~~Parties' proposal at para. 15.d.i:~~ The parties shall submit each exhibit or legal authority with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to a previously numbered exhibit or legal authority do not need to resubmit such exhibit or legal authority. All exhibits and legal authorities shall be consecutively numbered such that new exhibits or legal authorities submitted with later filings shall start with the next number following the number of the last exhibit previously filed.

In exceptional cases, the Tribunal may permit a party to submit further exhibits after all pre-hearing written submissions have been exchanged, but only upon good cause shown, such as that the exhibit has become relevant as a result of the last written submission by the other party.

All exhibits shall be submitted in the original language. If the original language is other than English, a translation into English shall be provided, in accordance with Item 7 of this Order. In the case of lengthy and/or technical documents, the party submitting the exhibit may translate only the relevant part(s), but with sufficient context so that the overall meaning of the text is not distorted.

For the Tribunal's ease of reference, the parties shall paginate any translation in the same manner as the original document.

All documents - originals and copies - submitted to the Tribunal shall be deemed to be authentic and complete, unless disputed by the other party.

Documents and exhibits other than demonstrative exhibits may not be introduced for the first time at the hearing, absent special circumstances and by leave of the Tribunal upon application by a party.

~~{~~All documents are produced to the Tribunal on the basis that each document:

- ~~■~~ •-is what it purports to be;
- ~~■~~ •-was signed by any purported signatory shown on its face;
- ~~■~~ •-was sent by the purported author and/or received by any purported addressee shown on its face; and,
- ~~■~~ •-if a copy, is a true copy of the original.

If there are any documents in respect of which authenticity is disputed or challenged, the originals of such documents shall be produced and included in a separate bundle, and the Tribunal will rule on them at the hearing.†

- 16.4. In their subsequent written submissions, the parties shall include only additional written witness testimony, expert opinion testimony, documents or other evidence that responds to or rebuts matters raised by the other party's prior written submission. ~~Parties' proposal at para. 17.2:~~ The parties shall submit each witness statement with the first written submission that expressly refers to it. Subsequent written submission(s) that refer to previously submitted statement(s) do not need to include such witness statement(s).
- 16.5. The Tribunal shall not admit any testimony or other evidence that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist. ~~Parties' proposal at para. 17.1: For each witness, a written and signed witness statement shall be submitted to the Tribunal in accordance with item [13] above, unless a party cannot obtain such a statement from a witness for a legitimate reason and obtains leave from the Tribunal.~~
- 16.6. All witness statements or expert reports shall be signed by the submitting witness or expert.
- 16.7. Before a hearing and within time limits to be set by the Tribunal, a party may be called upon by the Tribunal or the other party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been advanced with the written submissions. ~~The Tribunal has discretion to disregard the statement of any such witness or expert who does not appear for examination and cross-examination at the hearing—~~
~~Parties' proposal at para. 17.2:~~ Each party shall be responsible for summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal has not directed the witness' appearance.
~~Parties' proposal at para. 17.4:~~ The fact that a witness was not called by a party to appear at the hearing for cross-examination will not be deemed to imply that the facts set forth in that witness statement are correct or proven. The Tribunal will assess in its discretion, taking all circumstances into account, the weight of the written statement of a witness who does not testify at the hearing. As a general rule, if a party has waived cross-examination of a witness, the other party may not present that witness for direct examination and questioning unless requested to do so by the Tribunal.
- 16.8. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 16.9. ~~The Tribunal may disregard the testimony of a witness or expert called to~~

~~testify at the hearing who fails to appear at the hearing without justified reasons. Parties' proposal at para. 17.3:~~ The Tribunal may consider the witness statement of a witness who fails to appear when summoned to a hearing only in exceptional circumstances, and upon good cause shown.

- 16.10. Witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 16.11. The direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination. There is no limitation on the scope of the cross-examination to the contents of the witness statement or expert report. Re-direct examination shall be limited to the subject of cross-examination.
- 16.12. Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence. Experts shall be allowed in the hearing room at any time, including during the examination of other experts.
- 16.13. Other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal at a later stage and in advance of any hearing.

~~Parties' proposal at paras. 17.5-17.7:~~ Each Party shall advance the costs of appearance of its own witnesses. The Tribunal shall decide upon the appropriate allocation of such costs in any partial or final award.

It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

Each Party may retain and submit to the Tribunal the evidence of one or more experts.

17. Hearings (including Pre-Hearing Organizational Meetings)
Arbitration Rule 13(2)

Hearing

- 17.1. Dates of subsequent sessions shall be determined at a later stage.
- 17.2. A final hearing of [insert number] days shall be held on [insert date], [provided that at least 4 weeks have elapsed between the filing of the last written submission and the first day of the hearing].

~~Parties' proposal at para. 13~~

The hearing shall include opening statements of equal time for both parties; brief direct testimony of witnesses (as elaborated below); cross examination, re-direct examination, and re-cross examination of witnesses; questions to counsel by the Tribunal. The parties and the Tribunal shall decide on the need for closing statements, and/or post-hearing briefing prior to the closure of the hearing.

The direct testimony of any witness shall be set forth in a written statement submitted together with the corresponding pleading. The Parties agree that the statement of any witness or the report of any expert shall stand as that person's evidence in chief. At the hearing the party offering that witness's testimony may engage in brief direct oral examination (i.e., no more than 15 minutes). Except with advanced leave of the Tribunal, the witness's direct oral testimony shall be within the scope of his or her previously submitted witness statements.

Other details of the hearing or post-hearing proceedings shall be set forth in a subsequent procedural order.

[No later than 14 days prior to the commencement of the hearing the Parties shall submit to the Tribunal an agreed draft hearing schedule along the lines of the sample attached to this Procedural Order No. 1.

The hearing shall proceed as far as possible on the basis of an equal sharing of the available hearing time.

The hearing of expert witnesses (if any) may be grouped according to subject matter.

Absent special leave from the Tribunal for good cause shown, on any given topic witnesses shall be examined no more than one lawyer from each side.]

Pre-Hearing Organizational Meeting

17.3. There shall be a Pre-Hearing Organizational meeting between the Tribunal and the parties at least 4 to 6 weeks before each hearing. Such meetings may be conducted by telephone or video link.

18. Records of Hearings *Arbitration Rule 20(1)(g)*

18.1. Sound recordings shall be made of all sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

18.2. The Secretary may prepare summary minutes of hearings or sessions upon request.

18.3. Verbatim transcript(s) in English shall be made of any sessions other than sessions on procedural issues. Verbatim transcripts shall be maintained using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

18.4. The parties shall attempt to agree on any proposed corrections to the transcripts within 15 days of the receipt of both the sound recordings and transcripts. The agreed upon corrections shall be entered by the court reporter in the transcripts (“revised transcripts”). In case of disagreement between the parties, the Tribunal shall decide and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts. ~~Parties’ proposal at para. 8.32: Except as provided by the Tribunal, the final transcript prepared by a professional service shall serve as the official transcript of any hearing.~~

~~Parties’ proposal at para. 8.3:~~ Without prejudice to the Tribunal’s final allocation of costs, the costs of transcription and sound recording shall be borne by the parties in equal shares.

19. Publication

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

a) Option 1

19.1. The Centre shall publish all procedural orders, decisions, and award related to the proceeding.

b) Option 2

~~19.2. The Centre shall not publish any procedural order, decision, or award related to the proceeding without the consent of the parties. However, the parties consent to the Centre publishing the texts of any procedural order, decision, or award in these proceedings previously published by any other source.~~

~~19.3. The Centre shall promptly publish excerpts of the legal reasoning of the Tribunal’s award unless it is already in the public domain.~~

Other Matters

On behalf of the Tribunal
Professor David A. R. Williams QC
President of the Tribunal
Date:

**Summary Report:
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Modified Filename: C:\Users\fi11769\Desktop\Draft Procedural Order No 1 - 150612 - parties comments.doc	
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Delete	111
Move From	3
<u>Move To</u>	3
<u>Table Insert</u>	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	151