

Case No. 2018/098

THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

SVEA HOVRÄTT Avdelning 02 INKOM: 2021-10-29 MÅLNR: T 12646-21 AKTBIL: 7
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BETWEEN:

1. FESTORINO INVEST LIMITED (Cyprus)
2. FOSONTAL LIMITED (Cyprus)
3. PETRA SALESNY (Austria)
4. PETER DERENDINGER (Switzerland)
5. PETR ROJICEK (Czech Republic)

CLAIMANTS

AND:

THE REPUBLIC OF POLAND

RESPONDENT

## PROCEDURAL ORDER NO. 1

*Members of the Tribunal:*

Bernardo M. Cremades  
Zachary Douglas QC  
Kaj Hobér

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## **1. Introduction**

- 1.1. The Tribunal convened a telephonic case management conference on 31 January 2019 pursuant to Article 28 of the 2017 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “**SCC Rules**”) to discuss the procedural timetable and other procedural aspects to be adopted in this arbitration. Counsel for Claimants and counsel for Respondent participated in the case management conference call.

## **2. Parties’ Registered Office and Legal Representation**

- 2.1. Any change to the registered office of any Party must be notified to the other Parties, the Tribunal and the SCC Secretariat by email immediately and by no later than 48 hours of such addition or change.
- 2.2. Any addition or change to a Party’s legal representative must be notified to the other Parties, the Tribunal and the SCC Secretariat by email immediately and by no later than 48 hours of such addition or change. When a relationship exists between such new Party representative and a member of the Tribunal that in the Tribunal’s view may create a conflict of interest, the Parties agree that the Tribunal may take appropriate measures to ensure the integrity of the proceedings, including the exclusion of the new Party representative from participating in all or part of the arbitral proceedings, unless none of the Parties object after proper disclosure.

## **3. The Tribunal**

- 3.1. Procedural Orders may be issued by the President after consultation with his co-arbitrators or, in cases of urgency or if a co-arbitrator cannot be reached, by the President alone.
- 3.2. No member of the Tribunal shall be required to be a party or witness in any judicial or other proceedings arising out of this arbitration.

## **4. Seat of Arbitration and Confidentiality**

- 4.1. In accordance with Article 25 of the SCC Rules, on 21 November 2018 the Board of Directors of the SCC designated Stockholm (Sweden) as the Seat of Arbitration.
- 4.2. These arbitral proceedings shall be confidential. The confidentiality regime shall cover any information related to or obtained during these proceedings; any materials created or produced by the Parties (or by a third party) and not otherwise in the public domain; any hearings or meetings between the Parties, or between the Parties and the Tribunal; and any awards, decisions, and communications issued by the Tribunal. This duty of confidentiality may be waived with the consent of both Parties in writing, or where and to the extent disclosure is required of a Party by legal duty, or to protect or

pursue a legal right or in relation to legal proceedings before a court or other competent authority.

## **5. Language of the Arbitration**

- 5.1. In accordance with Article 26 of the SCC Rules, the Parties designated English as the language of the Arbitration.

## **6. Procedural Timetable**

- 6.1. In accordance with Article 28 of the SCC Rules, the procedural timetable is enclosed as Annex 1 to this Procedural Order.

## **7. Communications**

- 7.1. The Parties shall not engage in any *ex parte* oral or written communications with any member of the Tribunal in connection with the subject-matter of the arbitration or any procedural issues that are related to the proceedings.
- 7.2. The Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel, each member of the Tribunal, and the SCC Secretariat.
- 7.3. A hard copy of all communications to the attention of the Tribunal exceeding 30 pages (including all attached documents) shall also be sent by courier no later than the close of business on the third business day following their transmission by e-mail to the Tribunal.
- 7.4. Communications shall be deemed to have been made when they have been sent to the applicable e-mail address of the Parties' representatives, the members of the Tribunal, and the SCC Secretariat. Unless a different deadline is provided in a Procedural Order, communications shall be deemed to have been timely made if sent at or before 00:00 (midnight) in Stockholm, Sweden on the date due.
- 7.5. Any change of name, description, address, telephone number, facsimile number, or e-mail address shall immediately be notified by the Party or member of the Tribunal to all other addressees. Failing such notification, communications sent in accordance with this Procedural Order to the last known contact address shall be deemed validly made.
- 7.6. The Parties shall send correspondence between them to the Tribunal and to the SCC Secretariat only if such correspondence relates to a matter where the Tribunal is required to take action, to abstain from acting, or if it gives notice of a relevant event that the Tribunal and the SCC Secretariat should be apprised of.
- 7.7. All communications that are to be exchanged simultaneously by the Parties shall be delivered in the electronic version only to the members of the

Tribunal and to the SCC Secretariat, but not to the opposing Party's counsel. The Tribunal shall forward such communications to the opposing Party's counsel on the following business day

## **8. Submissions, Evidence and Legal Authorities**

- 8.1. The Parties shall file their written submissions in accordance with the procedural calendar set out in Annex 1 and the rules set out below.
- 8.2. The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, factual exhibits, legal authorities and all other evidence in whatever form.
- 8.3. In their rebuttal submissions (i.e. Reply and Rejoinder), the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the opposing Party in its preceding submission, and shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's immediately prior written submission, except for references to new evidence they received through document production.
- 8.4. In the event a Party wishes to raise a new argument or submit new evidence, it shall submit a reasoned request to the Tribunal. The other Party will have the opportunity to comment on such request, after which the Tribunal will make its decision whether to grant leave.
- 8.5. Electronic versions of written submissions (briefs, memorials, witness statements and expert reports) shall be submitted in either .doc or "non-scanned" and searchable .pdf format. Electronic versions of exhibits may be submitted in scanned .pdf format but shall be searchable.
- 8.6. Hard copies of written submissions (including witness statements and expert reports) and exhibits and legal authorities shall be submitted in double-sided A5 format, one for each arbitrator and one for the other Party. For the avoidance of doubt, a Party shall deliver the hard copies of the submissions for the other Party directly to the address of the relevant Party's counsel. Submissions shall be submitted to the SCC Secretariat in electronic form only.
- 8.7. The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimants shall begin with the letter "C" followed by the applicable number (i.e. C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with the letter "R" followed by the applicable number (i.e. R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. Exhibits shall be contained in separate binders, each exhibit having a divider bearing on the tab the exhibit's identification number. Each binder containing exhibits shall

contain a list of the exhibits included in that binder, setting forth for each one: (a) the exhibit number; (b) its date; (c) a brief description of the exhibit.

- 8.8. The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters "CL" followed by the applicable number (i.e. CL-1, CL-2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RL" followed by the applicable number (i.e. RL-1, RL-2, etc.). The parties shall use sequential numbering throughout the proceedings. The legal authorities shall be submitted electronically only.
- 8.9. All exhibits shall be submitted in their original language, together with a translation into English. Whenever lengthy documents need to be translated, the translation may be limited to all relevant passages together with such portions of the document necessary to put such passages in proper context, it being understood that the Tribunal or the other Party may request a full translation of documents of particular importance to the dispute. Should any doubt remain with respect to the quality of accuracy of a translation, the Parties shall first attempt to agree upon the translation in question. In case such agreement cannot be reached, the objecting Party may request a certified translation to the Party who produced the translation. If any translation dispute remains, the Tribunal may decide upon the correct translation through any means of its choice, including, when appropriate, the use of an expert retained by the Tribunal for such purpose. For ease of reference, the Parties shall paginate any translation in the same way as the original document, placing the translation first both in the hard copy version and in the electronic version.
- 8.10. Each Party shall file its exhibits in electronic format ("scanned" and searchable .pdf). Each exhibit shall constitute a single electronic document. Electronic versions of exhibits shall commence by the appropriate letter and number, so that they may be ordered consecutively. An electronic copy of the exhibit list shall also be provided, and it shall be updated accordingly alongside each consecutive submission.
- 8.11. All documents shall either be submitted to the Tribunal in complete form or the Parties shall indicate the extent to which any document is incomplete. All documents, including both originals and copies, submitted to the Tribunal shall be deemed to be authentic and complete, unless specifically objected to by the other Party, in which case the Tribunal will determine whether authentication is necessary.
- 8.12. When considering matters of evidence, the Tribunal may refer to, but shall not be bound by, the Rules on the Taking of Evidence in International Arbitration issued by the International Bar Association (2010) (the "IBA Rules").

## 9. Document Production

- 9.1. Any application for document production to the Tribunal shall be made on a date to be fixed in accordance with Annex 1 hereto and in the form of a Redfern Schedule containing the document request in one column, and blank columns for each of the following:
- (i) the justification for the request;
  - (ii) the response to each request (including objections, if any);
  - (iii) replies to any objections in a third column; and
  - (iv) a final column entitled "Tribunal's Decision."
- 9.2. Each request for production shall contain:
- (i) either:
    - a. a description of each requested document sufficient to identify it; or
    - b. a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist; in the case of documents maintained in electronic form, the requesting Party may, or the Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such documents in a sufficient and economical manner;
  - (ii) a statement as to how the documents requested are relevant to the case and material to its outcome;
  - (iii) a statement that the documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such documents; and
  - (v) a statement of the reasons why the requesting Party assumes the documents requested are in the possession, custody or control of another Party.
- 9.3. All other correspondence or documents exchanged in the course of the document production phase shall not be copied to the Tribunal.
- 9.4. Documents ordered to be disclosed shall be produced at the latest by the dates set forth in Annex 1 to this Procedural Order or any other date fixed by the Tribunal.

- 9.5. Should a Party fail to produce documents ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 9.6. Documents produced pursuant to this Section shall not be considered on the record unless and until the requesting Party submits them to the Tribunal as exhibits.
- 9.7. Documents shall be produced in their original language only, without translations to be arranged by the producing Party.

## **10. Witnesses**

- 10.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative.
- 10.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal. A witness who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances with leave of the Tribunal; if the testimony is admitted, the other Party shall be given an appropriate opportunity to respond to such testimony.
- 10.3. Each witness statement shall state the witness's name, date of birth and involvement in the case. Each witness statement and expert report shall be signed and dated by the witness. Lengthy statements shall be presented together with a list of contents and an executive summary.
- 10.4. Witness statements shall be submitted in English or with a translation into English if the witness intends to testify in a language other than English. Where a translation is challenged, the objecting Party may request a certified translation.
- 10.5. The first witness statement or expert report of a particular witness or expert shall be identified as "First Witness Statement" or "First Expert Report," the second as the "Second Witness Statement" or the "Second Expert Report," and so on. In addition, the witness statements and expert reports submitted by each Party shall be numbered consecutively using the prefixes "CWS-" and "RWS-" for the Claimants' and Respondent's witness statements, respectively, and "CER-" and "RER-" for the Claimants' and Respondent's expert reports, respectively.
- 10.6. Each Party will submit its witness statements together with its written submission (to be filed in accordance with the procedural calendar set out in Annex 1) or indicate on the date when the submission is due the reasons for which a statement could not be filed for a particular witness.
- 10.7. Witness statements shall stand in lieu of direct examination. Accordingly, witnesses shall testify at the oral hearing only if they are called by the



opposing Party or the Tribunal for examination or cross-examination. Before the Hearing, on the dates indicated in the scenarios established in Annex 1 to this Procedural Order, each Party shall file a notification regarding the witnesses and experts presented by the other Party that it wishes to cross-examine at the hearing.

- 10.8. The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 10.9. The facts contained in the written statement of a witness whose cross-examination has been waived by the opposing Party shall not be deemed established simply by virtue of the fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 10.10. Each Party shall be responsible for ensuring the presence of its witnesses if they are to appear for examination at the Hearing.
- 10.11. The Tribunal shall be entitled to draw any inferences with respect to the weight to be given to the contents of a witness statement as it may deem appropriate if a witness having been summoned fails to appear to be examined, or if any Party fails to cooperate in ensuring that a witness is examined.
- 10.12. In exceptional circumstances, the Tribunal may direct that witnesses be examined through means of telecommunication that do not require their physical presence at the hearing (such as video-conference). In such event, the Tribunal shall verify that the telecommunication means in question ensure proper and secure communication with the witness and allow for effective examination or cross-examination. The Tribunal shall ensure, before initiating an examination by such telecommunication means, that the witness is alone in the room when testifying and does not communicate with any third person during his or her examination or cross-examination. A third person may only be present at the telecommunications to confirm the witness's identity, and to ensure that the witness does not receive any external help from any person by any means.
- 10.13. Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 10.14. At the hearing, the examination of each witness shall proceed as follows:

- (i) The Party who has presented the witness may briefly examine the witness (in principle, not more than 10 minutes without leave from the Tribunal) for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address matters which have arisen after such statement was drafted ("direct examination").
  - (ii) The opposing Party may then cross-examine the witness on matters which are relevant and of which the witness has knowledge, but not limited to matters addressed in that witness's written statement ("cross-examination").
  - (iii) The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination ("redirect examination").
  - (iv) The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.
  - (v) The Tribunal may order two or more expert witnesses to be examined concurrently ("witness conferencing") in supplement to individual examination.
- 10.15. Sequestration of fact and/or expert witnesses during the hearing will be decided by the Tribunal following the pre-hearing organizational conference with the Parties.
- 10.16. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion, after consultation with the Parties, limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or to direct that a witness be recalled for further examination at any time.

## **11. Expert Witnesses**

- 11.1. Each Party may retain and submit the evidence of one or more experts to the Tribunal. Save as set out below, the procedural rules set out in Section 10 *supra* shall apply, mutatis mutandis, to the evidence of experts.
- 11.2. Expert reports shall be accompanied by any documents or information upon which they rely, unless (i) hard copies of such documents could not have been retrieved even though the experts had access to them and they could be produced by the other Party in accordance with Section 9, or (ii) such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit shall suffice.

- 11.3. Expert reports shall be filed with the Parties' written submissions. The Tribunal shall not admit any report that has not been filed with the written submissions.
- 11.4. Unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
- 11.5. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

## **12. Pre-Hearing Conference**

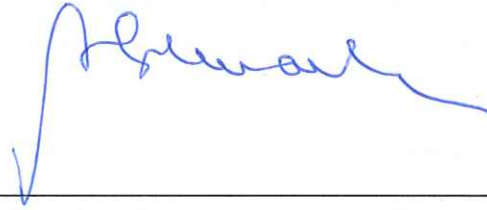
- 12.1. In advance of the hearing, the Tribunal will hold a pre-hearing conference to discuss the logistical details and procedures for the hearing.

## **13. Time Limits**

- 13.1. The time limits are set by the Tribunal in the procedural calendar in Annex 1 below or in any later order or directions. The time limits set in any later order or directions shall start to run on the day following the date on which a notification or communication is made and if the first or last day of the relevant period of time is an official holiday or non-business day in the country where the notification or communication is received, the period of time shall begin to run at the beginning of the first following business day or expire at the end of the first following business day. For the purpose of these proceedings, Saturdays shall be considered non-business days.
- 13.2. Short extensions may be agreed between the Parties as long as they do not affect later dates in the timetable and the Tribunal is informed before the original due date.
- 13.3. The President of the Tribunal may extend the time limits as necessary or appropriate. The President shall only grant the extension of a time limit as an exception and provided that the request for an extension is made without undue delay and before the time limit to be extended has lapsed.
- 13.4. Parties shall not object to any reasonable extension of time which the SCC Board may grant in relation to the time-limit within which the Tribunal must render the Final Award.

Date: 1 February 2019

For and on behalf of the Arbitral Tribunal

A handwritten signature in blue ink, appearing to read 'Bernardo M. Cremades', is written above a solid horizontal line.

Prof. Bernardo M. Cremades (President)

### ANNEX 1 TO PROCEDURAL ORDER NO. 1

Scenario 1: The following timetable shall apply in the event Respondent does not raise preliminary objections or Respondent raises preliminary objections but does not seek bifurcation:

Date	Period of Time	Party / Tribunal	Submission / Event
30 April 2019	N/A	CLAIMANT	Statement of Claim (“SOC”)
30 September 2019	5 months from SOC	RESPONDENT	Statement of Defense (“SOD”)
14 October 2019	2 weeks from SOD	PARTIES	Simultaneous exchange between the Parties of any Document Requests
4 November 2019	3 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the other Party’s Document Requests (including the grounds for any objections)
18 November 2019	2 weeks from Responses to other Party’s Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party’s Responses to its Document Requests and Production of Documents to which no objection is made
2 December 2019	2 weeks from exchange of Replies to Responses to Document Requests	PARTIES	The Parties’ Redfern Schedules to be submitted to the Tribunal together with Parties’ Objections and Answers to the Objections
16 December 2019	2 weeks from submission of Redfern Schedules to Tribunal	TRIBUNAL	Tribunal ruling on any unresolved Document Requests (“ <b>Order to Produce</b> ”)
7 January 2020	3 weeks from Order to Produce	PARTIES	Production of Documents that must be produced pursuant to any Order to Produce
7 March 2020	2 months from production of	CLAIMANTS	Reply

	Documents pursuant to any Order to Produce		
8 June 2020	3 months from Reply	RESPONDENT	Rejoinder
6 July 2020	4 weeks from Rejoinder	PARTIES	Identification of witnesses to be called for cross-examination
July 2020 [TBD]		ALL	Pre-Hearing Organizational Meeting
31 July 2020		ALL	Common Bundle
7-18 September 2020		ALL	Hearing
November 2020[TBD]	2 months from hearing	PARTIES	Post Hearing Briefs, if any
2021 [TBD]		TRIBUNAL	Award

Scenarios 2 and 3: The following procedural timetable shall apply in the event preliminary objections are raised and Respondent seeks bifurcation:

Date	Period of Time	Party / Tribunal	Submission / Event
30 April 2019	N/A	CLAIMANT'S	Statement of Claim ("SOC")
21 May 2019	3 weeks from SOC	RESPONDENT	Request for Bifurcation
4 June 2019	2 weeks from Request for Bifurcation	CLAIMANTS	Observations on Request for Bifurcation
2 July 2019	4 weeks from Observations on Request for Bifurcation	TRIBUNAL	Decision on Request for Bifurcation

Scenario 2: The following timetable shall apply in the event the Tribunal decides to join the preliminary objections to the merits:

Date	Period of Time	Party / Tribunal	Submission / Event
30 September 2019	5 months from SOC	RESPONDENT	Statement of Defense ("SOD")
14 October 2019	2 weeks from SOD	PARTIES	Simultaneous exchange between the Parties of any Document Requests
4 November 2019	3 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the

			other Party's Document Requests (including the grounds for any objections)
18 November 2019	2 weeks from Responses to other Party's Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party's Responses to its Document Requests and Production of Documents to which no objection is made
2 December 2019	2 weeks from exchange of Replies to Responses to Document Requests	PARTIES	The Parties' Redfern Schedules to be submitted to the Tribunal together with Parties' Objections and Answers to the Objections
16 December 2019	2 weeks from submission of Redfern Schedules to Tribunal	TRIBUNAL	Tribunal ruling on any unresolved Document Requests (" <b>Order to Produce</b> ")
7 January 2020	3-weeks from Order to Produce	PARTIES	Production of Documents that must be produced pursuant to any Order to Produce
7 March 2020	2 months from production of Documents pursuant to any Order to Produce	CLAIMANTS	Reply
8 June 2020	3 months from Reply	RESPONDENT	Rejoinder
6 July 2020	4 weeks from Rejoinder	PARTIES	Identification of witnesses to be called for cross-examination
July 2020 [TBD]		ALL	Pre-Hearing Organizational Meeting
31 July 2020		ALL	Common Bundle
7-18 September 2020		ALL	Hearing
November 2020[TBD]		PARTIES	Post Hearing Briefs, if any
2021 [TBD]		TRIBUNAL	Award

Scenario 3: The following timetable shall apply in the event the Tribunal decides to bifurcate:

Date	Period of Time	Party / Tribunal	Description
9 August 2019	5.5 weeks from Tribunal Decision on Request for Bifurcation	RESPONDENT	Memorial on Jurisdiction
9 September 2019	1 month from Memorial on Jurisdiction	CLAIMANTS	Counter-Memorial on Jurisdiction
23 September 2019	2 weeks from Counter-Memorial on Jurisdiction	PARTIES	Simultaneous exchange between the Parties of any Document Requests
7 October 2019	2 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the other Party's Document Requests (including the grounds for any objections)
14 October 2019	1 week from Responses to other Party's Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party's Responses to its Document Requests and Production of Documents to which no objection is made
21 October 2019	1 week from exchange of Replies to Responses to Document Requests	PARTIES	The Parties' Redfern Schedules to be submitted to the Tribunal together with Parties' Objections and Answers to the Objections
5 November 2019	2 weeks from submission of Redfern Schedules to Tribunal	PARTIES	Tribunal ruling on any unresolved Document Requests (" <b>Order to Produce</b> ")
19 November 2019	2 weeks from Order to Produce	TRIBUNAL	Production of Documents that must be produced pursuant to any Order to Produce
3 December 2019	2 weeks from production of Documents pursuant to any Order to Produce	RESPONDENT	Reply on Jurisdiction
3 January 2020	1 month from Reply on Jurisdiction	CLAIMANTS	Rejoinder on Jurisdiction



Date	Period of Time	Party / Tribunal	Description
24 January 2020	3 week from Rejoinder on Jurisdiction	PARTIES	Identification of witnesses to be called for cross-examination
January/February 2020 [TBD]		ALL	Pre-Hearing Organizational Meeting
7 February 2020		PARTIES	Common Bundle
9-10 March 2020 (with 11 March 2020 held in reserve)		ALL	Hearing on Jurisdiction
2020 [TBD]		TRIBUNAL	Award

In scenario 3, if any issue remains after the phase on jurisdiction, the remainder schedule for further proceedings will be fixed by the Tribunal following submissions by the Parties on the issue.