



INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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NIKO RESOURCES (BANGLADESH) LTD.
V.
BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED (“BAPEX”)
AND BANGLADESH OIL & GAS MINERAL CORPORATION (“PETROBANGLA”)
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)

Procedural Order No 19
(Hearing Organisation)

Further to the Pre-Hearing Conference on 10 April 2017, at which the Tribunals consulted the Parties about the organisation of the April 2017 Hearing on the Corruption Claim, the Tribunals now make the following Order reflecting the procedural organisation to which the Parties consented.

I. Agenda & Time Allocation Principles

1. The Hearing arrangements communicated by the Secretariat’s letter of 7 April 2017 are confirmed.
2. The Hearing will be held from Monday, 24 April 2017 to Friday, 28 April 2017. Saturday 29 April 2017 will not be required for the Hearing and will now be reserved for the Tribunals’ deliberations.
3. Each Hearing Day will commence at 9am, with a view to adjourn around 5:30pm. Ninety minutes are reserved for the daily lunch break, as well as two 15-minute mid-session breaks in the mornings and afternoons.
4. The preliminary Hearing Schedule is agreed as follows:

Day 1:	Opening Presentations by the Parties
Day 2, 3, and 4:	Witness Examination
Day 5:	Closing Statements by the Parties
5. On Day 1 the Parties may use up to 2.5 hours (net of Tribunals questions) for their opening statements. The time not used by a Party in this allowance will be added to that Party’s allowance for witness examination. The remainder of the time on Day 1 is reserved for organisational matters and questions by the Tribunals.

6. The following persons will appear for examination on Day 2 to 4: called by the Respondents: Ms. Debra LaPrevotte Griffith, Mr Ferdous Ahmed Khan, Mr Maqbul E-Elahi, and Mr Khairuzzaman Chowdhury; called by the Claimant: Messrs. Brian Adolph, William Hornaday, Amit Goyal, and Christopher P. Moyes. For purposes of the examination, Mr Moyes, described as expert, will be treated in the same manner as the witnesses and, in this Procedural Order will be referred to as such.
7. Subject to paragraph 4, each Party shall have 7 hours for questioning the witnesses on Days 2 to 4, not counting the time taken by the Tribunals. The Parties have agreed on time allocation and the sequence in which the witnesses will be heard and have prepared an indicative timetable. The Tribunals accept this timetable. It is annexed to this Procedural Order.
8. Closing Statements of no more than 1.5 hours per Party will be delivered on Day 5, Friday, 29 April 2017, in the afternoon; there will be no session in the morning.

II. Witness Examination

9. Each Party is responsible for the appearance of the witnesses which it has named.
10. Examination will commence with a short direct examination of no more than 15 minutes. The written witness statements, as confirmed by the witness at the hearing, shall be taken as the witness’ testimony; essential points of the testimony may be summarised orally during the direct examination. This examination shall not serve as a “launching pad” for matters not previously raised in the witness statement or in the examining party’s submissions.
11. Cross-examination is not limited to matters addressed in the witness statements. The decisive criterion is the relevance and materiality for the issues to be decided by the Tribunals.
12. The scope of the re-direct examination will be limited to matters arising out of the cross-examination.
13. The Tribunals have taken note of the restrictions on the oral testimony of Ms. LaPrevotte Griffith resulting from the instructions as communicated by the 3 April 2017 letter from the U.S. Department of Justice, Federal Bureau of Investigation (R-407). Should these instructions lead to restrictions in her answers to questions which the Tribunals consider

relevant and material, the Tribunals reserve to take this into account in assessing her evidence.

14. Witnesses may be present in the hearing room during opening statements. Prior to having been examined, the witnesses may not be present in the hearing room or otherwise be informed of the testimony of other witnesses. Subject to any confidentiality procedures agreed by the Parties, a party representative appearing for examination as a witness may be present in the hearing room throughout the Hearing, unless otherwise directed by the Tribunals.

III. Confidentiality Procedures

15. The Tribunals note that the Parties agreed on the following arrangement concerning the treatment of confidential documents at the hearing: provided that only Foley Hoag retains copies of any confidential documents, no portion of the Hearing discussing confidential Niko documents need be held in camera (in other words, party representatives may remain in the room during discussion of confidential Niko documents). However, a separate transcript with distribution limited to the Secretariat, Members of the Tribunals and to Foley Hoag and Dentons will be prepared of such discussions. The Parties are asked to inform the Secretariat by Tuesday, 18 April 2017, whether they request two separate audio recordings of this Hearing, i.e., one of the entire oral proceedings, including discussion of confidential information, and one excluding such discussion.
16. Otherwise, the Tribunals’ instructions on confidentiality as confirmed by Procedural Order No 18 remain in force.

IV. Post-Hearing Submissions

17. The question whether post-hearing submissions may be produced and in the affirmative their scope and length shall be decided at the end of the hearing in consultation with the Parties.

V. Document Production Matters

18. Further to the Claimant’s request, the Respondents are instructed

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- (i) To produce to the Claimant by Friday, 14 April 2017 the documents they received from the FBI as mentioned in the letter of 10 November 2016;
- (ii) to list by the same date their correspondence exchanged with the FBI regarding Ms. LaPrevotte Griffith’s testimony.

If the Respondents are of the view that any such document or correspondence is protected and may not be disclosed to the Claimant and/or the Tribunals, they shall explain the grounds for such protection and propose any protective measures which may make production possible.

19. The Claimant may comment on the Respondents’ production and accompanying explanations by Wednesday, 19 April 2017.
20. The Tribunals have taken note that the Respondents, having considered the Claimant’s letter of 7 April 2017, confirm their view that the Claimant’s document production was incomplete but see no need for further submissions on the topic. The Tribunals reserve their position concerning the question whether the production was complete and, if they consider it incomplete, reserve the conclusions that may be drawn from it.

On behalf of the two Arbitral Tribunals

[signed]

Michael E. Schneider

President

15 April 2017

Annex: Indicative Timetable for the Hearing

Niko Resources (Bangladesh) Ltd.

v.

Bangladesh Petroleum Exploration & Production Company Limited (“Bapex”), and
Bangladesh Oil Gas and Mineral Corporation (“Petrobangla”)
(ICSID Case Nos. ARB/10/11 and ARB/10/18)

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Annex: Hearing on the Corruption Claim – Indicative Schedule

Mon (Apr. 24) 9am-6pm	Tues (Apr. 25) 9am-6pm	Wed (Apr. 26) 9am-6pm	Thurs (Apr. 27) 9am-6pm	Fri (Apr. 28) 1-6pm	Sat (Apr. 29)
Opening remarks/ housekeeping Opening (Respondents)	Examination of Respondents’ fact witnesses (Khan)	Examination of Respondents’ fact witnesses (LaPrevotte)	Examination of Niko’s fact witnesses (Hornaday)		
<i>Coffee Break</i>	<i>Coffee Break</i>	<i>Coffee Break</i>	<i>Coffee Break</i>		
Respondents’ Opening (2.5 hours)	Examination of Respondents’ fact witnesses	Examination of Respondents’ fact witnesses (Elahi)	Examination of Niko’s fact witnesses (Goyal)		
<i>Lunch (1.5 hours)</i>	<i>Lunch (1.5 hours)</i>	<i>Lunch (1.5 hours)</i>	<i>Lunch (1.5 hours)</i>	Respondents’ Closing (up to 1.5 hours)	
Niko’s Opening (2.5 hours)	Examination of Respondents’ fact witnesses (Chowdhury)	Examination of Niko’s fact witnesses (Adolph)	Examination of Niko’s expert (Moyes)		
<i>Coffee Break</i>	<i>Coffee Break</i>	<i>Coffee Break</i>	<i>Coffee Break</i>		
Niko’s Opening (cont.)	Examination of Respondents’ fact witnesses (cont.)	Examination of Niko’s fact witnesses (cont.)	Examination of Niko’s expert (cont.)	Niko’s Closing (up to 1.5 hours)	
<i>Time available to Parties and Tribunals: 7 hours</i>	<i>Time available to Parties and Tribunals: 6.5 hours</i>	<i>Time available to Parties and Tribunals: 6.5 hours</i>	<i>Time available to Parties and Tribunals: 6.5 hours</i>	<i>Time available to Parties and Tribunals: 4.5 hours</i>	Total: 31 hours 11h for each Party, 9h for Tribunals