

*Victor Pey Casado and Foundation President Allende v. Republic of Chile*  
(*ICSID Case No. ARB/98/2 – Resubmission*)

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**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Victor Pey Casado and Foundation President Allende**

**v.**

**Republic of Chile**

**(ICSID Case No. ARB/98/2 – Resubmission)**

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**PROCEDURAL ORDER NO 1**

Sir Frank Berman KCMG QC, President of the Tribunal  
Mr. V. V. Veeder QC, Arbitrator  
Maître Alexis Mourre, Arbitrator

*Secretary of the Tribunal*  
Mr. Benjamin Garel

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## **Introduction**

The first session of the Arbitral Tribunal was held from 4:00 to 6:00 pm GMT on 11 March 2014, by telephone conference.

Participating in the conference were:

### **Members of the Tribunal**

Sir Frank Berman KCMG QC, President of the Tribunal  
V. V. Veeder QC, Arbitrator  
Maître Alexis Mourre, Arbitrator

### **ICSID Secretariat:**

Mr. Paul-Jean Le Cannu, former Secretary of the Tribunal

### **Participating on behalf of the Claimants:**

Mr. Juan E. Garcés y Ramón  
Ms. Carole Malinvaud, Gide Loyrette Nouel  
Ms. Alexandra Muñoz, Gide Loyrette Nouel  
Ms. Natasha Peter, Gide Loyrette Nouel  
Ms. Astrid Westphalen, Gide Loyrette Nouel

### **Participating on behalf of the Respondent:**

Mr. Paolo Di Rosa, Arnold & Porter LLP  
Ms. Gaela Gehring Flores, Arnold & Porter LLP  
Ms. Mallory Silberman, Arnold & Porter LLP  
Mr. Juan Carlos Riesco, Arnold & Porter LLP  
Ms. Victoria Fernández-Armesto, Foreign Investment Committee, Republic of Chile  
Mr. Juan Banderas Casanova, Foreign Investment Committee, Republic of Chile

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

Having considered the following:

- the Agenda for the first session circulated by the Tribunal Secretary on 10 March 2014 (Annex 1);
- the Summary of the first session circulated by the Tribunal Secretary on 29 April 2014 (Annex 2);
- the notification by the Parties of the agreement reached between them<sup>1</sup> on the languages of the proceedings (Annex 3) and other correspondence; and

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<sup>1</sup> See the letter from the Claimants dated 24 March 2014 and the email from the Respondent dated 25 March 2014.

- The Draft Procedural Order circulated by the Tribunal Secretary on 29 April 2014 (Annex 4) and the Parties' comments thereon;

the Tribunal now issues the present Order (Procedural Order No.1):

## **Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this Order sets out the procedural rules that govern this arbitration. Pursuant to Article 52(6) of the Convention and Arbitration Rule 55, the proceedings in this arbitration are limited to the matters identified in paragraph 359.1 of the Decision of the ad hoc Committee transmitted to the Parties on 18 December 2012, and the procedures in this Order are to be understood accordingly.

### 1. Applicable Arbitration Rules *Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

### 2. Constitution of the Tribunal and Tribunal Members' Declarations *Arbitration Rule 6*

- 2.1. The Tribunal was constituted on 24 December 2013 in accordance with the ICSID Convention and the ICSID Arbitration Rules. Following the resignation by Professor Philippe Sands from his appointment as arbitrator in this case and the consent to that resignation by the other Members of the Tribunal in accordance with Arbitration Rule 8(2), Mr. V. V. Veeder QC was appointed as arbitrator to fill the vacancy, in accordance with ICSID Arbitration Rules 55(2)(d) and 11(1), and accepted his appointment on 31 January 2014. On the same date, the Centre informed the Parties that the vacancy created on the Tribunal following the resignation of Professor Sands had been filled and that, in accordance with ICSID Arbitration Rule 12, the proceeding resumed on that day from the point it had reached at the time the vacancy occurred.

- 2.2. At the first session, the Claimants, while indicating that they were not proposing the disqualification of the arbitrator nominated by the Respondent, nevertheless requested the Tribunal to decide whether the arbitrator in question had been duly appointed in accordance with the Convention and Arbitration Rules, and, if not, that the Tribunal invite him to resign; whereas the Respondent maintained that the arbitrator in question had been properly appointed in accordance with Article 37(2)(b) of the Convention. In the absence of a proposal for disqualification

under the Convention and Rules, the Tribunal does not feel called upon to rule on the matter.

- 2.3. The Members of the Tribunal submitted their signed declarations in good time in accordance with Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 11 October 2013, 13 and 31 January 2014.

3. Fees and Expenses of Tribunal Members

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
  - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
  - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Assistant to the President of the Tribunal

- 4.1. The President explained to the Parties at the first session, and the Parties agreed in principle, that it would greatly assist the overall cost and time efficiency of the proceedings if an assistant were appointed to the President. Taking into account the Parties' views at the first session as to what should be the assistant's profile, the President will in due course propose, with the approval of the other members of the Tribunal, the name of the person he intends to appoint.
- 4.2. The President further explained that the assistant would undertake only such specific tasks as are assigned to him or her by the President. The assistant would

be subject to the same confidentiality obligations as the Members of the Tribunal and would sign a declaration to that effect.

4.3. The Parties will at that stage be asked to approve the appointment of the person proposed as assistant to the President and the fees and expenses payable, which are likely to be at the level of (a) US\$200 for each hour of work performed in connection with the case or pro rata; and (b) a flat rate of US\$1,500 per day of hearing. The assistant would also receive subsistence allowances and be reimbursed for travel and other expenses within the limits prescribed by Administrative and Financial Regulation 14.

5. Presence and Quorum

*Arbitration Rules 14(2) and 20(1)(a)*

5.1. The presence of all Members of the Tribunal, including by any appropriate means of communication, shall constitute a quorum for its sittings. However, for hearings on matters other than merely procedural ones, the physical presence of all three arbitrators shall be required.

6. Decisions and Procedural Rulings of the Tribunal

*Convention Article 48(1); Arbitration Rules 16, 19 and 20*

6.1. Decisions of the Tribunal shall be taken by a majority of its Members.

6.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that, where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

6.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

6.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.

7. Power to Fix Time Limits

*Arbitration Rule 26(1)*

7.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

7.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

8. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

8.1. The Tribunal Secretary is Mr. Benjamin Garel, Legal Counsel, ICSID, or such other person as ICSID may notify to the Tribunal and the Parties from time to time. In accordance with the Secretary-General's letter dated 13 May 2014, Mr. Garel will be assisted, as and when needed, by Ms. Anneliese Fleckenstein, Legal Counsel, ICSID. The Parties are requested to copy both Mr. Garel and Ms. Fleckenstein on future correspondence.

8.2. To send communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Benjamin Garel  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473 1761  
Fax: + 1 (202) 522-2615  
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[afleckenstein@worldbank.org](mailto:afleckenstein@worldbank.org)  
Paralegal email: [aboissaye@worldbank.org](mailto:aboissaye@worldbank.org)

8.3. For local messenger deliveries, the contact details are:

Mr. Benjamin Garel  
701 18th Street, N.W. ("J Building")  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-4567

9. Representation of the Parties  
*Arbitration Rule 18*

9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation and, if possible, in advance.

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10. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

- 10.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. By letter of 24 December 2013, ICSID requested that each party pay US\$ 100,000 to defray the initial costs of the proceeding. ICSID confirmed receipt of the Respondent's payment on 9 January 2014 and the Claimants' payment on 13 January 2014.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*

- 11.1. Washington, DC shall be the place of the proceeding.

11.2. For reasons of economy and convenience, oral hearings will be held in London, unless in any particular instance the Tribunal and the Parties otherwise agree.

11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation

*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*

12.1. Documents (including exhibits, memorials, etc.) that have already been submitted in the prior arbitration proceedings need not be translated, unless the Tribunal so requests in respect of any specific document.

12.2. The Claimants will file their written pleadings (see § 15 below) in French and the Respondent in English. In either case a translation into Spanish shall be submitted not later than 15 days after the filing. The Parties will make every effort to submit the translations within 15 calendar days, but may if necessary avail themselves of 15 business days (after so informing the Tribunal and the other Party).

12.3. The Parties are requested to make every effort to ensure that quotations in any pleading from an exhibit or legal authority for which a Spanish translation already exists shall appear as in that translation and not in a fresh translation.

12.4. The annexes and exhibits to any written pleading need not be translated provided that they are filed in English, French or Spanish.

12.5. The rules laid down above for the Parties' pleadings shall apply to the experts and fact witnesses, if any.

12.6. Correspondence between the Parties and the Centre or the Arbitral Tribunal may be in any one of the three official languages of ICSID (English, French or Spanish).

12.7. At the hearings, the Claimants will plead in French or Spanish and the Respondent will plead in English or Spanish. There shall be interpretation and transcription in all three languages.

12.8. The Award shall be rendered in the three languages. However the text of the Award (in whatever language it may be) shall be transmitted to the Parties as soon as it is completed and signed without waiting for the translation into the other languages to be ready, it being specified that all three language versions shall be equally authentic.

12.9. Other decisions or communications issued by the Arbitral Tribunal (such as correspondence, procedural orders, etc.) shall be in English and French only.

13. Routing of Communications

*Administrative and Financial Regulation 24*

13.1. The ICSID Secretariat shall be the channel for all written communications between the Parties and the Tribunal.

13.2. Written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing Party (or Parties) and the Tribunal.

13.3. The Tribunal Secretary shall not be copied into direct communications between the Parties which are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

14.1. By the relevant filing date, the Parties shall:

14.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading, witness statements, expert reports, and indices of exhibits and legal authorities,<sup>2</sup> and

14.1.2. upload the documents listed in § 14.1.1, along with exhibits and legal authorities, to the FTP server created for this case.

14.2. Within three business days of the relevant filing deadline, the Parties shall:

14.2.1. courier to the Tribunal Secretary:

14.2.1.1. one unbound hard copy in A4/Letter format of the pleading, witness statements, expert reports, indices, and exhibits (but not legal authorities);<sup>3</sup>

14.2.1.2. a minimum of five hard copies in A5 format of the pleading, witness statements, expert reports, indices, and exhibits (but not legal

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<sup>2</sup> Please note that the World Bank server does not accept emails larger than 10 MB.

<sup>3</sup> The signed originals of the pleading, witness statements, and expert reports shall be submitted in this format.

authorities); and

14.2.1.3. a minimum of six USB drives, CD-ROMs, or DVDs, with full copies of the entire submission (*i.e.*, the pleading, witness statements, expert reports, indices, exhibits, and legal authorities);

14.2.2. courier to the opposing party at the address(es) indicated at §9.1 above:

14.2.2.1. one hard copy in A5 format of the pleading, witness statements, expert reports, indices, and exhibits (but not legal authorities); and

14.2.2.2. two USB drives, or sets of CD-ROMs or DVDs, with a full copy of the entire submission (*i.e.*, the pleading, witness statements, expert reports, indices, exhibits, and legal authorities).<sup>4</sup>

14.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

14.4. Electronic versions of a pleading shall be text searchable (*i.e.*, OCR PDF or Word).

14.5. The exhibit and legal authority indices referenced above in §§ 14.1–14.2 shall indicate which exhibits or legal authorities had already been submitted during a prior proceeding in this case (*i.e.*, arbitration, revision, annulment, or supplementation proceeding). In addition, the exhibit and authorities indices referenced in §§ 14.2.1.3 and 14.2.2.2 (*i.e.*, the indices submitted on USB drive, CD-ROM, or DVD) shall include hyperlinks to the supporting documentation.

14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

14.7. A filing shall be deemed in time if sent by a party by 11:59 pm, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

15.1. The sequence of the Parties' Written Pleadings shall be as follows:

15.1.1. a Memorial by the Claimants, to be filed not later than Friday, **27 June 2014**;

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<sup>4</sup> As regards the Claimants, one USB drive or set of CD-ROMs or DVDs should be addressed to Mr. Garcés and one to Gide Loyrette Nouel, at the addresses provided in §9.1. As regards the Respondent, one USB drive or set of CD-ROMs or DVDs should be addressed to Arnold & Porter and one to the Committee on Foreign Investment, at the addresses provided in §9.1.

- 15.1.2. a Counter-Memorial by the Respondent, to be filed not later than Monday, **27 October 2014**;
- 15.1.3. a Reply by the Claimants, to be filed not later than Friday, **9 January 2015**;
- 15.1.4. a Rejoinder by the Respondent, to be filed not later than Monday, **9 March 2015**.
- 15.2. The time limits laid down in §§ 15.1.2-15.1.4 above are dependent on the timely submission of Spanish translations pursuant to § 12.2 above; in the event that there is a delay in the submission of a Spanish translation under that paragraph, the opposing Party will be entitled to apply to the Tribunal for a corresponding extension to the time limit for submission of its responsive pleading.
- 15.3. The Parties are requested to confine their pleadings strictly to the limited issues for decision in these proceedings and to avoid unnecessary length. Responsive pleadings (i.e. the Counter-Memorial, Reply, and Rejoinder) should be directed specifically to the matters of fact or arguments of law raised in the pleading under reply, and must not raise further issues extraneous to that.
16. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*
- 16.1. The Tribunal acknowledges the receipt of an indicative list from the Claimants, as agreed during the first session, of the documents which the Claimants would wish to have disclosed by the Respondent in advance of the filing of the Claimants' Memorial and of the Respondent's reply. Having taken this correspondence into account, in the light of the viewpoints expressed by the Claimants and by the Respondent during the first session, the Tribunal invites the Respondent to disclose to the Claimants for the purposes of the preparation of their Memorial the documents mentioned in the second and final paragraphs of its letter to the Tribunal of 14 May 2014. The documents in question should be transmitted to the Claimants, in whatever format is most convenient, as soon as possible and in any event not later than Friday, **23 May 2014**.
- 16.2. The arrangements laid down in § 16.1 above are entirely without prejudice to the following formal procedure for document disclosure:
- 16.2.1. after the filing of the Counter-Memorial as laid down in §§ 15.1.1 and 15.1.2 above, it will be open to any Party to make formal application to the Tribunal for the disclosure of any document not submitted with the opposing Party's pleading, or any document not previously disclosed in an earlier proceeding in this case;

- 16.2.2. any such application must (a) be made within **two weeks** from the date on which the Counter-Memorial was filed; (b) identify as precisely as possible the document or documents sought; (c) specify the grounds on which disclosure is sought;
- 16.2.3. in the event that any such application is made, the opposing Party or Parties will then have a period of **three weeks** either to disclose the requested document or documents or to indicate the reasons for its refusal to do so;
- 16.2.4. in the event of such refusal, the Tribunal will rule on the matter without delay;
- 16.2.5. in the application of this procedure under Article 43 of the ICSID Convention, the Tribunal will be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010).

**17. Submission of Documents**

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties may be submitted in rebuttal with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §14 above.
- 17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.
- 17.3.1. Should a party request leave to file additional or responsive documents, that party may not annex to its request the documents that it seeks to file.
- 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.5. The documents shall be submitted in the following form:

- 17.5.1. Each Party's exhibits and legal authorities shall be numbered consecutively throughout these proceedings.
  - 17.5.2. The number for each exhibit produced by the Claimants shall be preceded by the letter "C-". The number of each legal authority produced by the Claimants shall be preceded by the designation "CL-". The number for each exhibit produced by the Respondent shall be preceded by the letter "R-". The number for each legal authority produced by the Respondent shall be preceded by the designation "RL-".
  - 17.5.3. For hard copy submissions, each exhibit and legal authority shall be separated by a divider that features the relevant identification number on the tab. For purposes of electronic submissions, each exhibit and legal authority shall be submitted as a separate file.
  - 17.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, so long as each page of such Exhibit is numbered separately and consecutively.
  - 17.5.5. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
  - 17.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
  - 17.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the previously submitted exhibit or legal authority from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.
18. Witness Statements and Expert Reports  
*Convention Article 43(a); Arbitration Rule 24*
- 18.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
  - 18.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless, after giving both Parties an opportunity to be heard on

admissibility, the Tribunal determines that exceptional circumstances exist. The Party making a petition under this Section may not annex to its request the testimony that it seeks to file.

18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. Examination of Witnesses and Experts  
*Arbitration Rules 35 and 36*

19.1. Each Party is responsible for ensuring that its witnesses and experts are available for examination at the hearing, subject to the provisions of this Order.

19.2. At the pre-hearing organizational meeting at the latest (see § 20), each party shall notify the other party and the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing.

19.3. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.

19.4. If examination of a witness or expert is not requested by the other party pursuant to § 19.2 or by the Tribunal pursuant to § 19.3, the witness or expert shall not testify at the hearing. For witnesses and experts called to testify under §§ 19.2–19.3, the procedure for examining witnesses and experts at the hearing shall be the following:

19.4.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).

19.4.2. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.

19.4.3. The examination will be under the overall control of the Tribunal and shall be limited to matters raised in the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal), and/or oral evidence of the other party's witnesses, to the extent the witness is competent to testify on these statements and materials.

19.4.4. Witnesses of fact giving oral testimony may first be examined in direct examination for no longer than 15 minutes.

19.4.5. Experts giving oral evidence shall first give a summary of their report for no longer than 30 minutes, followed by a direct examination for no longer than



15 minutes. Experts will be allowed to use PowerPoint presentations in giving their oral evidence limited to tables, graphics and information already produced in any expert report submitted as part of the written pleadings.

19.4.6. The direct examination of a fact witness or expert shall be followed by examination by the other party (“cross-examination”), and subsequently, if it so chooses, by the party producing the witness or expert (“redirect examination”). This is without prejudice to the power of the Tribunal, after consultation with the Parties, to arrange a session for joint expert conferencing.

19.4.7. The redirect examination shall be limited to matters raised in cross-examination.

19.5. Unless the parties and the Tribunal agree otherwise, witnesses shall not be allowed in the hearing room before giving their testimony and shall not be permitted to read the transcript before testifying. Experts shall be allowed in the hearing room at any time.

19.6. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the witness statement of such witness or report of such expert to be struck from the record, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.

19.7. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.

19.8. Each party may determine the order of the witnesses and the experts called by it, after consultation with the Tribunal and the opposing party during the pre-hearing organizational meeting in § 20 below.

20. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*

20.1. On a date to be determined by the Tribunal after prior consultation with the Parties, a pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. Hearings  
*Arbitration Rules 20(1)(e) and 32*

21.1. The oral procedure shall consist of a hearing for examination of witnesses and

experts, if any, and for oral arguments.

- 21.2. In accordance with and subject to § 11.2 above, the hearing will be held in London from **13 to 16 April 2015** with **17 April 2015** being held in reserve in case of need.
- 21.3. The precise schedule for the hearing will be determined by the Tribunal after discussion with the Parties at the Pre-Hearing organizational meeting referred to in § 20 above.

22. Records of Hearings and Sessions  
*Arbitration Rules 13 and 20(1)(g)*

- 22.1. Sound recordings shall be made of all hearings and sessions, including of the interpretation taking place under § 12.7 above. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 22.2. Subject to the approval of the Tribunal, the Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 22.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis. The provision of verbatim transcripts in real-time using LiveNote or similar software will be the subject of further discussion between the Parties and with the Tribunal, taking into account the estimated cost.
- 22.4. The transcript in the language in which a party renders its oral argument shall be deemed to be the governing text. Within 30 calendar days of receiving the final version of the transcripts, each party shall submit to the other party any corrections it proposes to the governing text for its own oral argument. Any corrections agreed upon by the parties shall 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.

23. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*

- 23.1. The Tribunal shall decide, after hearing the Parties: (i) whether the Parties shall submit post-hearing memorials, and if so, what their length and format should be, and (ii) when the Parties shall submit their statements of costs.

24. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

24.1. The Parties consent to ICSID publication of any ruling issued in the present proceeding.

[Signed]

---

Sir Franklin Berman  
President of the Tribunal  
Date: 18 May 2014

## **ANNEX 1**



**Víctor Pey Casado and Foundation President Allende**

**v.**

**Republic of Chile**

(ICSID Case No. ARB/98/2 – Resubmission)

**FIRST SESSION OF THE ARBITRAL TRIBUNAL**

**Date: 11 March 2014 - Time: 4:00 pm GMT (to be confirmed)**

**By telephone conference**

**Agenda**

1. Applicable Arbitration Rules (Convention Article 44)
2. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)
3. Fees and Expenses of Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)
4. Assistant to the President of the Tribunal
5. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))
6. Procedural Language(s), Translation and Interpretation (Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22)
7. Number and Sequence of Pleadings (Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31)
8. Production of Documents (Convention Article 43(a); Arbitration Rules 24 and 33-36)
9. Submission of Documents (Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24)
10. Witness Statements and Expert Reports (Convention Article 43(a); Arbitration Rule 24)
11. Possible timing for eventual oral hearing

## **ANNEX 2**

**Víctor Pey Casado and Foundation President Allende**

**v.**

**Republic of Chile**

(ICSID Case No. ARB/98/2 – Resubmission)

**FIRST SESSION OF THE ARBITRAL TRIBUNAL**

**Date: 11 March 2014 - Time: 4:00 – 6:00 pm GMT**

**By telephone conference**

**SUMMARY OF ITEMS DISCUSSED AT THE FIRST SESSION**

**1. Applicable Arbitration Rules (Convention Article 44)**

- Both parties agreed that the 2006 Arbitration Rules should govern these proceedings.

**2. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)**

- Both parties confirmed receipt of the arbitrators' declarations. The Claimants made comments with respect to the constitution of the Tribunal.
- On the basis of their interpretation of ICSID Arbitration Rule 55(2)(d), the Claimants argued that the arbitrator appointed by the Respondent should have been appointed by the Chairman of the Administrative Council, in the same way that Professor Gaillard was in the original arbitration. They requested that (i) the Tribunal decide whether Me Mourre was appointed in accordance with the ICSID Convention and Arbitration Rules, and (ii) if he has not, that the Tribunal invite him to resign. The Claimants confirmed that their request was not a proposal for the disqualification of Me Mourre.
- The Respondent argued that Me Mourre was appointed in accordance with the proper method of constitution, namely, Article 37(2)(b) of the ICSID Convention. In its view, the Claimants' request should be rejected.

**3. Fees and Expenses of Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)**

- Both parties agreed that the ICSID Schedule of fees should be followed in these proceedings.

**4. Assistant to the President of the Tribunal**

- The Claimants would in principle accept the appointment of an assistant to the President to carry out specific tasks in the interest of cost-effectiveness, but they were of the view that this assistant should be fluent in Spanish and French.

- The Respondent had no objection to the appointment of an assistant to the President. The Respondent's concern was whether the members of the Tribunal would have the ability to review documents in Spanish.
- While Me Moure confirmed that he was comfortable in Spanish, the President and Mr. Veeder indicated they were not fluent enough to work on Spanish documents without translation. The President indicated he would try to find an assistant in London who is fluent in the three languages, but if he cannot do so he reserves the right to propose someone who would be perfectly fluent in English and French. The parties would have an opportunity to comment and the appointee would in any event be subject to the same confidentiality obligations as the Tribunal.

**5. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))**

- The Claimants were of the view that a place in Europe/Paris would make sense and left it to the Tribunal to decide on this issue.
- The Respondent was of the view that Washington, DC should be the place of proceedings and would be open to consider having hearings in a different location subject to the approval of the parties.

**6. Procedural Language(s), Translation and Interpretation (Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22)**

- The Claimants referred to the agreement that the parties had reached in 1999 at the first session in the original proceeding, and argued that the languages of the proceedings should be French and Spanish. Mr. Pey does not speak English and the Claimants' lead counsel cannot plead in English. The Claimants were concerned about costs if English were a procedural language.
- The Respondent pointed out that English is one of the official languages of ICSID and that it should be one of the procedural languages in this arbitration. The Respondent indicated that this would be without prejudice to the possibility of submitting documents in Spanish and French without an English translation.
- Mr. Veeder referred to the agreement that the parties reached in the Annulment proceedings. Decision on the application for annulment, para. 10:  

“The parties also reached an agreement on the procedural languages: the Claimants would file their submissions in French and submit a Spanish translation within 15 days of the filing whereas the Respondent would file its submissions in English and submit a Spanish translation within 15 days of the filing. The parties agreed that all decisions of the Committee would be issued in the three official languages of the Centre.”
- The Parties agreed that they would try to come to an agreement on the procedural languages.

**7. Number and Sequence of Pleadings (Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31)**

- The Claimants proposed the following schedule:



- (i) If no prior document production phase, Claimants' Memorial would be filed within five weeks (from first session?); if prior document production phase, three weeks after the production of documents from the Respondent (see below item 8)
  - (ii) Respondent's Counter-Memorial three months after Claimants' Memorial;
  - (iii) Claimants' Reply two months after Respondent's Counter-Memorial;
  - (iv) Respondent's Rejoinder two months after Claimants' Response.
- The Respondent proposed the following schedule:
    - (i) Claimants' Memorial: No specific period; Claimants may want to move forward swiftly; they had a year to prepare their submission;
    - (ii) Respondent's Counter-Memorial four months after Claimant's Memorial;
    - (iii) Claimants' Response three months after Respondent's Counter-Memorial;
    - (iv) Respondent's Reply three months after Claimants' Response.
  - The Respondent insisted that the Tribunal should set specific dates rather than time periods for the filing of the parties' submissions.
  - The Parties agreed that they would try to come to an agreement on the schedule of submissions, including the document production phase and the oral hearing.

#### **8. Production of Documents (Convention Article 43(a); Arbitration Rules 24 and 33-36)**

- The Claimants wish to make a request for the production of financial documents on quantum issues. The document production phase should take place before they file their first memorial in this arbitration. This would be a fairly limited request for specific documents (10 to 15 categories of documents), reiterating parts of a request made in July 2002 and to which Chile did not respond.
- The Respondent would accept that a request for document production be filed provided that it is not covered by an earlier request. The Respondent was unable to find a number of the documents that the Claimants had requested in 2002 and would find it unfair to have to conduct the same document search twice over. The document production phase should take place after the first exchange of memorials.
- It was decided that the Claimants would provide at an early stage an indicative list of the kind of documents they are likely to be seeking, without prejudice to the timing of the document production phase (before or after first exchange of pleading), so that the Tribunal may assess the size and scope of the contemplated document request. While the Tribunal set no particular time limit, the Claimants suggested they could submit their list next week. The Respondent did not object to the Tribunal's decision, provided the Claimants' document request were submitted without prejudice to Chile's right to submit its own document request at this stage or any future stage.

**9. Submission of Documents (Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24)**

- Not specifically discussed.

**10. Witness Statements and Expert Reports (Convention Article 43(a); Arbitration Rule 24)**

- The Claimants did not anticipate that they would file witness statements, but intended to file expert reports.
- The Respondent reserved the right to file witness statements to respond to the Claimants' Memorial. It expected to file expert reports to rebut the Claimants' reports.

**11. Possible timing for eventual oral hearing**

- The Claimants: as early as possible in 2015, in any event before the summer; 2-4 days, one week maximum.
- The Respondent: Mid 2015; not more than one week. To be scheduled not too soon after the filing of the last submission.

**12. Other items**

- Claimants: if a party has to file a memorial near Christmas time, it should be afforded an additional ten days.
- Respondent: (i) prepared to accommodate the Claimant's request regarding Christmas (or other holidays) if reciprocal; (ii) invited the Claimants to refrain from publishing procedural correspondence and their pleadings on their website because it exacerbates the dispute; if the Claimants do not show more restraint, the Respondent will ask that the Tribunal address this issue.
- The Claimants disclosed that Prof. Paul Le Cannu, who is the father of the Secretary to the Tribunal, is a member of Gide's scientific council and a consultant on corporate matters in the law firm. The Claimants stated that Prof. Le Cannu had no connection with this case. The Tribunal Secretary confirmed that he himself had no professional connection with Gide, except for the fact that he did an internship there in August and September 1997 (not in the arbitration department). Counsel for the Respondent said he did not raise any objection at this stage, but wished to confer with his client.

**13. Next steps: summary**

- The Parties agreed that they would try to come to an agreement on (i) the procedural languages and (ii) the schedule of submissions, including the document production phase and the oral hearing.
- The Claimants shall submit an indicative list of the kind of documents they are likely to request at an early stage/earliest convenience.
- The Tribunal shall circulate in the near future a draft procedural order with a "gap" for the parties' comment (the "gap" being no draft provisions regarding the (i) the procedural languages and (ii) the schedule of submissions, including the document production phase and the oral hearing).

- The Tribunal shall revert to the parties to propose the name of an assistant to the President.

## **ANNEX 3**

*Juan E. Garcés, Abogado*

ZORRILLA, 11 - 1° - DCHA.

TELÉF. 91 360 05 36 - FAX: 91 5311989

E-mail: 100407.1303@compuserve.com

28014 MADRID

Madrid, le 24 mars 2014

M. le Secrétaire du Tribunal arbitral  
CIRDI. Banque Mondiale  
1818 H Street, N.W.  
WASHINGTON D.C. 20433

**Réf.: Victor Pey Casado et Fondation Président Allende v. République du Chili (CIRDI Affaire No. ARB-98-2). Accord des parties sur le choix des langues de procédure**

Monsieur le Secrétaire du Tribunal arbitral,

Lors de la première session du nouveau Tribunal arbitral du 11 mars 2014, ce dernier a invité les parties à se mettre d'accord sur le choix des langues de procédure.

Les parties sont parvenues à un accord dans les termes suivants :

- Les documents (y compris les pièces, les mémoires etc.) déjà produits dans la procédure, ne seront pas traduits ;
- Les Demanderesses soumettront leurs écritures en français et remettront une traduction en espagnol dans les 15 jours de la remise de leurs écritures ;
- La Défenderesse soumettra ses écritures en anglais et remettra une traduction en espagnol dans les 15 jours de la remise de ses écritures ;
- Les annexes et les pièces ne seront pas traduites dès lors que soumises dans l'une des trois langues officielles du CIRDI (anglais, français ou espagnol) ;
- Les règles préconisées pour les écritures des parties s'appliqueront aux experts ou aux témoins factuels éventuels ;
- Les correspondances entre les Parties et la Cour ou le Tribunal arbitral pourront être indifféremment rédigées dans l'une des trois langues officielles du CIRDI (anglais, français ou espagnol) ;
- Lors des audiences, les Demanderesses s'exprimeront en français ou en espagnol et la Défenderesse s'exprimera en anglais ou en espagnol. La traduction et la retranscription se feront dans les trois langues ;
- La Sentence sera rendue dans les trois langues. Néanmoins, la première version de la Sentence (peu importe la langue) sera transmise aux parties sans attendre

la traduction dans les autres langues bien que les trois versions soient également contraignantes ;

- Les autres décisions ou communications qui émanent du Tribunal arbitral (telles que les correspondances, les ordonnances de procédure etc.) seront uniquement rédigées en anglais et en français.

Cet accord est identique à celui intervenu entre les parties le 29 janvier 2010 lors de la première session du Comité *ad hoc* et qui a été rappelé par le Tribunal arbitral lors de la première session lorsqu'il a cité le paragraphe 10 de la Décision d'annulation du 18 décembre 2012.

Nous laissons le soin à la Défenderesse de vous confirmer son accord.

Nous vous prions d'agréer, Monsieur le Secrétaire du Tribunal arbitral, l'expression de notre considération distinguée

[Signé]

Dr. Juan E. Garcés  
Représentant de M. Victor Pey-Casado, Mme. Coral Pey-Grebe et de la Fondation espagnole Président Allende

**Re: Victor Pey Casado et Fondation Président Allende c. République du Chili (Affaire No. ARB-98-2). Langues de la procédure**

**Paul Jean Le Cannu** to: Di Rosa, Paolo

03/25/2014 06:17 PM

From: Paul Jean Le Cannu/Person/World Bank

To: "Di Rosa, Paolo" <Paolo.DiRosa@aporter.com>

Cc: "J" <100407.1303@compuserve.com>, "cdettleff@ciechile.gob.cl" <cdettleff@ciechile.gob.cl>,

Bcc: "vfarmesto@ciechile.gob.cl" <vfarmesto@ciechile.gob.cl>, "jcarey@carey.cl" <jcarey@carey.cl>, "gfernandez@carey.cl" <gfernandez@carey.cl>, "jcriesco@carey.cl" <jcriesco@carey.cl>, "Silberman, Mallory B." <Mallory.Silberman@APORTER.COM>, "Endicott, Amy" <Amy.Endicott@aporter.com>, "Ballena, Kelby P." <Kelby.Ballena@aporter.com>, "Gehring Flores, Gaela K."

<Gaela.GehringFlores@aporter.com>

Alix M. J. Ahimon/Person/World Bank

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Dear Sirs and Mesdames,

I acknowledge receipt of the Respondent's email of today's date confirming the Parties' agreement on the languages of the proceeding. I will forward it to the Tribunal.

Kind regards,

---

Mesdames, Messieurs,

J'accuse réception du courriel de la partie défenderesse en date de ce jour confirmant l'accord des parties sur les langues de la procédure. Je le transmets au Tribunal.

Je vous prie d'agréer, Mesdames, Messieurs, l'expression de mes salutations distinguées.

Paul-Jean Le Cannu  
Legal Counsel  
ICSID  
1818 H Street, NW  
MSN J2-200  
Washington, DC 20433

On Mar 25, 2014, at 11:08 PM, "Di Rosa, Paolo" <[Paolo.DiRosa@aporter.com](mailto:Paolo.DiRosa@aporter.com)> wrote:

Dear Mr. Le Cannu: I hereby confirm the understanding on behalf of the Republic of Chile (without prejudice to Chile's eventual observations on the draft Procedural Order that we

understand the Centre will soon be distributing to the parties). Best regards, -Paolo

**From:** [pjlecannu@worldbank.org](mailto:pjlecannu@worldbank.org) [<mailto:pjlecannu@worldbank.org>]

**Sent:** Monday, March 24, 2014 5:24 PM

**To:** J; [100407.1303@compuserve.com](mailto:100407.1303@compuserve.com); [cdettleff@ciechile.gob.cl](mailto:cdettleff@ciechile.gob.cl); [ryanez@presidencia.cl](mailto:ryanez@presidencia.cl); [vfarmesto@ciechile.gob.cl](mailto:vfarmesto@ciechile.gob.cl); [jcarey@carey.cl](mailto:jcarey@carey.cl); [gfernandez@carey.cl](mailto:gfernandez@carey.cl); [jcriesco@carey.cl](mailto:jcriesco@carey.cl); Di Rosa, Paolo; Silberman, Mallory B.; Endicott, Amy; Ballena, Kelby P.; Gehring Flores, Gaela K.

**Subject:** Re: Victor Pey Casado et Fondation Président Allende c. République du Chili (Affaire No. ARB-98-2). Langues de la procédure

Dear Sirs and Mesdames,

I acknowledge receipt of the Claimants' letter of today's date regarding the Parties' agreement on the languages of the proceeding. I will forward it to the Tribunal.

The Respondent is invited to confirm its agreement to the provisions set forth in the Claimant's letter.

Kind regards,

---

Mesdames, Messieurs,

J'accuse réception de la lettre des parties demanderesses en date de ce jour concernant l'accord des parties sur les langues de la procédure. Je la transmets au Tribunal.

La partie défenderesse est invitée à confirmer son accord sur les dispositions exposées dans la lettre des parties demanderesses.

Je vous prie d'agréer, Mesdames, Messieurs, l'expression de mes salutations distinguées.

**Paul-Jean Le Cannu**

Legal Counsel

1818 H Street, NW | MSN J2-200 | Washington, DC 20433 USA

T 202-473-0737 | F 202-522-2615/2027 | [pjlecannu@worldbank.org](mailto:pjlecannu@worldbank.org)

<M2.jpg>



<M3.gif>"J" ---03/24/2014 01:45:48 PM---Madrid, le 24 Mars 2014

From: "J" <[100407.1303@compuserve.com](mailto:100407.1303@compuserve.com)>

To: <[pjlecannu@worldbank.org](mailto:pjlecannu@worldbank.org)>

Date: 03/24/2014 01:45 PM

Subject: Victor Pey Casado et Fondation Président Allende c. République du Chili (Affaire No. ARB-98-2). Langues de la procédure

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Madrid, le 24 Mars 2014

M. Paul-Jean Le Cannu  
Secrétaire du Tribunal arbitral  
CIRDI. Banque Mondiale  
1818 H Street, N.W.  
WASHINGTON D.C. 20433

**Réf.: Victor Pey Casado et Fondation Président Allende c. République du Chili (Affaire No. ARB-98-2). Langues de la procédure**

Monsieur le Secrétaire du Tribunal arbitral,

Veillez trouver ci-joint la communication des parties Demanderesses relative aux langues de la procédure.

Nous vous prions d'agréer, Monsieur le Secrétaire du Tribunal arbitral, l'expression de notre considération distinguée.

Dr. Juan E. Garcés

Représentant de M. Victor Pey-Casado, Mme. Coral Pey-Grebe et de la  
Fondation espagnole Président Allende

*(See attached file: 2014-03-24 Communication des Demanderesses relative aux langues de la procédure.pdf)*

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<http://www.arnoldporter.com>

**ANNEX 4**

*Draft of 29 April 2014*

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Víctor Pey Casado and Foundation President Allende**

**v.**

**Republic of Chile**

**(ICSID Case No. ARB/98/2 – Resubmission)**

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**DRAFT PROCEDURAL ORDER NO 1**

Sir Frank Berman KCMG QC, President of the Tribunal  
Mr. V. V. Veeder QC, Arbitrator  
Maître Alexis Mourre, Arbitrator

*Secretary of the Tribunal*  
Mr. Paul-Jean Le Canu

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## **Introduction**

The first session of the Arbitral Tribunal was held from 4:00 to 6:00 pm GMT on 11 March 2014, by telephone conference.

Participating in the conference were:

### **Members of the Tribunal**

Sir Frank Berman KCMG QC, President of the Tribunal

V. V. Veeder QC, Arbitrator

Maître Alexis Mourre, Arbitrator

### **ICSID Secretariat:**

Mr. Paul-Jean Le Cannu, Secretary of the Tribunal

### **Participating on behalf of the Claimants:**

Mr. Juan E. Garcés y Ramón

Ms. Caroline Malinvaud, Gide Loyrette Nouel

Ms. Alexandra Muñoz, Gide Loyrette Nouel

**[to be completed]**

[ ], **[Affiliation]**

### **Participating on behalf of the Respondent:**

Mr. Paolo Di Rosa, Arnold & Porter LLP

Ms. Gaela Gehring Flores, Arnold & Porter LLP

**[to be completed]**

[ ], **[Affiliation]**

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

Having considered the following:

- the Agenda for the first session circulated by the Tribunal Secretary on 10 March 2014 (Annex 1);
- the Summary of the first session circulated by the Tribunal Secretary on [insert date] (Annex 2);
- the notification by the Parties of the agreement reached between them<sup>1</sup> on the languages of the proceedings (Annex 3) and other correspondence; and

---

<sup>1</sup> See the letter from the Claimants dated 24 March 2014 and the email from the Respondent dated 25 March 2014.

Draft Procedural Order No. 1

- The Draft Procedural Order circulated by the Tribunal Secretary on [insert date] (Annex 4) and the Parties' comments thereon;

the Tribunal now issues the present Order (Procedural Order No.1):

**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this Order sets out the procedural rules that govern this arbitration. Pursuant to Article 52(6) of the Convention and Arbitration Rule 55, the proceedings in this arbitration are limited to the matters identified in paragraph 359.1 of the Decision of the ad hoc Committee transmitted to the Parties on 18 December 2012, and the procedures in this Order are to be understood accordingly.

1. Applicable Arbitration Rules  
*Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations  
*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on 24 December 2014 in accordance with the ICSID Convention and the ICSID Arbitration Rules. Following the resignation by Professor Philippe Sands from his appointment as arbitrator in this case and the consent to that resignation by the other Members of the Tribunal in accordance with Arbitration Rule 8(2), Mr. V. V. Veeder QC was appointed as arbitrator to fill the vacancy, in accordance with ICSID Arbitration Rules 55(2)(d) and 11(1), and accepted his appointment on 31 January 2014. On the same date, the Centre informed the Parties that the vacancy created on the Tribunal following the resignation of Professor Sands had been filled and that, in accordance with ICSID Arbitration Rule 12, the proceeding resumed on that day from the point it had reached at the time the vacancy occurred.
- 2.2. At the first session, the Claimants, while indicating that they were not proposing the disqualification of the arbitrator nominated by the Respondent, nevertheless requested the Tribunal to decide whether the arbitrator in question had been duly appointed in accordance with the Convention and Arbitration Rules, and, if not, that the Tribunal invite him to resign; whereas the Respondent maintained that the arbitrator in question had been properly appointed in accordance with Article 37(2)(b) of the Convention. In the absence of a proposal for disqualification

Draft Procedural Order No. 1

under the Convention and Rules, the Tribunal does not feel called upon to rule on the matter.

- 2.3. The Members of the Tribunal submitted their signed declarations in good time in accordance with Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 11 October 2013, 13 and 31 January 2014.

3. Fees and Expenses of Tribunal Members

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
- 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Assistant to the President of the Tribunal

- 4.1. The President explained to the Parties at the first session, and the Parties agreed in principle, that it would greatly assist the overall cost and time efficiency of the proceedings if an assistant were appointed to the President. Taking into account the Parties' views at the first session as to what should be the assistant's profile, the President will in due course propose, with the approval of the other members of the Tribunal, the name of the person he intends to appoint.
- 4.2. The President further explained that the assistant would undertake only such specific tasks as are assigned to her by the President. The assistant would be



Draft Procedural Order No. 1

subject to the same confidentiality obligations as the Members of the Tribunal and would sign a declaration to that effect.

- 4.3. The Parties will at that stage be asked to approve the appointment of the person proposed as assistant to the President and the fees and expenses payable, which are likely to be at the level of (a) US\$200 for each hour of work performed in connection with the case or pro rata; and (b) a flat rate of US\$1,500 per day of hearing. The assistant would also receive subsistence allowances and be reimbursed for travel and other expenses within the limits prescribed by Administrative and Financial Regulation 14.

5. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*

- 5.1. The presence of all Members of the Tribunal, including by any appropriate means of communication, constitutes a quorum for its sittings.

6. Decisions and Procedural Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*

- 6.1. Decisions of the Tribunal shall be taken by a majority of its Members.
- 6.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence [except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal. - **to be approved by the Parties**]
- 6.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 6.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.

7. Power to Fix Time Limits

*Arbitration Rule 26(1)*

- 7.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 7.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

8. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

- 8.1. The Tribunal Secretary is Mr. Paul-Jean Le Cannu, Legal Counsel, ICSID, or such other person as ICSID may notify to the Tribunal and the Parties from time to time.
- 8.2. To send communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Paul-Jean Le Cannu  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473 0737  
Fax: + 1 (202) 522-2615  
Email: [pjlecannu@worldbank.org](mailto:pjlecannu@worldbank.org)  
Paralegal email: [aboissaye@worldbank.org](mailto:aboissaye@worldbank.org)

- 8.3. For local messenger deliveries, the contact details are:

Mr. Paul-Jean Le Cannu  
701 18th Street, N.W. (“J Building”)  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-4567

9. Representation of the Parties  
*Arbitration Rule 18*

9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation and, if possible, in advance.

For the Claimants

Mr. Juan E. Garcés  
Calle Zorrilla no. 11, primero derecha  
Madrid – 28014  
Spain  
Tel.: + 91 360 05 36  
E-mail: 100407.1303@compuserve.com

For the Respondent

Mr. Jorge Pizarro  
Executive Vice President,  
Committee on Foreign Investments,  
Ahumada 11, Piso 12  
Santiago de Chile, Chile  
Tel.: **[to be completed]**  
Email: jpizarro@ciechile.gob.cl  
and  
Mr. Paolo Di Rosa,  
Arnold & Porter LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004, USA  
Tel.: + 1 202 942 5000  
E-mail: Paolo.DiRosa@aporter.com

10. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

10.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10.2. By letter of December 24, 2013, ICSID requested that each party pay US\$ 100,000 to defray the initial costs of the proceeding. ICSID confirmed receipt of the Respondent's payment on January 9, 2014 and the Claimants' payment on January 13, 2014.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

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11. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*
  - 11.1. Washington DC shall be the place of the proceeding.
  - 11.2. Oral hearings will be held in [London], unless the Tribunal and the Parties otherwise agree. [ - **for consideration by the Parties**; alternatives would be The Hague, or Paris]
  - 11.3. The Tribunal may deliberate at any place it considers convenient.
  
12. Procedural Language(s), Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
  - 12.1. Documents (including exhibits, memorials, etc.) that have already been submitted in the prior arbitration proceedings need not be translated, unless the Tribunal so requests in respect of any specific document.
  - 12.2. The Claimants will file their submissions in French and submit a translation into Spanish within 15 days of the filing.
  - 12.3. The Respondent will file its submissions in English and submit a translation into Spanish within 15 days of the filing.
  - 12.4. The annexes and exhibits need not be translated provided that they are filed in English, French or Spanish.
  - 12.5. The rules established above for the Parties' submissions shall apply to the experts and fact witnesses, if any.
  - 12.6. Correspondence between the Parties and the Centre or the Arbitral Tribunal may be in any one of the three official languages of ICSID (English, French or Spanish).
  - 12.7. At the hearings, the Claimants will plead in French or Spanish and the Respondent will plead in English or Spanish. There shall be interpretation and transcription in all three languages.
  - 12.8. The Award shall be rendered in the three languages. However the text of the Award (in whatever language it may be) shall be transmitted to the Parties as soon as it is completed and signed without waiting for the translation into the other

languages to be ready, it being specified that all three language versions shall be equally authentic.

12.9. Other decisions or communications issued by the Arbitral Tribunal (such as correspondence, procedural orders, etc.) shall be in English and French only.

13. Routing of Communications

*Administrative and Financial Regulation 24*

13.1. The ICSID Secretariat shall be the channel for all written communications between the Parties and the Tribunal.

13.2. Written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing Party (or Parties) and the Tribunal.

13.3. The Tribunal Secretary shall not be copied into direct communications between the Parties which are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

14.1. By the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,<sup>2</sup> and upload the pleading with the supporting documentation to the FTP server created for this case.

14.1.1. The Parties shall courier to the Tribunal Secretary by the following business day:

14.1.1.1. one unbound hard copy in A4/Letter format<sup>3</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

14.1.1.2. a minimum of five hard copies in A5 format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

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<sup>2</sup> Please note that the World Bank server does not accept emails larger than 10 MB.

<sup>3</sup> The A4/Letter format is required for ICSID's archiving.

14.1.1.3. a minimum of six minimum USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities;

And at the same time,

14.1.2. courier to the opposing party at the address(es) indicated at §[9.1] above:

14.1.2.1. one hard copy in [A4/A5 – **to be decided by the Parties**] format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

14.1.2.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.

14.2. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

14.3. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

14.4. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.

14.5. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

14.6. A filing shall be deemed in time if sent by a party by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

15.1. The sequence of the Parties' Written Pleadings shall be as follows:

15.1.1. a Memorial by the Claimants, to be filed not later than Friday, 13 June 2014;

15.1.2. a Counter-Memorial by the Respondent, to be filed not later than Monday, 13 October 2014;

15.1.3. a Reply by the Claimants, to be filed not later than Monday, 15 December

2014;

15.1.4. a Rejoinder by the Respondent, to be filed not later than Wednesday, 25 February 2015.

15.2. The Parties are requested to confine their pleadings strictly to the limited issues for decision in these proceedings and to avoid unnecessary length. Responsive pleadings (i.e. the Counter-Memorial, Reply, and Rejoinder) should be directed specifically to the matters of fact or arguments of law raised in the pleading under reply, and must not raise further issues extraneous to that.

16. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*

16.1. The Tribunal acknowledges the receipt of an indicative list from the Claimants, as agreed during the first session, of the documents which the Claimants would wish to have disclosed by the Respondent in advance of the filing of the Claimants' Memorial. Having taken that indicative list into account, in the light of the viewpoints expressed by the Claimants and by the Respondent during the first session, the Tribunal invites the Respondent to confirm by [Wednesday, 14 May] 2014 which of the documents on this list it acknowledges to have in its possession and to be in a position to disclose to the Claimants forthwith for the purposes of the preparation of their Memorial; all documents so noted by the Respondent are then to be transmitted to the Claimants by [Wednesday, 21 May] 2014 from that date, in whatever format is most convenient.

16.2. The arrangements laid down in paragraph 16.1 above are entirely without prejudice to the following formal procedure for document disclosure:

16.2.1. after the filing of the Memorial and Counter-Memorial as laid down in paragraphs 15.1.1 and 15.1.2, it will be open to any Party to make formal application to the Tribunal for the disclosure of any document not submitted with the opposing Party's pleading or previously disclosed;

16.2.2. any such application must (a) be made within one week from the date on which the Counter-Memorial was filed; (b) identify as precisely as possible the document or documents sought; (c) specify the grounds on which disclosure is sought;

16.2.3. in the event that any such application is made, the opposing Party or Parties will then have a period of one week either to disclose the requested document

or documents or to indicate the reasons for its refusal to do so;

16.2.4. in the event of such refusal, the Tribunal will rule on the matter without delay;

16.2.5. in the application of this procedure, the Tribunal will be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010).

17. Submission of Documents

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. [Further documentary evidence relied upon by the Parties may be submitted in rebuttal with the Reply and Rejoinder – **to be discussed by the Parties**].

17.2. The documents shall be submitted in the manner and form set forth in §[14] above.

17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

17.3.1. Should a party request leave to file additional or responsive documents, that party may not annex to its request the documents that it seeks to file.

17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

17.5. The documents shall be submitted in the following form:

17.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

17.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a



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document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

- 17.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
  - 17.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
  - 17.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
  - 17.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
  - 17.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
  - 17.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no 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 hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.
18. Witness Statements and Expert Reports  
*Convention Article 43(a); Arbitration Rule 24*
- 18.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.
  - 18.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
  - 18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. Examination of Witnesses and Experts  
*Arbitration Rules 35 and 36*

**[To be discussed by the Parties]**

- 19.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.
- 19.2. On [insert date], each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing.
- 19.3. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.
- 19.4. The procedure for examining witnesses and experts at the hearing shall be the following:
  - 19.4.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).
  - 19.4.2. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert ("direct examination"), subject to the provisions below.
  - 19.4.3. The examination shall be limited to matters raised in the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal), and/or oral evidence of the other party's witnesses, to the extent the witness is competent to testify on these statements and materials.
  - 19.4.4. Witnesses giving oral testimony may first be examined in direct examination for no longer than [15 minutes].
  - 19.4.5. Experts giving oral evidence shall first give a summary of their report for no longer than [30 minutes], followed by a direct examination.
  - 19.4.6. The direct examination of witnesses is followed by examination by the other party ("cross-examination"), and subsequently by the party producing the witness ("redirect examination").
  - 19.4.7. The redirect examination shall be limited to matters raised in cross-examination.

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- 19.5. Unless the parties and the Tribunal agree otherwise, witnesses shall not be allowed in the hearing room before giving their testimony and shall not be permitted to read the transcript before testifying. Experts shall be allowed in the hearing room at any time.
- 19.6. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the witness statement of such witness or report of such expert to be struck from the record, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.
- 19.7. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 19.8. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the parties during the pre-hearing organizational meeting in §[20] below.
20. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*
- 20.1. A pre-hearing organizational meeting shall be held [**on / at a date determined by the Tribunal after prior consultation with the Parties**] by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
21. Hearings  
*Arbitration Rules 20(1)(e) and 32*
- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. In accordance with §[11] above, the hearing shall be held in [London – **see also #11.2**] from 9 to 12 March 2015; the date of 13 March 2015 will also be held in reserve in case of need [alternatively 13-17 April 2015 - **to be discussed between the Tribunal and the Parties**]
- 21.3. [Allocation of time - **to be discussed by the Parties**]
22. Records of Hearings and Sessions  
*Arbitration Rules 13 and 20(1)(g)*
- 22.1. Sound recordings shall be made of all hearings and sessions. The sound

recordings shall be provided to the Parties and the Tribunal Members.

- 22.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 22.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 22.4. The Parties shall agree on any corrections to the transcripts within [...] days of the later of the dates of the receipt of the sound recordings and transcripts. **[to be agreed by the Parties]** Agreed corrections may be entered by the [Parties/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 [Parties/court reporter] in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*

- 23.1. The Tribunal shall decide, after hearing the Parties: (i) whether the Parties shall submit post-hearing memorials, and if so, what their length and format should be, and (ii) when the Parties shall submit their statements of costs.

24. Publication  
*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

**[to be discussed by the Parties]**

**a) Option 1**

- 24.1. The Parties consent to ICSID publication of any ruling issued in the present proceeding.

**b) Option 2**

- 24.2. The ICSID Secretariat shall not publish any ruling issued in the present proceeding without the consent of the Parties, unless it has been previously published by any other source.

*Victor Pey Casado and Foundation President Allende v. Republic of Chile*  
*(ICSID Case No. ARB/98/2 – Resubmission)*

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Sir Franklin Berman  
President of the Tribunal  
Date:

## **ANNEX 1**

## **ANNEX 2**

## **ANNEX 3**



## **ANNEX 4**