

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Sodexo Pass International SAS
Claimant

v.

Hungary
Respondent (Applicant on Annulment)

(ICSID Case No. ARB/14/20)
Annulment Proceeding

PROCEDURAL ORDER NO. 1

Members of the ad hoc Committee

Mr. Andrés Jana Linetzky, President of the *ad hoc* Committee
Mr. Ucheora Onwuamaegbu, Member of the *ad hoc* Committee
Dr. Jacomijn van Haersolte-van Hof, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Leah W. Njoroge

September 6, 2019

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Introduction

The first session of the *ad hoc* Committee (Committee) was held on September 6, 2019, at 7:00 a.m. (Washington, D.C. time) by telephone conference. The session was adjourned at 7:20 a.m. (Washington, D.C. time).

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

Participating in the conference were:

Members of the *ad hoc* Committee

Mr. Andrés Jana Linetzky, President of the *ad hoc* Committee

Mr. Ucheora Onwuamaegbu, Member of the *ad hoc* Committee

Dr. Jacomijn van Haersolte-van Hof, Member of the *ad hoc* Committee

ICSID Secretariat:

Ms. Leah W. Njoroge, Secretary of the *ad hoc* Committee

Participating on behalf of Sodexo Pass International SAS:

Mr. Philippe Cavalieros, Simmons & Simmons LLP

Ms. Christina Mangani, Simmons & Simmons LLP

Mr. Emmanuel Favier, General Counsel, Sodexo Pass International SAS

Participating on behalf of Hungary:

Mr. Michael Ostrove, DLA Piper France LLP

Mr. Théobald Naud, DLA Piper France LLP

Mr. Dávid Kőhegyi, DLA Piper Posztl, Nemescsói, Györfi-Tóth & Partners Law Firm

Ms. Zsófia Deli, DLA Piper Posztl, Nemescsói, Györfi-Tóth & Partners Law Firm

The Committee and the parties considered the following:

- The Draft Agenda circulated by the Secretary of the Committee on August 9, 2019 as amended by the parties on September 3, 2019.
- The Draft Procedural Order circulated by the Secretary of the Committee on August 9, 2019; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on September 3, 2019, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19, 20 and 53, this first Procedural Order sets out the Procedural Rules that the parties have agreed and that the Committee has determined shall govern this annulment proceeding. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

2. Constitution of the Committee and the Committee Members' Declarations

Convention Article 52(3); Arbitration Rules 6 and 52

- 2.1. The Committee was constituted on July 30, 2019, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that no party has any objection to the appointment of any Member of the Committee.
- 2.2. The Members of the Committee 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 July 30, 2019.
- 2.3. The Members of the Committee confirmed that they have sufficient availability during the next 18 months to dedicate to this case.

3. Fees and Expenses of the Committee Members

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

- 3.1. The fees and expenses of each Member of the Committee 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 Member of the Committee receives:

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- (i) 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
 - (ii) subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Committee shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred by the Members of the Committee 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 Committee constitutes a quorum for its sittings.
5. **Rulings of the Committee**
Convention Article 48(1); Arbitration Rules 16, 19 and 20
- 5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.
- 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 Committee.
- 5.3. The Committee will draft all rulings, including its final decision, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Committee will provide the parties with status updates every three months.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Committee.
- 5.5. Procedural rulings shall be made after the parties have been afforded an adequate opportunity to present their views in relation thereto.
- 5.6. The Committee's rulings on procedural matters may be communicated to the parties by the Secretary of the Committee in the form of a letter or email.

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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 Committee. 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 Committee.

7. **Secretary of the Committee**
Administrative and Financial Regulation 25

- 7.1. The Secretary of the Committee is Ms. Leah W. Njoroge, Legal Counsel, ICSID, or such other person as ICSID may notify the Committee 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. Leah W. Njoroge
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7727
Fax: + 1 (202) 522-2615
Email: Injoroge@worldbank.org
Paralegal email: eminina@worldbank.org

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

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

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8. Representation of the Parties
Arbitration Rule 18

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

For Sodexo Pass International SAS

Mr. Philippe Cavalieros
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- 8.2. Sodexo Pass International SAS will be designated as the Claimant and Hungary will be designated as the Respondent, as in the original arbitration proceeding. The party that filed the Application for Annulment, Hungary, may also be referred to as the Applicant.

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

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- 9.1. In accordance with Administrative and Financial Regulation 14(3)(e), the Applicant shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the costs following the Committee's constitution. This is without prejudice to the Committee's final decision as to the allocation of costs.
- 9.2. By letter of August 1, 2019, the Centre requested the Applicant to make an advance payment of US\$ 200,000, to cover the initial costs of the proceeding. The Centre received the Applicant's payment on September 2, 2019.
- 9.3. ICSID shall request from the Applicant further advances as needed. Such requests shall be accompanied by a detailed interim statement of account. The final financial statement will include a breakdown of each member of the Committee's fees and expenses.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Committee may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Committee may deliberate at any place it considers convenient.

11. Procedural Language, Translation and Interpretation

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

- 11.1. English is the procedural language of the annulment proceeding.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Committee may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

11.5. The costs of any interpreter(s) will be paid from the advance payments made by the Applicant, without prejudice to the decision of the Committee as to which party shall ultimately bear those costs.

12. **Routing of Communications**

Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Committee.

12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Committee Secretary, who shall send them to the Committee.

12.3. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing party and the Committee.

12.4. The Committee Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Committee.

13. **Number of Copies and Method of Filing of Parties' Pleadings**

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d), 23 and 53

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

(i) submit by email to the Committee Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an updated index of all the supporting documentation attached to the pleading (including exhibits and legal authorities),¹ and

(ii) upload the pleading with all the supporting documentation and the corresponding updated index to the file sharing platform that will be created by ICSID for purposes of this case.

13.2. Within three business days following the electronic filing, the parties shall courier to the Committee Secretary:

13.2.1. one unbound hard copy in A4/Letter format² of the entire submission³,

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

² The A4/Letter format is required for ICSID's archiving.

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

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including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including legal authorities) and the updated index;

- 13.2.2. two USB drives, with full copies of the entire submission, including the pleading, the witness statements, expert reports, legal authorities and an updated hyperlinked index of all the supporting documentation.
- 13.3. Also within three business days following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Committee at the addresses indicated at §13.4 below:
- 13.3.1. one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and an updated hyperlinked index of all the supporting documentation.
- 13.4. The addresses of the Committee Members are as follows:
- | | | |
|---|---|--|
| Mr. Andrés Jana Linetzky
Bofill Mir & Alvarez Jana
Abogados
Av. Andrés Bello 2711
Piso 8, Las Condes
7550611 Santiago
Chile
Tel. +56 22 757 7616 | Mr. Ucheora Onwuamaegbu
Arent Fox LLP
1717 K Street, NW
Washington D.C. 20006
USA
Tel. +1 202 350 3689 | Dr. Jacomijn van Haersolte-van Hof
Delistraat 27
2582 VX The Hague
The Netherlands
Tel. +44 78 2411 7167 |
|---|---|--|
- 13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Committee.
- 13.6. If possible, electronic versions of submissions shall be text searchable (i.e., OCR PDF or Word).
- 13.7. Pleadings shall be accompanied by an updated index to the supporting documentation. To the extent possible, the index shall be hyperlinked to those documents. The index shall indicate the document number, the pleading with which it was submitted.
- 13.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Committee, or at any other time the Committee or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Committee a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities

and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents.

- 13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is submitted to the Secretary of the Committee.
- 13.10. A filing or any submission shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 29, 31 and 53

- 14.1. The number and sequence of pleadings is determined in the Timetable attached as Annex A.

15. Evidence: Supporting Documentation

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

- 15.1. 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 Rejoinder.
- 15.2. Given the nature of an annulment proceeding, the Committee expects that the parties will primarily refer to the evidentiary record of the arbitration proceeding and it does not expect to receive new witness statements or expert reports.
- 15.3. In principle, no new evidence shall be admitted in this proceeding. Should either party wish to introduce new documents or other evidence, other than legal authorities or expert reports, that party shall file a request to the Committee to that effect. The requesting party may not annex such evidence to the request. The Committee will promptly decide on the admissibility of these new documents and/or evidence, after hearing from the other party.
- 15.4. Any documents introduced as exhibits in this annulment proceeding shall be labeled with numbers, and shall be organized in a clear order:
 - 15.4.1 Exhibits and legal authorities already included in the evidentiary record of the arbitration proceeding shall be labeled and referred to using the same numbering as in the arbitration proceeding.
 - 15.4.2 Accordingly, for the purposes of numbering the exhibits and legal authorities, and regardless of which of the parties is the Applicant in the

present case, Applicant's exhibits shall be submitted in PDF format (**include reference to the numbering used in the arbitration proceeding** e.g. "R-001" for factual exhibits (see **attached Annex B**) and "RLA-001" for legal exhibits containing authorities)(see **attached Annex C**). Claimant's exhibits shall also be submitted in PDF format (**include reference to the numbering used in the arbitration proceeding** e.g. "C-001" for factual exhibits (see **attached Annex B**) and "CLA-001" for legal exhibits containing authorities (see **attached Annex C**)).

- 15.4.3 Each exhibit shall have a divider with the exhibit identification number on the tab.
 - 15.4.4 New exhibit and legal authority numbering shall continue from the numbering used in the underlying arbitration. Each party shall number the accompanying documentation consecutively throughout the entire annulment proceeding and shall number the paragraphs of each of its written pleadings (see **Sample Lists attached as Annexes B and C**).
 - 15.4.5 Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Committee deems the certification necessary.
 - 15.5. The parties shall include all of the evidence on which they intend to rely, including documents, legal authorities, written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.
 - 15.6. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
16. Examination of Witnesses and Experts
Arbitration Rules 35, 36
- 16.1. Examination of witnesses and experts will be decided by the parties once submissions have been filed.
17. Pre-Hearing Organizational Meetings
Arbitration Rule 13

17.1. A pre-hearing organizational meeting shall be held at a date determined by the Committee after consultation with the parties by telephone between the Committee, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

18. **Hearings**

Arbitration Rules 20(1)(e), 32 and 53

- 18.1. The oral procedure shall consist of oral arguments and exceptionally, include the examination of witnesses and experts, if any.
- 18.2. The hearing shall be held at a place to be determined in accordance with §10 above.
- 18.3. The date of the hearing is determined in the Timetable attached as Annex A.
- 18.4. The Members of the Committee shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 18.5. For the allocation of time, the parties agree to a chess-clock approach, with the number of hours to be addressed at a later stage.
- 18.6. Hearings shall be closed to the public.

19. **Records of Hearings and Sessions**

Arbitration Rules 13 20(1)(g) and 53

- 19.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Committee Members.
- 19.2. 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 Committee, 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 Committee on a same-day basis.
- 19.3. The parties shall agree on any corrections to the transcripts within 21 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

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

- 20.1. Whether there will be post-hearings briefs, and if so, their content and format, will be addressed at the close of the hearing.

21. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4) and 53

- 21.1. The ICSID Secretariat will publish the decision on annulment and any order or decision in the present case where both parties consent to publication. Otherwise, ICSID will publish excerpts of the decision on annulment pursuant to Arbitration Rule 48(4) and include bibliographic references to rulings made public by other sources on ICSID's website and in its publications.

22. Other Matters: Stay of Enforcement

- 22.1. The Committee ordered the continuation of the provisional stay of enforcement of the Award as notified to the parties by the Secretary General in the Notice of Registration dated May 31, 2019, until the Committee issues its decision on Hungary's application for Stay of Enforcement of the Award.
- 22.2. The number and sequence of pleadings concerning the stay of enforcement of the Award is determined in the Timetable attached as Annex A.

[signed]

Mr. Andrés Jana Linetzky
President of the Committee
Date: September 6, 2019

Annex A – Procedural Calendar

Procedural Step	By	Date
First Session	All	September 6, 2019
Submission in support of Hungary's application for the Stay of Enforcement of the Award	Applicant	September 27, 2019
Response to Hungary's application for the Stay of Enforcement of the Award	Claimant	October 18, 2019
Reply on Hungary's application for the Stay of Enforcement of the Award	Applicant	November 8, 2019
Rejoinder on Hungary's application for the Stay of Enforcement of the Award	Claimant	November 29, 2019
Decision on Stay of Enforcement of the Award	Committee	TBD
Memorial on Annulment	Applicant	December 20, 2019
Counter-Memorial on Annulment	Claimant	March 20, 2020
Reply on Annulment	Applicant	May 20, 2020
Rejoinder on Annulment	Claimant	July 24, 2020
Pre-Hearing Organizational Meeting	All	TBD
Hearing on Annulment	All	Tuesday, November 17 and Wednesday, November 18, 2020
Post-Hearing Submissions	Both Parties	TBD

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Costs Submissions	Both Parties	TBD
Decision on Annulment	Committee	TBD

Annex B – List of Exhibits

List of Exhibits Description	Exhibit Number Annulment Proceeding	Exhibit Number Original Proceeding (as reference only)
Exhibit ABC	C-001	C-034
Exhibit XYC	R-002	R-101

Annex C – List of Legal Authorities

List of Legal Authorities Description	Legal Authorities Number Annulment Proceeding	Legal Authorities Number Original Proceeding (as reference only)
Legal Authority ABC	CLA-001	CLA-034
Legal Authority XYC	RLA-002	RLA-101