

PCA Case No. 2012-07

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENTS BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE
ARAB REPUBLIC OF EGYPT ON THE PROMOTION AND PROTECTION OF
INVESTMENTS RESPECTIVELY DATED 5 MAY 1980 AND 3 MARCH 2004 AND THE
UNCITRAL ARBITRATION RULES 1976**

- between -

MOHAMED ABDEL RAOUF BAHGAT

(“Claimant”)

- and -

THE ARAB REPUBLIC OF EGYPT

(“Respondent,” and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 1

ARBITRAL TRIBUNAL:

Professor Rüdiger Wolfrum (Presiding Arbitrator)

Professor W. Michael Reisman

Professor Francisco Orrego Vicuña

Registry:

Permanent Court of Arbitration

Taking into account the discussions and agreements reached at the Preliminary Procedural Hearing on 29 August 2012, as well as an agreement on procedural issues reached by the Parties and submitted to the Tribunal prior to the Preliminary Procedural Hearing, the Tribunal issues the following Procedural Order:

1. Communications

- 1.1 The provisions set out in Article 10 of the Terms of Appointment (“ToA”) shall continue to apply throughout these proceedings.
- 1.2 The Parties shall deliver electronic copies of their written pleadings, including memorials, witness statements, and expert reports, directly to the Tribunal, with a copy to the PCA. The Parties shall deliver four printed copies of their complete submissions, including exhibits, to the PCA for onward delivery to the Tribunal and for the PCA’s record.

2. Timetable

- 2.1 The following timetables shall apply, without prejudice to any possible adjustments as may be granted by the Tribunal.

Interim Measures Phase

- 2.2 By 19 September 2012, the Claimant shall file his Request for Interim Measures together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on.
- 2.3 By 17 October 2012, the Respondent shall file its Answer to the Claimant’s Request for Interim Measures together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on.
- 2.4 By 31 October 2012, the Claimant shall file his Interim Measures Reply with any further evidence (documents, witness statements, expert statements) but only in rebuttal to the Respondent’s Answer to the Claimant’s Request for Interim Measures.
- 2.5 By 21 November 2012, the Respondent shall file its Interim Measures Rejoinder with any further evidence (documents, witness statements, expert statements) but only in rebuttal to the Claimant’s Interim Measures Reply.
- 2.6 On 1 December 2012, from 10:00 to 13:00 Hague time, a Hearing on Interim Measures shall be held by telephone conference.
- 2.7 By 21 December 2012, the Tribunal will issue an Award on Interim Measures.

Bifurcation Phase

- 2.8 By 26 October 2012, the Claimant shall file its Statement of Claim (Memorial) together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on. The Statement of Claim is intended to be the Claimant's principal written pleading on facts and law.
- 2.9 By 26 January 2013, the Respondent shall file its Request for Bifurcation together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on.
- 2.10 By 26 February 2013, the Claimant shall file his Reply to the Respondent's Request for Bifurcation together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on.
- 2.11 On 4 May 2013, a Hearing on Bifurcation shall be held in London, the UK.
- 2.12 By 3 June 2013, the Tribunal shall issue a Decision on Bifurcation.

Jurisdiction Phase, if the Tribunal grants the Request for Bifurcation

- 2.13 By 15 July 2013, the Respondent shall file its Memorial on Jurisdiction together with all evidence (documents, witness statements, expert statements) and legal authorities it wishes to rely on.
- 2.14 By 30 August 2013, the Claimant shall file his Counter-Memorial on Jurisdiction together with all evidence (documents, witness statements, expert statements) and legal authorities it wishes to rely on.
- 2.15 By 7 October 2013, the Respondent shall file its Reply Memorial on Jurisdiction together with further evidence (documents, witness statements, expert statements) and legal authorities but only in rebuttal to the Claimant's Counter-Memorial on Jurisdiction.
- 2.16 By 5 November 2013, the Claimant shall file its Rejoinder on Jurisdiction together with further evidence (documents, witness statements, expert statements) and legal authorities but only in rebuttal to the Respondent's Reply Memorial on Jurisdiction.
- 2.17 On 18 and 19 November 2013, a Hearing on Jurisdiction shall be held in the Peace Palace, The Hague, the Netherlands.
- 2.18 In the event that the Tribunal finds jurisdiction, a further procedural schedule shall be agreed upon at a procedural hearing following the Tribunal's Award on Jurisdiction.

Jurisdiction and Merits Phase, if the Tribunal decides against granting the Request for Bifurcation

- 2.19 In the event that the Tribunal decides against granting the Request for Bifurcation, a further procedural schedule shall be issued by the Tribunal after consulting the Parties.

Jurisdiction and Merits Phase, if the Respondent does not file the Request for Bifurcation

- 2.20 By 26 October 2012, the Claimant shall file his Statement of Claim (Memorial) together with all evidence (documents, witness statements, expert statements, legal authorities) it wishes to rely on. The Statement of Claim is intended to be the Claimant's principal written pleading on facts and law.
- 2.21 By 26 January 2012, the Respondent shall file its Statement of Defence (Counter-Memorial) together with all evidence (documents, witness statements, expert statements) and legal authorities it wishes to rely on. The Statement of Defence is intended to be the Respondent's principal written pleading on facts and law.
- 2.22 By 4 February 2013, the Parties may request disclosure of documents from the other Party (without a copy to the Tribunal), using the model in Appendix A to this Agenda.
- 2.23 By 25 February 2013, the receiving Party either produces the requested documents or replies by a reasoned objection to the other Party (without a copy to the Tribunal).
- 2.24 By 20 March 2013, the Parties try to agree regarding the documents to which objections have been made.
- 2.25 By 27 March 2013, insofar as they cannot agree, the Parties may submit reasoned applications to the Tribunal to order production of the documents.
- 2.26 By 10 April 2013, the Tribunal shall endeavour to decide on such applications.
- 2.27 By 24 April 2013, the Parties shall produce documents as ordered by the Tribunal.
- 2.28 By 24 June 2013, the Claimant shall file its Reply, with any further evidence (documents, witness statements, expert statements) but only in rebuttal to the Respondent's Statement of Defence (or regarding new evidence from the document production procedure).
- 2.29 By 24 August 2013, the Respondent shall file its Rejoinder, with any further evidence (documents, witness statements, expert statements) and legal authorities but only in rebuttal to the Claimant's Reply (or regarding new evidence from the document production procedure).
- 2.30 Thereafter, no new evidence may be submitted, unless agreed between the Parties or expressly authorised by the Tribunal provided that the Tribunal grants the other party the

right to respond to such evidence and submit counter-evidence in accordance with procedural equality.

- 2.31 By 2 September 2013, the Parties will submit notifications of the witnesses and experts presented by themselves or by the other Party whom they wish to examine at the Hearing and a chronological list of all exhibits with indications where the respective documents can be found in the file.
- 2.32 By 1 October 2013, the experts appointed by the Parties shall conclave and produce a joint report listing agreed and contentious issues and summarising any points of contention.
- 2.33 On 4 November 2013, a Pre-Hearing Conference Call shall be held to discuss, *inter alia*, the dates by which the Parties shall agree and submit a joint Hearing Bundle in A5, double-sided format, as well as the dates by which the Parties shall exchange Skeleton Arguments and provide the same to the Tribunal.
- 2.34 As soon as possible thereafter, the Tribunal will issue a Procedural Order regarding details of the Hearing.
- 2.35 The Hearing shall take place in the Peace Palace, The Hague, the Netherlands, from 18 to 22 November 2013.
- 2.36 At the end of the Hearing, the Tribunal will consult with the Parties on whether and by when the Parties shall submit post-hearing briefs and claims for costs.

3. Evidence

- 3.1 The Parties and the Tribunal may use, as additional guidelines, the IBA Rules on the Taking of Evidence in International Arbitration (2010), subject to any changes considered appropriate by the Tribunal and agreed by the Parties.
- 3.2 Any issues with regard to the admissibility, relevance, weight or materiality of the evidence offered by a Party or a witness shall be determined by the Tribunal.

4. Legal Authorities

The legal authorities available on the ICSID and ITA Law websites shall not be submitted in order to reduce the costs. Other authorities shall be submitted only in soft copy

5. Documentary Exhibits

- 5.1 All documents submitted by the Parties shall be identified with “C” when submitted by Claimant and “R” when submitted by Respondent. Each Party shall consecutively number its exhibits starting with 0001.

- 5.2 Each Party shall keep a list of all documents submitted by it and submit an updated list to the Members of the Tribunal and the other Party every time new documents are submitted. The list shall also be submitted in electronic word-searchable format. The list shall set forth – in that order – the number of the document, its date and a brief reference to its nature (e.g. a letter by X to Y).
- 5.3 All documentary evidence submitted to the Tribunal shall be deemed authentic and complete, including evidence submitted in the form of copies, unless a Party disputes its authenticity or completeness. In case a Party raises any reasonable doubt regarding the validity and completeness of photocopies, the original document or a certified copy must be submitted. In the case that it is impossible to submit the original document or a certified copy, the Tribunal will decide on further action.
- 5.4 If a Party submits a document the original of which is not in English, that Party shall be responsible for providing an accompanying English translation of the relevant part/s of the document. Legal texts (statutes, case law and scholarly writings) need to be translated only insofar as the relevant parts are concerned. Informal English translations may be submitted unless contested, in which case sworn translations shall be submitted. Either Party shall provide a full English translation of the submitted documents if the Tribunal so requests.

6. Witness Evidence

- 6.1 Witness statements shall contain:
- The full name and address of the witness;
 - Past and present relations of the witness with any Parties, Counsel or the Tribunal;
 - A description of the witness' position and qualifications if relevant to the dispute or to the contents of the statement;
 - The signature of the witness affirming the truth of the statement;
 - The language in which the witness would testify if called to provide oral testimony.
- 6.2 Each Party shall be responsible to ensure the attendance in person at the Hearing of the witnesses on whose evidence it relies, unless notice is given by the other Party that attendance is not required.
- 6.3 If the Parties agree that a witness who has submitted a witness statement does not need to appear for testimony at the hearing, such an agreement shall not be considered to reflect an agreement as to the correctness of the content of the witness statement.
- 6.4 At the Hearing, the witnesses proposed by the Claimant shall be examined first unless otherwise agreed by the Parties or decided by the Tribunal.

- 6.5 The written statements submitted by witnesses shall stand as their evidence-in-chief, but each Party shall have the right to introduce its witnesses briefly and add direct examination on issues, if any, which have occurred after the last written statement of the witness has been submitted. The remaining hearing time shall be reserved for cross-examination and re-direct examination, as well as for questions by the Tribunal. Any re-direct examination of a witness shall be limited to matters that have arisen in cross-examination of the same witness.
- 6.6 The Tribunal shall have discretion over the procedure for hearing of oral evidence and the examination of witnesses, including the right to limit or exclude a question.
- 6.7 If any individual witness whose cross-examination has not been waived fails to be available to offer oral evidence, the Tribunal may refuse to admit that individual's witness statement or draw such inferences it considers appropriate in determining the weight to be given to such witness statement.

7. Expert Evidence

- 7.1 The provisions in Article 6 above shall apply to expert statements.
- 7.2 Should the Parties appoint experts with corresponding areas of specialization, those experts shall prepare and present to the Tribunal a joint list of agreed and contentious issues in accordance with the timetable set by the Tribunal.

8. Hearing

- 8.1 The Parties may present short opening statements of not more than 90 minutes each.
- 8.2 No new documents may be presented at the Hearing absent agreement of the Parties or leave of the Tribunal. However, demonstrative exhibits may be shown using documents submitted earlier in accordance with the Timetable.
- 8.3 The Tribunal intends to establish equal maximum time periods both for the Claimant and for the Respondent which the Parties shall have available. Changes to that principle may be applied for at the latest at the time set for the Pre-Hearing Conference.
- 8.4 A transcript shall be made of the Hearing and sent to the Parties and the Tribunal. The PCA shall make the necessary arrangements in this regard. Details as to the nature of the transcript and requirements as to live transcription will be finalized during the Pre-Hearing Conference.
- 8.5 Any Party that intends to present a witness who is not able or willing to testify in English shall facilitate the simultaneous translation of the witness' testimony by an interpreter. At a Party's request no later than two months before the date of the Hearing at which the witness

or expert is to be presented, the PCA shall make the necessary arrangements in this regard, after consulting with the Tribunal and the Parties.

- 8.6 Further details regarding the Hearing will be set after consultation with the Parties by a further Procedural Order of the Tribunal in time before the Hearing.
- 8.7 The quorum for hearings and deliberations shall be three arbitrators. This does not exclude the possibility of some or all of the arbitrators participating in the Tribunal's deliberations via telephone or video conference.

9. Time Limits

- 9.1 Time limits shall be deemed to be complied with if submissions or other documents are sent at least by e-mail by midnight Hague time on the day when the time limit expires. A hard copy original submission or document, as required, will be sent the same day or at the latest by the next working day after it has been sent by e-mail. In the case that the day set as the time limit terminates on a public holiday in the country where the sender has its residence, the time limit is complied with if the submission is sent on the following working day.
- 9.2 A Party must seek prior leave of the Tribunal for the extension of a time limit.

10. Confidentiality

This arbitration shall remain confidential in accordance with the UNCITRAL Arbitration Rules 1976.

