

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.

In the matter between

Tulip Real Estate Investment and Development Netherlands B.V.  
(Claimant)

and

Republic of Turkey  
(Respondent)

(ICSID Case No. ARB/11/28)

---

DECISION ON THE RESPONDENT'S REQUEST FOR BIFURCATION  
UNDER ARTICLE 41(2) OF THE ICSID CONVENTION

---

*Members of the Tribunal*

Dr. Gavan Griffith QC (President)  
Mr. Michael Evan Jaffe  
Prof. Dr. Rolf Knieper

*Secretary of the Tribunal*

Ms. Martina Polasek

*Representing the Claimant*

Mr. Stuart H. Newberger  
Mr. Dana Contratto  
Mr. George D. Ruttinger  
Ms. Meriam Alrashid  
Crowell & Moring LLP

*Representing the Respondent*

Mr. Robert C. Sentner  
Mr. Harry P. Trueheart  
Nixon Peabody LLP

Mr. M. Rasim Kuseyri  
Mr. Ferdi Karoglu  
Ms. Simge Sertoglu Akyuz  
Kuseyri Hukuk Bürosu

Mr. Michael E Schneider  
Mr. Matthias Scherer  
Ms. Laura Halonen  
Lalive

## **I. Procedural History**

1. On 11 October 2011 the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) received a Request for Arbitration (the “Request”), dated the same, from Tulip Real Estate and Development Netherlands B.V. (“Tulip” or “Claimant”), a company constituted in accordance with the laws of The Netherlands, against the Republic of Turkey (“Respondent”). On 12 October 2011, the Centre, in accordance with Rule 5 of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “Institution Rules”), acknowledged receipt of the Request and transmitted a copy to the Republic of Turkey.
2. The dispute is brought under the Agreement on Reciprocal Encouragement and Protection of Investments between the Kingdom of the Netherlands and the Republic of Turkey dated 27 March 1986 (the “BIT”).
3. On 28 October 2011, the Secretary-General of ICSID, registered the Request and notified the Parties, pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the “Convention”) and in accordance with Institution Rules 6 and 7. The case was registered as ICSID Case No. ARB/11/28. In the same letter the Secretary-General invited the Parties to inform the Centre of any agreed provisions as to the number of arbitrators and the method of their appointment as soon as possible.
4. On 16 November 2011, Respondent proposed, pursuant to Rule 2(1)(b) of the ICSID Arbitration Rules (the “Rules”), a procedure for constituting the Tribunal.
5. On 1 December 2011, Claimant appointed Michael Evan Jaffe, a national of the United States, as arbitrator in accordance with Article 37 of the Convention.
6. By letter dated 1 December 2011, the Centre informed the Parties that it understood that no agreement had been reached on the method of constituting the Arbitral Tribunal and that it would act on the appointment as soon as the method was established.
7. By letter dated 27 December 2011, Claimant informed ICSID that it opted for the formula provided for in Article 37(2)(b) of the Convention for the constitution of the Tribunal: that it consist of three arbitrators, with each party appointing an arbitrator,

and the third, the President of the Tribunal, to be appointed by agreement of the Parties.

8. On 28 December 2011, ICSID's Secretary-General informed the Parties that, in accordance with Article 37(2)(b) of the Convention and Rule 2(3) of the Rules, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties. The Secretary-General also invited Claimant, in accordance with Rules 3(1)(a)(i) and (ii) to propose the name of a person who shall be the President of the Tribunal and invited Respondent to concur in this proposal or to propose another person as the President, and to appoint another arbitrator.
9. On 10 January 2012, ICSID informed the Parties that Michael Evan Jaffe accepted his appointment as arbitrator.
10. On 25 January 2012, Respondent appointed Professor Rolf Knieper, a national of Germany, and informed the Centre that the Parties were cooperating to agree upon the President of the Tribunal.
11. On 30 January 2012, ICSID informed the Parties that Professor Rolf Knieper accepted his appointment as arbitrator.
12. On 23 March 2012, the Respondent informed ICSID that the Parties had reached an agreement on the appointment of Dr. Gavan Griffith, QC, a national of Australia, as the President of the Tribunal. On 26 March 2012, the Claimant confirmed that the Parties agreed to appoint Dr. Gavan Griffith, QC as President of the Tribunal.
13. On 28 March 2012, ICSID's Secretary-General notified the Parties that the Tribunal was deemed to be constituted in accordance with Article 37(2)(b) of the Convention and under Rule 6 of the Rules. The Tribunal is thus composed by (i) Michael Evan Jaffe (appointed by the Claimant), (ii) Professor Rolf Knieper (appointed by the Respondent) and (iii) Dr. Gavan Griffith (appointed by agreement of the Parties). The Centre also informed the Parties and the Tribunal that Ms. Martina Polasek, ICSID, would serve as the Secretary to the Tribunal.
14. On 30 April 2012, pursuant to ICSID Arbitration Rule 13(1), the Tribunal held the first session in Paris, France.

15. On 22 May 2012, after consultation with the Parties, Procedural Order No. 1 was issued by the President of the Tribunal, recording the parties' agreement and the Tribunal's decisions on a number of procedural matters. Among other things, it was agreed that the applicable Arbitration Rules would be the Rules in force as of April 2006 and that the place of proceedings would be Paris, France.
16. On 15 August 2012, pursuant to Procedural Order No. 1, Claimant submitted its Memorial on Jurisdiction, Merits and Damages together with three witness statements and one expert report.
17. On 12 October 2012, the Respondent filed a Request for Bifurcation (the "Application") in accordance with the timetable established in Procedural Order No. 1, para. 13.
18. On 16 October 2012, the Tribunal invited Claimant to provide its observations to the Application by 26 October 2012.
19. On 26 October 2012, the Claimant filed its Reply to the Application ("C Reply").
20. On 1 November 2012, the Respondent's Counsel wrote to the Tribunal, protesting against the manner in which Respondent's position was characterised in C Reply and asserting that no factual inquiry is required for the Tribunal to decide Respondent's preliminary objection.

## **II. Claimant's Pleaded Case**

21. The Tribunal summarises below Claimant's written case, as currently pleaded, to the extent it is relevant for the purposes of the Application. Some of the facts of the pleaded case are contested between the Parties and the summary does not constitute a finding as to the facts.
22. Claimant's claims arise out of investments it made in several residential and commercial construction projects in Istanbul and Ankara, Turkey and in particular, the Ispartakule III project in Istanbul. The Ispartakule III project was promoted to foreign investors by Emlak Konut Gayrimenkul Yatirim Ortakligi A.S. ("Emlak"), a company 100% controlled by Turkey's Housing Development Administration ("TOKI"). Claimant was the first foreign investor to do business directly with TOKI, which is part of Turkey's Prime Ministry.

23. Claimant conducted its investments in Turkey by way of several special investment vehicles, including companies referred to as “Tulip I,” “Tulip II” and “Tulip JV.” Emlak and Tulip JV signed the Contract for Revenue-Sharing in Exchange for Sale of Parcels for the Ispartakule III Project (the “Contract”) on 3 August 2006, and Tulip I took possession of the land from Emlak on behalf of Tulip JV a few days later.
24. It is claimed that actions taken by Respondent deprived Claimant of the entire value of its real estate development projects throughout Turkey and constitute breaches of the BIT and applicable international law; namely it is claimed:
  - a. Respondent failed to disclose pending zoning litigation in tender documents presented by Emlak and TOKI to Claimant, which resulted in a delay of two years until the commencement of construction, in September 2008, while Tulip JV waited for a construction permit.
  - b. In January 2007, the government official who was head of both TOKI and Emlak informed Claimant’s investors that he would terminate the Contract if the investors did not throw out the Turkish professionals who were part of Tulip JV and effectively hand over control of the project to a Turkish national recommended by the government official.
  - c. Once construction commenced, Respondent’s agencies Emlak and TOKI harassed Claimant by, *inter alia*, delaying approvals which should have been mere formalities; denying time extensions to cover delays for approvals which should have been mere formalities; denying time extensions to cover delays for which Emlak and TOKI themselves were responsible and threatening to terminate the Contract for vague and unjustifiable reasons.
  - d. Respondent terminated the Contract in May 2010 - calling it a “termination for delay” – as a pretext for Respondent to take the project away from Claimant and seize all its assets associated with the Ispartakule III project as the delay could only be attributed to Respondent.
  - e. Respondent forcibly seized the construction site with the aid of police and private security forces and summarily seized the performance bond that had been posted by Claimant.
  - f. Respondent re-tendered the project while Claimant’s court actions to nullify the termination of the Contract were still pending and the award of the new

contract for the project was on less favourable terms to Respondent than under the contract with Claimant.

25. Claimant argues that the above actions of the Respondent constitute breaches of the BIT and international law, including:
- a. Respondent's obligation to ensure the fair and equitable treatment ("FET") of Claimant's investment (Article 3(1) of the BIT);
  - b. Respondent's obligation to provide treatment that is not arbitrary or discriminatory;
  - c. Respondent's obligation to accord at all times to Claimant's investment full protection and security (Article 3(2) of the BIT);
  - d. Respondent's obligation to observe any obligation it may have entered into with regard to investments (Article 3(2) of the BIT);
  - e. Respondent's obligation to refrain from unlawful expropriation without compensation (Article 5 of the BIT); and
  - f. Respondent's affirmative obligation to protect foreign investors.

### **III. Respondent's Application**

26. In its Application the Respondent requested the bifurcation of its preliminary objections to jurisdiction and admissibility from the merits of the case. [Application, paras. 6, 16, 52 and 66]. Respondent did not identify under which provision of the Rules it is making its objections.
27. Respondent identified the objections for which it seeks bifurcation as follows [Application, para. 66]:
- 1) **Claimant's claims are contract claims not treaty claims:** That Claimant's claims fail to establish *prima facie* treaty breaches because its claims are in reality allegations that Emlak breached the Contract for which the jurisdiction of the Turkish courts has been agreed and the Tribunal has no jurisdiction ("Objection 1").
  - 2) **It is premature to decide any treaty claims and they are therefore inadmissible:** Alternatively, even if Claimant's claims may relate to rights under

the BIT, they are currently inadmissible as they cannot be determined before the underlying contractual dispute has been resolved by the Turkish courts (“Objection 2”).

3) **The mandatory negotiation period was not respected:** That Claimant has failed to respect the mandatory negotiation period set out in Article 8 of the BIT, taking the dispute outside the Tribunal’s jurisdiction or making it inadmissible (“Objection 3”).

28. Respondent says that Claimant’s claims must be dismissed for lack of jurisdiction, or, in any event, are inadmissible as being premature [Application, para. 4]. It is argued that “efficiency of these proceedings requires that these objections be bifurcated from the rest of the case as they can be heard as a separate matter, avoiding pleading the complex contractual dispute that underlies the present one” [Application, para. 17]. If successful, Respondent submits that Objection 1 would either dispose of Claimant’s case, or at the very least reduce its scope and Objection 2 would terminate or suspend any possible remaining claims. It is therefore argued that bifurcation of these objections promises to lead to significant savings in time and costs. In respect of Objection 3, Respondent submits that this should be dealt with in an initial phase of the proceedings as it could potentially result in the dismissal of the whole case [Application, para. 52].

#### **IV. The Applicable Standard**

29. Article 41(2) of the ICSID Convention provides as follows:

*Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.*

30. The Parties agree that the Tribunal has the power to bifurcate these proceedings in its discretion [Application para. 8, C Reply para. 8]. Three considerations have been identified as relevant to the exercise of the Tribunal’s discretion. These are: (i) whether it is desirable to bifurcate for reasons of procedural economy; and (ii) whether the preliminary objection is intimately linked to the merits; and (iii) whether a determination of the preliminary objection is capable of resulting either in the dismissal of the entire case or reducing significantly its scope and complexity.

31. The Tribunal is guided by these considerations in the exercise of its discretion whether to grant Respondent’s Application for bifurcation. The Tribunal now moves to consider each of Respondent’s objections and whether to order bifurcation.

**V. Objection 1: Claimant’s claims are contract claims not treaty claims**

32. Respondent says that the relevant test for establishing the Tribunal’s jurisdiction in the present circumstances is whether Claimant can establish that, *prima facie*, its claims can give rise to the alleged breaches of the BIT if proven [Application, para. 18<sup>1</sup>; *see also*, letter from Respondent’s Counsel dated 01 November 2012]. Respondent argues that Claimant’s claims fail to establish a *prima facie* case of treaty breaches because its claims are in reality contractual claims [Application, para. 16]. Claimant agrees with Respondent that the jurisdictional test for bifurcation is a *prima facie* analysis of Claimant’s claims, but argues that this test has been met [C Reply, para. 17]. Claimant says that the test calls on the Tribunal to assess the possibility of the facts as alleged by the Claimant to generate a proper jurisdictional basis for a treaty claim, as well as a violation of the BIT [C Reply, para. 19].<sup>2</sup>
33. The Tribunal accepts that this is the legal test to be applied when establishing the Tribunal’s jurisdiction.
34. Respondent argues that Claimant’s pleaded case involves allegations of many wrongs, practically all of which relate directly or indirectly to Emlak’s contractual, and in some cases, pre-contractual obligations [Application, para. 21]. It is averred that Claimant’s damages claim arises exclusively from the termination of the Contract. Claimant argues that no separate claim for damage is made for any other act, and therefore it is submitted the termination of the Contract is the act on which the Tribunal should focus in determining whether Claimant has made a case that could amount to a breach of the BIT [Application, para. 22].
35. Claimant argues that its case is not simply contractual in nature, but “concerns how the highest officials and agencies of the Republic of Turkey – via TOKI, the Prime Minister’s Supreme Audit Board, and other entities – used its *imperium* to influence

---

<sup>1</sup> Referring to *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, at para. 197.

<sup>2</sup> Referring to *Case Concerning Oil Platforms* (Iran v. U.S.), 1996 I.C.J. (12 Dec.) (separate opinion of Judge Higgins), para. 32.

and control Emlak's conduct towards Claimant's investments, and to otherwise frustrate and destroy those investments in Turkey" [C Reply para. 15]. It is claimed that these actions are evidence of violations of the BIT.

36. The current task of the Tribunal is to consider whether to grant Respondent's Application for bifurcation of this jurisdictional objection, not decide the objection to jurisdiction itself. Taking into account the considerations enumerated above at IV, the Tribunal is not persuaded that Objection 1 is not intimately linked to the merits. The Tribunal's attention has been drawn to decisions of previous tribunals that have been reluctant to launch into the merits to decide a jurisdictional question [C Reply, para. 24]. Reference has been made to the award in *Generation Ukraine*, where the tribunal indicated that it had:

*...elected to join issues of jurisdiction and admissibility to the merits because of the close relationship between the Respondent's primary jurisdictional objection, based on the alleged absence of any relevant investment by the Claimant, and the factual evidence pertaining to the complete history of the Claimant's activities in Ukraine.*<sup>3</sup>

37. In the present case, it is apparent to the Tribunal that, *prima facie*, the issues that will need to be considered in determining Respondent's Objection 1 are intimately linked to the merits. On the evidence before the Tribunal, and without prejudging the merits, there appears to be a close relationship between Respondent's Objection 1 and the factual evidence presented by Claimant pertaining to the alleged representations and conduct of Respondent, TOKI and Emlak.
38. In light of the above finding, it is unlikely a determination of Objection 1 is capable of reducing significantly the scope and complexity of this case. Similarly, the Tribunal does not consider that bifurcating Objection 1 would serve procedural economy. For these reasons, and in its discretion, the Tribunal rejects the Respondent's application to bifurcate the proceeding to hear Objection 1.

## **VI. Objection 2: It is premature to decide any treaty claims and they are therefore inadmissible**

39. In the alternative, Respondent submits that even if any treaty claims do arise in connection with the contractual claims, they are nevertheless inadmissible as they depend upon a determination of the contractual rights and obligations of the parties.

---

<sup>3</sup> *Generation Ukraine v. Ukraine*, ICSID Case No. ARB/00/9 (Award dispatched 16 September 2003), para. 4.24,

It is argued that this Tribunal is not the proper forum to adjudicate the Claimant's contractual grievances as the Contract provides for the exclusive jurisdiction of the Istanbul Courts [Application, para. 37]. Respondent says that there is an agreed forum open to the Claimant or its subsidiaries to bring their claims for alleged breaches of the Contract.

40. Respondent says that Claimant's Turkish subsidiary has seized the Turkish courts with a number of actions, both civil and criminal, in relation to the Contract and the alleged wrongdoings of Emlak [Application, para 41]. In particular, Respondent refers to a currently pending proceeding before the Kadıköy 5th Commercial Court of First Instance (Case No. 2010/1654) that it says, concerns essentially the same claims as those before this Tribunal. It is argued that since Claimant does not raise any claims for denial of justice, there is no justification for Claimant to seize now, in addition to the courts of Turkey, an international arbitral tribunal under the BIT.
41. In response, Claimant argues that the pending Turkish court action before the Kadıköy 5th Commercial Court of First Instance is against Emlak, not Respondent and is brought by Tulip JV (a Turkish entity), not Claimant. Further, Claimant argues that the claim in the Turkish court seeks a court order that would grant return of the project, by declaring the termination invalid under Turkish law, and damages arising from the delay to the Project. In contrast, the matter before the Tribunal seeks damages for the total destruction of the Claimant's investments in Turkey as a result of the actions of Respondent and its related entities, including Emlak, TOKI and the Prime Minister's Office.
42. If the Tribunal understands Respondent's argument in relation to Objection 2 correctly, its position is that any legitimate treaty claims asserted by Claimant in this arbitration can only be determined once cases concerning Claimant's contractual claims, pending before the Turkish courts, have been decided. Therefore, any treaty claims are premature and must be dismissed as inadmissible.
43. In light of the decision to deny Respondent's Application to bifurcate Objection 1, it follows that the Tribunal must deny Respondent's Application to bifurcate Objection 2. This is because Objection 2 only arises if the Claimant's claims have been found to relate to rights under the BIT and this determination of the preliminary objection is to be joined to the merits.

44. In any event, even if it were possible for the Tribunal to consider Objection 2 independently of its decision in relation to Objection 1, it is of the view that the issues raised by Objection 2 are intimately linked with the merits. Accordingly, the Tribunal is not persuaded that there is procedural economy in hearing this objection separately from the merits.

**VII. Objection 3: The mandatory negotiation period was not respected**

45. Respondent argues that Claimant has failed to respect the mandatory negotiation period set out in Article 8 of the BIT, depriving the Tribunal of jurisdiction to hear this case. It is argued that this objection could result in the dismissal of the whole case and therefore should be dealt with in an initial phase of the proceeding before the merits are addressed.

46. Article 8(2) of the BIT provides

*In the event of an investment dispute between a Contracting Party and an investor of the other Contracting Party, the parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. ... If the dispute cannot be resolved through the foregoing procedures the investor concerned may choose to submit the dispute to the International Centre for the Settlement of Investment Disputes (“Centre”) for settlement by arbitration, at any time after one year from the date upon which the dispute arose provided that in case the investor concerned has brought the dispute before the courts of justice of the Contracting Country that is a party to the dispute, and there has not been rendered a final award.*

47. Respondent says that Article 8(2) of the BIT contains wording which amount to an obligation to “initially seek to resolve the dispute by consultations and negotiations in good faith” and this obligation has not been fulfilled. Accordingly, it is argued that failing to fulfill this obligation either defeats the Tribunal’s jurisdiction or makes the Claimant’s claims inadmissible [Application, para. 54].
48. Respondent submits that it was never aware of the Claimant’s treaty claims before the present arbitration was commenced [Application, para. 60]. It is argued that in no communications with Respondent by or on behalf of Claimant was reference made to treaty claims.
49. Furthermore, the Respondent argues that the date upon which the present dispute arose for the purpose of Article 8(2) of the BIT was 11 October 2011, the date of filing of the Request for Arbitration. The Respondent submits that the Claimant has therefore not

complied with the obligations in Article 8(2) of the BIT, rendering the claims inadmissible or resulting in them falling outside the jurisdiction of the Tribunal.

50. Respondent says that Objection 3 is entirely factually discrete from the underlying dispute. It is said that it is incumbent upon Claimant to demonstrate that it has notified its treaty claims to Respondent and that it has attempted to negotiate with Respondent for at least a year prior to launching the present proceedings. Respondent argues that if Objection 3 were successful, it would result in the dismissal of Claimant's entire case and therefore procedural economy dictates that it be bifurcated and heard as a preliminary matter [Application, paras. 64-65].
51. Claimant accepts that the BIT requires an investor to seek to resolve its disputes regarding breach of rights acquired by the BIT before bringing claims in arbitration [C Reply, para. 36]. Claimant submits that this was done. It is argued that the Contract was terminated by Emlak's Board on 18 May 2010, after which time Claimant and its representatives sought good faith consultations and negotiations with the Turkish authorities. It is submitted that, in accordance with Article 8(2) of the BIT, after the completion of a year, and noticing that its endeavors for a good faith negotiation were fruitless, Claimant submitted its case to ICSID.
52. Claimant says that Respondent has not demonstrated that the alleged "mandatory negotiation period" was a jurisdictional requirement that Claimant had to comply with or that there was no compliance with such a requirement. It is argued that Respondent fails to explain how Claimant's actions or inactions violated the requirements of the BIT.
53. Claimant further argues that Respondent is incorrect by asserting that a formalistic pre-arbitration negotiation is "mandatory". It argues, referencing *Alps v Slovak Republic* and *Bayindir*, that the weight of previous decisions favors avoiding the formalistic conclusions that certain "pre-arbitration procedures" must be complied with before an investor can seek arbitration.
54. At this stage it is not for the Tribunal to determine whether the requirements of Article 8(2) of the BIT have been complied with; merely, whether this objection should be dealt with as a preliminary question or joined to the merits. Article 8(2) of the BIT clearly provides for a period during which the parties shall seek to resolve the dispute by consultations and negotiations in good faith. Respondent asserts that this is a mandatory negotiation period that has not been complied with. Claimant asserts that

Article 8(2) does not require a formalistic pre-arbitration negotiation and it has sought to resolve the BIT dispute in compliance with the provision.

55. Taking into account the considerations expressed above at IV, the Tribunal is satisfied that:
- a. Objection 3 is not intimately linked to the merits and is capable of preliminary determination;
  - b. if Objection 3 were successful, it could have the effect of disrupting the entire case either by (i) taking the dispute outside the Tribunal's jurisdiction or making the dispute inadmissible (at least until the requirements of Article 8(2) have been satisfied) or (ii) requiring a suspension of the proceeding while the Parties engage in consultations and negotiations in good faith; and
  - c. procedural economy would be served by dealing this objection prior to the merits, avoiding the possibility that the entire case is heard and the Tribunal then finding that a pre-condition to arbitration was not satisfied.
56. Accordingly, in the Tribunal's discretion, it finds that Objection 3 is to be dealt with as a preliminary question. In the interest of procedural economy, taking into account the relatively uncomplicated nature of the objection and the arguments already presented on this point, the Tribunal decides at the same time not to suspend the proceedings on the merits.

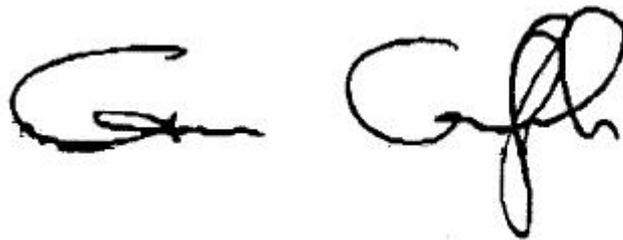
### **VIII. Decision and Orders**

**In the light of the foregoing and for reasons set out above, the Tribunal:**

- 1. Rejects Respondent's Application in relation to Objection 1 and Objection 2;**
- 2. Determines to deal with Objection 3 as a preliminary question and makes the following procedural directions:**
  - a. Claimant will submit a Memorial with respect to compliance with Article 8(2) of the BIT (with witness statements, factual exhibits and legal authorities) by 23 November 2012;**
  - b. Respondent will submit a Counter-Memorial with respect to compliance with Article 8(2) of the BIT (with witness statements, factual exhibits and legal authorities) by 14 December 2012;**

- c. Claimant will submit its Reply with respect to compliance with Article 8(2) of the BIT (with response witness statements, factual exhibits and legal authorities) by 28 December 2012;
3. Directs that unless by 21 November a Party requests a hearing (in which event the Tribunal will issue further procedural directions), Objection 3 shall be determined by the Tribunal upon the papers;
  4. Rejects Respondent's application to suspend the proceedings on the merits;
  5. Confirms that the Schedule of Submission of Pleadings set out in paragraph 13 of Procedural Order No. 1 remains unchanged;
  6. Reserves all the other issues to a further order, decision or award, including the question of costs.

2 November 2012

A handwritten signature in black ink, appearing to read 'Gavan Griffith', written in a cursive style.

**Dr Gavan Griffith QC**  
**On behalf of the Tribunal**