

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius**

**v.**

**Portuguese Republic**

**(ICSID Case No. ARB/22/28)**

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**PROCEDURAL ORDER NO. 5**

**Organization of the Hearing on Jurisdiction**

**Members of the Tribunal**

Mr. Jeremy K. Sharpe, President of the Tribunal

Prof. Brigitte Stern, Arbitrator

Prof. Dr. Stephan Schill, Arbitrator

**Secretary of the Tribunal**

Ms. Ella Rosenberg

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December 12, 2024

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## **I. PROCEDURAL BACKGROUND**

1. On December 10, 2024, the Tribunal and the Parties held a pre-hearing organizational meeting by video conference at 4:30PM GMT (the “**Pre-Hearing Conference**”), to discuss procedural, administrative and logistical matters in preparation for the forthcoming hearing on jurisdiction (the “**Hearing**”).

2. The following participants joined the conference:

Tribunal:

Mr. Jeremy K. Sharpe, President of the Tribunal  
Prof. Brigitte Stern, Arbitrator  
Prof. Dr. Stephan Schill, Arbitrator

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal  
Ms. Marine Chepda, ICSID Secretariat

On behalf of the Claimants:

Mr. Ashique Rahman, Saadeh Rahman LLP  
Ms. Charlotte Westbrook, Fietta LLP  
Ms. Jane Byrne, Fietta LLP  
Mr. Joaquim Shearman de Macedo, PLMJ Advogados  
Mr. Tiago Duarte, PLMJ Advogados  
Ms. Manuela Martins Amorim Costa, PLMJ Advogados

On behalf of the Respondent:

Mr. Miguel de Almada, Cuatrecasas  
Mr. Lourenço Vilhena de Freitas, Cuatrecasas  
Mr. Manuel Requicha Ferreira, Cuatrecasas  
Mr. Miguel Pereira da Silva, Cuatrecasas  
Ms. Inês de Abreu Régio, Cuatrecasas  
Ms. Carolina Salazar Leite, Cuatrecasas  
Ms. Bárbara Vidal Sousa, Cuatrecasas  
Ms. Diana Paraguacuto-Mahéo, Foley Hoag  
Mr. Peter Tzeng, Foley Hoag  
Mr. Nicholas Renzler, Foley Hoag  
Mr. Jago Chanter, Foley Hoag  
Ms. Margaux Mery, Foley Hoag  
Ms. Margarida Baptista, Secretariat-General for the Ministry of Finance  
Ms. Rosa Ribeiro, Secretariat-General for the Ministry of Finance  
Mr. João Gil Antunes, Ministry of Foreign Affairs

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3. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the Box folder established for the case to be accessed by the Members of the Tribunal and the Parties.
4. During the Pre-Hearing Conference, the Tribunal and the Parties considered the following documents:
  - The Parties' communications of November 26, 2024, as per paragraph 18.1 of Procedural Order No. 1, identifying the witnesses and experts that they intend to cross-examine at the Hearing;
  - The draft Procedural Order No. 5 circulated by the Secretary of the Tribunal on behalf of the Tribunal on December 3, 2024; and
  - The Parties' joint comments on draft Procedural Order No. 5 of December 9, 2024, advising the Tribunal of any agreements reached by the Parties on the various items, as well as their respective positions where no agreement was reached.
5. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules upon which the Parties have agreed or, having heard the Parties, the Tribunal has determined shall govern the conduct of the Hearing.

## **II. THE TRIBUNAL'S DECISIONS AND ORDERS**

### **A. HEARING SCHEDULE AND ALLOCATION OF TIME**

#### ***(i) Date and format of the Hearing***

6. The Hearing shall take place in person at the Paris Arbitration Centre by Delos (92 rue Réaumur, 75002, Paris) between January 20-23, 2025 (with January 24, 2025, held in reserve).
7. In accordance with paragraph 18 of Procedural Order No. 2, the Hearing shall be closed to the public.

#### ***(ii) Schedule and sequence of the Hearing; Detailed daily Schedule***

8. On December 10, 2024, the Parties agreed on a provisional Hearing Timetable, which reflects the discussion at the Pre-Hearing Conference as follows:
  - **Daily Schedule:** The Tribunal will sit between 9:30 a.m. and 17:30 p.m., as per the Hearing Timetable attached as Annex A. There will be one 15-minute break during each of the morning and afternoon sessions of each Hearing day. There shall be a lunch break of 1 hour. The Hearing Timetable is attached at Annex A. The Parties may request, or the Tribunal may direct, an extension of each Hearing day as may be needed.

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- **Opening Statements:** Each Party shall be allowed a maximum of 2 hours and 30 minutes for its opening statements on the first Hearing day.
9. **Witnesses and Experts Cross-Examinations (PO1, paragraph 18):** Witnesses and Experts examinations and cross-examinations will be conducted as specified in paragraphs 21 to 34 of the present Order.
  10. **Closing and Post-Hearing Briefs:** As set forth in the Hearing Timetable in Annex A, there will be time at the end of the Hearing for the Parties to address Tribunal questions and discuss post-Hearing matters. At the conclusion of the Hearing, after consultation with the Parties, the Tribunal shall decide whether the Parties will file Post-Hearing Memorials and/or answers to the Tribunal's written questions, if any. In any event, any such submissions shall not contain new evidence, documents, sources, witness statements or expert reports unless the Tribunal decides otherwise.
  11. The Tribunal reserves its discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical or other disruptions.
  12. The Tribunal emphasizes that the Parties are expected to use the Hearing days efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.  
  
*(iii) Allocation of time*
  13. The time at the Hearing shall be allocated to each Party in equal proportions, subject to the Tribunal's discretion taking into account all relevant circumstances, including the number of experts for each Party and the amount of evidence to be presented.
  14. The Hearing time available for the Parties and the Tribunal amounts to a total of 26 hours across four days, excluding breaks. The Tribunal will provisionally have 3.5 hours in reserve across the four days, including for housekeeping, Tribunal questions, and post-Hearing matters.
  15. The Hearing will be conducted in accordance with the Hearing schedule set in **Annex A**.
  16. The Parties may request short extensions of time if necessary and the Tribunal will exercise a limited degree of flexibility in this regard. Any time allocated to each Party for its use during the Hearing shall depend in the end on how much time remains available (or not) at the time of adjournment.
  17. Time taken by the Tribunal for its own questions during the Parties' presentations and the answers to those questions shall not be counted against the Parties' time.
  18. Time spent dealing with objections from a Party shall not be counted against any Party's time unless the Tribunal determines otherwise if the circumstances warrant a deviation from that rule.

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19. Time used for housekeeping or to resolve technical difficulties shall be counted against the Tribunal's reserved time, if needed.

**(iv) Manner of time-keeping**

20. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.

**B. EXAMINATION OF WITNESSES AND EXPERTS**

**(i) Witnesses and Experts called by the Parties for cross-examination**

21. On November 26, 2024, the Parties indicated that they wish to cross-examine the following witnesses and experts in accordance with paragraph 18 of Procedural Order No. 1:

- Claimants' experts: Professor Mário Aroso de Almeida and Professor Luís Menezes Leitão
- Claimants' witnesses: [REDACTED] and [REDACTED]
- Respondent's experts: Professor Fausto de Quadros and Professor Manuel Carneiro da Frada

22. The Parties decided the rolling order as indicated in **Annex A** including time slots assigned to the examination and cross-examination of the above-listed experts and witnesses.

23. The Claimants confirmed that all of their fact witnesses and experts are expected to testify in-person.

24. The Respondent will confirm, no later than January 6, 2025, whether its expert, Professor Fausto de Quadros, will attend the Hearing remotely or in person.

- Video conferencing shall be made available via the Zoom platform (the "VC Platform"). ICSID will be in charge of providing secure access details to any remote participants.
- ICSID shall send log-in details to all remote participants every day at least one hour before the Hearing starts. To preserve the security and privacy of the Hearing, access to the Hearing will be password protected, and entrants to the VC Platform will be placed into a virtual holding room to await approval of ICSID.
- The remote participants should not forward or share the hearing link or password. Any person attempting to access the Hearing that is not agreed to by the Parties shall be refused access to the Hearing, unless approved by the Tribunal.

**(ii) Scope and manner of the examination of Witnesses and Experts**

25. The rules set out in paragraphs 18.3 to 18.9 of Procedural Order No. 1 for the examination of witnesses and experts continue to apply.

i. *Direct Examination of Fact Witnesses:* The Claimants may use up to a maximum of 15 minutes for the Direct Examination of the fact witness, save if compelling reasons justify the use of limited additional time. The Direct Examination of the fact witness shall be limited to introducing the witness, to confirming the accuracy and completeness of the witness' written statement and to offering any corrections or clarifications that may be necessary.

ii. *Direct Examination of experts:* The Party that has presented the expert may conduct a brief direct examination to confirm the expert report, with any corrections, and to ask introductory questions, including about matters that have arisen after that expert's last report was signed. As a general rule, direct examination shall not exceed ten minutes.

Direct Examination of experts may, in lieu of direct examination, take the form of a presentation by the expert, who may make use of PowerPoint presentations. Such presentations shall not exceed a maximum of 30 minutes and shall be limited to the contents of the reports and addressing any new points arising out of any opposing expert's most recent report.

iii. *Cross-examination and redirect:* The direct examination of experts is followed by cross-examination and subsequently by redirect examination. The redirect examination shall be limited to matters raised in cross-examination.

**(iii) Rules for remote Expert examination**

26. Any communications by or with the experts during their examinations or during breaks are prohibited, other than those communications necessary for facilitating the logistical arrangements of the hearing. Each expert shall affirm at the start of the examination that he or she will not receive or provide communications of any sort during the course of his or her examination.

27. The expert under examination shall remain visible at all times. Experts will be connected to the Hearing waiting room 30 minutes before their examination to ensure that they are available in time to be brought into the Hearing room. During the breaks of their cross-examination, the expert will be taken to a remote breakout room and shall remain alone in that room.

28. Experts shall not use a "virtual background" or in any way prevent or limit the recording of the remote venue from which they are testifying.

29. At the request of one of the Parties or the Tribunal, the expert shall orient his/her camera to show a 360-degree viewing of the room to confirm that no unauthorized persons are present.

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30. Experts shall be able to view the Members of the Tribunal, the attorneys conducting the examination, and documents presented by the examining attorney through the Zoom platform/uploaded onto BOX. Except for an unannotated copy of their report(s), notes for the purpose of their presentation and the documents which will be shown on the screen during the examination, the expert shall not be aided by any other documents, notes or otherwise, unless permitted by the Tribunal upon application by a Party.
31. A member of each of the Parties shall be permitted (but not required) to be physically present with the expert testifying remotely during the examination to assist with accessing documents during the testimony.
32. Other than noted herein, no other individual may be permitted to be present in the room from which an expert is providing testimony.
33. Experts are encouraged to have two screens to facilitate simultaneous viewing of the video connection and documents.
34. Unless the Parties and the Tribunal agree otherwise, experts shall be allowed in the Hearing room at all times.

***(ii) Witnesses and Experts bundles***

35. At the start of each examination, the Party presenting the witness or expert shall provide a hard copy of the witness statements or expert reports of the testifying witness or expert. Any other document will be made available to the witness or expert in electronic format. The cross-examining Party shall provide each witness or expert, as well as opposing counsel, with one hard copy of the cross-examination bundle. For voluminous exhibits, it shall suffice to include only relevant excerpts (in context). The provision of such hard copy bundles shall not prevent the Parties from relying on other documents in the electronic Hearing bundle, if necessary. USB flash drives containing the cross-examination bundle shall also be provided to the Tribunal and the Secretary of the Tribunal.

***(iv) Sequestration of Witnesses and Experts***

36. Any communications with a witness or expert during their examination (namely, from the moment their oral testimony begins until it is completed) are prohibited.
37. Fact witnesses shall be allowed in the Hearing room during Opening Statements but shall not be allowed in the Hearing room during the examination of other fact witnesses before giving their oral evidence and shall not be permitted to communicate with a fact witness that has been examined, prior to their own examination.
38. Experts shall be allowed in the Hearing room at any time.
39. The Parties shall exercise best efforts to avoid witnesses and experts being unnecessarily kept sequestered overnight.



**(v) Use of Interpreters**

40. The Hearing shall be conducted in English.
41. The Parties confirm that the following experts require interpretation in Portuguese when testifying:
- Professor Luís Menezes Leitão
  - Professor Mário Aroso de Almeida
  - Professor Fausto de Quadros
  - Professor Manuel Carneiro da Frada

**(vi) Other**

42. A maximum of two counsel may examine and pose questions to a witness or expert. Prior to the commencement of the examination, counsel shall indicate the subject matter or objections each examiner will cover.

**C. DOCUMENTS FOR USE AT THE HEARING**

**(i) Demonstrative exhibits and PowerPoint presentations**

43. The Parties and experts may use PowerPoint or other slide presentations for their oral statements and expert presentations, subject to the rules set forth at paragraphs 16.8 to 16.10 of Procedural Order No. 1 on demonstrative exhibits.
44. The Parties shall provide hard copies of the PowerPoint or other slide presentations they intend to use for the purpose of their opening statements to the Tribunal, and the Secretary of the Tribunal and opposing counsel.

**(ii) Hearing bundles**

45. The Parties have agreed to jointly prepare the Electronic Hearing Bundle and will themselves be responsible for providing evidence display services during the Hearing.
46. As soon as possible and in any event no later than January 10, 2025, the Parties shall upload the Electronic Hearing Bundle to the Box folder established for this case and send USB devices containing the Electronic Hearing Bundle to all of the Members of the Tribunal and to the Secretary of the Tribunal. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. To ensure

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the proper operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. It shall be organized as follows:

**01. Pleadings**

- A. Claimants
- B. Respondent

**02. Witness Statements**

- A. Claimants

**03. Expert Reports**

- A. Claimants
- B. Respondent

**04. Exhibits (using current numbering)**

- A. Claimants
- B. Respondent

**05. Legal Authorities**

- A. Claimants
- B. Respondent

**06. Experts' Exhibits**

- A. Claimants
- B. Respondent

**07. Tribunal's Rulings**

- 47. If the Electronic Hearing Bundle includes any password-protected document, the Party that submitted such document shall ensure that the password is included in the hyperlinked index.
- 48. The Parties, the Tribunal and ICSID will be able to access the Electronic Hearing Bundle until the end of this matter by downloading the same, locally, on a computer. The Bundle should be downloaded before the end of the Hearing.

*(iii) New evidence/exhibits*

- 49. Paragraph 16.3 of Procedural Order No. 1 continues to apply during and after the Hearing.
- 50. The Parties agree that no new factual evidence, new exhibits, or new legal authorities shall be admitted into the record unless in accordance with the process described in paragraph 16.3 of Procedural Order No. 1.

**D. AUDIO RECORDING**

- 51. Paragraph 21.1 of Procedural Order No. 1 concerning audio recording will apply to the Hearing.
- 52. Except for the court reporters, who will make their own audio recording of the Hearing, attendees will not otherwise make any audio or video of the Hearing or any part of it.

**E. TRANSCRIPTION**

53. Ms. Dawn Larson will provide court reporting and real-time English transcription. Ms. Larson will arrange for all Hearing participants to have access to the real-time transcript during the Hearing. The court reporter may seek to clarify the record from time to time during the course of the Hearing.
54. Paragraph 21.3 of Procedural Order No. 1 will apply to the arrangements for the correction of the transcripts.

**F. POST-HEARING MEMORIALS AND STATEMENTS OF COSTS**

55. Pursuant to paragraphs 22.1 and 22.2 of Procedural Order No 1, the number, sequence and length of post-hearing memorials and/or responses to the Tribunal's written questions (if required) and statements of costs shall be determined by the Tribunal at the end of the Hearing, after consulting with the Parties.

**G. PARTICIPANTS**

56. Each Party will provide its respective List of Participants to the Hearing ("**List of Participants**") on January 8, 2025, using the template format provided by ICSID.

**H. IN-PERSON ARRANGEMENTS**

57. The ICSID Secretariat has reserved a Hearing room and breakout rooms for each Party and the Tribunal.
58. The ICSID Secretariat will liaise with the Parties on other logistical aspects (set-up, catering, etc.).

**I. GENERAL PROVISIONS**

**(i) Confidentiality**

59. This ICSID proceeding, including all communications, is confidential. Participants in the Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All participants providing services shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the Hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the Hearing; and (iii) dispose all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their Hearing-related work has been completed.
60. The Hearing shall be conducted in accordance with the provisions of Procedural Order No. 2 (on Transparency and Confidentiality).

**(ii) Data Privacy**

61. Should the List of Participants for the Hearing contain personal data provided to ICSID (including names and contact information, such as business email addresses and telephone numbers), this data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.

For and on behalf of the Tribunal,

[signature]

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Jeremy K. Sharpe  
President of the Tribunal  
Date: December 12, 2024

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ANNEX A

**HEARING SCHEDULE**

(THE SUGGESTED DURATIONS ARE INDICATIVE ESTIMATES ONLY)

Claimants	Respondent
<b>Total = 11.25 hours</b>	<b>Total = 11.25 hours</b>

**Day 1: Monday, January 20, 2025**

Hour	Duration	PROCEDURAL STEP
00:00	(# hours/min.)	
09:30	15 minutes	Housekeeping
09:45	1 hour and 15 minutes	Respondent's opening statement
11:00	15 minutes	Break
11:15	1 hour and 15 minutes	Respondent's opening statement (cont.)
12:30	1 hour	Lunch
13:30	1 hour and 15 minutes	Claimants' opening statement
14:45	15 minutes	Break
15:00	1 hour and 15 minutes	Claimants' opening statement (cont.)
16:15		End of Day 1

**Day 2: Tuesday, January 21, 2025**

Hour	Duration	PROCEDURAL STEP
00:00	(# hours/min.)	
09:30	15 minutes	Direct examination of ██████████
09:45	1 hour and 15 minutes	Cross-examination of ██████████
11:00	15 minutes	Break
11:15	1 hour and 15 minutes	Cross-examination of ██████████ (cont.)
12:30	1 hour	Lunch
13:30	30 minutes	Redirect examination of ██████████
14:00	15 minutes	Direct examination of ██████████
14:15	1 hour	Cross-examination of ██████████
15:15	15 minutes	Break
15:30	1 hour and 15 minutes	Cross-examination of ██████████ (cont.)
16:45	30 minutes	Redirect examination of ██████████
17:15		End of Day 2

**Day 3: Wednesday, January 22, 2025**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00</b>	<b>(# hours/min.)</b>	
09:30	30 minutes	Presentation of Professor Manuel Carneiro da Frada in lieu of direct examination
10:00	1 hour	Cross-examination of Professor Manuel Carneiro da Frada
11:00	15 minutes	Break
11:15	1 hour and 15 minutes	Cross-examination of Professor Manuel Carneiro da Frada (cont.)
12:30	15 minutes	Redirect examination of Professor Manuel Carneiro da Frada
12:45	1 hour	Lunch
13:45	30 minutes	Presentation of Professor Fausto de Quadros in lieu of direct examination
14:15	1 hour and 30 minutes	Cross-examination of Professor Fausto de Quadros
15:45	15 minutes	Break
16:00	1 hour and 30 minutes	Cross-examination of Professor Fausto de Quadros (cont.)
17:30	15 minutes	Redirect examination of Professor Fausto de Quadros
17:45		End of Day 3

**Day 4: Thursday, January 23, 2025**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00</b>	<b>(# hours/min.)</b>	
09:30	30 minutes	Presentation of Prof. Mário Aroso de Almeida in lieu of direct examination
10:00	1 hour	Cross-examination of Prof. Mário Aroso de Almeida
11:00	15 minutes	Break
11:15	30 minutes	Redirect examination of Prof. Mário Aroso de Almeida
11:45	30 minutes	Presentation of Prof. Luís Menezes Leitão in lieu of direct examination
12:15	1 hour and 15 minutes	Lunch
13:30	1 hour and 30 minutes	Cross-examination of Prof. Luís Menezes Leitão
15:00	30 minutes	Redirect examination of Prof. Luís Menezes Leitão (cont.)
15:30	15 minutes	Break
15:45	1 hour and 45 minutes	Tribunal questions and discussion of post-Hearing matters
17:30		End of Day 4