

B R E D I N P R A T**BY E-MAIL**

Professor Rüdiger Wolfrum
Professor W. Michael Reisman
Professor Francisco Orrego Vicuña

Permanent Court of Arbitration

Attn: Ms. Judith Levine
 Peace Palace
 Carnegieplein 2
 2517 KJ The Hague
 The Netherlands
 Tel.: +31 70 302 4268
 Fax: +31 70 302 4167
 E-mail: jlevine@pca-cpa.org

Paris, 11 January 2018

Re: PCA Case No 2012-07 / Mohamed Abdel Raouf Bahgat (Egypt) v. The Arab Republic of Egypt (Egypt)

Dear Members of the Tribunal,

We refer to the Tribunal's invitation to the Parties to confer regarding the procedural calendar for the merits phase of the arbitration contained in its Decision on Jurisdiction of 30 November 2017 and to Claimant's letter of 10 January 2018 setting forth his proposal and position on the procedural calendar.

Respondent confirms the Parties' agreement on the three points set out in Claimant's letter, namely that (i) the procedural stages for the merits phase of the arbitration should, with the two exceptions that follow, replicate those set out by the Tribunal at paragraphs 2.20 to 2.36 of Procedural Order No. 1 ("**PO 1**"); (ii) in contrast to PO 1, the document production process shall run in parallel with the Claimant's preparation of his Reply; and (iii) the document production process shall also be streamlined by removing the step anticipated by paragraph 2.24 of PO 1.

The Parties have otherwise been unable to reach an agreement on the timing of the various procedural steps for the merits phase of the arbitration. Therefore, Respondent respectfully submits its proposal for the procedural calendar below:

8 June 2018	Statement of Defense
22 June 2018	Request for disclosure of documents from the other Party (without copy to the Tribunal)
13 July 2018	The Parties either produce the requested documents or reply by a reasoned objection (without copy to the Tribunal)
20 July 2018	Insofar as the Parties cannot agree, the Parties submit reasoned applications to the Tribunal to order production of documents

3 August 2018	The Tribunal shall endeavour to decide on such applications
31 August 2018	The Parties produce documents as ordered by the Tribunal
26 October 2018	Claimant's Reply
18 January 2019	Respondent's Rejoinder
1 February 2019	The Parties submit lists of witnesses and experts that they wish to cross-examine at the Hearing
15 February 2019	Experts conclave and produce joint report
Week of 25 February 2019	Pre-Hearing conference call
March 2019	Hearing subject to the Tribunal's availability

Respondent's proposed procedural calendar is not "yet another attempt to delay or derail the present proceedings"¹ nor does it "bear[] no relation to Po 1"² as Claimant wrongly alleges. Rather, it is a realistic and reasonable calendar that is based on PO No 1 and that ensures - in light of the complexity and particular circumstances of the case - that the Parties' due process rights are adequately protected.

Contrary to Claimant's baseless insinuation, Respondent has not started work on its Statement of Defense "during the previous six years of this arbitration",³ as no State – indeed, no reasonable party – would run up costs on legal work that may subsequently become moot. Therefore, and given that the disputed facts of the case date back to almost 20 years ago (and several key individuals present at the time of the events have since passed away), that Egypt has undergone several changes in regime since the disputed facts of the case and that Respondent as a State party will be required to work with a number of different State authorities and officials, the five months from today proposed in Respondent's calendar for the filing of its Statement of Defense (i.e. 8 June 2018) will be necessary for Respondent to be able to collect its evidence and prepare its defense. This timeframe is also justified by Respondent's need to select and officially appoint its experts and complete the different administrative procedures that are required to authorize the process, and in order to allow Respondent's experts, once appointed, to prepare their reports, as well as Respondent to present its arguments in its Statement of Defense on the basis of these reports. For the same reasons, in line with PO 1 which, as Claimant points out, envisaged five months for Claimant's Reply,⁴ Respondent's calendar foresees five months for the preparation of the Reply and three months for the Rejoinder.

In light of the above, it is Respondent's position that Claimant's proposed timetable is neither "reasonable [nor] appropriate".⁵ Claimant's proposed calendar is also not "faithful to the framework and timings put in place by PO 1",⁶ nor does it contain only "minor ... reductions".⁷ Rather, Claimant's proposed calendar fundamentally departs from the spirit of PO No 1 and aims to dispose of the merits and the quantum of Claimant's case in their entirety within less than 7 months. That is wholly unreasonable given the complexity and particular circumstances of the case and cannot be justified on the basis that the Parties' submissions "will now relate to merits

¹ Claimant's letter of 10 January 2018, p. 4.

² Claimant's letter of 10 January 2018, p. 1.

³ Claimant's letter of 10 January 2018, p. 2.

⁴ Claimant's letter of 10 January 2018, p. 1.

⁵ Claimant's letter of 10 January 2018, p. 3.

⁶ Claimant's letter of 10 January 2018, p. 3.

⁷ Claimant's letter of 10 January 2018, p. 1.

issues only”.⁸ If adopted by the Tribunal, Claimant’s calendar would seriously jeopardize Egypt’s right of defense and result in an unfair advantage in Claimant’s favour. In particular, the 14 February 2018 deadline proposed by Claimant for Respondent’s Statement of Defense would not allow Respondent to collect its evidence and prepare its Statement of Defense. In the same vein, the mere 7 weeks foreseen in Claimant’s proposed calendar for the Rejoinder would be insufficient for Respondent to respond to Claimant’s Reply. Claimant’s proposed calendar is inadequate to guarantee the Parties a fair and proper proceeding and fails to ensure that the Tribunal has a full record before it on which to determine the Parties’ dispute.

Respondent reaffirms its willingness to work with the Tribunal and Claimant towards a timely resolution of the Parties’ dispute, albeit not at the expense of its ability to fully present its case and its fundamental right to a fair trial. Respondent readily acknowledges that the proceedings have already been running for more than six years,⁹ but wishes to point out that, contrary to Claimant’s allegations, such delays are not Respondent’s fault – Claimant voluntarily agreed to the bifurcation of the proceedings¹⁰ and the idea of the suspension of the proceedings for the duration of the Finnish court proceedings in fact originated with Claimant.¹¹

In sum, Respondent respectfully submits that in light of the particularities of the present proceedings its proposed calendar adequately reconciles the need for expediency with that for due process and should therefore be adopted by the Tribunal.

Respondent reserves its rights with respect to the proceedings, including with regards to the Decision on Jurisdiction dated 30 November 2017.

Yours sincerely,



Louis Christophe DELANOY



Raed FATHALLAH



Tim PORTWOOD

Cc:

Fietta International Law

Stephen Fietta

stephen.fietta@fiettalaw.com

Jiries Saadeh

jiries.saadeh@fiettalaw.com

⁸ Claimant’s letter of 10 January 2018, p. 1.

⁹ Claimant’s letter of 10 January 2018, p. 3.

¹⁰ Claimant’s letter of 23 February 2013.

¹¹ Claimant’s letter of 30 August 2013. See also Claimant’s letter of 24 September 2013.

Laura Rees-Evans
laura.rees-evans@fiettlaw.com

Zsófia Young
zsofia.young@fiettlaw.com

Prof. Andrew Newcombe
newcombe@uvic.ca

Mr. Samuel Wordsworth
swordsworth@essexcourt.net