

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Sodexo Pass International SAS

v.

Hungary

(ICSID Case No. ARB/14/20)

PROCEDURAL ORDER NO. 1

Professor William W. Park, President of the Tribunal
Mr. Andrea Carlevaris, Arbitrator
Mr. John Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Ms. Aïssatou Diop

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Introduction

The first session of the Arbitral Tribunal was held on 26 May 2015, at 10:10 a.m. Eastern Time, by telephone conference.

Participating in the conference were:

Members of the Tribunal

Professor William W. Park, President of the Tribunal
Mr. Andrea Carlevaris, Arbitrator
Mr. John Christopher Thomas QC, Arbitrator

ICSID Secretariat:

Ms. Aïssatou Diop, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Philippe Cavaleros, Winston & Strawn LLP
Dr. András Szecskay, Szecskay Attorneys at Law
Dr. András Dániel László, Szecskay Attorneys at Law
Dr. György Wellmann, Szecskay Attorneys at Law

Participating on behalf of the Respondent:

Mr. András Nemescsói, Horváth and Partners Law Firm DLA Piper
Mr. David Kohegyi, Horváth and Partners Law Firm DLA Piper
Mr. Camilo Cardozo, DLA Piper LLP (US)
Ms. Agnes Sarhegyi, Sarhegyi and Partners Law Firm
Mr. András Lovas, Sarhegyi and Partners Law Firm
Mr. Gergely Pap, Sarhegyi and Partners Law Firm

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on 27 April 2015.
- The Draft Procedural Order circulated by the Tribunal Secretary on 27 April 2015; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on May 19, 2015.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

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

2.1. The Tribunal was constituted on 7 April 2015 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on 7 and 9 April 2015

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

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

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

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- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Decisions and Procedural Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by any appropriate means of communication except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The President is authorized to issue Procedural Orders and Procedural Decisions on behalf of the Tribunal.
 - 5.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.
6. Power to Fix Time Limits
Arbitration Rule 26(1)
 - 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
 - 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

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

Ms. Aïssatou Diop
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C.
20433
USA
Tel.: + 1 (202) 458-9833
Fax: + 1 (202) 522-2615
Email: adiop3@worldbank.org
Paralegal email: oakinyode@worldbank.org

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

Ms. Aïssatou Diop
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-9833

8. Representation of the Parties

Arbitration Rule 18

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

For Claimant

Mr. Philippe Cavalieros
Winston & Strawn LLP
40-48 rue Cambon
75039 Paris Cedex 01

For Respondent

Mr. András Nemescsóí
Mr. David Kohegyi
Horváth and Partners Law Firm DLA
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jozsef.gyori@nfm.gov.hu

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. In determining how costs shall be apportioned between the parties, the Tribunal may assess the reasonableness and proportionality of costs claimed and take into account factors it considers relevant, including the procedural conduct of the parties and/or their counsel throughout the proceedings. Cost items that may be recoverable include but are not limited to arbitration costs (arbitrators' fees and ICSID's administrative costs), lawyers' fees, and experts' costs.
- 9.3. By letter of 8 April 2015, ICSID requested that each party pay US\$150,000 to defray the initial costs of the proceeding. ICSID received Claimants' payment on 23 April 2015 and the Respondent's payment on 30 April 2015.
- 9.4. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. London, United Kingdom, shall be the place of the proceeding, unless, from a costs perspective including, *inter alia*, the costs for hearing premises and travel, it would be more suitable to hold the hearing at Washington D.C., United States.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.

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- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
 - 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version. In any event, the party so disputing the translation shall advance the costs of procuring a certified translation, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
 - 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated. When such documents are submitted to the Tribunal, they will be translated in whole or in relevant part.
 - 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
 - 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
 - 11.8. The costs of the interpreters will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
12. Routing of Communications
Administrative and Financial Regulation 24
- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
 - 12.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
 - 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
 - 12.4. The email addresses of the Members of the Tribunal are:

Professor William W. Park Email: wwpark@bu.edu	Mr. Andrea Carlevaris Email: acs@iccwbo.org	Mr. John Christopher Thomas QC Email: jcthomas@thomas.ca
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13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal, the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

13.1.1. Within five days of filing the underlying pleading, the parties shall courier to the Tribunal Secretary:

13.1.1.1. one unbound hard copy in A4/Letter format² in redwell folders (or file pockets) of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.1.1.2. one hard copy in A4 format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

13.1.1.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.1.2. at the same time, courier to the opposing party at the addresses indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.2 below:

13.1.2.1. one hard copy in A4 format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

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

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

² The A4/Letter format is required for ICSID's archiving.

authorities.

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

**Alternate address – for use
until further notice**

Professor William W. Park
36 King Street,
Cohasset, MA 02025
United States of America
Tel: +1 617 353-3149

Mr. Andrea Carlevaris
ICC International Court
of Arbitration
33-43 avenue du
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National University of
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Center for International
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Singapore 259756
Singapore
Tel: +65 6516 4103

Regular Address

Professor William W. Park
Boston University School of
Law
765 Commonwealth Avenue
Boston, MA 02215
United States of America

- 13.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.4. Electronic versions of a pleading shall be text searchable (i.e., PDF or Word).
- 13.5. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation. Such index may be submitted within five days of submission of the underlying pleading.
- 13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary and to each Member of the Tribunal.
- 13.7. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. **Number and Sequence of Pleadings**
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

See Annex A

15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36

See Annex A

16. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties may be submitted in rebuttal 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, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. The documents shall be submitted in the following form:

16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

16.5.2. 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.

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- 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.5.4. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.5. 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.
- 16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter and interpreters at the hearing.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 17.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 17.3. Each witness statement and expert report shall be signed and dated by the witness.
18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.
- 18.2. On a date to be determined by the Tribunal after consulting the parties which shall not be less than six weeks before any hearing, each party shall notify the other party,

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with a copy to the Tribunal which witnesses and experts of the opposing party it wishes to cross-examine at the hearing.

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

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

18.3.2. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below and any agreement of the parties or direction of the Tribunal.

18.3.3. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes. Direct examination of witnesses shall be conducted only if and as necessary to introduce the witness, confirm the accuracy of and completeness of the witness’ written statement(s), offer testimony on any issues that may have arisen since the submission of the witness’ written statement and offer any corrections or clarifications that may be necessary to prevent a misunderstanding of that witness’ written direct testimony.

18.3.4. The direct examination of witnesses is followed by examination by the other party (“cross-examination”), and subsequently by the party producing the witness (“redirect examination”). The cross-examination shall be limited to matters raised in the witness’ written statement(s) and any additional matter raised during direct examination.

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

18.3.5. Sections 18.3.2, 18.3.3 and 18.3.4 shall apply to experts *mutatis mutandis*.

18.3.6. The Tribunal may pose questions to the witnesses and experts at any time.

18.4. Unless the parties and the Tribunal agree otherwise, experts (but not witnesses) shall be allowed in the hearing room before giving their testimony and shall be permitted to read the transcript of the hearing before testifying.

18.5. The party whose witness or expert has been called for cross-examination must make the witness or expert available for the hearing. In the event of a failure to do so without good cause, the Tribunal may disregard the statement, report or opinion of the relevant witness or expert. In any case, the Tribunal shall assess the probative

value of such statement, report or opinion taking into account the record and all relevant circumstances, including the fact that the statement was not confirmed orally and that the witness and/or expert was not examined.

- 18.6. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.7. A party's waiver to cross-examine a witness or expert shall not be deemed to be an acceptance of the witness' or experts' written testimony.
- 18.8. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the parties during the pre-hearing organizational meeting in §19 below.
- 18.9. In determining any question regarding the taking of evidence, the Tribunal may draw guidance from the IBA Rules on the Taking of Evidence in International Arbitration, effective as of 29 May 2010.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held on a date determined by the Tribunal after prior consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings
Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with §10 above.
- 20.3. The exact dates of the hearing shall be determined at a later stage, but the parties have agreed to block off two weeks for this purpose as per Annex A.
- 20.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. For the allocation of time, the parties agree to a chess-clock approach, with the number of hours to be addressed at a later stage.

20.6. Hearings shall be closed to the public.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

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

21.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.

21.3. A verbatim transcript in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

21.4. The parties shall agree on any corrections to the transcripts within 21 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

22.1. The parties agree that this item will be addressed at the end of the hearing.

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

23.1. The ICSID Secretariat shall not publish any ruling issued in the present proceeding without the consent of the parties.

24. Confidentiality

24.1. Unless both parties consent, neither party shall unilaterally disclose to any third party information that relates to the proceedings, including:

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- a. all correspondence exchanged between the parties, ICSID, and/or the Arbitral Tribunal,
- b. all party submissions filed in the arbitration, including pleadings, memorials, witness statements, annexes and evidence supplied to the Arbitral Tribunal;
- c. all awards, decisions and orders of the Arbitral Tribunal;
- d. all minutes, records, and transcripts of hearings and meetings; and
- e. information contained in or derived from any such documents.

Such documents and information may be disclosed to third parties, such as expert witnesses, to the extent necessary for the purpose of the arbitration. These third parties shall undertake the same confidentiality obligations as the parties to the arbitration.

This provision does not affect ICSID Secretariat's right to publish case information and procedural details on its website.

Other Matters

The session was adjourned at 10:53 a.m. Eastern Time.

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

in behalf of the Tribunal

[signed]

Professor William W. Park
President of the Tribunal

Date: 17 June 2015

Annex A - Timetable

The following timetable shall apply in the event no preliminary objections are raised:

Date	Party / Tribunal	Description	Section of this Order
1 October 2015	CLAIMANT	Memorial	§14
29 January 2016	RESPONDENT	Counter-Memorial	§14
26 February 2016	CLAIMANT AND RESPONDENT ¹	Request for Production of Documents	§15
25 March 2016	CLAIMANT AND RESPONDENT	Production of Documents non contested, and Responses and/or Objections to the Request for Production of Documents	§15 §15
15 April 2016	CLAIMANT AND RESPONDENT	Reply to Objections to the Request for Production of Documents – Sent to Tribunal	§15
6 May 2016	TRIBUNAL	Decision on Objections to Request for Production of Documents	§15
3 June 2016	CLAIMANT AND RESPONDENT	Production of Documents Ordered by the Tribunal	§15
8 August 2016	CLAIMANT	Reply	§14

¹ The requests for production of documents have been inserted after the first exchange of pleadings on the merits for illustration purposes. The parties are free to agree on a different timing for such requests. If the parties fail to agree, the Tribunal can also decide otherwise.

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Date	Party / Tribunal	Description	Section of this Order
7 November 2016	RESPONDENT	Rejoinder	§14
December 2016	CLAIMANT AND RESPONDENT	Witness notification	§18.2
January 2017	ALL	Pre-Hearing Organizational Meeting	§19.1
17 April 2017	CLAIMANT AND RESPONDENT	Pre-Hearing Skeleton	-
1-5 May 2017	ALL	Hearing	§20.3
6 May 2017	TRIBUNAL	Deliberations	§20.4
