

PCA Case No. 2020-21

In the matter of an arbitration under the Arbitration Rules of the United Nations
Commission on International Trade Law 1976

and

The Agreement between the Government of the Republic of India and the Republic of
Mozambique for the Reciprocal Promotion and Protection of Investment dated
19 February 2009

-between-

PATEL ENGINEERING LIMITED
(INDIA)

Claimant

-and-

THE REPUBLIC OF MOZAMBIQUE

Respondent

PROCEDURAL ORDER NO. 1

**Procedural Timetable and Conduct of
the Arbitration**

THE ARBITRAL TRIBUNAL

Prof. Guido Santiago Tawil (Arbitrator)
Mr. Hugo Perezcano Díaz (Arbitrator)
Prof. Juan Fernández-Armesto (Presiding Arbitrator)

REGISTRY

Permanent Court of Arbitration

ADMINISTRATIVE SECRETARY

Sofia de Sampaio Jalles

14 October 2020

WHEREAS

1. This arbitration arises between Patel Engineering Limited [**“Patel”** or **“Claimant”**] and The Republic of Mozambique [**“Mozambique”** or **“Respondent”**]. Hereinafter, Claimant and Respondent shall be jointly referred to as the **“Parties”**.
2. On 10 July 2020 the Parties submitted a summary of their respective claims and of the relief sought as well as their agreements on the contents of the draft Terms of Appointment prepared by the Tribunal.
3. On 17 July 2020 the Parties informed the Tribunal that although they had sought to reach an agreement on the Procedural Timetable, they had been unable to. Consequently, each of the Parties submitted a proposal for the Procedural Timetable.
4. On 22 July 2020 the Parties and the Arbitral Tribunal held a conference call, during which they discussed the Terms of Appointment and the Procedural Timetable.
5. On 10 August 2020 the Parties received the consolidated version of the Terms of Appointment, which were deemed to have been signed by the Parties and the Arbitrators on 4 August 2020.
6. On 24 August 2020 the Tribunal sent a draft Procedural Order No. 1 to the Parties, giving them the opportunity to comment on such draft, which they did on 16 September 2020.
7. The following Procedural Order reflects the Parties’ agreements, and the Tribunal’s decisions when such agreements were not possible.

PROCEDURAL ORDER NO. 1

I. PROCEDURAL TIMETABLE

8. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex I, 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.

9. Amendments to the Procedural Timetable will be made by reissuing Annex I.

1. STATEMENT OF CLAIM

10. At the date established in Annex I, Claimant shall present a **Statement of Claim**,¹ in which it shall set forth the facts, the legal argumentation and the relief sought. The Statement of Claim shall also:

(i) include as attachments all documents in possession, custody or control of Claimant on which it relies (pursuant to the numbering already established in Communication A-1, i.e. C-[] and CLA-[], followed by the number)²;

(ii) identify the fact witnesses Claimant presents, and for each witness attach a signed witness statement containing the name, address, relation to the Parties and the full text of the testimony (each witness statement shall be numbered CWS-[], followed by the number); and

(iii) identify expert witnesses on whose opinion Claimant relies, and attach a signed opinion containing the name and address; a statement of the qualifications, any present or past relationship to any of the Parties, their respective counsel or the Members of the Tribunal; a description of the instructions concerning the preparation of the opinion; and the full text of the opinion of the expert (each expert report shall be numbered CER-[], followed by the number).

11. Claimant is required to front-load, and not to withhold, its evidence.

2. MOTION TO BIFURCATE

12. At the date established in Annex I, Respondent may submit a **Motion to Bifurcate**, explaining the reasons why it believes the proceedings should be bifurcated. This motion shall be limited to 20 pages not including exhibits and legal authorities.

¹ Art. 18 of the Arbitration Rules of the United Nations Commission on International Trade Law 1976 [“**UNCITRAL Rules**”].

² See Communication A-1, para. 13.

13. On the date established in Annex I, Claimant may file a **Response to the Motion to Bifurcate**, which shall be no longer than 20 pages not including exhibits and legal authorities.
14. The Tribunal reserves the right to ask the Parties for a new round of submissions once it has received Claimant's Response to the Motion to Bifurcate.
15. If the Tribunal finds that it is sufficiently briefed on the issue of bifurcation, it will issue its **Decision on Bifurcation** by the date established in Annex I. Otherwise the Tribunal, at its sole discretion, will request additional briefing and/or hold a hearing on bifurcation by videoconference.

3. SCENARIO A – BIFURCATED PROCEEDINGS

16. If the Tribunal decides that the proceedings should be bifurcated, the proceedings shall continue as follows:

3.1 RESPONDENT'S MEMORIAL ON OBJECTIONS TO JURISDICTION

17. At the date established in Annex I, Respondent shall file its Memorial on Objections to Jurisdiction and:
 - (i) include as attachments all documents related to the Objections to Jurisdiction in its possession, custody or control, on which it relies (pursuant to the numbering already established in Communication A-1, i.e. R-[] and RLA-[], followed by the number)³;
 - (ii) identify the fact witnesses related to the Objections to Jurisdiction Respondent presents, and for each witness attach a signed witness statement containing the name, address, relation to the Parties and the full text of the testimony (each witness statement shall be numbered RWS-[], followed by the number); and
 - (iii) identify expert technical or legal witnesses related to the Objections to Jurisdiction, on whose opinion Respondent relies, and attach a signed opinion containing the name, address, qualifications, relationship to Respondent statement of the qualifications, any present or past relationship to any of the parties, their respective counsel or the Members of the Tribunal; a description of the instructions concerning the preparation of the opinion; and the full text of the opinion of the expert (each expert report shall be numbered RER-[], followed by the number).

3.2 CLAIMANT'S COUNTER-MEMORIAL ON OBJECTIONS TO JURISDICTION

18. At the date established in Annex I, Claimant shall file its Counter-Memorial on Objections to Jurisdiction. The marshalling of evidence shall follow *mutatis mutandis* the rules established in para. 17 *supra*.

³ See Communication A-1, para. 13.

3.3 HEARING ON JURISDICTIONAL OBJECTIONS

19. A hearing on Jurisdictional Objections will be held on the date established in Annex I. The hearing shall be held either in person at the PCA at The Hague, Netherlands, or by videoconference, as determined by the Tribunal in its sole discretion after consultation with the Parties. The Tribunal shall then issue a Procedural Order determining the time, agenda, and all other technical and ancillary aspects of this hearing.
20. A pre-hearing organizational teleconference shall be held between the Tribunal (or its President) and the Parties to resolve any outstanding procedural, administrative, or logistical matters in preparation for the hearing.
21. The Parties agree that the hearing will be conducted in English, but interpretation will be provided between English and Portuguese if a Portuguese speaking party participates and/or if Portuguese speaking experts provide testimony.
22. The hearing shall be recorded and shall be transcribed in English. The hearing 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. No new evidence may be presented at the hearing except with leave of the Tribunal. Should the Tribunal grant leave to a Party to present new evidence in the course of the hearing, it will grant the other Party the opportunity to introduce new evidence to rebut it.
24. Demonstrative exhibits (such as PowerPoint presentations) may be shown using documents or information submitted earlier in accordance with this Order. Each such demonstrative exhibit shall display the number of the document from which the information was taken. Electronic copies of all such demonstrative exhibits shall be provided by e-mail to the PCA, each Member of the Tribunal, the Administrative Secretary and the opposing Party prior to the exhibit being used at the hearing.

3.4 POST-HEARING SUBMISSIONS

25. At the end of the hearing the Arbitral Tribunal and the Parties shall discuss the need for and scope of any post-hearing submissions, including post-hearing briefs and statements on costs.

4. SCENARIO B – NO BIFURCATION

26. If the Tribunal decides that the proceedings will not be bifurcated, the proceedings shall continue as follows:

4.1 STATEMENT OF DEFENCE AND OBJECTIONS TO JURISDICTION

27. At the date established in Annex I, Respondent shall present its **Statement of Defence and Objections to Jurisdiction**, which shall set forth the facts, the legal argumentation and the relief sought by Respondent. The marshalling of evidence with the Statement of Defence and Objections to Jurisdiction shall follow *mutatis*

mutandis the rules established in para. 10 *supra*. Respondent is required to front-load, and not to withhold, its evidence.

4.2 DOCUMENT PRODUCTION

A. Documents

28. The Parties agree to be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) [**“IBA Rules”**] for the production of documents in this arbitration.
29. The “Definitions” section of the IBA Rules includes the following definition of document:

“‘*Document*’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”.

30. This definition applies to this Procedural Order No. 1 and shall apply as well to the Parties’ respective requests for document production.

B. Request for document production

31. At the date established in Annex I the Parties shall submit a Document Production Schedule [**“DPS”**], using the draft model attached hereto as Annex II. For each Document (or category of Document) a single Document Request shall be completed. Document Requests shall be numbered sequentially. The Parties are kindly requested to adhere to the word limit defined for each cell.
32. Each Party will deliver its DPS directly to the counterparty, without copying the Tribunal.
33. Each Document Request must meet the following cumulative requirements [**“R”**]:
 - a. **“R1”: Identification of each Document or description of a narrow and specific category⁴**
34. The description must be in sufficient detail to identify the requested Document.
35. If the request is for a category of Documents, the following additional requirements must be met:
 - a clear and well defined characterization of a narrow and specific category must be provided;
 - circumstantial evidence of the putative existence of the category must be provided;

⁴ Art. 3.3(a)(i) and (ii) IBA Rules.

- the name of the person, authority or entity which has issued the category of Documents must be provided;
 - the initial and the final date of the period, during which the Documents belonging to the category were issued, must be identified.
36. Any request which does not comply with these requirements shall be rejected *in limine*.
37. In order to assist the Parties, the Tribunal gives some examples of what shall not be considered a narrow and defined category of Documents:
- “All documents and any correspondence exchanged internally or externally between the Claimant and any of the entities in its group structure, in relation to the construction of the mine”.
- “All documents concerning Respondent’s decision not to renew Claimant’s license, including but not limited to internal emails, correspondence, analysis, memoranda, or other reports, produced between 2006 and 2016”.
- “Documents establishing the loss of significant future business of Claimant as a result of Law 4563, created between May 2015 and June 2018”.
- “All resolutions of the Board of Directors or internal communications between Board members of Claimant or any entity within its group structure, discussing the decision to purchase the shares in Company X, created between January 2016 and January 2018”.
- b. “R2”: Relevant and material⁵**
38. The requesting Party must prove that the Documents are relevant to the case and material to its outcome and identify the specific paragraph in the submission for which evidentiary support by way of document production is requested.
39. Any request which does not comply with this requirement shall be rejected *in limine*.
40. Documents
- referred to in other Documents that have already been submitted,
 - mentioned in witness statements or in expert reports, or
 - relied upon by experts to prepare their expert reports (but excluding working papers used by experts),
- will, as a general rule, be considered relevant.
41. It is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof, since failure to discharge such burden will by itself lead to dismissal. Production with the

⁵ Arts. 3.3(b) and 9.2(a) IBA Rules.

purpose of disproving the counterparty's allegations will only be ordered in exceptional circumstances.

42. Any analysis by the Tribunal regarding the relevance and materiality of requested Documents is made *prima facie*, without prejudging any final decision that the Tribunal may adopt on the facts alleged and the supporting evidence.

c. “R3”: Not in the possession, custody or control of the requesting Party⁶

43. The requesting Party must aver that the Documents sought are not in its possession, custody or control, and explain why it assumes that the Documents are in the possession, custody or control of the counterparty.
44. The request will be rejected if the Documents are located in the premises or under the control of a third party, to which the requesting Party has access. Similarly, a Document shall be considered to be in possession of the requesting Party if it is already on the record of the arbitration or if it is publicly available (and the counterparty is not in a significantly more favourable position to obtain such Document).
45. Documents which are located in the premises or under the control of a third party, to which the requested Party has access, shall generally be considered to be in its “possession, custody or control”, unless otherwise proven by the requested Party.

C. Objections

46. The IBA Rules provide for a number of objections to the production of Documents. Further to alleging failure to satisfy any of the previously established requirements (R1 to R3), a Party may object to a request for production in the following cases [“O”]:⁷

a. “O1”: Legal or settlement privilege⁸

47. A requested Party may invoke legal privilege with regards to Documents prepared by or addressed to counsel, containing legal advice, and given or received with the expectation that such Documents would be kept confidential.
48. In general, a Document needs to meet the following requirements in order to be granted special protection under legal privilege:⁹
- The Document has to be drafted by or addressed to a lawyer acting in his or her capacity as lawyer;
 - A relationship based on trust must exist as between the lawyer (in-house or external legal advisor) and the client;

⁶ Art. 3.3(c)(i) and (ii) IBA Rules.

⁷ Art. 3.5 IBA Rules.

⁸ Art. 9.2(b) IBA Rules.

⁹ *Vito G. Gallo v. The Government of Canada*, NAFTA-UNCITRAL, Procedural Order No. 3, April 8, 2009, para. 47.

- The Document has to be elaborated for the purpose of requesting or giving legal advice;
 - The client and the lawyer, when requesting or giving legal advice, must have acted with the expectation that in a contentious situation the advice would be kept confidential.
49. A requested Party may also invoke privilege regarding Documents prepared in connection with settlement negotiations,¹⁰ including:
- Oral or written statements submitted to the other side during negotiations,
 - Internal Documents prepared specifically for negotiations, and
 - Drafts or final versions of any settlement agreements.
50. If the requested Party raises an objection under O1 and, if challenged, the Tribunal confirms it, the requested Party shall deliver the requested Documents with the privileged information redacted.
51. In those cases in which the asserted privilege cannot be adequately safeguarded through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a “**Privilege Log**”, drafted in accordance with Annex III,
- identifying the date, the issuer, the recipient of the Document,
 - providing a summary description of the Document, plus
 - an explanation of the reasons which justify that the Document be withheld in full.
52. Any discussion will be settled by the Tribunal.
- b. “O2”: Production is unreasonably burdensome¹¹**
53. The requested Party may object to the production of Documents on the basis that it would impose an unreasonable burden. In making its decision, the Tribunal will weigh time and cost of producing the Documents against their expected evidentiary value. The Tribunal may also reduce the scope of production to avoid unreasonable burden.
- c. “O3”: Loss, destruction or inexistence¹²**
54. The requested Party may object to the production of Documents if it shows, with reasonable likelihood, that they have been lost or destroyed, or do not exist for other reasons.

¹⁰ Art. 9.3(b) IBA Rules.

¹¹ Art. 9.2(c) IBA Rules.

¹² Art. 9.2(d) IBA Rules.

55. In such case, the Tribunal shall take note of the requested Party's declaration. The requesting Party may make the inferences it deems appropriate in its following written submission.

d. "O4": Technical or commercial confidentiality¹³

56. A Party may request that a Document should not be produced, alleging compelling grounds of technical or commercial confidentiality.

57. If the requested Party raises an objection under O4 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect the confidentiality of the Documents. Absent such agreement, the requested Party shall deliver the Documents with the confidential information redacted.

58. In those cases in which the confidential information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with Annex III,

- identifying the date, the issuer, the recipient of the Document,
- providing a summary description of the Document, plus
- an explanation of the reasons which justify that the Document be withheld in full.

59. Any discussion will be settled by the Tribunal.

e. "O5": Special political or institutional sensitivity¹⁴

60. A Party may request that a Document should not be produced, alleging compelling grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution).

61. If the requested Party raises an objection under O5 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect the sensitive information. Absent such agreement, the requested Party shall deliver the Documents with the political or institutionally sensitive information redacted.

62. In those cases in which sensitive information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with Annex III,

- identifying the date, the issuer, the recipient of the Document,

¹³ Art. 9.2(e) IBA Rules.

¹⁴ Art. 9.2(f) IBA Rules.

- providing a summary description of the Document, plus
- an explanation of the reasons which justify that the Document be withheld in full.

63. Any discussion will be settled by the Tribunal.

f. “O6”: Production would affect the fairness or equality of the procedure¹⁵

64. Documents will not be ordered to be produced when the Tribunal finds considerations of procedural economy, proportionality, fairness or equality of the Parties that it determines to be compelling, or where there is another compelling reason for nonproduction.

D. Procedure

a. DPS Response

65. On the date identified in Annex I, each Party shall return directly to the counterparty the initial DPS (without copying the Tribunal), indicating which requests it will voluntarily comply with, and which requests it rejects [**“DPS Response”**],

- Arguing that such requests do not meet any or some of the Requirements R1 through R3; or
- Raising one or more of the Objections O1 through O6.

b. Delivery of Non-Contested Documents

66. On the same date, each requested Party shall produce all documents which it has voluntarily accepted to deliver [the **“Non-Contested Documents”**]. Non-Contested Documents shall only be delivered to the requesting Party, without copying the Tribunal. The requesting Party may submit any of these Non-Contested Documents as evidence with the following written submissions.

67. The requested Party should not deliver at this stage Documents for which it has raised an Objection; such Documents shall only be delivered (or a Privilege Log submitted) once the Tribunal has issued its decision.

c. DPS Response to Objections

68. On the date identified in the Procedural Calendar, the requesting Party shall file a response to the Objections O1 through O6 raised by the counterparty. The requesting Party may withdraw or limit its requests on account of the Objections raised.

69. The requesting Party shall formalize its response in the DPS [**“DPS Response to Objections”**].

¹⁵ Art. 9.2 (g) IBA Rules.

70. For the avoidance of doubt, the requesting Party shall refrain from replying to the arguments raised by the requested Party regarding Requirements R1 to R3.
71. On that same date, each Party shall submit its DPS (including its own requests, the objections of the counterparty and its own responses to the objections) to the Tribunal.
72. When submitting the DPS to the Tribunal, the Parties are kindly requested to refrain from making additional submissions. Parties are expected to strictly adhere to the rules set out in the present Procedural Order.

d. Decision on DPS

73. The Tribunal will endeavour to issue its decision by the date established in the Procedural Calendar. Such decision will be formalized in the requesting Party's DPS.

e. Production of Contested Documents or Privilege Log

74. Each Party shall produce all "**Contested Documents**", in compliance with the decision adopted by the Tribunal, on the date established in the Procedural Calendar. Contested Documents shall only be delivered to the counterparty, without copying the Tribunal. The receiving Party may submit any of such Contested Documents as evidence with its written submissions.
75. The same rule shall apply, if the requested Party has raised, and the Tribunal has accepted, Objections O4 or O5 with regard to certain Documents, and the Parties have reached a confidentiality agreement.
76. Absent such agreement, or if Objection O1 has been pleaded and accepted, the requested Party shall deliver the Documents with the privileged information redacted.
77. In those cases in which the privileged information cannot be adequately safeguarded through redaction, the requested Party shall produce to the counterparty (without copying the Tribunal) a Privilege Log, drafted in accordance with Annex III,
 - identifying the date, the issuer, the recipient of the Document,
 - providing a summary description of the Document, plus
 - an explanation of the reasons which justify that the Document be withheld in full.

f. Delivery of Affidavits

78. On the same date, each Party will deliver to its counterparty and to the Tribunal, the following "**Affidavits**":

- A first Affidavit signed by the chief legal officer of such Party drafted in accordance with Annex IV, and
- A second Affidavit signed by the head external legal counsel to such Party drafted in accordance with Annex V.

79. If a Party, without satisfactory explanation, and in contravention of the Tribunal's instructions, fails to produce a Document, the Tribunal may infer that such Document is adverse to the interest of that Party. Likewise, if a Party absent satisfactory explanation fails to deliver any of the Affidavits, the Tribunal will make appropriate inferences.

E. Allocation of costs

80. In its decision on costs, the Tribunal will make a special allocation of costs with regard to the Document production exercise, taking into consideration the reasonableness of the Requests and Objections, each Party's willingness to produce the Documents under its control and the relative success of each Party.
81. Parties shall identify separately in their statements of costs, the costs incurred in preparing their DPS Requests and DPS Responses, and the costs incurred in the search and delivery of the requested Documents.

4.3 REPLY ON THE MERITS AND RESPONSE TO OBJECTIONS TO JURISDICTION

82. At the date established in Annex I, Claimant shall present its **Reply on the Merits and Response to Objections to Jurisdiction** which shall be limited to replying to the facts and legal argumentation set forth by Respondent regarding the Claim in its Statement of Defence and Objections to Jurisdictions. Claimant may also set forth the legal argumentation and the relief it is seeking with regards to the Objections to Jurisdiction.
83. Absent leave from the Tribunal for good cause shown, no new argument shall be presented, and no new evidence shall be attached to the Reply on the Merits and Response to Objections to Jurisdiction regarding the Claim, except if required to rebut arguments and evidence submitted with the Statement of Defence and Objections to Jurisdictions and/or if evidence has arisen from the document production.
84. The marshalling of evidence regarding the Reply on the Merits and Response to Objections to Jurisdiction shall follow *mutatis mutandis* the rules established in para. 10 *supra*.

4.4 REJOINDER ON THE MERITS AND REPLY TO OBJECTIONS TO JURISDICTION

85. At the date established in Annex I, Respondent shall present its **Rejoinder on the Merits and Reply to Objections to Jurisdiction**, which shall be limited to replying to the facts and legal argumentation set forth by Claimant in its Reply on the Merits and Response to Objections to Jurisdiction.

86. Absent leave from the Tribunal for good cause shown, no new argument shall be presented, and no new evidence shall be attached to the Rejoinder on the Merits and Reply to Objections to Jurisdiction, except if required to rebut arguments and evidence submitted with the Reply on the Merits and Response to Objections to Jurisdiction and/or if evidence has arisen from the document production.
87. The marshalling of evidence shall follow *mutatis mutandis* the rules established in para. 10 *supra*.

4.5 REJOINDER ON OBJECTIONS TO JURISDICTION

88. The Claimant shall present its Rejoinder on Objections to Jurisdiction, which shall be strictly limited to replying to the argumentation regarding the Objections to Jurisdiction set forth by the Respondent in the Rejoinder on the Merits and Reply to Objections to Jurisdiction.
89. The marshalling of evidence shall follow *mutatis mutandis* the rules established in para. 10 *supra*.

4.6 ORGANISATION OF THE HEARING

90. In due course, the Tribunal shall issue a Procedural Order establishing the specific details of the evidentiary hearing [the “**Hearing**”] to be held in this case. This notwithstanding, this Procedural Order No. 1 establishes some basic principles.
91. A pre-hearing organizational teleconference shall be held between the Tribunal (or its President) and the Parties to resolve any outstanding procedural, administrative, or logistical matters in preparation for the Hearing.
92. The Hearing will be held either in person at the PCA in The Hague, Netherlands, unless otherwise ordered by the Tribunal, or by videoconference, subject to appropriate arrangements to be discussed between the Tribunal and the Parties in due course.
93. The Parties agree that the Hearing will be conducted in English, but interpretation will be provided between English and Portuguese if Portuguese speaking parties participate and/or if Portuguese speaking witnesses and/or experts provide testimony.
94. No new evidence or calculations may be presented at the Hearing except with leave of the Tribunal. Should the Tribunal grant leave to a Party to present new evidence in the course of the Hearing, it will grant the other Party the opportunity to introduce new evidence to rebut it.
95. Demonstrative exhibits (such as PowerPoint presentations) may be shown using documents or information submitted earlier in accordance with this Order. Each such demonstrative exhibit shall display the number of the document from which it was taken. Hard copies (if the Hearing is held in person) and electronic copies (by e-mail) of all such exhibits shall be provided to the PCA, each Member of the Tribunal, the Administrative Secretary and the opposing Party prior to the exhibit being used at the hearing.

96. To facilitate references to the main documents on which the parties intend to rely at the Hearing, the Parties shall use their best efforts to agree on and prepare a joint physical hearing bundle containing only a set of essential factual/legal documents on which the Parties are most likely to rely, together with a table of contents for such bundle. In the event that the Parties are unable to agree on a joint Hearing bundle, each party shall provide a separate hearing bundle of essential factual and legal documents. The documents in the bundle referenced in this paragraph shall be identified by using the exhibit or legal authority numbers recorded over the course of the arbitration. Such binder shall be produced in A5 format, spiral-bound and be provided to Prof. Juan Fernández-Armesto, Prof. Guido Santiago Tawil and the PCA at the beginning of the Hearing.
97. The Parties should also provide a full copy of the record in electronic format to the PCA and each member of the Tribunal at the beginning of the Hearing, which should be compatible with Macintosh format.

A. Witnesses

98. Any person who has produced a witness statement, expert opinion or report [“**Witness**”] may be called to the Hearing for cross-examination at the dates established in Annex I. The witness statement, expert opinion and/or report produced by any Witness shall be considered that person’s direct evidence and there shall be no additional need for the Party submitting said Witness to engage in direct examination of the Witness at the Hearing (other than a brief introductory examination as provided herein and/or to address any new points that have arisen). Notwithstanding this, the Parties recognize it may be helpful for the Parties’ respective quantum experts to provide a short presentation prior to engaging in cross-examination and, accordingly, this may be permitted.
99. At the dates established in Annex I, each Party shall communicate to the other Party and the Tribunal whom of such Witnesses it intends to cross-examine.
100. The Tribunal may call for examination any Witness, even if not proposed by the Parties.
101. Each Party shall be responsible for summoning those of its own Witnesses who have been called to the Hearing, except when the other Party has waived cross-examination of a Witness and the Tribunal does not insist on his or her appearance. Each Party shall advance the costs of appearance of its own Witnesses. The Tribunal will decide upon the appropriate allocation of such costs in accordance with Arts. 38 to 40 of the UNCITRAL Rules.
102. If the Hearing is held in person and the Witness cannot attend the Hearing for a valid reason, such Witness may be heard by videoconference, or by any other means the Tribunal deems appropriate. Counsel of both Parties may be present at the place where the witness will make his or her video deposition.
103. The examination of Witnesses shall proceed as follows:

- The Presiding Arbitrator shall invite the Witness to make a solemn declaration that his or her testimony will be truthful;
- The Party presenting the Witness may conduct a brief direct examination lasting no more than 15 minutes; in the case of Expert Witnesses, the Witness may make a presentation in lieu of direct examination, limited to 30 minutes;
- The adverse Party may then cross-examine the Witness on relevant matters that either were addressed or presented by that witness in his or her statement or direct examination, which otherwise form part of the record before the Tribunal or that the Witness should reasonably have knowledge of;
- The Party summoning the Witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination;
- The Tribunal may examine the Witness at any time, either before, during or after examination by one of the Parties.

104. The Tribunal shall, at all times, have complete control over the procedure for hearing a Witness. The Tribunal may, in its discretion:

- Refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant or immaterial to the outcome of the dispute;
- Limit or refuse the right of counsel to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant or immaterial to the outcome of the dispute; or
- Direct that a witness be recalled for further examination at any time.

105. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare witness statements, and prepare for examination.

106. Unless the Parties agree, or the Tribunal decides otherwise, a Factual Witness, other than a representative of the Party concerned, shall not be present in the Hearing room during the hearing of oral testimony, discuss the testimony of any other Witness, or read any transcript of any oral testimony, prior to his or her examination. Unless the Parties agree otherwise, Expert Witnesses shall be allowed to be present in the hearing room at any time.

107. If a Witness testifies in a language other than English, the Parties shall organise simultaneous interpretation.

B. Recording and transcripts

108. The Hearing shall be recorded and transcribed in English.

109. The hearing 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.

110. The Parties may review and propose corrections to the written transcripts. In the event of disagreement with the written transcript, the audio recording in the original spoken language controls. In case of disagreement between the Parties with respect to the audio, the Tribunal shall decide upon such disagreement.

4.7 POST-HEARING BRIEFS

111. Post-Hearing briefs shall be filed simultaneously, on a date to be agreed by the Tribunal with the Parties at the end of the Hearing.

4.8 STATEMENTS ON COSTS

112. Statements of costs shall be filed simultaneously, on a date to be agreed by the Tribunal with the Parties at the end of the Hearing.

5. NO EXTEMPORANEOUS SUBMISSIONS AND EVIDENCE

113. No submissions regarding jurisdiction or the merits of the dispute shall be presented outside of the submissions provided in the above sections. Similarly, no new evidence shall be submitted outside of the provisions of the above sections.
114. If, under exceptional circumstances, a Party wishes to raise a new argument or present new evidence, it shall submit a reasoned request to the Tribunal. The other Party will have the opportunity to comment on such request, after which the Tribunal will make its decision whether to grant leave. Should such leave be granted to one side, the other side shall have an opportunity to submit a response.

II. CONDUCT OF THE PROCEEDINGS

1. TIME LIMITS

115. The Tribunal understands that time periods fixed in Annex I are ample and sufficient for the preparation of the submissions. Consequently, the Tribunal will not accept motions for the extension of time periods, save in exceptional and well proven circumstances.
116. The Tribunal is especially reluctant to grant extensions of time periods which result in a postponement of the Hearing dates.

2. COMMUNICATIONS AND SUBMISSIONS

A. Transmission of communications and submissions

117. All communications and written submissions shall be sent to all members of the Arbitral Tribunal, to the PCA Registry, to the Administrative Secretary and to the counterparty by e-mail only.

118. For any simultaneous communications or written submissions, each side will submit an electronic copy to the PCA Registry only. The Registry will then distribute copies to the members of the Tribunal, the Administrative Secretary and the opposing party once all submissions have been received.
119. The Parties' written submissions identified in Chapter I *supra* will be sent by e-mail on their due date, together with a list of exhibits, any witness statements and expert reports (without documentary evidence or case law). Within the next two business days the Parties are to make available through an electronic platform (e.g. Dropbox, Box or similar) the written submission in question, together with all witness statements, expert reports and all other documents (documentary evidence and case law) attached to the Parties' submissions. The Parties should confer and decide on the appropriate platform.
120. For the avoidance of doubt, the Tribunal dispenses any paper copies of communications, submissions or evidence (except for the joint physical hearing bundle referred to in para. 96 *supra*).

B. Rules for communications and submissions

121. The Parties shall number all communications (including any e-mails) and written submissions, pursuant to para. 13 of communication A-1. All communications and written submissions shall have paragraphs numbered consecutively. All written submissions shall include a table of contents.
122. To facilitate filing, citations, and word processing, all written submissions, witness statements and expert reports, shall be provided in a non-scanned, editable Word or PDF format without restrictions so that they can be searched, annotated and the contents copied. Factual evidence and legal authorities shall also be submitted in text searchable format (i.e., OCR PDF) without restrictions.
123. Any spreadsheet or table shall be editable and all *formulae* visible. Data used in the creation of spreadsheets and tables should indicate its source.
124. Each written submission shall be accompanied of a consolidated chronological list of factual exhibits, identifying the exhibit date, number and description, as follows:

DATE	NUMBER	DESCRIPTION
2 April 1949	C-1	Certificate of Incorporation No. 7089
9 December 1999	C-2	Certificate of Incorporation No. 7039
Etc.		

125. Electronic documents shall be named according to the following format: document number, followed by the date in *yyyy-mm-dd* format, followed by the document description, as follows:

“C-1 1949-04-02 Certificate of Incorporation No 7089.pdf”
126. This list shall be updated with each written submission.

127. Similarly, a list of the legal authorities relied upon by a Party shall accompany each submission.

3. EVIDENCE

128. In addition to the provisions on document production above, the Tribunal may be guided by the IBA Rules when considering matters of evidence.

Documents

129. All documents (documentary evidence and case law), including both originals and copies, submitted to the Tribunal shall be deemed to be authentic, unless a Party disputes, within a reasonable time, a document's authenticity or completeness, or the Party submitting the evidence indicates aspects in which the document is incomplete.

130. All documents shall either be submitted to the Tribunal in complete form or the Parties shall indicate the aspects in which any document is incomplete.

Witness statements

131. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.

132. For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and, if the Tribunal grants such leave, in accordance with its directions.

133. Any document to which a witness refers shall be exhibited (unless such document has already been submitted with the Parties' written submissions), form part of the documentary exhibits submitted by the Party calling that witness and be numbered in accordance with para. 13 of communication A-1 (and identified accordingly in the witness statement).

Expert reports

134. Each Party may retain and submit the evidence of one or more experts to the Tribunal.

135. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions. Any new document to which an expert refers shall be exhibited, form part of the documentary exhibits submitted by the Party calling that expert and shall be numbered in accordance with para. 13 of communication A-1 (and identified accordingly in the expert report).

136. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

4. LANGUAGE

137. As per Section VIII of the Terms of Appointment, the language of the Arbitration will be English.
138. However, documents which are originally in Portuguese (such as agreements, exhibits, correspondence, laws, etc.) may be submitted and cited in Portuguese, with full or partial translations at the option of the submitting party. If a party desires to submit any full or partial translations, it may do so without the need of a certified translation.
139. Informal translations will be accepted as accurate unless contested by the other party, in which case, the Parties shall attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Tribunal shall take any appropriate decision.
140. The Tribunal may request full or partial translations of specific written materials it may deem necessary.
141. Any procedural orders, partial awards and/or the final award shall be in English. That notwithstanding, the Tribunal may cite evidence in Portuguese in any decisions, procedural orders and awards, without the need for translation.
142. Documents produced in response to requests or orders for document production may be produced in their original language. If a Party wishes to submit any such documents as exhibits, para. 138 *supra* shall apply.

5. ATTENDANCE LIST

143. The Parties must always provide a list with the names of the people attending any meetings or hearings that might be held, in person, by phone or videoconference.

6. POWERS OF THE ARBITRAL TRIBUNAL AND OF THE PRESIDENT

144. The Arbitral Tribunal, or the President of the Tribunal by himself, shall have the power to extend for good cause any time period set forth in Annex I, upon reasoned request by any Party or *sua sponte* in exceptional circumstances.

7. TRANSPARENCY

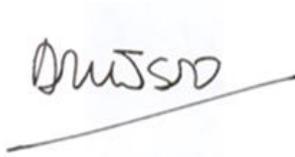
145. Pursuant to the agreement of the Parties,¹⁶ the arbitration shall be conducted in accordance with the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration, as adopted in 2013 [“**UNCITRAL Rules on Transparency**”], in accordance with Art. 1(2)(a) thereof.
146. The PCA shall assume the role of the “repository” foreseen under the UNCITRAL Rules on Transparency with respect to this arbitration.

¹⁶ Terms of Appointment, Section X.

147. The PCA shall make information and documents regarding the arbitration available to the public in accordance with the UNCITRAL Rules on Transparency, except as otherwise decided by the Tribunal pursuant to the UNCITRAL Rules on Transparency.
148. Hearings shall be public except as otherwise decided by the Tribunal in accordance with the UNCITRAL Rules on Transparency.

Place of Arbitration: The Hague, Netherlands

Date: 14 October 2020

A handwritten signature in black ink, appearing to read "J. Fernández-Armesto", is written over a horizontal line.

Juan Fernández-Armesto
President of the Arbitral Tribunal