

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**The Carlyle Group L.P., Carlyle Investment Management L.L.C., Carlyle
Commodity Management L.L.C., and others**

v.

Kingdom of Morocco

(ICSID Case No. ARB/18/29)

**PROCEDURAL ORDER NO. 2
(on third-party submissions)**

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Dr. Horacio A. Grigera Naón

Mr. Samuel Wordsworth, QC

Secretary of the Tribunal

Ms. Ella Rosenberg

Assistant to the Tribunal

Dr. Luis Fernando Rodríguez

November 1, 2019

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WHEREAS

1. This arbitration arises between The Carlyle Group L.P.; Carlyle Investment Management L.L.C.; CCM, TC Group, L.L.C.; TC Group Investment Holdings, L.P.; Celadon Commodities Fund, LP; and Celadon Partners, LLC¹ [**“Carlyle”** or **“Claimants”**] against the Kingdom of Morocco [**“Morocco”** or **“Respondent”**] under the United States-Morocco Free Trade Agreement signed on June 15, 2004 [the **“Treaty”**]. Claimants and Respondent shall be jointly referred to as the **Parties**.
2. On July 1, 2019, the Tribunal issued Procedural Order No. 1 [**“PO 1”**].
3. In accordance with Art. 10.19(3) of the Treaty, the Tribunal has authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.² Article 10.19(2) of the Treaty and para. 26.1 of the PO 1 further acknowledge that the non-disputing Party to the Treaty may make oral and written submissions to the Tribunal regarding the interpretation of the Treaty.
4. In addition, para. 26.3 of PO 1 provides that the Tribunal shall establish in a procedural order, upon consultation with the Parties, the procedural arrangements for introducing these submissions into the record and for the Parties to react to them.
5. On September 24, 2019, the Tribunal circulated a draft PO 2 on these third-party submissions, asking for the Parties’ comments, which they submitted on October 30, 2019.
6. The following Procedural Order sets out the Tribunal’s decisions after consultation with the Parties.

¹ “All of the Claimants are entities incorporated in the State of Delaware in the United States of America. The Carlyle Group L.P. . . . is the ultimate parent of all other Claimants.” Claimants’ Memorial, para. 10.

² See also PO 1, para. 26.2.

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7. This Procedural Order sets out the deadlines and requirements for admitting *amicus curiae* submissions and submissions by the non-disputing Party to the Treaty [“**Third-Party Submissions**”].

1. SUBMISSIONS BY THE NON-DISPUTING PARTY TO THE TREATY

8. Under Art. 10.19(2) of the Treaty, the United States of America is the non-disputing Party entitled to make oral and written submissions to the Tribunal regarding the interpretation of the Treaty.
9. Written submissions by the non-disputing Party, if any, may be filed within the deadline for Art. 10.19(2) submissions set forth in the latest version of the Procedural Timetable (Annex B to PO 1).
10. Oral submissions by the non-disputing Party, based on its prior written submissions, may take place during the Hearing and must be announced not later than the date of the Pre-Hearing Conference set forth in the Procedural Timetable.
11. The Tribunal’s Secretary will promptly notify the United States of America of this decision.

2. AMICUS CURIAE SUBMISSIONS

12. The Tribunal has authority to accept and consider *amicus curiae* submissions pursuant to Art. 10.19(3) of the Treaty, Rule 37.2 of the ICSID Arbitration Rules,³ and para. 26 of the PO 1. Accordingly, the Tribunal issues the following directions with regard to *amicus curiae* submissions.
13. An *amicus curiae* submission shall consist of two documents: a petition for admission, and the text of the proposed written submission. These documents must be filed within the deadline for *amici curiae* set out in the latest version of the Procedural Timetable. The documents shall be submitted to the Tribunal’s Secretary, in electronic format. The Secretary will promptly transmit the documents to the Tribunal and the Parties.
14. The petition for admission shall meet all the following requirements:
- be no more than five pages;
 - be submitted in English;
 - identify the petitioner and its background;
 - identify the author or authors of the attached written submission;

³ PO 1, para. 1.1.

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- disclose any affiliation with the Parties or their counsel;
 - specify the interest the petitioner or the authors have in the outcome of this arbitration proceeding;
 - identify the issues of fact or law addressed in the written submission and why the petitioner can bring perspective or insight distinct from the Parties; and
 - identify any material dealings prior to or during this proceeding between the petitioner and the author and the Parties or their counsel.
15. The proposed written submission shall be attached to and filed simultaneously with the petition. It shall also be made in English, be no longer than 15 pages (excluding exhibits), and express the opinion of its author on any issue of fact or law related to this arbitration.
 16. The Parties will have an opportunity to comment on the admissibility of any *amicus curiae* petition within the deadline established in the Procedural Timetable. The Tribunal shall rule on the admissibility of any petition by the deadline set forth in the Procedural Timetable.
 17. The Parties will have the opportunity to submit, with their second round of written submissions, comments on any *amicus curiae* submission that the Tribunal has admitted.
 18. The Tribunal may, but is not obliged to consider the *amicus curiae* submissions in its decisions or Award.

On behalf of the Arbitral Tribunal,

[Signed]

Prof. Juan Fernández-Armesto
President of the Tribunal
Date: November 1, 2019