

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE UNITED
MEXICAN STATES – SINGAPORE AGREEMENT ON THE PROMOTION AND
RECIPROCAL PROTECTION OF INVESTMENTS AND
THE UNCITRAL ARBITRATION RULES (2010)**

PACC Offshore Services Holdings Ltd

v.

The United Mexican States

(UNCT/18/5)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Dr. Andrés Rigo Sureda, Presiding Arbitrator

Prof. W. Michael Reisman, Arbitrator

Prof. Philippe Sands QC, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski

November 28, 2018

Contents

1.	Applicable Arbitration Rules	4
2.	Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3.	Representation of the Parties	5
4.	Administering Authority.....	6
5.	Secretary of the Tribunal	6
6.	Deposit of Costs.....	6
7.	Fees and Expenses of Tribunal Members	7
8.	Presence and Quorum	8
9.	Decisions of the Tribunal.....	8
10.	Power to Fix Time Limits	8
11.	Place of Arbitration.....	8
12.	Procedural Languages, Translation and Interpretation	9
13.	Routing of Communications	10
14.	Number of Copies and Method of Filing of Parties' Pleadings.....	11
15.	Number and Sequence of Pleadings	13
16.	Interim Measures of Protection.....	13
17.	Jurisdiction of the Arbitral Tribunal	13
18.	Production of Documents	14
19.	Submission of Documents	16
20.	Witness Statements and Expert Reports	17
21.	Examination of Witnesses and Experts.....	18
22.	Pre-Hearing Organizational Meetings	19
23.	Hearings	19
24.	Records of Hearings and Sessions	19
25.	Post-Hearing Memorials and Statements of Costs.....	20
26.	Confidentiality and Publication	20

Introduction

The first session of the Tribunal was held on November 21, 2018, by telephone conference. The session was adjourned at 11.06 a.m.

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

Dr. Andrés Rigo Sureda, Presiding Arbitrator

Prof. W. Michael Reisman, Arbitrator

Prof. Philippe Sands QC, Arbitrator

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

Participating on behalf of the Claimants:

Dr. Tai-Heng Cheng, Partner, Quinn Emanuel Urquhart & Sullivan, LLP

Mr. Duncan Watson, Partner, Quinn Emanuel Urquhart & Sullivan, LLP

Mr. Simon Navarro, Of Counsel, Quinn Emanuel Urquhart & Sullivan, LLP

Mr. Diego Durán de la Vega, Associate, Quinn Emanuel Urquhart & Sullivan, LLP

Mr. Jordan Johnson, Associate, Quinn Emanuel Urquhart & Sullivan, LLP

Participating on behalf of the Respondent:

Ms. Cindy Rayo Zapata

Secretaría de Economía

Ms. Rosalinda Toxqui Tlaxcalteca

Secretaría de Economía

Mr. Cameron Mowatt

Tereposky & De Rose, LLP

Mr. Alejandro Barragán

Tereposky & De Rose, LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 10, 2018, as amended by the parties on November 7, 2018.
- The Draft Procedural Order circulated by the Tribunal Secretary on October 10, 2018; and
- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on November 7, 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

This Procedural Order No. 1 sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex 1 and the Document Production Schedule as Annex 2.

1. Applicable Arbitration Rules
Article I UNCITRAL Arbitration Rules

1.1. These proceedings are conducted in accordance with the UNCITRAL Arbitration Rules, as revised in 2010 (the **UNCITRAL Rules**), except as modified by the Agreement between the Government of the United Mexican States and the Government of the Republic of Singapore on the Promotion and Reciprocal Protection of Investments, signed on November 12, 2009, which entered into force on April 3, 2011 (the **BIT**) and the provisions of this Procedural Order No. 1.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Section II UNCITRAL Arbitration Rules

- 2.1. The Tribunal was constituted on September 22, 2018 in accordance with the BIT and the UNCITRAL Arbitration Rules.
- 2.2. 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.
- 2.3. The Members of the Tribunal confirmed that, to the best of their knowledge, there are no circumstances likely to give rise to justifiable doubts as to their impartiality or independence and that they will promptly disclose any such circumstances, should they arise.
- 2.4. The Tribunal Members have submitted their signed declarations in accordance with Article 11 of the UNCITRAL Arbitration Rules. Copies of these declarations were distributed to the parties by ICSID on October 10, 2018.
- 2.5. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

PACC Offshore Services Holdings Ltd v. The United Mexican States
(UNCT/18/5)

Procedural Order No. 1

3. Representation of the Parties
Article 5 UNCITRAL Arbitration Rules

- 3.1. Each party shall be represented by its respective counsel listed below and may designate additional persons by notifying the Arbitral Tribunal and the Tribunal Secretary promptly of such designation, as provided for in Article 5 of the UNCITRAL Arbitration Rules.

For Claimant[s]

Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue
22nd Floor
New York, NY 10010
UNITED STATES
Tel. +1 (212) 849-7000
Fax +1 (212) 849-7100
Floor 3
90 High Holborn
London WC1V 6LJ
UNITED KINGDOM
Tel. +44 20 7653 2000
Fax +44 20 7653 2100
Attention:
Tai-Heng Cheng
Stephen Jagusch QC
Duncan Watson
Simon Navarro
Diego Durán de la Vega
Odysseas G. Repousis
Jordan Johnson

taihengcheng@quinnemanuel.com
stephenjagusch@quinnemanuel.com
duncanwatson@quinnemanuel.com
simonnavarro@quinnemanuel.com
diegoduran@quinnemanuel.com
odysseasrepousis@quinnemanuel.com
jordanjohnson@quinnemanuel.com

For Respondent

The United Mexican States

Samantha Atayde Arellano
Directora General de Consultoría Jurídica de
Comercio Internacional
Calle Pachuca 189, Piso 19
Colonia Condesa, Delegación Cuauhtémoc
06140, Ciudad de México, México
samantha.atayde@economia.gob.mx
Tel. +52 (55) 5729 9100 Ext. 15200 or
15237

Cindy Rayo Zapata
Directora General Adjunta de Consultoría
Jurídica de Comercio Internacional
cindy.rayo@economia.gob.mx
Tel: +52 (55) 5729 9100 Ext. 15501

Alan Bonfiglio Ríos
Director de Consultoría Jurídica de
Comercio Internacional
alan.bonfiglio@economia.gob.mx
Tel: +52 (55) 5729 9100 Ext. 15204

Rosalinda Toxqui Tlaxcalteca
Jefa de Departamento de Consultoría
Jurídica de Comercio Internacional
rosalinda.toxqui@economia.gob.mx
Tel: +52 (55) 5729 9100 Ext. 15084

J. Cameron Mowatt
Tereposky & De Rose, LLP
cmowatt@tradeisds.com

Alejandro Barragán
Tereposky & De Rose, LLP
abarragan@tradeisds.com

4. Administering Authority

- 4.1. The parties agreed that ICSID will administer this case. ICSID shall render full administrative services in relation to this arbitration.
- 4.2. In accordance with the current ICSID's Schedule of Fees (effective July 1, 2017), the annual fee for ICSID's administering services is US\$ 42,000 (forty-two thousand dollars of the United States of America). This fee covers the time spent by all members of the dedicated case team (legal counsel, paralegals, legal assistants, hearings organizers, and financial management of the case account).

5. Secretary of the Tribunal

- 5.1. The Tribunal Secretary is Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID, or such other person as ICSID may designate. The parties confirmed that they have no objection to Ms. Kurowski's appointment as Secretary of the Tribunal.
- 5.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mercedes Cordido-F. de Kurowski
ICSID – The World Bank Group
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-3171
Fax: + 1 (202) 522-2615
Email: mkurowski@worldbank.org

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

Mercedes Cordido-F. de Kurowski
701 18th Street, N.W. ("World Bank J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-1534

6. Deposit of Costs

Articles 40 - 43 UNCITRAL Arbitration Rules

- 6.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs pursuant to Article 42 of the UNCITRAL Rules.

- 6.2. By letter of October 3, 2018, ICSID requested each party to make a payment to the Centre of US\$175,000 (and having regard to the appointment fee previously paid by the Claimant, ICSID applied US\$20,000 as a partial payment of Claimant's share) to defray the initial costs of the proceeding. ICSID received Claimants' payment on October 30, 2018. Respondent informed the Tribunal that it has taken the internal steps necessary to pay its share (US\$175,000) of the first advance requested as soon as possible. It was clarified that the US\$20,000 that had been credited to the case account were part of Claimants' payment, and not a partial payment from Respondent.
- 6.3. The Arbitral Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the global fees and expenses of all arbitrators.
- 6.4. After a termination order or final award has been made, the Arbitral Tribunal shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

7. Fees and Expenses of Tribunal Members
Article 41 UNCITRAL Arbitration Rules

- 7.1. 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.
- 7.2. Under the current Schedule of Fees, each Tribunal Member receives:
- 7.2.1. 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
- 7.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 7.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 7.4. Each Member of the Tribunal shall receive a fee equivalent to 25% of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than 60 days prior to commencement of the hearing, and 50% if less than 7 days prior to commencement of the hearing. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

8. Presence and Quorum

- 8.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, without prejudice to the Parties agreeing otherwise.

9. Decisions of the Tribunal

- 9.1. The presence of all Members of the Arbitral Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, without prejudice to the Parties agreeing otherwise.
- 9.2. Decisions of the Arbitral Tribunal shall be made by a majority of the Members of the Arbitral Tribunal.
- 9.3. The Arbitral Tribunal will draft all rulings, including the award, within a reasonable time period.
- 9.4. The Presiding Arbitrator is authorized to issue Procedural Orders on behalf of the Tribunal.
- 9.5. The Arbitral Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

10. Power to Fix Time Limits

- 10.1. In accordance with Article 25 of the UNCITRAL Arbitration Rules, the periods of time fixed by the Tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the Tribunal may extend the time limits if it concludes that an extension is justified.
- 10.2. The Presiding Arbitrator may fix and extend time limits for the completion of the various steps in the proceeding.
- 10.3. In exercising this power, the Presiding Arbitrator shall consult with the other Members of the Tribunal. If the matter is urgent, the Presiding Arbitrator may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

11. Place of Arbitration

Article 18 UNCITRAL Arbitration Rules

- 11.1. The place/seat of arbitration shall be Washington, D.C.
- 11.2. The location of hearings shall be Washington, D.C. The Tribunal may designate alternate locations for hearings if it so decides further to consultation with the Parties.

- 11.3. The Arbitral Tribunal may deliberate at any place it considers convenient.
- 11.4. All awards shall be deemed to be made at the place/seat of arbitration, regardless of where the award is signed.

12. Procedural Languages, Translation and Interpretation
Article 19 UNCITRAL Arbitration Rules

- 12.1. English and Spanish are the procedural languages of the arbitration, subject to the following provisions.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the Tribunal or the ICSID Secretariat, as well as any written requests and applications from the parties, shall be in either procedural language. A party shall provide in all cases a courtesy translation into the other language of any communication, regardless of their length, within 3 business days thereafter.

For Parties' Pleadings

- 12.3. The main pleadings, expert reports and witness statements or other accompanying documentation may be submitted in either procedural language.
- 12.4. The Parties shall file a courtesy translation of their main pleadings within 7 business days of the filing date of the corresponding pleading. Courtesy translations of witness statements and expert reports shall be filed within 10 business days of the filing date.
- 12.5. Exhibits and legal authorities in Spanish must be translated into English and vice-versa. If such document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Arbitral Tribunal may require a fuller or a complete translation.
- 12.6. Any document written in a language other than the procedural languages must be translated to English.
- 12.7. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal decides to request a certified translation.
- 12.8. Documents exchanged between the parties for Production of Documents in English or Spanish shall be produced in the original language and need not be translated. Only documents submitted onto the record of the arbitration shall be subject to the above-mentioned rules.
- 12.9. In the event of any discrepancy between the translated documents and the originals, the originals shall prevail.

For Hearing

- 12.10. The hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 12.11. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English and Spanish languages shall be interpreted simultaneously.
- 12.12. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §22 below), which witnesses or experts require interpretation.
- 12.13. 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.

For the Arbitral Tribunal's Awards and Decisions

- 12.14. Orders and decisions shall be issued in both procedural languages. The Arbitral Tribunal may issue an order or decision in one of the procedural languages with an equally authentic version in the other procedural language following shortly thereafter.
- 12.15. The Arbitral Tribunal shall render the Award in English and Spanish simultaneously.

13. Routing of Communications

Article 17(4) UNCITRAL Arbitration Rules

- 13.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal. If such communications contain attachments, they shall be text searchable (i.e., OCR PDF or Word document).
- 13.2. Prof. Reisman and Prof. Sands would find it very useful if the parties could also copy their communications to their respective secretary (Ms. Cina Santos: cina.santos@yale.edu), and assistant (Ms. Lea Main-Klingst: LeaMain-Klingst@matrixlaw.co.uk). This, for the better organization of Prof. Reisman's and Prof. Sands' correspondence at no cost to the parties. Both Ms. Main-Klingst and Ms. Santos have been working with Prof. Reisman and Prof. Sands for several years and they are bound to respect the confidentiality of the communications.
- 13.3. 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.

13.4. 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.

13.5. The email addresses of the Members of the Tribunal are:

Dr. Andrés Rigo Sureda
arigo@rigo.net

Prof. W. Michael Reisman
michael.reisman@yale.edu

Prof. Philippe Sands QC
philippesands@matrixlaw.co.uk

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

14.1. **By the relevant filing date**, the parties shall:

- (i) submit by email to the Tribunal Members, the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and the updated index of all the supporting documentation attached to the pleading (including witness statements, expert reports, exhibits and legal authorities)¹; and
- (ii) upload the pleading, with all the supporting documentation and the corresponding updated index to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing process indicated under i) and ii) is applicable both to the original language submission and to any subsequent translations agreed by the parties.

14.2. Within 3 business days following the electronic filing of the translations submitted pursuant to § 12.4, the parties shall courier to the Tribunal Secretary:

14.2.1. one unbound hard copy in A4/Letter format² of the entire submission³ (both in the original language and the subsequent translations), including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including exhibits and legal authorities) and the updated consolidated indices of all the supporting documentation; and

14.2.2. two (2) USB drives with full copies of the entire submission (both in the original language and the subsequent translations), including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated consolidated indices of all the supporting documentation.

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.

³ The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

PACC Offshore Services Holdings Ltd v. The United Mexican States
(UNCT/18/5)

Procedural Order No. 1

14.3. Within 3 business days following the electronic filing of the translations submitted pursuant §12.4, the parties shall courier to the opposing party at the address(es) indicated at §3 above and to each Member of the Tribunal at the addresses indicated at §14.4 below:

14.3.1. (i) Both **Dr. Rigo Sureda** and **Prof. Sands** would like to receive everything in electronic format only; and (ii) **Prof. Reisman** would like to receive one hard copy in **A4** (letter format) of the entire submission, (both in the original language and the subsequent translations), including the pleading, witness statements, expert reports, together with any other supporting documentation (but not including exhibits and legal authorities) and the updated index of all the supporting documentation.

14.3.2. one minimum USB drive with a full copy of the entire submission (both in the original language and the subsequent translations), including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated consolidated indices of all the supporting documentation.

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

Dr. Andrés Rigo Sureda	Prof. W. Michael Reisman	Prof. Philippe Sands QC
7202 Beechwood Drive Chevy Chase 20815 United States of America	<u>Via Courier:</u> Professor W. Michael Reisman Yale Law School 127 Wall Street New Haven, CT 06511 Tel: 203.432.4962 Fax: 203.432.7247 Email: michael.reisman@yale.edu	Matrix Chambers Griffin Building, Gray's Inn London WC1R 5LN United Kingdom philippesands@matrixlaw.co.uk Tel: +44 207 7404 3447

Via Regular Mail

Professor W. Michael
Reisman
Yale Law School
P. O. Box 208215
New Haven, CT 06520-
8215

14.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

14.6. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

- 14.7. All pleadings shall be accompanied by the updated index. The index shall indicate the document number, the pleading with which it was submitted and the language of the document
- 14.8. Upon request of the ICSID Secretariat or a Member of the Tribunal, 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 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 index of all documents.
- 14.9. 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.
- 14.10. 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

- 15.1. The proceeding shall consist of a written phase followed by an oral phase.
- 15.2. As to the Pleadings, it was agreed that, as reflected under Annex 1 – Procedural Time Table, the written phase will comprise two rounds of pleadings to be filed as follows:
- a) A Memorial (Statement of Claim): 16 weeks from the date of Procedural Order No. 1;
 - b) A Counter-Memorial (Statement of Defence): 16 weeks from the date of the Memorial;
 - c) A Reply: 8 weeks from the date of the Counter-Memorial; and
 - d) A Rejoinder: 8 weeks from the date of the Reply.
- 15.3. For the purposes of §15.2 above, the deadlines are counted from the date of receipt of the electronic version of the main pleading in its original procedural language, and not from the date of receipt of its translation.

16. Interim Measures of Protection

Article 26 of the UNCITRAL Arbitration Rules

- 16.1. The Parties confirmed that Article 26 of the UNCITRAL Rules is applicable.

17. Jurisdiction of the Arbitral Tribunal

Article 23 of the UNCITRAL Arbitration Rules

- 17.1. The Parties confirmed that Article 23 of the UNCITRAL Rules is applicable.

18. Production of Documents

- 18.1. The disputing parties shall have an opportunity to request a reasonable number of documents (Request for Documents) from the other disputing party before the filing of the Statement of Claim, Statement of Defense, Reply and Rejoinder.
- 18.2. Additional Requests for Documents and their corresponding schedule may be agreed upon by the disputing parties or determined by the Tribunal upon receipt of a reasoned written request from a disputing party, followed by observations from the other party.
- 18.3. Requests for Documents shall be submitted in Word format using the Redfern Schedule provided in Annex 3, by the date specified in the Document Production Schedule in Annex 2.
- 18.4. The Document Production Schedule may be amended by agreement of the parties or by order of the Tribunal. Amendments to the Document Production Schedule will be made by reissuing Annex 2.
- 18.5. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (IBA Rules) may guide the Tribunal and the parties regarding document production in this case.
- 18.6. Every request for production of documents shall precisely identify each document, or category of documents, sought and establish its relevance and materiality to the outcome of the case.

Procedure in the Event of Objections

- 18.7. To the extent that a party considers that a requested document or category of documents is not subject to production (a “Disputed Request”), the following procedure shall apply:
 - 18.7.1. The party that has received a request for documents shall submit by email its objections to the Requesting Party, by the date specified in the Document Production Schedule (Annex 2).
 - 18.7.2. The objections shall be included in the Redfern Schedule containing the document requests and shall be submitted in Word format.
 - 18.7.3. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.
 - 18.7.4. The requesting party shall reply to the objections to produce by the date specified in the Document Production Schedule in Annex 2, as amended from time to time by agreement of the Parties or by decision of the Tribunal.

18.7.5. The reply to the objections shall be included in the Redfern Schedule containing the requests and the objections and shall be submitted in Word format.

Decision by the Tribunal to Disputed Requests

- 18.8. Disputed Request will be decided by the Tribunal on a case-by-case basis, as soon as possible, upon receipt of the reply to the objections.
- 18.9. The Tribunal's decision on Disputed Request will be included in the same Redfern Schedule containing the request, objections and reply, using the column or row reserved for that purpose.
- 18.10. A reasonable due date for the production of documents pertaining to any Disputed Requests decided in favor of the requesting party shall be specified in Document Production Schedule in Annex 2.

Document Production

- 18.11. Documents or categories of documents pertaining to undisputed requests shall be produced by the due dates indicated in the Document Production Schedule in Annex 2.
- 18.12. Documents or categories of documents pertaining to Disputed Requests shall be produced by the date determined by the Tribunal.
- 18.13. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.
- 18.14. The producing party shall provide the requesting party with a complete and accurate list of the documents that are being produced, at the time of production. Said list shall contain the name of the corresponding electronic file and a brief description of the document. Any errors in the list shall be corrected by the Producing Party as soon as possible.
- 18.15. The requested documents and the list of documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. The producing party shall also deliver a USB drive, or a CD-ROM, with a complete set of the documents and the list to the requesting party within 3 business days of the corresponding due date.
- 18.16. Documents produced in response to a request for documents will not be part of the record, unless they are included as exhibits to a written submission or as an annex to a witness statement or expert report.
- 18.17. The Tribunal may, where appropriate, make necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection.

Compliance with Document Requests

- 18.18. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.
- 18.19. If a disputing party fails, without satisfactory explanation, to produce any document requested in a Request for Documents to which it has not objected in due time, or fails to produce any document or category of documents ordered by the Tribunal, the Tribunal may infer that such document or category of documents is adverse to the interests of the non-complying Party.
- 18.20. If the Tribunal determines that a disputing party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conducts into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.

19. Submission of Documents

Articles 20-21 UNCITRAL Arbitration Rules

- 19.1. The Statement of Claim and the Statement of Defence 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.
- 19.2. The documents shall be submitted in the manner and form set forth in § 12 above.
- 19.3. Neither party shall be permitted to submit additional or responsive documents, testimony or expert reports 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.
 - 19.3.1. Should a party request leave to file additional or responsive documents, testimony or expert reports, that party shall not annex the documents that it seeks to file to its request.
 - 19.3.2. 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 the new document, testimony or expert report.
- 19.4. The Tribunal may call upon the parties to produce documents, exhibits or other evidence in accordance with Article 27 (3) of the UNCITRAL Arbitration Rules.

- 19.5. The documents shall be submitted in the following form:
- 19.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 19.5.2. 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. 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.
- 19.5.3. Each Exhibit shall have a cover page or divider with the Exhibit identification number on the tab.
- 19.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 19.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish].
- 19.6. 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.
- 19.7. 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.
- 19.8. 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 (i) in electronic copy to the other party 24 hours before the materials are used, and (ii) in electronic and hard copy to the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

20. Witness Statements and Expert Reports

- 20.1. Witness statements and expert reports and their supporting documentation shall be filed as exhibits to the pleadings.
- 20.2. 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 §19.3.

- 20.3. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 20.4. All witness statements and expert reports shall be signed and dated by the witness or expert, and include all the information contemplated in Articles 4(5) and 5(2), respectively, of the IBA Rules.
- 20.5. It shall not be improper for a disputing party, its officers, employees, legal advisors or other representatives to interview that party's witnesses or potential witnesses and to discuss their prospective testimony with them.

21. Examination of Witnesses and Experts

- 21.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 21.2. The Tribunal will decide how much weight, if any, to give to the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons, when it evaluates all the evidence that the parties have submitted to its consideration during the proceeding.
- 21.3. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 21.4. The parties shall notify the opposing party which witness and experts it intends to call for cross-examination within 4 weeks after completion of the Written Procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.
- 21.5. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witness and experts shall make a declaration of truthfulness.
- 21.6. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness may conduct a brief direct examination at the hearing, which shall be no longer than 10 minutes in the case of a witness and will be limited to the contents of his direct written testimony. The party presenting an expert may conduct a brief direct examination, or the expert may make a presentation, at the hearing, which shall not exceed 30 minutes, and will be limited to the contents of his expert reports.

22. Pre-Hearing Organizational Meetings

- 22.1. At the discretion of the Tribunal and after consultation with the parties (by telephone, either between the Tribunal, or its President and the Parties), a pre-hearing conference call may be convened in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing. The pre-hearing organizational meeting shall take place 6 weeks before the hearing.

23. Hearings

- 23.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The hearing shall be held at ICSID's headquarters in Washington, D.C.
- 23.3. The hearing shall take place at a date and for a length to be determined by the Tribunal, upon consultation with the parties, but not earlier than 8 weeks after the filing of the translations of the Rejoinder. The date of the hearing shall be determined at a later stage.
- 23.4. 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.
- 23.5. The principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings. Each party shall be permitted to use the time allocated to it as it sees fit.
- 23.6. Hearings shall be closed to the public.

24. Records of Hearings and Sessions

- 24.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 24.2. 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.
- 24.3. The parties shall agree on any corrections to the transcripts within 35 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.

25. Post-Hearing Memorials and Statements of Costs

- 25.1. The Tribunal shall decide at the hearing, after hearing the parties, whether and by when any post-hearing briefs may be required, and when cost submissions are to be made.

26. Confidentiality and Publication

- 26.1. The Tribunal notes that Article 18.4 of the BIT requires to publish the award unless the disputing parties agree otherwise, and is otherwise silent on matters of confidentiality. The Tribunal further notes that the parties agree to the publication of the award, but disagree on publication of other documents in the arbitration. The Tribunal directs the parties to discuss further this issue and inform the Tribunal of the results of their discussions no later than 15 days from the date of this order.

[Signed]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: November 28, 2018

PACC Offshore Services Holdings Ltd v. The United Mexican States
(UNCT/18/5)

Procedural Order No. 1

Annex 1

Procedural Time Table

Merits Phase

Submission	Term	Due Date
Statement of Claim	<u>16 weeks from the date of Procedural Order No. 1</u>	[X]
Statement of Defence	<u>16 weeks from the due date of the Statement of Claim</u>	[X]
Document production	See Annex 2 for document production schedule	[X]
Reply	<u>8 weeks from the due date of the Statement of Defence</u>	[X]
Rejoinder	<u>8 weeks from the due date of Reply</u>	[X]
Hearing (estimated duration: 5/6 days, plus 2 in reserve)	Not earlier than 8 weeks from the date of the filing the translations of the of Rejoinder	[X]

NOTE: For the avoidance of doubt, early submission of a pleading does not alter the Procedural Time Table above.

Annex 2
Document Production Schedule

Item	Term	Date
Claimant's and Respondent's simultaneous Requests for Documents	Within 2 weeks from the due date of the Statement of Defense	
Claimant's and Respondent's objections to the requests	2 weeks from the date of the requests	
Claimant's and Respondent's replies to objections	1 week from the date of the objections	
Tribunal's decision	1 week from the date of the replies to the objections	
Production of disputed documents	1 week from the date of the Tribunal's decision	
Production of undisputed documents	4 weeks from the date of the requests	

Annex 3
Redfern Schedule

Request	
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	
