

IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF
THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE
LAW

between

AKGUN INSAAT MAKINA SANAYII VE DIS TICARET LTD. STI.

Claimant

and

THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Respondent

FINAL AWARD ON COSTS

4 February 2026

Members of the Tribunal:

Dr Michael Hwang S.C. (Presiding Arbitrator)

Sir David AR Williams K.C.

Professor Philip McConaughay

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I. Introduction

1. This Final Award on Costs constitutes the second and final award in a dispute concerning Respondent's alleged expropriation, breach of its Fair and Equitable Treatment ("**FET**") obligation, and non-impairment obligation under the Agreement Between the Republic of Turkey and the Federal Democratic Republic of Ethiopia Concerning the Reciprocal Promotion and Protection of Investments, signed on 16 November 2000 ("**TEBIT**" or "**Treaty**"), relating to the lease of land and the development of an industrial zone within the Oromia Regional State.
2. The Tribunal has addressed the substantive claims and counterclaims in the Final Award (Save as to Costs) dated 29 August 2025 (the "**Award**").
3. In this Final Award on Costs, the Tribunal addresses the issue of costs arising from the Award. Where terms used in this Final Award on Costs have been defined in the Award, such terms shall have the same meaning as they do in the Award.

A. The Parties

4. Claimant, Akgun Insaat Makina Sanayii ve Dis Ticaret Ltd. Sti. ("**Akgun**" or "**Claimant**"), is a family-owned company incorporated under Turkish law and registered with the Istanbul Trade Registry on 26 September 1991 under the registration number 279250.¹ It is owned by three Turkish nationals, Yusuf Akgun, Serkan Ufuk Akgun and Yunus Akgun, who are each members of the Akgun family.²
5. Respondent is the Federal Democratic Republic of Ethiopia ("**Ethiopia**" or "**Respondent**", and together with Claimant, the "**Parties**").
6. For purposes of this Final Award on Costs, the Tribunal has proceeded on the basis that Counsel for the respective Parties are those firms listed as such in the Award with no change in representation and as reflected in the latest distribution list before the issuance of this Final Award on Costs.

¹ Exhibit C-1.

² Exhibit C-2.

B. Arbitration Agreement

7. The arbitration agreement (the “**Arbitration Agreement**”) is found in the TEBIT. Article VII, Settlement of Disputes Between One Party and Investor of the Other Party, and states as follows:³
1. *Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle the disputes by consultations and negotiations in good faith.*
 2. *If the disputes, cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:*
 - (a) *the Competent Court or Arbitral Tribunal of the Party in the territory of which the investment has been made; or*
 - (b) *the International Center for Settlement of Investment Disputes (ICSID) set up by the “Convention on Settlement of Investment Disputes Between States and Nationals of other States”, in case both Parties become signatories of this Convention,*
 - (c) *an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).*
 - (d) *The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.*

³ Exhibit CLA-1, at Art. VII.

C. Seat of the Arbitration

8. The seat of the Arbitration is The Hague, Netherlands.⁴

D. The Tribunal

9. The Tribunal consists of Dr Michael Hwang, S.C. sitting as the Presiding Arbitrator (the “**Chairman**”), Sir David A R Williams KNZM, K.C. and Professor Philip J. McConnaughay, both sitting as Co-Arbitrators.
10. On 25 June 2019, Sir David A R Williams KNZM, K.C. was appointed as Co-Arbitrator by Claimant.
11. On 3 December 2019, Professor Philip J. McConnaughay was appointed as Co-Arbitrator by Respondent.
12. On 2 March 2020, Dr Michael Hwang, S.C. was appointed by the two Co-Arbitrators as the Chairman of the Tribunal.

II. Procedural History Following the Issuance of the Award

13. On 29 August 2025, the Tribunal issued the Award addressing the substantive claims and counterclaims concerning liability and quantum in this Arbitration. The Award was notified to the Parties on 2 September 2025. The procedural history leading up to the issuance of the Award has been set out in the Award, which is incorporated by reference in this Final Award on Costs.
14. On 3 September 2025, the Tribunal invited the Parties to confer and agree on a timeframe for the single exchange of submissions on costs. In the event of disagreement, the Tribunal would determine the period for preparing and exchanging such submissions.
15. On 10 September 2025, Claimant informed the Tribunal that the Parties were unable to agree on a joint proposal. Claimant believed that the exchange of submissions on costs should take place on 24 September 2025 (being three weeks of the Tribunal’s letter on 3 September 2025), and had ultimately adjusted its proposal to 1 October 2025 in light of Respondent’s request for

⁴ Hearing Bundle A, Tab 13, “20200430 Claimant emails to Tribunal re Final agreed draft ToA”.

additional time. However, Respondent was unable to accept any proposal earlier than 15 October 2025.

16. On the same day, Respondent informed the Tribunal that, owing to its Counsel's heavy schedule in September and October, it could not agree to any date earlier than 15 October 2025.
17. On 16 September 2025, the Tribunal directed the Parties to file their respective Written Costs Submissions ("**Costs Submissions**") on 8 October 2025.
18. On 18 September 2025, Claimant submitted its Request for Correction and Interpretation of the Award (the "**Claimant's Request for Correction and Interpretation**") pursuant to Articles 37 and 38 of the UNCITRAL Arbitration Rules 2013.
19. On 19 September 2025, the Tribunal invited Respondent to respond to Claimant's Request for Correction and Interpretation by 26 September 2025.
20. On 22 September 2025, Respondent wrote to the Tribunal, stating that it had no comments on Claimant's Request for Correction and Interpretation.
21. On 8 October 2025, the Parties filed their respective Costs Submissions.
22. On 18 October 2025, Respondent wrote to the Tribunal (copying Claimant), requesting that the Tribunal strike out paragraphs 2.81 to 2.85 of Claimant's Costs Submissions (the "**New Evidence Paragraphs**") on the ground that they contained new evidence.
23. On 19 October 2025, Claimant responded to Respondent's request to strike out the New Evidence Paragraphs in its Costs Submissions.
24. On 23 October 2025, the Tribunal invited Respondent: (i) to comment on the accuracy of Claimant's representations in the New Evidence Paragraphs and in Claimant's letter to the Tribunal of 19 October 2025; and (ii) to respond to Claimant's assertion that those representations, if accurate, are relevant to the allocation of costs.
25. On 24 October 2025, the Tribunal issued its decision on Claimant's Request for Correction and Interpretation.

26. On 7 November 2025, Respondent submitted its comments on the accuracy of Claimant's representations in the New Evidence Paragraphs and in Claimant's letter to the Tribunal of 19 October 2025, as well as its response on the relevance of those representations to the allocation of costs.
27. On 9 November 2025, Claimant sought leave from the Tribunal to file further observations on Respondent's comments dated 7 November 2025.
28. On 11 November 2025, having considered Claimant's leave application, the Tribunal granted Claimant three working days (commencing 12 November 2025) to file a comprehensive response to Respondent's comments dated 7 November 2025. The Tribunal further granted Respondent three working days (commencing 17 November 2025) to file its response to Claimant's submissions. The Tribunal made clear that, upon receipt of Respondent's submissions, it would consider the Parties' submissions on costs to be complete and closed, unless exceptional circumstances warranted a further response.
29. On 15 November 2025, Claimant submitted its response to Respondent's comments dated 7 November 2025.
30. On 20 November 2025, Respondent submitted its response to Claimant's submissions dated 15 November 2025.
31. On 25 November 2025, the Tribunal informed the Parties that the submissions on costs were complete and closed, unless the Tribunal required further clarification and advised the Parties to that effect accordingly.
32. On 24 December 2025, the Tribunal requested that Claimant clarify the mathematical conclusion it reached at in its Costs Submissions at paragraph 2.33, which states that "[e]ven on Respondent's own figures, Claimant's costs are only approximately 45% higher—not double or triple—which cannot reasonably be characterized as 'manifestly excessive'."
33. On 25 December 2025, Claimant acknowledged that there was a mathematical error, and clarified that its costs are in fact approximately 84% higher than Respondent's costs, rather than 45%.

III. Parties' Positions on Costs

34. The Parties' respective positions on costs are set out in the following:

- 34.1. The Parties' respective Post-Hearing Submissions dated 11 November 2022 (which included submissions on costs);
 - 34.2. The Parties' respective breakdown of costs dated 5 August 2025 ("**Costs Breakdown**");
 - 34.3. The Parties' respective Costs Submissions dated 8 October 2025;
 - 34.4. Respondent's email of 18 October 2025;
 - 34.5. Claimant's email of 19 October 2025;
 - 34.6. Respondent's email of 7 November 2025;
 - 34.7. Claimant's email of 15 November 2025;
 - 34.8. Respondent's email of 20 November 2025; and
 - 34.9. Claimant's email of 25 December 2025.
35. The Tribunal notes that the Parties' Costs Submissions largely reflect their respective positions on costs in the Post-Hearing Submissions (referred to in Paragraph [34.1] above), with the key difference being that the arguments in the Costs Submissions are tailored to the outcome of this Arbitration, having had the benefit of reading the Award. Accordingly, the Tribunal will primarily refer to the Costs Submissions, unless reference to the Post-Hearing Submissions is necessary and relevant.
36. In brief, the Parties' respective submissions on costs are as follows.

A. Claimant's Submissions

37. Claimant cites Article 42(1) of the UNCITRAL Arbitration Rules 2013 as the provision governing the allocation of costs, which includes legal fees; the fees and expenses of experts and witnesses; the arbitrators' fees and expenses; and those of the PCA.⁵ As a matter of law, Claimant contends that Article 42(1) of the UNCITRAL Arbitration Rules 2013 "*establishes a principal rule that the losing party pays the costs of the prevailing party*".⁶ Claimant reiterates the same position in multiple paragraphs throughout Section 2A of its Costs Submissions,

⁵ Claimant's Costs Submissions, at [2.2]-[2.3], citing Arts. 42(1) and 40(2).

⁶ Claimant's Costs Submissions, at [2.2], citing Art. 42(1).

albeit with semantically different wording. Among others, Claimant argues that Article 42(1) of the UNCITRAL Arbitration Rules 2013:

- 37.1. establishes full cost-shifting as the presumptive rule;⁷
 - 37.2. incorporates *“the principle that ‘costs follow the event’”*;⁸
 - 37.3. *“reflects the widely accepted ‘costs follow the event’ principle in investor-state arbitration”*;⁹ and
 - 37.4. *“codifies a presumption that the unsuccessful party bears the costs of arbitration. This principle establishes full cost-shifting as the default rule and requires an express justification for any departure”*.¹⁰
38. Claimant argues that the “costs follow the event” principle operates to ensure that a prevailing party *“is, as far as possible, restored to the position it would have occupied had it not been required to pursue international arbitration”*.¹¹ The principle, according to Claimant, is *“generally consistent with the broad aim of damages in international law which is to wipe out the consequences of the unlawful act”*.¹²
39. Claimant cites Matthew Hodgson, *‘Costs in Investment Treaty Arbitration: The Case for Reform’* (2014) 11 TDM 1 (**“Hodgson”**),¹³ for the proposition that:
- Where settlement is not possible and the investor is forced to achieve its remedy for breach of treaty through a costly arbitration process, it will be left substantially out of pocket if it does not also recover its reasonable costs.*
40. Claimant also cites *Unión Fenosa Gas v Egypt* for the proposition that the “costs follow the event” principle is intended to ensure that a successful claimant *“is*

⁷ Claimant’s Costs Submissions, at [1.4].

⁸ Claimant’s Costs Submissions, at [2.1].

⁹ Claimant’s Costs Submissions, at [2.4], citing Exhibit CLA-197, at [44]; Exhibit CLA-045, at [1002]; Exhibit CLA-004, at [261]; Exhibit CLA-029, at [531]-[533]; Exhibit CLA-032, at [17-22]-[17-24]. See also Exhibit CLA-191; Exhibit CLA-192; and Exhibit CLA-193.

¹⁰ Claimant’s Costs Submissions, at [2.9].

¹¹ Claimant’s Costs Submissions, at [2.4], citing Exhibit CLA-197, at [44] & [48]; and Exhibit CLA-030, at [860]. See also Exhibit CLA-192; Exhibit CLA-195; and Exhibit CLA-065.

¹² Claimant’s Costs Submissions, at [2.4], citing Exhibit CLA-065, at pg. [96].

¹³ Claimant’s Costs Submissions, at [2.5], quoting Exhibit CLA-191, at pg. [7].

not financially penalised for pursuing meritorious claims through arbitration”.¹⁴ The failure to award Claimant its full costs would, in its submission, “*undermine the very remedial purpose of the proceedings*”, because “*the amount of Claimant’s arbitration costs is of the same order of magnitude as the compensation awarded*”.¹⁵

41. Claimant further directs the Tribunal’s attention to recent ICSID jurisprudence, which it contends has departed significantly from its “*historically more even allocation of costs among parties*” in favour of applying the “costs follow the event” principle.¹⁶ This is despite the fact that ICSID tribunals enjoy wide discretion in allocating costs, and the ICSID framework does not designate the “costs follow the event” principle as the default rule (unlike Article 42(1) of the UNCITRAL Arbitration Rules 2013).¹⁷
42. Having regard to the above legal principles, Claimant seeks full reimbursement of its costs. In the event the Tribunal departs from the default rule of full cost-shifting, Claimant requests a recovery of not less than 75% of its total costs.¹⁸ In support of its request, Claimant makes the following arguments.
 - 42.1. Claimant is the prevailing party, and is therefore entitled to recover costs incurred in these proceedings on the basis of full reparation.
 - 42.2. Claimant’s costs are reasonable.
 - 42.3. Respondent’s misconduct in these proceedings justifies the allocation of costs in favour of Claimant.
 - 42.4. In the event the Tribunal departs from the default rule of full cost-shifting, the allocation of costs must be assessed “*holistically on an aggregate basis*” instead of issue-based.
 - 42.5. Post-award interest on costs to be compounded monthly, or at the very least, semi-annually.

¹⁴ Claimant’s Costs Submissions, at [2.6], citing Exhibit CLA-173, at [12.15]. See also Exhibit CLA-029; Exhibit CLA-072; and Exhibit CLA-037.

¹⁵ Claimant’s Costs Submissions, at [2.7].

¹⁶ Claimant’s Costs Submissions, at [2.8], citing Exhibit CLA-193, at pg. [8]-[10]; and Exhibit CLA-030, at [860].

¹⁷ Claimant’s Costs Submissions, at [2.8]-[2.9], citing Exhibit CLA-197, at [42]-[45]; Exhibit CLA-032, at [17-21]-[17-22]; Exhibit CLA-124, [687] & [689]; and Exhibit CLA-193, at pg. [7]-[8].

¹⁸ Claimant’s Costs Submissions, at [1.2] & [3.1]-[3.2].

43. The extensive elaboration of these arguments will not be reproduced here, but they are summarised as follows.

Claimant Is the Prevailing Party

44. Claimant submits that it is the prevailing party, having successfully defended itself against Respondent's counterclaims.¹⁹ Claimant also succeeded on jurisdiction and the Respondent's breach of its FET obligation, for which damages have been awarded.²⁰ In this regard, Claimant relies on a line of authorities establishing that a prevailing party is determined by overall and substantial success, and that such status is not negated merely because "*some claims or procedural applications were unsuccessful, or where the damages awarded are modest in comparison to those claimed*".²¹
45. Claimant further relies on *Bear Creek v Peru*²² and *Natland v Czech Republic*²³ for the proposition that, in cases of partial success where tribunals decide to apportion costs, a recovery of 75% has consistently been the minimum awarded. Claimant submits that while these precedents establish the minimum to which it is entitled, its successful defence of the Respondent's counterclaims, together with Respondent's misconduct in these proceedings (aggravating factors absent in those precedents) warrants full reimbursement of its costs.²⁴
46. It is Claimant's position that a partial recovery of costs may be appropriate only in cases "*where the prevailing party has pursued blatantly unmeritorious claims or where the quantum awarded departs significantly from any quantum claim that a party has asserted*". However, Claimant submits that this is not the case, for four reasons. First, Claimant has succeeded in establishing Respondent's breach of its "*core treaty obligation*", namely the FET obligation. Second, Claimant's other unsuccessful claims are not blatantly unmeritorious, as the Tribunal, although ultimately deciding against Claimant, "*accorded serious consideration*" to those claims. Third, the Tribunal's decision not to uphold certain additional heads of claim does not affect Claimant's success on

¹⁹ Claimant's Costs Submissions, at [2.11].

²⁰ Claimant's Costs Submissions, at [2.1] & [2.13].

²¹ Claimant's Costs Submissions, at [2.14]-[2.15], citing Exhibit CLA-030, at [862]; Exhibit CLA-068, at [1852]; Exhibit CLA-045, at [1002]-[1003]; Exhibit CLA-124, at [689]; Exhibit CLA-192, at pg. [3]-[4]; Exhibit CLA-195, at pg. [669] & [673]; and Exhibit CLA-198, at [1024], [1025]-[1026], [1029] & [833]. See also Exhibit CLA-185, at [1585].

²² Exhibit CLA-199, at [730]-[731] & [736].

²³ Exhibit CLA-200, at [736].

²⁴ Claimant's Costs Submissions, at [2.16]-[2.18].

Respondent's core treaty obligation, nor would those additional claims have materially altered the damages awarded.²⁵ Fourth, although the Tribunal declined to award Claimant damages for loss of profits or loss of opportunity, which would have resulted in a higher quantum than the sunk costs awarded, this head of loss was nevertheless "*one of the expressly pleaded and substantiated alternative valuation methodologies*".²⁶ Accordingly, "*Claimant prevailed on a recognised and properly advanced theory of loss and received compensation consistent with that theory*".²⁷

47. Claimant then cites *Chorzów Factory* in support of its request for reimbursement of its full costs, as the principle articulated therein provides that reparation must "*wipe out all the consequences*" of an internationally wrongful act.²⁸ In this regard, Claimant submits that the entirety of the arbitration costs is "*a direct consequence of Respondent's wrongful conduct*", and could have been avoided had Respondent reimbursed Claimant for its out-of-pocket costs following Claimant's repeated requests at the time Respondent notified it that the ETIZ project would not be permitted to proceed on the original site.²⁹
48. Relying on this ground alone, Claimant contends that the presumption of full cost-shifting to the unsuccessful party under Article 42(1) of the UNCITRAL Arbitration Rules 2013 applies, and should be given "*full effect*" by the Tribunal.³⁰ It is also Claimant's position that there are no "*equitable or procedural considerations*" that warrant a departure from the default presumption of full cost-shifting, particularly because: (i) all of its claims were *bona fide*, substantiated, and reasonably made; and (ii) it ultimately obtained an award of damages after successfully defending against Respondent's jurisdictional objections and counterclaims, and establishing Respondent's breach of its FET obligation.³¹

²⁵ Claimant's Costs Submissions, at [2.9] & [2.19].

²⁶ Claimant's Costs Submissions, at [2.10].

²⁷ Claimant's Costs Submissions, at [2.10].

²⁸ Claimant's Costs Submissions, at [2.21], citing Exhibit CLA-063, at pg. [47]; and Award, at [1073]-[1074].

²⁹ Claimant's Costs Submissions, at [2.21], citing Exhibit C-084; Exhibit C-086; Exhibit C-036; Exhibit C-089; and Exhibit C-088.

³⁰ Claimant's Costs Submissions, at [2.12].

³¹ Claimant's Costs Submissions, at [2.22], citing Exhibit CLA-191, at pg. [5]; Exhibit CLA-173, at [12.15]; and Exhibit CLA-065, at pg. [323] (noting that "*where the tribunals found that the prevailing claimant acted reasonably in pursuing its claim in arbitration and was left with no choice other than to enter into arbitration, given the unreasonable position adopted by the other side, such circumstances were considered in support of allocating legal fees*").

Claimant's Costs Are Reasonable

49. In the event the Tribunal considers additional factors in determining whether to award the Claimant its full costs, Claimant further submits that its costs, amounting to **USD 8,054,065.97**, are consistent with costs averages in investor-state dispute cases,³² and reasonable in light of the scale, complexity, and duration of this Arbitration.³³
50. In support of the reasonableness of its costs, Claimant relies on the following factors.
- 50.1. The duration of this Arbitration, which has spanned more than six years.³⁴
- 50.2. The duration of the evidentiary hearings and post-hearing submissions.³⁵
- 50.3. The volume of written submissions (in respect of which Claimant submits it bore a “*disproportionate[ly]*” heavier burden than Respondent).³⁶
- 50.4. The extent of document production (in respect of which Claimant submits it bore a disproportionately heavier burden than Respondent, and was compelled to undertake “*extensive additional efforts to locate, review, and organize evidence*” owing to Respondent’s “*obstructive conduct*”).³⁷
- 50.5. The preparation and examination of six witnesses and six experts (three witnesses for each party).³⁸
- 50.6. Claimant’s efficient and diligent compliance with, and co-operation throughout, the arbitral process.³⁹

³² Exhibit CLA-173, at [12.16-12.17] (finding claimant’s costs of USD 10M as reasonable); Exhibit CLA-200, at [709] & [733] (finding both parties’ arbitration costs - EUR 9.7 million for claimants and USD 8.3 million for the respondent, including legal fees for the merits and quantum phases - reasonable); Exhibit CLA-199, at [721] & [732]-[735] (considering the claimant’s costs of approximately USD 8M as reasonable); Exhibit CLA-198, at [1027]; Exhibit CLA-025, at [576]-[577] & [588]-[589] (finding claimant’s costs of USD 7.9M as reasonable); and Exhibit CLA-029, at [527] and [535] (upholding claimant’s costs of USD 7.6M as reasonable).

³³ Claimant’s Costs Submissions, at [2.23].

³⁴ Claimant’s Costs Submissions, at [2.24].

³⁵ Claimant’s Costs Submissions, at [2.24].

³⁶ Claimant’s Costs Submissions, at [2.24].

³⁷ Claimant’s Costs Submissions, at [2.25].

³⁸ Claimant’s Costs Submissions, at [2.24].

³⁹ Claimant’s Costs Submissions, at [2.26].

- 50.7. The distinctive and non-duplicative roles performed by Claimant's counsel and solicitors, assembled from four firms (in respect of which Claimant submits it is common for claimants to be represented by multiple firms in investor-state disputes).⁴⁰
- 50.8. Claimant's efforts to mitigate the dispute: (i) in 2015, before the commencement of this Arbitration, when Claimant repeatedly requested reimbursement of its out-of-pocket expenditures; (ii) at the outset of these proceedings, when Claimant approached Respondent for preliminary settlement discussions; and (iii) in the months preceding the hearings, when Claimant approached Respondent for mediation. All of these efforts were fruitless owing to Respondent's rejection and/or refusal to engage in "*meaningful settlement discussions*".⁴¹
51. Claimant notes that its costs (quantified at **USD 8,054,065.97**) exceed those of Respondent's (quantified at **USD 4,380,945.15**), but initially emphasised that they are "*only approximately 45% higher—not double or triple*". Following the Tribunal's query, Claimant subsequently corrected this figure to state that its costs are in fact approximately 84% higher.⁴² According to Claimant, this differential cannot be characterised as "*manifestly excessive*",⁴³ and does not render its costs unreasonable.⁴⁴
52. In justifying the differential between its costs and those of the Respondent, Claimant relies on the following reasons.

⁴⁰ Claimant's Costs Submissions, at [2.27]-[2.30], citing Exhibit CLA-200, at [709] & [733] (listing claimed costs for six distinct firms all of which the tribunal deemed reasonable); Exhibit CLA-199, at [721] & [734]-[735] (listing claimed costs for four distinct firms, which the tribunal treated as reasonable); and Exhibit CLA-197, at pg. [i] (listing four firms among parties' representatives) & [49]-[50] (finding the legal costs to be reasonable).

⁴¹ Claimant's Costs Submissions, at [2.33].

⁴² Claimant's email of 25 December 2025.

⁴³ Claimant's Costs Submissions, at [2.33], citing Exhibit CLA-192, at pg. [5]-[6]; and Exhibit CLA-065, pg. [325].

⁴⁴ Claimant's Costs Submissions, at [2.31], citing Exhibit CLA-199, at [734] (noting that "[t]he higher fees and expenses for Claimant's international counsel [as compared to the fees and expenses of Peru's counsel] are not unreasonable"); Exhibit CLA-025, at [576]-[577] & [589] (finding claimant's costs of USD 7.9 million reasonable, despite respondent's costs being USD 2.8 million); and Exhibit CLA-029, at [527] & [535] (upholding claimant's costs of USD 7.6 million as reasonable, notwithstanding respondent's costs of USD 4.3 million).

- 52.1. The higher evidentiary and legal burdens borne by claimants, as well as the differing billing practices between law firms representing investor-claimants and State respondents.⁴⁵
- 52.2. The lack of transparency in Respondent's Costs Breakdown compared with Claimant's particularised Costs Breakdown.⁴⁶
53. Having regard to the above submissions, Claimant contends that the "*direct causal link*" between its costs and Respondent's conduct (including conduct leading to the commencement of, and during, this Arbitration) justifies the reasonableness of its costs, which are "*proportionate to the scale, duration and complexity of the dispute as well as the conduct of the proceedings*".⁴⁷

Respondent's Misconduct in These Proceedings Justifies the Allocation of Costs in Favour of Claimant

54. Claimant submits that Respondent's misconduct in these proceedings provides "*an additional and independent basis*" for the full cost-shifting rule to be given effect by the Tribunal.⁴⁸
55. Claimant relies on *Von Pezold v Zimbabwe*⁴⁹ and a line of authorities⁵⁰ in support of its proposition that tribunals will award full recovery of costs where respondents' unreasonable, dilatory, or obstructive conduct compounds the burden on claimants and unnecessarily increases the costs of the proceedings.⁵¹
56. In addition to the precedents noted above, Claimant submits that there are two reasons (specific to this Arbitration) why the Tribunal should take Respondent's

⁴⁵ Claimant's Costs Submissions, at [2.31], citing Exhibit CLA-032, at [17]-[25]; Exhibit CLA-029, at [533] & [535] (observing that "[i]t is not unusual for claimants to spend more on costs than respondents given, among other things, the burden of proof"); Exhibit CLA-173, at [12.16] (recognising that international arbitrations are "*often more expensive for a claimant (who bears the burden of proving its claim) than for a respondent and that there are sometimes special factors in costing a law firm's services to a respondent State*"); and Exhibit CLA-192, at pg. [5] (noting that claimants generally "*spend more pursuing their claims than respondents*").

⁴⁶ Claimant's Costs Submissions, at [2.32].

⁴⁷ Claimant's Costs Submissions, at [2.34].

⁴⁸ Claimant's Costs Submissions, at [2.35].

⁴⁹ Exhibit CLA-045, at [1006]-[1008].

⁵⁰ Exhibit CLA-065, at pg. [322]; Exhibit CLA-194, at pg. [41]; Exhibit CLA-029, at [533], [536]-[539] & [542]; Exhibit CLA-132, at [1038] & [1040]; and Exhibit CLA-025, at [588]-[590]. See also Exhibit CLA-195, at pg. [669] (considering cost-shifting as "*a way to induce efficient litigation behavior*").

⁵¹ Claimant's Costs Submissions, at [2.36].

conduct into account in allocating costs. First, Procedural Order No. 1 specifically provides that the Tribunal “*shall take into account when using its discretion to allocate costs any unreasonable behaviour by a Party*”.⁵² Second, Article 42(1) of the UNCITRAL Arbitration Rules 2013 requires the Tribunal to consider “*the circumstances of the case*” in allocating costs, which, according to Claimant, “*necessarily encompasses the manner in which each Party has conducted itself during the arbitration*”.⁵³

57. Claimant cites the following instances of Respondent’s alleged misconduct to justify costs being awarded against Respondent.⁵⁴

57.1. Respondent presented unfounded and superfluous jurisdictional objections and counterclaims. This imposed a “*significant and wholly unnecessary burden on Claimant, materially increasing the time, effort, and expense required to defend against claims that the Tribunal ultimately rejected in their entirety*”.⁵⁵

57.2. Respondent employed disingenuous tactics in the presentation of its case across various submissions and went “*beyond permissible advocacy*” during the hearings.⁵⁶

57.3. Respondent failed to comply with its procedural obligations under PO1. First, during the document production phase, Respondent “*unilaterally curtailed its disclosure obligations*”, which “*disrupted the preparation of Claimant’s Reply, increased Claimant’s costs, and unnecessarily complicated the proceedings*”.⁵⁷ Second, at the outset of these proceedings and in the lead-up to the hearings, Respondent avoided engaging in mediation in good faith.⁵⁸ Third, Respondent appointed two experts to opine on the same discipline of Ethiopian environmental law, thereby gaining “*an unwarranted tactical advantage, while Claimant was forced to incur additional costs to reorganize the hearing schedule and to prepare to address multiple experts on a single issue*”.⁵⁹ Forth,

⁵² Claimant’s Costs Submissions, at [2.37], quoting Procedural Order No. 1 dated 4 December 2020 (“PO1”), at [19].

⁵³ Claimant’s Costs Submissions, at [2.38].

⁵⁴ Claimant’s Costs Submissions, at [2.39]-[2.85]. See also Claimant’s Post-Hearing Submission, Section 6A(ii).

⁵⁵ Claimant’s Costs Submissions, at [2.41]-[2.43].

⁵⁶ Claimant’s Costs Submissions, at [2.44]-[2.55].

⁵⁷ Claimant’s Costs Submissions, at [2.57]-[2.67].

⁵⁸ Claimant’s Costs Submissions, at [2.68]-[2.73].

⁵⁹ Claimant’s Costs Submissions, at [2.74]-[2.75].

Respondent failed to pay its share of the advance on costs within the deadlines prescribed by the Tribunal and the PCA.⁶⁰

57.4. Respondent resumed industrial development works on the disputed ETIZ site prior to the issuance of the Award. In support of this allegation, Claimant had to introduce new evidence comprising video and photographs,⁶¹ the admissibility and accuracy of which are strongly contested by Respondent.⁶² In any event, Claimant maintains that the new evidence is “*directly relevant to the equitable allocation of costs*”, as it serves as proof of Respondent’s “*marked disregard for the integrity of these proceedings and undermines the credibility of its defences*”.⁶³

Allocation of Costs Must Be Assessed Holistically

58. Claimant contends that the Tribunal should adopt the “*standard arbitral approach of allocating costs holistically*” with respect to its aggregate costs, rather than applying a “*mechanical issue-by-issue apportionment*” given the “*integrated nature of advocacy across claims and phases*”. The issue-based approach, according to Claimant, “*does not precisely reflect how resources were actually deployed*”.⁶⁴
59. Claimant further submits that the issue-based approach is “*neither feasible nor appropriate in complex treaty arbitrations*”, citing *Bear Creek* and *Natland*, in which costs were allocated on a holistic basis.⁶⁵ Specific to this Arbitration, Claimant contends that a holistic approach to costs allocation is warranted owing to Respondent’s procedural misconduct and tactics, which have inflated its costs across all phases. The adoption of a holistic approach would ensure

⁶⁰ Claimant’s Costs Submissions, at [2.76]-[2.80].

⁶¹ Claimant’s Costs Submissions, at [2.81]-[2.85].

⁶² Respondent’s email of 18 October 2025; Respondent’s email of 7 November 2025; and Respondent’s email of 20 November 2025. Among others, Respondent contends that the disputed site has not been granted to any other investors, but has instead been used exclusively for agricultural purposes. Respondent further submits that the Claimant has not sought any form of specific performance (such as conservatory relief) that would prohibit such use pending the issuance of the Award.

⁶³ Claimant’s email of 19 October 2025; and Claimant’s email of 15 November 2025.

⁶⁴ Claimant’s Costs Submissions, at [3.3].

⁶⁵ Exhibit CLA-200, at [734]-[735]; and Exhibit CLA-199, at [730]-[731]. See also Exhibit CLA-065, at pg. [320] (noting that “*allocation based on the parties’ relative success should not be seen to reduce the cost[s] decision to a purely arithmetical exercise, and in particular does not speak against awarding full costs where a party, while not fully, still very predominantly succeeded with its claim or defence*”).

that Respondent “*cannot profit from its own misconduct*” and that it “*capture[s] the true source of the expenses incurred*”.⁶⁶

60. In the event that the Tribunal adopts the issue-based approach, Claimant argues that it would still be entitled to a minimum recovery of approximately USD 6 million (corresponding to 75% of its total costs) as the prevailing party based on its relative success on the issues of jurisdiction, counterclaims, and the FET obligation. Claimant has also succeeded in establishing its entitlement to sunk costs, as well as pre-award and post-award interest.⁶⁷

Post-Award Interest on Costs to be Compounded Monthly, or at the Very Least, Semi-Annually

61. Claimant submits that post-award interest on costs is necessary to ensure full reparation,⁶⁸ and should be granted at the same rate as in the Award until full payment by Respondent.⁶⁹
62. However, citing Respondent’s “*pattern of delayed payments during the arbitration*” and noting that Respondent has yet to satisfy its obligation to pay the damages awarded in the Award, Claimant contends that there is a risk of further non-payment.⁷⁰ For that reason, Claimant requests that post-award interest on costs be granted at the same rate as in the Award and be compounded (so as to incentivise compliance)⁷¹ monthly, or at the very least, semi-annually, until full payment.⁷²
63. In support of this request, Claimant relies on a line of authorities for the proposition that tribunals have, in appropriate circumstances, adjusted the

⁶⁶ Claimant’s Costs Submissions, at [3.4].

⁶⁷ Claimant’s Costs Submissions, at [3.5].

⁶⁸ Claimant’s Costs Submissions, at [4.1]-[4.2], citing Exhibit CLA-065, at pg. [302]-[303] & [330]; Exhibit CLA-201 (noting that “[t]ribunals have systematically granted interest on the costs of the parties when such requests were made”); Exhibit CLA-065, at pg. [302] (stating that “[t]ribunals often award post-award interest in addition to the amount specified in the award”); Exhibit CLA-045, at [1024]; CLA-068, at [1856]-[1857]; Exhibit CLA-029, at [543(3)]; Exhibit CLA-199, at [737]; and Exhibit CLA-185, at [1657] & [1690].

⁶⁹ Claimant’s Costs Submissions, at [4.2].

⁷⁰ Claimant’s Costs Submissions, at [4.3].

⁷¹ Claimant’s Costs Submissions, at [4.4], citing Exhibit CLA-185, at [1657]; Exhibit CLA-045, at [943]; Exhibit CLA-052, at [665]; Exhibit CLA-202, at [747]; Exhibit CLA-203, at pg. [8] (noting that tribunals frequently use compounding element to “incentivise” the respondent’s compliance and “facilitate prompt payment”); and Exhibit CLA-204, at [45]-[46] (stating that the function of the post-award interest is among other things to compensate for the risks in collecting the award and “to disincentivize delay in payment”).

⁷² Claimant’s Costs Submissions, at [4.4]-[4.5].

frequency of compounding to “*reflect aggravating circumstances and to avoid incentivizing delay*”,⁷³ with monthly compounding increasingly used alongside annual and semi-annual compounding.⁷⁴

64. In the alternative, should the Tribunal decline to depart from its earlier approach in the Award, Claimant requests that post-award interest on costs be granted on the same terms as in the Award, i.e., to be compounded annually on both the principal amount and the costs at each anniversary of this Final Award on Costs.⁷⁵
65. Accordingly, Claimant prays for the following relief.⁷⁶
 - 65.1. Respondent reimburse Claimant for the full amount of its arbitration costs in the sum of **USD 8,054,065.97**, or, in the alternative, no less than 75% of that sum.
 - 65.2. Respondent pay post-award interest on costs at the rate set forth in the Tribunal’s Award, compounded monthly, or, in any event, no less frequently than annually on each anniversary of this Final Award on Costs (commencing with the first anniversary), from the date of the Tribunal’s Final Award on Costs until payment in full.
 - 65.3. Respondent bear its own arbitration costs.
 - 65.4. The Tribunal grant such other relief to Claimant as it deems just and appropriate.

B. Respondent’s Submissions

66. Insofar as the applicable legal principle is concerned, Respondent aligns with Claimant in that it also cites Article 42 of the UNCITRAL Arbitration Rules 2013. Although not stated in clear terms, Respondent similarly submits that, under

⁷³ Exhibit CLA-045, at [950] & [1024] (awarding semi-annual compounding, including on costs); Exhibit CLA-124, at [677]-[678] (awarding semi-annual compounding); Exhibit CLA-173, at [10.141] (awarding quarterly compounding); Exhibit CLA-029, at [543(3)] (awarding monthly compounding, including on costs); Exhibit CLA-202, at [747]-[750]; and Exhibit CLA-052, at [665] (each awarding monthly compounding).

⁷⁴ Claimant’s Costs Submissions, at [4.4], citing Exhibit CLA-203, at pg. [4].

⁷⁵ Claimant’s Costs Submissions, at [4.5].

⁷⁶ Claimant’s Costs Submissions, at [5.1]. See also Annex A, Claimant’s Costs Submissions.

Article 42(1) of the UNCITRAL Arbitration Rules 2013, the presumption is that the unsuccessful party shall bear the arbitration costs.⁷⁷

67. In the circumstances, Respondent asserts, contrary to Claimant's position, that it has "*overwhelmingly prevailed*" in this Arbitration and should be awarded its full costs of these proceedings (including all costs of its representation and interest thereon).⁷⁸ Respondent argues that, while Claimant did obtain some damages, it brought an excessive claim with "***more than 99%** of the damages claim stand[ing] rejected*".⁷⁹ Respondent adds that the exaggerated nature of Claimant's claim is further evidenced by the fact that Claimant has "*expended in excess of fifty percent more than the amount that it has obtained in a damages award*".⁸⁰ Respondent further submits that there is no basis to depart from the presumption under Article 42(1) of the UNCITRAL Arbitration Rules 2013, and that Claimant shall bear Respondent's costs.⁸¹
68. Respondent relies on two key factors it considers to be central to the allocation of costs in its favour.⁸²
69. First, Respondent submits that Claimant's unjustified rejection of the alternative land offered for the ETIZ project is independently relevant to the allocation of costs.⁸³ Respondent argues that: (i) Claimant never held an absolute entitlement to the originally contemplated Sendafa site; and (ii) Claimant acknowledged that the provision of suitable alternative land could defeat its claims.⁸⁴ Nevertheless, Claimant disputed the suitability of the land offered. According to Respondent, the offer of alternative land (of equal or potentially superior quality to the original site) constituted a reasonable accommodation and, in substance, an attempt to settle the dispute.⁸⁵ Respondent further submits that Claimant failed to provide a satisfactory explanation for the discrepancy between its contemporaneous positive assessment of the alternative land and its subsequent rejection of that land

⁷⁷ Respondent's Costs Submissions, at [9]-[10].

⁷⁸ Respondent's Costs Submissions, at [2]-[8].

⁷⁹ Respondent's Costs Submissions, at [6].

⁸⁰ Respondent's Costs Submissions, at [7].

⁸¹ Respondent's Costs Submissions, at [10].

⁸² Respondent's Costs Submissions, at [11].

⁸³ Respondent's Costs Submissions, at [12]-[23].

⁸⁴ Respondent's Costs Submissions, at [14]-[15].

⁸⁵ Respondent's Costs Submissions, at [15]-[16] & [19]-[20].

during the arbitration.⁸⁶ Respondent also emphasises that the offer was supplemented by a fifteen-year tax exemption, which it contends could have recouped Claimant's sunk costs.⁸⁷ On this basis, Respondent submits that Claimant's refusal to accept the alternative land and tax incentives, and its decision to pursue costly arbitration instead, were unreasonable and should be taken into account in the allocation of costs.⁸⁸

70. Second, Respondent contends that Claimant's "*outrageously exaggerated damages claims*" should be taken into account in the allocation of costs.⁸⁹ According to Respondent, Claimant sought total damages of USD 502,234,718.50 (comprising claims for loss of profits and interest thereon, as well as loss of opportunity).⁹⁰ By contrast, Claimant was awarded sunk costs in the amount of USD 4,955,131.00, representing less than 1% of the amount claimed (i.e., approximately 0.987%).⁹¹
71. In addition to the above, Respondent submits that Claimant bypassed available domestic administrative and judicial remedies, as well as "*the Parties' mutually intended international contract remedies*", and instead initiated a treaty claim under the TEBIT.⁹² It further identifies, in passing, the following factors adverse to the Claimant:⁹³
- 71.1. *[Claimant's] extensive and unnecessary discovery requests including irrelevant environmental reports of other projects to seek a lowering of environmental standards.*
- 71.2. *[Claimant's] advancement of frivolous Ethiopian environmental law arguments that required expert witnesses.*
- 71.3. *[Claimant's] presentation of volumes of irrelevant and unhelpful arbitral cases that required the dedication of immense resources.*
72. On this basis, Respondent contends that it is the successful party in this Arbitration to the extent of 99.013% and accordingly seeks reimbursement of

⁸⁶ Respondent's Costs Submissions, at [17]-[18].

⁸⁷ Respondent's Costs Submissions, at [21].

⁸⁸ Respondent's Costs Submissions, at [22]-[23].

⁸⁹ Respondent's Costs Submissions, at [11] & [24]-[28].

⁹⁰ Respondent's Costs Submissions, at [24]-[26].

⁹¹ Respondent's Costs Submissions, at [27].

⁹² Respondent's Costs Submissions, at [29]-[30]. See also Respondent's Post-Hearing Submission, at [75] & [77].

⁹³ Respondent's Post-Hearing Submission, at [75].

its costs, quantified at **USD 4,380,945.15**,⁹⁴ in the same proportion.⁹⁵ Accordingly, Respondent claims 99.013% of its costs, amounting to **USD 4,337,705.22**.⁹⁶

IV. The Tribunal's Decision on Costs

73. This Final Award will now set out the Tribunal's decision on costs.

74. Pursuant to Article 40(1) of the UNCITRAL Arbitration Rules 2013, it is provided that:

The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

75. In turn, Article 40(2) of the UNCITRAL Arbitration Rules 2013 defines "costs" as follows:

The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

⁹⁴ Respondent's Costs Breakdown.

⁹⁵ Respondent's Costs Submissions, at [28].

⁹⁶ Respondent's Costs Submissions, at [31]-[32].

76. The Tribunal fixes the fees and expenses of the Tribunal, in accordance with Article 40 of the UNCITRAL Arbitration Rules 2013 as follows:
- 76.1. Dr. Michael Hwang S.C.: USD 486,375.00 in fees and USD 19,498.41 in expenses;
- 76.2. Professor Philip McConnaughay: USD 291,625.00 in fees and USD 32,472.01 in expenses;
- 76.3. Sir David A.R. Williams K.C.: USD 253,312.50 in fees and USD 12,421.88 in expenses.
77. The fees and expenses incurred by the Tribunal Secretary amount to USD 101,625.00 and USD 5,123.78, respectively.
78. The PCA's fees and expenses for registry services in assistance of the Tribunal amount to USD 96,474.38 and USD 73.93, respectively.
79. Other arbitration costs incurred, including for hearing and meeting facilities, catering, court reporters, IT support, courier costs, bank costs, communications, supplies, and court filing fees, amount to USD 364,555.68.
80. Insofar as the allocation of costs is concerned, Article 42 of the UNCITRAL Arbitration Rules 2013 provides that:
- 1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.*
- 2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.*
81. The Parties are agreed that Article 42(1) of the UNCITRAL Arbitration Rules 2013 provides the presumptive starting point for the allocation of costs, and that, in the present case, costs should in principle follow the event. The Tribunal has no qualms about accepting this plain and literal reading of Article 42(1) of the UNCITRAL Arbitration Rules 2013 as the starting point for the allocation of all costs (as defined in Article 40(2) of the UNCITRAL Arbitration Rules 2013).

Indeed, the existence of this presumptive starting point is echoed by Micha Bühler in the *2018 GAR Guide to Damages in International Arbitration – Costs* (“**2018 GAR Guide on Costs**”) (an authority cited by Claimant),⁹⁷ in which he observes that:

The starting point for any decision on costs is the applicable arbitration rules and, if containing relevant rules, the arbitration agreement and the applicable lex arbitri.

*Many international arbitration rules now expressly provide that the costs of arbitration shall in principle be borne by the unsuccessful party, and hence expressly provide for fee shifting: see...Article 42(1) of the 2010 UNCITRAL Rules.*⁹⁸

82. The Tribunal takes note of Claimant’s additional reliance on a voluminous body of authorities for the proposition that the “costs follow the event” principle has been widely adopted in international arbitration, including investor-state disputes and in cases where the applicable arbitral rules do not provide for a presumptive starting point, such as under the ICSID Arbitration Rules.⁹⁹ However, as the Tribunal has accepted the Parties’ common position that Article 42(1) of the UNCITRAL Arbitration Rules 2013 establishes a presumptive starting point for the allocation of costs in the present case, practices developed under other arbitral regimes are of persuasive value only and carry no binding effect. In these circumstances, the Tribunal does not consider it necessary to examine those authorities in further detail.
83. In applying the “costs follow the event” principle under Article 42(1) of the UNCITRAL Arbitration Rules 2013, the Tribunal begins its analysis by assessing the outcome of this Arbitration and identifying the prevailing party. It will then determine whether “*the circumstances of the case*” reasonably warrant any apportionment of costs between the Parties.
84. Unsurprisingly, each Party has claimed to be the prevailing party in this Arbitration.

⁹⁷ Claimant’s Costs Submissions, at [2.4].

⁹⁸ Exhibit CLA-065, at pg. [319].

⁹⁹ Refer to Paragraphs [37.3] & [41] above.

85. On the one hand, Claimant argues that it is the prevailing party on the basis that it “*succeeded on all principal issues in dispute*”, for which damages has been awarded.¹⁰⁰ On the other hand, Respondent argues that it “*has overwhelmingly prevailed in this arbitration*”, pointing to Claimant’s failure on what it characterises as an “*excessive and exaggerated and even outlandish damages claim (exceeding half a billion dollars in value)*”.¹⁰¹ Respondent emphasises that Claimant was awarded less than 1% of the amount claimed (i.e., approximately 0.987%).¹⁰²
86. Neither of these positions is untenable on its face. Indeed, determining the prevailing party is not always a straightforward exercise, especially in cases where there are multiple claims and the ultimate outcome is mixed. This observation is consistent with the analysis in the *2018 GAR Guide on Costs*, where it is stated that:

Yet, it should be noted that the costs follow the event rule is prevalently applied in a ‘bespoke way’ by arbitral tribunals, namely taking into account the parties’ relative success and failure in the award, or the relative degree of success of their claims and defences respectively...

Determining the relative success is not necessarily straightforward, in particular in complex cases with multiple causes of action and claims. In purely monetary awards, and absent particular circumstances, it will in many cases be appropriate for assessing the relative success of each party to determine the success ratio by simply comparing the amounts claimed by the parties in their prayers for relief and the amounts ultimately awarded to each party. In other cases, the pro rata rule will only be a starting point and the arbitral tribunal will look beyond a mere computation of the amounts claimed and awarded. The arbitral tribunal enjoys discretion when evaluating the parties’ relative successes and failures in the arbitration. For instance, the tribunal may take into consideration that a party, although unsuccessful in the end, succeeded on certain preliminary issues on which a large amount of time and effort had to be spent by the parties or the tribunal. To the same effect, a tribunal may take into account case-specific difficulties in assessing and valuing

¹⁰⁰ Claimant’s Costs Submissions, at [2.13].

¹⁰¹ Respondent’s Costs Submissions, at [2] & [5].

¹⁰² Respondent’s Costs Submissions, at [27].

damages and, in particular, where such assessment was made difficult by the uncooperative attitude of the counterparty, may decide to award full costs to a claimant, although the monetary award obtained was lower than the claimed amount (or to not reduce the cost[s] award proportionally to the ratio between the amounts claimed and awarded)...

In summary, when awarding costs based on the outcome of the dispute, arbitral tribunals measure success in various ways, effectively adjusting the costs follow the event rule to the specific case.¹⁰³

87. The same position is echoed in the ICC Commission Report, *Decisions on Costs in International Arbitration*, ICC Dispute Resolution Bulletin 2015, Issue 2 (“**2015 ICC Commission Report**”). Although not cited directly by either Party, the 2015 ICC Commission Report is frequently relied upon in the authorities cited by Claimant, viz. the 2018 GAR Guide on Costs and Joseph Profaizer et al. in the 2021 GAR Guide to Damages in International Arbitration – Costs.¹⁰⁴ The 2015 ICC Commission Report observes that:

59. ...However, determining relative success is not necessarily straightforward, particularly in complex disputes involving multiple causes of action, counterclaims, set-off, multiple contracts and multiple parties. As claims are added, withdrawn, modified or merged in the course of proceedings, it may become increasingly difficult to track what was originally claimed against what is ultimately awarded.

60. The general approach is to assess the degree and scope of success and, where relevant, the timing of that success. A successful party may prevail in some but not all claims brought, and/or recover some but not all damages sought. In the case of less-than-full recovery, different approaches have been taken by arbitrators.

61. Arbitrators may take into account the relative success of the prevailing party by: (i) assuming that if a claimant or respondent succeeded in its core or primary claim or outcome, then it is entitled to all of its reasonable costs; (ii) apportioning costs on a claim-by-claim or issue-by-issue basis according to relative success and failure; or (iii) apportioning success against the amount of damages originally claimed or the value of the property in

¹⁰³ Exhibit CLA-065, at pg. [320]-[321].

¹⁰⁴ See Exhibit CLA-065; and Exhibit CLA-192.

dispute. Other approaches may be used as well (and in all cases there might be an additional assessment based on conduct). Whatever approach is used, it is important to take into account differences in the complexity and importance of different issues.

*62. Any apportionment of costs may involve consideration of some or all of the factors discussed above, as well as bad faith or improper conduct by the parties as discussed below in paragraphs 78 to 85. Any costs so apportioned must nevertheless be reasonable.*¹⁰⁵

88. It is apparent from the passages above that, while the Tribunal should consider the Parties' relative success and failure in applying the "costs follow the event" principle, tribunals in international arbitrations have adopted varying approaches. Some have treated the monetary outcome as the determinative factor in allocating costs, an approach that Respondent has relied on predominantly in its Costs Submissions,¹⁰⁶ while others have placed greater emphasis on the outcome of a party's primary claim, an approach which forms the basis of Claimant's Costs Submissions.¹⁰⁷
89. The Tribunal notes, however, that no single method is universally applied, and each case must be assessed in light of its specific circumstances. In accordance with Article 42(1) of the UNCITRAL Arbitration Rules 2013, the apportionment of costs should "*tak[e] into account the circumstances of the case*".
90. In the present Arbitration, Claimant has succeeded in establishing the following findings by the Tribunal.
- 90.1. Claimant's rights to develop an industrial zone on a plot of land provided by Respondent qualified as an "*investment*" under either Article I(2)(b), Article I(2)(c), and/or Article I(2)(d) of the TEBIT.¹⁰⁸
- 90.2. Respondent's conduct constituted a breach of its FET obligations under the TEBIT by: (i) creating and then frustrating Claimant's legitimate expectations with respect to the Sendafa site; and (ii) behaving

¹⁰⁵ 2015 ICC Commission Report, at pg. [11].

¹⁰⁶ Respondent's Costs Submissions, at [2]-[8], [24]-[28] & [31].

¹⁰⁷ Claimant's Costs Submissions, at [1.2], [2.9]-[2.11] & [2.13]-[2.20].

¹⁰⁸ Award, at [354] & [364]-[365].

inconsistently with respect to Ethiopia's economic development, regulatory, and environmental protection objectives.¹⁰⁹

91. In the Tribunal's view, these are significant legal findings in this Arbitration, to which due and proper consideration must be given. In particular, by establishing the Tribunal's jurisdiction over this Arbitration under the TEBIT and Respondent's breach of its FET obligations, Claimant had also established its *prima facie* entitlement to claim for damages (subject, of course, to those damages being proved and quantified).
92. Furthermore, Claimant succeeded in defending against all of Respondent's counterclaims through, among others, its "*extensive written submissions*" on "*the comparatively atypical issue of state counterclaims*",¹¹⁰ which, on Claimant's own account, translated into substantial legal fees (USD 1,201,948.36) and out-of-pocket expenses, referred to by Claimant as arbitration-related costs (USD 72,808.11).¹¹¹
93. The outcome of this Arbitration is that, although Claimant was not awarded damages for loss of profits or loss of opportunity, it was nonetheless reimbursed for its sunk costs (Claimant's failure to establish its loss of profits or loss of opportunity will be addressed further below).¹¹²
94. In the circumstances, the Tribunal considers Claimant to be the prevailing party in this Arbitration. As noted above, while Claimant was not awarded damages for loss of profits or loss of opportunity, it was awarded reimbursement of its sunk costs and succeeded on the core issues of jurisdiction, Respondent's breach of its FET obligations, and defending against counterclaims. The Tribunal does not accept that a deduction in the quantum of damages awarded would of itself render Respondent the successful party. In this regard, the following observation in the *2018 GAR Guide on Costs* is apposite:

Conversely, allocation based on the parties' relative success should not be seen to reduce the cost[s] decision to a purely arithmetical exercise, and in

¹⁰⁹ Award, at [781].

¹¹⁰ Claimant's Costs Submissions, at [2.24].

¹¹¹ Claimant's Costs Breakdown. The Tribunal notes that Claimant's issue-based Costs Breakdown submitted on 5 August 2025 was subsequently replaced by Annex A in its Costs Submissions, which presents the costs on an aggregated basis. Nevertheless, the costs incurred by Claimant in defending against counterclaims remain unchanged regardless of the differing formats of the two breakdowns.

¹¹² Claimant's Costs Submissions, at [1132] & [1140].

*particular does not speak against awarding full costs where a party, while not fully, still very predominantly succeeded with its claim or defence, or against equal apportionment where neither side came out as a winner.*¹¹³

95. The Tribunal's attention has also been drawn to a number of authorities, in particular, *Tethyan v Pakistan* (an authority cited by Claimant),¹¹⁴ in which the ICSID tribunal (comprised of Lord Hoffmann, Dr Alexandrov, and Professor Sachs) had to grapple with the issue of determining the victor in light of Tethyan's partial success. In that case, although Tethyan failed in its request for provisional measures and certain deductions were made from the quantum of damages awarded, the tribunal nonetheless regarded Tethyan as the prevailing party. This conclusion was reached on the basis that those failures were outweighed by Tethyan's success on jurisdiction and liability, its successful defence against Pakistan's counterclaims and allegations, and its establishment of the feasibility and substantial value of its project. In awarding costs to Tethyan, the tribunal stated that:

*Furthermore, neither of the two [failures] changes the fact that Claimant had to initiate this arbitration in order to receive the amount of compensation to which it is entitled as a result of Respondent's Treaty breaches.*¹¹⁵

96. Similar observations were made by the PCA tribunal in *DTEK Krymenergo v Russia* conducted under the UNCITRAL Arbitration Rules 1976 (an authority cited by Claimant):¹¹⁶

1024. In the present case, Respondent is the unsuccessful party. Indeed, Claimant has prevailed:

- In all its defenses to Respondent's multiple jurisdictional objections;*
- In the merits of the case; and*
- In the quantification of damages, although the Tribunal has decided on a lower amount than the one claimed by Claimant.*

¹¹³ Exhibit CLA-065, at pg. [320].

¹¹⁴ Claimant's Costs Submissions, at [2.14].

¹¹⁵ Exhibit CLA-068, at [1852].

¹¹⁶ Claimant's Costs Submissions, at [2.15].

*1025. Following the principle that costs follow the event, enshrined in Article 40 of the UNCITRAL Rules, the Tribunal decides that the Administrative Costs should be borne entirely by the Russian Federation. This is only fair considering that Claimant was forced to resort to arbitration to obtain relief for the Expropriatory Measures adopted by Russia.*¹¹⁷

97. Indeed, Claimant was compelled to pursue this arbitration as a result of Respondent's breach of its treaty obligations. This is evidenced by the fact that, when Respondent notified Claimant that it would not be permitted to proceed with the industrial zone project on the original site, Claimant repeatedly sought reimbursement of its out-of-pocket costs, which Respondent refused. As Claimant submits, had Respondent reimbursed those costs at that material time, this Arbitration (ultimately resulting in the reimbursement of sunk costs, with interest from the date on which Claimant was formally notified that the industrial zone project had to be relocated (i.e., 17 June 2015)) could have been avoided.¹¹⁸ This is also a relevant factor to be considered by the Tribunal in allocating costs. As observed in the *2018 GAR Guide on Costs*:

Cause of the dispute; failure to avoid the dispute

Arbitral tribunals also look into the parties' conduct that gave rise to the arbitration, and in particular whether the arbitration could have been avoided if one party had acted differently in earlier settlement discussions or dealings or whether the winning party shares responsibility for the escalation of the conflict or the root cause of the dispute...[W]here the tribunals found that the prevailing claimant acted reasonably in pursuing its claim in arbitration and was left with no choice other than to enter into

¹¹⁷ Exhibit CLA-198, at [1024]-[1025]. See also Exhibit CLA-200, at [736]; and Exhibit CLA-185, at [1869].

¹¹⁸ Claimant's Costs Submissions, at [2.21], citing Exhibit C-084, at pg. [1] (recording Akgun's request for reimbursement of all costs due to the impossibility of realizing the project); Exhibit C-086, at pg. [1] (noting the Prime Minister's prior promise to reimburse Akgun's expenses incurred on the site) & pg. [2] (reflecting Akgun's position that repayment of all expenses for the ETIZ site in Sendafa was a condition for accepting new land); Exhibit C-036, at [13.2] (demanding compensation for "[t]otal expenses incurred by AKGUN, such as costs of site plan design studies, feasibility studies, EIA studies, construction machinery and equipment"); Exhibit C-089, at pg. [5] (recording that the State Minister had stated that the Government could not approve reimbursement of Akgun's expenses); Exhibit C-088, at pg. [1] (referencing prior governmental promises to repay expenses) & pg. [3] (reiterating Akgun's request for reimbursement); and Witness Statement of Yusuf Akgun dated 19 November 2020 ("Yusuf Akgun 1st Statement"), at [5.26] (describing a subsequent meeting with State Minister Tadesse Haile in November 2015, during which the Minister unequivocally confirmed that "Ethiopia would not compensate [Akgun] for the damages...suffered").

*arbitration, given the unreasonable position adopted by the other side, such circumstances were considered in support of allocating legal fees.*¹¹⁹

98. In this regard, the Tribunal has not overlooked Respondent's contention in its Costs Submissions that it offered Claimant alternative land of equal or potentially superior quality to the original site, which Respondent characterises as a reasonable accommodation and, in substance, an attempt to settle the dispute. The offer was accompanied by a fifteen-year tax exemption.¹²⁰ However, this point has already been dealt with by the Tribunal in the Award and is now repeated in Respondent's Costs Submissions. In the Award, the Tribunal found, among others, as follows:

98.1. *Respondent did not provide a firm offer or even a skeletal set of terms for an alternative plot.*¹²¹

98.2. *Given that Claimant here did reject alternative plots, it is reasonable to assume that the rejection was due to some reasonable consideration (at least in Claimant's mind) that the plot was unsuitable. Without proof that the alternative sites, in fact, were suitable, and that Claimant was provided with adequate information at the time to make this determination, the Tribunal is inclined to defer to Claimant's business judgement that the sites were not suitable.*¹²²

98.3. *[W]hile Respondent may very well have promised Claimant a tax holiday and alternative sites for industrial development, these alleged promises were not reduced into writing (or a formal offer) that included information supporting Respondent's assertions of comparability to Sendafa. Consequently, the Tribunal finds that there were no reasonable alternative sites on offer to Claimant (or at least, Respondent did not provide Claimant with sufficient information about the sites for Claimant to make an informed decision).*¹²³

99. In light of the above, having succeeded on the issues of jurisdiction and liability and in defending against Respondent's counterclaims, and having been

¹¹⁹ Exhibit CLA-065, at pg. [322]-[323].

¹²⁰ Refer to Paragraph [69] above.

¹²¹ Award, at [1146].

¹²² Award, at [1151].

¹²³ Award, at [1156].

awarded reimbursement of its sunk costs, Claimant must be regarded as the prevailing party in this Arbitration. Therefore, Claimant is, *prima facie*, entitled to recover all its reasonable costs pursuant to Article 42(1) of the UNCITRAL Arbitration Rules 2013. Absent such recovery, Claimant “*will be left substantially out of pocket*”.¹²⁴ In reaching this decision, the Tribunal also notes the following observations of the ICSID tribunal (chaired by the late V.V. Veeder KC) in *Unión Fenosa Gas v Egypt* (an authority cited by Claimant), where it has been stated that:¹²⁵

*The Tribunal bases this decision on the ‘loser pays’ principle applied by the majority of ICSID tribunals to compensate a successful claimant for the expenses of bringing a meritorious claim against a respondent. Without such compensation, a successful claimant would be penalised for resorting to ICSID arbitration. In this case, the Tribunal can see no reason to depart from the general principle that a successful claimant should be reimbursed for its legal costs by an unsuccessful respondent. For the avoidance of doubt, the Tribunal confirms that its decision is not based upon any desire to punish the Respondent for procedural misconduct or for perversely defending a meritorious claim.*¹²⁶

100. Having concluded that Claimant is the prevailing party in this Arbitration, the Tribunal now proceeds to consider whether Claimant is entitled to all of its reasonable costs.
101. The Tribunal is mindful that Claimant did not succeed on all of its claims, and failed on multiple issues in this Arbitration.¹²⁷ In particular, notwithstanding Claimant’s success in establishing the Tribunal’s jurisdiction, Respondent’s breach of its FET obligations, and in defending against Respondent’s counterclaims, Claimant failed to establish that it has suffered a compensable expropriation and, most important, its entitlement to any damages, whether on the basis of loss of profits or loss of opportunity. Consequently, Claimant was awarded only reimbursement of its sunk costs.
102. These are also significant legal findings in this Arbitration, to which due and proper consideration must be given. Specifically, in determining the extent to

¹²⁴ Exhibit CLA-191, at pg. [7].

¹²⁵ Claimant’s Costs Submissions, at [2.6].

¹²⁶ Exhibit CLA-173, at [12.15].

¹²⁷ Award, at [731], [746], [757], [777], [780], [911] & [923].

which Claimant's unsuccessful expropriation claim should be reflected in the allocation of costs, it is germane to examine the reasons for that failure and the manner in which the issue was argued. The Tribunal was ultimately not persuaded that Respondent had committed an expropriation, finding instead that Respondent was validly exercising its Police Powers.¹²⁸

103. Notably, however, the Police Powers doctrine was not forcefully advanced by Respondent. Rather, it was the Tribunal that highlighted the Police Powers doctrine as the decisive consideration leading to the dismissal of the expropriation claim.¹²⁹ In these circumstances, although Claimant failed on its expropriation claim, the fact that Respondent did not itself advance the Police Powers doctrine as a central defence indicates that the claim was not *prima facie* unreasonable and straightforward. Accordingly, the Tribunal does not consider that Claimant's failure on this issue warrants a substantial costs penalty. This decision is consistent with the observation in the *2018 GAR Guide on Costs*, which states that:

Claims raised bona fide

*Arbitral decisions show a wide range of further mitigating factors considered by arbitrators when deciding on costs, including understandable difficulties of a party in providing sufficient evidence, the sheer complexity of a case and the novelty of issues to be decided.*¹³⁰

104. Moreover, while the Tribunal has noted in this Final Award on Costs that the monetary outcome of the Arbitration should not be the determinative factor in apportioning costs,¹³¹ it is nevertheless a relevant consideration. In its Costs Submissions, Claimant denies that it failed to advance a reasonable quantum claim, and describes the Tribunal's decision not to award damages for loss of profits or loss of opportunity as merely an "*exercise of discretion*", and "*not a failure on Claimant's part to advance a credible damages case*".¹³² The Tribunal disagrees. In the Award, the Tribunal repeatedly characterised Claimant's

¹²⁸ See, e.g., Award, at [923].

¹²⁹ Procedural Order No. 4 dated 19 October 2022. See also the Parties' Post-Hearing Submissions dated 11 November 2022.

¹³⁰ Exhibit CLA-065, at pg. [323].

¹³¹ Refer to Paragraph [90] above.

¹³² Claimant's Costs Submissions, at [2.20].

claims for loss of profits and loss of opportunity as, among others, “*speculative*”. For instance:

104.1. *However, having carefully considered Ms Hardin’s report, the Tribunal finds that it makes several other flawed assumptions in attempting to show that Akgun’s lost profit is more than **speculative**.*¹³³

104.2. *Second, Ms Hardin’s arguments for why demand for ETIZ would be high are **simply too speculative** to amount to reasonable proof.*¹³⁴

104.3. *In other words, Claimant is claiming (i) that it lost the chance to develop Phase 1 of Stage 1 of the Project, and (ii) assuming it had succeeded with Phase 1, it then lost a chance to develop Phase 2 of Stage 1 and Stage 2 of the Project. The Tribunal finds this progression to be **highly speculative**.*¹³⁵

104.4. *It therefore seems clear that the Parties themselves believed that Phase 2 of Stage 1 of the Project as well as Stage 2 of the Project were **more speculative than certain**.*¹³⁶

104.5. *Accordingly, for the same reasons as those given for rejecting Claimant’s claim for loss of profits, the Tribunal finds that the valuation of Claimant’s loss of opportunity is **unreasonably speculative and improbable**. The Tribunal therefore finds that it cannot grant damages for a loss of opportunity to Claimant.*¹³⁷ (emphasis added)

105. Hence, Claimant has indeed failed to advance credible claims in respect of its alleged loss of profits or loss of opportunity, and was awarded reimbursement only of its sunk costs. The Tribunal has taken this factor into account in its apportionment of costs.

106. The Tribunal turns finally to the remaining issue of the Parties’ conduct and procedural behaviour, which are relevant factors in the determination of costs. As noted in the *2018 GAR Guide on Costs*, arbitral tribunals may, in appropriate circumstances, sanction improper conduct and bad-faith procedural behaviour

¹³³ Award, at [1091].

¹³⁴ Award, at [1093].

¹³⁵ Award, at [1115].

¹³⁶ Award, at [1117].

¹³⁷ Award, at [1127].

through adverse costs orders. As to what constitutes improper conduct and bad-faith procedural behaviour, the 2018 GAR Guide on Costs states:

Parties' conduct

*Arbitral tribunals routinely take into account improper conduct and bad faith procedural behaviour by a party when deciding costs, and may penalise with their cost[s] award **unreasonable, obstructive, abusive or otherwise improper behaviour aimed at derailing or delaying the arbitration**...Where a party **undermines an expeditious and cost-efficient conduct of the arbitration**, the tribunal should consider ordering that party to reimburse the other party for additional costs incurred because of its **uncooperative behaviour**, or reducing any costs award to such party because of its **inefficiency**.*¹³⁸ (emphasis added)

107. Having considered both Parties' respective submissions on each other's alleged misconduct,¹³⁹ the Tribunal is not persuaded that either Party has made out a case of improper behaviour "*aimed at derailing or delaying the arbitration*". This is to be distinguished from the ICSID case of *Pezold v Zimbabwe* (an authority cited by Claimant),¹⁴⁰ in which the tribunal imposed an adverse costs order on the basis that Zimbabwe's conduct had "*resulted in an unnecessary escalation of the costs of the proceedings*".¹⁴¹ In that case, the misconduct identified by the tribunal consisted of: (i) presenting "*convoluted and repetitive*" pleadings; (ii) including "*irrelevant material*" in Zimbabwe's pleadings; (iii) elaborating belatedly objections to jurisdiction, admissibility, and defences; and (iv) including "*inadmissible material*" in the hearing transcripts and post-hearing briefs. The tribunal found that these acts of misconduct had "*unnecessary escalat[ed]*" the costs. This is not the case here. The Tribunal is not satisfied that: (i) any misconduct has been established; or, in any event, (ii) that either Party's conduct, assessed *in toto*, has unnecessarily escalated the costs of this Arbitration.
108. For the reasons set out above, in these "*circumstances of the case*", the Tribunal takes the view that an apportionment of costs is warranted, and that Claimant

¹³⁸ Exhibit CLA-065, at pg. [322].

¹³⁹ Refer to Paragraphs [57] & [71] above. See also Claimant's Costs Submissions, Section D; Claimant's Post-Hearing Submission, Section 6A(ii); and Respondent's Post-Hearing Submission, at [75].

¹⁴⁰ Claimant's Costs Submissions, at [2.36].

¹⁴¹ Exhibit CLA-045, at [1008].

should not be awarded its full costs. Accordingly, the Tribunal orders that Respondent shall bear its own costs and 75% of Claimant's total costs, which the Tribunal finds to be reasonable, as itemised below:

Claimant's Costs Breakdown ¹⁴²	
PCA Fees & Expenses	USD 831,778.78 (being Claimant's share of the Tribunal's and PCA's final invoices rendered on 4 February 2026, less the remaining deposits held with PCA)
Legal Fees	USD 5,983,545.09
Expert Fees & Costs	USD 857,583.74
Arbitration-related Costs	USD 362,937.14
Total	USD 8,035,844.75
Costs Awarded to Claimant	
(USD 8,035,844.75) x 75%	USD 6,026,833.56

109. In so deciding, the Tribunal is guided by the following observations in the 2018 *GAR Guide on Costs* and Stephan W. Schill, 'Arbitration Risk and Effective Compliance Cost-Shifting in Investment Treaty Arbitration' (2010) 7 TDM 1 (authorities cited by Claimant) respectively:

109.1. *The rationale behind allocating costs to a successful party is that a party 'should not be out of pocket as a result of having to seek adjudication to enforce or vindicate its legal rights'.*¹⁴³

109.2. *Cost-shifting therefore fulfills the purpose of indemnifying a foreign investor who was harmed by the host State's unlawful conduct. This rationale has been explicated as the decisive element in some awards where the investor prevailed. It also conforms to the fundamental principle of State responsibility that the injured State* is entitled to obtain reparation for the internationally wrongful act. As acknowledged in the decision of the PCIJ in the Chorzów Factory case, this "reparation must, as far as possible, wipe out all the consequences of the illegal act and*

¹⁴² Claimant's Costs Submissions, Annex A.

¹⁴³ Exhibit CLA-065, at pg. [318].

*reestablish the situation which would, in all probability, have existed if that act had not been committed”. This also includes the costs of the proceedings and legal expenses incurred by the investor for bringing a successful claim against a host State.*¹⁴⁴ (emphasis added)

110. Further, the Tribunal agrees with Claimant that this Final Award on Costs shall carry post-award interest at the rate of **6.625%** as in the Award. However, the Tribunal is not persuaded that post-award interest should be compounded monthly or semi-annually, and determines that the same compounding interval as applied to payments under the Award shall apply in this Final Award on Costs.
111. The Tribunal therefore orders that post-award interest shall begin to accrue **4 weeks** from the date of this Final Award on Costs (i.e. **4 March 2026**). The Tribunal also orders that post-award Interest be compounded **annually** (starting from the first anniversary of this Final Award on Costs) until the date of full payment.

V. Dispositive Section

112. For the reasons set forth above, the Tribunal **DECIDES, ORDERS** and **AWARDS** as follows.
- 112.1. Respondent is ordered to bear 75% of Claimant’s total costs, amounting to **USD 6,026,833.56**.
- 112.2. Post-award interest at the rate of **6.625%** is awarded to Claimant on the sum above from **4 March 2026**. The Tribunal further orders that post-award interest be compounded annually on the sum above (and interest thereon) as shall remain outstanding on each anniversary of this Final Award on Costs (starting from the first anniversary) until the date of full payment.
- 112.3. Respondent is ordered to bear all of its own costs.
- 112.4. All other prayers for relief by either party are denied.

¹⁴⁴ Exhibit CLA-195, at pg. [684]-[685].

* The context of Professor Schill’s discussion is that he is discussing a scenario of a state-to-state dispute, noting that the injured state is entitled to reparation from the state causing the injury. Professor Schill subsequently argues that the same principle should extend to a successful investor in an investor-state dispute with respect to costs and legal expenses.

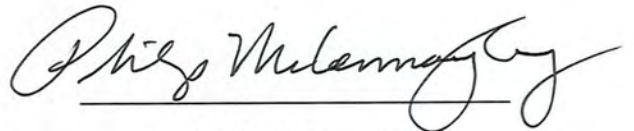
Seat of Arbitration: The Hague, Netherlands

Date: 4 February 2026



Sir David Williams KNZM K.C.

Arbitrator



Prof Philip McConaughay

Arbitrator



Dr Michael Hwang S.C.

Presiding Arbitrator