

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera
Arbitration Center LLC**

v.

Republic of Honduras

(ICSID Case No. ARB/23/2)

PROCEDURAL ORDER No. 2
On the Organization of the Hearing

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal
Mr. David W. Rivkin, Arbitrator
Prof. Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal

Mr. Marco Tulio Montañés-Rumayor

Assistant of the Tribunal

Mr. Antonio Gordillo

10 December 2024

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ANNEX A10

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I. PROCEDURAL BACKGROUND

1. On 19 September 2024, the Tribunal issued Procedural Order No. 1 (“**PO1**”), setting out the procedural rules that govern this preliminary phase of the arbitration (“**Preliminary Phase**”).
2. Pursuant to paragraphs 21.1 and 21.3 of PO1, a hearing shall be held remotely on 16 and 17 December 2024 (“**Hearing**”).
3. Pursuant to paragraph 20.2 of PO1, a pre-hearing conference was held by videoconference (“**Pre-Hearing Conference**”) on 6 December 2024 to discuss any outstanding procedural, administrative and logistical matters in preparation for the Hearing. Participating were:

On behalf of the Tribunal:

Prof. Juan Fernández-Armesto, President of the Tribunal

Assistant to the President:

Mr. Antonio Gordillo

ICSID Secretariat:

Mr. Marco Tulio Montañés-Rumayor, Secretary of the Tribunal

Mr. Federico Salon-Kajganich, Paralegal

On behalf of the Claimants:

Ms. Ank Santens

Mr. Francisco X. Jijón

Ms. Bianca McDonnell

Ms. Marta González-Ruano Calles

On behalf of the Respondent:

Mr. Marcio Ariel Canaca

Mr. Nelson Gerardo Molina Flores

Ms. Daniela Rueda

Mr. Kenneth Juan Figueroa

Mr. Andrés Felipe Esteban Tovar

Mr. Rodrigo Gil Ljubetic

Sr. Francisco Grob Duhalde

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4. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on 21 November 2024, as well as their comments of 3 December 2024.
5. The Tribunal also discussed the transparency issues raised in the Parties' comments of 28 November and 2 December 2024 on the publication of pleadings by ICSID. During the Pre-Hearing Conference, the Parties agreed to ICSID publishing on its website the documents mentioned in Article 10.21 of CAFTA-DR.¹
6. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID and made available to the Members of the Tribunal and the Parties on 6 December 2024.
7. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT

8. The Hearing will be held on Monday, 16 December 2024.
9. It will take place remotely through the Zoom videoconference platform which will be operated by Sparq ("**Operator**").

B. ORDER OF PROCEEDINGS AND SCHEDULE

10. In order to accommodate the multiple time zones of the Participants, the Hearing will start at 8:00 am Washington DC time. It is expected to conclude by 2:00 pm Washington DC time.
11. The order of proceedings and structure of the Hearing will be as indicated in the schedule incorporated as **Annex A**.
12. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

¹ Such documents include (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25; (d) minutes or transcripts of hearings of the tribunal, where available; and (e) orders, awards, and decisions of the tribunal.

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C. ISSUES TO BE HEARD

13. The hearing in the Preliminary Phase is limited to Respondent's preliminary objection under Article 10.20.5 of CAFTA-DR ("**Preliminary Objection**"), whereby Respondent requested that the Tribunal "accept in all its parts the preliminary objection of non-exhaustion of local remedies to which the Republic of Honduras conditioned its consent to ICSID arbitration, declaring in consequence that it lacks jurisdiction."²

D. TIME ALLOCATION

14. Each Party will have an equal amount of time to present its case.
15. The Hearing shall proceed according to Annex A and the following time allocation and sequence:
 - a. *Introduction and housekeeping matters*: 30 minutes tentatively reserved.³
 - b. *Opening Statements*: Each Party shall be allocated a maximum of 1 hour and 30 minutes for its Opening Statement. The Respondent will proceed first, followed by the Claimants.
 - c. *Non-disputing party submissions (if any)*: The 1 hour tentatively reserved for any oral submissions pursuant to PO1 Section 18 is vacated as no requests for such interventions were received by the due date.
 - d. *Tribunal Questions*: 1 hour has been reserved for the Tribunal's questions.⁴
 - e. *Rebuttal / Closing Statements*: Each Party shall be allowed a maximum of 10-15 minutes for a short rebuttal and/or concluding remarks. The Respondent will proceed first, followed by the Claimants.
 - f. *Breaks*: Two breaks of 15 minutes each and one break of 30 minutes have been tentatively reserved.

E. TIME KEEPING

16. Time shall be kept using the chess-clock method.

² Preliminary Objection dated 30 August 2024, ¶ 49.

³ Pursuant to PO1 Section 22.1 "[t]he two weeks prior to the hearing shall be considered preparation time for the Parties and the Tribunal. Therefore, during that period, no procedural incident will be admitted and will be considered rejected *a limine*. However, the Party may present such incident at the beginning of the hearing and the Tribunal will adopt the appropriate decision after hearing the counterparty."

⁴ The Tribunal may ask counsel questions at any time during the Hearing. The Tribunal has also reserved time at the end of the Opening Statements for such questions.

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17. The Secretary of the Tribunal shall keep the time under the direction of the President of the Tribunal.
18. For clarity, the following will not be counted against any Party's time: time spent (i) on questions posed by the Tribunal during the Parties' presentations and on responses to those questions; and (ii) on administrative or organizational matters.

F. PARTICIPANTS

19. Each Party has submitted its respective list of Hearing Participants ("**List of Participants**") by 10 December 2024, using the format provided in **Annex B**. Any person not included in Annex B will not be admitted to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.
20. Each Party has designated those participants that will have an active speaking role ("**Active Participants**") and those who will be passive attendees ("**Passive Participants**").
21. The Parties are encouraged to join the videoconference at least 15 minutes in advance of the start to facilitate the identification of Participants and to try to resolve any technical contingencies.
22. All Participants will join the videoconference through a "waiting room". Each Participant shall use a username that enables them to be readily identified in line with the list of representatives (i.e., ["C" for Claimants or "R" for Respondent] [First Name] [Last Name]). Any prospective participant who cannot be identified shall not be granted access to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.

G. DOCUMENTS FOR USE AT THE HEARING

i. Electronic Hearing Bundle

23. The Parties have prepared jointly an electronic Hearing bundle (PC and Mac compatible) ("**Hearing Bundle**") and have uploaded it to the designated BOX folder on 9 December 2024.⁵
24. The Hearing Bundle contains all pleadings, exhibits, legal authorities and the Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index. It does not contain any document not previously filed.

ii. Demonstrative Exhibits

25. Each Party shall present demonstrative exhibits and evidence to the Participants via Zoom.

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26. In accordance with PO1 Section 16.7, “[t]he Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, and (ii) do not contain information that is not in the record.”
27. In accordance with PO1 Section 16.8, an electronic copy of each demonstrative and the PowerPoint slides⁶ shall be distributed by the Party intending to use it via email sent to the entire case email distribution for each Party, the Members of the Tribunal, the Assistant, the Secretary of the Tribunal, the interpreters and court reporters, no later than 30 minutes prior to its use. If the demonstrative and PowerPoint cannot be distributed by email because of its size, it shall be uploaded to BOX, followed by an email to the entire distribution list confirming the upload.
28. In addition, promptly after the end of the Hearing, the Parties shall upload such demonstrative exhibit to the BOX case folder,⁷ designating each with the corresponding number: “CD-__” for Claimants’ demonstrative exhibits, and “RD-__” for Respondent’s demonstrative exhibits. The Parties shall also upload their PowerPoint slides to the BOX folder.⁸
29. Documents that do not form part of the record may not be displayed at the Hearing.

H. OPEN HEARING AND PROTECTED INFORMATION

30. In accordance with PO1 Section 21.4 and 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. The Parties shall give the Tribunal advance notice prior to referencing protected information at the hearing. The Tribunal shall make appropriate arrangements to protect the information from disclosure.”
31. Pursuant to CAFTA-DR Article 10.21(4), “[a]ny protected information that is submitted to the [T]ribunal shall be protected from disclosure in accordance with the following procedures:
 - (a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

⁶ The PowerPoint slides should be entirely in English or bilingual.

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(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information."

32. The following arrangements will be made to provide public access to the Hearing and to protect information designated as "protected information" from disclosure:
- (i) Each Party shall inform the Tribunal before raising topics where "protected information" could reasonably be expected to arise. The Tribunal will then consult the Parties in camera.⁹ After consulting with the Parties, the Tribunal will decide whether to exclude such information. The relevant section of the transcript shall be marked "confidential" by the court-reporters. If the Tribunal decides to exclude such section, it shall be redacted from the transcript prior to its publication by ICSID.
 - (ii) An audio-video recording of the Hearing ("**Hearing Video**") will be made available on ICSID's website in both English and Spanish. The Tribunal's consultations with the Parties regarding "protected information" shall be redacted from the Hearing Video prior to its posting by ICSID. The Parties shall propose editions to the Hearing Video because of "protected information" within seven days of its receipt by ICSID. After consulting with the Parties, the Tribunal will decide whether to exclude such information from the final Hearing Video.
 - (iii) Non-disputing parties may attend the Hearing in real time, subject to the procedures for the protection of information pursuant to CAFTA-DR.

⁹ If this happens, the non-disputing parties will be sent to a Zoom break-out room.

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- (iv) The Tribunal may revisit these protocols or establish further protocols for the conduct of the Hearing and to protect the information designated as “protected information” at a later stage, in consultation with the Parties.

I. AUDIO/VIDEO RECORDING

33. Pursuant to PO1 Section 23.1, “recordings shall be made of the hearing and all sessions. The recordings shall be provided to the Parties and the Tribunal.”
34. Subject to any editions and redactions (see *supra* paragraph 32), ICSID will also make the Hearing Video available on its website.

J. TRANSCRIPTION

35. Pursuant to PO1 Section 23.2, ICSID will arrange for transcription services in English and Spanish. The court reporters will transcribe in real time and will provide an online link connection to the Hearing Participants.¹⁰
36. ICSID will circulate the connection details for the transcript prior to the start of the Hearing. Participants are encouraged to use a second device or a second screen for viewing the transcript. Provisional transcripts will be emailed at the end of the Hearing.
37. Pursuant to PO1 Section 23.3, the Parties

“shall agree on any corrections to the transcripts within seven days of the later of the dates of the receipt of the sound recordings and transcripts.”
The agreed corrections will 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.”

38. ICSID shall publish transcripts of Hearing, with any redactions agreed to by the Parties or decided by the Tribunal in accordance with CAFTA-DR Article 10.21(d).

K. INTERPRETATION

39. Pursuant to PO1 Section 12.1, the Parties may present oral argument in either English or Spanish.
40. ICSID will arrange for simultaneous interpretation into English and Spanish.

¹⁰ The non-disputing parties will not have access to the Hearing transcript in real time.

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41. The Active Participants should, insofar as possible, circulate any speaking notes to the interpreters prior to the start of each intervention. These notes should be emailed directly to ICSID and/or the interpreters and are to be treated as confidential information.

L. VIRTUAL HEARING ARRANGEMENTS

42. The following procedures shall be followed to ensure the good conduct of the Hearing:

1. Testing

43. The ICSID Secretariat and the Operator will conduct technical tests with the Tribunal and each Party in advance of the Hearing. The date of each test and the access details will be communicated in due course.
44. All Participants should strive to replicate the conditions under which they will participate in the Hearing.
45. Each Party designated by 3 December 2024 one representative to act as videoconferencing contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents which arise during the videoconference.
46. The VC Emergency Contact Person shall be responsible for advising the Tribunal and ICSID if an Active Participant from their side is disconnected or otherwise cannot participate, without interrupting the Hearing.

2. Connectivity

47. The Parties shall ensure that each of their representatives who will connect to the videoconference use a stable internet connection offering sufficient bandwidth. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi.
48. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels.

3. Equipment and Set Up

49. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the Active Participants use a headset equipped with a microphone and connected through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. Internal microphones do not give as good a sound quality as external microphones.

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4. Break-Out Rooms

50. The Operator will arrange for Zoom break-out rooms for each Party and the Tribunal, which shall be separate from the Zoom virtual Hearing Room. Each Party shall make its own arrangements for use of any other separate channel of communication to handle internal communications. The Operator shall disable the Zoom built-in chat function, except for communications with ICSID or the Operator.

5. Videoconference Etiquette

51. Upon the joining of the Participants to the videoconference on the day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its members, the Participants who are not expected to speak should turn off their video feed and mute their microphones.
52. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the Hearing.
53. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Operator shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
54. To facilitate the accurate transcription and interpretation, speakers are advised to speak at a reasonable speed and with pauses between phrases.
55. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

On behalf of the Tribunal,



Prof. Juan Fernández-Armesto
President of the Tribunal

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ANNEX A

HEARING SCHEDULE

Monday, 16 December 2024

HOUR	PROCEDURAL STEP	ALLOCATED TIME
8:00 am – 8:30 am	Introduction and Housekeeping	30 minutes
8:30 am – 10:00 am	Respondent's Opening	1 hour 30 minutes
10:00 am – 10:15 am	Break	15 minutes
10:15 am – 11:45 am	Claimants' Opening	1 hour 30 minutes
11:45 am – 12:15 pm	Break	30 minutes
12:15 pm – 13:15 pm	Tribunal's Questions	1 hour
13:15 pm – 13:30 pm	Break	15 minutes
13:30 pm – 14:00 pm	Brief Rebuttals and Concluding Remarks	30 minutes
14:00 pm	End of Hearing	