

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Orazul International España Holdings S.L.

v.

Argentine Republic

(ICSID Case No. ARB/19/25)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Dr. Inka Hanefeld, President of the Tribunal

Mr. David R. Haigh QC, Arbitrator

Prof. Alain Pellet, Arbitrator

Secretary of the Tribunal

Ms. Anna Toubiana

Assistant to the Tribunal

Mr. Aaron de Jong

24 August 2020

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Introduction

The first session of the Tribunal was held on August 7, 2020, at 4:00 pm CET, by video conference. The session was adjourned at 7:58 pm CET.

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

Participating in the conference were:

Members of the Tribunal

Dr. Inka Hanefeld, President of the Tribunal
Mr. David R. Haigh QC, Arbitrator
Prof. Alain Pellet, Arbitrator

ICSID Secretariat:

Ms. Anna Toubiana, Secretary of the Tribunal

Assistant to the Tribunal:

Mr. Aaron de Jong

Participating on behalf of the Claimant:

Ms. Silvia Marchili (White & Case LLP)
Mr. Paul Friedland (White & Case LLP)
Mr. Ricardo Chirinos (White & Case LLP)

Participating on behalf of the Respondent:

Mr. Sebastián Antonio Soler (Subprocurador del Tesoro de la Nación)
Ms. Érica Elizabeth Gorbak (Directora Nacional de Asuntos y Controversias Internacionales Procuración del Tesoro de la Nación)
Ms. María Alejandra Etchegorry (Subdirectora Nacional de Asuntos y Controversias Internacionales Procuración del Tesoro de la Nación)
Mr. Juan Manuel Falabella (Dirección Nacional de Asuntos y Controversias Internacionales Procuración del Tesoro de la Nación)

At the first session, the Tribunal and the parties discussed the following:

- The draft of this Procedural Order as circulated by the Tribunal Secretary on June 19, 2020; and
- The parties' comments on such draft Procedural Order received on July 23, 2020, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree as well as the parties' respective proposals regarding the timetable (Annex A).

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Following the first session, on August 12, 2020, the Tribunal Secretary circulated a revised draft Procedural Order No. 1 and proposed Procedural Timetable produced by the Tribunal. On August 21, 2020, the parties transmitted to the Tribunal a joint proposal for the Procedural Timetable.

In light of the above, 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. The timetable is attached as **Annex A**.

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.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on June 10, 2020 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. Mr. David R. Haigh QC accepted his appointment as Arbitrator by the Claimant on November 26, 2019. Prof. Alain Pellet accepted his appointment as Arbitrator by the Respondent on December 25, 2019. Dr. Inka Hanefeld accepted her appointment as President of the Tribunal by the parties on June 10, 2020.

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 10, 2020.

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

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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.

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 after concertation of all Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence. If the matter is urgent, the President may decide procedural matters without consulting the other Members, provided that the parties are informed that the decision has been made in such a manner and subject to possible reconsideration of such decision by the full Tribunal at the request of a party.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period.
 - 5.3.1. If the Tribunal has not issued the award within six months after the final submission of the parties, the Tribunal will provide the parties with status updates every three months.

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- 5.3.2. If the Tribunal has not issued any other substantive decision (*e.g.*, a decision on jurisdiction or liability) within three months after the final submission of the parties, the Tribunal will provide the parties with status updates every month.
- 5.4. Without prejudice to §5.2 and §6.2, the President is authorized to issue Procedural Orders on behalf of the Tribunal, provided all Members of the Tribunal have been consulted and the decision has been taken by a majority of them.
- 5.5. The Tribunal's rulings on procedural matters will be communicated to the parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically by the Tribunal Secretary to the parties.

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 and the decision shall be taken by a majority of them. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, provided that the parties are informed that the decision has been made in such a manner and subject to possible reconsideration of such decision by the full Tribunal at the request of a party.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Anna Toubiana, 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. Anna Toubiana
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-4934
Fax: + 1 (202) 522-2615

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Email: atoubiana@worldbank.org
Paralegal name: Ms. Ivania Fernandez
Paralegal email: ifernandez1@worldbank.org

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

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

8. Appointment of Assistant to the Tribunal

8.1. By letter of June 19, 2020, the President of the Tribunal explained to the parties that she considered that it would assist the overall cost and time efficiency of the proceedings if the Tribunal had an Assistant. In the same letter, the President of the Tribunal proposed, with the approval of the other members of the Tribunal, that Mr. Aaron de Jong of the President's law firm, HANEFELD, be appointed as Assistant to the Tribunal. Mr. de Jong's *curriculum vitae* was distributed to the parties on that same date.

8.2. The President also set out the tasks which may be assigned to the Assistant and noted that the Assistant is subject to the same confidentiality obligations as the Members of the Tribunal. Mr. de Jong has signed a declaration to that effect, which was distributed to the parties by the ICSID Secretariat on June 29, 2020.

8.3. The parties agree to the appointment of Mr. de Jong as Assistant to the Tribunal and that he receive US\$ 100 for each hour of work performed in connection with the case or *pro rata*. He would also receive subsistence allowances and be reimbursed for his travel and other expenses in the limits prescribed by ICSID Administrative and Financial Regulation 14.

8.4. The contact information of the Assistant to the Tribunal is as follows:

Mr. Aaron de Jong
HANEFELD Rechtsanwälte Rechtsanwaltsgesellschaft mbH
Brooktorkai 20
20457 Hamburg
Germany
Email: dejong@hanefeld-legal.com

9. Representation of the Parties
Arbitration Rule 18

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

For Claimant

Paul Friedland
(pfriedland@whitecase.com)
Silvia M. Marchili
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(ricardo.chirinos@whitecase.com)
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(jessica.marroquin@whitecase.com)

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33131-2352

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Reception
New York, NY 10020

Paseo de la Castellana, 7
Madrid, Spain
28046

For Respondent

Carlos Alberto Zannini
Procurador del Tesoro de la Nación
Horacio Pedro Diez
Subprocurador del Tesoro de la Nación
Sebastián Antonio Soler
Subprocurador del Tesoro de la Nación
Érica Elizabeth Gorbak
Directora Nacional de Asuntos y
Controversias Internacionales
María Alejandra Etchegorry
Subdirectora Nacional de Asuntos y
Controversias Internacionales
Procuración del Tesoro de la Nación,
Posadas 1641
C1112ADC Buenos Aires
República Argentina
Email for electronic correspondence:
grupo_ciadi@ptn.gov.ar
Email for electronic file sharing platform:
ciadi-argentina@ptn.gov.ar

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 15 June 2020, ICSID requested that each party pay US\$ 200,000 to cover the initial costs of the proceeding. ICSID received the Claimant's payment on July 3, 2020 and the Respondent's payment on July 14, 2020.

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10.3. ICSID shall request further advances as needed. ICSID, in consultation with the Tribunal, shall make its best efforts to announce the request of further advance payments 60 days in advance. 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)

11.1. Washington D.C., United States shall be the place of the proceeding.

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

11.3. The Tribunal members may deliberate at any place and by any appropriate means it considers convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

12.1. English 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 it being understood that the ICSID Secretariat will promptly provide the Members of the Tribunal with an English translation, if this correspondence is in Spanish.

12.3. Any written requests, applications, pleadings, expert opinions, or witness statements, may be submitted in either procedural language, provided that a translation of such document to the other procedural language is filed within 14 calendar days thereafter. Any accompanying documentation may be submitted in either procedural language, provided that a translation of such document to the other procedural language is filed within 21 days thereafter.

12.4. If a document is lengthy and relevant only in part, it is sufficient to translate only such relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.

12.5. 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.

12.6. For ease of reference and to the extent possible, the parties shall paginate any translation of a document in the same way as the original language version.

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- 12.7. Simultaneous interpretation from one procedural language into the other procedural language shall be available during all hearings. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish languages shall be interpreted simultaneously into both procedural languages.
- 12.8. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require interpretation from any language other than English or Spanish.
- 12.9. 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.
- 12.10. Subject to §12.11 below, 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.
- 12.11. The Tribunal shall render the award and any other substantive decision (*e.g.*, a decision on jurisdiction or liability) in English and Spanish simultaneously. Both language versions shall be equally authentic.

13. Routing of Communications

Administrative and Financial Regulation 24

- 13.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 13.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal. The parties shall not copy the Tribunal in such emails.
- 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 once both parties' communications are received.
- 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.

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

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

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- 14.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading together with witness statements, expert reports, and an index of all supporting documentation.¹
- 14.2. By the fourth business day following the relevant filing date, the parties shall upload the pleading, witness statements, expert reports, and all supporting documentation (including exhibits and legal authorities) 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 filed in accordance with §12.3 above.
- 14.3. By the third business day following the electronic filing of the translation of the relevant submission, the parties shall courier, or send by regular mail, to each Member of the Tribunal at the addresses indicated at §14.4 below:

For Dr. Hanefeld:

one hard copy in (bound) A5 format of the English version of the entire submission, including the pleading, the witness statements, and expert reports together with the supporting documents (including legal authorities); and

one USB drive with the English version of the entire submission, including the pleading, the witness statements, and expert reports together with the supporting documents (including legal authorities).

For Mr. Haigh:

one hard copy in (bound) A5 format of the English version of the entire submission, including the pleading, the witness statements, and expert reports (excluding the supporting documents and legal authorities); and

one USB drive with the English version of the entire submission, including the pleading, the witness statements, and expert reports together with the supporting documents (including legal authorities).

For Prof. Pellet:

one hard copy in (bound) A4 format of the English version of the entire submission, including the pleading, and the witness statements (excluding expert reports, supporting documents and legal authorities);² and

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

² The hard copy submission shall be sent to Prof. Pellet by regular mail services.

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one USB drive with the English version of the entire submission, including the pleading, the witness statements, and expert reports together with the supporting documents (including legal authorities).

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

Dr. Inka Hanefeld HANEFELD Rechtsanwälte Rechtsanwaltsgesellschaft mbH Brooktorkai 20 20457 Hamburg Germany	Mr. David Haigh QC 2400, 525 – 8th Avenue S.W. Calgary, AB T2P 1G1 Canada	Prof. Alain Pellet 36 rue Bernard Buffet, Résidence Parc 17 (BAL 36) 75017 Paris France
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14.5. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.

14.6. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14.7. To the extent possible, electronic files of pleadings, witness statements, expert reports, and supporting documents shall be text searchable (*i.e.*, OCR, PDF or Word).

14.8. All electronic pleadings shall be accompanied by a cumulative index hyperlinked to 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.

14.9. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, the parties shall courier to the ICSID Secretariat at the address indicated at §7.2 above a USB drive containing an electronic copy of the entire case file with a consolidated hyperlinked index of all documents.

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 **Annex A** to this order.

15.2. In principle, a memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any

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additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions. A reply or rejoinder shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.

- 15.3. 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.

In their second exchange of submissions (Reply and Rejoinder), the parties shall limit themselves in essence 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.

- 15.4. 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.

- 15.5. Each written submission shall be divided into consecutively numbered paragraphs.

16. Submission of Evidence

Convention Articles 43 and 44; Administrative and Financial Regulation 30; Arbitration Rules 24 and 33-36

- 16.1. With the Memorial and Counter-Memorial the parties shall produce all the evidence upon which they wish to rely, including documentary evidence, written witness statements, and expert reports.

- 16.2. With the Reply and Rejoinder the parties may file additional documentary evidence, witness statements, and expert reports in essence in response to the evidence submitted with the adverse party's preceding submission.

- 16.3. The documents shall be submitted in the manner set forth in §14 above.

- 16.4. Without prejudice to §16.5 below, neither party shall submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that there is reasonable justification based on a reasoned written request followed by observations from the other party.

- 16.4.1. 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.

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- 16.4.2. 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 and submit counter-evidence.
- 16.5. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.6. Documents shall be submitted in the following form:
- 16.6.1. 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 letters “A RA” for factual exhibits and “AL RA” for legal exhibits containing authorities etc.
- 16.6.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “A RA 0001,” and “CL-001” and “AL RA 001” respectively. The numbering shall also indicate the language of the document: *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name.
- 16.6.3. Each Exhibit filed in hard copy shall have a divider with the Exhibit identification number on the tab.
- 16.6.4. Each Exhibit shall comprise one document only. Two or more documents shall be submitted as several Exhibits.
- 16.7. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.8. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.9. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence, and are solely based on information contained in the record. 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

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provide them in electronic and hard copy to the other party (two copies), the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the beginning of the respective presentation at the hearing and subsequently submit them in electronic format.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any witness statement or expert report 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 §16.4).
- 17.3. Each witness statement and expert report shall be signed and dated by the relevant witness or expert.

18. Examination of Witnesses

Arbitration Rules 35 and 36

- 18.1. Any person may present evidence as a witness, including a party or a party's officer, employee, or other representative.
- 18.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal in accordance with §17.1 above. A person who has not submitted a written witness statement together with the parties' pleadings, may provide testimony to the Tribunal only in exceptional circumstances and upon a showing of good cause, after submitting a written witness statement in accordance with §17.2 above. If these conditions are met, the other party shall be given an opportunity to respond to such testimony.
- 18.3. In accordance with §16.1 above, each party will submit its written witness statements together with its written submissions. The written witness statements shall be numbered independently from other documents and properly identified. If a party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second."
- 18.4. Written witness statements shall be submitted in their original language. In accordance with §14 above, the parties shall submit a translation of the witness statement together with the translated version of the relevant submission.
- 18.5. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations provided

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this does not alter the witness's own genuine perception of the facts to which his/her testimony relate.

- 18.6. Eight weeks prior to the hearing, each party shall inform the other party and the Tribunal which witnesses who have submitted witness statements on behalf of the other party it wishes to examine at the hearing.
- 18.7. The Tribunal shall indicate the witnesses not called by the parties whom it wishes to examine at the hearing, if any, within two weeks following the parties' notifications referred to in §18.6.
- 18.8. Witnesses that are not called by the other party or summoned by the Tribunal in accordance with §18.6 and 18.7 above shall not testify at the hearing. However, a party that wishes to hear a witness although not called for cross-examination under § 18.6 may within one week following the parties' notifications referred to in § 18.6 issue a reasoned request to the Tribunal which will then decide on the request.
- 18.9. Each party shall be responsible for summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.10. The facts contained in the written statement of a witness submitted by a party shall not be deemed established or accepted by the other party by the sole fact that no cross-examination has been requested. A party that does not call for direct examination a particular witness whose evidence has been submitted by that party, shall not be deemed thereby to have withdrawn the evidence given in the relevant witness statement. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.11. Each party shall be responsible for the practical arrangements, cost, and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.12. The Tribunal may summon to appear as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the parties, provided the parties are given sufficient advance notice and an opportunity to respond to such testimony.
- 18.13. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if it is satisfied that (i) there was a compelling reason for the first failure to appear and that the testimony of the witness is relevant, (ii) the testimony of the witness appears to be relevant to the adjudication of the dispute, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.

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- 18.14. If the circumstances so justify, the Tribunal may allow a witness to appear and be examined by videoconference and will issue appropriate directions upon consultation with the parties.
- 18.15. The Tribunal may consider the written statement of a witness who provides a valid reason, to the Tribunal's satisfaction, for failing to appear when summoned to a hearing having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 18.16. As a rule, and subject to other arrangements during the pre-hearing telephone conference, witnesses shall be examined prior to experts, the Claimant's witnesses being examined prior to the Respondent's witnesses.
- 18.17. At the hearing, the examination of each witness shall proceed as follows:
- a) The party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after that witness' written statement was signed (direct examination). In principle, direct examination shall be brief (e.g., not exceed 10 minutes);
 - b) The other party may then cross-examine the witness about relevant facts within the witness' knowledge with respect to the witness statement but not necessarily limited to facts addressed in the witness statement;
 - c) The party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination;
 - d) The Tribunal may examine the witness at any time, either before, during, or after examination by one of the parties;
 - e) The Tribunal may order two or more witnesses to be examined concurrently (witness conferencing).
- 18.18. A witness shall not be present in the hearing room during oral testimony and arguments, read the transcript of oral testimony or argument, listen to or watch any audio or video recording of the oral arguments or oral testimony, or receive updates, reports, or any information from a party, its counsel, or other witnesses or experts as to what transpires at the hearing until all witnesses have been examined. This limitation does not apply to experts. Party representatives may be present during opening submissions, unless they are witnesses.
- 18.19. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

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- a) Limit the right of a party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
- b) Direct that a witness be recalled for further examination at any time.

19. Experts

Arbitration Rules 35 and 36

- 19.1. Each party may retain and produce evidence of one or more experts.
- 19.2. 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 and conclusions of any such expert, and shall give the parties an opportunity to submit observations to any report issued by such expert. The Tribunal may, on its own initiative or at the request of any party, take oral evidence of such expert(s) and the parties shall have the opportunity to be present and examine the expert.
- 19.3. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 19.4. Except as otherwise provided below, the rules set forth in §18 above shall apply by analogy to the evidence of party- and Tribunal-appointed experts.
 - 19.4.1. In principle, direct examination of experts shall be brief (*e.g.*, not exceed 1 hour).
 - 19.4.2. The Tribunal or the party that has retained the expert may request such expert to give a brief presentation (*e.g.*, for of up to 1 hour) before the start of their cross-examination. Any such presentation shall count towards the time limit for direct examination referred to in §19.4.1 above.
- 19.5. As a rule, and subject to other arrangements during the pre-hearing conference, experts shall be examined at the hearing by topic, with Claimant's experts being examined prior to Respondent's experts in each case.

20. IBA Rules on the Taking of Evidence

- 20.1. Without being bound by such rules, the Tribunal may look for guidance to the IBA Rules for the Taking of Evidence in International Arbitration (2010 version).

21. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 21.1. A pre-hearing organizational meeting shall be held no later than six weeks prior to the hearing. It shall comprise a teleconference between the Tribunal, or its President, and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including, if necessary, the modality of interpretation and transcription) in preparation for the hearing.
- 21.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

22. Hearings

Arbitration Rules 20(1)(e) and 32

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the parties. An in-person hearing shall be held at a place to be determined in accordance with §11 above.
- 22.3. The hearing shall take place on the dates set forth in **Annex A** and in any event no earlier than nine weeks after the filing of the last written submission.
- 22.4. The Members of the Tribunal shall endeavor to reserve at least one day before and two days after the hearing to determine the next steps and to hold deliberations.
- 22.5. In principle, the parties will have an equal time allocation to examine witnesses and experts at the hearing, subject to adjustments if there is a severe imbalance in the number of cross-examinations or if due process so requires.
 - 22.5.1. The specific allocation of time for hearings shall be made closer to the holding of the hearing, in consultation with the parties.
 - 22.5.2. The Secretary of the Tribunal will keep a chess clock and advise the parties the length of time used and the amount of time remaining at the end of each morning and afternoon session.
 - 22.5.3. Without prejudice to other applicable time-limits in accordance with this Procedural Order, and within the time-limits that may be fixed by the Tribunal, each party shall decide the time that such party will allot to the examination of witnesses and experts.

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22.6. The Tribunal shall circulate to the parties a list of specific questions or issues that it would like the parties to address at the hearing six weeks before the latter starts. The Tribunal's list of specific questions or issues is for guidance purposes only. The parties may decide to address at the hearing other issues not included in such list or not to address any of the specific questions or issues.

22.7. Hearings shall be closed to the public.

23. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

23.2. Verbatim transcript(s) in both procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. The verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

23.3. The parties shall agree on any corrections to the transcripts within 30 calendar days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts ("revised transcripts"). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

24.1. In consultation with the parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. In the affirmative, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. Post-hearing briefs shall be limited to addressing the remaining issues that still divide the parties after the hearings as well as any issues that the Tribunal may request the parties to address.

24.2. The Tribunal will issue directions on the parties' statements of costs at the end of the hearing.

25. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

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- 25.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

[signed]

Dr. Inka Hanefeld
President of the Tribunal
Date: 24 August 2020

ANNEX A
PROCEDURAL TIMETABLE

Scenario 1: No Preliminary Objections or Preliminary Objections without Request for Bifurcation

Description	Party / Tribunal	Date
First Session	All	Friday, 7 August 2020
Memorial	Claimant	Tuesday, 15 September 2020
Counter-Memorial on the Merits and Memorial on Preliminary Objections	Respondent	Wednesday, 13 January 2021
Claimants' Reply on the Merits and Counter-Memorial on Preliminary Objections	Claimant	Tuesday, 13 April 2021
Respondent's Rejoinder on the Merits and Reply on Preliminary Objections	Respondent	Monday, 12 July 2021
Claimant's Rejoinder on Preliminary Objections	Claimant	Thursday, 26 August 2021
Witness notification for cross-examination	Claimant and Respondent	Monday, 6 September 2021
Request to hear witnesses not called for cross-examination	Claimant and Respondent	Monday, 13 September 2021
Notify the parties of any additional witnesses or experts who should be summoned to the hearing	Tribunal	Monday, 20 September 2021

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Description	Party / Tribunal	Date
Circulates list of specific questions or issues for parties to address at the hearing	Tribunal	Monday, 20 September 2021
Pre-Hearing Organizational Meeting	All	Monday, 20 September 2021
Hearing on Preliminary Objections and Merits	All	Monday, 1 November 2021 to Tuesday, 16 November 2021
Corrections to Transcripts	Claimant and Respondent	Thursday, 16 December 2021

Scenario 2: Preliminary Objections with Request for Bifurcation

Description	Party / Tribunal	Date
First Session	All	Friday, 7 August 2020
Memorial	Claimant	Tuesday, 15 September 2020
Memorial on Preliminary Objections and Request for Bifurcation	Respondent	Monday, 16 November 2020
Observations on Request for Bifurcation	Claimant	Monday, 14 December 2020
Decision on Request for Bifurcation	Tribunal	Monday, 11 January 2021
Scenario 2.1: If Bifurcation Granted		
Counter-Memorial on Preliminary Objections	Claimant	Friday, 12 March 2021
Reply on Preliminary Objections	Respondent	Monday, 26 April 2021
Rejoinder on Preliminary Objections	Claimant	Thursday, 10 June 2021
Witness notification for cross-examination	Claimant and Respondent	Monday, 21 June 2021
Request to hear witnesses not called for cross-examination	Claimant and Respondent	Monday, 28 June 2021
Notify the parties of any additional witnesses or experts	Tribunal	Monday, 5 July 2021

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Description	Party / Tribunal	Date
who should be summoned to the hearing		
Pre-Hearing Organisational meeting	All	Monday, 5 July 2021
Hearing on Preliminary Objections	All	Monday, 16 August 2021 to Wednesday, 18 August 2021
Corrections to Transcripts	Claimant and Respondent	Friday, 17 September 2021
Decision on Preliminary Objections	Tribunal	Tuesday, 16 November 2021
2.1.1 If Preliminary Objections Rejected or Deferred to the Merits		
Counter-Memorial on the Merits	Respondent	Monday, 14 February 2022
Reply on the Merits	Claimant	Friday, 15 April 2022
Rejoinder on the Merits	Respondent	Tuesday, 14 June 2022
Witness notification for cross-examination	Claimant and Respondent	Monday, 27 June 2022
Request to hear witnesses not called for cross-examination	Claimant and Respondent	Monday, 4 July 2022
Notify the parties of any additional witnesses or experts who should be summoned to the hearing	Tribunal	Monday, 11 July 2022

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Description	Party / Tribunal	Date
Circulates list of specific questions or issues for parties to address at the hearing	Tribunal	Monday, 11 July 2022
Pre-hearing Organizational Meeting	All	Monday, 11 July 2022
Hearing on Merits	All	Monday, 22 August 2022 to Tuesday, 6 September 2022
Corrections to Transcripts	Claimant and Respondent	Thursday, 6 October 2022
Scenario 2.2: If Bifurcation Denied		
Respondent's Counter-Memorial on the Merits	Respondent	Tuesday, 27 April 2021
Claimants' Reply on the Merits and Counter-Memorial on Preliminary Objections	Claimant	Monday, 26 July 2021
Respondent's Rejoinder on the Merits and Reply on Preliminary Objections	Respondent	Monday, 25 October 2021
Claimant's Rejoinder on Preliminary Objections	Claimant	Thursday, 9 December 2021
Witness notification for cross-examination	Claimant and Respondent	Monday, 20 December 2021
Request to hear witnesses not called for cross-examination	Claimant and Respondent	Monday, 27 December 2021
Notify the parties of any additional witnesses or experts	Tribunal	Monday, 3 January 2022

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Procedural Order No. 1 – Annex A

Description	Party / Tribunal	Date
who should be summoned to the hearing		
Circulates list of specific questions or issues for parties to address at the hearing	Tribunal	Monday, 3 January 2022
Pre-Hearing Organizational Meeting	All	Monday, 3 January 2022
Hearing on Preliminary Objections and Merits	All	Monday, 14 February 2022 to Tuesday, 1 March 2022
Corrections to Transcripts	Claimant and Respondent	Thursday, 31 March 2022