

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**The Carlyle Group L.P., Carlyle Investment Management L.L.C., Carlyle Commodity  
Management L.L.C., and others**

**v.**

**Kingdom of Morocco**

**(ICSID Case No. ARB/18/29)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Prof. Juan Fernández-Armesto, President of the Tribunal

Dr. Horacio A. Grigera Naón, Arbitrator

Mr. Samuel Wordsworth, QC, Arbitrator

***Secretary of the Tribunal***

Ms. Ella Rosenberg

***Assistant to the Tribunal***

Dr. Luis Fernando Rodríguez

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July 1, 2019

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**Introduction**

The first session of the Tribunal was held on April 2, 2019, at 4:30pm Madrid time/10:30am Washington, D.C. time/3:30pm London time, by telephone conference. The session was adjourned at about 6:20pm Madrid time.

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 the Parties.

Participating in the conference were:

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal  
Dr. Horacio A. Grigera Naón, Arbitrator  
Mr. Samuel Wordsworth, QC, Arbitrator

Assistant to the Tribunal:

Dr. Luis Fernando Rodríguez, Assistant to the Tribunal

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal

Attending / Participating on behalf of the Claimants:

Mr. Eric Ordway, Weil, Gotshal & Manges LLP  
Ms. Lori Pines, Weil, Gotshal & Manges LLP

Attending / Participating on behalf of the Respondent:

Dr. Christopher Harris Q.C., 3 Verulam Buildings  
Mr. Georges Chalfoun, 3 Verulam Buildings

The Tribunal and the Parties considered the following:

- The Agenda circulated by the Tribunal Secretary on March 29, 2019;
- The Draft Procedural Order circulated by the Tribunal Secretary on March 11, 2019;  
and
- The Parties' comments on the Draft Procedural Order received on March 26, 2019, 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**

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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 B.

1. Applicable Arbitration Rules

*Convention Article 44*

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, and the relevant provisions of the United States – Morocco Free Trade Agreement [the “**Treaty**”].

2. Constitution of the Tribunal and Tribunal Members’ Declarations

*Arbitration Rule 6*

2.1. The Tribunal was constituted on February 21, 2019 in accordance with the Treaty, 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 February 21, 2019.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

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. USD 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 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.

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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. 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.

5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period.

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.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

7.1. The Tribunal Secretary is Ms. Ella Rosenberg, 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. Ella Rosenberg  
ICSID  
MSN C3-300  
1818 H Street, N.W.

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Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473 7756  
Fax: + 1 (202) 522-2615  
Email: [erosenberg@worldbank.org](mailto:erosenberg@worldbank.org)  
Paralegal email: [cpommier@worldbank.org](mailto:cpommier@worldbank.org)

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

Ms. Ella Rosenberg  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3<sup>rd</sup> Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-1534

8. Assistant to the Tribunal

- 8.1. The President of the Tribunal proposes to appoint Dr. Luis Fernando Rodríguez as Assistant to the Tribunal. Dr. Rodríguez works as an Associate at Armesto & Asociados. The Parties and the Tribunal received Dr. Rodríguez's curriculum vitae and his declaration of independence and impartiality on March 11, 2019. With the express agreement of the Parties, the Tribunal hereby proceeds to appoint Dr. Luis Fernando Rodríguez as Assistant to the Tribunal.
- 8.2. The Members of the Tribunal will personally make all decisions required to adjudicate the merits of the present dispute and all procedural issues. The Assistant's tasks will be performed upon the Tribunal's specific instructions, under its direct supervision and responsibility, and will not release the Tribunal of any of its decision-making duties.
- 8.3. When instructed by the President on behalf of the Tribunal, the Assistant to the Tribunal may perform the following tasks in order to assist the Tribunal:
  - 8.3.1. organize and maintain the President's arbitral file;
  - 8.3.2. attend meetings, hearings and deliberations; take notes;
  - 8.3.3. summarize submissions, review evidence and authorities, conduct legal research, write notes or memoranda on factual and legal issues, prepare preliminary drafts of decisions or sections of awards under the specific instruction and continuous control and supervision of the President.
- 8.4. The Assistant to the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Arbitral Tribunal.
- 8.5. The Assistant to the Tribunal will be remunerated directly by the President, without causing any additional cost to the Parties, save that the Assistant will be entitled to justified personal disbursements for attending hearings and meetings.

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- 8.6. The Tribunal may remove the Assistant to the Tribunal at its discretion. The Tribunal will remove the Assistant if the Assistant ceases to work for Armesto & Asociados. The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.
- 8.7. The contact details of Dr. Rodríguez are the following:

Dr. Luis Fernando Rodríguez García  
Armesto & Asociados  
General Pardiñas, 102, 8 izq.  
28006 Madrid  
Tel: +34 91 562 16 25  
Fax: +34 91 515 91 45  
E-mail: lfr@jfarmesto.com

9. Representation of the Parties  
*Arbitration Rule 18*

- 9.1. 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. Eric Ordway  
Ms. Lori Pines  
Ms. Heather Weaver  
Mr. Jay Minga  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
U.S.A.  
Tel.: +1 (212) 310-8000  
[Fax: +1 (212) 310-8007  
Emails: eric.ordway@weil.com  
lori.pines@weil.com  
heather.weaver@weil.com  
jay.minga@weil.com

Ms. Glenda Bleiberg  
Weil, Gotshal & Manges LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
U.S.A  
Tel. +1 202 682 7016

For Respondent

Dr. Christopher Harris Q.C.  
Mr. Mark Wassouf  
Mr. Georges Chalfoun  
Dr. Cameron Miles  
Mr. Ryan Ferro  
Ms. Sarah Tulip  
3 Verulam Buildings  
Gray's Inn  
London  
WC1R 5NT  
United Kingdom  
Tel.: + 44 (0)20 7831 8441  
Fax: + 44 (0)20 7831 8479  
Email: charris@3vb.com

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Fax. +1 202 6827237  
Emails: glenda.bleiberg@weil.com

10. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*
  - 10.1. 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.
  - 10.2. By letter of February 27, 2019, ICSID requested that each party pay US\$ 175,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on March 29, 2019, and the Respondent's payment on March 27, 2019.
  - 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
  
11. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); Treaty Article 10.19(1)*
  - 11.1. The proceedings shall be held at the seat of the Centre in Washington DC.
  - 11.2. The Tribunal may hold the hearings at any other place that it considers appropriate, with the agreement of the Parties.
  - 11.3. The Tribunal may deliberate at any place it considers convenient.
  
12. Procedural Language(s), Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
  - 12.1. English is the procedural language of the arbitration.
  - 12.2. Documents filed in any other language must be accompanied by a translation into English.
  - 12.3. 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.
  - 12.4. 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.
  - 12.5. Documents exchanged between the Parties in a language other than English under §[15.4] below (Production of Documents) need not be translated.
  - 12.6. 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



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simultaneously.

- 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §[20] below), which witnesses or experts require interpretation.
- 12.8. 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.

13. Routing of Communications

*Administrative and Financial Regulation 24*

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.
- 13.3. The Tribunal Secretary shall not be copied on direct communications between the Parties which are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

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

- 14.1. By the relevant filing date, the Parties shall:
  - 14.1.1. 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>1</sup>; and
  - 14.1.2. 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.
- 14.2. On the day following the electronic version, the Parties shall courier to the Tribunal Secretary:
  - 14.2.1. one unbound hard copy in A4/Letter format<sup>2</sup> of the entire submission<sup>3</sup>, including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including legal authorities) and the updated index; and

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

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

<sup>3</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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- 14.2.2. two 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.
- 14.3. Also on the day following the electronic filing, the Parties shall courier to the opposing party at the address(es) indicated at §[9.1] above, the Assistant to the Tribunal at the address indicated at §[8.7] above, and each Member of the Tribunal at the addresses indicated at §[14.4] below:
- 14.3.1. one hard copy in A4 format 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
- 14.3.2. one USB drive with a full copy of the entire, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 14.4. The addresses of the Tribunal Members are as follows:
- |                              |                         |                             |
|------------------------------|-------------------------|-----------------------------|
| Prof. Juan Fernández-Armesto | Mr. Samuel Wordsworth   | Dr. Horacio A. Grigera Naón |
| Armesto & Asociados          | QC                      | 5224 Elliott Road           |
| General Pardiñas, 102        | Essex Court Chambers    | Bethesda, MD 20816          |
| Madrid 28006                 | 24 Lincoln's Inn Fields | United States of            |
| Spain                        | London                  | America                     |
|                              | WC2A 2EG                |                             |
|                              | United Kingdom          |                             |
- 14.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 14.6. 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, the Assistant to the Tribunal, and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated and the updated hyperlinked index of all documents.
- 14.7. 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.
- 14.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
15. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*
- 15.1. The proceedings shall consist of a written phase followed by an oral phase.

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- 15.2. The arbitration shall proceed, and the Parties shall submit their pleadings, in accordance with the Procedural Timetable attached hereto as Annex B, except if the Tribunal, at the reasonable request of any Party or on its own initiative, decides that, for good cause, this Procedural Timetable has to be amended.
- 15.3. Annex B shall be updated and reissued every time the Tribunal amends the procedural calendar.
- 15.4. Subject to Annex B, the first round of submissions (Memorial and Counter-Memorial) shall be all-inclusive, addressing all issues of both facts and law and attaching all available documentary evidence relied upon by the Parties in these submissions, including fact exhibits, legal authorities, witness statements and/or expert reports. For the avoidance of doubt, it is the Parties' understanding that, if new information is brought to either Party's attention at a later time (e.g. with the Reply or the Rejoinder submissions), then the Parties should be allowed to incorporate this new information in their submissions within the bounds of reasonableness.
- 15.5. The Parties are requested to confine their pleadings strictly to the limited issues for decision in these proceedings and to avoid unnecessary length. Responsive pleadings (such as the Counter-Memorial, Reply or Rejoinder) should be directed specifically to the matters of fact or arguments of law raised in the pleading under reply, and must not raise further issues extraneous to that.
- 15.6. Further evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder, in accordance with Annex B. Such evidence shall be in rebuttal to the opposing party's preceding pleading, relate to a matter in the party's own preceding pleading or in relation to new evidence from the document production.
- 15.7. The documents shall be submitted in the manner and form set forth in §[14] above.
- 15.8. All written submissions to the Arbitral Tribunal must contain consecutively numbered paragraphs and shall include a table of contents. Following each factual allegation, the Parties shall clearly identify the evidence adduced or to be adduced in support of that allegation and specifically refer to it. If an exhibit consists of more than one page, the Parties shall refer to the specific page and paragraph number upon which they rely and highlight the relevant section of the corresponding exhibit, insofar as this is reasonably feasible.
- 15.9. 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**.
- 15.10. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

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16. Submission of Documentary Evidence

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

- 16.1. Documentary evidence shall be submitted in the manner and form set forth in §§ [14] and [15] above.
- 16.2. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.3. The documents shall be submitted in the following form:
  - 16.3.1. Exhibits shall be numbered consecutively throughout these proceedings.
  - 16.3.2. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
  - 16.3.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
  - 16.3.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.4. 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.
- 16.5. 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.

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 §[19.1]).
- 17.3. Each witness statement shall be signed and dated by the witness and include:
  - A disclosure statement detailing any past and present relations of the witness with any party, counsel or the Tribunal;
  - A description of the witness's position and qualifications, if relevant;
  - A full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;

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- Any documents on which the witness relies that have not already been submitted (which shall be provided as annexes to the witness statement);
  - A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the hearing; and
  - An affirmation of the truth of the witness statement.
- 17.4. Witness Statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 17.5. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 17.6. Expert Reports shall be dated and signed by the expert or experts and contain:
- The full name of the expert;
  - A disclosure statement detailing any past and present relations of the expert with any party, counsel or the Tribunal;
  - A brief description of the expert's qualifications;
  - A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
  - A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
  - A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
  - His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
  - The documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report;
  - An affirmation of his or her genuine belief in the opinions expressed in the report.
- 17.7. Expert Reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs as well as a detailed table of contents.
- 17.8. Excel spreadsheets will display visible formulae.
18. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*
- 18.1. Each Party shall be entitled to request production of documents within the time limits set out in Annex B.

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- 18.2. The Tribunal shall issue, after consultation with the Parties, a procedural order specifically governing the production of documents in this arbitration.
19. Extemporaneous Submissions of Pleadings or Evidence
- 19.1. Neither Party shall be permitted to submit outside of the Procedural Timetable any additional or responsive written submission, document or legal authority, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
- 19.2. Should a party request leave to file additional or responsive written submission, document, or legal authority, that party may not annex the documents that it seeks to file to its request.
- 19.3. If the Tribunal grants an application, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such submission.
20. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*
- 20.1. A pre-hearing organizational meeting shall be held by telephone – on a date determined by the Tribunal after consultation with the Parties – 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.
- 20.2. Following the pre-hearing organizational meeting, a procedural order will be issued by the Tribunal reflecting the decisions made in preparation for the hearing.
21. Hearings  
*Arbitration Rules 20(1)(e) and 32*
- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall be held at a place to be determined in accordance with §[11] above.
- 21.3. The hearing shall take place in accordance with the Procedural Timetable.
- 21.4. 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.
- 21.5. The time allocation to examine witnesses and experts at the hearing (if necessary) shall be determined by the Parties and the Tribunal after the witnesses to be examined have been identified. The time allocation shall be determined in a manner which takes into account not only the number of witnesses adduced, but also (inter alia) the importance of each witness, the size of the witness statements, the number of issues addressed by each witness and the language in which the witness will give

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evidence.

- 21.6. Pursuant to Art. 10.20(2) of the Treaty, the Tribunal shall conduct the Hearing open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements in a procedural order.
- 21.7. 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 Assistant to the Tribunal, the court reporter(s) and interpreter(s) at least 24 hours prior to the start of the hearing day on which they are proposed to be used. For the avoidance of doubt, the parties have agreed that textual material used to support oral arguments (whether in the form of PowerPoint slides or otherwise) and which contain no graphs or tables processing data or new evidence, but only text in support of the oral submissions, will not constitute a “demonstrative” in the sense of this clause and can be produced at the hearing.

22. Examination of Witnesses and Experts  
*Arbitration Rules 35 and 36*

- 22.1. Except with the leave of the Tribunal, no witness, called by a party, may be presented at a hearing whose written testimony or expert report has not been advanced with the pleadings, pursuant to § [18] above.
- 22.2. Before a hearing and within time limits to be set by the Tribunal, a party may be called upon by the Tribunal or the other party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony or expert report has been advanced with the pleadings. Subject to possible reconsideration or limitations by the Tribunal, a party may also call its own experts or witnesses for examination at the hearing, even if such witnesses or experts have not been called by the other party.
- 22.3. The fact that a party does not call a witness or expert for cross-examination does not imply that the substance of any statement or report by such witness or expert is accepted.
- 22.4. The party presenting testimony shall take all measures necessary to ensure the witness appears at the hearing if requested by the other party or the Tribunal.
- 22.5. If a fact or expert witness is called to appear at the hearing and fails to do so without providing a valid reason, the Tribunal may disregard the written evidence of such witness. If a fact or expert witness fails to appear providing a valid reason, the Tribunal may reconvene a meeting and may hear the witness by videoconference.
- 22.6. Witnesses and experts shall be examined by each party under the control of the



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Tribunal.

- 22.7. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3).
- 22.8. Unless the Parties and the Tribunal agree otherwise, witnesses shall not be allowed in the hearing room before giving their oral evidence. Expert witnesses shall be allowed in the hearing room at all times.
- 22.9. The Tribunal shall have the discretion, subject to the Parties' agreement, to order witness-conferencing (or hot-tubbing) of factual witnesses covering the same questions of fact or expert witnesses of like discipline.
- 22.10. Unless the Tribunal directs otherwise, the procedure for examining witnesses at the oral hearing(s) shall be as follows:
- 22.10.1. Generally, witnesses shall be examined before experts. Claimants' witnesses shall be examined first, followed by Respondent's witnesses. It may be that the Tribunal considers it more convenient to hear expert witnesses by discipline, rather than hearing all of the Claimants' expert witnesses first followed by all of the Respondent's expert witnesses. This will be considered further at the pre-hearing organizational meeting.
- 22.10.2. The Tribunal shall have the right to examine the witnesses and to ask questions during the examination by counsel. It shall ensure that each party has the opportunity to re-examine a witness with respect to questions raised by the Tribunal.
- 22.10.3. Each party shall present its own witnesses with a brief direct examination or, in the case of experts, at the party's discretion, with a presentation.
- During direct examination, a witness may address any point of fact or issue that has arisen since the witness submitted his or her most recent statement or expert report. In such case the witness shall provide, within a reasonable time prior to the hearing, a written statement informing on the new points, fact or issue.
  - Thereafter, the other party shall proceed to cross-examine the witness. Subject to the direction of the Tribunal, which may rule as to relevance *sua sponte* or upon objection by the other party, there shall be no limitation on the scope of the cross-examination to the contents of the witness statement or expert report.
  - The cross-examination shall be followed by a re-examination if the first party so wishes. The scope of the re-examination shall be limited to matters that have arisen in the cross-examination. The other party may then have an opportunity to proceed to a short re-cross in relation to any new matters or issues arising out of the re-direct examination.
- 22.11. The Tribunal shall at all times have complete control over the procedure in relation



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to oral evidence, including the right to limit or exclude any question, or to prevent a party from examining a witness when it considers that any factual allegation on which the witness is being examined is sufficiently proven by exhibits or other witnesses, or that the manner of examination of a given witness is irrelevant, immaterial, unduly burdensome or duplicative.

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

- 23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 23.2. *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.
- 23.3. The Parties shall notify each other of any material corrections to the transcripts that they have identified at the latest two weeks prior to the submission of post-hearing briefs (if any), and if no post-hearing briefs are ordered at the latest four weeks following the relevant hearing. The agreed corrections may be entered by the Parties or 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 Parties or the court reporter in the Revised Transcripts.

24. Post-Hearing Briefs and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*

- 24.1. Whether there will be post-hearing briefs, and if so, their content and their format, will be addressed at the close of the hearing.
- 24.2. The Tribunal will issue directions on the Parties’ statements of costs at the end of the hearing.

25. Transparency

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), Treaty Article 10.20.*

- 25.1. In accordance with Art. 10.20 of the Treaty, the ICSID Secretariat shall maintain a record of the procedural details for the proceeding on its website and publish the documents set forth in Art. 10.20(1) of the Treaty, including the following:
  - 25.1.1. the notice of intent;
  - 25.1.2. the request for arbitration;

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- 25.1.3. pleadings, memorials, and briefs submitted to the Tribunal by a party and any written submissions submitted pursuant to Art. 10.19.2 and 10.19.3 and Art. 10.25 of the Treaty;
- 25.1.4. minutes or transcripts of the hearings; and
- 25.1.5. orders, awards, and decisions of the Tribunal.
- 25.2. The ICSID Secretariat will be in charge, under the Tribunal's directions, of all the administrative tasks regarding transparency and publicity of these proceedings, in accordance with the Treaty.
- 25.3. The Respondent shall promptly transmit the public documentation to the non-disputing party to the Treaty in accordance with its Art. 10.20(1).
- 25.4. Pursuant to Art. 10.20(2) of the Treaty, any party that intends to use information designated as protected information in a hearing shall so advise the Tribunal. The Tribunal shall make appropriate arrangements in a procedural order to protect the information from disclosure.
- 25.5. Any protected information that is submitted to the Tribunal shall be protected from disclosure in accordance with the procedures set out in paras. 10.20(4) of the Treaty, in particular:
  - 25.5.1. Any party claiming that certain information in a document constitutes protected information shall clearly designate the information at the time it submits it to the Tribunal, together with a redacted version of the document that does not contain such information. Only the redacted version shall be made public.
  - 25.5.2. The Tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the Tribunal determines that such information was not properly designated, the party that submitted the information may
    - withdraw all or part of its submission containing such information, or
    - agree to resubmit complete and redacted documents with corrected designations in accordance with the Tribunal's determination.
  - 25.5.3. In either case, the other party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn by the party that first submitted the information or redesignate the information consistent with the corrected designation.
- 25.6. Neither the Parties nor the Tribunal shall disclose any protected information so designated in accordance with this section.
- 25.7. The Tribunal will decide any disagreement between the Parties regarding the enforcement of these rules on transparency.

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26. *Amicus curiae* submissions and submissions by the non-disputing party to the Treaty

- 26.1. In accordance with Art. 10.19(2) of the Treaty, the non-disputing Party to the Treaty may make oral and written submissions to the Tribunal regarding the interpretation of the Treaty.
- 26.2. In accordance with Art. 10.19(3) of the Treaty, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.
- 26.3. The Procedural Timetable sets a deadline for the filing of any third-party submissions. The Tribunal shall establish in a procedural order, upon consultation with the Parties, all the other procedural arrangements for introducing these submissions into the record and for the Parties to react to them.

[Signed]

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Prof. Juan Fernández-Armesto  
President of the Tribunal  
Date: July 1, 2019

Procedural Order No. 1 – Annex A

**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
MAIN PLEADINGS	<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>
SUPPORTING DOCUMENTATION  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>	

*The Carlyle Group L.P. and others v. Kingdom of Morocco*  
(ICSID Case No. ARB/18/29)

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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>
	<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>	
<b>INDICES</b>	<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>
<b>OTHER APPLICATIONS</b>	<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>	