

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

The Lopez-Goyne Family Trust and others

v.

Republic of Nicaragua

(ICSID Case No. ARB/17/44)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Luca G. Radicati Di Brozolo, President of the Tribunal

Mr. José A. Martínez de Hoz, Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

6 August 2019

(Amended on 16 December 2019)

(Amended on 26 June 2020)

(Amended on 5 February 2021)

(Amended on 18 February 2021)

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Introduction

The first session of the Tribunal was held on 18 July 2019, at 11:00 a.m. (Washington, DC time), by telephone conference. The session was adjourned at 11:24 am.

Prior to holding the first session, the Parties' agreed to hold the session in English only.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Prof. Luca G. Radicati Di Brozolo, President of the Tribunal
Mr. José A. Martínez de Hoz, Arbitrator
Prof. Brigitte Stern, Arbitrator

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Jean Paul Dechamps, Dechamps International Law
Mr. Gustavo Topalian, Dechamps International Law
Mr. Pablo Jaroslavsky, Dechamps International Law
Mr. Juan Ignacio González Mayer, Dechamps International Law

Participating on behalf of the Respondent:

Ms. Tafadzwa Pasipanodya, Foley Hoag LLP
Mr. Nicholas Renzler, Foley Hoag LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on July 10, 2019.
- The Draft Procedural Order circulated by the Tribunal Secretary on July 10, 2019 and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on July 16, 2019 indicating the items on which they agreed.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent modified and/or supplemented by the Dominican Republic-Central America Free Trade Agreement (“CAFTA-DR”), in force in the United States since March 1, 2006 and in the Republic of Nicaragua since April 1, 2006.

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on June 19, 2019 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on June 19, 2019.

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

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
- 3.5. All half days and whole days booked shall be paid for but subject to the following conditions:
- 3.5.1. If a booking is cancelled upon the request of either or both Parties less than 15 clear days before the day(s) or half day booked it shall be paid in full;
 - 3.5.2. If a booking is cancelled upon the request of either or both Parties less than 45 clear days before the day(s) or half day booked it shall be paid at a rate of 50%;
 - 3.5.3. If a booking is cancelled upon the request of either or both Parties less than 90 clear days but more than 44 clear days before the day(s) or half day booked, it shall be paid at a rate of 25%;
 - 3.5.4. If a booking is cancelled more than 89 clear days before the day(s) or half day booked, no payment shall be made to the Tribunal;
 - 3.5.5. In all cases referred to above a duty to mitigate arises and credit will be given for any remunerated hearings conducted during the day(s) booked;
 - 3.5.6. Any booking fee shall be added to any fees due in respect of hourly charges actually incurred in preparation for any hearing cancelled upon the request of either or both Parties prior to the cancellation being notified to the Tribunal;
 - 3.5.7. Where hearing days are cancelled or postponed at the request of one Party and not the other, this may be taken into account when considering any subsequent allocation of costs.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.

5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Catherine Kettlewell, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Catherine Kettlewell
ICSID
MSN C3-300
1818 H Street, N.W.

Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7231
Fax: + 1 (202) 522-2615
Email: ckettlewell@worldbank.org
Paralegal email: ifernandez1@worldbank.org

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

Ms. Catherine Kettlewell
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Assistant to the President of the Tribunal

8.1. With the consent of the Parties, the following Assistant to the President is appointed:

Uberto Gregorio Baldoli
ARBLIT Radicati di Brozolo Sabatini Benedettelli Torsello
Via Alberto Da Giussano, n. 15
20145 Milan
Italy
Email: gregorio.baldoli@arblit.com
Telephone: +39 02 8525 4810

8.2. The Assistant is a junior associate at ARBLIT Radicati di Brozolo Sabatini Benedettelli Torsello. The Parties have received the Assistant's *curriculum vitae* on July 19, 2019 and declaration of independence and impartiality on July 31, 2019.

8.3. The Assistant's tasks will be performed upon the President's instructions. The President will not delegate to the Assistant any of the duties and obligations incumbent on the President of the Tribunal as an arbitrator.

8.4. The Assistant, under the instruction of the President of the Tribunal, may perform the following tasks:

- Marshaling of evidence
- Research of specific issues of law
- Organization of case documents

8.5. The Assistant is bound by the same duties of confidentiality, independence and impartiality as the Members of the Tribunal.

8.6. The Assistant would receive (a) \$200 per hour for each hour of work performed in connection with the case or pro rata; (b) a flat rate of \$1,600 per day of hearing; and (c) reimbursement of reasonable expenses related to the hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.

9. Representation of the Parties
Arbitration Rule 18

9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

The Lopez-Goyne Family Trust and others
c/o Mr. Jean-Paul Dechamps
Mr. Gustavo Topalian
Mr. Pablo Jaroslavsky
Mr. Juan Ignacio González Mayer
Dechamps Law Ltd.
10 Bloomsbury Way
London – United Kingdom
WC1A 2SL
and
Dr. Tariq Baloch
3 Verulam Buildings
Gray’s Inn,
London WC1R 5NT
United Kingdom
Email: jpdechamps@dechampsllaw.com;
gtopalian@dechampsllaw.com;
pjaroslavsky@dechampsllaw.com;
jgmayer@dechampsllaw.com;
tbaloch@3vb.com

For Respondent

Republic of Nicaragua
c/o Mr. Paul Reichler
Ms. Tafadzwa Pasipanodya
Mr. Diego Cadena
Ms. Christina Beharry
Mr. Nick Renzler
Ms. Tracy Roosevelt
Foley Hoag LLP
1717 K Street NW
Suite 1200
Washington, D.C. 20001
U.S.A.
and
Dirección de Integración y
Administración
de Tratados
Ministerio de Fomento, Industria y
Comercio
Km. 6 Carretera a Masaya
Managua, Nicaragua
Email: preichler@foleyhoag.com;
cbeharry@foleyhoag.com;
dcadena@foleyhoag.com;
tpasipanodya@foleyhoag.com;
nrenzler@foleyhoag.com;
troosevelt@foleyhoag.com;

mific_vui@mific.gob.ni

10. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

10.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10.2. By letter of June 21, 2019, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. ICSID acknowledged receipt of Claimants' payment on 17 July 2019. On 11 July 2019, the Respondent informed that the first advance payment was forthcoming but would not assure to be received before 18 July 2019. ICSID received Respondent's advance payment and acknowledged receipt on 23 July 2019.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); CAFTA-DR Article 10.20(1)

11.1. The seat of ICSID in Washington, D.C. shall be the place of the proceeding.

11.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

11.3. The Tribunal may deliberate at any place it considers convenient, including by video or telephone conference.

12. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

12.1. English and Spanish are the procedural languages of the arbitration.

12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

[For Parties' Pleadings]

12.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language and need not be translated.

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12.4. All documentary evidence in a language other than English or Spanish shall be accompanied by an English or Spanish translation of the relevant portions. If a party wishes to challenge the translation of a document, it may submit a new translation that clearly identifies the differences.

12.5. The Tribunal may require that a party translate any document in whole or in part.

12.6. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.

12.7. Documents exchanged between the parties under §16 below (Production of Documents) may be produced in the original language and need not be translated.

[For Hearing]

12.8. The testimony of a witness called for examination during the hearing who prefers to give evidence in either procedural language shall be interpreted simultaneously into the other procedural language. Witness and expert testimony in a language other than English or Spanish shall be interpreted into the procedural languages as required.

12.9. 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.

12.10. 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 Tribunal's Documents Except the Award]

12.11. The Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish. Both language versions shall be equally authentic.

[For Tribunal's Award]

The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

13. Routing of Communications

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.

13.2. Neither party shall communicate with ICSID, the Tribunal, or its individual members, without copying the representatives of the other party, save for simultaneous submissions ordered by the Tribunal.

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:

Prof. Luca G. Radicati di
Brozolo
Email:
Luca.radicati@arblit.com

Mr. José Martínez de Hoz
Email:
jose.martinezdehoz@mhrlegal.com

Prof. Brigitte Stern
Email:
Brigitte.stern@jstern.org

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

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

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

14.1.1. submit by email to the Tribunal, the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading;¹ and

14.1.2. Three working days² following an electronic filing in accordance with §14.1.1 above, the Parties shall upload the pleading, with all the supporting documentation 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 in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the parties.

14.2. *[Intentionally left blank.]*

14.3. Also within one week following the electronic filing of the submission as provided in §14.1.1, the parties shall courier to each Member of the Tribunal at the addresses indicated at §14.4 below:

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

² A “working day” means Monday to Friday inclusive, not including public holidays applicable at the location of the Parties’ counsel (i.e., London and Buenos Aires, in the case of the Claimants, and Washington, D.C., in the case of the Respondent).

14.3.1. One hard copy of the pleading in A4 format for each Member of the Tribunal;
and

14.3.2. One USB drive for each Tribunal Member with a full copy of the entire submission, both in the original language and translations (when applicable), including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index of all supporting documentation submitted by the relevant party.

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

| | | |
|--|--|---|
| Prof. Luca G. Radicati di Brozolo ArbLit – Radicati di Brozolo Sabatini Benedettelli Vía Alberto da Giussano, n. 15 20145 Milan Italy Phone: +39 02 8425 4810 | Mr. José Martínez de Hoz Martinez De Hoz & Rueda Torre Fortabat Bouchard 680, Piso 19 C1106ABJ Buenos Aires Argentina Phone: (+54-11) 4114- 3017 | Prof. Brigitte Stern 7, rue Pierre Nicole CodeA1672 75005, Paris France Phone: +33 (0)1 40 46 93 79 |
|--|--|---|

14.5. Factual exhibits and 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 a cumulative index of all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex A**).

14.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal 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 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
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

15.1. The number and sequence of pleadings shall be as provided in § 15.2.

15.1.1. In the first exchange of submissions (Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.

15.1.2. In their second exchange of submissions (Reply and Rejoinder), the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, unless new facts that have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments.

15.1.3. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.

15.1.4. All written submissions shall be divided into consecutively numbered paragraphs.

15.2. The schedule shall be as follows:

15.2.1. The Claimants shall file a Memorial no later than 157 days from Procedural Order No.1.

15.2.2. Within 30 days after the date the Claimants file their Memorial, the Respondent shall inform the Claimants and the Tribunal as to whether it intends to raise objections to jurisdiction under ICSID Arbitration Rule 41(1) and wishes to request that all or some of these objections be heard separately from the merits of the case (*i.e.*, a request for bifurcation under ICSID Arbitration Rule 41(3)).

15.2.2.1. If the Respondent interposes separate jurisdictional objections as described above in §15.2.2, the Respondent shall file its objections no later than 67 days after the date the Claimants file their Memorial. If the Respondent decides to request the bifurcation of the proceedings to have all or some of its objections heard separately,

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the proceeding on the merits would be suspended until the Tribunal makes a decision on the request for bifurcation and the Claimants shall present their comments on the question of bifurcation of the proceedings no later than 21 days after the date the Respondent files its request for bifurcation. The Tribunal shall make its best efforts to decide within 21 days after the Claimants file their comments on the question of bifurcation whether all or some of Respondent's jurisdictional objections will be heard separately from the merits of the case. If the Tribunal decides to hear all or some of the objections separately from the merits, the Tribunal shall set a schedule for briefing such objections. If the Tribunal decides not to hear all or some of the objections separately from the merits, the Respondent shall file a Counter-Memorial no later than 100 days after the date the Tribunal issues its decision.

15.2.2.2. If the Respondent does not interpose separate jurisdictional objections as described above in §15.2.2, the Respondent shall file a Counter-Memorial no later than 229 days after the date the Claimants file their Memorial.

15.2.3. The Claimants shall file a Reply no later than 180 days after the date the Respondent files its Counter-Memorial.

15.2.4. The Respondent shall file a Rejoinder no later than 138 days after the date the Claimants file their Reply.

15.2.5. The Claimants shall file a Rejoinder on Respondent's jurisdictional objections and counterclaim no later than 64 days after the date the Respondent files its Rejoinder.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

16.1. The parties shall exchange requests for production of documents simultaneously, if any, no later than 21 days after the date the Respondent files its Counter-Memorial (each a "Request to Produce"). If the arbitration is organized into separate issues or phases (such as jurisdiction, preliminary determinations, liability, or damages), the Tribunal may, after consultation with the parties, schedule the submission of requests shall be recorded in a joint schedule in the form below. Such requests shall not be sent to the Tribunal or the ICSID Secretariat.

16.2. A Request to Produce shall contain:

16.2.1. a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and

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specific requested category of documents that are reasonably believed to exist (in the case of documents maintained in electronic form, the requesting party may, or the Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such documents in an efficient and economical manner);

16.2.2. a statement as to how the documents requested are relevant to the case and material to its outcome; and

16.2.3. a statement that the documents requested are not in the possession, custody, or control of the requesting party or a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such documents; and

16.2.4. a statement of the reasons why the requesting party assumes the documents requested are in the possession, custody, or control of another party.

16.3. The party to whom the Request to Produce is addressed shall produce to the other party within 30 days of receipt of a Request to Produce (and, if the Tribunal so orders, to the Tribunal) all of the requested documents in its possession, custody, or control as to which it makes no objection.

16.4. Each party shall state its response to each request and any objections to any request within 30 days after the parties exchange their Requests to Produce. Such responses and objections shall be recorded in line 5 of the joint schedule following the format below:

Redfern/Stern Schedule

| Document Request Number | 1 |
|---|----------|
| Identification of documents or category of documents requested | |
| Relevance and materiality according to Requesting Party | |

| | |
|---|--|
| Documents that are not in the party's possession | |
| Objections by disputing party to production of requested documents | |
| Reply | |
| Decision of the Tribunal | |

- 16.5. Each party shall respond to these objections within 14 days of receiving them. Such responses shall be recorded in line 6 of the schedule above. Each party shall provide the other party and the Tribunal with the completed schedule (in both Word and PDF formats).
- 16.6. The disclosure of documents under this Part shall be made electronically through a file sharing platform which can be accessed by counsel to the parties, in PDF format or some other similar format to which the parties may later agree. Each party shall provide the other party, on the date of the production, with an index of the documents that it is producing.
- 16.7. Documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this, or any subsequent, Procedural Order.
- 16.8. Other requests for the production of documents sought by either party, if any, shall be permitted only in exceptional circumstances and at the discretion of the Tribunal. The request must be substantiated with reasons. Nothing herein shall prevent a party from seeking voluntary production of documents from the other party prior to or following the dates set forth in this section.

16.9. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

17. Objections to Requests to Produce

17.1. The parties and the Tribunal may hold a conference call on the parties' objections to Requests to Produce. The Tribunal may also invite the relevant parties to consult with each other with a view to resolving the objections.

17.2. Where a party objects to the production of certain documents, the Tribunal shall make its best efforts to rule on the objections within 14 days following the requesting party's reply to the objections, or within 14 days following a conference call pursuant to §17.1 above (whichever date is later). Any such document shall be produced to the other party and, if the Tribunal so orders, to it.

17.3. A party shall produce the documents ordered by the Tribunal within 14 days of the ruling.

18. Submission of Documents

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

18.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and the Parties' respective Rejoinders. These additional documents, including witness statements and expert reports, may be submitted only insofar as the relevance of such additional evidence has arisen as a result of the adverse Party's preceding submission, or if the documents were procured during the document production phase after the Memorial and Counter-Memorial.

18.2. The documents shall be submitted in the manner and form set forth in §14 above.

18.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

18.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request, nor disclose the contents of any such documents beyond providing a general description of them.

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- 18.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 18.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 18.5. The documents shall be submitted in the following form:
- 18.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 18.5.2. 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, etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities, etc.
- 18.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 18.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 18.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 18.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 18.6. 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.
- 18.7. 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.
- 18.8. Demonstrative exhibits (meaning representations such as diagrams, charts, graphs, models and computer simulations that depict and explain evidence otherwise submitted) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and

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

19. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24

19.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

19.2. 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 §18.3).

19.3. Each witness statement and expert report shall be signed and dated by the witness, or expert presenting it.

19.4. Any person may present evidence as witness, including a Party or its officials, officers, employees or other representatives. For each witness, a sworn or affirmed witness statement shall be submitted to the Tribunal together with the relevant submission of the Party presenting the witness.

20. Submission by Non-Disputing Parties
CAFTA-DR Article 10.20.2

20.1. The Non-Disputing CAFTA-DR Parties shall be entitled to make oral and written submissions to the Tribunal within the meaning of Article 10.20.2. The Tribunal shall set the schedule for any submission from a Non-Disputing Party and the Parties shall have the opportunity to comment on such submission.

21. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

21.1. Two weeks following the Claimants' Rejoinder on Respondent's jurisdictional objections and counterclaim, each party will (i) identify the factual witnesses and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine, and (ii) as the case may be, a request for the Tribunal to permit the examination at the hearing of witnesses whose statement or report has been submitted by that Party. One week after the parties' notifications, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question, if any. The fact that a party does not call a witness or expert whose statement has been submitted with the other party's written submissions does not mean that it accepts the substance or content of the statement or expert opinion.

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- 21.2. Exceptionally, if a witness is unable to appear personally at the hearing on the merits for reasons of health or force majeure, the Tribunal may permit alternative arrangements (such as videoconference facilities), upon consultation with the parties.
- 21.3. If a witness whose appearance has been requested pursuant to §21.1 fails without a valid reason to appear for testimony at a hearing, the Tribunal shall disregard any witness statement related to that hearing by that witness unless, in exceptional circumstances, the Tribunal decides otherwise.
- 21.4. Witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Questions may also be put to them by any member of the Tribunal.
- 21.5. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). Witnesses shall also be asked to confirm their statement or report.
- 21.6. The procedure for examining witnesses and experts at the hearing shall be the following:
- 21.6.1. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.
 - 21.6.2. Fact witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes.
 - 21.6.3. Expert witnesses giving oral evidence may first give a presentation of the key points of their report either directly and/or through direct examination for no longer than 45 minutes.
 - 21.6.4. During direct examination, counsel who is examining the witness may not introduce new matters not already covered by the written statement or report, save in response to new matters raised in any of the Parties’ respective Rejoinders.
 - 21.6.5. Direct examination is followed by cross-examination by the other party, which may be followed by re-direct examination. The members of the Tribunal shall have the right to pose questions during or after the examination of any witnesses.
- 21.7. The scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report, (ii) impeachment of the witness unless for good cause shown the Tribunal agrees to a broader cross-examination and/or (iii) documents or facts about which the witness or expert has personal knowledge, provided that they are relevant to the dispute. Re-direct examination shall be limited to the subject of the cross-examination.
- 21.8. Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence unless the fact witness is

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also the party representative. Expert witnesses shall be allowed in the hearing room at any time.

21.9. Counsel may meet witnesses and potential witnesses to establish the facts, and assist with the preparation of witness statements and oral examinations.

21.10. Other matters regarding hearings shall be addressed at the pre-hearing organizational meeting.

22. Pre-Hearing Organizational Meetings
Arbitration Rule 13

22.1. A pre-hearing organizational meeting shall be held on a date not later than one month prior to the first day of the hearing determined by the Tribunal after consultation with the parties, by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

23. Hearings
Arbitration Rules 20(1)(e) and 32, and CAFTA-DR Article 10.21.2

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 in Washington, DC.

23.3. The date of the hearing was to be determined at a later stage. After consultation with the Parties, the Tribunal confirmed that the hearing would be scheduled for the week of 15 November 2021.

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. During the hearing, time not used by the Tribunal shall be allocated equally between the parties. In principle, time will be accounted for in accordance with the chess-clock method, with each Party having the right to allocate that time for opening statements, closing statements, and witness and expert examination as it deems appropriate.

23.6. Pursuant to CAFTA-DR Article 10.21.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the parties, the appropriate logistical arrangements.

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

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 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The parties will correct only the original language version of the transcripts (*e.g.* only the Spanish transcript of Spanish language testimony). The original language version of the transcript will be the only authoritative transcript for use in any post-hearing brief or other subsequent pleading or presentation. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the parties in the revised transcripts.

25. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

25.1. The Tribunal, in consultation with the parties, shall decide whether or not to order post-hearing briefs at an organizational meeting prior to the oral hearing or during the course of the oral hearing.

25.2. In accordance with Arbitration Rule 28(2), promptly after the closure of the proceeding, each party shall submit to the Secretary of the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

26. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); CAFTA-DR Article 10.21(1)

26.1. The parties consented to ICSID publication of the award and any order or decision issued in the present proceeding.

[signed]

Prof. Luca G. Radicati Di Brozolo
President of the Tribunal
6 August 2019
Amended 16 December 2019
Amended 26 June 2020
Amended 5 February 2021
Amended 18 February 2021

ANNEX A

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Index (which shall be attached to each submission).

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

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

| | |
|--|---|
| Witness Statements, Expert Reports, Legal Opinions | <i>For exhibits filed with the Witness Statement of [Maria Jones]</i> |
| | <i>MJ-0001</i> |
| | <i>MJ-0002</i> |
| | <i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i> |
| | <i>TK-0001</i> |
| | <i>TK-0002</i> |
| | <i>For exhibits filed with the Expert Report of [Lucia Smith]</i> |
| | <i>LS-0001</i> |
| | <i>LS-0002</i> |
| INDICES | Consolidated Index |
| | Index of Exhibits-C-#### to C-#### |
| | <i>Index of Exhibits-C-0001 to C-0023</i> |
| | Index of Legal Authorities-RLA-### to RLA-### |
| | <i>Index of Legal Authorities-RLA-0001 to RLA-0023</i> |
| OTHER APPLICATIONS | Name of Application-[Party] LANGUAGE |
| | <i>Preliminary Objections under Rule 41(5)-SPA</i> |
| | <i>Request for Bifurcation-ENG</i> |
| | <i>Request for Provisional Measures-[Respondent]-SPA</i> |
| | <i>Request for Production of Documents-[Claimant]-SPA</i> |
| | <i>Request for Stay of Enforcement-SPA</i> |
| | <i>Request for Discontinuance-[Claimant]-ENG</i> |
| | <i>Post-Hearing Brief-[Claimant]-SPA</i> |
| | <i>Costs Submissions-[Respondent]-ENG</i> |
| <i>Observations to Request for [XX]-[Claimant]-SPA</i> | |