

**Klesch Group Holdings Limited and Raffinerie Heide GmbH**

v.

**Federal Republic of Germany**

**(ICSID Case No. ARB/23/49)**

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**PROCEDURAL ORDER No. 3**  
**On the Organization of the Hearing on Bifurcation**

***Members of the Tribunal***

Mr. Cavinder Bull., S.C., President of the Tribunal  
Judge O. Thomas Johnson, Arbitrator  
Prof. Jorge E. Viñuales, Arbitrator

***Secretary of the Tribunal***

Ms. Aurélia Antonietti

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13 February 2025

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## **I. PROCEDURAL BACKGROUND**

1. On 14 June 2024, the Tribunal issued Procedural Order No. 1 (“**PO1**”), according to which a hearing on bifurcation was scheduled to be held on Wednesday, 19 March 2025 (the “**Hearing on Bifurcation**” or “**Hearing**”).
2. On 17 December 2024, after consulting with the Parties pursuant to §11.2 and §22.2 of PO1, the Tribunal determined that the Hearing on Bifurcation will be held at the World Bank in Paris (“**World Bank Paris**”) located at 66 avenue d’Iéna, 75116 Paris, France.
3. On 16 January 2025, the Tribunal circulated a draft of this Procedural Order for the Parties’ comments.
4. On 31 January 2025, the Parties submitted their joint comments on the draft Procedural Order, including their respective positions on the issues that remained outstanding.
5. Pursuant to §20.1 of PO1 and the correspondence between the Tribunal and the Parties, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 12 February 2025, at 8:30 am in Washington, D.C / 1:30 pm in London / 2:30 pm in The Hague / 9:30 pm in Singapore (“**Pre-Hearing Conference**”), to discuss outstanding procedural, administrative, and logistical matters in preparation for the Hearing on Bifurcation. Participating were:

Members of the Tribunal:

Mr. Cavinder Bull S.C., President of the Tribunal  
Judge O. Thomas Johnson, Arbitrator  
Prof. Jorge E. Viñuales, Arbitrator

ICSID Secretariat:

Ms. Aurélie Antonietti, Secretary of the Tribunal  
Ms. Ayong Lim, Legal Counsel  
Ms. Marine Chepda, Paralegal

Assistant to the President of the Tribunal:

Ms. Elisabeth Liang

On behalf of the Claimants:

Mr. Dany Khayat, Mayer Brown  
Mr. Jawad Ahmad, Mayer Brown  
Mr. José Caicedo, Mayer Brown  
Ms. Isabela Lacrete, Mayer Brown

Mr. Jagpreet Sandhu, Mayer Brown  
Mr. David Green, Klesch Group, General Counsel

On behalf of the Respondent:

██████████ European Commission, Legal Service  
██████████ European Commission, Legal Service  
██████████ European Commission, Legal Service  
██████████ European Commission, Legal Service  
██████████ European Commission, Legal Service  
██████████ European Commission, Legal Service  
██████████ European Commission, Directorate-General for Trade  
██████████ Tiemann, Federal Republic of Germany, Federal Ministry for Economic  
Affairs and Climate Action  
██████████ Federal Republic of Germany, Federal Ministry for Economic  
Affairs and Climate Action  
██████████ Federal Republic of Germany, Federal Ministry of Economic Affairs  
and Climate Action  
██████████ Advisor to the Federal Republic of Germany, ██████████  
██████████  
██████████ Kingdom of Denmark, Ministry for Taxation

6. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft of this Procedural Order circulated to the Parties on 16 January 2025, and the Parties' comments received on 31 January 2025, advising the Tribunal of any agreements reached on the various items as well as the Parties' respective positions where no agreement was reached.
7. An audio recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on 12 February 2025.
8. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing on Bifurcation.

## **II. ORGANIZATION OF THE HEARING**

### **A. DATE, FORMAT AND VENUE OF THE HEARING**

9. The Hearing on Bifurcation is scheduled to be held in-person on Wednesday, 19 March 2025, at the World Bank Paris located at 66 avenue d'Iéna, 75116 Paris, France.
10. The hearing modality is hybrid, exclusively for passive participants only to attend via Zoom (to be hosted by the Secretariat).

11. Pursuant to §28.1.3 of PO1, there will be a joint Hearing on Bifurcation in ICSID Case No. ARB(AF)/23/1, ICSID Case No. ARB/23/48, and ICSID Case No. ARB/23/49.

**B. ORDER OF PROCEEDING AND SCHEDULE**

12. The Hearing on Bifurcation will commence at 9:30 a.m. CET and end by approximately 5:00 p.m. CET.
13. The order of proceeding and structure of the Hearing on Bifurcation will be as indicated in the Hearing Agenda set forth in **Annex A**.
14. The Tribunal has discretion to adjust the Hearing Agenda as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

**C. TIME ALLOCATION**

15. In accordance with §22.5 of PO1, the Hearing will proceed on the principle that the Parties should have equal time to present their case, subject to the Tribunal's discretion taking into account all the relevant circumstances. The calculation of the Parties' total allocation of time excludes the scheduled lunch and coffee breaks.
16. Time used by the Parties in oral argument shall be attributable to the Party making such argument.
17. Subject to the Tribunal's control, Tribunal questions to counsel, including time spent by the relevant individual in responding to such questions, will be allocated to reserved Tribunal time, as will all time spent on housekeeping and procedural discussions.
18. The Secretary of the Tribunal will keep the time using the chess-clock method and advise the Parties of the total daily time used at the lunch break and at the end of the hearing day.
19. The Tribunal emphasizes that the Parties are expected to use the hearing day 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.

#### **D. HEARING PARTICIPANTS**

20. Each Party shall provide its initial list of Hearing Participants (“**List of Participants**”) on 3 March 2025, using the format provided in **Annex B**. Each Party may amend this list by no later than 12 March 2025, *i.e.*, one week prior to the start date of the Hearing. The List of Participants shall: (i) include the name, e-mail and/or telephone number; that each participant connecting remotely will use in the videoconference; (ii) they shall designate any participant connecting remotely as a “Passive Participant”; (iii) indicate the location from which any participant connecting remotely will join the videoconference; and (iv) indicate if several remote participants will use one and the same camera/connection.
21. Only persons on the final List of Hearing Participants, as circulated by the Secretary of the Tribunal, can access the Hearing rooms.

#### **E. DOCUMENTS FOR USE AT THE HEARING**

##### **1. Electronic Presentation of Evidence**

22. Each Party shall designate a member of its team to run electronic presentation of demonstratives and evidence to the participants in the Hearing *via* screens in the hearing room.
23. Documents that do not form part of the record may not be presented at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal.

##### **2. PowerPoint Slides and Demonstrative Exhibits**

24. The Parties may use PowerPoint or other slide presentations for their oral statements. In such case, the Parties shall provide electronic copies of any PowerPoints or similar presentations by email to all other participants (including the other Party, the Members of the Tribunal, the Tribunal Secretary, the Assistant to the Tribunal, and the court reporter, simultaneously by 7:30 a.m. CET on 19 March 2025.
25. In the event the Parties' presentations incorporate demonstrative exhibits, or should the Parties intend to use demonstrative exhibits independently, those demonstrative exhibits shall be used in accordance with §§17.8-17.10 of PO1 (reproduced below) with certain adjustments in paragraph 17.9, *infra*:

- 17.8. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record.
- 17.9. An electronic copy of each demonstrative exhibit (including specific PowerPoint slides containing demonstrative exhibits), shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunals, the Tribunal Secretary, to the court reporter simultaneously by 9:30 a.m. CET of the previous day of its intended use.
- 17.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.
26. PowerPoint presentations and demonstrative exhibits shall be distributed in hard copy to the other Party (3 copies), the Tribunal Members (3 copies), the Tribunal Secretary (1 copy), the Assistant to the President to the Tribunal (1 copy), and to the court reporter (1 copy) prior to use.
27. The Parties should, insofar as possible, circulate any speaking notes to the court reporter prior to the start of each intervention. These notes should be emailed directly to the court reporter and shall be treated as confidential information. The Secretariat shall provide the court reporter's email address to the Parties at least 24 hours in advance of the Hearing.

**F. RECORDING AND TRANSCRIPTION**

28. The provision of §23.1 of PO1 concerning the recording of the Hearing (reproduced below) applies.
- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.
29. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.

30. Except for the court reporter who will make his or her own audio recording of the Hearing, attendees will not otherwise make any audio or video record of the Hearing or any part of it.
31. The provisions of §23.2 and §23.3 of PO1 concerning the transcripts of the Hearing (reproduced below) apply with certain adjustments in paragraph 23.3 *infra*.
- 23.2. Verbatim transcript(s) in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 23.3. The Parties shall agree on any corrections to the transcripts within 15 days of the later of the dates of the receipt of the sound recordings and transcripts. 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 by the court reporter in the revised transcripts.
32. Real-Time transcription services in English will be provided by ██████████ (the “**court reporter**”). The court reporter may seek to clarify the record from time to time during the course of the Hearing.
33. The provision of §46 of PO2 concerning the publication of transcripts and recordings of the Hearing (reproduced below) applies.
46. Transcripts and recordings of hearings shall not be published by ICSID, unless both Parties agree otherwise no later than 30 days from the time limit for corrections to a transcript.

**G. POST-HEARING SUBMISSIONS AND STATEMENT OF COSTS**

34. The provisions of §24.1 and §24.2 of PO1 concerning post-hearing submissions and the statement of costs (reproduced below) apply.
- 24.1. 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.



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

#### **H. PUBLIC ACCESS TO THE HEARING**

35. The provision of §17 of Procedural Order No. 2 (“**PO2**”) (reproduced below) applies.

17. Hearings shall not be open to the public unless the Parties agree otherwise at the latest by two months before the hearing. If the Parties agree that the hearings shall be open to the public, the Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information discussed during the hearing at the latest at the pre-hearing organizational conference.

36. Pursuant to §17 of PO2 and the correspondence between the Tribunal and the Parties between 15 January and 21 January 2025, the Hearing on Bifurcation shall be closed to the public.

#### **I. GENERAL PROVISIONS**

##### **1. Reservation of Immunities**

37. Nothing in this Order shall constitute or be considered to be a limitation upon or a waiver of the privileges and immunities provided in Chapter I, Section 6 of the ICSID Convention, which privileges and immunities are specifically reserved.

##### **2. Confidentiality**

38. Participants in the Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality including those under PO2. All participants providing services to facilitate the Hearing 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.

##### **3. Data Privacy**

39. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the Hearing, 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.

On behalf of the Tribunal,

[signed]

Cavinder Bull S.C.  
President of the Tribunal  
Date: 13 February 2025

**ANNEX A**  
**HEARING AGENDA**

<i>Hour</i>	<i>Duration</i> (# hours/min.)	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>		
<b>09:30 AM – 09:45 AM</b>	15 mins	<b>Housekeeping</b>
<b>09:45 AM – 10:45 PM</b>	1 hr	<b>Respondent’s Oral Argument</b>
<b>10:45 AM</b>	15 mins	<b>Break</b>
<b>11:00 AM – 12:00 PM</b>	1 hr	<b>Claimants’ Oral Argument</b>
<b>12:00 PM</b>	90 mins	<b>Lunch Break</b>
<b>01:30 PM – 02:00 PM</b>	30 mins	<b>Respondent’s Rebuttal</b>
<b>02:00 PM</b>	15mins	<b>Break</b>
<b>02:15 PM – 02:45 PM</b>	30 mins	<b>Claimants’ Rebuttal</b>
<b>02:45 PM</b>	15 mins	<b>Break</b>
<b>03:00 PM – 03:40 PM</b>	40 mins	<b>Tribunal’s questions</b>
<b>03:40 PM – 03:55 PM</b>	15 mins	<b>Procedural Discussion and Closing</b>

**ANNEX B  
LIST OF PARTICIPANTS<sup>1</sup>**

<b>TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Mr. Cavinder Bull S.C	A	President		Email: Phone:
T	[T] – Judge O. Thomas Johnson	A	Co-arbitrator		Email: Phone:
T	[T] – Prof. Jorge E. Viñuales	A	Co-arbitrator		Email: Phone:

<b>ICSID SECRETARIAT</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Ms. Aurélia Antonietti	A	Secretary of the Tribunal		Email: ████████████████████
T	[T] – Ms. Ayong Lim	P	ICSID Secretariat	Washington D.C.	Email : ████████████████████
T	[T] – Ms. Marine Chepda	P	ICSID Secretariat	Office Washington D.C.	Email : ████████████████████

<b>ASSISTANT TO THE PRESIDENT OF THE TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Ms. Elisabeth Liang	A	Assistant to the President of the Tribunal		Email: Phone:

<sup>1</sup> Use “A” (Active Participants) / “P” (Passive Participants).

<b>CLAIMANTS</b>					
Room	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>				
C	[C] –	A	Claimants		Email: Phone:
C	[C] –	A	Claimants		Email: Phone :
	<i>Party Representative:</i>				
C	[C] –	P	Party Representative		Email: Phone:

<b>RESPONDENTS</b>					
Room	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>				
R	[R] –	A	Respondents		
R	[R] –	A	Respondents		
	<i>Party Representatives:</i>				
R	[R] –	P	Party Representative		Email: Phone:

<b>COURT REPORTER</b>				
Room	Name and Contact	Role	Affiliation	Location of Connection (if remote)
N/A	[TRA] – ██████████ ████████████████████	P	██████ ██████	