

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER CHAPTER 10 OF THE DOMINICAN
REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT AND
THE UNCITRAL ARBITRATION RULES (2010)**

**DAVID AVEN ET AL. V. THE REPUBLIC OF COSTA RICA
(UNCT/15/3)**

PROCEDURAL ORDER NO 1

Eduardo Siqueiros T., Presiding Arbitrator
C. Mark Baker, Arbitrator
Pedro Nikken, Arbitrator

Secretary of the Tribunal
Francisco Grob

September 10, 2015

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

Contents

1.	Applicable Arbitration Rules.....	5
2.	Constitution of the Tribunal and Tribunal Members' Declarations	5
3.	Representation of the Parties	5
4.	Administering Authority.....	6
5.	Secretary of the Tribunal	6
6.	Deposits of Costs	7
7.	Fees and Expenses of Tribunal Members.....	7
8.	Seat of the Arbitration	7
9.	Venue of Hearings	7
10.	Procedural Languages, Translation and Interpretation	8
11.	Routing of Written Communications.....	9
12.	Presence and Quorum	10
13.	Decisions of the Tribunal.....	10
14.	Delegation of Power to Fix Time Limits -.....	10
15.	Submission of Documents	10
16.	Number of Copies and Method of Filing of Parties' Pleadings.....	12
17.	Interim Measures of Protection	13
18.	Jurisdiction of the Tribunal.....	13
19.	Number and Sequence of Pleadings	13
20.	Production of Documents	14
21.	Procedural Calendar.....	14
22.	Witness Statements and Expert Reports	15
23.	Examination of Witnesses and Experts	16
24.	Pre-Hearing and Other Organizational Meetings	17
25.	Hearings.....	17
26.	Records of Hearings and Sessions.....	17
27.	Post-Hearing Memorials and Statements of Costs	18
	Annex A – Timetable.....	19

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

Introduction

The first session of the Tribunal was held on Thursday, September 3, 2015 at the seat of the International Centre for Settlement of Investment Disputes (ICSID) in Washington DC.

Participating in this session were:

Members of the Tribunal:

Eduardo Siqueiros T., Presiding Arbitrator
C. Mark Baker, Arbitrator
Pedro Nikken, Arbitrator

ICSID Secretariat:

Francisco Grob, Secretary of the Tribunal

Participating on behalf of the Claimants:

Mr. George Burn Vinson & Elkins RLLP
Mr. Todd Weiler, SJD Independent
Mr. Peter Danysh Vinson & Elkins RLLP

Participating on behalf of the Respondent:

Christian Leathley Herbert Smith Freehills
Amal Bouchenaki Herbert Smith Freehills
José Carlos Quirce Ministry of Foreign Trade of Costa Rica (COMEX)

Joining by telephone:

Florencia Villaggi Herbert Smith Freehills
Adriana Gonzalez Ministry of Foreign Trade of Costa Rica (COMEX)
Karima Sauma Ministry of Foreign Trade of Costa Rica (COMEX)
Julian Aguilar Ministry of Foreign Trade of Costa Rica (COMEX)
Arianna Arce Ministry of Foreign Trade of Costa Rica (COMEX)

The Presiding Arbitrator opened the session at 10:10 am and welcomed the participants. The Presiding Arbitrator introduced the Tribunal and the Secretary of the Tribunal (Tribunal Secretary or Secretary) and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Presiding Arbitrator of the Tribunal on August 11, 2015.

The session was adjourned at 1:30pm.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

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

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

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

Order

This first Procedural Order sets out the Procedural Rules that govern this arbitration. The agreed timetable is attached as Annex A.

1. Applicable Arbitration Rules

Article 1 UNCITRAL Arbitration Rules

Articles 10.16.3 (c), 10.16.5 and 10.22 of the DR-CAFTA

1.1. These proceedings are conducted in accordance with the UNCITRAL Arbitration Rules, as revised in 2010, except as modified by Section B Chapter 10 of the Dominican Republic-Central America-United States Free Trade Agreement (the “DR-CAFTA”).

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Section II UNCITRAL Arbitration Rules

Article 10.19 of the DR-CAFTA

2.1. The Tribunal was constituted on August 4, 2015, in accordance with the DR-CAFTA and the UNCITRAL Arbitration Rules.

2.2. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.3. The Members of the Tribunal confirmed that, to the best of their knowledge, there are no circumstances likely to give rise to justifiable doubts as to their impartiality or independence and that they will promptly disclose any such circumstances, should they arise.

3. Representation of the Parties

Article 5 UNCITRAL Arbitration Rules

3.1. Each party shall be represented by its respective counsel listed below and may designate additional persons by promptly notifying the Tribunal and the Secretary if the Tribunal of such designation, as provided for in Article 5 of the UNCITRAL Arbitration Rules.

For Claimants

Mr. George Burn
Ms. Justine Moxham
Mr. Alexander Slade
Vinson & Elkins RLLP
City Point, 33rd Floor
One Ropemaker Street
London EC2Y 9UE

For Respondent

Ms. Adriana Gonzalez
Ms. Karima Sauma
Mr. Julián Aguilar
Ms. Arianna Arce
Ministerio de Comercio Exterior
de Costa Rica
Autopista Próspera Fernández, costado

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

United Kingdom
and
Dr. Todd Weiler
2014 Valleyrun Blvd- Unit 19
Ontario N6G 5N8
Canada
and
Mr. Peter Danysh
Vinson & Elkins LLP
1001 Fannin Street - Suite 2500
Houston, TX
USA

oeste del Hospital Cima,
Apartado Postal 297 -1007 Centro Colón,
Escazú, Costa Rica
and
Mr. Christian Leathley
Mr. Laurence Shore
Ms. Florencia Villaggi
Ms. Amal Bouchenaki
Herbert Smith Freehills LLP
450 Lexington Avenue, 14th floor
New York, NY 10017

4. Administering Authority

4.1. The parties agreed that ICSID will administer this case. ICSID shall render full administrative services in relation to this arbitration. The cost of ICSID's services shall be included in the costs of the arbitration.

5. Secretary of the Tribunal

5.1. The Tribunal Secretary is Francisco Grob, Legal Associate at ICSID. The parties confirmed that they have no objection to Mr. Grob's appointment as Secretary of the Tribunal.

5.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Francisco Grob
Legal Associate
ICSID
1818 H Street, NW, Washington, DC 20433 USA
MSN J2-200
Tel. +1 (202) 458-5072
Fax: + 1 (202) 522-2615
Email: fgrob@worldbank.org

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

Francisco Grob
ICSID
701 18th St, NW ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-5072

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

6. Deposits of Costs

Articles 40 - 43 UNCITRAL Arbitration Rules

- 6.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs pursuant to Article 42 of the UNCITRAL Rules.
- 6.2. By letter of September 1, 2015, ICSID requested each party to make a payment to the Centre of USD 200,000 to defray the initial costs of the proceeding.
- 6.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the global fees and expenses of all arbitrators.
- 6.4. After a termination order or final award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

7. Fees and Expenses of Tribunal Members

Article 41 UNCITRAL Arbitration Rules

- 7.1. The fees and expenses of each Tribunal Member shall be determined and paid as follows:
 - 7.1.1. The Tribunal proposed to the parties that their fees be set at an hourly rate of USD 750 equally for each of the arbitrators, and this fee was accepted during the session.
 - 7.1.2. In addition, each Tribunal Member shall be entitled to receive reimbursement for any direct expenses reasonably incurred in connection with this case, including travel expenses and subsistence expenses when away from their normal place of residence.
- 7.2. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

8. Seat of the Arbitration

Article 18 UNCITRAL Arbitration Rules
Article 10.20.1 of the DR-CAFTA

- 8.1. London, England shall be the place of arbitration.
- 8.2. The Tribunal may meet at any location it considers appropriate for deliberations.

9. Venue of Hearings

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 9.1. Washington, D.C. shall be the venue of the hearings.
- 9.2. Unless otherwise agreed by the parties, the Tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

10. Procedural Languages, Translation and Interpretation
Article 19 UNCITRAL Arbitration Rules

- 10.1. English and Spanish shall be the procedural languages of the arbitration.
- 10.2. Routine, administrative, and procedural correspondence addressed to or sent by the parties, the Arbitral Tribunal or the ICSID Secretariat may be in English only (and not require translation to Spanish).

The Parties' Pleadings and Exhibits/Authorities

- 10.3. Pleadings shall be submitted in English, provided that a translation to Spanish is filed within 15 days thereafter or such longer period as the parties may agree or the Tribunal may determine for specific documents, upon a party's request.
- 10.4. Expert opinions, witness statements and any other accompanying documentation shall be submitted in either English or Spanish. A translation of such document to the other procedural language shall be filed within 15 days thereafter or such longer period as the parties may agree or the tribunal may determine for specific documents, upon a party's request.
- 10.5. Exhibits or legal authorities in English need not be translated into Spanish. Exhibits or legal authorities in Spanish need only be translated into English to the extent a relevant extract or section is relied upon and cited by the party submitting the same. A more extensive translation may be requested by the Tribunal or offered on the party's own initiative.
- 10.6. Any exhibits or legal authorities in neither English nor Spanish must be translated into English (and into Spanish in accordance with paragraph 10.5 above).
- 10.7. If the Tribunal requests additional translations (*e.g.*, new, more extensive or complete translations), it shall notify the party that submitted the document(s). That party will undertake to have the document(s) translated within 15 days of the Tribunal's request. Expenses for such translations shall be paid for by the Secretariat out of the advance payments made by the parties, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.8. In the event of any discrepancy between the translated documents and the originals, the originals shall prevail.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 10.9. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation, or the Tribunal, specifically requests a certified version.
- 10.10. Documents exchanged between the parties for Production of Documents need not be translated. Only documents submitted onto the record of the arbitration shall be subject to the above mentioned rules.

Hearings or Telephonic Calls

- 10.11. Any hearings (including by means of telephone conference) on procedural matters, may be conducted in English only.
- 10.12. Any hearings (including by means of telephone conference) on the merits, including any hearing on Jurisdiction, shall be interpreted simultaneously (or consecutively in the event held by telephone or video conference) in their entirety from and into English and Spanish. The testimony of a witness or expert called for examination during the hearing who prefers to give evidence in their mother tongue shall be interpreted simultaneously into both languages.
- 10.13. If a witness or expert needs to give testimony in a language other than English or Spanish, the parties will notify the Tribunal, as soon as possible, and in any event no later than at the pre-hearing organizational meeting (see § 24 below).
- 10.14. The ICSID Secretariat will arrange for translation services to be provided during the hearings.
- 10.15. The costs of interpretation and translation provided during the hearing will be paid from the deposit made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

Tribunal Communications Except any Partial, Jurisdictional, Preliminary or Final Award

- 10.16. The Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish. In the event of any inconsistency, the English version shall prevail.

Tribunal's Partial, Jurisdictional, Preliminary or Final Award

- 10.17. The Tribunal shall render any Award (howsoever defined) in English and Spanish simultaneously. In the event of any inconsistency, the English version shall prevail.

11. Routing of Written Communications
Article 17(4) UNCITRAL Arbitration Rules

- 11.1. The ICSID Secretariat shall be the channel of written communications between the

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

parties and the Tribunal.

- 11.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 11.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 11.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

12. Presence and Quorum

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

13. Decisions of the Tribunal

Article 33 of the UNCITRAL Arbitration Rules

- 13.1. Decisions of the Tribunal shall be made by a majority of the arbitrators. In the case of questions of procedure, when there is no majority or when the Tribunal so authorizes, the Presiding Arbitrator may decide alone, subject to revision, if any, by the Tribunal.
- 13.2. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

14. Delegation of Power to Fix Time Limits

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

15. Submission of Documents

Article 27 of the UNCITRAL Arbitration Rules

Article 10.21 of the DR-CAFTA

- 15.1. The written pleadings shall be accompanied by the documentary evidence relied upon by the parties. Further documentary evidence of a responsive nature relied upon by the parties may be submitted in rebuttal with the Reply and Rejoinder.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 15.2. The documents shall be submitted in the manner and form set forth in § 16 below.
- 15.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.
 - 15.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 15.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 15.4. The Tribunal may call upon the parties to produce documents or other evidence within such a period as the tribunal shall determine.
- 15.5. The documents shall be submitted in the following form:
 - 15.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 15.5.2. The number of each Exhibit containing a document produced by Claimants shall be preceded by the letter “C”. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R”.
 - 15.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 15.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 15.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
 - 15.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 15.6. The Tribunal encourages the parties to agree, in so far as possible, on a common bundle of documents organized in chronological order, or alternatively, to cross refer to documents included in the evidential bundle of the other party.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 15.7. To avoid duplicating submissions, the parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 15.8. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.

16. Number of Copies and Method of Filing of Parties' Pleadings
Article 17(4) UNCITRAL Rules

- 16.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with the supporting documentation to the file sharing platform that has been created by ICSID for purposes of this case.
- 16.1.1. The parties shall courier to the Tribunal Secretary by the following business day:
- 16.1.1.1. one unbound hard copy in letter format of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
- 16.1.1.2. four minimum hard copies in letter format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and
- 16.1.1.3. five minimum USB drives, with full copies of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.
- 16.2. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 16.3. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).
- 16.4. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
- 16.5. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

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

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

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

16.7. The Members of the Tribunal's addresses are as follows::

Lic. Eduardo Siqueiros T.
Hogan Lovells BSTL, S.C.
Paseo de Tamarindos 150-PB
Bosques de las Lomas
Cuajimalpa de Morelos
Mexico, D.F. 05120
eduardo.siqueiros@hoganlovells.com

Mr. C. Mark Baker
Norton Rose Fulbright US LLP
Fulbright Tower
1301 McKinney
Suite 5100
Houston, TX 77010-3095
mark.baker@nortonrosefulbright.com

Prof. Pedro Nikken
Baumeister & Brewer
Torre America - PH "B"
Avenida Venezuela de Bello Monte
1050
Caracas, Venezuela
pnikken@bblegal.com
pedro.nikken@gmail.com

17. Interim Measures of Protection
Article 26 of the UNCITRAL Arbitration Rules
Article 10.20.8 of the DR-CAFTA

17.1. Claimants reserved their rights to seek interim relief.

18. Jurisdiction of the Tribunal
Article 23 of the UNCITRAL Arbitration Rules

18.1. Respondent reserved its right to object to jurisdiction and to request the bifurcation of the proceedings.

19. Number and Sequence of Pleadings
Article 23- 25 UNCITRAL Arbitration Rules
Article 10.20.2 through Article 10.20.5 of the DR-CAFTA

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 19.1. The number and sequence of pleadings agreed upon by the parties is indicated in § 21 below.
20. Production of Documents
- 20.1. 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.
- 20.2. The request, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions referred to in this Section shall be recorded in a joint schedule in the form of a Redfern Schedule.
21. Procedural Calendar
- 21.1. Claimants shall file its Memorial (including all documents, witness statements and expert reports on which the Claimants rely) by November 27, 2015.
- 21.2. Respondent shall advise whether it will raise objections to jurisdiction or admissibility, and seek the bifurcation of the proceedings within 3 weeks from the date of receipt of the Claimants' Memorial; *i.e.* by December 18, 2015.
- 21.3. If Respondent decides not to raise objections to jurisdiction or admissibility, or if the bifurcation of the proceedings is not ordered:
- 21.3.1. Respondent shall file its Counter-Memorial (including all documents, witness statements and expert reports on which the Respondent relies) within 17 weeks from the date of receipt of the Claimants' Memorial, *i.e.* by March 25, 2016.
- 21.3.2. Each party shall file its request for production of documents in the form of a Redfern Schedule within 3 weeks after the submission of the Respondent's Counter-Memorial, *i.e.* by April 15, 2016.
- 21.3.3. Each party shall produce the requested documents or file in writing its responses or objections to the requested documents in the form of a Redfern Schedule within 5 weeks from the document production request, *i.e.* by May 20, 2016.
- 21.3.4. The parties shall submit their completed Redfern Schedules to the Tribunal within 2 weeks thereafter, *i.e.* by June 3, 2016.
- 21.3.5. The Tribunal will make its best efforts to rule on the objections within 2 weeks of their receipt, *i.e.* by June 17, 2016.
- 21.3.6. A party shall produce those documents for which no objection is sustained by the Tribunal within 3 weeks of the ruling; *i.e.* no later than on July 8, 2016.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 21.3.7. Claimants shall file a Reply Memorial within 4 months from the date of receipt of the Respondent's Counter-Memorial, *i.e.* by July, 2016.
- 21.3.8. Respondent shall file a Rejoinder Memorial within 12 weeks from the date of receipt of the Claimants' Reply Memorial, *i.e.* by October 21, 2016.
- 21.3.9. Each party shall inform the Tribunal of the witness or witnesses that such party plans to call for cross-examination and of the witnesses requiring interpretation at the hearing, within 3 weeks from the date of receipt of the Respondent's rejoinder Memorial, *i.e.* by November 4, 2016.
- 21.3.10. The parties shall submit an agreed draft schedule for the hearing on the merits within 3 weeks from the date of receipt of the Respondent's Rejoinder Memorial, *i.e.* by November 4, 2016.
- 21.3.11. A pre-hearing conference shall take place 4 weeks from the date of receipt of the Respondent's Rejoinder Memorial, *i.e.* by November 11, 2016.
- 21.3.12. The hearing shall be held from December 5, 2016 through December 9, 2016. The parties and the Tribunal shall reserve the following Monday, December 12, 2016 in case it is needed.
- 21.4. If there are objections to jurisdiction or admissibility and the Tribunal decides to bifurcate the proceedings:
 - 21.4.1. Respondent shall file objections to jurisdiction or admissibility within 6 weeks from the date of the first session, *i.e.* by January 29, 2016.
 - 21.4.2. Claimants shall file a response within 6 weeks from the date of receipt of the objections to jurisdiction, *i.e.* by April 1, 2016.
 - 21.4.3. Respondent shall file a reply within 3 weeks from the date of receipt of the response, *i.e.* by April 22, 2016.
 - 21.4.4. Claimants shall file a rejoinder within 3 weeks from the date of receipt of the reply, *i.e.* by May 13, 2016.
 - 21.4.5. The hearing shall be held on May 13, 2016.
 - 21.4.6. The subsequent procedure, if any, shall be reserved for decision by the Tribunal in light of the views of the parties and the times above agreed.

22. Witness Statements and Expert Reports
Article 27 of the UNCITRAL Arbitration Rules

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 22.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
 - 22.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
 - 22.3. Each witness statement and expert report shall be signed and dated by the witness.
23. Examination of Witnesses and Experts
Article 28(2)-(4) of the UNCITRAL Arbitration Rules
- 23.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.
 - 23.2. At least 3 weeks prior to the hearing, each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing.
 - 23.3. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.
 - 23.4. The procedure for examining witnesses and experts at the hearing shall be the following:
 - 23.4.1. Witnesses giving oral testimony may first be briefly examined in direct examination.
 - 23.4.2. Experts giving oral evidence shall first give a brief summary of their report, followed by a brief direct examination.
 - 23.4.3. The direct examination of witnesses shall be followed by examination by the other party ("cross-examination"), and subsequently by the party producing the witness ("redirect examination").
 - 23.4.4. The redirect examination shall be limited to matters raised in cross-examination.
 - 23.5. Pursuant to Article 28(3) of the UNCITRAL Rules, unless otherwise agreed, the Tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
 - 23.6. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the witness statement of such witness or report of such expert to be struck from the record, or may attach such weight as it deems appropriate.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

- 23.7. If the appearance of a witness has not been requested, the other parties shall not be deemed to have agreed to the correctness of the content of that witness' statement.
- 23.8. The Tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).
- 23.9. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the parties during the pre-hearing organizational meeting in § 24 below.
24. Pre-Hearing and Other Organizational Meetings
Article 28 of the UNCITRAL Arbitration Rules
- 24.1. A pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its Presiding Arbitrator, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing, including the need or not for closing arguments.
- 24.2. Pre-hearing organizational meetings shall be no later than 3 to 4 weeks before the hearing on the merits.
- 24.3. The Tribunal may require such other organizational meetings or conference calls as seem expedient to the efficient management of the arbitration, and the Parties may request the Tribunal or the Presiding Arbitrator to hold other meetings or conference calls to address issues affecting the arbitration.
25. Hearings
Article 28 of the UNCITRAL Arbitration Rules
Article 10.21.2 of the DR-CAFTA
- 25.1. The oral procedure shall consist of a hearing or hearings for the examination of witnesses and experts, if any, and for oral arguments.
- 25.2. Pursuant to Article 10.21.2 of the DR-CAFTA, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect the information from disclosure.
26. Records of Hearings and Sessions
Article 28 of the UNCITRAL Arbitration Rules
Article 10.21.1 of the DR-CAFTA
- 26.1. Sound recordings shall be made of all hearings and sessions.

David Aven et al. v. Republic of Costa Rica
(UNCITRAL Case No. UNCT/15/3)
Procedural Order No. 1

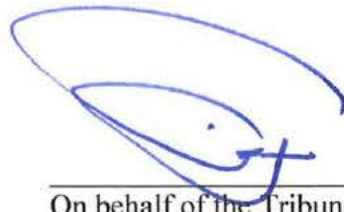
26.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis. The Secretariat will arrange for court reporting services.

26.3. Any corrections to the transcripts shall be agreed by the parties and communicated to the Tribunal within a number of days equivalent to three times the length of the respective hearing. Any disagreement between the parties, shall be communicated within the same time frame to the Tribunal. The Tribunal will then decide on any such disagreement. Any correction adopted by the Tribunal shall be entered by the parties in the transcripts.

27. Post-Hearing Memorials and Statements of Costs
Article 31 of the UNCITRAL Arbitration Rules
Article 10.26 of the DR-CAFTA

27.1. At the conclusion of any hearing, the Tribunal shall decide whether the parties may or are requested to file Post-Hearing Memorials as well as when and in what form the parties shall file evidence regarding the quantification of the costs. The Tribunal shall thereafter, at an appropriate point, declare the hearings closed.

Date: September 10, 2015



On behalf of the Tribunal

Eduardo Siqueiros T.
Presiding Arbitrator

David Aven et al. v. Republic of Costa Rica
 (UNCITRAL Case No. UNCT/15/3)
 Procedural Order No. 1

Annex A – Timetable

Procedural step	Date
Claimants to file Memorial (including all documents, witness statements and expert reports on which the Claimants rely)	27 November 2015

Bifurcation for Jurisdictional Objections

Respondent to advise whether it will raise objections to admissibility and/or jurisdiction	18 December 2015 (Claimants' Memorial + 3 wks)
Respondent's objection to jurisdiction and/or admissibility	29 January 2016 (6 wks)
Claimants' Response to Respondent's objection to jurisdiction and/or admissibility	11 March 2016 (6 wks)
Respondent's Reply on jurisdiction and/or admissibility	1 April 2016 (3 wks)
Claimants' Rejoinder on jurisdiction and/or admissibility	22 April 2016 (3 wks)
Hearing on jurisdiction/admissibility	13 May 2016 (3 wks)
Decision on jurisdiction and/or admissibility	[TBC]

**In the event no jurisdictional objections/
 bifurcation**

Respondent to file Counter-Memorial (including all documents, witness statements and expert reports on which the Respondent relies)	25 March 2016 (Claimants' Memorial + 17 wks)
Simultaneous requests for production of documents in the form of Redfern Schedules (no copy to the Tribunal)	15 April 2016 (3 wks)
Simultaneous production of requested documents and/or objections to requests for production of	20 May 2016 (5 wks)

David Aven et al. v. Republic of Costa Rica
 (UNCITRAL Case No. UNCT/15/3)
 Procedural Order No. 1

documents (no copy to the Tribunal)	
Submission of completed Redfern Schedules (requests, objections and replies) to the Tribunal and applications to decide on disputed production requests	3 June 2016 (2 wks)
Target date for Tribunal's decision on disputed document requests	17 June 2016 (2 wks)
Production of documents so ordered by the Tribunal	8 July 2016 (3 wks)
Claimants to file Reply Memorial (including all additional documents, witness statements and expert reports on which the Claimants rely)	29 July 2016 (over 4 months from submission of Counter-Memorial) (3 weeks from Production)
Respondent to file Rejoinder Memorial (including all additional documents, witness statements and expert reports on which the Respondent relies)	21 October 2016 (12 wks)
Notification of witnesses for cross-examination and of witnesses requiring interpretation	4 November 2016 (3 wks)
Parties to submit agreed draft hearing schedule	4 November 2016
Pre-hearing conference	11 November 2016
Hearing	5 - 9 December 2016
Post Hearing Briefs / Costs Schedules	[TBD, necessity and timing of these documents to be determined during hearing]