

UNCITRAL ARBITRATION
COMMENCED BY NOTICE OF ARBITRATION DATED 21 SEPTEMBER 2011

between:

MURPHY EXPLORATION & PRODUCTION COMPANY - INTERNATIONAL
Claimant

and

THE REPUBLIC OF ECUADOR
Respondent

PROCEDURAL ORDER N° 1

Considering the Terms of Appointment signed by the Parties on 3 September 2012;

Considering the consultation between the Parties' lawyers during the procedural hearing which took place by teleconference on 19 July 2012;

The Tribunal hereby issues the following decisions and directions:

1. Sequence of Proceedings / Provisional Timetable

1.1

The sequence and timing of the first phase of the proceedings shall be as follows:

| n° | Description | Date |
|-----------|---|-------------------|
| (a) | Claimant's Statement of Claim together with Witness Statements and Expert Reports | 17 September 2012 |
| (b) | Respondent's Objections to Jurisdiction | 17 October 2012 |
| (c) | Claimant's Response to Respondent's Objections to Jurisdiction | 16 November 2012 |

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|-----|---|------------------|
| (d) | Tribunal's Decision on Bifurcation of Proceedings | 14 December 2012 |
|-----|---|------------------|

1.2

Pursuant to the Parties' agreement, the remainder of the provisional timetable reflects two alternative scenarios: (i) where the Tribunal orders bifurcation of the proceedings into separate jurisdictional and merits phases; and (ii) where the Tribunal does not order bifurcation. These scenarios are provided for in sections 1.2.1 and 1.2.2 respectively.

1.2.1

Should the Tribunal decide to bifurcate proceedings, the following provisional timetable shall apply:

| n° | Description | Date |
|-----|--------------------------------------|--------------------|
| (a) | Respondent's Reply on Jurisdiction | 14 January 2013 |
| (b) | Claimant's Rejoinder on Jurisdiction | 14 February 2013 |
| (c) | Hearing on Jurisdiction | 18 – 19 March 2013 |

Should the Tribunal find that it has jurisdiction over the claims in these proceedings, the procedural timetable for the merits phase shall be established in consultation with the Parties following the decision of the Tribunal.

1.2.2

Should the Tribunal decide against bifurcation of proceedings, the remainder of the provisional timetable shall be as follows:

| n° | Description | Date |
|-----|---|---------------|
| (a) | Respondent's Statement of Defence and Reply on Jurisdiction | 18 March 2013 |
| (b) | Exchange of Parties' Document Production Requests | 2 April 2013 |
| (c) | Objections to the Other Party's Document Requests (if any) | 12 April 2013 |
| (d) | Deadline for Exchange of Documents and | 24 April 2013 |

| | | |
|-----|--|----------------------|
| | Response to the Other Party's Objections to Document Requests (if any) | |
| (e) | Tribunal's Decision on Parties' Objections to Document Requests (if any) | 3 May 2013 |
| (f) | Production of Additional Documents (if any) Ordered by Tribunal | 7 May 2013 |
| (g) | Claimant's Statement of Reply on the Merits and Rejoinder on Jurisdiction | 17 May 2013 |
| (h) | Respondent's Statement of Rejoinder on the Merits | 19 July 2013 |
| (i) | Deadline for List of Witnesses to be Examined at the Hearing | 14 September 2013 |
| (k) | Pre-Hearing Teleconference | [TBC] |
| (l) | Pre-Hearing Deadline to Submit Any Additional Exhibits or Legal Authorities on Which Either Party Intends to Rely at the Hearing | [TBC] |
| (m) | Hearing on Jurisdiction and the Merits | 14 - 18 October 2013 |

Whether the Parties will submit post-hearing memorials will be discussed in the course of the hearing.

1.3

Extension of time limits may be granted by the Tribunal in its discretion, in exceptional cases only and provided that a request is submitted before or, if not possible, immediately after the event preventing a party from complying with the deadline. The Parties may also grant between themselves short extensions of time, on the basis of mutual courtesy, as long as they do not materially affect the timetable and that the Tribunal is informed.

1.4

The Parties are requested not to copy the Tribunal on all correspondence between themselves, and to address the Tribunal only in compliance with the above calendar or when the Tribunal is required to decide a disputed issue.

2. Written Submissions

2.1

The paragraphs of all written submissions shall be numbered consecutively and the submissions shall include a table of contents.

2.2

For each of their submissions, the parties will clearly indicate the evidence they invoke in support thereto: documents (with indication of the page and paragraphs, if numbered), expert reports, witness statements, etc.

2.3

Written submissions shall be sent to each of the three arbitrators, counsel of record for the opposing party, and the PCA. Routine procedural communications may be transmitted by email only. The Parties' substantive submissions, including witness statements and expert reports, should be transmitted by email and followed by hard copy by courier within three (3) business days. Exhibits shall be submitted in hard copy and electronically (e.g., DVD or flash drive). Legal authorities shall be submitted electronically (e.g., DVD or flash drive) and may also be submitted in hard copy. Electronic versions of the submissions shall be in searchable format (e.g., PDF or Word).

2.4

The Tribunal may limit any post-hearing memorials in scope and/or length.

3. Documentary Evidence

3.1

Written submissions shall be accompanied, in the manner provided in section 2.3, by all documentary evidence relied upon by the relevant party, including legal authorities. No new documentary evidence may be presented at the hearing unless agreed by the Parties or authorised by the Tribunal.

3.2

Documentary evidence shall be submitted in the following form:

- a. exhibits shall be contained in separate binders, each exhibit having a divider bearing on the tab the exhibit's identification number;
- b. the exhibits shall be numbered consecutively throughout these proceedings;

- c. the number of each exhibit containing a document submitted by Claimant shall be preceded by the letter “C”; the number of each exhibit containing a document submitted by Respondent shall be preceded by the letter “R”;
- d. each binder containing exhibits shall contain a list of these exhibits, setting forth for each one:
 - (i) the exhibit number;
 - (ii) its date; and
 - (iii) a brief description of the exhibit.
- e. the lists of exhibits shall be updated with each new submission of documents in these proceedings.

3.3

All documentary evidence submitted to the Tribunal shall be deemed true and complete, including evidence submitted in the form of copies, unless a party disputes its authenticity or completeness.

3.4

The parties may request documents from each other at any time during the proceedings up to and including the date set out in section 1.2.2(b). Correspondences or documents exchanged in the course of this process should not be sent to the Tribunal.

3.5

To the extent that the totality of the requests referred to in section 3.4 is not satisfied, the parties may file a request for document production as provided for in section 1.2.2(b). Any requests under section 1.2.2(b) that remain unsatisfied following the date set out in section 1.2.2(d) shall be resolved by the Tribunal and shall take the form of a joint submission in tabular form (a “Redfern Schedule”) with two sections:

- i) the Claimant’s request(s) for the production of documents; and
- ii) the Respondent’s request(s) for the production of documents.

The joint submission shall be presented in five columns, as follows:

- first column : identification of the document(s) or categories of documents that have been requested;
- second column : short presentation of the reasons for each request;
- third column : a summary of the objections by the other party to the production of the document(s) requested;
- fourth column : a summary of the response to the objections by the other party to the production of the document(s) requested;
- fifth column : left blank for the decision of the Tribunal.

3.6

In making its decision, the Tribunal will be guided by the IBA Rules on the Taking of Evidence in International Arbitration 2010 (the “IBA Rules”). On this basis, the Tribunal’s reasoning will be guided by the following standards:

- (i) The request for production must identify each document or specific category of documents sought with precision;
- (ii) The request must establish the relevance of each document or category of documents sought in such a way that the other party and the Tribunal are able to refer to factual allegations in the submissions filed by the Parties. In other words, the requesting party must make it clear with reasonable particularity which facts / allegations each document (or category of documents) sought is intended to support.
- (iii) The Tribunal will only order the production of documents or category of documents if they exist and are within the possession, power, custody or control of the other party. If contested, the requesting party will have to make a case that it is likely that the document is indeed within the possession, power, custody or control of the other party.
- (iv) If necessary, the Tribunal shall also balance the request for production against the legitimate interests of the other party, including any applicable privileges, the extent to which the request places an unreasonable burden on the other party and the need to safeguard confidentiality, taking into account all the surrounding circumstances.

Before making such a decision, the Tribunal may, in its discretion and at the request of a party, invite oral submissions.

3.7

If, subsequent to the document production request deadline referred to in section 1.2.2(b) above, disclosure of additional documents is still required by a party, leave should first be requested from the Tribunal. If leave is granted, the procedure detailed in sections 3.4 to 3.6 will be applicable.

3.8

If a party is directed by the Tribunal to produce documentary evidence containing privileged or proprietary information or trade secrets, that party shall so indicate to the Tribunal and to the other party. In these circumstances, the Tribunal shall determine, after consultation with the parties, the appropriate measures to be implemented in order to respect the proprietary or privileged nature of the information or the trade secret(s) while, to the extent possible, allowing the production of such evidence for the purpose of the arbitral proceedings.

3.9.

The use of demonstrative exhibits (such as charts, tabulations, etc.) is allowed at the hearing, provided that no new evidence is contained therein. A hard copy of any such exhibit shall simultaneously be provided by the party submitting such exhibit to the other party and to each member of the Tribunal.

4. Evidence of Fact Witnesses

4.1.

If a party wishes to adduce testimonial evidence in respect of its allegations, it shall so indicate in its written submissions and submit written witness statements, as provided for in section 1.1(a).

4.2.

Any person may present evidence as a witness, including a party, a party's officer, employee or other representative.

4.3.

Each witness statement shall:

- a. contain the name and address of the witness, his or her relationship to any of the parties (past and present, if any) and a description of his or her qualifications;
- b. contain a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;
- c. contain an affirmation of the truth of the statement;
- d. be signed by the witness and give the date and place of signature; and
- e. identify with specificity any document or other material relied on and, if not already provided in the document exchange, attach a copy of the document or other material relied on.

4.4.

The witness statements shall be in sufficient detail so as to stand as examination in chief of the witness at the witness hearing.

4.5.

If a party wishes to cross-examine a witness whose statement has been filed by the other party, it should request the presence of this witness for cross-examination at the relevant hearing; otherwise, the witness statement will be considered admissible evidence, subject to the decision of the Tribunal.

4.6.

On or before the date mentioned in section 1.2.2(i), each party shall notify the other party, with the Tribunal in copy, of the names of the other party's witnesses it wishes to cross-examine at the hearing.

4.7.

Being duly informed of the date of the hearings, the parties will immediately after the receipt of this Order, or at least, as quickly as possible, inform their potential witnesses of these dates to secure their presence at the hearings and avoid any disruption of the procedural calendar.

4.8.

Where the witness should ultimately not be able to attend for a valid reason, the Tribunal shall hear the parties on this issue and decide after taking into account all relevant circumstances, including the parties' legitimate interests, what weight should be given to the testimony of said witness, if any.

4.9.

The admissibility, relevance, weight and materiality of the evidence offered by a witness or a party shall be determined by the Tribunal.

4.10.

The costs of a witness's appearance shall be borne by the party who submitted the witness's statement(s), without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs and to what extent.

5. Evidence of Expert Witnesses

5.1.

The provisions of section 4 of this Order are applicable, *mutatis mutandis*, to expert witnesses. The expert shall identify his or her area of expertise. The expert's report will contain the expert's opinion including a description of the method, evidence and information used in arriving at the conclusions.

5.2.

The Tribunal will also be guided by Article 5(4) of the IBA Rules which provides where the Parties submit expert reports, the Tribunal may, if it deems appropriate, order that the party-appointed experts meet and confer on their reports after the Respondent has filed its Statement of Rejoinder and any Rebuttal Witness Statements. At such meeting, the experts

shall attempt to reach agreement on those issues as to which they had differences of opinion in their expert reports, they will try to narrow them and they shall record in writing the issues on which they reached agreement or in relation to which they have been able to narrow their differences.

6. Oral Hearings

6.1.

The procedure for examining witnesses at the oral hearing(s) shall be as follows:

- a. Claimant's witnesses will be examined first, followed by Respondent's witnesses.
- b. Each witness shall first of all be invited to confirm or deny his written statement.
- c. The Tribunal shall have the right to examine the witnesses and to interject questions during the examination by counsel or thereafter. It shall ensure that each party has the opportunity to re-examine a witness with respect to questions raised by the Tribunal.
- d. After a short presentation by the party producing the witness, the other party shall proceed to cross-examine the witness, followed by a re-examination if the first party so wishes. The scope of the re-examination shall be limited to matters that have arisen in the cross-examination.
- e. The Tribunal shall at all times have complete control over the procedure in relation to a witness's giving of oral evidence, including the right to limit or exclude any question, or to prevent a party from examining a witness when it considers that any factual allegation on which the witness is being examined is sufficiently proven by exhibits or other witnesses, or that the manner of examination of a given witness is irrelevant, immaterial, unduly burdensome or duplicative.

6.2.

Witnesses will not be heard under oath but the Chairman shall draw their attention to the fact that the Tribunal requests them to tell the truth, the entire truth and nothing but the truth and shall ask them to confirm that they comply with this request.

6.3.

Witnesses of fact may not be present in the hearing room during the examination of other witnesses of fact, unless the parties agree otherwise. However, this rule does not apply to parties' representatives.

6.4.

Further directions for the timing and detailed procedures for the conduct of the hearing will be issued at a later date.

7. Translations and interpretation

Translations and interpretation shall be provided in accordance with section 10 of the Terms of Appointment.

8. Venue of the hearings

The venue of the hearings will be decided by the Tribunal after consultation with the Parties.

9. Amendments

This Order may be amended or supplemented, and the procedures for the conduct of this arbitration modified, pursuant to such further directions or Procedural Orders as the Tribunal may from time to time issue.

On behalf of the Tribunal,



Bernard HANOTIAU,
Chairman