

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Raymond Charles Eyre and Montrose Developments (Private) Limited

v.

Democratic Socialist Republic of Sri Lanka

(ICSID Case No. ARB/16/25)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Lucy Reed, President of the Tribunal

Prof. Julian D. M. Lew Q.C., Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Geraldine Fischer

June 1, 2017

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Introduction

The first session of the Tribunal was held on May 1, 2017 by telephone conference.

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

Participating in the conference were:

Members of the Tribunal

Prof. Lucy Reed, President of the Tribunal
Prof. Julian D. M. Lew Q.C., Arbitrator
Prof. Brigitte Stern, Arbitrator

ICSID Secretariat:

Ms. Geraldine Fischer, Secretary of the Tribunal

Participating on behalf of Claimants:

Counsel:

Mr Christopher Harris	3 Verulam Buildings
Mr Garreth Wong	Bird & Bird LLP
Ms Rhiannon Price	Bird & Bird LLP

Parties:

Mr Raymond Eyre

Participating on behalf of Respondent:

Counsel:

Mr. Toby Landau, QC	Essex Court Chambers
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Parties:

Mr. Janak De Silva	Senior Deputy Solicitor General, Attorney General's Department, Sri Lanka
Mr. Indula Ratnayake	State Counsel, Attorney General's Department, Sri Lanka

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on April 17, 2017.
- The Draft Procedural Order circulated by the Tribunal Secretary on April 25, 2017;

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- The parties' comments on the Draft Agenda and the Draft Procedural Order received on April 28 and 29, 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree; and
- The parties' comments on the draft procedural schedule received on May 19 and 24, 2017.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The procedural schedule is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

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

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

- 2.1. The Tribunal was constituted on March 6, 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on March 6, 2017.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

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

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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/her 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. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)

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

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. 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.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. 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.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Geraldine Fischer, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Geraldine Fischer
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-2950
Fax: + 1 (202) 522-2615
Email: gfischer1@worldbank.org
Paralegal email: nmaisel@worldbank.org

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

Ms. Geraldine Fischer
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Representation of the Parties

Arbitration Rule 18

- 8.1. 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.

For Claimants

Mr. Garreth Wong and
Ms. Rhiannon Price
Bird & Bird LLP
15 New Fetter Lane
London EC4A 1JP
United Kingdom

and

Mr. Christopher Harris
3 Verulam Building
Gray's Inn
London WC1R 5NT
United Kingdom

For Respondent

Hon. Jayantha Chandrasiri Jayasuriya
Attorney General
Attorney General's Office
P. O. BOX 502
Hulftsdorp
Colombo 12
Democratic Socialist Republic of Sri Lanka

and

Mr. Toby Landau QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

- 8.2. Any proposed addition to or change to a party's legal representation must be notified promptly to the other party, ICSID and the Tribunal and should only take effect if approved by the Tribunal. The Tribunal may refuse to permit the new or additional legal representative to appear to ensure the integrity of the proceedings and the effectiveness of the final award.

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of March 10, 2017, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on April 7, 2017 and no payment has yet been received from Respondent. The Tribunal shall apply ICSID Administrative and Financial Regulation 14 without prejudice to the final decision of the Tribunal as to the allocation of costs.

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- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account, providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. London, United Kingdom shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.

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11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications
Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.

12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.

12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. 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,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

13.2. On the day following the electronic filing, the parties shall courier to the Tribunal Secretary:

13.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.2.2. one hard copy in A5 format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

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legal authorities); and

13.2.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.3. Also on the day following the electronic filing, the parties shall courier to the opposing party at the addresses indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.4 below:

13.3.1. For Prof. Reed and Prof. Lew, one hard copy in A5 format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities);

13.3.2. For Prof. Stern, one hard copy single-sided in A4 format only of the pleadings. The witness statements, expert reports, documents and legal authorities are only to be received in electronic format; and

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

13.4. The addresses of the Tribunal Members are as follows:

Prof. Lucy Reed
National University of Singapore
Centre for International Law
469A Bukit Timah Road
Tower Block #09-01
Singapore 259770
Singapore
+65 6601 5739

Prof. Julian Lew QC
20 Essex Street
London WC2R 3AL
United Kingdom
+44 20 7842 6712

Prof. Brigitte Stern
7 rue Pierre Nicole
Building Code A1672
Paris 75005
France
+33 1 40 46 93 79

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

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

13.7. 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.

13.8. A filing shall be deemed timely if sent by a party by midnight, London UK time, on the relevant date.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- [See attached Procedural Schedule (Annex A)]
15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36
- [See attached Procedural Schedule (Annex A)]
16. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 16.1. 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 in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
- 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
- 16.3.2. 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.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings, starting with “-0001”.
- 16.5.2. The number of each Exhibit containing a document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal

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

16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.

16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.

16.5.5. Exhibits shall also be submitted in PDF format.

16.5.6. 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.

16.6. 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.

16.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence, and the sources of information contained therein are identified with reference to the appropriate exhibits or other references in the record of the proceedings. 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 at a time to be decided at the pre-hearing organizational meeting.

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

17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).

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

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1. Within the time limits to be agreed upon by the parties or directed by the Tribunal, each party shall identify the factual witnesses and expert witnesses whose written testimony has been advanced with the opposing party's written submissions and whom it intends to cross-examine. Shortly after the parties' notifications, the Tribunal will indicate the factual or expert witnesses not called by the parties that it wishes to question, if any.
- 18.2. The party whose factual or expert witness has thus been called for cross-examination or to be questioned by the Tribunal must make the factual or expert witness available for the hearing. In the event of a failure to do so, and unless there are exceptional circumstances for the relevant party that justify or explain not making the witness available, the Tribunal shall strike the factual or expert witness's testimony from the record. Each factual or expert witness shall appear in person before the Tribunal. If warranted by justifiable circumstances, the Tribunal may authorize an alternate method of cross-examining a witness, such as by live video-link.
- 18.3. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the factual or expert witness at any time during the oral procedure.
- 18.4. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness may conduct a brief direct examination to introduce the factual or expert witness, confirm the accuracy and completeness of the witness's written statement(s) or expert report(s), or to offer any corrections or clarifications that may be necessary. No new testimony or evidence may be presented during this brief direct examination without prior leave of the Tribunal.
- 18.5. Subject to the direction of the Tribunal, the cross-examination of factual witnesses shall not be limited to their witness statements.
- 18.6. Re-direct examination shall be limited to the subjects addressed directly during the cross-examination.
- 18.7. Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. Expert witnesses may be in the hearing room at any time.
- 18.8. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts and assist in the drafting of their witness testimony.
- 18.9. All other matters regarding hearings, including any requirements regarding the

interpretation / translation of testimony, shall be addressed at the Pre-Hearing Organizational Meeting.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held approximately three weeks before the hearing 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.

20. Hearings

Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of one or more hearings for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing(s) shall be held at a place to be determined in accordance with §0 above.

20.3. Should the case proceed without Preliminary Objections, the hearing shall take place on the date set out in the attached Schedule.

20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. Time at the hearing shall, in principle, be allocated to each party in equal proportions, subject to the Tribunal's discretion taking into account all relevant circumstances including the number of witnesses/experts for each party called to testify and the amount of evidence to be presented. The Tribunal will address allocation of time at the Pre-Hearing Organizational Meeting.

20.6. Hearings shall be closed to the public.

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

21.2. 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

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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.

21.3. The parties shall agree on any corrections to the transcripts within a reasonable time, to be agreed during the last day of the hearing, . The agreed corrections may 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.

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

22.1. Issues regarding Post-Hearing Memorials and Statements of Costs shall be addressed at the Pre-Hearing Organizational Meeting and, if appropriate, at the end of the hearing.

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

23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

24. IBA Rules on the Taking of Evidence

24.1 Both parties agree that the IBA Rules on the Taking of Evidence in International Arbitration dated May 29, 2010 (“IBA Rules”) shall provide general guidance for the parties and the Tribunal in these proceedings.

25. Applications to the Tribunal

25.1. Party applications regarding procedural issues shall be discussed between counsel for the parties prior to submitting an application to the Tribunal.

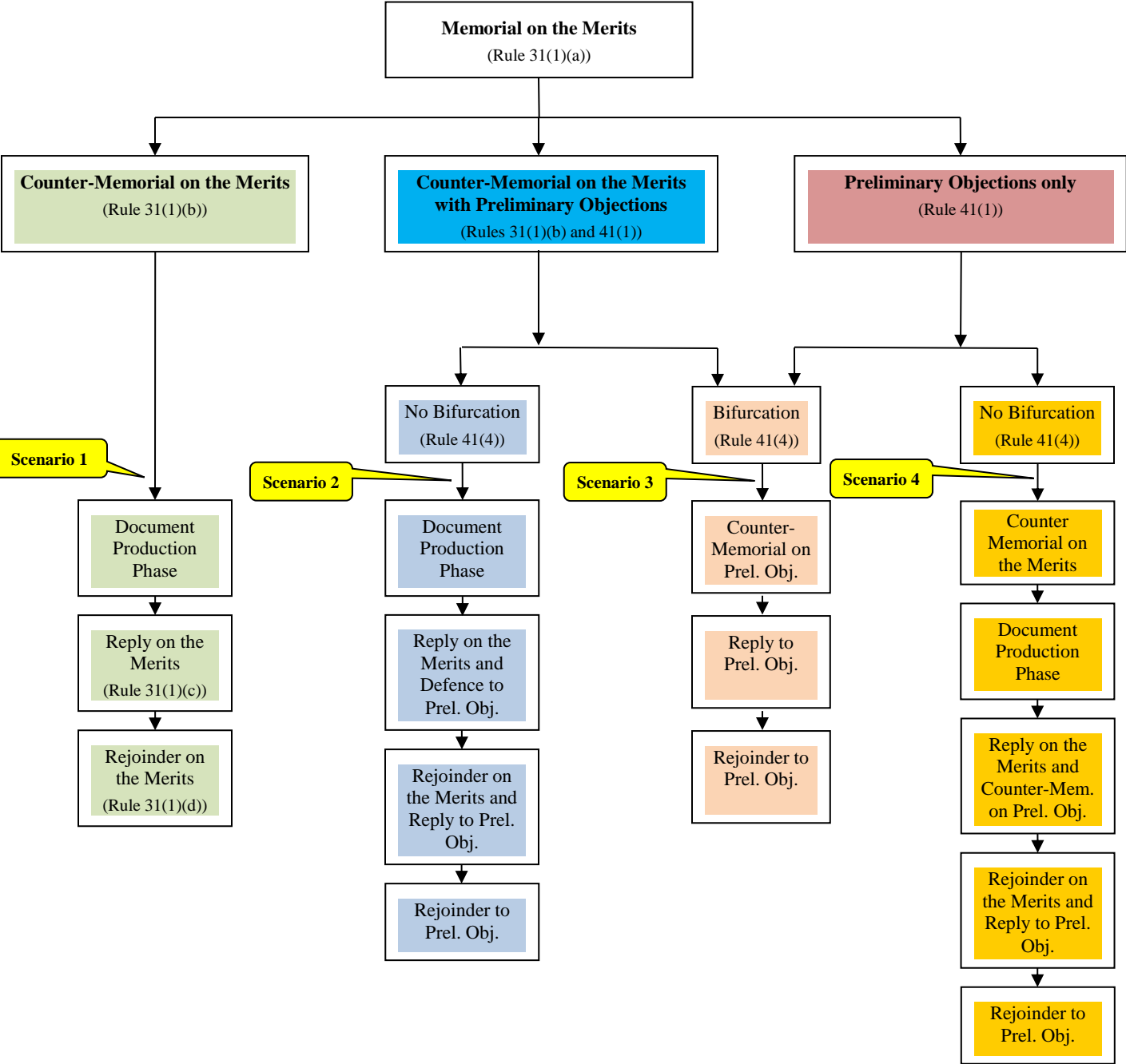


Lucy Reed
President of the Tribunal
Date: June 1, 2017

ANNEX A- PROCEDURAL SCHEDULE

Event	Period	Deadline
Memorial on Admissibility, Jurisdiction and the Merits	+ 3 months	August 11, 2017
Preliminary document and/or information requests	(within the period to file the Respondent's Counter-memorial or Preliminary Objections)	
Counter-Memorial on Admissibility, Jurisdiction and the Merits OR (per ICSID Rule 41) Preliminary Objections only	+ 4 months <i>[Separate schedule to determine bifurcation, and Scenarios 2, 3 & 4]</i>	December 8, 2017
IF SCENARIO 1*:		
Document requests in the form of a Redfern Schedule	+ 3 weeks	January 5, 2018
Objections to document requests	+ 3 weeks	January 26, 2018
Replies to objections to document requests and production of uncontested documents	+ 3 weeks	February 16, 2018
Applications to the Tribunal in respect of contested document requests	+ 3 weeks	March 9, 2018
Decision by the Tribunal on contested document requests	+ 2 weeks	March 23, 2018
Production of documents ordered by the Tribunal	+ 3 weeks	April 11, 2018
Reply	+ 10 weeks	June 22, 2018
Rejoinder	+ 10 weeks	August 31, 2018
Pre-Hearing Organizational Meeting	3 weeks before Hearing	September 24, 2018
Hearing	1 week	October 15-19, 2018

*In the event of Scenarios 2, 3, or 4 per the attached flow chart, the Procedural Schedule will be modified.



Note 1: Scenarios 2 - 4 subsume the requirement of Rule 41(3) that “The President shall ... fix a time limit within which the parties may file observations on the [Preliminary Objections].”

Note 2: Scenarios 1, 2 and 4 may be bifurcated between liability and quantum.