

**IN THE MATTER OF AN ARBITRATION BEFORE THE INTERNATIONAL CENTRE  
FOR SETTLEMENT OF INVESTMENT DISPUTES (“ICSID”)  
BROUGHT UNDER THE DOMINICAN REPUBLIC - CENTRAL AMERICA-UNITED  
STATES FREE TRADE AGREEMENT (“CAFTA”) AND THE INVESTMENT LAW OF  
EL SALVADOR  
(ICSID CASE NO. ARB/09/12)**

**BETWEEN:**

**PAC RIM CAYMAN LLC**

*Claimant*

**v.**

**THE REPUBLIC OF EL SALVADOR**

*Respondent*

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**DECISION ON THE RESPONDENT’S REQUEST FOR A SUPPLEMENTARY DECISION**

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***THE TRIBUNAL:***

**Professor Dr. Guido Santiago Tawil,  
Professor Brigitte Stern, and  
V.V.Veeder (President)**

***ICSID Tribunal Secretary:*  
Marco Tulio Montañés-Rumayor**

*Date of dispatch to the Parties:*  
28 March 2017

**REPRESENTATION OF THE PARTIES**

Republic of El Salvador  
Mr Luis Parada  
Mr Derek Smith  
Ms Erin Argueta  
Foley Hoag LLP  
1717 K Street, NW  
Washington, D.C. 20006-5342  
USA

Pac Rim Cayman LLC  
Mr R. Timothy McCrum  
Mr Ian Laird  
Mr George Ruttinger  
Ms Ashley Riveira  
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## ***PART I: INTRODUCTION***

### ***A. The Parties***

- 1.1. ***The Claimant:*** The named Claimant is Pac Rim Cayman LLC (also called “Pac Rim Cayman” or “PRC” and, occasionally, “Pac Rim”). It is a legal person organised under the laws of Nevada, USA, with its principal office at 3545 Airway Drive, Suite 105, Reno, Nevada 89511, USA.
- 1.2. ***The Claimant’s Legal Representatives:*** Claimant’s Legal Representatives are Messrs R. Timothy McCrum, Ian A. Laird, George Ruttinger and Mrs Ashley Riveira of the law firm Crowell & Moring LLP, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004, USA.
- 1.3. ***The Respondent:*** The Respondent is the Republic of El Salvador.
- 1.4. ***The Respondent’s Legal Representatives:*** The Respondent’s legal representatives are Mr Douglas Meléndez, Attorney General of El Salvador; and Mr Aquiles Parada, Deputy Attorney General, Fiscalía General de la República, Edificio Primavera, Urbanización Madreselva 3, Antiguo Cuscatlán, La Libertad, El Salvador; Messrs Derek C. Smith, Luis Parada, Mrs Erin Argueta, of the law firm Foley Hoag LLP, 1717 K Street, N.W., Washington, D.C. 20006-5350, USA.

### ***B. The Tribunal***

- 1.5. The Claimant appointed as arbitrator: Professor Guido Santiago Tawil of M&M Bomchil, Suipacha 268, 12th Floor, C1008AAF, Buenos Aires, Argentina.
- 1.6. The Respondent appointed as arbitrator: Professor Brigitte Stern, 7 rue Pierre Nicole, Paris, 75005, France.
- 1.7. The Parties, pursuant to ICSID Convention Article 37(2)(a) and CAFTA Article 10.19, agreed to appoint as the President of the Tribunal: V.V. Veeder of Essex Court Chambers, 24 Lincoln’s Inn Fields, London WC2A 3EG, United Kingdom.

### *C. The Procedural History*

- 1.8. On 14 October 2016, the Tribunal rendered the Award in the case in reference to the Claimant and the Respondent (collectively the “Parties”).
- 1.9. On 22 November 2016, the ICSID Secretariat received from the Respondent a Request for a Supplementary Decision (the “Respondent’s Request”) pursuant to Article 49(2) of the ICSID Convention (“the ICSID Convention”) and Rule 49 of the ICSID Arbitration Rules (“the ICSID Arbitration Rules”).
- 1.10. On 1 December 2016, the Secretary-General of ICSID registered the Respondent’s Request in accordance with Rule 49(2)(a) of the ICSID Arbitration Rules and transmitted the same to the Members of the Tribunal and the Claimant.
- 1.11. On 5 December 2016, the Claimant filed written observations on the Respondent’s Request (the “Claimant’s Response”).
- 1.12. On 12 December 2016, the Tribunal established the following procedural calendar:
  - The Respondent may submit further written observations in answer to the Response as soon as practicable, but no later than 19 December 2016 (the “Respondent’s Reply”).
  - The Claimant may submit written observations in answer to the Respondent’s said observations as soon as practicable, but no later than 31 December 2016. (the “Claimant’s Rejoinder”).
  - The Tribunal shall thereafter decide upon the further procedure under ICSID Arbitration Rule 49(3).
- 1.13. Each of the Parties filed its respective written observations by the due date.

## ***PART II: THE TRIBUNAL'S DECISION***

- 1.14. The Tribunal has considered in full the Parties' written submissions, namely the Respondent's Request for a Supplementary Decision of the Award dated 22 November 2016, the Claimant's Response dated 5 December 2016, the Respondent's letter dated 19 December 2016; and the Claimant's letter dated 31 December 2016, together with the Tribunal's Award of 14 October 2016.
- 1.15. It is nonetheless appropriate to decide the Respondent's Request summarily, without addressing all the submissions made by the Parties.
- 1.16. It is clear to the Tribunal, not least from Paragraph 3.32 of the Award, that the Respondent was claiming post-award interest on its Legal Costs (albeit otherwise unspecified as to rate etc). Yet, somehow, the Tribunal inadvertently overlooked this claim for post-award interest in listing and addressing the interest issues in Paragraphs 4.13, 10.9 and 12.1(4) of the Award.
- 1.17. It is equally clear to the Tribunal that, had it addressed its collective mind to the Respondent's claim for post-award interest, the Tribunal would have ordered post-award interest on the Respondent's Legal Costs. The Tribunal would also have considered that such post-award interest should be simple interest at a reasonable compensatory rate. The Tribunal takes public notice that 12-months US\$ LIBOR is currently running at about 1.71% per annum.
- 1.18. As the Tribunal understands the Parties' written submissions, it is common ground between the Parties that the claim for post-award interest was pleaded by the Respondent and that, if the Tribunal were to recognise an inadvertent error in not deciding such claim in the Award (as opposed to a deliberate decision not to do so), there would be jurisdiction to make an appropriate further decision under ICSID Arbitration Rule 49. The Tribunal adopts the same approach to Rule 49; and it readily recognises such an

inadvertent error. There was no deliberate intent by the Tribunal not to decide such a claim or to decide it, *sub silentio*, adversely to the Respondent in the Award. Further, the Tribunal considers the Respondent's request to have been made in a timely manner, conforming to the requirements for a request under ICSID Arbitration Rule 49.

- 1.19. For these reasons, pursuant to Rule 49, the Tribunal decides to supplement and rectify its Award by ordering the Claimant to pay simple interest on the order for Legal Costs payable to the Respondent in the principal amount of US\$ 8 million under Paragraph 12.1(4) of the Award, at the rate of an average of 12-months US\$ LIBOR, as reported in the London Financial Times, starting from the date of the Claimant's receipt of the Award (namely 14 October 2016) until payment to the Respondent.
- 1.20. In the circumstances, the Tribunal makes no order for legal or arbitration costs by reference to Article 61(2) of the ICSID Convention, ICSID Arbitration Rules 47(1)(j) and 49(4) or otherwise.



*Professor Dr. Guido Santiago Tawil, Arbitrator*

Date: 2/22/2017

*Professor Brigitte Stern, Arbitrator*



Date: 24 February 2017

*V.V. Veeder, President*



Date: 6.iii.2017