

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PAWLOWSKI AG AND PROJEKT SEVER S.R.O.
Applicants

v.

CZECH REPUBLIC
Respondent on Annulment

ICSID Case No. ARB/17/11
Annulment Proceeding

PROCEDURAL ORDER No. 2 on Hearing Organization

Members of the ad hoc Committee

Dr. Jacomijn J. van Haersolte-van Hof, President of the ad hoc Committee
Ms. Yoshimi Ohara, Member of the ad hoc Committee
Mr. David A. Pawlak, Member of the ad hoc Committee

Secretary of the ad hoc Committee

Mr. Alex B. Kaplan

27 November 2023

I. PROCEDURAL BACKGROUND

1. Paragraph 17.1 of Procedural Order No. 1 (“**PO 1**”) foresees that the hearing may be held in-person or by any other means of communication as determined by the Committee after consultation with the Parties.
2. In accordance with Section 16 of PO 1, a pre-hearing organizational conference for the organization of the Hearing was to be held by videoconference between the Committee, or its President, and the Parties on a date determined by the Committee after consultation with the Parties, to discuss the outstanding procedural, administrative and logistical matters in preparation of the Hearing. On October 12, 2023, the Committee proposed several dates to hold a pre-hearing organizational conference. After receiving the Parties’ and the Committee’s respective availabilities, the pre-hearing organizational conference was scheduled for November 27, 2023 with the President of the Committee.
3. In advance of the Pre-Hearing Conference, the Committee circulated to the Parties a draft procedural order on 19 November 2023. The Parties submitted their joint comments on 24 November 2023.
4. The Committee has considered the Parties’ positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and the Committee has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND MODALITY

5. The Parties and the Committee agree that the hearing will last one day only, taking place on January 18, 2024.
6. The Hearing will be held at Delos at Espace Hamelin, 17 rue de l’Amiral Hamelin, 75116 Paris, France.

7. The modality of the hearing is “in person”. All participants (speaking and non-speaking) shall be present in the hearing room. The Parties agree there will be no virtual connection to the hearing, such as Zoom.

B. ORDER OF PROCEEDINGS AND SCHEDULE

8. The Parties and the Committee have agreed to the following hearing schedule:

9:00 – 9:15	Housekeeping
9:15 – 10:45	Applicants’ Oral Submissions
10:45 – 11:00	<i>Coffee Break (15 minutes)</i>
11:00 – 12:30	The Czech Republic’s Oral Submissions
12:30 – 2:00	<i>Lunch (1.5 hours)</i>
2:00 – 2:30	The Applicants’ Rebuttal
2:30 – 2:45	<i>Coffee Break (15 minutes)</i>
2:45 – 3:15	The Czech Republic’s Rebuttal
3:15 – TBD	The Committee’s Questions
	Hearing adjourns

9. The Hearing Schedule is subject to any changes that the Committee may deem necessary or appropriate during the Hearing.
10. The Parties are reminded that the hearing room will not be available for set up by the Parties until the evening of January 17, 2024 or the morning of the hearing itself. Thus, the hearing may start after 9:00 am to accommodate set up and any technical tests. In this case, the hearing schedule will not be truncated; instead the extant schedule will be adjusted according to the actual start time. The Secretariat will make every effort to give advance notice of the timing of set up.

C. TIME ALLOCATION

11. In accordance with the Parties’ agreed schedule, the Parties are allocated an equal amount of hearing time—2 hours per side. The Committee may, however, adjust the time allocation as appropriate in the circumstances.

12. In addition to the time set aside for questions by the Committee, the Committee may ask questions at any time.
13. Time used for housekeeping or to resolve technical difficulties shall not be counted against the Parties' time but shall be counted as Committee time. Time taken by the Committee for its own questions during the Parties' presentations and the Parties' answers to those questions shall not be counted against the Parties' time. The Parties are amenable to the Committee taking additional time should it so require.
14. The Secretary of the Committee shall keep a chess clock account of time under the direction of the President of the Committee.

D. DOCUMENTS FOR USE AT THE HEARING

15. **Hearing Bundle:** In accordance with Section 13.5 of PO 1, by 10 January 2024, the parties shall upload to Box a Mac compatible electronic copy of the entire case file (including all pleadings, exhibits, legal authorities and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents.¹ The Hearing Bundle shall not contain any document not previously submitted, issued, or cited in this annulment proceeding. It shall be organized as follows:

Material from the Annulment Proceeding

01. Pleadings

- A. Applicants
- B. Respondent on Annulment

02. Exhibits

- A. Applicants, including the Award
- B. Respondent on Annulment

03. Legal Authorities

- A. Applicants
- B. Respondent on Annulment

04. Committee's Rulings and Procedural Orders

05. Correspondence

¹ To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 14 above and including a consolidated (non-hyperlinked) index.

16. Prior to the Hearing, the Members of the Committee, the Secretary of the Committee and the Parties shall download the Hearing Bundle from the BOX Case Folder onto their own devices to have access to it offline during the Hearing. The court reporter will also be provided a copy of the Hearing Bundle via the ICSID Secretariat.
17. Documents that do not form part of the record may not be presented at the Hearing.
18. **Consolidated Lists of Exhibits and Legal Authorities:** The Parties shall jointly prepare and upload by 10 January 2024, two consolidated lists, (i) a list of fact exhibits and (ii) a list of legal authorities. These lists shall be prepared using Excel and must also be Mac compatible. Each list must indicate the date, the exhibit number in the original proceeding, the exhibit number in the annulment proceeding, and the title of the of each document such that the lists can be sorted by these metrics (e.g., sorted by date to create a chronology). These lists need not be hyperlinked.
19. **Demonstrative Exhibits:** These shall be used in accordance with Section 15.10 of PO 1, bearing in mind that a PowerPoint Presentation constitutes a demonstrative exhibit only to the extent that it contains charts, tabulations or other representations of data that compile information present in the record. Section 15.10 of PO 1 states:

Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they do not contain 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, if requested, hard copy format to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) prior to their use at the hearing at a time to be decided at the pre-hearing organizational meeting.
20. Such demonstrative exhibits, including all PowerPoint slides, shall be provided electronically to the opposing Party, the Committee, the Secretary of the Committee, and the court reporter 30 minutes in advance of their use at the Hearing. In addition, the Party submitting such exhibits shall provide a hard copy (2 copies) to the other Party and the Committee Members immediately before their use at the Hearing.

21. Each Party will ensure that electronic copies of PowerPoint presentations and demonstrative exhibits are uploaded to Box by the end of each Hearing day, designating each with the corresponding CD-__ or RD-__ number.

E. RECORDINGS OF THE HEARING

22. Section 18.1 of PO 1 concerning audio recording (reproduced below) continues to apply.

Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Committee Members.

23. The audio recording will be shared with the Parties and the Committee via Box as soon as possible after the conclusion of the Hearing.
24. Except for the court reporters, who will make their own audio recording of the Hearing for the purposes of preparing the transcript, the Committee and the Parties agree that the attendees will not otherwise record the Hearing or any part of it, including *via* audio, video or screenshot methods of recording.

F. TRANSCRIPTION

25. Real time court reporting services are to be provided by Ms. Anne-Marie Stallard, with same day transcript delivery to the Committee and the Parties via email. The verbatim transcripts will be available in real-time using LiveNote or similar software.
26. Following the Hearing, the Committee Secretary will provide the Parties and the Committee with access to the audio recording made by the court reporters.
27. Section 18.3 of PO 1 shall govern the process of correcting the Hearing transcript:

The Committee will consult with the parties at the end of the hearing, and issue directions in relation to whether, and if so by which date, the parties shall agree on any corrections to the transcripts. The agreed corrections may be entered by the court reporter 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.

G. INTERPRETATION

28. No interpretation is required during the Hearing.

H. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS

29. The provisions of PO 1, Section 19 apply:
- 19.1. The Committee will determine the need for and modalities of any post-hearing memorials at the hearing, taking into account the views of the parties and issues presented.
- 19.2. The Committee will also determine at the hearing the sequence of and modalities of the statements of costs in consultation with the parties.

I. LOGISTICAL ITEMS

30. The logistical details (e.g., confirmation of room number assignments, list of participants, set-up details, details on court reporting and technical support services, internet access, audio-visual equipment and catering orders) will be handled through correspondence directly by the ICSID Secretariat.

J. GENERAL PROVISIONS

1. Closed Hearing

31. Pursuant to Section 17.6 of PO 1, the Hearing shall be closed to the public.

2. COVID/Illness Precautions

32. The Committee finds that it is not necessary to impose a COVID testing requirement on the hearing participants. It is nevertheless prudent to call upon on all participants to monitor for symptoms of COVID, influenza and other contagious conditions. Any participant experiencing such symptoms undertakes not to attend the hearing.
33. The Parties do not consider that a Zoom back-up connection is required.

3. Data Privacy

34. Section 21 of PO 1 states as follows:

21.1 The Members of the Committee, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this annulment proceeding.

21.2 The Members of the Committee, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the annulment proceeding, where necessary. Should compliance with applicable law require action from another participant in the annulment proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Committee for specific data protection measures to be put in place.

On behalf of the Committee,

[signed]

—
Prof. Dr. Jacomijn J. van Haersolte-van Hof
President of the Committee
Date: 27 November 2023

ANNEX A

LIST OF PARTICIPANTS AT THE HEARING

AD HOC COMMITTEE					
Room	Name	Role	Affiliation to Case	Location of Connection	Personal Contact (Optional)
N/A	Prof. Dr. Jacomijn J. van Haersolte-van Hof	A	President	Hearing room	Email: Phone:
N/A	Ms. Yoshimi Ohara	A	Member	Hearing room	Email: Phone:
N/A	Mr. David A. Pawlak	A	Member	Hearing room	Email: Phone:

SECRETARY OF THE AD HOC COMMITTEE					
Room	Name	Role	Affiliation to Case	Location of Connection	Personal Contact
N/A	Mr. Alex B. Kaplan	A	Secretary of the <i>ad hoc</i> Committee	Hearing room	Email: Phone: [REDACTED]

APPLICANTS					
Room	Name	Role	Affiliation to Case	Location of Connection	Personal Contact
	<i>Counsel:</i>				
App	[App] – Name Last name	A		Room [Firm] [C] [City]	Email: Phone:
App	[App] –			Room [Firm] [C] [City]	Email: Phone:
App	[App] –				Email: Phone:
	<i>Party Representative:</i>				
App	[App] – Name Last name			Home [C] []	
App					



RESPONDENT ON ANNULMENT					
Room	Name	Role	Affiliation to Case	Location of Connection	
	<i>Counsel:</i>				
RoA	[RoA] – Name Last name	A		Room [Firm] # 1 [R] []	Email: Phone:
RoA	[RoA] – Name Last name	A		Room # 1 [R] []	
	<i>Party Representatives:</i>				
RoA	[RoA] – Name Last name			Home [R] []	
RoA	[RoA] – Name Last name			Home [R] []	

COURT REPORTER					
N/A	Ms. Anne-Marie Stallard	P		Hearing room	

TECHNICAL SUPPORT STAFF					
N/A		P			
N/A		P			