

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Stratius Investments Limited

v.

Hungary

(ICSID Case No. ARB/24/6)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Ms. Juliet Blanch, Arbitrator
Prof. Philippe Sands KC, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

Assistant to the Tribunal

Dr. Magnus Jesko Langer

11 September 2024

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Introduction

The first session of the Tribunal was held on 6 September 2024 at 16:00 CET by videoconference via Zoom. The session was adjourned at 18:10 CET.

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 session were:

Members of the Tribunal:

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Ms. Juliet Blanch, Arbitrator
Prof. Philippe Sands KC, Arbitrator

ICSID Secretariat:

Ms. Aïssatou Diop, Secretary of the Tribunal
Ms. Ekaterina Minina, Paralegal
Mr. Pedro Magariño, Paralegal

Assistant to the Tribunal:

Dr. Magnus Jesko Langer

On behalf of the Claimant:

Counsel

Mr. Ben Giaretta, Fox Williams LLP
Mr. Peter Ashford, Fox Williams LLP
Mr. David Jones, Fox Williams LLP

Party

Mr. Stephen Coleman

On behalf of the Respondent:

Counsel

Ms. Mahnaz Malik, Twenty Essex
Mr. Csaba Rusznak, Sovereign Arbitration Advisors
Mr. János Burai-Kovács, Burai-Kovács, Perlaki, Sztanka, Szikla & Partners

The Tribunal and the Parties considered the following:

- The Draft Procedural Order No. 1 circulated by the Tribunal Secretary on 14 August 2024; and
- The Parties' comments on the Draft Procedural Order No. 1 received on 28 August 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration and includes the procedural timetable in **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

1.1. These proceedings are conducted in accordance with the procedural rules contained in the Energy Charter Treaty (the "ECT"), the ICSID Convention and the ICSID Arbitration Rules in force as of 1 July 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on 8 July 2024, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that they had no 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) (2006). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on 16 May, 24 June and 8 July 2024.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses

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 in force at the time the fees and expenses are incurred.

4. Presence and Quorum

Arbitration Rule 33

- 4.1. The participation of all the Members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders on behalf of the Tribunal.
- 5.5. When 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.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. No reasons need to be provided for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. 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 Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).

- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the proceeding as set out in **Annex B** and (ii) the Tribunal is informed.
- 6.4. A time limit shall be satisfied if a procedural step is taken or a document, written submission and/or correspondence is received by the Tribunal Secretary on the relevant date, or on the subsequent business day at the seat of the Centre if the time limit falls on a Saturday or Sunday.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Aïssatou Diop, Senior 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. Aïssatou Diop
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-9833
Fax: + 1 (202) 522-2615
Email: adiop3@worldbank.org
Paralegal name: Ms. Ekaterina Minina
Paralegal email: eminina@worldbank.org
ICSID case address: arb/24/6@icsidcases.worldbank.org

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

Ms. Aïssatou Diop
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.

Tel.: +1 (202) 458-1534

8. Assistant to the Tribunal

- 8.1. By letter of 14 August 2024, the ICSID Secretariat, acting on instructions of the Tribunal, noted that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant, who would undertake the tasks described in that letter. In the same letter, the Tribunal proposed that Dr. Magnus Jesko Langer of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. The proposed assistant's *curriculum vitae* and declaration of independence and confidentiality were distributed to the Parties on the same date.
- 8.2. The Parties consented to the appointment of Dr. Langer as Assistant to the Tribunal on the terms set out in the letter referred to in the preceding paragraph. The Parties also agreed that the Assistant would receive US\$300 for each hour of work performed and reimbursement of reasonable actual expenses on the same terms as the arbitrators.
- 8.3. The contact details of the Assistant are:

Dr. Magnus Jesko Langer
Lévy Kaufmann-Kohler
3-5 rue du Conseil-Général
P.O. Box 552
CH-1211 Geneva 4
Switzerland
Email: magnusjesko.langer@lk-k.com

9. Representation of the Parties

Arbitration Rule 2

- 9.1. The Parties are represented by the following counsel and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation:

For the Claimant

Fox Williams LLP
Mr. Ben Giaretta
Mr. Peter Ashford
Ms. Anisha Patel
Mr. David Jones
Mr. Giovanni Passamonti
Ms. Sophia Digby
10 Finsbury Square

For the Respondent

Dr. Burai-Kovács János, Jr.
Burai-Kovács, Perlaki, Sztanka, Szikla &
Partners
Pauler utca 11
Budapest, H-1013
Hungary
Tel.: +(36) 1-354-4300
Email: jr.burai-kovacs@bpss.hu

London EC2A 1AF
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Tel.: +44 (0)20 7628 2000
Emails: bgiaretta@foxwilliams.com
pashford@foxwilliams.com
apatel@foxwilliams.com
dmjones@foxwilliams.com
sdigby@foxwilliams.com
gpassamonti@foxwilliams.com

and
Mr. Csaba M. Rusznak
Sovereign Arbitration Advisors
1050 Connecticut Avenue, NW, St. 66255
Washington, DC 20035
United States of America
Email: crusznak@sovereignarbitration.us
and
Ms. Mahnaz Malik
Twenty Essex
20 Essex Street, Temple
London WC2R 3AL
United Kingdom
Tel.: +44 (0)20 7842 1200
Email: mmalik@twentyessex.com

9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

10.1. 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.

10.2. Following registration of the Request for arbitration, by letter of 15 March 2024, ICSID requested that the Claimant pay US\$200,000 to cover the initial costs of the proceeding through the first session. ICSID received the Claimant's payment on 26 March 2024. Upon the constitution of the Tribunal, by letter of 9 July 2024, ICSID requested that the Parties pay US\$400,000 to defray the estimated costs of the subsequent phase of the proceeding. Payment made by the Claimant on 26 March 2024 is considered a partial payment toward that sum. ICSID received the Respondent's payment on 6 August 2024.

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

10.4. In application of Arbitration Rule 14, each Party shall, immediately upon concluding a third-party funding arrangement, disclose to the Centre, the Tribunal and the other Party, that it has third-party funding, provide the name and address of the third-party funder and, if the third-party funder is a juridical person, provide the names of the persons and entities that own and control it. For the purpose of this

provision, the term “third-party funder” does not include shareholders, parent or affiliated entities of a Party.

- 10.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.

11. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Washington, D.C. shall be the place of the proceeding.
- 11.2. As a rule, substantive hearings shall be held in person and procedural hearings may be held online. The Parties agree that any in-person hearings shall take place in London, preferably at the International Dispute Resolution Centre. The format of a hearing on bifurcated preliminary objections, if any, shall be determined in accordance with the Procedural Timetable attached hereto as **Annex B**.
- 11.3. Online hearings will be conducted through an appropriate videoconferencing platform. In such case, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 11.4. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English shall be the language of the arbitration.
- 12.2. Documents filed in a language other than English shall be accompanied by a translation into English. Translated documents shall be submitted as separate electronic documents from the original. The original and the translation will bear the same exhibit number, but additionally indicate the language in the electronic title.
- 12.3. Translations of long documents can be limited to the relevant passages, provided the translated parts are sufficient for the reader to understand the context. The Tribunal may order a Party to provide a fuller or complete translation.
- 12.4. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.

- 12.5. Documents drafted in a language other than English which are exchanged between the Parties in document production under §16 below need not be translated.
- 12.6. The Parties will notify the Tribunal, as soon as possible, and no later than at the case management conference for hearing organization, which witnesses or experts require interpretation.
- 12.7. The testimony of a witness called for examination who gives evidence in a language other than the language of the arbitration shall be interpreted simultaneously.
- 12.8. The costs of interpretation 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.

13. Routing of Communications

Arbitration Rule 6

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Tribunal Secretary, the Tribunal Members, and the Assistant.
- 13.2. Communications to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party, the Tribunal Members, and the Assistant, once she has received both Parties' communications.
- 13.3. The Tribunal Secretary, Tribunal Members and Assistant shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:

Prof. Gabrielle Kaufmann-Kohler: gabrielle.kaufmann-kohler@lk-k.com

Ms. Juliet Blanch: julietblancharbitration@gmail.com

Prof. Philippe Sands KC: philippe.sands@11kbw.com

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

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant filing date, the Parties shall:
 - 14.1.1. Submit by email to the Tribunal Members, Secretary, Assistant, and opposing Party an electronic version of the pleading, witness statements and expert reports (without appended documentation) and an index of all supporting documentation, i.e. factual exhibits, legal authorities, documents

appended to witness statements and expert reports (in accordance with §§18.3.5 and 19.1 below).¹

14.1.2. Within three business days following the relevant time limit, a Party shall upload the pleading with all the supporting documentation and index to the file sharing platform created by ICSID for purposes of this case (the “Electronic Filing Process”).²

14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).

14.3. All pleadings to be filed after the date of this Procedural Order No. 1 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 and follow the naming conventions contained in **Annex A**.

14.4. A filing shall be deemed timely if a Party meets the requirements set in §14.1 above by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings – Procedural Calendar
Arbitration Rule 30

15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.

15.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.

15.3. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing Party’s last submission.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Supporting documentation shall be uploaded as individual files, not in .zip format.

- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.5. All written submissions shall be divided into consecutively numbered paragraphs.
- 15.6. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The Tribunal and the Parties shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 16.2. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control, in the form of a Redfern Schedule as attached in **Annex C** hereto, in both Word and .pdf format. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
- 16.3. Each request for production shall:
 - 16.3.1. identify with specificity: (i) the type of documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as "all documents" or "all records", or use such formulation and then define it to "include" specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be), being specified that a Party asserting that such identification is not possible must adequately substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;
 - 16.3.2. describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;
 - 16.3.3. specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and

- 16.3.4. explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.
- 16.4. Within the time limits set forth in **Annex B**, the other Party shall either produce the requested documents (to the opposing Party only, without copying the Tribunal, the Secretary or the Assistant consistent with §16.9 below) or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.5. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for the production of the documents sought and not produced, in which case it shall reply to the other Party's objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
- 16.6. The Parties shall make no submissions in respect of the steps set out in §§16.2, 16.4, and 16.5 above other than those incorporated in the Redfern Schedules.
- 16.7. On or around the date set forth in **Annex B**, the Tribunal will rule upon the production of the documents or categories of documents having regard to the requirements of §16.3 above, the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges. As a rule, a Party shall not be entitled to the production of a document sought to prove a fact (i) for which the other Party bears the burden of proof or (ii) which is already established by other evidence in the record. If a request does not meet the requirements of §16.3 above, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative.
- 16.8. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal, the Secretary, and the Assistant. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.
- 16.9. In addition, the Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on record.
- 16.10. If a Party fails to produce documents ordered by the Tribunal, the Tribunal shall be entitled to draw such inferences from such failure to produce as it considers

appropriate, in light of all circumstances, including the reasons for the non-production.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. Documents, including exhibits and legal authorities, shall be submitted together with the memorial or written submission that refers to them in conformity with §§15.2 and 15.3 above.
- 17.2. Neither Party shall be permitted to submit additional documents after the filing of its last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.
 - 17.2.1. Should a Party request leave to file additional documents, it may not annex the documents that it seeks to file to its request.
 - 17.2.2. If the Tribunal grants such request, the Tribunal shall ensure that the other Party is afforded an opportunity to make its observations concerning such a document.
- 17.3. The documents shall be submitted in the following form:
 - 17.3.1. The number of each exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.
 - 17.3.2. Factual and legal exhibits shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001”, respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the electronic file name in accordance with §17.3.3 below.
 - 17.3.3. Electronic files and the accompanying indices shall follow the naming conventions contained in **Annex A**.
- 17.4. 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.

- 17.5. 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.
- 17.6. Demonstrative exhibits, i.e. documents, including PowerPoint slides, compiling information in the record but not in the form presented, such as charts may be used at a hearing, provided they (i) contain no new evidence; (ii) identify their source in the record; (iii) are submitted to the other Party at the time specified in the relevant pre-hearing order; and (iv) are numbered consecutively with a number introduced by CD-, respectively RD-.

18. Witnesses

Convention Article 43(a); Arbitration Rule 38

- 18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 18.2. For each witness, a written witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal.
- 18.3. Each witness statement shall be signed and dated by the witness and include:
 - 18.3.1. the witness's name, date of birth, and involvement in the case;
 - 18.3.2. a disclosure statement detailing any past and present relations of the witness with any Party, counsel or Member of the Tribunal;
 - 18.3.3. a description of the witness' position and qualifications, if relevant;
 - 18.3.4. a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
 - 18.3.5. any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as exhibits, not as a new group of numbered documents attached to a witness statement);
 - 18.3.6. a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing;
 - 18.3.7. a declaration regarding whether the witness received any form of compensation for his or her testimony; and
 - 18.3.8. an affirmation of the truth of the witness statement.

- 18.4. Witness statements shall be submitted in a searchable PDF format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. Witness statements shall be submitted in English or with a translation into English.
- 18.6. In accordance with §§15.2 and 15.3 above, each Party will submit its witness statements together with its written submissions. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as “Second”.
- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.8. On the date provided in **Annex B**, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine. A witness whose cross-examination is not sought shall not testify unless the Tribunal directs his or her appearance.
- 18.9. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.10. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the Award.
- 18.11. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.12. Except for online hearings, witnesses shall in principle be cross-examined in person. Whether in the context of an online hearing or otherwise, the Tribunal may hear witnesses by videoconference and will issue appropriate directions.
- 18.13. The Tribunal may consider the written statement of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal may only in exceptional circumstances consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing and having regard to all surrounding circumstances, including the fact that

the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.

- 18.14. At the hearing, the examination of each witness shall proceed as follows, subject to further specifications to be addressed in a subsequent procedural order:
- 18.14.1. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements. It shall in principle not last more than 10 minutes;
 - 18.14.2. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge;
 - 18.14.3. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination; and
 - 18.14.4. The Tribunal may ask its questions at any time, likely mainly at the end.
- 18.15. Subject to other arrangements during the case management conference for hearing organization, (i) fact witnesses shall be examined prior to expert witnesses, the Claimant's fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimant's expert for each topic being examined first.
- 18.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions.
- 18.17. The Tribunal shall, at all times, maintain its influence over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 18.17.1. Limit the examination of a witness if it deals with facts that are already established by other evidence or are irrelevant;
 - 18.17.2. Direct that a witness be recalled for further examination at any time; or
 - 18.17.3. Provide that the witnesses may be examined together ("witness conferencing"), in which case it will give appropriate directions.

19. Experts

Arbitration Rule 38

- 19.1. Unless inconsistent with this Section, all the rules set forth in §18 above shall apply by analogy to experts.
- 19.2. Each Party may retain and produce evidence of one or more experts.
- 19.3. The Tribunal may order experts on the same subject matter on both sides to liaise before the hearing to identify disputed and undisputed issues, and to produce joint expert reports identifying disputed and undisputed issues.
- 19.4. In exceptional circumstances, 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 and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
- 19.5. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §18 above. Spreadsheets prepared by experts and submitted as part of or accompanying their report(s) should also be submitted in their native format with all formulae visible.
- 19.6. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 19.7. After consultation with the Parties, the Tribunal may request non-legal experts to give a presentation summarizing their methodology and conclusions in lieu of direct examination.

20. Case Management Conferences

Arbitration Rule 31

- 20.1. A case management conference for purposes of discussing hearing organization and logistics will be held on the date provided in **Annex B** by way of videoconference.
- 20.2. The Tribunal may convene other case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 if necessary or appropriate.

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall take place on the dates set in **Annex B**.
- 21.3. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.
- 21.4. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be discussed at the case management conference for hearing organization and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties, the Tribunal Members, and the Assistant.
- 22.2. Verbatim transcripts in the procedural language shall be made of any hearing other than procedural sessions. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, 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.
- 22.3. The Parties shall agree on any corrections to the transcripts within a time limit to be determined at the end of the hearing. The agreed corrections may be entered by the court reporter 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 in the revised transcripts by the court reporter.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal.

23.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

24. Transparency and Confidentiality

Convention Article 48(5), Arbitration Rules 62-66

24.1. These matters will be dealt with in Procedural Order No. 2.

25. Data Privacy and Cybersecurity

25.1. The Members of the Tribunal, the Assistant, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

25.2. The Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.

25.3. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber security of arbitration-related information and the Parties confirm that communications may be sent by email.

26. Amicable Dispute Settlement

26.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. The Parties may agree to suspend the arbitration for this purpose.

26.2. At any time in the course of the arbitration, considering the circumstances of the dispute and the interests at stake, the Tribunal may suggest to the Parties to resort to mediation or other appropriate methods of amicable resolution.

26.3. Beyond making a suggestion to the Parties, the Tribunal will not become involved in mediation or other settlement attempts and will continue the proceedings if the

Parties do not agree to follow the Tribunal's suggestion or if they agree but the attempt fails.

27. Disability Inclusion

- 27.1. At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

On behalf of the Tribunal,

/signed/

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 11 September 2024

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.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report–Name of Expert–Type–Name of Submission–LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion–Name of Expert–Name of Submission–LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS –###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>

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Procedural Order No. 1 – Annex A

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

Annex B – Procedural Timetable

Scenario 1 – bifurcation not requested

	Procedural step	Author	Interval	Date
1.	Memorial	Claimant		18 October 2024
2.	Counter-Memorial on the Merits (and Memorial on Jurisdiction)	Respondent	16 weeks	7 February 2025
3.	Document Production Requests	Parties	3 weeks	28 February 2025
4.	Responses and/or Objections to Document Requests	Parties	2 weeks	14 March 2025
5.	Replies to Objections to Document Requests	Parties	2 weeks	28 March 2025
6.	Production of Documents which are not subject to Objections	Parties		28 March 2025
7.	Decision on the Parties' requests for production of documents	Tribunal	3 weeks	18 April 2025
8.	Production of documents ordered by the Tribunal	Parties	3 weeks	9 May 2025
9.	Reply on the Merits (and Counter-Memorial on Jurisdiction)	Claimant	12 weeks	1 August 2025
10.	Rejoinder on the Merits (and Counter-Memorial on Jurisdiction)	Respondent	14 weeks	7 November 2025
11.	Rejoinder on Jurisdiction	Claimant	6 weeks	19 December 2025
12.	Identification of witnesses and experts to be called at the hearing	Parties	3 weeks	9 January 2026
13.	Pre-hearing videoconference	All	1 week	16 January 2026 at 4pm CET

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14.	Hearing on Jurisdiction and Merits	All		16 to 19 February 2026 (with 20 and 21 in reserve)
15.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties	To be determined	
16.	Cost Submissions	Parties	To be determined	

Scenario 2 – bifurcation is requested

	Procedural step	Author	Interval	Date
1.	Memorial	Claimant		18 October 2024
2.	Identification of Preliminary Objections and Request for Bifurcation	Respondent	6 weeks	29 November 2024
3.	Response to Request for Bifurcation	Claimant	2 weeks	13 December 2024
4.	Decision on Bifurcation (with reasons to be provided on a later date), followed by Tribunal consulting Parties on format of hearing if bifurcation granted	Tribunal	1 week	20 December 2024

Scenario 2(a) – bifurcation is granted

	Procedural step	Author	Interval	Date
5.	Memorial on Bifurcated Objections	Respondent	6 weeks	31 January 2025
6.	Counter-Memorial on Bifurcated Objections	Claimant	6 weeks	14 March 2025
7.	Reply on Bifurcated Objections	Respondent	4 weeks	11 April 2025
8.	Rejoinder on Bifurcated Objections	Claimant	4 weeks	9 May 2025
9.	Identification of witnesses and experts to be called at the hearing, if any	Parties	2 weeks	23 May 2025

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Procedural Order No. 1 – Annex B

10.	Pre-hearing videoconference	All	1 week	30 May 2025 at 4pm CET
11.	Hearing on Bifurcated Objections	All		9 June 2025

Scenario 2(b) – bifurcation is not granted

	Procedural step	Author	Interval	Date
5.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	12 weeks	14 March 2025
6.	Document production requests	Parties	3 weeks	4 April 2025
7.	Responses and/or Objections to Document Requests	Parties	13 days	17 April 2025
8.	Replies to Objections to Document Requests	Parties	2 weeks + 1 day	2 May 2025
9.	Production of Documents which are not subject to Objections	Parties		2 May 2025
10.	Decision on the Parties' requests for production of documents	Tribunal	2 weeks	16 May 2025
11.	Production of documents ordered by the Tribunal	Parties	3 weeks	6 June 2025
12.	Reply on the Merits and Counter-Memorial on Jurisdiction	Claimant	12 weeks	29 August 2025
13.	Rejoinder on the Merits and Reply on Jurisdiction	Respondent	12 weeks	21 November 2025
14.	Rejoinder on Jurisdiction	Claimant	4 weeks	19 December 2025
14.	Identification of witnesses and experts to be called at the hearing	Parties	3 weeks	9 January 2026
15.	Pre-hearing videoconference	All	1 week	16 January 2026 at 4pm CET

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Procedural Order No. 1 – Annex B

16.	Hearing	All		16 to 19 February 2026 (with 20 and 21 in reserve)
17.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties	To be determined	
18.	Cost Submissions	Parties	To be determined	

Annex C – Redfern Schedule

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal’s Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			