

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Webuild S.p.A.**

**v.**

**Republic of Panama**

**(ICSID Case No. ARB/20/10)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Mr. Lucy Reed, President of the Tribunal

Mr. Stanimir Alexandrov, Arbitrator

Prof. Dr. Hélène Ruiz Fabri, Arbitrator

***Secretary of the Tribunal***

Celeste E. Salinas Quero

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16 February 2021

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## **Introduction**

The first session of the Tribunal was held on 5 February 2021, at 10:00 a.m., by videoconference. The session was adjourned at noon.

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

Participating in the conference were:

### Members of the Tribunal

Ms. Lucy Reed, President of the Tribunal

Mr. Stanimir Alexandrov, Arbitrator

Prof. Dr. H el ene Ruiz Fabri, Arbitrator

### ICSID Secretariat:

Ms. Celeste E. Salinas Quero, Secretary of the Tribunal

### Participating on behalf of the Claimant:

Ms. Carolyn B. Lamm, White & Case LLP

Mr. Jonathan C. Hamilton, White & Case LLP

Mr. Hansel T. Pham, White & Case LLP

Mr. Matthew N. Drossos, White & Case LLP

Mr. Onur Saka, White & Case LLP

Mr. Paolo M oder, Webuild S.p.A.

Ms. Maria Irene Perruccio, Webuild S.p.A.

### Participating on behalf of the Respondent:

Ms. M elida Hodgson, Jenner & Block

Mr. Kenneth Figueroa, Foley Hoag

Ms. Patricia Cruz Trabanino, Jenner & Block

Mr. Sebasti an Canon Urrutia, Jenner & Block

Dr. Margie-Lys Jaime, Ministry of Finance, Panama

Dr. Miguel Angel Clare, Ministry of Finance, Panama

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 28 December 2020; and
- The parties' comments (received on 2 February 2021) on the Draft Procedural Order indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

*Convention Article 44*

1.1. These proceedings are conducted under the Agreement between the Republic of Panama and the Italian Republic on the Promotion and Protection of Investments (dated 6 February 2009, entered into force on 4 October 2009), and in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations

*Arbitration Rule 6*

2.1. The Tribunal was constituted on 7 December 2020 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and, relying on the Tribunal disclosures and declarations, 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 7 December 2020.

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

3. Fees and Expenses of Tribunal Members

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

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- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
  - 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
  - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*
  - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings. As a general matter, Tribunal Members shall appear in person (unless otherwise agreed by both Parties) at all hearings on substantive issues. In urgent circumstances, including public health emergencies, if a member of the Tribunal is unable to attend (or considers that such attendance involves an unacceptable health risk) a substantive hearing in person, an appropriate means of communication and participation shall be put in place, in consultation with the parties (including by conducting a virtual or hybrid hearing). For all other sittings, Tribunal Members may participate by any appropriate means of communication.
5. Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*
  - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
  - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal. Before making a ruling on procedural matters, the Tribunal shall afford the parties an adequate opportunity to make submissions in relation thereto, the timing for such submissions to be scheduled in consultation with the parties whenever possible.
  - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling other than the Decision on Jurisdiction or the Award has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with a status update. If a Decision on Jurisdiction or the Award has not been issued within six months after the final submission after the Hearing, the Tribunal will provide the Parties with a status update.
  - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

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- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits

*Arbitration Rule 26(1)*

- 6.1. Upon agreement of the parties, or at the request of either party and after the other party has been heard, the Tribunal may fix and extend time limits for the completion of the various steps in the proceeding, unless the matter is urgent, then the President may decide in accordance with section 6.2.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

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

Ms. Celeste E. Salinas Quero  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 458-7461  
Fax: + 1 (202) 522-2615  
Email: [csalinasquero@worldbank.org](mailto:csalinasquero@worldbank.org)  
Paralegal name: Ms. Vanina Laura Bauza  
Paralegal email: [vbauza1@worldbank.org](mailto:vbauza1@worldbank.org)

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

Celeste E. Salinas Quero  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
USA  
Tel. 202-458-1534

8. Representation of the Parties

*Arbitration Rule 18*

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

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For Respondent

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8.2. If the parties provide any notice of changes in counsel, the Members of the Tribunal will provide any further disclosures as necessary, within 10 calendar days.

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 10 December 2020, ICSID requested that each party pay US\$ 150,000 to cover the initial costs of the proceeding. To the date of issuance of this Procedural Order, ICSID had not received payment from the parties. On 16 February 2021, ICSID requested both parties to provide by 19 February 2021 an update on the status of the expected payment.



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9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*

10.1. Washington, D.C. shall be the place of the proceeding.

10.2. The Tribunal may, if the parties so agree, hold in-person hearings at any other place that it considers appropriate. Subject to § 4.1, hearings other than jurisdictional and/or merits hearings, or others that involve witness examination, may be held virtually or by any other means of communication. Virtual hearings with witnesses are disfavored.

10.3. The Tribunal members may deliberate at any place and by any appropriate means 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 relied upon and filed in any language other than English must be accompanied by a translation into English. Translations shall be clearly identified as such by adding the word “TRANSLATION” in red in the top right corner of the first page of the translated document.

11.3. If the document is relevant only in part, it is sufficient to translate only relevant parts, provided that the party submitting the document may be required to provide a fuller or complete translation at the request of the Tribunal or other party, subject to application to the Tribunal if necessary.

11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

11.5. Documents exchanged between the parties in a language other than English under § 15 below (Production of Documents) need not be translated.

11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.

11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts

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require interpretation, and in which language each witness or expert will provide testimony.

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

12. Routing of Communications

*Administrative and Financial Regulation 24*

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal, upon receipt of both parties' submissions. As a courtesy, the parties shall provide notice to each other when they transmit their submission to the Tribunal Secretary.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary, and the opposing party, an electronic file of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading.
- 13.2. Within three business days following the submission by email, the Parties shall upload the pleading, with the witness statements, and expert reports, and all the supporting documentation and an index, to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.3. Within five business days following the submission by email, the parties shall courier to the opposing party at the address(es) indicated at § 8.1 above one USB drive with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

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- 13.4. While the COVID-19 restrictive measures are in place in a country where the Tribunal, either Party or their counsel are located (see §8), the requirement of physical delivery under §13.3 shall not apply, and the Parties shall file their pleadings in accordance with §13.1 and §13.2 via email and the file sharing platform only.
- 13.5. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word). Excel spreadsheets and other calculations shall be provided in native electronic format rather than PDF.
- 13.6. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and, the pleading with which it was submitted. (Please follow the naming conventions contained in **Annex A**).
- 13.7. At the conclusion of the written phase of the proceeding and as early as possible before the hearing, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and to each Member of the Tribunal at the addresses indicated at §13.8 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents. The parties shall share equally the cost of this joint hyperlinked index.
- 13.8. The addresses of the Tribunal Members are as follows:
- |   |   |  |
|---|---|--|
| Ms. Lucy Reed<br>Arbitration Chambers<br>c/o 252 7 <sup>th</sup> Avenue #15J<br>New York, NY 10001<br>United States | Mr. Stanimir Alexandrov<br>Stanimir A. Alexandrov PLLC<br>1501 K Street, N.W., Suite C-072<br>Washington, D.C. 20005<br>United States | Prof. Dr. H el ene Ruiz Fabri<br>4 rue Alphonse Weicker<br>Luxembourg 2721<br>Luxembourg |
| +1 (917) 280 5996   | +1 (202) 736-8186   | + 352 621139603  |
- 13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.10. 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. At the first session, each party presented its proposal on the procedural calendar and on the issue of bifurcation, as outlined in their joint draft Procedural Order No. 1 of 2 February 2021.
- 14.2. The Claimant's position is that the arbitration should be bifurcated in two phases: one for jurisdiction and one for merits. The Respondent's position is that the arbitration should not be bifurcated.
- 14.3. At the first session, the Respondent indicated that, if the Claimant is minded to maintain its position on bifurcation, it should submit a request to the Tribunal to that effect and brief the issues. The Claimant indicated that it could make a request for bifurcation to proceed separately, and it cannot agree to a procedural calendar until the potential issue of bifurcation is decided.
- 14.4. On 5 February, after the first session, the Tribunal indicated to the parties that: "[u]nless [they] inform the Tribunal by Wednesday, 10 February 2021 that they have agreed on a different timetable, the Tribunal is inclined to order Claimant to file a request for bifurcation within two weeks (*i.e.* by 25 February 2021), and the Respondent to file a response on Claimant's request two weeks thereafter (*i.e.* by 11 March 2021)."<sup>1</sup>
- 14.5. The Parties thereafter conferred and agreed to the dates proposed by the Tribunal.
- 14.6. By email dated 10 February 2021, the Claimant stated that it "reserve[s] the right to request a reply, should Respondent include any argument in its response which is beyond those exchanged at the procedural conference concerning Claimant's request, or if Respondent raises any new factual or legal issues." By email later on 10 February 2021, the Respondent stated: "Panama takes note of Claimant's indication that it may seek leave to file a Reply, and regrets the need to answer Claimant's indication. Claimant of course has a right to seek such leave from the Tribunal, which the Tribunal will consider in its discretion. But as Panama made clear at the First Meeting, it was not making substantive arguments regarding the merits of a bifurcation, and indeed insisted that if Claimant wanted a bifurcation, it should seek one pursuant to the proper procedures. Further, as the President of the Tribunal observed more than once during the First Meeting, that meeting not a hearing. Neither did Panama accept Claimant's attempts to convert it into a hearing in which it would be bound by arguments regarding the merits of bifurcation. Accordingly, other than to form a basis to allow Claimant to file a request for bifurcation, the discussions at the First Meeting are irrelevant. Claimant has chosen to seek bifurcation, and Panama will respond to any arguments made unfettered by

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<sup>1</sup> Secretariat's email (Ms. Salinas Quero) sent on behalf of the Tribunal to the parties on 5 February 2021.

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Claimant's attempt to limit Panama's response to the discussions at the First Meeting."

- 14.7. The Tribunal notes that either Party may request leave to make submissions not included in the procedural calendar, and the Tribunal will exercise its discretion in ruling on such requests. Insofar as the Claimant's anticipated request for bifurcation is concerned, nothing that counsel for either Party stated during the First Session in relation to possible bifurcation limits the scope of their written submissions as allowed by the Tribunal.
- 14.8. In light of the above, the Tribunal's decision on the number and sequence of pleadings in the procedural calendar is deferred until a later date, once the issue of bifurcation has been decided.

15. Production of Documents

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

- 15.1. Each party may request the production of documents on the dates to be designated to that effect in the procedural calendar, once said calendar is fixed.
- 15.2. In addressing issues of document requests and production, the Tribunal and the Parties may be guided – but are not bound by – the IBA Rules on the Taking of Evidence in International Arbitration (2010), and in particular, by Articles 3 and 9.
- 15.3. Requests for the production of documents shall be in writing and shall identify each document or category of documents sought and establish its relevance and materiality to the outcome of the dispute. The request shall be made in the form of a modified 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.
- 15.4. On the date to be designated to this effect in the procedural calendar, the other party shall either produce the requested documents or, using the modified Redfern Schedule provided by the first party, provide the requesting party with its objections to production.
- 15.5. On the dates to be designated to this effect in the procedural calendar, 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). Any documents withheld on the basis of privilege shall be listed on a privilege log with a brief explanation. The parties will attempt to agree within 2 weeks as to privileges, objections, limiting the scope of production. The Tribunal then will consider and decide any remaining issues. Documents ordered by the Tribunal to be produced shall be produced on the dates to be designated in the procedural calendar.
- 15.6. Documents shall be communicated directly to the requesting party without copying

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the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be on record unless and until a party subsequently submits them as exhibits to its written submissions or upon authorization of the Tribunal after the exchange of submissions, in accordance with §16 below.

- 15.7. Documents shall be produced in electronic form and, to the extent possible, shall be text searchable. The electronic copies of documents shall be emailed or uploaded to a secure file-sharing site. The produced documents shall be organized into electronic folders that correspond to the document request to which such documents are responsive. Each document shall be produced with a stamp in the lower-right corner that identifies the party that produced it and numbers the pages of the production consecutively (beginning with WEB-000001 for documents produced by Claimant and ROP-000001 for documents produced by Respondent). The parties shall provide an index that identifies the title and date of each produced file that is responsive to each request of the opposing party and must note which request it is responsive to.
- 15.8. The failure of a Party to produce documents as ordered by the Tribunal may lead the Tribunal to draw the negative inferences it deems appropriate in relation to the documents not produced.

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 fact witness statements and expert reports, 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. To the extent the parties make other submissions that rely on documentary evidence (such as in an application for security for costs or an application for provisional measures), those submissions shall also be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities.
- 16.2. The parties' Reply and Rejoinder shall be responsive to the prior pleading by the opposing party, and shall not raise new facts or arguments, unless such facts or arguments are relevant and material to the other party's prior submissions, including the main arguments and/or defenses, or the other party's prior witness statements and expert reports, or are new facts and documents that were unknown or could not have been dealt with previously that further support the party's positive case.
- 16.3. The documents shall be submitted in the manner and form set forth in § 13 above.
- 16.4. 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 special circumstances exist based on a reasoned written request followed by observations from the other party.

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- 16.4.1. 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. All documents to be used at the hearing must have been already submitted to the record either through the parties' written submissions or in accordance with §16.4.
- 16.4.2. 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 including the potential submission of rebuttal documents.
- 16.4.3. No documents other than those on the record can be used at the hearing. No later than two weeks before a substantive hearing either party may apply to the Tribunal to add to the record documents to be used during the cross-examination of the other party's witnesses and experts. If the other party opposes the application, the Tribunal will rule on the matter.
- 16.5. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.6. The documents shall be submitted in the following form:
  - 16.6.1. The number of each Exhibit containing a document produced by Claimant 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.
  - 16.6.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with "C-0001" and "R-0001," and "CL-001" and "RL-001" respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §16.6.4.
  - 16.6.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
  - 16.6.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.7. 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.



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- 16.8. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.9. Demonstrative exhibits (such as PowerPoint slides, other slide presentations, 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) or evidence from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing when they are to be used, or at a such other time to be decided at the re-hearing organizational meeting. Electronic copies of any presentations or other demonstrative exhibits shall be provided to the Tribunal, the opposing party, and the ICSID Secretary by the end of the day on which they are submitted/used.

17. Witness Statements and Expert Reports

*Convention Article 43(a); Arbitration Rule 24*

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Each witness statement shall: (i) state the name of the witness; (ii) contain an affirmation of the truth of the statement; and (iii) be signed by the witness, and give the date and place of signature. All documents upon which the witness relies shall be attached to the witness statement.
- 17.3. Each expert report shall (i) state the name of the expert and a description of his or her qualifications; (ii) contain a statement of his or her independence from the parties, their legal advisors and the Tribunal, and (iii) be signed by the expert, and provide the date and place of signature.
- 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 special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.4 above).

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 witness and expert shall be available for examination at the hearing, subject to the provisions of this Procedural Order. Witnesses and experts shall testify in person at the hearing if called for examination, unless the Tribunal concludes that



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exceptional circumstances justify otherwise.

- 18.3. On the date to be designated to this effect in the procedural calendar, 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. Three business days thereafter, as counted in Washington, D.C., each party may designate its own witnesses or experts, who were not called for cross-examination, to testify.
- 18.5. Within five business days 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.
- 18.6. Should any party decline to examine a witness or expert which it has called for examination, the party must provide notice of its decision at least 15 business days before the commencement of the hearing. If such notice is given after 15 business days prior to the hearing, without good cause, the party declining to call the witness or expert shall bear all of the expenses incurred in connection with the cancellation of the witness's or expert's travel and preparations for the hearing.
- 18.7. 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.
- 18.8. Each party also shall be responsible for the practical arrangements, cost, and availability of any of its witnesses. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.9. The witnesses and experts shall be examined in the order agreed by the Parties. If not agreed by the Parties, the Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the pre-hearing organizational meeting in §19 below.
- 18.10. Under exceptional circumstances, the Tribunal may allow a witness to be examined by videoconference, but arrangements must be made to permit both parties' counsel to be present with the witness, if so requested.
- 18.11. If a witness or expert fails to appear at the hearing without justification, the Tribunal may attach such weight as it considers appropriate in the circumstances to the witness statement or expert report. If a witness's or expert's absence is determined to be justified (e.g., health), the Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.12. As a rule, and subject to other arrangements agreed during the pre-hearing

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organizational meeting, fact witnesses shall be examined prior to expert witnesses. Within this, Claimant's fact witnesses shall be examined prior to the Respondent's fact witnesses, and Claimant's expert witnesses shall be examined prior to Respondent's expert witnesses. In the event of a bifurcated jurisdictional phase and hearing, Respondent's fact witnesses shall be examined prior to the Claimant's fact witnesses, and Respondent's expert witnesses shall be examined prior to Claimant's expert witnesses.

18.13. Witnesses shall be examined (direct, cross, and/or redirect) on anything contained in their witness statements and/or in the documents attached to those statements.

18.14. Both fact and expert witnesses may be present in the hearing room when they are not testifying.

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

18.15.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2);

18.15.2. The witness statement of each witness shall stand in lieu of the examination by the party producing the witness ("direct examination"), provided, however, that (i) the witness shall be entitled to make corrections to his or her statement at the outset of the examination, and (ii) any witness giving oral testimony may first be examined in direct examination for no more than 15 minutes to introduce the witness, to confirm the accuracy and completeness of the witness's written statement(s), and (iii) to update their witness statement on events relevant to issues in their witness statement which took place after the Party's last submission before the oral hearing. Any requests to modify these time limits for a particular witness shall be raised with the other Party and the Tribunal no later than at the pre-hearing organizational meeting.

18.15.3. Following direct examination, the witness shall then be subject to examination by the other Party ("cross-examination"), and subsequently by the Party producing the witness ("redirect examination").

18.15.4. No contact shall be permitted between the party who has presented the witness and the witness while that witness is testifying.

18.16. At the hearing, the examination of each expert shall proceed as follows:

18.16.1. Before giving evidence, experts shall make the declaration in ICSID Arbitration Rule 35(3);

18.16.2. The expert report of each expert shall stand in lieu of the examination by the party producing the expert, provided, however, that (i) the expert

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shall be entitled to make corrections to his or her report at the outset of the examination, and (ii) any experts may give a summary of their report either directly, using demonstrative slides and/or through direct examination, for no longer than 45 minutes, unless the Parties agree or the Tribunal orders otherwise. Any requests to modify these time limits for a particular expert shall be raised with the other Party and the Tribunal no later than at the pre-hearing organizational meeting.

18.16.3. Following direct examination, the expert shall then be subject to examination by the other Party, and subsequently by the Party producing the expert (“expert redirect examination”)

18.17. The Tribunal may examine the witness or expert at any time, either before, during or after examination by one of the Parties.

18.18. Parties’ counsel shall be authorized to meet and discuss with witnesses and potential witnesses to establish the facts and prepare their testimony.

19. Pre-Hearing Organizational Meetings

*Arbitration Rule 13*

19.1. At least four weeks before the Hearing, on a date to be determined by the Tribunal after consulting with the parties, a pre-hearing organizational meeting shall be held. It shall comprise a teleconference between the Tribunal, or its President, and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

19.2. The identification of the witnesses and experts to be called to testify or be cross-examined shall occur in accordance with the procedural calendar.

19.3. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing organizational meeting, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings

*Arbitration Rules 20(1)(e) and 32*

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for opening and closing arguments. Subject to revisiting at the pre-hearing organizational meeting the exact time allocated for opening and closing arguments, each party shall be allowed up to four hours for opening arguments, and four hours for closing arguments. Each party may designate the time they wish, within the principle of equal time indicated in §20.5 below.

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- 20.2. An in-person hearing shall be held in Washington D.C., unless otherwise agreed by the parties and the Tribunal, including in accordance with §10 above.
- 20.3. The date of the hearing shall be determined at a later stage.
- 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. The principle of equal time shall be observed at hearings. As a guide, the Secretary of the Tribunal will keep a chess clock, and will advise the parties daily of the length of time used.
- 20.6. Consistent with Arbitration Rule 32(2), hearings shall be closed to the public unless the Parties agree otherwise.
- 20.7. If the Tribunal requires, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately one or all of the following:
  - 20.7.1. A chronology of relevant facts in tabular form;
  - 20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
  - 20.7.3. A list of the substantive issues required to be determined by the Tribunal.

21. Records of Hearings and Sessions

*Arbitration Rules 13 and 20(1)(g)*

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in English shall be made of any substantive hearing (jurisdiction and/or merits hearings), and if a party wants to add transcripts of a procedural hearing, it shall so request to the Tribunal which, after consulting the parties in advance of that procedural hearing, shall determine if such transcripts are necessary. If testimony is provided in other than English, then both the language testified in, and English, shall be recorded and provided to the parties. 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. Real-time transcripts are optional for hearings other than jurisdiction and/or merits hearings, or other hearings involving witness examination.
- 21.3. The parties shall agree on any corrections to the transcripts for multi-day hearings within 60 days of the later of the dates of the receipt of the sound recordings and transcripts. For any single-day hearings or sessions, any corrections shall be

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provided within 5 business days. 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 court reporter in the revised transcripts.

21.4. Questions concerning significant errors of interpretation or translation should be raised as soon as possible during the proceedings.

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, after consultation with the parties:

(i) whether and, if so, when, the parties will file Post-Hearing Memorials and, depending on the circumstances then, whether and, if so, when, Reply Post-Hearing Memorials will also be filed; and

(ii) when and in what form the parties shall file evidence regarding the quantification of costs.

23. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

23.1. The Centre shall not publish the award without the consent of the parties. The Centre will publish excerpts of the award pursuant to Arbitration Rule 48(4).



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Ms. Lucy Reed  
President of the Tribunal  
Date: 16 February 2021

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**ANNEX A**

**ELECTRONIC FILE NAMING GUIDELINES**

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
<b>MAIN PLEADINGS</b>	<b>Title of Pleading</b>
	<i>Memorial on Jurisdiction (or on Merits)</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction</i>
	<i>Reply on Jurisdiction (or Merits)</i>
	<i>Rejoinder on Jurisdiction (or on Merits)</i>
<b>SUPPORTING DOCUMENTATION</b>  Exhibits	<b>C-####</b>
	<b>R-####</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT'S FACTUAL EXHIBITS</b>
	<i>C-0001</i>
	<i>C-0002</i>
	<b>RESPONDENT'S FACTUAL EXHIBITS</b>
	<i>R-0001</i>
	<i>R-0002</i>
	Legal Authorities
<b>RL-####</b>	
To be produced sequentially throughout the case.	
<b>CLAIMANT'S LEGAL AUTHORITIES</b>	
<i>CL-0001</i>	
<i>CL-0002</i>	
<b>RESPONDENT'S LEGAL AUTHORITIES</b>	
<i>RL-0001</i>	
<i>RL-0002</i>	
Witness Statements	
	<i>WS-Maria Jones I-Memorial on Jurisdiction</i>
	<i>WS-Maria Jones II-Reply on Jurisdiction</i>
Expert Reports	<b>EX-Last Name of Expert-# of Report -Name of Submission</b>
	<i>EX-Lucia Smith I-Memorial</i>
	<i>EX-Lucia Smith II-Reply</i>
Legal Opinions	<b>LO-Last Name of Expert-Name of Submission</b>
	<i>LO-Kaine I-Counter-Memorial</i>
	<i>LO-Kaine II-Rejoinder</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	<b>WITNESS/EXPERT INITIALS-###</b>
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>

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	<i>LS-0001</i>
	<i>LS-0002</i>
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
<b>OTHER APPLICATIONS</b>	<b>Name of Application</b>
	<i>Preliminary Objections under Rule 41(5)</i>
	<i>Request for Bifurcation</i>
	<i>Request for Provisional Measures</i>
	<i>Request for Production of Documents</i>
	<i>Request for Stay of Enforcement</i>
	<i>Request for Discontinuance</i>
	<i>Post-Hearing Brief</i>
	<i>Costs Submissions</i>
<i>Observations to Request for [XX]</i>	

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**ANNEX B**

**MODIFIED REDFERN SCHEDULE**

**REQUEST NO. [#]**

<b>Documents or Category of Documents Requested (requesting Party)</b>		
<b>Relevance and materiality, incl. references to submission (requesting Party)</b>	<b>References to Submissions, Exhibits, Witness Statements or Expert Reports</b>	
	<b>Comments</b>	
<b>Reasoned objections to document production request (objecting Party)</b>		
<b>Response to objections to document production request (requesting Party)</b>		
<b>Decision (Tribunal)</b>		