

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

China Machinery Engineering Corporation

v.

Republic of Trinidad and Tobago

(ICSID Case No. ARB/23/8)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Ms. Juliet Blanch, President of the Tribunal

Mr. David R. Haigh KC, Arbitrator

Lord David Hope, Arbitrator

Secretary of the Tribunal

Mr. Govert Coppens

May 22, 2024

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Introduction

The first session of the Tribunal was held on 24 April 2024, at 2:30 p.m. London time, via Zoom. The session was adjourned at 5:02 p.m. London time.

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

Participating in the conference were:

Members of the Tribunal:

Ms. Juliet Blanch, President of the Tribunal
Mr. David R. Haigh KC, Arbitrator
Lord David Hope, Arbitrator

ICSID Secretariat:

Mr. Govert Coppens, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Audley Sheppard KC, Clifford Chance
Mr. Shi Lei, Clifford Chance
Dr. Romesh Weeramantry, Clifford Chance
Mr. Rodolphe Ruffié-Farrugia, Clifford Chance
Ms. Hazel He, Clifford Chance

On behalf of the Respondent:

Mr. Mark Strachan KC, SC, 3 Hare Court Chambers (UK) and Parkside Chambers (HK)
Mr. Jeffrey Chau, Parkside Chambers (HK)
Mr. Rowan Pennington-Benton, 3 Hare Court Chambers (UK)

Mr. John Almeida, Charles Russell Speechlys LLP
Ms. Lucy Wicksteed, Charles Russell Speechlys LLP
Ms. Camilla Hart, Charles Russell Speechlys LLP

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 circulated by the Secretary of the Tribunal on 29 January 2024; and
- The parties' comments on Draft Procedural Order No. 1 received on 22 March 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on January 10, 2024, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on January 10, 2024.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

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

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

4. Presence and Quorum
Arbitration Rule 33

- 4.1. The participation of all of the Members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, unless the parties agree otherwise.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the parties.

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6. Power to Fix Time Limits
Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Mr. Govert Coppens, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Govert Coppens
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Email: gcoppens@worldbank.org
Paralegal name: Mr. Anton Tugushev
Paralegal email: atugushev@worldbank.org
ICSID case address: arb/23/8@icsidcases.worldbank.org

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

Mr. Govert Coppens
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1225 Connecticut Ave. N.W.
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U.S.A.
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8. Representation of the Parties
Arbitration Rule 2

- 8.1. Each party shall be represented by its counsel (below). If a party wishes to designate additional or alternative agents, counsel, or advocates such party is to notify the other party, the Tribunal and the Tribunal Secretary promptly of such proposed designation. In the event the other party objects to such additional or alternative designation, it shall notify the Tribunal, the Tribunal Secretary and the first party, with reasons, within 7 days of such notification. Any such intended change or addition shall only take effect subject to the approval of the Tribunal.
- 8.2. The Tribunal may withhold approval of any intended change or addition to a party's legal representatives where such change or addition could compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration), the integrity of the process, the finality of any order, decision or the Award and any likely wasted costs or loss of time resulting from such change or addition.
- 8.3.

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- 8.4. The Tribunal also reserves the right not to allow additional or alternative agents, counsel, or advocates to participate in part or all of the arbitration should the Tribunal consider, in its sole discretion, that it might adversely affect the efficiency and/or integrity of the arbitration, the composition of the Tribunal, and/or the finality of any order, decision or the Award.

9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. Following registration of the Request for Arbitration, by letter of April 11, 2023, ICSID informed the Parties that US\$300,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimant pay US\$150,000. ICSID received the Claimant's payment on April 27, 2023. Upon the constitution of the Tribunal, by letter of January 18, 2024, ICSID requested that the Respondent pay US\$150,000. ICSID received the Respondent's payment on 16 February 2024.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

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10. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 10.1. London, United Kingdom shall be the place of the proceeding.
- 10.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the parties so agree. The method of holding a hearing will be determined in accordance with §21.2.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 11.1. English is the procedural language of the arbitration.

For Documents and Communications

- 11.2. The Tribunal and the Secretariat shall communicate with the parties in the English language.
- 11.3. Documents filed in any other language must be accompanied by a translation into English.
- 11.4. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal orders a party to provide a fuller or a complete translation.
- 11.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a party to provide a certified translation.
- 11.6. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.

For Hearing

- 11.7. The parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing (see **Annex B** below) and as soon as possible.
- 11.8. Where a witness called for examination during the hearing is required to give evidence in a language other than in the English language, such testimony shall be interpreted simultaneously, if possible.

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- 11.9. The costs of interpretation will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications
Arbitration Rule 6

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

13. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 4, 5 and 9

- 13.1. The parties shall:
- 13.1.1. by the relevant filing date, submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a (non-hyperlinked) index of all supporting documentation;¹ and
- 13.1.2. within three days thereafter, upload the pleading with all the supporting documentation (including witness statements, expert reports, exhibits and legal authorities, as applicable) and an updated hyperlinked index to the file sharing platform that has been created by ICSID for purposes of this case.²
- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

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

² Supporting documentation shall be uploaded as individual files, not in .zip format.

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- 13.3. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**.
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.³
- 13.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.6. A filing or written communication shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date. If a filing or written communication falls on a Saturday or Sunday, or a public holiday in China or Trinidad and Tobago, the relevant date is the subsequent business day.

14. Number and Sequence of Pleadings – Procedural Calendar
Arbitration Rule 30

- 14.1. This arbitration shall proceed in accordance with the Procedural Calendar set out in **Annex B**. The parties may at any stage of the proceeding seek further directions from the Tribunal regarding procedural steps relating to and/or in addition to those set out in the Procedural Calendar.
- 14.2. Extensions of time limits provided for in Annex B may be (a) agreed between the parties on the basis of professional courtesy or (b) granted by the Tribunal for justifiable reasons after consultation with the parties, provided that absent compelling grounds such extensions of time shall not affect the date fixed for any hearing. A request for an extension shall be submitted as soon as practicable after a party becomes aware of the circumstances which may prevent it from complying with the deadline.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX files sharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 15.1. Articles 3 and 9 of the International Bar Association’s Rules on the Taking of Evidence in International Arbitration, as adopted on 17 December 2020 (the “**IBA Rules**”) shall provide guidance to the Tribunal and the parties regarding document production in this proceeding.
- 15.2. By the relevant dates specified in the Procedural Calendar set out in **Annex B**:
- 15.2.1. each party may serve a request for production of documents on the other party. Such requests for production of documents shall comply with the rules set forth in Article 3.3 of the IBA Rules, including containing a statement as to how the documents requested are relevant to the case and material to its outcome. Such requests shall not be copied to the Tribunal or the Tribunal Secretary;
 - 15.2.2. the requested party shall submit its responses and/or objections to any requests for production, which shall be transmitted to the requesting party only;
 - 15.2.3. each party shall produce to the other party those documents requested in its possession, custody or control as to which it does not object;
 - 15.2.4. a party may seek an order for the production of documents sought and not produced, in which case it shall reply to the other party’s objections and submit the completed document request schedule to the Tribunal (through the Tribunal Secretary), with a copy to the other party;
 - 15.2.5. the Tribunal will, at its discretion, rule upon any contested requests for production of documents submitted to its resolution (including, where applicable and/or necessary, with respect to the format of particular documents to be disclosed), having regard to all relevant circumstances and with reference to Articles 3.3, 9.2, 9.3, 9.4 and 9.5 of the IBA Rules; and
 - 15.2.6. each party shall produce to the other party those documents in its possession, custody or control ordered to be produced by the Tribunal.
- 15.3. The requests for production of documents, responses and/or objections to requests, replies to objections to requests, and the Tribunal’s decisions regarding contested requests, as respectively referred to in §§15.2.1, 15.2.2, 15.2.4 and 15.2.5 above, shall be recorded in a document request schedule in the form provided at **Annex C** and be made available in both Word and PDF formats (except for the Tribunal’s decisions in §15.2.5 which may be issued in PDF format only).

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- 15.4. Documents produced according to the above procedure shall be (a) produced electronically and where reasonably possible in a format that allows for an electronic search of words within the documents (provided that a party may make reasonable requests for particular documents (e.g. where a document's metadata is relevant) to be disclosed in native format), (b) organized according to the request(s) to which they are responsive, and (c) communicated directly to the requesting party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be deemed on record unless and until a party subsequently files such documents as exhibits.
- 15.5. The Tribunal may order a party to produce documents on its own initiative at any time in accordance with §16.4. In that case, the documents shall be submitted to the other party and to the Tribunal (through the Tribunal Secretary) and shall be deemed on record.
- 15.6. If a party considers that certain responsive documents in its possession, custody or control (or certain portions thereof) should not be produced on the grounds of a legal impediment or privilege, or commercial or technical confidentiality, or special political or institutional sensitivity, that party shall at the same time of production of documents pursuant to §§15.2.3 and/or 15.2.6, as applicable, submit to the other party (a) a log identifying such documents (or categories of documents) and the grounds for withholding and/or (b) redacted versions of such documents identifying the contents being redacted and the grounds for redaction. Any such withholding or redactions shall be subject to challenge by the other party. The challenge shall as required be submitted for a decision by the Tribunal.
- 15.7. If a party fails without satisfactory explanation to produce any requested documents to which it has not timely objected or as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced, after taking into account all relevant circumstances.

16. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application

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followed by observations from the other party.

- 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
- 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such document and/or to request leave to file rebuttal documents.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 16.5. Documents shall be submitted in the following form:
 - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §16.5.4.
 - 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. The parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such

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form), provided that they (i) identify the source in the record from which the information is derived, and (ii) do not contain information not in the record.

- 16.9. An electronic copy of each demonstrative exhibit, including for the purpose of this paragraph PowerPoint slides (whether in support of oral arguments, presentation or otherwise), shall be distributed by the party intending to use it via an electronic mail sent to the entire case email distribution for each party, the Members of the Tribunal, the Tribunal Secretary, and the court reporter(s) and the interpreter(s) as necessary by 7pm local time (at the place of the hearing) on the day before their intended use.
- 16.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the parties shall upload such demonstrative to the case folder in the BOX files sharing platform, designating each with the corresponding “CD-[...]” or “RD-[...]” number.

17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 38

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

18. Examination of Witnesses and Experts
Arbitration Rule 38

- 18.1. By the relevant dates specified in the Procedural Calendar set out in **Annex B**:
- 18.1.1. each party shall identify the witnesses and experts whose written testimony has been advanced with the other party’s written submissions and whom it intends to cross-examine at the hearing; and
- 18.1.2. the Tribunal will indicate whether it wishes to question any witnesses or experts not called for examination by the parties.
- 18.2. The party whose witnesses or experts have thus been called for cross-examination or to be questioned by the Tribunal shall make such witnesses or experts available

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at the hearing. Witnesses and experts shall be examined before the Tribunal in person, unless, in exceptional circumstances, the Tribunal determines that examination by videoconference may be permitted for justified reasons after consultation with the parties.

- 18.3. If a witness or expert whose appearance is requested by a party or the Tribunal fails to appear at the hearing without justification, the Tribunal shall disregard the witness statement of such witness or the report of such expert, unless, in exceptional circumstances, the Tribunal decides otherwise.
- 18.4. If a party decides not to call a witness or expert for cross-examination, or not to put questions to a witness or expert on any particular topic, such decision shall not be taken as an acceptance by that party of the veracity of the evidence of that witness or expert. The relevance, weight and cogency to be attributed to any evidence is wholly a matter for the Tribunal.
- 18.5. It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts and assist with the preparation of witness statements and oral examinations, save that witness coaching and mock cross-examinations directed at the actual facts that are in dispute are impermissible.
- 18.6. The above matters may be revisited and other matters regarding the examination of witnesses and experts will be addressed at a later stage of the proceeding, including at the pre-hearing organizational meeting.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 31

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

20. Case Management Conferences
Arbitration Rule 31

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- 20.1. If and when a need arises, the Tribunal shall convene case management conferences with the parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence).

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing or hearings for examining witnesses and experts, if any, and for oral arguments. No new evidence may be presented, and no unpleaded points may be raised, at the hearing(s) except with leave of the Tribunal.
- 21.2. The hearing(s) shall, in principle, be held in-person. An in-person hearing shall be held at a place to be determined in accordance with §10.2 above.
- 21.3. Under exceptional circumstances and after consultation with the parties, for example, if any relevant travel or public health/security restrictions do not allow an in-person hearing to be held, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 21.4. The hearing(s) shall take place as per the Procedural Calendar in **Annex B**.
- 21.5. The Members of the Tribunal shall reserve (at least) the day after the hearing(s) to determine the next steps, to hold deliberations, and to provide the parties with an estimated timeline relating to the Tribunal's decision-making process.
- 21.6. Other matters regarding hearing(s) will be addressed at a later stage of the proceeding, including at the pre-hearing organizational meeting.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 22.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be

available in real-time and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

- 22.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 51

- 23.1. The Tribunal will consult with the parties at an appropriate stage and issue directions in relation to the schedule of and other matters relating to post-hearing memorials (if any) and statements of costs.

24. Transparency Matters
Convention Article 48(5), Arbitration Rules 62-66

- 24.1. The parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

25. Data Privacy and Cybersecurity

- 25.1. The Members of the Tribunal, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 25.2. The Members of the Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 25.3. The parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

26. Amicable Dispute Settlement

- 26.1. The Tribunal notes that the parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. If the parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2). Any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

27. Bifurcation

Arbitration Rule 42

- 27.1. Pursuant to ICSID Arbitration Rule 42, the Claimant requests that the question of damages be bifurcated and addressed in a separate phase of the proceeding.
- 27.2. The Respondent objects to the Claimant's request for bifurcation.
- 27.3. The parties have agreed that the procedure for the request for bifurcation pursuant to ICSID Arbitration Rule 42(3)(c) shall be conducted in accordance with the time limits set out below:
- 27.3.1. written submissions of each party on bifurcation to be filed simultaneously by 12:00 p.m. London time on 10 April 2024;
- 27.3.2. oral submissions by each party on bifurcation to be heard at the first session on 24 April 2024; and
- 27.3.3. if necessary, further written submissions of each party on bifurcation to be filed as directed by the Tribunal (absent such direction by the Tribunal, no further written submissions may be filed by the parties).

28. Preliminary Objections

Arbitration Rule 43

- 28.1. Pursuant to ICSID Arbitration Rule 43, the Respondent intends to file preliminary objections as follows:
- 28.1.1. that the essential basis of the Claimant's claims is breach of the 2005 and 2008 Contract Agreements between the Claimant and Alutrint Limited, which falls outside the jurisdiction of ICSID and the Tribunal by reason of Article 25 of the ICSID Convention and Article 10 of the Agreement Between the Government of the Republic of Trinidad and Tobago and the

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Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments (the "**BIT**"); and

28.1.2. that the Claimant's claims are barred on the grounds of extinctive prescription, acquiescence, estoppel, bad faith and/or abuse of process, by reason of the following conduct which caused prejudice to the Respondent:

- (a) the Claimant's undue delay and failure to assert the claims in the Request for Arbitration for some 12 years until its Notification of a Claim and Request for Consultations and Negotiations by letter dated 26 August 2022;
- (b) the Claimant's representation by words and/or conduct of its intention to commence arbitration under the dispute resolution procedure in the Contract Agreements, its instigation of such dispute resolution procedure and/or its lack of intention to claim against the Respondent under the BIT; and
- (c) the Claimant's transplant of its successive quantified contractual claims submitted to Alutrint Limited into its present claims under the BIT against the Respondent, being claims which are grossly exaggerated, plainly unsupported as presented and for which there is no reasonable basis.

28.2. In accordance with ICSID Arbitration Rule 45, the Respondent will not request bifurcation of any preliminary objections. Therefore, the preliminary objections shall be joined to the merits.

28.3. The Claimant denies the Respondent's alleged preliminary objections as they, inter alia, lack validity, merit and/or appropriateness and are based on incorrect factual assertions. The Claimant will provide a fuller and further response in its Counter-Memorial on Preliminary Objections.

28.4. The Procedural Calendar set out in **Annex B** shall apply to preliminary objections proceedings.

29. Other Matters
Arbitration Rules 3 and 52

29.1. The parties are to conduct themselves respectfully and in an expeditious and cost-effective manner consistent with the efficient use of time and resources, so as to enable the arbitration to proceed in a proper, fair and efficient way. The Tribunal may take a party's unreasonable behavior into account when exercising its

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discretion to allocate costs, including by issuing interim cost orders. Unreasonable behavior includes, by way of examples, repeated or unjustified failure to meet deadlines in the Procedural Calendar or comply with other procedural orders, dilatory tactics, or unnecessary or intemperate inter-lawyer correspondence.

On behalf of the Tribunal,

[signed]

Ms. Juliet Blanch
President of the Tribunal
Date: 22 May 2024

Annex A – Electronic File Naming Guidelines

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

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

As English is the only procedural language of this arbitration, the “LANGUAGE” designation may be omitted, except for documents in a language other than the English language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
	<i>RL-0002-ENG</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>

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Witness Statements, Expert Reports, Legal Opinions	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
	<i>Observations to Request for [XX]-[Claimant]-SPA</i>

Annex B – Procedural Calendar

Parties’ joint note: The events and their sequence as listed in the Procedural Calendar are agreed (subject only to whether there should be a separate quantum phase in accordance with the Claimant’s request for bifurcation). Given the resulting difference on the time required to prepare main written submissions as well as complete other procedural steps, the Parties propose that dates and intervals in the Procedural Calendar be agreed and inserted after receipt of the Tribunal’s directions at or following the first session.

Event	Date	Interval (weeks)
Claimant’s Memorial		
Respondent’s Counter-Memorial on the Merits and Memorial on Preliminary Objections		
Parties’ Requests for Production of Documents		
Parties’ Responses and/or Objections to Requests for Production of Documents		
Parties’ Replies to Objections to Requests for Production of Documents and Production of Documents which are not subject to Objections		
Tribunal’s Decision on Objections to Requests for Production of Documents		
Parties’ Production of Documents ordered by Tribunal		
Claimant’s Reply on the Merits and Counter-Memorial on Preliminary Objections		
Respondent’s Rejoinder on the Merits and Reply on Preliminary Objections		
Claimant’s Rejoinder on Preliminary Objections		
Parties to confirm which witnesses and experts they wish to examine		
Tribunal to indicate whether it wishes to examine any witnesses/experts not called for examination by the Parties		
Pre-Hearing Organizational Meeting	TBD	At least 4 weeks before the Hearing.
Hearing on Jurisdiction and Merits		

Annex C – Document Request Schedule

Document Request No	
A. Documents or category of documents requested	
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	
C. Responses and/or objections to document request	
D. Replies to objections and request for resolution	
E. Decision of the Tribunal	