

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Corona Materials, LLC**

**v.**

**Dominican Republic**

**(ICSID Case No. ARB(AF)/14/3)**

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**PROCEDURAL ORDER NO. 2**

Prof. Pierre-Marie Dupuy, President of the Tribunal  
Mr. Fernando Mantilla-Serrano, Arbitrator  
Mr. J. Christopher Thomas, QC, Arbitrator

*Secretary of the Tribunal*

Ms. Mercedes Cordido-Freytes de Kurowski

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**Date of the Order:** March 30, 2016

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**Introduction**

1. In preparation for the hearing on expedited objections to be held in Paris on April 11-12, 2016 (the “Hearing”), the Parties submitted on March 22, 2016, the *Parties’ Procedural Agreements for Hearing on Expedited Objections* (the “Procedural Agreements”), which were followed by the Parties’ letters of March 23, 2016, stating their respective views on the points where the Parties had different positions.
  
2. At the request of the Parties, an Organizational Meeting was held on March 29, 2016, by telephone conference, to discuss the outstanding procedural matters.

Participating in the conference were:

On behalf of the Tribunal:

Prof. Pierre-Marie Dupuy                      President of the Tribunal

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

On behalf of Claimant:

Mr. Ian Meredith	K&L Gates LLP
Mr. Wojciech Sadowski	K&L Gates LLP
Mr. Jake Ferm	K&L Gates LLP
Ms. Malgorzata Judkiewicz	K&L Gates LLP

On behalf of Respondent:

Mr. Paolo Di Rosa	Arnold & Porter LLP
Mr. Raul Herrera	Arnold & Porter LLP
Ms. Mallory Silberman	Arnold & Porter LLP
Mr. Jose Antonio Rivas	Arnold & Porter LLP
Ms. Catherine Kettlewell	Arnold & Porter LLP

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3. The President of Tribunal and the Parties considered the following outstanding procedural matters (the “Outstanding Matters”):
  - Allocation of Hearing Time for Each Party.
  - Testimony of the Parties’ Experts on Dominican Law.
  - Examination of a Witness by video conference (“V.C.”).
  - Closing Arguments and Post-Hearing Briefs (“PHBs”).
  - Deadline for the Tribunal to Issue its Decision.
  - Other Procedural Matters.
4. For each of the above-indicated Outstanding Matters, reference was made during the Organizational Meeting to the Parties’ respective positions; the President of the Tribunal discussed with the Parties’ the Tribunal’s preliminary views resulting from the Tribunal’s previous discussions and deliberations in light of the Parties’ Procedural Agreements, and the Parties’ subsequent communications in such regard; and each of the Party was given the opportunity to comment.
5. Following the Organizational Meeting, the President of the Tribunal informed his Co-Arbitrators the matters that were discussed during that meeting, and the fact that each of the Parties had expressed no objections to the Tribunal’s preliminary views on the Outstanding Matters.
6. Considering the above, the Tribunal now issues the present order:

**Order**

7. **Allocation of Time**: As agreed, each hearing day shall start at 9:00 a.m., concluding at 5:30 p.m. on April 11, 2016, and at 3:00 pm on April 12, 2016. After deducting (i) the time reserved by the Tribunal for questioning (1 hour); (ii) the time devoted to addressing logistic and administrative matters (1 hour and 15 minutes); (iii) one-hour lunch break for each day (2 hours); and (iv) two 15-minute coffee breaks during the first day, and one 15-

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minute coffee break during the second day (45 minutes); that leaves a total of 9 hours and 30 minutes of total effective time, to be equally shared by the Parties. As a result, 4 hours and 45 minutes of effective hearing time shall be available to each Party.

8. **Testimony of the Parties' Experts on Dominican Law**: the Tribunal considering that it would be helpful for the better understanding of the experts' reports to have the experts make a short presentation of their reports, has decided to allow the three experts, who have submitted expert reports on Dominican Law, including those who have not been called for cross-examination, to make a short presentation of their reports of up to 15 minutes. The Tribunal notes that although each of the experts will be allowed a 15-minute presentation, it is for each Party to allocate such a time between direct examination and the presentation of the report. The Tribunal has taken note of Respondent's submission during the Organizational Meeting, of the need for its Expert, Prof. Eduardo Jorge Prats, to submit new materials and address, in accordance with sections 19.4.1 and 19.7 of the Tribunal's Procedural Order No. 1 of December 16, 2015, matters which have arisen after his statement was drafted. This, given that Prof. Prats' report was filed before those submitted by Claimant's experts, Ms. Fabiola Medina and Prof. Gustavo Mena. The Tribunal has also taken note of Claimant's submission that its experts would need some time to address such new materials during the Hearing. As a result, and as already indicated by the President of the Tribunal during the Organizational Meeting, the Tribunal has decided that there will be some flexibility with the time limits, at the Tribunal's discretion. Any supplementary time devoted to direct examination, is to be deducted from the time allocated to the respective Party.
  
9. **Examination of a Witness by V.C.**: The Tribunal has considered (i) Respondent's request of March 24, 2016 for the examination by V.C. of the Honorable Jaime David Fernández, current Minister of Sports of the Dominican Republic, who previously served as Minister of Environment. The Tribunal has also considered the Parties subsequent communications in such regard (Claimant's observations by letter of March 25, 2016, and Respondent's response by email of March 26, 2016). After due deliberation, the Tribunal has decided to authorize the participation of the Honorable Jaime David Fernández by V.C. The ICSID

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Secretariat has made arrangements for the V.C. to be conducted from the World Bank (“W.B.”) office in Santo Domingo. For logistical reasons the V.C. has been scheduled for Monday, April 11, 2016, starting at 9:30 EST (9:30 a.m. Washington, D.C. and Santo Domingo time; 3:30 p.m. Paris time). The Tribunal has taken note that, as indicated during the Organizational Meeting, the Honorable Jaime David Fernández is doing his best efforts to attend the Hearing in-person. Counsel for Respondent is to confirm as soon as possible and, in any event, by **Thursday, March 31, 2016**, whether or not the Honorable Jaime David Fernández will be participating in-person. This to enable the ICSID Secretariat to finalize the logistical arrangements for the V.C., and for Counsel for Claimant to send a member of its team to be present during the V.C. at the W.B. office in Santo Domingo.

- 10. Closing Arguments and Post-Hearing Briefs:** The Parties are to file short PHBs, simultaneously, on **April 21, 2016**, with the translation into the other procedural language to follow within a week (i.e., by **April 28, 2016**). The PHBs are not to exceed 12 pages, and should summarize the Party’s main allegations with precise references to what it considers essential for the Tribunal to take into account from the Hearing. Quotations to the hearing transcripts in the PHBs will be conditional and subject to the agreed and revised transcripts. The submission of PHBs does not exclude concluding remarks at the end of the Hearing, if time is still available.
- 11. Deadline for the Tribunal to issue its Decision on the Expedited Objections:** During the Organizational Meeting, the President of the Tribunal referred to Section 14.6 of the Tribunal’s Procedural Order No. 1 that states:

*“The Tribunal shall make its best efforts to render the decision on or before May 1, 2016 (150 days from the date of Respondent’s Preliminary Objections request) and no later than May 31, 2016 (30 day extension on showing of an extraordinary cause, pursuant to Article 10.20.5). In view of the time restraints under CAFTA-DR and the established calendar, the Tribunal may issue its Decision on Respondent’s Preliminary Objections by May 1, 2016, or May 31, 2016, as*

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*applicable, with the reasoning to follow as soon as possible.”*

Reference was also made to Section 11.11 of Procedural Order No. 1 that states:

*“The Tribunal shall render any decision in English and Spanish simultaneously. Procedural Orders will be issued in either procedural language with the translation to follow.”*

In view of the time restraints under DR-CAFTA, and the established calendar, following a request made by the President of the Tribunal, on behalf of the Tribunal, to the Parties, during the Organizational Meeting, the Parties expressed their agreement to allow the Tribunal to issue its Decision on the Expedited Objections by May 31, 2016 only in English, with the Spanish version to follow as soon as possible, within 15 working days. The Tribunal would like to thank the Parties for their agreement.

12. **Other Procedural Matters**: with regard to certain of the documentary issues that were contemplated in the Parties’ Procedural Agreements, the Tribunal directs the Parties as follows:

- a. Each of the Parties is to prepare and bring to the Hearing four (4) USBs (for the Tribunal Members and the Secretary of the Tribunal), comprising the totality of the pleadings, witness statements, expert reports, exhibits, and authorities submitted by that Party to date. Such USBs are to be given to the Secretary of the Tribunal during the set-up for the Hearing.
- b. Regarding the use of visual aids or demonstrative exhibits, the Parties are to provide ten (10) sets of hard copies of any PowerPoint presentation (3 for the Tribunal, 1 for the Secretariat, 2 for the court reporters, 2 for the interpreters and 2 for opposing counsel), to be followed by an electronic copy transmitted to the Secretary of the Tribunal and opposing counsel by the end of each Hearing day.

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- c. The Parties are to provide eleven (11) hard copies of the examination bundles (1 for the witness, 3 for the Tribunal, 1 for the Secretariat, 2 for the court reporters, 2 for the interpreters and 2 for opposing counsel.
  
- d. Each of the Parties will be responsible to make available an examination bundle to the Honorable Jaime David Fernández during his examination by V.C. at the WB office in Santo Domingo. This, if his examination is conducted by V.C. and not in-person.

*[signed]*

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Mr. Fernando Mantilla-Serrano  
Arbitrator

*[signed]*

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Mr. J. Christopher Thomas QC  
Arbitrator

*[signed]*

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Prof. Pierre-Marie-Dupuy  
President of the Tribunal