

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Omega Engineering LLC and Oscar Rivera**

**v.**

**Republic of Panama**

**(ICSID Case No. ARB/16/42)**

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**PROCEDURAL ORDER No. 1**

***Members of the Tribunal***

Mr. Laurence Shore, President of the Tribunal

Dr. Horacio A. Grigera Naón, Arbitrator

Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Natalí Sequeira

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**Introduction**

The First Session of the Tribunal was held on June 9, 2017, 10 a.m. Washington, D.C. time, by telephone conference. Participating were:

Members of the Tribunal

Mr. Laurence Shore, President of the Tribunal  
Dr. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

ICSID Secretariat:

Ms. Natalí Sequeira, Secretary of the Tribunal

Attending / Participating on behalf of Claimants:

Mr. Baiju Vasani, Jones Day  
Mr. Carlos F. Concepción, Jones Day  
Mr. James Egerton-Vernon, Jones Day  
Ms. María I. Pradilla Picas, Jones Day  
Mr. Ricardo Ampudia, International Dispute Resources  
Mr. Oscar Iván Rivera Rivera, Omega Engineering, LLC

Attending / Participating on behalf of Respondent:

Mr. Henry Weisburg, Shearman & Sterling LLP  
Mr. Christopher Ryan, Shearman & Sterling LLP  
Mr. Aristides Valdonedo, Republic of Panama  
Ms. Geniva Escobar, Republic of Panama

The following materials were considered:

- The Draft Agenda circulated by the Secretary of the Tribunal on May 23, 2017;
- The Draft Procedural Order circulated by the Secretary of the Tribunal on May 23, 2017; and
- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on June 5, 2017, indicating the items on which they agreed.

The First Session was adjourned at 11:09 a.m., Washington D.C. time. An audio recording was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

Following the above, the Tribunal now issues the present order:

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**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable 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 except to the extent modified by:

- i) the Treaty between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investment, signed on October 27, 1982, which entered into force on May 30, 1991, as amended by the Protocol between the Government of the United States of America and the Government of the Republic of Panama Amending the Treaty Concerning the Treatment and Protection of Investments of October 27, 1982, signed on June 1, 2000, entered into force on May 14, 2001 (cumulatively the “**BIT**”), as applicable; and/or
- ii) the United-States Panama Trade Promotion Agreement signed on June 28, 2007, in force on October 31, 2012 (“**US-Panama TPA**”), as applicable.

2. Constitution of the Tribunal and Tribunal Members’ Declarations

*Arbitration Rule 6*

2.1. The Tribunal was constituted on May 1, 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 21, 2017, March 23, 2017, and May 1, 2017.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

2.4. The contact details for the Members of the Tribunal are:

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**Mr. Laurence Shore**  
Herbert Smith Freehills  
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3. Fees and Expenses of Members of the Tribunal  
*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*
- 3.1. The fees and expenses of each Member of the Tribunal 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 Member of the Tribunal receives:
- 13.2.1. 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
- 13.2.1. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Tribunal 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. 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. In-person attendance shall be required for any jurisdictional, merits or quantum hearings. Alternative appropriate means of communication shall be allowed for procedural and other sittings.
5. Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*
- 5.1. Subject to §5.2 and §6.2 below, decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal and shall be issued in writing.

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- 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 six months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every two months thereafter.
  - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal, after consultation with the other Members of the Tribunal, subject to §5.2 above and §6.2 below. The Tribunal shall issue Procedural Orders only after having provided the Parties the opportunity to be heard (either orally or in writing) on the subjects addressed in the Procedural Order.
  - 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal 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 Secretary of the Tribunal is Ms. Natalí Sequeira, Team Leader / 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:

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Ms. Natalí Sequeira  
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7.3. For local messenger deliveries, the contact details are:

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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 Secretary of the Tribunal promptly of such designation.

For Claimants

Omega Engineering LLC and  
Mr. Oscar Rivera  
c/o Mr. Carlos F. Concepción  
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United States of America

Mr. Lee Coffey  
Mr. Baiju S. Vasani  
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For Respondent

Republic of Panama  
c/o Mr. Henry Weisburg  
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Mr. Aristides Valdonedo  
Ms. Geniva Escobar  
Ministerio de Economía y Finanzas  
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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 May 4, 2017, ICSID requested that each Party pay US\$ 200,000.00 to cover the initial costs of the proceeding. ICSID received Claimants' payment on 31 May 2017. ICSID will expect to receive Respondent's payment by June 20, 2017.
- 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.

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10. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); US-Panama TPA, Article 10.20(1)*
- 10.1. Washington, D.C. 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 under §15 below (Production of Documents) in a language other than English 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.
- 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.

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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 Secretary of the Tribunal, 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 Secretary of the Tribunal only, who shall send them to the opposing Party and the Tribunal once both Parties' communications are received.
- 12.4. The Secretary of the Tribunal 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 (i) submit by email to the Secretary of the Tribunal and the opposing Party an electronic version of the pleading, witness statements, expert reports and a list of exhibits and legal authorities,<sup>1</sup> and (ii) within five business days following the relevant filing date the parties shall upload the pleading with all the supporting documentation to the folder created by ICSID for this case in the World Bank's electronic file sharing platform (the "Electronic Filing").
- 13.2. Within five business days following relevant filing date, the Parties shall courier to the Secretary of the Tribunal:
- 13.2.1 one hard copy in A5 format of the pleading, the witness statements, and the expert reports; and
- 13.2.2 two USB drives with full copies of the entire submission (both in original language and translations), including the pleading, the witness statements, expert reports, exhibits, and legal authorities.
- 13.3. Also within five business days of the relevant filing date, the Parties shall courier

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

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to each Member of the Tribunal at the addresses indicated at §2.4 above:

- 13.3.1 one hard copy in A5 format of the pleading, the witness statements, and the expert reports; and
  - 13.3.2 one USB drive with a full copy of the entire submission (both in original language and translations), including the pleading, the witness statements, expert reports, exhibits, and legal authorities.
  - 13.4. Legal authorities shall be submitted in electronic format and in the USB drive only, unless a hard copy is specifically requested by the Tribunal.
  - 13.5. Electronic versions of pleadings, witness statements and expert reports shall be text searchable (i.e., OCR PDF or Word).
  - 13.6. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation, which shall be provided within five business days of the relevant filing date.
  - 13.7. In advance of a hearing the Tribunal may direct the Parties to courier to each Member of the Tribunal, at the addresses indicated at §2.4 and to the ICSID Secretariat, a hard copy (in A5 format) of the exhibits in chronological order.
  - 13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal.
  - 13.9. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*
- 14.1. There shall be a Memorial, Counter-Memorial, Reply, and Rejoinder. Each pleading shall include all factual and legal arguments in support thereof.
  - 14.2. All evidentiary documents to be used by the Parties at the hearing shall be attached as exhibits to one of the Parties' submissions. Additional evidentiary documents may only be introduced with the approval of the Tribunal upon a showing of exceptional circumstances and with the opportunity for the non-introducing Party to comment and to submit any rebuttal documents.

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15. Production of Documents

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

- 15.1. The Tribunal shall apply Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules”) in relation to document production in this case.
- 15.2. On the date provided in Annex A, each Party may serve a request for production of documents on the other party. Such a request for production shall comply with regulations set forth in Article 3 of the IBA Rules. The request shall be made in the form of a Redfern Schedule as attached in Annex B hereto, in both Word and PDF format, and shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.3. On the date provided in Annex A the other Party shall, using the Redfern Schedule provided by the first Party, provide the requesting Party with its reasons and/or objections for its failure or refusal to produce responsive documents.
- 15.4. On the date provided in Annex A the other Party shall produce the requested documents to which it has not filed any objection.
- 15.5. On the date provided in Annex A, the requesting Party shall reply to the other Party’s objections in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal, with a copy to the other Party (in both Word and PDF formats).
- 15.6. The Tribunal will make its best efforts to rule on the objections within two weeks of receiving the Redfern Schedule. Provided that the Tribunal rules within two weeks of receiving the Redfern Schedule, a Party shall produce documents ordered by the Tribunal by the date provided in Annex A.
- 15.7. Documents shall be communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §16 below.

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.

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- 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 and to submit rebuttal evidence if appropriate.
- 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.
- 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 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 and start with the number “C-0001” and “R-0001,” respectively.
- 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.
- 16.5.7 Voluminous or technical documentary evidence may be submitted in

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electronic form only.

- 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. The parties may not use any document for argument, cross-examination, or redirect examination at any hearing if said document was not submitted in advance and on the record.
  - 16.8. Demonstrative exhibits (such as PowerPoint 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 Secretary of the Tribunal, 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. Any person may present evidence as a witness, including a party or a party's officer, employee or other representative.
  - 17.2. Each party may offer evidence of one or more experts.
  - 17.3. Witness statements and expert reports shall be filed together with the Parties' pleadings.
  - 17.4. 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 and rebuttal evidence if appropriate (following the procedure outlined in §16.3).
  - 17.5. Each witness statement and expert report shall be signed and dated by the witness.
  - 17.6. If an expert report is co-authored by more than one individual, the Party submitting the expert report shall identify the portion of the report authored by each such individual.

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

- 18.1. Unless otherwise stated, the rules below apply to the examination of fact and expert witnesses.
- 18.2. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.3. On the date provided in Annex A, each Party shall notify to the other Party, with a copy to the Tribunal, which witnesses or experts it wishes to cross examine at the hearing.
- 18.4. Shortly after the Parties' notification, the Tribunal will indicate to the Parties whether it wishes any witnesses or experts who have not been designated to testify to appear at the hearing.
- 18.5. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.6. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will ultimately decide upon the appropriate allocation of such costs.
- 18.7. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that: (i) there was a compelling reason for the first failure to appear; (ii) the testimony of the witness appears to be relevant to the adjudication of the dispute; and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.8. For good cause, the Tribunal may allow a witness to be examined by videoconference.
- 18.9. The Tribunal may consider the witness statement of a witness who provides a compelling reason for failing to appear when summoned to a hearing, or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a

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witness who fails to appear and does not provide a compelling reason. For these purposes, it shall be understood that a witness whom the Tribunal has allowed to testify by videoconference has appeared at the hearing.

18.10. The Tribunal may, after conferring with the Parties, direct that expert witnesses meet and confer prior to a hearing.

18.11. At the hearing, the examination of each witness shall proceed as follows:

18.11.1 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);

18.11.2 The party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after that witness's written statement was signed (direct examination). After consultation with the parties, the Tribunal may also request non-legal experts to give a presentation lasting no longer than thirty minutes before the start of their cross-examination summarizing their methodology and conclusions;

18.11.3 The adverse Party may then cross-examine the witness. The Tribunal may exclude any question if it considers such question to be irrelevant or immaterial or unreasonably burdensome or duplicative;

18.11.4 The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination. Re-examination questions (like direct examination questions) may not be unreasonably leading;

18.11.5 The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties; and

18.11.6 The Tribunal may direct two or more experts to be examined concurrently (expert conferencing). This and other matters relating to the examination of experts will be addressed at an appropriate time in advance of a hearing.

18.12. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, prior to his or her examination. Fact witnesses may be in the hearing room after completion of their testimony. This limitation does not apply to expert witnesses.

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- 18.13. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may:
- 18.13.1 Limit the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
  - 18.13.2 Direct that a witness be recalled for further examination at any time.
19. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*
- 19.1. A pre-hearing organizational meeting shall be held (possibly by telephone, pursuant to the Tribunal's discretion after conferring with the Parties) four to six weeks prior to a hearing between the Tribunal 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; US-Panama TPA, Article 10.21(2)*
- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
  - 20.2. The hearing shall be held at a place to be determined in accordance with §10 above.
  - 20.3. The hearing shall take place on the dates specified in Annex A.
  - 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. In principle, each Party will have an equal time allocation at the hearing, subject to adjustments if due process so requires. The Secretary of the Tribunal will keep a chess clock and advise the Parties daily of the length of time used.
  - 20.6. Hearings will be open to the public in accordance with Article 10.21(2) of the US-Panama TPA.
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.

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- 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 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 15 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties 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 in the revised transcripts.
22. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*
- 22.1. At the conclusion of any hearing, the Tribunal shall decide whether the Parties will file Post-Hearing Memorials and Reply Post-Hearing Memorials as well as when and in what form the Parties shall file evidence regarding the quantification of the costs.
23. Non-Disputing Parties  
*Arbitration Rule 37(2); US-Panama TPA, Article 10.20(2)*
- 23.1. The Parties agree that Article 10.20(2) of the US-Panama TPA shall be read together with ICSID Arbitration Rule 37(2).
24. Publication  
*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), US-Panama TPA, Article 10.21(1)*
- 24.1. The Parties consent to ICSID publication, through the method arranged by ICSID, in accordance with Article 10.21 of the US-Panama TPA.
- 24.2. Publication shall occur within 45 days after the relevant filing date of a submission. Applications to exclude material from publication shall be made within that time limit absent leave from the Tribunal for an extension.

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24.3. The Parties agree that the reference in Article 10.21.1(c) of the US-Panama TPA to "pleadings, memorials, and briefs" includes accompanying material (i.e. witness statements, expert reports, exhibits, and legal authorities).

25. Transparency  
*US-Panama TPA, Article 10.21*

25.1. The Parties agree to abide by Article 10.21 of the US-Panama TPA, "Transparency of Arbitral Proceedings."

[signed]  
Laurence Shore  
President of the Tribunal  
Date: 21 June 2017

## Annex A – Timetable<sup>1</sup>

### 1. Scenario 1: No Preliminary Objections or Preliminary Objections without Request for Bifurcation

Date	Lapse	Party / Tribunal	Description
2017/10/20	19 weeks from First Session	CLAIMANTS	Memorial
2018/03/09	20 weeks after Claimants' Memorial	RESPONDENT	Counter-Memorial on the Merits [and Memorial on Preliminary Objections]
<b>Document Production</b>			
2018/04/06	4 weeks after Respondent's Counter-Memorial	CLAIMANTS AND RESPONDENT	Request for Production of Documents
2018/04/20	2 weeks after Request	CLAIMANTS AND RESPONDENT	Responses and/or Objections to the Request for Production of Documents
2018/05/04	2 weeks after Response	CLAIMANTS AND RESPONDENT	Production of non-contested Documents and Reply to Objections to the Request for Production – sent to Tribunal
2018/05/18	2 weeks after the Reply to objections	TRIBUNAL	Tribunal issues decision/order on objections to Request for Production of Documents
2018/06/01	2 weeks after the Tribunal's decision	CLAIMANTS AND RESPONDENT	Production of Documents ordered by the Tribunal

<sup>1</sup> Adoption of this timetable does not limit the ability of either party to seek Provisional Measures at such time as it deems appropriate.

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<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2018/08/10	22 weeks after Respondent's Counter-Memorial / 10 weeks after receipt of final document production	CLAIMANTS	Reply on the Merits [and Counter-Memorial on Preliminary Objections]
2018/12/14	18 weeks after Claimants' Reply	RESPONDENT	Rejoinder on the Merits [and Reply on Preliminary Objections]
2019/02/08	8 weeks after Respondent's Rejoinder on the merits	CLAIMANTS	[Rejoinder on Preliminary Objections]  [If needed]
6 weeks before the hearing		CLAIMANTS AND RESPONDENT	Witness Notification
4-6 weeks before the hearing		ALL	Pre-Hearing Organizational Meeting
2 weeks before the hearing		CLAIMANTS AND RESPONDENT	Pre-Hearing Skeleton
2019/04/08 to 2019/04/12	8 weeks after Respondent's Rejoinder	ALL	Hearing
		TRIBUNAL	Deliberations

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**2. Scenario 2: Preliminary Objections with Request for Bifurcation**

<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2017/10/20	19 weeks from First Session	CLAIMANTS	Memorial
2017/12/22	9 weeks after Claimants' Memorial	RESPONDENT	Memorial on Preliminary Objections and Request for Bifurcation
2018/02/23	9 weeks after Respondent's Request for Bifurcation	CLAIMANTS	Observations on Request for Bifurcation
2018/03/23	4 weeks after Claimants' Reply on Bifurcation	TRIBUNAL	Decision on Request for Bifurcation

**2.1. If Bifurcation Denied**

The following timetable shall apply in the event the Tribunal decides to join the preliminary objections to the merits:

<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2018/08/03	19 weeks after the Tribunal's Decision on Bifurcation	RESPONDENT	Counter-Memorial on the Merits
<b>Document Production</b>			
2018/08/24	3 weeks after Respondent's Counter-Memorial	CLAIMANTS AND RESPONDENT	Request for Production of Documents

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<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2018/09/07	2 weeks after Request	CLAIMANT AND RESPONDENT	Responses and/or Objections to the Request for Production of Documents
2018/09/21	2 weeks after Response	CLAIMANTS AND RESPONDENT	Production of Documents Non Contested  Reply to Objections to the Request for Production of Documents – Sent to Tribunal
2018/10/05	2 weeks after the Reply to objections	TRIBUNAL	Decision on Objections to Request for Production of Documents
2018/10/19	2 weeks after the Tribunal's decision	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal
2019/01/18	24 weeks after Respondent's Counter-Memorial / 13 weeks after receipt of final document production	CLAIMANTS	Reply on the Merits and Counter-Memorial on Preliminary Objections
2019/05/24	18 weeks after Claimants' Reply	RESPONDENT	Rejoinder on the Merits and Reply on Preliminary Objections

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<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2019/08/12	8 weeks after Respondent's Rejoinder on the merits	CLAIMANTS	Rejoinder on Preliminary Objections
6 weeks before the hearing		CLAIMANTS AND RESPONDENT	Witness Notification
4-6 weeks before the hearing		ALL	Pre-Hearing Organizational Meeting
2 weeks before the hearing		CLAIMANTS AND RESPONDENT	Pre-Hearing Skeleton
2019/09/30 to 2019/10/04		ALL	Hearing on Preliminary Objections and Merits
		TRIBUNAL	Deliberations

2.2. If Bifurcation Granted

The following timetable shall apply in the event the Tribunal decides to bifurcate:

<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2018/06/15	12 weeks after Tribunal's decision on bifurcation	CLAIMANTS	Counter-Memorial on Preliminary Objections

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<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
<b>Document Production<sup>2</sup></b>			
2018/07/13	4 weeks after Respondent's Counter-Memorial	CLAIMANTS AND RESPONDENT	Request for Production of Documents
2018/07/27	2 weeks after Request	CLAIMANT AND RESPONDENT	Responses and/or Objections to the Request for Production of Documents
2018/08/10	2 weeks after Response	CLAIMANTS AND RESPONDENT	Production of Documents Non Contested  Reply to Objections to the Request for Production of Documents – Sent to Tribunal
2018/08/24	2 weeks after the Reply to objections	TRIBUNAL	Decision on Objections to Request for Production of Documents
2018/09/07	2 weeks after the Tribunal's decision	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal
2018/11/30	12 weeks after document production is completed	RESPONDENT	Reply on Preliminary Objections

<sup>2</sup> The requests for production of documents have been inserted here for illustrative purposes only. In the event of bifurcation the Parties are free to agree on a different timing for such requests; if the Parties fail to agree, the Tribunal shall decide.

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<b>Date</b>	<b>Lapse</b>	<b>Party / Tribunal</b>	<b>Description</b>
2019/02/08	10 weeks after Respondent's Reply on Preliminary Objections	CLAIMANTS	Rejoinder on Preliminary Objections
6 weeks before the hearing		CLAIMANTS AND RESPONDENT	Witness Notification
4-6 weeks before the hearing		ALL	Pre-Hearing Organizational Meeting
2 weeks before the hearing		CLAIMANTS AND RESPONDENT	Pre-Hearing Skeleton
2019/04/15 to 2019/04/17		ALL	Hearing on Preliminary Objections
		TRIBUNAL	Deliberations

The remainder of the schedule for further proceedings, if any issues remain after a phase on preliminary objections, will be fixed pursuant to Arbitration Rule 41(4) (last sentence).

