

**INTERNACIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

IN THE MATTER OF

**RICARDO FILOMENO DUARTE VENTURA LEITÃO MACHADO**

(Portugal)

**Claimant**

and

**REPUBLIC OF ANGOLA**

**Respondent**

**ICSID Case No. ARB/24/8**

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**Statement of Costs**

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10 April 2025

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## 1. Introduction

1. In accordance with the Procedural Calendar provided in Annex B of the Procedural Order No. 1, the Republic of Angola hereby presents its Submission of Costs regarding the special procedure under Rule 41.
2. The Respondent has incurred reasonable costs in addressing the Claimant's claim, which clearly lacks legal merit, despite the Claimant's actions and uncooperative attitude towards the present proceeding (**Section 2**).
3. Furthermore, this Arbitral Tribunal has the authority to decide on the standard and the timing of the allocation of costs (**Section 3**).
4. Finally, if Respondent's Objection under Rule 41 is granted, the Claimant should be held accountable for all the Parties expenses incurred during these special proceedings (**Section 3.1**). Conversely, if the Arbitral Tribunal dismisses the Respondent's Objection under Rule 41, it should defer the decision on the cost allocation to the end of these proceedings (**Section 3.2**).

## 2. The Respondent has incurred reasonable costs to address both the Claimant's unmeritorious claims and vexatious tactics in these proceedings

5. As detailed in the table below, the Respondent has incurred and claims the reimbursement of the following costs:

Description	USD
ICSID/Tribunal Fees <sup>1</sup>	250,000.00
Legal Fees and Expenses <sup>2</sup>	999,793.40 <sup>3</sup>
Total	1,249,793.40

6. The Respondent has incurred reasonable costs to address both the Claimant's unmeritorious

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<sup>1</sup> ICSID Letter of 17.12.2024.

<sup>2</sup> In accordance with the respective invoice submitted with this Statement of Costs as Annex A.

<sup>3</sup> Fees and expenses incurred in EUR were converted to USD at the 09 April 2025 exchange rate of 1 EUR for 1,10450 USD, established by the Portuguese Central Bank (<https://www.bportugal.pt/page/conversor-de-moeda>) .

claims and his vexatious tactics meant to complicate these proceedings.

7. Notably, the Respondent is currently facing a new claim by Ricardo Machado that completely contradicts the position previously taken by his company, AEnergy, in other legal proceedings.
8. In fact, and as pointed out in the Respondent's submissions, the Claimant through AEnergy has initiated proceedings in the US Courts regarding the same dispute as the one at hand.<sup>4</sup>
9. Despite having his claims dismissed five times by the US Courts, the Claimant has persisted with this proceeding, continuing with his evident strategy to advance manifestly unmeritorious claims.<sup>5</sup>
10. This repeated forum shopping has significantly burdened the Respondent with increased legal expenses, requiring detailed examination of the US proceedings and extensive coordination with Angola's representatives involved in those cases.
11. Additionally, the Claimant has sought to impose unnecessary costs on the Respondent by attempting to mandate Spanish as the language of arbitration.
12. It is telling that, although the dispute involves a Portuguese Investor and a Portuguese-speaking country and concerns the Angola-Portugal BIT originally drafted in Portuguese, the Claimant has insisted on conducting the arbitration in Spanish.
13. This insistence on Spanish has led to additional costs and time expenditures, as the Respondent's legal representatives have had to spend increased hours addressing this matter and revising bilingual drafts of Procedural Order No. 1.
3. **The Tribunal has the authority to determine the standard and the timing of the allocation of costs**
14. Article 61 (2) of the ICSID Convention provides that the Arbitral Tribunal "*shall decide how and by whom [the Parties'] expenses, the fees and expenses of the members of the Tribunal and the charges for the use of facilities of the Centre shall be paid.*"
15. Furthermore, and specifically concerning the allocation of costs arising from the Rule 41

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<sup>4</sup> Respondent's Submission on Manifest Lack of Legal Merit under Rule 41, Chapter 2.4.

<sup>5</sup> Respondent's Reply on Manifest Lack of Legal Merit under Rule 41, Chapter 4.

Proceeding, Rule 52 (2) of the ICSID Arbitration Rules provides that “[i]f the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs”.

16. As pointed out by Respondent in its Reply under Rule 41, in cases where respondents have prevailed in their Rule 41 Objection, Tribunals have often applied the “costs follow the event” principle, ordering claimants to bear the costs of the arbitration and the legal costs to the successful party.<sup>6</sup>
  17. Conversely, when the special procedures under Rule 41 are dismissed, Arbitral Tribunals have predominantly deferred the decision on the costs to the end of the proceedings.<sup>7</sup>
  18. Accordingly, the Arbitral Tribunal has broad discretion over the allocation of costs, including both the percentage allocated and the timing of the decision. This is due to the fact than an objection under Rule 41 may be dismissed, yet the respondents could still succeed at the conclusion of the proceedings, which is of utmost relevance in terms of allocation of costs.
  19. Considering the above mentioned principles, and the cited case law, Respondent submits that (i) if it prevails on its Rule 41 Objection, the Claimant should bear all the costs of the special procedure (**Section 3.1**); and, subsidiarily, (ii) if the Respondent’s Rule 41 Objection is dismissed, the decision on the costs should be deferred to the end of the proceedings (**Section 3.2**).
- 3.1. If the Respondent prevails on its Rule 41 Objection, the Claimant should bear all the costs of this special procedure**
20. As the Respondent has demonstrated in depth in its submissions, the Claimant’s claims are manifestly without legal merit since this Arbitral Tribunal lacks jurisdiction *ratione temporis* to adjudicate the dispute.

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<sup>6</sup> Respondent’s Reply on Manifest Lack of Legal Merit under Rule 41, p. 40, § 164 ; see also **RL-0032**, *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*, ICSID Case No. ARB/18/2, Award on the Respondent’s Application under Rule 41(5) of the ICSID Arbitration Rules, 1 November 2019, §§ 61-63; **RL-0009**, *Lotus Holding Anonim Şirketi v. Republic of Turkmenistan*, ICSID Case No. ARB/17/30, Award, 6 April 2020, §§ 207-210, 213.

<sup>7</sup> Respondent’s Reply on Manifest Lack of Legal Merit under Rule 41, § 163; see also **RL-0029**, *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Award, 5 May 2015, §§ 406-416; **RL-0030**, *Brandes Investment Partners, LP v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/3, Award, 2 August 2011, §§ 119-120.

21. In fact, the Claimant has repeatedly and unsuccessfully tried to manipulate both the facts and the legal criteria to establish the jurisdiction *ratione temporis* of this Arbitral Tribunal, in yet another effort to put forward its patently unmeritorious claims, which demonstrates that the Claimant recourse to the present arbitration was made in bad faith in a blatant abuse of the ICSID system.
22. The Claimant's stance throughout this proceeding supports the Respondent's arguments on cost allocation and justifies the application of the "costs follow the event" principle, as the Respondent is likely to succeed in its Rule 41 application.
23. Consequently, the Claimant should bear all the expenses of the present proceedings and reimburse the Respondent for all the expenses it has incurred in defending itself against the unmeritorious claims.
- 3.2. **If the Respondent's objection under Rule 41 is dismissed, the decision on the costs should be deferred to the end of the proceedings**
24. In the event that the Tribunal decides to dismiss the Respondent's Objection under Rule 41, a subsidiary course of action should be considered regarding the associated costs of this special procedure. Specifically, instead of making an immediate determination on the costs, the Tribunal should postpone this decision until the conclusion of the overall proceedings.
25. With this submission, the Respondent is not attempting to avoid any costs it may be required to incur. On the contrary, the Respondent wishes for this Tribunal to decide on the allocation of costs for this proceeding at a time when it has a complete understanding of the entire case, thereby fostering a fair and informed decision.
26. This being so, because even if the Arbitral Tribunal dismisses the Respondent's Objection under Rule 41 (*quod non*), the Respondent's claims should and will ultimately prevail.
27. It is reasonable that this should at least be considered when allocating costs, which is why the Respondent asks this Tribunal to defer the decision to the end of the proceedings in case its Objection under Rule 41 is dismissed.
4. **Request for Relief**
28. Based on the above arguments, the Respondent respectfully requests the Tribunal to:

- a. **Order** the Claimant to pay all costs and expenses of these arbitration proceedings, including fees and expenses of the Arbitral Tribunal and the cost of the Respondent's legal representation, plus pre-award and post-award interest thereon, in an amount no less than USD 1,249,793.40; or subsidiarily,
- b. **Defer** the decision on costs allocation to the end of the proceedings.

On behalf of the Republic of Angola,



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