

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Bay View Group LLC and The Spalena Company LLC**

**v.**

**Republic of Rwanda**

**(ICSID Case No. ARB/18/21)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Rt. Hon. Lord Phillips KG, PC, President of the Tribunal

Mr. J. Truman Bidwell, Jr., Arbitrator

Ms. Barbara Dohmann QC, Arbitrator

***Secretary of the Tribunal***

Mr. Alex B. Kaplan

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**December 12, 2018**

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**Introduction**

The first session of the Tribunal was held on December 3, 2018, at 8 a.m., by telephone conference.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and Claimants, Bay View Group LLC and The Spalena Company LLC, and Respondent, the Republic of Rwanda (collectively, the “parties”).

Attending the First Session were:

**On behalf of the Tribunal:**

Rt. Hon. Lord Phillips KG, PC, President of the Tribunal  
Mr. J. Truman Bidwell, Jr., Arbitrator  
Ms. Barbara Dohmann QC, Arbitrator

Mr. Alex Kaplan, Secretary of the Tribunal

**On behalf of Claimants:**

Mr. Steven M. Cowley, Duane Morris LLP  
Mr. Bryan D. Harrison, Duane Morris LLP  
Roderick Marshall, Bay View Group LLC and The Spalena Company LLC

**On behalf of Respondent:**

Ms. Michelle Duncan, Joseph Hage Aaronson LLP  
Mr. Seth Cumming, Joseph Hage Aaronson LLP  
Ms. Lucy Needle, Joseph Hage Aaronson LLP

The Tribunal and the parties considered the following:

- The Draft Procedural Order and procedural calendar circulated by the Tribunal Secretary on November 23, 2018; and
- The parties’ comments on the Draft Procedural Order received on November 29, 2018, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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 procedural calendar is attached as **Annex C**.

1. Applicable Arbitration Rules

*Convention Article 44; the BIT*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.
- 1.2. In addition, the Parties and the Tribunal note the applicability of certain provisions of the Treaty Between the United States of America and Rwanda Concerning the Encouragement and Reciprocal Protection of Investment (the “**BIT**”) to the conduct of the proceedings.

2. Constitution of the Tribunal and Tribunal Members’ Declarations

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on October 3, 2018 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 October 3, 2018.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 2.4. The contact details for the Members of the Tribunal are:

Rt. Hon. Lord Phillips KG, PC  
Brick Court Chambers  
7-8 Essex Street  
London WC2R 3LD  
United Kingdom  
Tel: +44 20 7379 3550  
[phillipsofworth@gmail.com](mailto:phillipsofworth@gmail.com)  
[kate.trott@brickcourt.co.uk](mailto:kate.trott@brickcourt.co.uk)<sup>1</sup>

Mr. J. Truman Bidwell, Jr.  
Sullivan & Worcester LLP  
1633 Broadway  
New York, NY 10019  
United States of America  
Tel: +1 212 660 3032  
[jbidwell@sandw.com](mailto:jbidwell@sandw.com)

Ms. Barbara Dohmann QC  
Blackstone Chamber  
Blackstone House, Temple  
London EC4Y 9BW  
United Kingdom  
Tel: +44 20 7583 1770  
[bd@blackstonechambers.com](mailto:bd@blackstonechambers.com)

<sup>1</sup> The Parties consent to the addition of Ms. Trott’s email address to the email distribution list established for the Tribunal. Ms. Trott is purely an administrative aid to the President of the Tribunal, and the addition of her email to the email distribution list is merely for organizational purposes.

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.
- 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)*

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

5. 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 correspondence except that where 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. The President may not decide substantive matters without consulting a quorum of the Tribunal, as defined by Section 4.

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- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within six months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every three months.
- 5.4. The President is authorized to issue procedural orders on behalf of the Tribunal.
- 5.5. 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.
- 6.3. Routine extensions of time may be agreed to by the parties without reference to the Tribunal, provided that they do not affect dates for hearings or rulings from the Tribunal and are promptly reported to the Tribunal.

7. Secretary of the Tribunal  
*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Mr. Alex B. Kaplan, 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. Alex B. Kaplan  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433 USA  
Tel.: + 1 (202) 522-5142  
Fax: + 1 (202) 522-2615  
Email: [akaplan@worldbank.org](mailto:akaplan@worldbank.org)  
Paralegal email (Colleen Ferguson): [cferguson2@worldbank.org](mailto:cferguson2@worldbank.org)

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

Mr. Alex B. Kaplan  
701 18th Street, N.W. (“J Building”)  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-1534

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 Claimants

Mr. Steven M. Cowley  
Mr. Bryan D. Harrison  
100 High Street  
Suite 2400  
Boston, MA 02110  
United States of America  
Tel.: +1 857 488 4200  
Fax: +1 857 488 4201  
Emails:  
[smcowley@duanemorris.com](mailto:smcowley@duanemorris.com)  
[bharrison@duanemorris.com](mailto:bharrison@duanemorris.com)

For Respondent

Mr. Thomas Beazley QC  
Ms. Michelle Duncan  
Joseph Hage Aaronson LLP  
7<sup>th</sup> Floor  
280 High Holborn  
London WC1V 7EE  
United Kingdom  
Tel. +44 207 851 8888  
Emails:  
[TomBeazleyIC@jha.com](mailto:TomBeazleyIC@jha.com)  
[mduncan@jha.com](mailto:mduncan@jha.com)  
[seth.cumming@jha.com](mailto:seth.cumming@jha.com)  
[lneedle@jha.com](mailto:lneedle@jha.com)  
[ewatt@jha.com](mailto:ewatt@jha.com)

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 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. By letter of October 3, 2018, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimants’ payment on November 1, 2018 and Respondent’s payment on November 28, 2018.

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- 9.3. 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. Paris, France shall be the place of the proceeding.
- 10.2. The Tribunal will hold hearings in Paris, France or 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(s), 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.
- 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.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 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 interpreter(s) 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. 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. Attachments greater than 25MB in aggregate may be transmitted by uploading to the file sharing platform mentioned in §13.1(ii) below.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 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

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

- 13.1. By the relevant filing date, each party shall:
  - (i) submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and the updated hyperlinked index of all the supporting documentation attached to the pleading (including witness statements, expert reports, exhibits and legal authorities)<sup>2</sup>; and
  - (ii) upload the pleading, with all the supporting documentation and the corresponding updated hyperlinked index to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. The parties shall courier to the Tribunal Secretary by dispatch no later than five business days after the filing date:
  - 13.2.1. one unbound hard copy in A4/Letter format<sup>3</sup> of the entire submission,<sup>4</sup> including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not

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<sup>2</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

<sup>3</sup> The A4/Letter format is required for ICSID's archiving.

<sup>4</sup> The Secretariat's copy will be kept in the official repository of ICSID and is not intended to be used at hearings.

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including legal authorities); and

- 13.2.2. two unencrypted USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 13.3. Also no later than five business days following the electronic filing, each party shall courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §2.4 above:
  - 13.3.1. one hard copy in **A4** format to Lord Phillips and Mr. Bidwell, and (if Claimants are the opposing party) to Claimants, of the entire submission including the pleading, the witness statements, expert reports, together with any other supporting documentation (but not including legal authorities) and the updated hyperlinked index;
  - 13.3.2. one hard copy in **A5** format to Ms. Dohmann, and (if Respondent is the opposing party) to Respondent, of the entire submission including the pleading, the witness statements, expert reports, together with any other supporting documentation (but not including legal authorities) and the updated hyperlinked index; and
  - 13.3.3. one unencrypted USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 13.4. The contact details of the Tribunal Members are as indicated in §2.4, above.
- 13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.6. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.7. All pleadings shall be accompanied by the updated index hyperlinked to the supporting documentation. The index shall indicate the document number, the pleading with which it was submitted (please follow the naming conventions contained in **Annex A**).
- 13.8. 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 courier to the ICSID Secretariat and each Member of the Tribunal an unencrypted USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities

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and Tribunal decisions and orders to date) with a joint / consolidated and the updated hyperlinked index of all documents.

- 13.9. 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 by email.
- 13.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
- 13.11. The parties agree that periods of time agreed by them or specified by the Tribunal shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with §13.10 above. If the last day of the relevant period of time granted is an official public holiday or a non-business day in the United States of America, the Republic of Rwanda, or the United Kingdom, the period of time shall expire at the end of the first following business day. For the purpose of these proceedings, Saturdays and Sundays should be considered non-business days. Official holidays and non-business days occurring during the running of the period of time are included in calculating a period of time.
14. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*
- 14.1. The number and sequence of pleadings, comprising the written phase of the arbitration in accordance with Arbitration Rules 29 and 31, is established in **Annex C**. As reflected in **Annex C**, the Tribunal decided at the First Session to bifurcate quantum from the merits.
- 14.2. In the first exchange of submissions (Memorial and Counter-Memorial), the parties shall insofar as possible set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner.
- 14.3. In their second exchange of submissions (Reply and Rejoinder), the parties shall limit themselves to responding to allegations of fact and legal arguments made by the other party in the first exchange of submissions, unless new facts that have arisen or come to light after the first exchange of submissions justify new allegations of fact and/or legal arguments.
15. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*
- 15.1. Production of documents shall be guided by Article 3 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (the “**IBA Rules**”), except where inconsistent with this Procedural Order or any

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later order of the Tribunal, in which case the orders of this Tribunal shall prevail.

- 15.2. Upon the request of a party filed within the time limit set in **Annex C**, each party may request from the other party a disclosure of documents or categories of documents within its possession, custody or control. Such a request for production shall identify each document or category of documents sought, in the form of a Redfern Schedule as attached in **Annex B** hereto, in both Word and PDF format, specifying why the documents sought are relevant to the dispute and material to the outcome of the case.
  - 15.3. Within the time limit set forth by **Annex C**, the other party shall either produce the requested documents or, using the Redfern Schedule provided by the first party, submit its reasons for its failure or refusal to produce responsive documents (objections).
  - 15.4. Within the time limit set forth by **Annex C**, the requesting party shall reply to the other party's objections in that same Redfern Schedule and at the same time submit the Word and PDF copies of the Redfern Schedule to the Tribunal.
  - 15.5. On the date set forth by **Annex C**, the Tribunal will rule upon the production of the documents or categories of documents objected to by one or both parties. If the Tribunal orders that documents be produced notwithstanding a parties' objection, the producing party shall produce documents within the time limit let forth by **Annex C**.
  - 15.6. Documents shall be produced directly to the requesting party without copying the Tribunal.
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 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 exceptional circumstances exist based on 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.

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- 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 Claimants 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.
- 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.6. Electronic filings 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 attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint 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 electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and

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interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

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. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional 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 or expert, as the case may be.

18. Examination of Witnesses and Experts

*Arbitration Rules 35 and 36*

- 18.1. Without prejudice to the power of the Tribunal to request or allow the parties to produce further evidence at any stage of the proceedings, written witness statements and expert reports shall be submitted together with the pleadings which they support and shall, subject to §18.7 below, constitute the direct testimony of each factual or expert witness, respectively.
- 18.2. Each witness statement shall state the witness's name, date of birth (unless the witness objects), and involvement in the case.
- 18.3. Each party will submit its witness statements together with its written submission, or indicate when filing a submission the reasons for which a statement could not have been filed earlier for a particular witness. The witness statements shall be numbered independently from other documents and properly identified.
- 18.4. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.5. Witnesses shall testify at the hearing only if they are called by the opposing party or the Tribunal for cross-examination. On the date established in **Annex B**, each party shall notify the Tribunal and the other party the witnesses it wishes to call for cross-examination, as well as any witness for which it waives cross examination.
- 18.6. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party shall not be deemed established by the sole fact that no cross-examination has been requested.

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- 18.7. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion determine the weight, if any, to give his or her witness statement.
  - 18.8. Subject to a different agreement by the parties or a different ruling by the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments or read the transcript of any oral testimony or argument prior to his or her examination. Expert witnesses shall not be sequestered.
  - 18.9. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness, and may examine the witness or expert.
  - 18.10. During the hearing, the party presenting the witness may conduct a brief direct examination. Re-direct examination shall be limited to the subject of the cross-examination.
  - 18.11. The rules above governing witness evidence shall apply equally to experts and their evidence. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' submissions, in which case reference to such exhibits shall be sufficient.
  - 18.12. Each party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the opposing party has waived cross-examination of a witness and the Tribunal does not order or request his or her appearance.
  - 18.13. Examination by video-conference may be permitted by the Tribunal if determined by it to be fair.
  - 18.14. To the extent that further directions may be required governing the examination of witness and experts at a hearing, they may be made at the pre-hearing organizational meeting.
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 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.

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- 20.2. Hearings shall be held at a place to be determined in accordance with §10 above.
- 20.3. Hearings shall take place on the dates indicated in the procedural calendar at Annex C or as may be otherwise agreed by the parties or the Tribunal.
- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. Hearings shall be open to the public as set forth in §24 below.
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. 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 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.
- 21.3. 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 shall be entered by the court reporter in the transcripts (“**revised transcripts**”). The Tribunal may 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)*
- Before the end of the hearing, the Tribunal shall consult with the parties as to whether they shall submit Post-Hearing Briefs and shall determine the additional details regarding such briefs. The Tribunal shall also issue directions on the Parties’ statements of costs at the end of the hearing.
23. Non-Disclosure of Information  
*Articles 18, 19 and 29 of the BIT*
- 23.1. The parties agree that “protected information” is as defined in Article 1 of the BIT. Article 1 states in relevant part, “‘protected information’ means confidential business information or information that is privileged or otherwise protected from



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disclosure” under the laws of the United States of America or the Republic of Rwanda. Such information may not be publicly disclosed, in accordance with §24 (Transparency), below.

- 23.2. In addition, and in accordance with Articles 18 and 19 of the BIT, Respondent may not disclose information that Respondent deems to be “contrary to its essential security interests” or to “impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises public or private” (hereinafter, “**Article 18 and 19 information**”). The production of such information may not be compelled from the Respondent, nor may such information be publicly disclosed, in accordance with §24 (Transparency), below.
- 23.3. For the purposes of this Order, “protected information” and “Article 18 and 19 information” are collectively referred to as “non-disclosure information”.

24. Transparency

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); Article 29 of the BIT*

- 24.1. In accordance with Article 29(2) of the of the BIT, hearings shall be open to the public subject to a procedure to ensure “non-disclosure information” is not disclosed to the public during the hearing.
- 24.2. The parties consent to ICSID’s publication of the documents listed in Article 29 of the BIT. They are: (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials and briefs by the United States of America, if any, submitted to the Tribunal pursuant to Articles 28(2)-(3) and 33 of the BIT; (d) minutes or transcripts of hearings, where available; and (e) orders, awards, and decisions of the Tribunal.
- 24.3. The Parties agree that Respondent, and not ICSID, retains the obligation to transmit the documents listed in §24.2 above to the United States of America (the non-disputing State party to the BIT), as required by Article 29(1) of the BIT.
- 24.4. In accordance with Article 29(1) of the BIT, the documents published under that provision shall not contain “non-disclosure information”.
- 24.5. The Parties agree that the following procedure applies to the redaction of “non-disclosure information” prior to publication.

24.5.1. For the notice of intent and the notice of arbitration, which pre-date this Order:

Within 14 days of the date of this Order, Claimants shall submit redacted versions that do not contain any “non-disclosure information”. Within 14 days

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of the date that the redacted versions are submitted to the Tribunal, Respondent shall notify Claimants and the Tribunal whether it objects to any of Claimants' redactions. If Respondent objects to any of Claimants' redactions, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve Respondent's objections within 14 days and upon the request of either party, then the Tribunal will decide the issue.

24.5.2. For pleadings, memorials, and briefs:

Any party claiming that certain information constitutes "non-disclosure information" shall clearly designate the information at the time it is submitted to the Tribunal and submit a redacted version of the document, in electronic version only, that does not contain the information. Within 14 days of the date of the document's submission to the Tribunal, the other party shall notify the party submitting the document and the Tribunal whether it objects to any of the redactions. The parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 days and upon the request of either party, then the Tribunal will decide the issue.

If the Tribunal determines that any information that a party sought to redact is not "non-disclosure information", that party may either resubmit the document (i) withdrawing the content for which redaction was sought or (ii) with the redactions corresponding to the Tribunal's determination.

24.5.3. For minutes or transcripts of hearing and orders, awards, and decisions of the Tribunal:

The parties shall within 14 days of dispatch by the ICSID Secretariat submit redacted versions that do not contain any "non-disclosure information". Within 14 days of the date that the redacted versions are submitted to the Tribunal, each party shall notify the other party and the Tribunal whether it objects to any of the redactions. If there are objections, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 days and on the request of either party, then the Tribunal will decide the issue.

24.6. Neither the parties nor the Tribunal shall disclose to the United States of America (the non-disputing State party to the BIT) or to the public any "non-disclosure information" redacted in accordance with this Order or a subsequent ruling of the Tribunal.

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25. Proposed Decision or Award on Liability  
*Article 28 of the BIT*

- 25.1. In accordance with Article 28(9)(a) of the BIT, at the request of a party, the Tribunal will, before issuing a decision or award on liability, transmit its proposed decision or award to the parties and to the United States of America (the non-disputing State party to the BIT).
- 25.2. Within 60 days after the Tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the Tribunal concerning any aspect of its proposed decision or award. The Tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.
- 25.3. A party must make the request for the transmission of the proposed decision or award either 14 days after any hearing on liability or 14 days after the party's last post-hearing memorial, whichever is later.

[signed]

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Rt. Hon. Lord Phillips KG, PC  
President of the Tribunal  
Date: December 12, 2018

**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). Such indication should be reflected both i) in the name use to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
<b>MAIN PLEADINGS</b>	<b>Title of Pleading–LANGUAGE</b>
	<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>
<b>SUPPORTING DOCUMENTATION</b>  Exhibits	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
<i>R-0001-FR</i>	
	<i>R-0002-SPA</i>
Legal Authorities	<b>CL-####–LANGUAGE</b>
	<b>RL-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S LEGAL AUTHORITIES</b>
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>
<i>RL-0001-SPA</i>	
	<i>RL-0002-ENG</i>
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>

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	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>
	<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 Statements, Expert Reports, Legal Opinions	<b>WITNESS/EXPERT INITIALS-###</b>
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<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	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	<b>Name of Application-[party]-LANGUAGE</b>
	<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**

**REDFERN SCHEDULE FOR DOCUMENT REQUESTS**

No.	REQUEST			OBJECTIONS (Max 300 words)	REPLY (Max 300 words)	TRIBUNAL'S DECISION
	Document Requested	Relevance According to Requesting Party				
		Ref. to Submissions	Comments (Max 400 words)			

**ANNEX C**

**PROCEDURAL CALENDAR**

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

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
March 1, 2019	CLAIMANTS	Memorial (excluding quantum of damages)
May 24, 2019	RESPONDENT	Counter-Memorial (excluding quantum of damages)
June 7, 2019	CLAIMANTS AND RESPONDENT	Request for Production of Documents (excluding quantum of damages)
June 21, 2019	CLAIMANTS AND RESPONDENT	Production of Documents non-contested, and  Responses and/or Objections to the Request for Production of Documents
July 10, 2019	CLAIMANTS AND RESPONDENT	Reply to Objections to the Request for Production of Documents – Sent to Tribunal
August 15, 2019	TRIBUNAL	Decision on Objections to Request for Production of Documents
September 5, 2019	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal
October 18, 2019	CLAIMANTS	Reply (excluding quantum of damages)
December 20, 2019	RESPONDENT	Rejoinder (excluding quantum of damages)

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<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
February 10, 2020	CLAIMANTS AND RESPONDENT	Witness notification
Week of February 24, 2020	ALL	Pre-Hearing Organizational Meeting
March 9, 2020	CLAIMANTS AND RESPONDENT	Pre-Hearing Skeleton
March 16 – March 25, 2020	ALL	Hearing on the merits excluding quantum of damages  5 days, with 3 additional days held in reserve
TBD	TRIBUNAL	Deliberations

The following timetable shall apply in the event preliminary objections are raised and Respondent seeks bifurcation of preliminary objections from the merits:

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
March 1, 2019	CLAIMANTS	Memorial (excluding quantum of damages)
May 24, 2019	RESPONDENT	Memorial on Preliminary Objections and Request for Bifurcation and Counter-Memorial on the Merits (excluding quantum of damages)
June 21, 2019	CLAIMANTS	Observations on Request for Bifurcation



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<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
July 5, 2019	TRIBUNAL	Decision on bifurcation or joinder of preliminary objections to the merits

Upon its decision on bifurcation or joinder of preliminary objections to the merits, the Tribunal will confer with the parties to set out the procedural calendar for the next phase of the proceedings. **However, the parties and the Tribunal agree that if the Tribunal decides to bifurcate preliminary objections from the merits, then the hearing on bifurcated preliminary objections shall take place on November 18-22, 2019 (number of hearing days to be decided, maximum of five). If the Tribunal decides to join preliminary objections to the merits, the hearing will take place on March 16-25, 2020 (5-day hearing with 3 days held in reserve).**