

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Juan Carlos Argüello and Ernesto Argüello

v.

Republic of Panama

(ICSID Case No. ARB/25/39)

PROCEDURAL ORDER NO. 3

**Decision on the Respondent's Application to Exclude Ms. Cristina Ferraro as Counsel
for the Claimants and Directions to Miranda & Amado Abogados**

Members of the Tribunal:

Prof. Alfredo Bullard González, President

Prof. Dr. Stephan Schill, Arbitrator

Prof. Dr. Chiara Giorgetti, Arbitrator

Secretary of the Tribunal

Ms. Laura Arboleda Gutiérrez

30 March 2026

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1. This Procedural Order No. 3 is issued by the Tribunal in relation to the application filed on 3 February 2026 by the Republic of Panama (the “**Respondent**”) regarding the instruction of Ms. Cristina Ferraro, Mr. Luis Alonso Navarro, and Mr. Roberto Pérez-Prieto from Miranda & Amado Abogados (“**Miranda & Amado**”) as co-counsel for Mr. Juan Carlos Argüello and Mr. Ernesto Argüello (the “**Claimants**”).

I. PROCEDURAL HISTORY

2. On 31 July 2025, the Claimants filed their Request for Arbitration (“**RfA**”) under Article 10.16.4 of the United States-Panama Trade Promotion Agreement dated 28 June 2007, which has been in force since 31 October 2012 (“**TPA**”).
3. On 11 August 2025, the ICSID Acting Secretary-General registered the RfA under Article 36 of the ICSID Convention.
4. Following the method to appoint arbitrators in Article 10.19 of the TPA:
5. The Claimants appointed Prof. Dr. Stephan Schill as arbitrator in their RfA. On 14 October 2025, Prof. Dr. Schill accepted his appointment.
6. The Respondent appointed Prof. Dr. Chiara Giorgetti as arbitrator by letter dated 10 September 2025. On 7 October 2025, Prof. Dr. Giorgetti accepted her appointment.
7. By communication dated 25 September 2025, the Claimants submitted a protocol agreed by the Parties for the selection of the presiding arbitrator. The Respondent confirmed such agreement by communication dated 26 September 2025.
8. Pursuant to the Parties’ agreement, each Party was to submit to the ICSID Secretariat a list of three candidates. Upon receipt of both lists, the ICSID Secretariat was to share them with the Parties. Within ten days thereafter, each Party was to inform the ICSID Secretariat which of the other Party’s candidates it considered acceptable. Upon receipt of that information from each Party, the ICSID Secretariat was to communicate such information to the other Party.
9. In accordance with the agreed protocol, “[s]hould one or more candidates appear on both lists or be acceptable to both Parties, the ICSID Secretariat will promptly contact said candidate(s) to determine the availability of the candidate(s) and if any conflicts of interest exist and will promptly notify the Parties accordingly.”
10. As indicated in the ICSID communication dated 7 November 2025, following the above-referenced exchanges, Prof. Alfredo Bullard was identified by both Parties as an acceptable candidate to serve as president of the Tribunal (“**Prof. Bullard**” or “**President**”). After consulting the Parties, Prof. Bullard was invited to confirm his availability to act as presiding arbitrator, his compliance with the requirements established by the Parties, and to provide a declaration regarding the absence of any

conflict of interest.

11. By communication dated 18 November 2025, Prof. Bullard confirmed his availability, declared the absence of any conflict of interest, and made a number of disclosures, including previous unrelated cases where White & Case LLP acted as counsel for the same party instructing Prof. Bullard as expert on Peruvian law.¹
12. By communication dated 24 November 2025, the Respondent requested a series of clarifications concerning Prof. Bullard's role as an expert in a case handled by White & Case LLP as counsel. In particular, the Respondent sought information regarding the number of expert reports he submitted, the dates thereof, whether he provided testimony in that case, the date of the hearing, the names of the counsel involved on behalf of White & Case LLP, as well as any other relevant information.
13. On 26 November 2025, ICSID transmitted Prof. Bullard's additional declaration addressing the Respondent's questions to the Parties.
14. Subsequently, by communications from the Claimants dated 25 November 2025 and from the Respondent dated 1 December 2025, the Parties expressed their agreement with the appointment of Prof. Bullard as President of the Tribunal.
15. Prof. Bullard accepted his appointment as presiding arbitrator on 11 December 2025.
16. By communication dated 12 December 2025, ICSID informed the Parties that the Tribunal was deemed to have been constituted.
17. By communication dated 23 January 2026, the Claimants notified the Centre that Ms. Cristina Ferraro, Mr. Luis Alonso Navarro, and Mr. Roberto Pérez-Prieto from Miranda & Amado had been retained as co-counsel, in support of White & Case LLP, and requested that they be added to Section 8.1 of the draft Procedural Order No. 1.
18. On 26 January 2026, ICSID transmitted Prof. Bullard's additional disclosures in connection with the Claimants' instruction of Miranda & Amado. Among other disclosures, the President disclosed that he is currently serving as an expert on Peruvian law, appointed by the claimant in a separate ICSID arbitration against the Republic of Peru, in which the claimant is represented by Miranda & Amado.
19. By communication dated 27 January 2026, the Respondent objected to the inclusion of the listed Miranda & Amado lawyers as co-counsel until it had received additional information it requested from the President regarding his expert engagement. On the same day, the Tribunal also held the First Session with the Parties to discuss Procedural

¹ The remaining disclosures entailed an unrelated arbitration in which an affiliate of Burford Capital – the Claimants' third-party funders in this case – funds the claimants, and previous arbitrator appointments in unrelated cases relating to the Republic of Panama.

Orders Nos. 1 and 2, as well as the procedural calendar for this arbitration.

20. By communication dated 30 January 2026, ICSID transmitted Prof. Bullard's additional information requested by the Respondent. The President informed the Parties that his interactions with Miranda & Amado in connection with the expert engagement had been with Mr. Luis Marcelo de Bernardis, Ms. Cristina Ferraro and Mr. Diego Pulgar Vidal, and that Mr. Navarro and Mr. Pérez-Prieto are not involved as counsel in that case. The President further indicated that the other matter is contract-based, whereas the present arbitration is treaty-based, and that his expert work in the other proceeding is limited to questions of Peruvian law.
21. On 3 February 2026, the Respondent filed an application (the "**Application**") requesting the Tribunal to adopt the following measures: (i) exclude Ms. Cristina Ferraro from the present arbitration proceedings and order the Claimants to ensure her exclusion from all materials and communications related to this arbitration (the "**First Request**"); (ii) order the Claimants to refrain from including additional lawyers from Miranda & Amado, or any other firm, without prior consultation with the Tribunal and the Respondent (the "**Second Request**"); and (iii) order the Claimants to take necessary measures to ensure that lawyers from Miranda & Amado designated as counsel in this arbitration do not have any contact or *ex parte* communications with Prof. Bullard (the "**Third Request**").
22. On 4 February 2026, the Claimants requested leave to submit a short response to the Application. The Tribunal granted the Claimants leave to file their response by 9 February 2026.
23. On 9 February 2026, the Claimants filed their observations opposing the Application in its entirety.
24. On 10 February 2026, the Respondent requested leave to submit a reply. The Tribunal granted leave to submit a short reply by 13 February 2026 and set the deadline for any rejoinder by the Claimants for 18 February 2026.
25. On 13 February 2026, the Respondent filed its reply in support of the Application.
26. On 17 February 2026, the Claimants filed their rejoinder.
27. On 26 February 2026, the Tribunal invited the Parties to clarify their positions on whether it would be an adequate solution to limit the duration of the requested measures until the President is formally notified of his release from his functions as an expert in the unrelated arbitration. The Parties were invited to submit their positions by 3 March 2026.
28. On 3 March 2026, the Respondent submitted its position, maintaining that Ms. Ferraro should be excluded for the entirety of the arbitration, regardless of when the President's expert engagement concludes. On the same date, the Claimants submitted their position,

opposing any form of exclusion, whether permanent or temporary.

29. On 13 March 2026, the Tribunal issued Procedural Orders Nos. 1 and 2. Pending the Tribunal's decision on the Application, Procedural Order No. 1 listed the Parties' representatives as follows:

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II. THE PARTIES' POSITIONS

30. The following section summarizes the Parties' positions regarding the Application. The Tribunal has duly considered all arguments, observations, and communications submitted by the Parties. The following summary does not constitute an exhaustive description of all allegations made but rather aims to faithfully reflect the main points raised by the Parties.

A. THE RESPONDENT'S POSITION

31. The Respondent submits that the measures requested in the Application are necessary to safeguard the integrity of the arbitral proceedings.² It further states that those measures do not affect the Claimants' right to be represented in this arbitration by counsel of their choosing, nor do they impair the Claimants' ability to present their case or the proper

² Respondent's Communication dated 3 February 2026, p. 2; Respondent's Communication dated 13 February 2026, p. 1.

conduct of the proceedings.³

32. Regarding its First Request, the Respondent does not allege that the President of the Tribunal lacks independence or impartiality, nor does it contend that an actual conflict of interest exists.⁴ Rather, the Respondent requests that Ms. Ferraro be excluded from the present arbitration on the basis that the close working relationship between an expert and party counsel during the preparation of expert evidence in an ongoing arbitration gives rise to justifiable doubts, from the perspective of a reasonable third party, regarding the appearance of impropriety.⁵
33. The Respondent argues that the International Bar Association Guidelines on Conflicts of Interest in International Arbitration (“**IBA Guidelines on Conflicts of Interest**”) are not exhaustive and do not cover every potential conflict scenario.⁶ In this case, the concern is not the number of appointments by the same firm, but rather the fact that the President of the Tribunal is currently working alongside counsel from Miranda & Amado for the same client in a parallel ICSID proceeding.⁷
34. The Respondent contends that the relationship between an expert and the counsel who instructs that expert is inherently close and collaborative. It further submits that, unlike an arbitrator, an expert is not independent of the instructing party in the same manner, and that this close collaborative relationship could give rise to justifiable doubts about the independence and impartiality of the arbitrator, thereby creating an appearance of impropriety that warrants the exclusion of counsel appointed after the constitution of the Tribunal.⁸
35. The Respondent further relies on the IBA Guidelines on Conflicts of Interest, noting that Guideline 2.3 of the waivable Red List covers situations where an arbitrator currently advises or provides services to counsel representing one of the parties. In the Respondent’s submission, the role of a legal expert is, in effect, one of advising a party and its counsel in relation to a point of law in dispute.⁹
36. In support of its First Request, the Respondent invokes the decision of the tribunal in *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24) (“**HEP v. Slovenia**”), in which the tribunal excluded counsel affiliated with the same

³ Respondent’s Communication dated 13 February 2026, pp. 1, 4.

⁴ Respondent’s Communication dated 3 February 2026, p. 2; Respondent’s Communication dated 13 February 2026, p. 1; Respondent’s Communication dated 3 March 2026, p. 1.

⁵ Respondent’s Communication dated 3 March 2026, p. 1.

⁶ Respondent’s Communication dated 13 February 2026, p. 2.

⁷ Respondent’s Communication dated 13 February 2026, p. 2.

⁸ Respondent’s Communication dated 13 February 2026, p. 2; Respondent’s Communication dated 3 March 2026, p. 1.

⁹ Respondent’s Communication dated 3 March 2026, p. 1.

chambers as the presiding arbitrator.¹⁰ The Respondent emphasises that in that case, the tribunal held that it was not necessary to establish an actual lack of independence or impartiality, but rather that the appearance of impropriety was sufficient to warrant the exclusion of counsel.¹¹ The Respondent submits that the same principle applies here, particularly given that Miranda & Amado was instructed in the present case after the Tribunal was constituted, and that the Claimants knew or should have known of the President's ongoing expert engagement with the firm at the time of that instruction.¹²

37. Additionally, the Respondent argues that the exclusion of Ms. Ferraro would not impair the Claimants' right of defence, as the Claimants remain represented by White & Case LLP and by other lawyers from Miranda & Amado whose participation has not been challenged.¹³ The Respondent also relies on the decision in *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6) ("*Einarsson v. Canada*"), where the tribunal excluded counsel at an early stage and found that the consequences of the exclusion did not seriously affect the respondent's right to counsel of its choice.¹⁴
38. With respect to the duration of the exclusion, the Respondent maintains that Ms. Ferraro should be excluded for the entirety of the proceedings, on the basis that the close relationship between an expert and counsel does not simply disappear upon the conclusion of the expert engagement.¹⁵ The Respondent notes that the IBA Guidelines on Conflicts of Interest and the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the "**UNCITRAL Code of Conduct**" or "**Code of Conduct**") set reference periods of three and five years, respectively, for the assessment of professional relationships.¹⁶
39. In support of its Second Request, the Respondent submits that a consultation mechanism is necessary given that other lawyers from Miranda & Amado may be in a similar position as Ms. Ferraro, and that a pre-clearance obligation would be compatible with the Tribunal's power under paragraph 8.2 of Procedural Order No. 1 to refuse

¹⁰ Respondent's Communication dated 13 February 2026, p. 3, referring to *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 22.

¹¹ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 22.

¹² Respondent's Communication dated 13 February 2026, pp. 2-3; Respondent's Communication dated 3 March 2026, p. 2.

¹³ Respondent's Communication dated 13 February 2026, pp. 3-4; Respondent's Communication dated 3 March 2026, p. 2.

¹⁴ Respondent's Communication dated 13 February 2026, p. 3, referring to *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimant's Motion to Disqualify Counsel, 24 February 2022, ¶ 170.

¹⁵ Respondent's Communication dated 3 March 2026, p. 1.

¹⁶ Respondent's Communication dated 3 March 2026, p. 2.

designation of counsel if such designation would create a conflict of interest.¹⁷

40. In support of its Third Request, the Respondent argues that, given that Miranda & Amado is currently working with the President on the preparation of expert evidence in another ICSID proceeding, the risk of *ex parte* communications is heightened, and that additional safeguards are warranted.¹⁸

B. THE CLAIMANTS' POSITION

41. The Claimants oppose the Application in its entirety and submit that the Respondent has failed to articulate any valid basis for the relief sought.
42. As a threshold matter, the Claimants emphasise that a party's right to be represented by counsel of its choice is fundamental, and that the exclusion of counsel should only occur in extraordinary circumstances that genuinely touch on the integrity of the arbitral process.¹⁹ According to the Claimants, no such extraordinary circumstances exist here, noting that the Respondent itself acknowledges that the President's independence and impartiality are not in question and that no actual conflict of interest has been identified.
43. With respect to the IBA Guidelines on Conflicts of Interest, the Claimants identify Guideline 3.2.9 of the Orange List as the most directly relevant provision, which requires disclosure only where an arbitrator has been appointed as an expert on more than three occasions by the same counsel or law firm within the past three years.²⁰ The Claimants note that the President has been appointed as an expert by a client of Miranda & Amado on only a single occasion, which falls well below the Orange List threshold and does not even give rise to a disclosure obligation.²¹ The Claimants accordingly take the position that the factual circumstances of this case cannot be characterised as creating a conflict of interest or even an appearance thereof, under the instruments agreed upon by the Parties.
44. The Claimants further submit that the UNCITRAL Code of Conduct does not support the exclusion.²² Article 4(1) of the Code prohibits an arbitrator from acting concurrently as an expert only in proceedings involving the same measure, the same or related parties,

¹⁷ Respondent's Communication dated 13 February 2026, p. 4; Procedural Order No. 1 dated 13 March 2026, ¶ 8.2.

¹⁸ Respondent's Communication dated 13 February 2026, p. 4.

¹⁹ Claimants' Communication dated 9 February 2026, p. 1, citing *The Rompetrol Group N.V. v. Romania* (ICSID Case No. ARB/06/3), Decision of the Tribunal on the Participation of a Counsel, 14 January 2010, ¶ 15.

²⁰ IBA Guidelines on Conflicts of Interest, May 2024, Orange List, Guideline 3.2.9.

²¹ Claimants' Communication dated 9 February 2026, p. 2; Claimants' Communication dated 17 February 2026, p. 1.

²² Claimants' Communication dated 17 February 2026, p. 2; Claimants' Communication dated 3 March 2026, p. 1.

or the same provisions of the same instrument of consent.²³ According to the Claimants, none of those circumstances are present in this case.

45. With respect to *HEP v. Slovenia*, the Claimants submit that the decision is distinguishable on its facts.²⁴ In that case, the tribunal identified specific aggravating circumstances that are absent here, including: the respondent's conscious decision not to inform the claimant or the tribunal of the newly appointed counsel's previous involvement in the case; the tardiness of the announcement; the disclosure occurring on the eve of the hearing; and the respondent's repeated refusal to disclose the scope of counsel's role and date of appointment.²⁵ The Claimants contrast this with the present circumstances, noting that the President voluntarily disclosed his expert engagement, the proceedings are at an early stage, and no atmosphere of apprehension and mistrust exists. The Claimants also note that in *Einarsson v. Canada* the tribunal required clear evidence of a real risk to justify the disqualification of counsel, observing that a party cannot be prevented from access to its chosen counsel on the basis of mere appearances.²⁶
46. The Claimants further assert that any exclusion of Ms. Ferraro, even on a temporary basis, would cause significant prejudice. The Claimants maintain that, being the lead counsel on the Miranda & Amado team, the exclusion of Ms. Ferraro would impinge on their fundamental rights. The Claimants have disclosed that they are pursuing this arbitration with third-party funding and that Miranda & Amado's role under Ms. Ferraro's leadership is critical to their financial ability to pursue their case.²⁷ According to the Claimants, a temporary exclusion during the preparation of their Memorial would effectively deprive them of their lead co-counsel during the most strategically significant phase of the proceedings.²⁸
47. The Claimants also assert that excluding Ms. Ferraro would punish transparency and good faith.²⁹ They note that both the Claimants and the President went beyond any applicable obligation in making disclosures regarding Ms. Ferraro's involvement. The Claimants submit that granting the Respondent's request would create perverse incentives for parties and arbitrators to limit disclosures to avoid similar applications.³⁰

²³ UNCITRAL Code of Conduct, December 2023, Article 4(1).

²⁴ Claimants' Communication dated 17 February 2026, p. 3.

²⁵ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 31.

²⁶ Claimants' Communication dated 17 February 2026, pp. 2-3, citing *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants' Motion to Disqualify Counsel, 24 February 2022, ¶ 170.

²⁷ Claimants' Communication dated 3 March 2026, pp. 1-2.

²⁸ Claimants' Communication dated 3 March 2026, p. 2.

²⁹ Claimants' Communication dated 3 March 2026, p. 2.

³⁰ Claimants' Communication dated 3 March 2026, p. 2.

48. With respect to a temporary exclusion, the Claimants submit that no such measure is warranted.³¹ In addition to the arguments set forth above, the Claimants contend that a temporary measure would create uncertainty in this and future proceedings, as parties make decisions about counsel based on well-established conflict-of-interest rules, and excluding counsel without any recognised basis would introduce unpredictability into the process.³²
49. Regarding the Second Request, the Claimants submit that no legal basis exists for requiring prior consultation before the designation of counsel.³³ They note that ICSID Arbitration Rule 2(2) requires only that each party promptly notify the Centre of the appointment of counsel and furnish proof of authority, and that any actual conflict of interest that may arise from a future designation can be addressed through the mechanisms already agreed by the Parties in Procedural Order No. 1.³⁴
50. Regarding the Third Request, the Claimants state that the prohibition of *ex parte* communications is already in place under the applicable rules and that no additional measures are necessary or appropriate. The Claimants note that the Respondent itself acknowledges that *ex parte* communications are already prohibited and take the position that imposing unilateral obligations on the Claimants' counsel would be prejudicial and unjustified.³⁵

III. THE TRIBUNAL'S ANALYSIS

51. The Tribunal has carefully considered the Parties' submissions and the record before it. The question before the Tribunal is whether Ms. Cristina Ferraro should be excluded from participating as counsel for the Claimants in the present proceedings, and whether the additional measures requested by the Respondent should be adopted.

A. THE TRIBUNAL'S POWER TO REGULATE THE PARTICIPATION OF COUNSEL

52. As a preliminary matter, the Tribunal addresses its power to rule on the participation of counsel.
53. ICSID Arbitration Rule 2(2) provides that each party may be represented or assisted by agents, counsel, advocates, or other advisors. The right to representation by counsel of one's choosing is fundamental, as both Parties have acknowledged. That right, however, may yield in exceptional circumstances to preserve the integrity of the arbitral

³¹ Claimants' Communication dated 3 March 2026, p. 1.

³² Claimants' Communication dated 3 March 2026, p. 2.

³³ Claimants' Communication dated 9 February 2026, p. 2; Claimants' Communication dated 17 February 2026, p. 3.

³⁴ Claimants' Communication dated 9 February 2026, p. 2; ICSID Arbitration Rule 2(2).

³⁵ Claimants' Communication dated 9 February 2026, p. 3.

proceedings.

54. In the present case, paragraph 8.2 of Procedural Order No. 1 provides that: “[t]he Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.”³⁶ That provision also expressly establishes that in making such determination the Tribunal will apply the ICSID Convention and shall also be guided by the UNCITRAL Code of Conduct, the IBA Guidelines on Conflicts of Interest, and the International Bar Association Guidelines on Party Representation in International Arbitration (“**IBA Guidelines on Party Representation**”).³⁷ The Parties have therefore agreed on the principle that the Tribunal holds the power to regulate the participation of counsel where a conflict of interest may arise.³⁸
55. Moreover, even in the absence of such agreement, Article 44 of the ICSID Convention authorises the Tribunal to decide any question of procedure not expressly dealt with in the Convention, the Arbitration Rules, or any rule agreed by the parties.³⁹
56. Paragraph 8.2 of Procedural Order No. 1, read together with Article 44 of the ICSID Convention, grants the Tribunal the power to regulate the participation of counsel in proceedings before it and thus provides the necessary basis for the Tribunal to address the Respondent’s Application.

B. THE APPLICABLE STANDARD

57. The question before the Tribunal is not whether the President has a disqualifying conflict of interest that would warrant a challenge on that basis. Rather, the issue is whether the specific circumstances of this case, namely, the fact that Ms. Ferraro of Miranda & Amado instructs Prof. Bullard as legal expert on Peruvian law in an unrelated ICSID arbitration, constitute grounds to exclude counsel retained after the constitution of the Tribunal.
58. The Parties disagree on the applicable standard. The Respondent submits that the appearance of impropriety is a sufficient basis for the exclusion of counsel. The Claimants contend that exclusion is warranted only where a genuine conflict of interest has been established, and that no such conflict exists in this case.

³⁶ Procedural Order No. 1 dated 13 March 2026, ¶ 8.2.

³⁷ Procedural Order No. 1 dated 13 March 2026, ¶ 8.2.

³⁸ Procedural Order No. 1 dated 13 March 2026, ¶ 8.2; *see also*, Claimants’ Communication dated 9 February 2026, pp. 1-2; Respondent’s Communication dated 13 February 2026, p. 1.

³⁹ ICSID Convention, Article 44. *See Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal’s Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶¶ 33-34. In *HEP v. Slovenia*, the tribunal recognised an inherent power to take measures to preserve the integrity of its proceedings, grounding that power partly in Article 44 of the Convention.

59. The Tribunal notes and agrees with the Parties that the present circumstances do not give rise to a conflict of interest within the meaning of Articles 57 and 14(1) of the ICSID Convention, Article 4 of the UNCITRAL Code of Conduct, or the IBA Guidelines on Conflicts of Interest. In particular, the Tribunal notes that Guideline 3.2.9 of the Orange List requires disclosure only where an arbitrator has been appointed as an expert on more than three occasions by the same counsel or law firm within the past three years.⁴⁰ The President's single expert appointment falls well below this threshold. However, the Tribunal considers that the absence of a conflict of interest under these instruments is not, in and of itself, the only question before it.
60. As previously concluded, the Tribunal has the power to regulate the participation of counsel in proceedings before it. In so doing, it is guided by paragraph 8.2 of Procedural Order No. 1 which stipulates that in making such a determination the Tribunal shall be guided by the UNCITRAL Code of Conduct, the IBA Guidelines on Conflicts of Interest, and the IBA Guidelines on Party Representation. The Tribunal considers that the UNCITRAL Code of Conduct provides relevant guidance in the circumstances of the present case. In particular, Article 3.2(f), on independence and impartiality of arbitrators,⁴¹ and Article 4.1, on limits on multiple roles, of the UNCITRAL Code of Conduct. Specifically, Article 4.1 sets out the criteria for precluding an arbitrator from acting as a legal representative or an expert in other proceedings involving the same measures, parties or dealing with the same provisions of the same instrument of consent.⁴²
61. The Tribunal acknowledges that concurrent expert engagements by arbitrators in unrelated proceedings with the same counsel both instructing them and litigating before them are not expressly addressed in the UNCITRAL Code of Conduct or the IBA Guidelines on Conflicts of Interest, notwithstanding the extensive deliberations that informed those instruments. However, the lists of disclosable or problematic circumstances in those instruments are illustrative rather than exhaustive. Both of these instruments recognise that arbitrators must assess the propriety of their conduct in light of the circumstances of each case, and that situations giving rise to an appearance of impropriety may arise outside the enumerated categories.
62. Further, as noted by the Commentary to the UNCITRAL Code of Conduct at paragraph 33, even where the conditions of Article 4 are not met, an arbitrator should not act in a manner that would lead to a breach of the obligation under Article 3(2)(f) not to take any action that creates the appearance of a lack of independence or impartiality.⁴³ This

⁴⁰ IBA Guidelines on Conflicts of Interest, May 2024, Orange List, Guideline 3.2.9.

⁴¹ UNCITRAL Code of Conduct, December 2023, Article 3.2(f) (*Article 3. Independence and impartiality: 1. An Arbitrator shall be independent and impartial. 2. Paragraph 1 includes the obligation not to: [...] (f) Take any action that creates the appearance of a lack of independence or impartiality.*)

⁴² UNCITRAL Code of Conduct, December 2023, Article 4.1.

⁴³ UNCITRAL Code of Conduct, December 2023, Commentary, ¶ 33 (“*However, even when the above-mentioned circumstances are not met, an Arbitrator should not act as a legal representative or an expert*”)

obligation applies independently of the specific prohibitions set out in Article 4 and is engaged wherever the circumstances would reasonably give rise to an appearance of impropriety or justifiable doubts as to the arbitrator's independence or impartiality. Accordingly, while paragraph 8.2 of Procedural Order No. 1 refers to a conflict of interest, the instruments to which that provision refers recognise a broader duty to safeguard the integrity of the proceedings and to avoid not only actual conflicts of interests, but already any appearance of impropriety.⁴⁴

63. The Tribunal considers that, in applying the powers granted to it in paragraph 8.2 of Procedural Order No. 1, the relevant standard is whether the circumstances give rise to an appearance of impropriety that could compromise the integrity of the proceedings, assessed from the perspective of a reasonable and informed third-party observer.⁴⁵ This assessment is objective and must therefore be conducted from the standpoint of a reasonable independent observer.

64. This objective standard is also reflected in Guideline 2(c) of the IBA Guidelines on Conflicts of Interest.⁴⁶ In *Rompetrol v. Romania*, the tribunal similarly illustrated this approach, explaining that:

*“As the matter was put in a leading decision of the UK House of Lords, the test is ‘whether [a] fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased’.”*⁴⁷

65. Accordingly, the question before the Tribunal is whether a reasonable and informed observer, having considered the specific circumstances of this case, would conclude that the addition of new counsel to the Claimants' legal team after the constitution of the

witness in another proceeding if that would lead to a breach of article 3.”); see also Article 3.2(f) (prohibiting an arbitrator from taking “any action that creates the appearance of a lack of independence or impartiality”).

⁴⁴ UNCITRAL Code of Conduct, December 2023, Article 3(2)(f); IBA Guidelines on Party Representation, May 2013, Guideline 6.

⁴⁵ This approach is consistent with the reasoning of the tribunal in *HEP v. Slovenia*, where the tribunal emphasised that the objection was not predicated on any actual lack of independence or impartiality, but on apprehensions of the appearance of impropriety. The tribunal concluded that, in the interest of the legitimacy of those proceedings, the claimant was entitled to make the objection and that it was well founded. The tribunal in *HEP v. Slovenia* further noted that it was compelled to preserve the integrity of the proceedings and, ultimately, its award, observing that: “[u]ndoubtedly, one of the ‘fundamental rules of procedure’ referred to in Article 52(1)(d) of the ICSID Convention is that the proceedings should not be tainted by any justifiable doubt as to the impartiality or independence of any Tribunal member. The Parties agree that the relevant perspective in that inquiry is that of a reasonable independent observer.” *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶¶ 22, 30.

⁴⁶ IBA Guidelines on Conflicts of Interest, May 2024, Guideline 2 (c) (“Doubts are justifiable if a reasonable person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that a Candidate or an Arbitrator may be influenced by factors other than the merits of the case as presented by the disputing parties in reaching his or her decision.”)

⁴⁷ *The Rompetrol Group N.V. v. Romania* (ICSID Case No. ARB/06/3), Decision of the Tribunal on the Participation of a Counsel, 14 January 2010, ¶ 15.

Tribunal gives rise to a real possibility of an appearance of impropriety, in light of the President's concurrent expert engagement described in section I above. It is to that question that the Tribunal now turns.

C. APPLICATION TO THE PRESENT CASE

66. Having set out the applicable legal framework, the Tribunal now turns to apply it to the specific circumstances of this case. In doing so, the Tribunal will first assess whether the Respondent's First Request is justified (**Section 1**). The Tribunal will then address the applicable measure, its proportionality, and its duration (**Section 2**), before turning to the Respondent's Second and Third Requests (**Section 3**).

1. THE FIRST REQUEST: EXCLUSION OF MS. FERRARO

67. Before turning to its considerations on the First Request, the Tribunal considers it important to clarify the scope of its analysis. The present decision does not concern multiple appointments as arbitrator by the same law firm, relationships that are qualitatively different because an arbitrator is independent and has no task-specific obligations *vis-à-vis* counsel. Nor does this decision involve the appearance of financial dependence arising from a single expert appointment. The Tribunal also does not consider that, without more, an appearance of conflict or impropriety arises from the circumstance that an arbitrator accepts an expert appointment from a law firm that has appeared before that arbitrator after an arbitration has concluded or that an individual is appointed as arbitrator by a law firm after an expert engagement has terminated in which the same law firm was instructing him or her earlier as expert.
68. The scope of the Tribunal's analysis is determining whether there is an appearance of impropriety that would warrant the exclusion of Ms. Ferraro as counsel for the Claimants considering the combination of two factors: (i) the concurrent nature of Prof. Bullard's previous expert engagement with Miranda & Amado, and specifically with Ms. Ferraro serving as counsel instructing Prof. Bullard as expert; and (ii) the timing of Miranda & Amado's instruction as co-counsel in this arbitration, which occurred shortly after the process of constitution of the Tribunal was completed, a process that involved the Parties' agreement on the appointment of the President.
69. Notably, the fact that the President's concurrent expert engagement was unknown to the Respondent at the time it exercised its right to strike candidates during the appointment process and only became known following the President's voluntary disclosure, made in light of the circumstances of the appointment process, and reflecting the principle that an arbitrator may identify relevant circumstances and disclose them considering the specific circumstances of each case, is a material consideration.

70. The decision before the Tribunal requires striking a balance between a party's right to be represented by counsel of its choice and the impact that participation of such counsel may have on the appearance of impropriety in the arbitral proceedings. This is not a simple balance to assess. The right to designate counsel is an important element of due process, while the appearance of impropriety may affect the perception of integrity of the proceedings, which could affect its legitimacy. Both are relevant considerations that the Tribunal will address in the course of its analysis.
71. *First*, the President of this Tribunal is currently serving as an expert in Peruvian law in an unrelated ICSID proceeding. In that proceeding, Ms. Ferraro, a partner at Miranda & Amado, acts as one of the counsel who instructs the President in the preparation of his expert evidence.
72. Even though an expert has a duty *vis-à-vis* the tribunal to provide an independent and impartial opinion,⁴⁸ this engagement involves a concurrent, contractual, remunerated, and professional relationship carried out under the instructions of one party's counsel. This occurs in the context of direct and substantive interaction between the expert and counsel in the preparation and delivery of expert reports and in the lead-up to an evidentiary hearing. While the President's expert engagement concerns an entirely different dispute involving different parties, a different legal instrument, and different measures, the professional interaction between the expert and the counsel who instructs him is not merely incidental.
73. The Tribunal considers that a reasonable and informed third-party observer, aware of these facts, could perceive that the concurrent professional engagement between the President and Ms. Ferraro may create a proximity between the President and one of the Claimants' lead counsels that is incompatible with the appearance of propriety expected in these proceedings. This is so notwithstanding the Tribunal's confidence in the President's actual capacity to exercise independent and impartial judgment.
74. *Second*, the timing of Miranda & Amado's designation as co-counsel is a relevant factor in the present analysis. The designation occurred after the constitution of the Tribunal, which involved a process in which the Parties had agreed on the appointment of the President, and thus after the stage at which relationships between an arbitrator and the parties and their representatives are ordinarily identified and addressed, and at which decisions concerning the selection among candidates and the constitution of the Tribunal are made.

⁴⁸ Protocol for the Use Party-Appointed Expert Witnesses in International Arbitration, Chartered Institute of Arbitrators, Article 4.1-4.3 ("4.1 An expert's opinion shall be impartial and objective. 4.2 Payment by the appointing Party of the expert's reasonable professional fees for the work done in giving such evidence shall not, of itself, vitiate the expert's impartiality. 4.3 An expert's duty, in giving evidence in the Arbitration, is to assist the Arbitral Tribunal to decide the issue or issues in respect of which expert evidence is adduced.")

75. When the relationships between a prospective arbitrator and the parties or their representatives are known at the time of the appointment, and prior to the constitution of the Tribunal, arbitrators have the option of declining the appointment, and the parties—depending on the method of appointment—may choose not to confirm or may reject, at their discretion, a proposed candidate.
76. The latter is particularly relevant in appointment procedures agreed by the parties, as in the instant case, that allow them to strike or reject potential candidates without necessarily having to justify their decision on the basis of a conflict of interest or an appearance thereof.
77. In this case, the Parties agreed on a specific method for appointing the presiding arbitrator, pursuant to which they (i) exchanged lists of potential candidates, and (ii) both Parties could strike up any candidate from the list solely based on their discretion. Should a single candidate be considered acceptable, that candidate was to be contacted to determine their availability and, further to answering the Parties’ questions, was to be appointed as presiding arbitrator. The appointment procedure agreed upon by the Parties thus afforded each side the opportunity to assess prospective candidates and strike or reject any candidate without being required to justify that decision.
78. Therefore, given the timing of Miranda & Amado’s designation as co-counsel, the Respondent was deprived of the opportunity to take the President’s concurrent expert engagement into account when exercising its right to strike candidates during the appointment process. Had this professional relationship been known at the relevant time, the Respondent could have struck the President’s candidacy without the need to establish a disqualifying conflict of interest.
79. This does not mean, however, that at the stage at which this decision is being rendered, any subjective concern of a party may be invoked as a basis to seek the removal of counsel. As will be explained below, there must be a justified reason capable of reasonably giving rise to an appearance of impropriety.
80. *Third*, the timing of Miranda & Amado’s designation is also relevant because counsel must refrain from taking any action to endanger the tribunal’s legitimacy through changes to their legal teams. As held in *HEP v. Slovenia*, while parties are free to select their legal teams as they see fit prior to the constitution of the tribunal, they are not entitled to subsequently amend the composition of their legal team in such a fashion as to imperil the Tribunal’s status or legitimacy.⁴⁹ In the words of that tribunal: “although the Respondent in this case was free to select its legal team as it saw fit prior to the constitution of the Tribunal, it was not entitled subsequently amend the composition of

⁴⁹ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal’s Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 26.

its legal team in such a fashion as to imperil the Tribunal's status or legitimacy.”⁵⁰

81. The principle that there must be a balance between the right to counsel and procedural integrity is also reflected in Guidelines 5 and 6 of the IBA Guidelines on Party Representation, which provide that, once a tribunal has been constituted, a party shall not change its legal representation for the purpose of creating a conflict of interest, and that the tribunal may in such a case take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new representative.⁵¹
82. While the IBA Guidelines on Party Representation address this obligation specifically in the context of conflicts of interest, the underlying rationale, that changes in party representation after the constitution of the tribunal should not be permitted to undermine the integrity of the proceedings, is of broader application, as the tribunal in *HEP v. Slovenia* recognized. Accordingly, the Parties and their counsel bear an obligation to avoid creating situations that may disrupt the proceedings or place the composition of the Tribunal at risk.
83. At the time of Miranda & Amado's designation, the existing expert engagement between Miranda & Amado and the President was known or ought to have been known to the Claimants and their counsel. By proceeding with the designation notwithstanding that engagement, the Claimants introduced a circumstance that gave rise to the concerns identified in the preceding paragraphs.
84. This is particularly significant because the constitution process had already been completed, and each Party had exercised its right to appoint an arbitrator and to participate in the selection of the President based on the information then available. Had the Parties known that Miranda & Amado would be designated as co-counsel for the Claimants, they could have taken different decisions at the various stages of the constitution process, including with respect to the appointment or confirmation of the President.
85. *Fourth*, having identified the foregoing concerns, the Tribunal considers it important to address the extent to which the *HEP v. Slovenia* ruling supports its analysis in the present circumstances. The Tribunal acknowledges that the circumstances of the present case differ in significant respects from those in *HEP v. Slovenia*. In that case, counsel's involvement was disclosed on the eve of the hearing, while the appointment of counsel had been made long before, the respondent consciously chose not to inform the claimant

⁵⁰ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 26

⁵¹ IBA Guidelines on Party Representation, May 2013, Guidelines 5 and 6; UNCITRAL Code of Conduct, December 2023, Article 3(2)(f).

⁵² *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 11.

or the tribunal at the time the appointment was made,⁵² and the respondent refused to disclose the scope of counsel's involvement.⁵³ None of those aggravating factors are present here. The President voluntarily disclosed his expert engagement even though, as the Tribunal has noted, the IBA Guidelines on Conflicts of Interest did not mandate such disclosure.

86. However, the absence of those aggravating circumstances bears on the calibration of the appropriate remedy, not on the existence of an appearance concern. The principle established in *HEP v. Slovenia*—that a post-constitution change to a party's legal team must not imperil the Tribunal's status or legitimacy—is stated as a rule that operates independently of the specific aggravating factors present in that case.⁵⁴ Paragraph 8.2 of Procedural Order No. 1, read together with Article 44 of the ICSID Convention, grants the Tribunal the power to regulate the participation of counsel where doing so is necessary to safeguard the integrity and legitimacy of the proceedings.
87. *Fifth*, the concerns expressed by the Respondent are not merely subjective. The current phase of the proceedings is one in which counsel shape the case strategy, prepare submissions, and make decisions that will define the trajectory of the dispute. During this same period, Ms. Ferraro is instructing the President in the preparation of his expert evidence in another proceeding, at a stage where the parties in that matter are also potentially engaged in hearing preparation.
88. Unlike academic, institutional, or other incidental forms of professional overlap that are inherent to the relatively small community of international arbitration practitioners, the engagement at issue here is, as already mentioned, concurrent, contractual, remunerated, and instructed by one of the party's counsel, which places it in a qualitatively different category.
89. A reasonable observer could perceive that the particular circumstances of the President's engagement as legal expert—in which Ms. Ferraro, designated as counsel for the Claimants in these proceedings, provides instructions to Prof. Bullard in his capacity as expert in another matter—may give rise to an appearance that is incompatible with the impartiality and propriety that must be maintained in the present proceedings. The intensity of such instructions may further heighten these concerns in the eyes of a third-party observer.
90. In conclusion, the present decision is grounded in the following specific circumstances:
(i) the concurrent nature of Prof. Bullard's previous expert engagement with Miranda &

⁵² *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 11.

⁵³ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 31.

⁵⁴ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶ 26.

Amado, and specifically with Ms. Ferraro serving as counsel instructing Prof. Bullard as expert; and (ii) the timing of Miranda & Amado's instruction as co-counsel in this arbitration, which occurred shortly after the process of constitution of the Tribunal was completed, a process that involved the Parties' agreement on the appointment of the President.

2. APPLICABLE MEASURE, PROPORTIONALITY, AND DURATION

91. The appearance concern identified above is directly and exclusively linked to the concurrent professional relationship between the President and Ms. Ferraro in the context of the President's expert engagement. Once that engagement concludes, the circumstance giving rise to the appearance of impropriety ceases. Accordingly, the Tribunal considers that the appropriate measure is the temporary exclusion of Ms. Ferraro from participating in this arbitration for so long as the President's expert engagement in the other arbitration proceeding remains ongoing. This temporary exclusion finds support in Guideline 6 of the IBA Guidelines on Party Representation, which authorizes the Tribunal to exclude counsel "from participating in all or part of the arbitral proceedings." In the Tribunal's view, this measure strikes an appropriate balance between a party's right to designate counsel of its choice and the need to avoid any appearance of impropriety that may affect the perception of integrity of the proceedings.
92. In this regard, the Tribunal has carefully considered the Claimants' submissions regarding the prejudice that a temporary exclusion would cause, including in relation to the preparation of the Claimants' Memorial and the financial arrangements underpinning their pursuit of this arbitration. However, the Tribunal considers that the Claimants' right to counsel is not impaired in a manner that would render the exclusion disproportionate. The exclusion relates solely to Ms. Ferraro. The remaining lawyers from Miranda & Amado designated as counsel for the Claimants, namely Mr. Navarro and Mr. Pérez-Prieto, are not involved in Prof. Bullard's expert engagement and their participation is not affected by this Order. The Claimants further retain the full support of White & Case LLP as lead counsel. The early stage of the proceedings further mitigates the risk of prejudice. In these circumstances, the Claimants' right to be represented by counsel of their choosing is preserved in substance.
93. The Tribunal is not persuaded by the Respondent's submission that Ms. Ferraro should be excluded for the entirety of the proceedings. The Respondent's reliance on the three-year and five-year reference periods in the IBA Guidelines on Conflicts of Interest and the UNCITRAL Code of Conduct is misplaced in this context. Those reference periods relate to the assessment of whether a relationship gives rise to a disclosure obligation or a conflict of interest, not to the appropriate duration of a remedy designed to address an appearance concern arising from a concurrent engagement. Once the concurrent engagement ends, the specific basis for the appearance concern identified by the Tribunal ceases to exist.

94. Finally, the Tribunal does not consider it necessary or appropriate to specify a fixed calendar date for the termination of the exclusion. The exclusion shall remain in effect for so long as the President's expert engagement in the other proceeding is ongoing. Once that engagement has concluded, the Claimants may designate Ms. Ferraro as counsel in these proceedings by notifying the Tribunal and the Tribunal Secretary promptly of such designation, and the Tribunal will be able to determine at that stage whether the circumstances that gave rise to the exclusion have ceased to exist.

3. THE SECOND AND THIRD REQUESTS

95. With respect to the Respondent's Second Request, that the Claimants be ordered to consult with the Tribunal and the Respondent before designating additional counsel, the Tribunal considers that this measure is not warranted at this time. Paragraph 8.2 of Procedural Order No. 1 already empowers the Tribunal to refuse the designation of additional counsel if such designation would create a conflict of interest.⁵⁵
96. Should either Party designate additional counsel whose participation raises concerns, those concerns may be raised by the concerned Party to the Tribunal through existing mechanisms. The Tribunal sees no reason to impose a prior consultation obligation that would go beyond the procedural framework already in place.
97. With respect to the Respondent's Third Request, that the Claimants be ordered to take measures to ensure that lawyers from Miranda & Amado do not have *ex parte* communications with the President, the Tribunal considers that no additional measures are necessary. The Tribunal reminds the Parties that the obligation to refrain from *ex parte* communications with members of the Tribunal is fully in place and applies to all counsel, parties, and their representatives at all times throughout these proceedings.⁵⁶

IV. DECISION

98. For the reasons set forth above, the Tribunal decides as follows:

- (a) The Respondent's First Request is granted in part. Ms. Cristina Ferraro is excluded from participating as counsel for the Claimants in the present proceedings until the conclusion of the President's expert engagement in the other ICSID proceeding described in section I above, in which Ms. Ferraro acts as counsel.
- (b) The Respondent's remaining requests are dismissed.

⁵⁵ Procedural Order No. 1 dated 13 March 2026, ¶ 8.2.

⁵⁶ Respondent's Communication dated 13 February 2026, p. 4; Claimants' Communication dated 17 February 2026, pp. 3-4.

- (c) The Claimants are asked to submit the proof of authority granted to Miranda & Amado pursuant to ICSID Arbitration Rule 2(2).

[signed]

Alfredo Bullard González
President of the Tribunal
30 March 2026

[signed]

Chiara Giorgetti
Arbitrator
30 March 2026

[signed]

Stephan Schill
Arbitrator
30 March 2026