

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera  
Arbitration Center LLC**

**v.**

**Republic of Honduras**

**(ICSID Case No. ARB/23/2)**

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**PROCEDURAL ORDER No. 5**

***Members of the Tribunal***

Prof. Dr. Juan Fernández-Armesto, President of the Tribunal

Mr. David W. Rivkin, Arbitrator

Prof. Raúl E. Vinuesa, Arbitrator

***Secretary of the Tribunal***

Mr. Marco Tulio Montañés-Rumayor

***Assistant of the Tribunal***

Mr. Antonio Gordillo

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14 May 2025

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## **Introduction**

On 29 January 2024, the Tribunal was constituted pursuant to Article 10.19 of the Dominican Republic-Central America-United States of America Free Trade Agreement [“CAFTA-DR”].

On 31 January 2024, the Tribunal proposed to hold the first session with the Parties by video conference on 25 March 2024 pursuant to ICSID Arbitration Rule 29 [“**First Session**”]. On the same date, Claimants confirmed being available for the First Session. On 6 February 2024, Respondent informed the Tribunal that it was unavailable.

On 13 February 2024, after consulting again with the Parties regarding their availabilities, the Tribunal fixed 18 April 2024 as the date for the First Session.

On 19 February 2024, Respondent filed a proposal for disqualification and the proceeding was suspended. Further to written submissions by the Parties, the proposal for disqualification was declined by the Chair of the Administrative Council and the proceeding was resumed on 7 August 2024.

On 21 August 2024, the Tribunal rescheduled the First Session for 9 September 2024.

On 26 August 2024, Claimants proposed to hold the First Session on 16 September 2024.

On 27 August 2024, Respondent informed the Tribunal that it would be filing a preliminary objection under Article 10.20.5 of CAFTA-DR [“**Preliminary Objection**”] by the end of that week. It also stated that it would be available for a procedural conference the following week.

Also on 27 August 2024, Claimants stated that: “[t]o ensure an orderly and efficient proceeding, Claimants consider that it is important for the procedural rules governing the proceedings to be agreed and established, including for example those applicable to the submission of pleadings, exhibits, and legal authorities, the language of proceedings, and other procedural logistics. In light of Respondent’s communication [...] Claimants respectfully request that the Tribunal circulate the draft Procedural Order No. 1 as soon as possible.”

On 30 August 2024, Respondent filed its Preliminary Objection.

On 4 September 2024, the Tribunal suspended the proceeding on the merits pursuant to Article 10.20.5 of CAFTA-DR.

On 9 September 2024, ICSID circulated a draft Procedural Order No. 1 to the Parties for their comments, which it received on 13 September 2024.

On 16-17 September 2024, the Tribunal held its First Session solely among the Tribunal Members based on the Parties’ written submissions.

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On 19 September 2024, the Tribunal issued Procedural Order No. 1 [**“PO1”**], providing for the rules which governed the preliminary phase of the arbitration [**“Preliminary Phase”**]. PO1 stated that, “[i]f the case continues after the Preliminary Phase, a further Procedural Order will be issued for the remainder of the proceedings.”

On 26 February 2025, the Tribunal issued its Decision on Respondent’s Preliminary Objections under Article 10.20.5 of CAFTA-DR. In its decision, the Tribunal rejected Respondent’s Preliminary Objection and ordered the continuation of the proceedings.

On 10 March 2025, the Tribunal Secretary circulated to the Parties a draft Procedural Order No. 5 with the proposed rules for the remainder of the proceedings.

On 2 April 2025, the Parties submitted their comments on the draft Procedural Order No. 5, indicating the items on which they agreed and their respective positions regarding the items on which they disagreed.

On 7 May 2025, the Tribunal held a session by video conference with the Parties.

Having considered the Parties’ views, the Tribunal now issues the present Order:

**Order**

1. Applicable Arbitration Rules

*Convention Article 44; Arbitration Rule 1; CAFTA-DR Article 10.16.5*

1.1. This arbitration is conducted in accordance with the ICSID Arbitration Rules in force as of 1 July 2022; except to the extent modified and/or supplemented by CAFTA-DR.

2. Constitution of the Tribunal and Declarations of the Members of the Tribunal

*Arbitration Rule 21; CAFTA-DR Article 10.19*

2.1. The Tribunal was constituted on 29 January 2024 in accordance with Article 10.19 of CAFTA-DR.

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2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19. Copies of these declarations were distributed to the Parties by the ICSID Secretariat as follows:

- Mr. David W. Rivkin's declarations and statements were transmitted to the Parties on 20 April 2023 and 29 February 2024;
- Prof. Raúl E. Vinuesa's declaration and accompanying statement were transmitted to the Parties on 15 November 2023; and
- Prof. Juan Fernández-Armesto's declarations and statements were transmitted to the Parties on 29 January 2024, 7 February, and 19 August 2024.

2.3. On 19 February 2024, Respondent filed a proposal for the disqualification of Mr. Rivkin. On 7 August 2024, the proposal for disqualification was declined by the Chair of the Administrative Council.

2.4. 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 any Award, in accordance with ICSID Arbitration Rule 12(1). Likewise, the Members of the Tribunal have sufficient availability to comply with the time limits set out in Article 10.20.5 of CAFTA-DR.

2.5. The contact details for the Members of the Tribunal are:

Prof. Juan Fernández-Armesto  
Armesto & Asociados  
General Pardiñas, 102  
28006 Madrid - Spain  
Tel: (34) 91 562 16 25  
jfa@jfarmesto.com

Mr. David W. Rivkin  
45 Rockefeller Plaza  
20th floor  
New York NY 10111  
United States of America  
Tel: +1 212 332 8558  
dwrivkin@arbchambers.com

Prof. Raúl E. Vinuesa  
Alsina 2360  
San Isidro (1642)  
Buenos Aires, Argentina  
Tel: (54) 11 4723 6664  
raul.vinuesa43@gmail.com

3. Fees and expenses of the Members of the Tribunal  
*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 Member of the Tribunal 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.

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4. Presence and quorum  
*Arbitration Rule 33*

4.1. The participation of all of the Members of the Tribunal by any appropriate means of communications is required at the 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; CAFTA-DR Article 10.20.5*

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. Orders, decisions, and any Award may be made by any appropriate means of communication.

5.3. Orders, decisions, and any Award may be signed electronically.

5.4. The President is authorized to sign procedural orders and decisions 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 reconsideration of such decision by the full Tribunal at the request of either Party.

5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal 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 within the time limits prescribed by the ICSID Arbitration Rules and CAFTA-DR.

5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties. At any Party's request, a paper copy will be provided.

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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 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 and the co-arbitrators as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to reconsideration of such decision by the full Tribunal at the request of either Party.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 28*

- 7.1. The Secretary of the Tribunal is Mr. Marco Tulio Montañés-Rumayor, 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:

Marco Tulio Montañés-Rumayor  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433 U.S.A.  
Tel.: +12024581932  
Fax: + 1 (202) 522-2615  
Email: mmontanes@worldbank.org  
Paralegal name: Federico Salon-Kajganich  
Paralegal email: fsalonkajganich@worldbank.org  
ICSID case address: ARB/23/2@icsidcases.worldbank.org

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

Marco Tulio Montañés-Rumayor  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building) 3rd Floor  
Washington, D.C. 20036 U.S.A.  
Tel.: +1 (202) 458-1932

8. Assistant of the Tribunal

- 8.1. By communication of 9 September 2024, the Tribunal informed the Parties that it considered that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. The Tribunal proposed that Mr. Antonio Gordillo, an independent practitioner, be appointed as assistant to the Tribunal. Mr. Antonio Gordillo's *curriculum vitae* was distributed to the Parties.
- 8.2. As stated in the Tribunal's communication of 9 September 2024, the Assistant of the Tribunal shall work at all times under the specific instructions and continuous control and supervision of the Tribunal, and the Members of the Tribunal will not delegate to the Assistant of the Tribunal any of the duties and obligations incumbent on them as arbitrators.
- 8.3. The Assistant of the Tribunal shall undertake only such specific tasks as are assigned to him by the Tribunal, including:
- Attending meetings, hearings and deliberations, taking notes;
  - Summarizing submissions, reviewing authorities, conducting legal research, writing notes or memoranda on factual and legal issues, and preparing preliminary drafts of decisions or sections of awards, under the specific instruction and continuous control and supervision of the Tribunal.
- 8.4. The Tribunal shall ensure that the Assistant of the Tribunal does not duplicate the tasks of the ICSID Secretariat.
- 8.5. The Assistant of the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Tribunal, and shall sign a declaration to that effect.
- 8.6. The Parties received the Assistant's declaration of independence and impartiality on 9 September 2024. The Parties consented to the appointment of Mr. Antonio Gordillo as Assistant to the Tribunal on the terms set out above by communication of 13 September 2024. With the express agreement of the Parties, the Tribunal hereby appoints Mr. Antonio Gordillo as Assistant of the Tribunal.

- 8.7. Mr. Gordillo's contact details are the following:

101, rue Saint-Dominique  
75007 Paris, France  
Tel.: +33 616 97 41 29  
Email: agf@jfarmesto.com

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- 8.8. The Assistant of the Tribunal will be remunerated directly by the President of the Tribunal, without causing any additional cost to the Parties, save that the Assistant of the Tribunal will be entitled to reimbursement of reasonable expenses related to any hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.
- 8.9. The Tribunal may remove the Assistant of the Tribunal at its discretion. The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

9. Representation of the Parties  
*Arbitration Rule 2*

- 9.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such designation.

For Claimants

Ms. Ank Santens  
Ms. Bianca McDonnell  
Mr. Ricardo Cruzat Reyes  
Ms. Marta González-Ruano Calles  
White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
United States of America

Mr. Francisco X. Jijón  
White & Case LLP  
701 Thirteenth St. NW  
Washington, DC 20005  
United States of America

For Respondent

Procurador Manuel Antonio Díaz Galeas  
Abg. Nelson Gerardo Molina Flores  
Abg. Marcio Ariel Canaca Curry  
Edificio PGR, Residencial El  
Trapiche Tegucigalpa, M.D.C  
Honduras

Mr. Kenneth Juan Figueroa  
Mr. Andrés Felipe Esteban  
Foley Hoag LLP  
1717 K Street NW, Suite 1200  
Washington, D.C. 20006  
United States of America

Mr. Rodrigo Gil Ljubetic  
Mr. Francisco Grob Duhalde  
Mr. Matías Toselli  
Mr. Mathias Lehmann  
Mr. Alain Drouilly  
Ms. Lucero Díaz  
Jana & Gil Dispute Resolution  
Av. Andrés Bello 2711, 9th Floor  
Las Condes, 7550611  
Santiago, Chile

- 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

*Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50; CAFTA-DR Article 10.26.1*

- 10.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the decision of the Tribunal as to the allocation of costs.

- 10.2. Following registration of the Request for Arbitration on 7 February 2023, ICSID requested that Claimants pay US\$200,000.00. ICSID received Claimants' payment on 13 March 2023. Upon the constitution of the Tribunal, by letters of 31 January 2024 and 4 March 2024, ICSID requested that Respondent pay US\$200,000.00. ICSID received Respondent's payment on 12 March 2024. On 27 November 2024, ICSID requested a second advance payment of US\$200,000.00 per Party. On 12 December 2024, ICSID received Claimants' second advance payment.

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

11. Place of proceeding

*Convention Articles 62 and 63; Arbitration Rule 32; CAFTA-DR Article 10.20.1*

- 11.1. Washington, DC shall be the place of the proceeding.

- 11.2. The Tribunal may hold hearings at any other place that it considers appropriate after consultation with the Parties. The method of holding a hearing will be determined in accordance with Section 22.

- 11.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.

12. Procedural languages, translation and interpretation

*Administrative and Financial Regulation 32; Arbitration Rule 7*

- 12.1. English and Spanish are the procedural languages of the arbitration.

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***For Documents and Communications***

- 12.2. The Tribunal and the ICSID Secretariat may communicate with the Parties in either procedural language.
- 12.3. Any document (e.g., written requests, applications, pleadings, expert opinions, witness statements, or supporting documents) may be filed in either procedural language. However, the Parties shall submit a translation into the other procedural language of all documents and only the relevant part of the supporting documents (exhibits and legal authorities) within 14 days following the relevant filing date for pleadings or within seven days following the relevant filing date for other written submissions, including submissions related to document production and submissions relating to *amicus curiae* submissions. The Tribunal may order a Party to provide a fuller or a complete translation of the supporting documents.
- 12.4. Any documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal orders a Party to provide a fuller or a complete translation.
- 12.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 12.6. Documents exchanged between the Parties pursuant to Section 16 below (Production of Documents) may be produced in the original language and need not be translated unless and until they are submitted into the record.
- 12.7. In the event that there is an inconsistency between the original language and the translation of pleadings, witness statements, expert reports, and supporting documents, the original language shall prevail.
- 12.8. A party may submit better or further translations of a document or relevant parts of a document until two weeks before the hearing, and may request leave at the hearing to file further translations 24 hours before their use at the hearing.

***For Hearing***

- 12.9. The Tribunal will, in consultation with the Parties, determine whether simultaneous interpretation into both procedural languages will be provided during the hearing.
- 12.10. 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.

***For Tribunal's Rulings***

- 12.11. The Tribunal may initially make any order or decision in either language and subsequently issue that order or decision in the other language. Both language versions shall be equally authentic.
- 12.12. The Tribunal shall render the award in English and Spanish simultaneously. Both language versions shall be equally authentic.

**13. Routing of communications**

*Arbitration Rule 6*

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Secretary of the Tribunal, the Tribunal, and the Assistant.
- 13.2. Electronic versions of communications to be filed simultaneously (by order of the Tribunal or agreement of the Parties) shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing Party, the Tribunal, and the Assistant.
- 13.3. The Secretary of the Tribunal shall not be copied on 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. Juan Fernández-Armesto  
jfa@jfarmesto.com

Mr. David W. Rivkin  
dwrivkin@arbchambers.com

Prof. Raúl E. Vinuesa  
raul.vinuesa43@gmail.com

**14. Number of copies and method of filing of pleadings and other written submissions**

*Arbitration Rules 4, 5 and 9*

- 14.1. For the avoidance of doubt, the rules set forth in this section shall apply to written submissions contemplated in **Annex B** and also to other written submissions not contemplated in **Annex B** that the Parties may submit in the future.
- 14.2. By the relevant filing date, the Parties shall submit by email to the Secretary of the Tribunal and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation (both exhibits and legal authorities).<sup>1</sup>

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

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- 14.3. Within three days after the relevant filing date, the Parties shall upload to the file sharing platform that has been created by ICSID for purposes of this case:<sup>2</sup>
- 14.3.1. an electronic version of the pleading, witness statements, expert reports; and
  - 14.3.2. all the supporting documentation and an updated index.
- 14.4. Within 14 days after the relevant filing date for pleadings, or within seven days after the relevant filing date for other written submissions, including submissions related to document production and submissions relating to *amicus curiae* submissions, the Parties shall upload translations in accordance with paragraph 14.3 to the file sharing platform.

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- 14.5. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (*i.e.*, OCR PDF or Word). Any spreadsheet or excel table that is created for the purposes of the arbitration shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source.
- 14.6. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted, and the language of the document, and shall follow the naming conventions contained in **Annex A**.
- 14.7. At the conclusion of the written phase, on a date to be determined by the Tribunal, or at any other time the Tribunal or the ICSID Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.<sup>3</sup>
- 14.8. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Secretary of the Tribunal by email.

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<sup>2</sup> Supporting documentation shall be uploaded as individual files, not in .zip format.

<sup>3</sup> To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

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14.9. A filing shall be deemed timely if sent by a Party by 11:59 PM, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday or a federal holiday in the United States or a national holiday in Honduras,<sup>4</sup> the relevant date is the subsequent business day.

15. Number, sequence of and limitations to pleadings – Procedural Timetable  
*Arbitration Rule 30; CAFTA-DR Article 10.20*

15.1. The proceeding will be conducted in accordance with the timetable in **Annex B**.

15.2. The first round of pleadings (*i.e.*, the Memorial and Counter-Memorial, and in the event of bifurcation, the Memorial and Counter-Memorial on Jurisdictional Objections) shall be limited to 300 double-spaced pages. The Parties and the Tribunal shall discuss a page limit for the second round of pleadings (*i.e.*, the Reply and Rejoinder, and in the event of bifurcation, the Reply and Rejoinder on Jurisdictional Objections) promptly following the submission of the Counter-Memorial.

16. Production of documents

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

16.1. The Parties and the Tribunal agree to be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) [**IBA Rules**] for the production of documents in this arbitration.

16.2. The “Definitions” section of the IBA Rules includes the following definition of document:

“‘*Document*’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”.

16.3. The same definition will be used in this Order and must be used by the Parties in their requests for document production.

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<sup>4</sup> For reference, federal holidays in the United States are New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day. National holidays in Honduras are Año Nuevo, Jueves Santo, Viernes Santo, Sábado Santo, Día de las Américas, Día del trabajo, Día de la Independencia, Asueto, Día del Soldado, Día de la Raza, Día de las fuerzas armadas, Día de Navidad.

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- 16.4. Within the time limit set in the Procedural Timetable attached as **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. The Parties shall endeavor to make a reasonable number of requests, complying carefully with the requirements set forth in Section 16.
- 16.5. At the date established in **Annex B**, the Parties shall submit a Document Production Schedule [**"DPS"**], using the draft model attached hereto as **Annex C**. For each Document (or category of Documents) a single Document Request shall be completed. Document Requests shall be numbered sequentially, and the Parties shall adhere to the word limit defined for each cell.
- 16.6. Each Party will deliver its DPS directly to the counterparty, without copying the Tribunal, in both Word and PDF format, and each DPS shall contain:
- 16.6.1. Identification of each Document or description of a narrow and specific category<sup>5</sup> [**"R1"**].
- 16.6.1.1. If the request is for a single Document, a description of each requested Document sufficient to identify it.
- 16.6.1.2. If the request is for a category of Documents, the following additional requirements must be met:
- A description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist (in the case of Documents maintained in electronic form, the requesting party is encouraged to identify the specific individuals who have or had these Documents in their control, custody or possession; specific search terms; specific files, servers and email accounts where the search could be performed; and any other mean of searching for such Documents in an efficient and economical manner);
  - Circumstantial evidence of the putative existence of the category must be marshalled;
  - The name of the person, authority or entity which has issued the category of Documents must be provided; and

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<sup>5</sup> Art. 3.3(a)(i) and (ii) IBA Rules.

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- The initial and the final date of the period during which the Documents belonging to the category were issued must be identified.

16.6.1.3. Any request which does not comply with these requirements shall be rejected *in limine*.

16.6.2. A statement as to how the Documents requested are relevant to the case and material to its outcome and the identification of the specific paragraph in the submission for which evidentiary support by way of document production is requested<sup>6</sup> [“**R2**”].

16.6.2.1. Any request which does not comply with this requirement shall be rejected *in limine*.

16.6.2.2. Documents referred to in other Documents that have already been submitted will, as a general rule, be considered relevant. Documents referenced in any submission by a Party (such as memorials, witness statements and expert reports) shall be exhibited with that submission so that it will not be necessary to request such Documents in a DPS.

16.6.2.3. It is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof, since failure to discharge such burden will by itself lead to dismissal. Production with the purpose of disproving the counterparty's allegations will only be ordered in exceptional circumstances.

16.6.2.4. Any analysis by the Tribunal regarding the relevance and materiality of requested Documents is made *prima facie*, without prejudging any final decision that the Tribunal may adopt once all evidence has been marshalled.

16.6.3. A statement that the Documents requested are not in the possession, custody, or control of the requesting party or a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such Documents; and a statement of the reasons why the requesting party assumes the Documents requested are in the possession, custody, or control of another party<sup>7</sup> [“**R3**”].

16.6.3.1. The request will be rejected if the Documents are located in the premises or under the control of a third party, to which the requesting Party has access or control. Similarly, a Document shall be considered to be in possession of the requesting Party if it is already on the record of the

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<sup>6</sup> Arts. 3.3(b) and 9.2(a) IBA Rules.

<sup>7</sup> Art. 3.3(c)(i) and (ii) IBA Rules.

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arbitration or if it is publicly available (and the counterparty is not in a significantly more favourable position to obtain such Document).

16.6.3.2. The request will be rejected if the Documents are under possession, custody or control of a third party to which the requested Party has no access or control. On the contrary, Documents which are located in the premises or under the control of a third party to which the requested Party has access, shall generally be considered to be in its “possession, custody or control”, unless otherwise proven by the requested Party.

16.7. The IBA Rules provide for a number of objections to the production of Documents. Further to alleging failure to satisfy any of the requirements previously established in Sections 16.6.1, 16.6.2, and 16.6.3, the requested Party may object to a request for production in the following cases<sup>8</sup>;

16.7.1. Legal or settlement privilege<sup>9</sup> [“O1”]:

16.7.1.1. A requested Party may invoke legal privilege with regards to Documents prepared by or addressed to counsel, containing or requesting legal advice, and given or received with the expectation that such Documents would be kept confidential.

16.7.1.2. In general, a Document needs to meet the following requirements in order to be granted special protection under legal privilege<sup>10</sup>:

- The Document has to be drafted by or addressed to a lawyer acting in his or her capacity as lawyer;
- A relationship based on trust must exist as between the lawyer (in-house or external legal advisor) and the client;
- The Document has to be elaborated for the purpose of requesting or giving legal advice; and
- The client and the lawyer, when requesting or giving legal advice, must have acted with the expectation that in a contentious situation the advice would be kept confidential.

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<sup>8</sup> Art. 3.5 IBA Rules.

<sup>9</sup> Art. 9.2(b) IBA Rules.

<sup>10</sup> *Vito G. Gallo v. The Government of Canada*, NAFTA-UNCITRAL, Procedural Order No. 3, April 8, 2009, para. 47.

- 16.7.1.3. A requested Party may also invoke privilege regarding Documents prepared in connection with settlement negotiations<sup>11</sup>, including:
- Oral or written statements submitted to the other side during negotiations,
  - Internal Documents prepared specifically for negotiations, and
  - Drafts or final versions of any settlement agreements.
- 16.7.1.4. Documents prepared in the context of this arbitration by or for, and any communications with, any expert consulted or engaged for purposes of the arbitration shall not be subject to document production.
- 16.7.1.5. If the requested Party raises an objection under this Section 16.7 and, if challenged, the Tribunal confirms it, the requested Party shall deliver the requested Documents with the privileged information redacted.
- 16.7.1.6. In those cases in which the asserted privilege cannot be adequately safeguarded through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a “**Privilege Log**”, drafted in accordance with **Annex D**,
- Identifying in chronological order the date, the issuer (specifying whether he/she is an attorney of the party) and the recipient of the Document,
  - Providing a summary description of the Document, plus
  - An explanation of the reasons which justify that the Document be withheld in full.
- 16.7.1.7. Any discussion will be settled by the Tribunal.
- 16.7.2. Production is unreasonably burdensome<sup>12</sup> [“**O2**”].
- 16.7.2.1. The requested Party may object to the production of Documents on the basis that it would impose an unreasonable burden. In making its decision, the Tribunal will weigh time and cost of producing the Documents against their expected evidentiary value. The Tribunal may also reduce the scope of production to avoid unreasonable burden.

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<sup>11</sup> Art. 9.4(b) IBA Rules.

<sup>12</sup> Art. 9.2(c) IBA Rules.

16.7.3. Loss, destruction or inexistence<sup>13</sup> [“O3”].

16.7.3.1. The requested Party may object to the production of Documents if it shows, with reasonable likelihood, that they have been lost or destroyed, or do not exist for other reasons.

16.7.3.2. In such case, the Tribunal shall take note of the requested Party's declaration. The requesting Party may make the inferences it deems appropriate in its following written submission.

16.7.4. Technical or commercial confidentiality<sup>14</sup> [“O4”].

16.7.4.1. A Party may request that a Document should not be produced, alleging compelling grounds of technical or commercial confidentiality.

16.7.4.2. If the requested Party raises an objection under this Section 16.7.4 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect the confidentiality of the Documents. Absent such agreement, the requested Party shall deliver the Documents with the confidential information redacted.

16.7.4.3. In those cases in which the confidential information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with Annex D.

16.7.4.4. Any discussion will be settled by the Tribunal.

16.7.5. Special political or institutional sensitivity<sup>15</sup> [“O5”].

16.7.5.1. A Party may request that a Document should not be produced, alleging compelling grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution).

16.7.5.2. If the requested Party raises an objection under this Section 16.7.5 and, if challenged, the Tribunal confirms it, the requested Party may request a reasonable confidentiality undertaking from the counterparty, to protect

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<sup>13</sup> Art. 9.2(d) IBA Rules.

<sup>14</sup> Art. 9.2(e) IBA Rules.

<sup>15</sup> Art. 9.2(f) IBA Rules.

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the sensitive information. Absent such agreement, the requested Party shall deliver the Documents with the political or institutionally sensitive information redacted.

16.7.5.3. In those cases in which the confidential information cannot be adequately safeguarded by a confidentiality undertaking or through redaction, the requested Party, instead of delivery, may choose to disclose the existence and characteristics of the Document in a Privilege Log, drafted in accordance with Annex D.

16.7.5.4. Any discussion will be settled by the Tribunal.

16.7.6. Production would affect the fairness or equality of the procedure<sup>16</sup> [**“O6”**].

16.7.6.1. Documents will not be ordered to be produced when the Tribunal finds considerations of procedural economy, proportionality, fairness or equality of the Parties that it determines to be compelling.

16.8. The other Party shall return directly to the counterparty the initial DPS (without copying the Tribunal), indicating which requests it will voluntarily comply with, and which requests it rejects [**“DPS Response”**]. If a Party does not object to the production of a Document or category of Documents within its possession, custody or control, it shall so state in its response and produce these Documents to the requesting Party within the time limits set out in **Annex B** to this Order. If the requested Party objects to production, it shall argue that such requests do not meet any or some of the requirements set forth in Section 16.6 or raise one or more of the objections stated in Section 16.7, within the time limits set out in **Annex B** to this Order. In objecting to production, the requested Party may indicate whether it would be willing to produce a Document or category of Documents that would, in its appreciation, fulfill the purpose of the request. If either Party so requests within three days of exchange of the responses and objections to Document requests, the Parties shall hold a conference call within one week of such exchange with a view to seeking to resolve any issues before seeking an order of production from the Tribunal.

16.9. All foregoing exchanges between the Parties during document production shall be made simultaneously and shall not be sent to the Tribunal, the Assistant, or Tribunal Secretary. The requesting Party shall include any reply to objection(s) in the same DPS Response [**“DPS Response to Objections”**], and if it seeks an order of production from the Tribunal will send the DPS to the Tribunal with a request for

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<sup>16</sup> Art. 9.2(g) IBA Rules.

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an order of production for the relevant Document requests, all within the time limits set out in **Annex B**.

- 16.10. For the avoidance of doubt, the requesting Party shall refrain from replying to the arguments raised by the requested Party regarding Section 16.6.
- 16.11. When submitting the DPS to the Tribunal, the Parties are kindly requested to refrain from making additional submissions. Parties are expected to strictly adhere to the rules set out in the present Order.
- 16.12. Where a Party objects to the production of certain Documents and the requesting Party seeks an order of production, the Tribunal shall make its best efforts to rule on the objections within the time limit set out in **Annex B** to this Order. Such decision will be formalized in the requesting Party's DPS.
- 16.13. The Parties and the Tribunal may hold a conference call on the parties' objections to the Requests to Produce. The Tribunal may also invite the relevant parties to consult with each other with a view to resolving the objections.
- 16.14. A Party shall produce the Documents ordered by the Tribunal within the time limit set out in **Annex B** to this Order.
- 16.15. The Parties shall be under a continuous obligation to immediately produce responsive Documents that they have agreed or been ordered to produce even if they come into the Party's possession, custody or control after the time limit set out in **Annex B** to this Order.
- 16.16. On the same date, each Party will deliver to its counterparty and to the Tribunal, the following "**Affidavits**":
  - 16.16.1. A first Affidavit signed by the chief legal officer or other chief representative of such Party drafted in accordance with **Annex F**, and
  - 16.16.2. A second Affidavit signed by the head external legal counsel to such Party drafted in accordance with **Annex G**.
- 16.17. Should a Party fail to produce Documents as agreed or ordered by the Tribunal without good cause, the Tribunal may draw adverse inferences for such failure, either on its own motion or upon a reasoned application setting out the nature of the requested inference and its consequences on the relief sought. In deciding whether to draw adverse inferences, the Tribunal shall consider all circumstances, including the reasons advanced by a Party to explain its failure to produce any Documents. Likewise, if a Party absent satisfactory explanation fails to deliver any of the Affidavits, the Tribunal will make appropriate inferences.

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- 16.18. The Parties shall produce Documents under this section electronically through a file sharing platform in PDF or other similar format agreed by the Parties and such Documents shall not be made available to the Tribunal, the Secretary, or the Assistant except as exhibits. On the date of production, each Party shall provide the other Party with a list of the documents that it is producing and the Document request number(s) to which each Document is responsive.
- 16.19. Documents produced by any Party during the document production phase, voluntarily or following an order from the Tribunal, will be produced in their original language and do not have to be translated into English by the producing Party. Documents shared under this section shall not be part of the record unless one of the Parties files them as exhibits.
- 16.20. Sections 16.8 and 16.9 shall apply if the requested Party has raised, and the Tribunal has accepted, Objections O4 or O5 with regard to certain Documents, and the Parties have reached a confidentiality agreement.
- 16.21. Absent such agreement, or if Objection O1 has been pleaded and accepted, the requested Party shall deliver the Documents with the privileged information redacted.
- 16.22. In its decision on costs, the Tribunal will make a special allocation of costs with regard to the Document production exercise, taking into consideration the reasonableness of the Requests and Objections, each Party's willingness to produce the Documents under its control and the relative success of each Party.
- 16.23. Parties shall identify separately in their statements of costs the costs incurred in preparing their DPS Requests and DPS Responses, and the costs incurred in the search and delivery of the requested Documents.

17. Submission of documents

*Convention Article 44; Arbitration Rule 5*

- 17.1. The documents shall be submitted in the manner and form set forth in Section 14 above.
- 17.2. Neither Party shall be permitted to submit any documents or other evidence outside of the submissions agreed to in the Procedural Timetable attached as **Annex B** and may not rely on any such documents or other evidence unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by written observations from the other Party.

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- 17.2.1. Should a Party request leave to file additional or responsive evidence, that Party may not annex the evidence that it seeks to file to its request.
- 17.2.2. If the Tribunal grants such an application for submission of additional evidence, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such evidence and, if appropriate, to submit further evidence in response.
- 17.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.4. Evidence shall be submitted in the following form:
  - 17.4.1. The number of each exhibit containing a document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CLA-” for legal exhibits containing authorities etc. The number for each exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RLA-” for legal exhibits containing authorities, etc.
  - 17.4.2. Each document marshalled shall have an individual exhibit number. The Parties should not tender multiple documents under one exhibit number except exceptionally if the intent is to submit a compilation of documents to support a point.
  - 17.4.3. Exhibits and legal authorities shall be submitted in PDF format and shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CLA-001” and “RLA-001” respectively. The numbering shall also indicate the language of the document e.g., C-0001-ENG for a document submitted in English (original or translation) and C-0001-SPA for a document submitted in Spanish (original or translation). The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with Section 17.4.4.
  - 17.4.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
  - 17.4.5. Exhibits should be submitted in a searchable electronic file format, whenever possible.
- 17.5. 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.

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- 17.6. The Parties shall file all documents only once. If a document has been previously submitted, it will be referenced by the number under which it was first submitted, unless there is a reason to resubmit the document (whether because, e.g., a larger portion of a book is submitted or a different or more comprehensive translation is submitted) in which case the document will be labeled “resubmitted” if resubmitted by the same Party or will be labeled with a new exhibit number if resubmitted by the other Party.
- 17.7. 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) at any hearing, provided that they (i) identify the source in the record from which the information is derived, and (ii) do not contain information that is not in the record.
- 17.8. An electronic copy of each demonstrative exhibit and of any PowerPoint slides 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 Tribunal, the Secretary of the Tribunal, the Assistant, the court reporter, and the interpreters as necessary before their use at a time to be determined in advance of the hearing.
- 17.9. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative and PowerPoint slides to the case folder in the BOX files sharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.
18. Witness statements and expert reports  
*Convention Article 43(a); Arbitration Rules 38 and 39; CAFTA-DR Article 10.24*
- 18.1. Witness statements and expert reports, if any, shall be filed together with the Parties’ pleadings.
- 18.2. Neither Party shall be permitted to submit any testimony at the hearing that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by written observations from the other Party (following the procedure outlined in Section 17.2).
- 18.3. Each witness statement shall be signed and dated by the witness and include:
- 18.3.1. A disclosure statement detailing any past and present relations of the witness with any Party, counsel or Member of the Tribunal;
- 18.3.2. A photograph of the witness, if the witness so agrees;

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- 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' information as to those facts, sufficient to serve as that witness' 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);
  - 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; and
  - 18.3.7. An affirmation of the truth of the witness statement.
- 18.4. Witness statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them. It shall be improper for a Party, its officers, employees, legal advisors or other representatives to contact the other Party's witnesses.
- 18.6. Expert reports shall be dated and signed by the expert or experts and contain:
- 18.6.1. The full name of the expert;
  - 18.6.2. A photograph of the expert, if the expert so agrees;
  - 18.6.3. A disclosure statement detailing any past and present relations of the expert with any Party, counsel or Member of the Tribunal;
  - 18.6.4. A brief description of the expert's qualifications;
  - 18.6.5. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
  - 18.6.6. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
  - 18.6.7. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
  - 18.6.8. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
  - 18.6.9. The documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report (which may have

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their own sequential numbering); any spreadsheet or table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source;

18.6.10. An affirmation of his or her genuine belief in the opinions expressed in the report;

18.6.11. If more than one expert signed a report, each of them shall state the portion of the report for which he or she is responsible.

18.7. Expert reports shall be submitted in a searchable electronic file format and have consecutive numbering of pages, headings and paragraphs, as well as a detailed table of contents.

18.8. It shall be improper for a Party, its officers, employees, legal advisors or other representatives to contact the other Party's experts.

18.9. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts, after consultation with the Parties. This includes, but it is not limited to, the appointment of experts pursuant to CAFTA-DR Article 10.24.

19. Submissions by non-disputing parties

*CAFTA-DR Articles 10.20.2 and 10.21*

19.1. Pursuant to CAFTA-DR Article 10.20.2, a non-disputing CAFTA-DR party may make oral and written submissions to the Tribunal regarding the interpretation of CAFTA-DR.

19.2. Any non-disputing CAFTA-DR party's written submission shall be filed within the time limit established in **Annex B**. A non-disputing CAFTA-DR party intending to make an oral submission at the hearing shall notify the Tribunal of that intent within the time limit established in **Annex B**.

19.3. In accordance with CAFTA-DR Article 10.21, neither the disputing Parties nor the tribunal shall disclose to any non-disputing party or to the public any protected information.

20. Submissions by *amicus curiae*

*CAFTA-DR Article 10.20.3*

20.1. Pursuant to CAFTA-DR Article 10.20.3, the Tribunal has the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.

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- 20.2. Any application for leave to file an *amicus curiae* submission shall be filed within the time limit established in **Annex B**.
- 20.3. The procedure with respect to *amicus curiae* submissions shall be as follows:
- 20.3.1. A petition to make an *amicus curiae* submission shall be submitted in electronic format to the Tribunal Secretary and distributed to the Tribunal and the Parties.
- 20.3.2. A petition shall (i) be no more than 5 pages; (ii) be presented in English and Spanish; (iii) disclose any affiliation with the Parties; (iv) specify the interest the applicant has in the arbitration; and (v) identify the issues of fact or law to be addressed in a written submission and why the applicant can bring perspective or insight distinct from the Parties.
- 20.3.3. After providing the Parties an opportunity to comment on any *amicus curiae* petition, the Tribunal shall rule on its admissibility.
- 20.3.4. The written submission shall be in English and Spanish and shall not exceed 15 pages. The written submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.
- 20.4. The Parties will have an opportunity to comment on any *amicus curiae* submissions in subsequent pleadings. The Tribunal may consider such *amicus curiae* submissions, but it is not required to do so.

21. Pre-Hearing organizational meetings  
*Arbitration Rule 31*

- 21.1. At a date to be determined by the Tribunal, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing and any related organizational matters.
- 21.2. If necessary, a pre-hearing organizational meeting may be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a tele conference or video conference between the Tribunal, or, if the full Tribunal cannot attend, its President and the Parties, and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

22. Hearing

*Arbitration Rule 32; CAFTA-DR Article 10.21.2*

- 22.1. The oral procedure shall consist of a hearing for oral arguments and examination of witnesses and experts, if any.
- 22.2. The hearing shall take place on the dates set forth in **Annex B**. The Parties agree that the hearing dates should be fixed now, that there should be at least two months between the last pleading scheduled in Annex B and the start of the hearing, and that for now seven hearing days should be kept in reserve.
- 22.3. Pursuant to CAFTA-DR Article 10.21.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements. The Parties shall give the Tribunal advance notice prior to referencing protected information at the hearing. The Tribunal shall make appropriate arrangements to protect the information from disclosure.
- 22.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.

23. Preparation for the hearing

- 23.1. The two weeks prior to the hearing shall be considered preparation time for the Parties and the Tribunal. Therefore, during that period, no procedural incident will be admitted and will be considered rejected *a limine*. However, the Party may present such incident at the beginning of the hearing and the Tribunal will adopt the appropriate decision after hearing the counterparty.

24. Site Visit

*Arbitration Rule 40*

- 24.1. The Tribunal may intend to visit the place connected with the dispute prior to the hearing.
- 24.2. If the Tribunal decides to carry out a site visit, it will establish a protocol defining the scope of such visit, the procedure to be followed, the applicable time limits and other relevant terms.
- 24.3. The Parties have the right to participate in the site visit should it take place.

25. Recordings of hearing and sessions

*Arbitration Rule 29(4)(i)*

- 25.1. Recordings shall be made of the hearing and all sessions. The recordings shall be provided to the Parties and the Tribunal.
- 25.2. Verbatim transcripts in the procedural languages 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.
- 25.3. The Parties shall agree on any corrections to the transcripts within one month of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections will 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.
- 25.4. Recordings of hearings will be subject to the provisions detailed on Section 28 on transparency matters.

26. Post-hearing memorials and statements of costs

*Convention Article 44; Arbitration Rules 51*

- 26.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

27. Conduct of the arbitration

*Arbitration Rule 3*

- 27.1. The Tribunal and the Parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner, and the Parties will refrain from aggravating the dispute.

28. Transparency matters

*Convention Article 48(5), CAFTA-DR Article 10.21*

- 28.1. The provisions on “Transparency of Arbitral Proceedings” set out in Article 10.21 of CAFTA-DR continue to apply.
- 28.2. As agreed by the Parties, ICSID will continue to publish on its website the following documents pursuant to Article 10.21.1 of CAFTA-DR:
- (i) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Articles 10.20.2, 10.20.3 and 10.25 of CAFTA-DR;
  - (ii) minutes or transcripts of hearings of the tribunal, where available; and
  - (iii) orders, awards, and decisions of the tribunal.
- 28.3. Any “protected information” as defined in Article 10.28 of CAFTA-DR that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
- 28.3.1. Within 21 days from the date of a decision, order or Award, or a written submission (as defined in paragraph 28.2 above), or from the date of transmittal of the transcript, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers protected and may propose redactions.
  - 28.3.2. Absent such a notice, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with Article 10.21 of CAFTA-DR, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.
  - 28.3.3. Within 14 days of receipt of the notice referred to in paragraph 28.3.1 *supra*, the other Party may raise objections to the proposed redactions.
  - 28.3.4. If no objections are raised within the deadline established in paragraph 28.3.3, the Tribunal will authorize ICSID to publish the document at issue with the requested redactions.
  - 28.3.5. If objections are raised within the deadline established in paragraph 28.3.3, the Parties shall confer and seek to agree on redactions within 7 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.

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- 28.3.6. If objections remain unresolved after the 7 days deadline established in paragraph 28.3.5, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal within 3 days in the form of the Transparency Schedule set out in **Annex E** to this Order.
- 28.3.7. If information is to be redacted from a document in accordance with the above paragraphs, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.

29. Data privacy and cybersecurity

- 29.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 29.2. The Members of the Tribunal, 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.
- 29.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

On behalf of the Tribunal,

A large black rectangular redaction box covering the signature of Prof. Juan Fernández-Armesto.

Prof. Juan Fernández-Armesto  
President of the Tribunal

**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
<b>MAIN PLEADINGS</b>	<b>Title of Pleading–LANGUAGE</b>
	<i>Memorial on Jurisdiction-SPA</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-SPA</i>
	<i>Rejoinder on Quantum-ENG</i>
<b>SUPPORTING DOCUMENTATION</b>  Exhibits	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
	<i>R-0001-ENG</i>
<i>R-0002-SPA</i>	
Legal Authorities	<b>CLA-####–LANGUAGE</b>
	<b>RLA-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S LEGAL AUTHORITIES</b>
	<i>CLA-0001-ENG</i>
	<i>CLA-0002-SPA</i>
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>
	<i>RLA-0001-SPA</i>
<i>RLA-0002-ENG</i>	
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>

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	<i>Witness Statement-Name of Witness-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement- Name of Witness -Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<i>Expert Report-Name of Expert Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report- Name of Expert -Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>
	<i>Legal Opinion-Name of Expert -Counter-Memorial on the Merits-SPA</i>
	<i>Legal Opinion-Name of Expert -Rejoinder on the Merits-[Second Opinion]-SPA</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	<i>All exhibits and legal authorities should be numbered sequentially as mentioned above for exhibits and legal authorities</i>
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
<b>OTHER APPLICATIONS</b>	<b>Name of Application-[Party]-LANGUAGE</b>
	<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**

	<b>Procedural step</b>	<b>Responsible Entity</b>	<b>Interval<sup>17</sup></b>	<b>Date</b>
<b><i>Scenario 1: No request for bifurcation</i></b>				
1.	Memorial on the Merits	Claimants	25 weeks from Wednesday, 2 April 2025	Wednesday, 24 September 2025
2.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	25 weeks	Wednesday, 18 March 2026
3.	Document Production Requests	Claimants and Respondent	3 weeks	Wednesday, 8 April 2026
4.	Applications to Intervene as <i>Amicus Curiae</i> (if any)	<i>Amicus curiae</i> applicants	4 weeks from Step #2 (Counter-Memorial on the Merits)	Wednesday, 15 April 2026
5.	Responses to Document Production Requests	Claimants and Respondent	2 weeks from Step # 3 (Document Production Requests)	Wednesday, 22 April 2026
6.	Parties' Observations on Applications to Intervene as <i>Amicus Curiae</i>	Claimants and Respondent	2 weeks from Step # 4 (Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 29 April 2026
7.	Replies on Document Production Requests and Submission of Disputed Requests to the Tribunal	Claimants and Respondent	2 weeks from Step # 5 (Responses to Document Production Requests)	Wednesday, 6 May 2026

<sup>17</sup> Intervals run from the previous step unless otherwise indicated.

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8.	Tribunal's Decision on Applications to Intervene as <i>Amicus Curiae</i>	Tribunal	2 weeks from Step # 6 (Parties' Observations on Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 13 May 2026
9.	Voluntary Productions	Claimants and Respondent	3 weeks from Step # 5 (Responses to Document Production Requests)	Wednesday, 13 May 2026
10.	Decision on the Parties' Objections to Document Production Requests	Tribunal	2 weeks from Step # 7 (Submission of Disputed Document Requests to the Tribunal)	Wednesday, 20 May 2026
11.	Submissions by Non-Disputing Parties and Authorized <i>Amicus Curiae</i>	Non-Disputing Parties and Authorized <i>Amicus Curiae</i>	2 weeks from Step # 8 (Tribunal's Decision on Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 27 May 2026
12.	Production of Documents Ordered by the Tribunal	Claimants and Respondent	3 weeks from Step # 10 (Decision on the Parties' Objections to Document Production Requests)	Wednesday, 10 June 2026
13.	Reply on the Merits and Counter-Memorial on Jurisdiction	Claimants	14 weeks	Wednesday, 16 September 2026
14.	Rejoinder on the Merits and Reply on Jurisdiction	Respondent	18 weeks	Wednesday, 20 January 2027
15.	Rejoinder on Jurisdiction (if necessary)	Claimants	8 weeks	Wednesday, 17 March 2027

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16.	Non-Disputing Parties Express Intention to Make an Oral Submission at the Hearing	Non-Disputing Parties	2 weeks	Wednesday, 31 March 2027
17.	Notification of Witnesses and Experts to be Cross-Examined at the Hearing	Claimants and Respondent	2 weeks from Step # 15 (Rejoinder on Jurisdiction)	Wednesday, 31 March 2027
18.	Pre-Hearing Conference	Claimants, Respondent, and Tribunal	Subject to the Tribunal's convenience, the parties propose reserving: Wednesday, 7 April 2027	
19.	Hearing	Claimants, Respondent, and Tribunal	Subject to the Tribunal's convenience, the parties propose reserving: Monday 10-Tuesday 18 May 2027	
<b><i>Scenario 2: Request for bifurcation is granted</i></b>				
1.	Memorial on the Merits	Claimants	25 weeks from Wednesday, 2 April 2025	Wednesday, 24 September 2025
2.	Request for Bifurcation	Respondent	10 weeks	Wednesday, 3 December 2025
3.	Observations on the Request for Bifurcation	Claimants	10 weeks	Wednesday, 11 February 2026
4.	Decision on the Request for Bifurcation	Tribunal	4 weeks	Wednesday, 11 March 2026
5.	Memorial on Jurisdiction	Respondent	12 weeks	Wednesday, 3 June 2026
6.	Counter-Memorial on Jurisdiction	Claimants	12 weeks	Wednesday, 26 August 2026
7.	Applications to Intervene as <i>Amicus Curiae</i> (if any)	<i>Amicus curiae</i> applicants	2 weeks	Wednesday, 9 September 2026
8.	Parties' Observations on Applications to Intervene as <i>Amicus Curiae</i>	Claimants and Respondent	2 weeks	Wednesday, 23 September 2026
9.	Tribunal's Decision on Applications to Intervene as <i>Amicus Curiae</i>	Tribunal	2 weeks	Wednesday, 7 October 2026

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10.	Reply on Jurisdiction	Respondent	2 weeks	Wednesday, 21 October 2026
11.	Rejoinder on Jurisdiction	Claimants	8 weeks	Wednesday, 16 December 2026
12.	Non-Disputing Parties Express Intention to Make an Oral Submission at the Hearing	Non-Disputing Parties	2 weeks	Wednesday, 30 December 2026
13.	Notification of Witnesses and Experts to be Cross-Examined at the Hearing	Claimants and Respondent	2 weeks from Step # 11 (Rejoinder on Jurisdiction)	Wednesday, 30 December 2026
14.	Pre-Hearing Conference	Claimants, Respondent, and Tribunal	Subject to the Tribunal's availability, the parties propose reserving 7 January, 2027	
15.	Hearing	Claimants, Respondent, and Tribunal	Subject to the Tribunal's availability, the parties propose reserving the week of 15 February 2027 (necessary time to be determined once the scope of bifurcation authorized by the Tribunal is known)	
16.	Depending on the results of the bifurcated phase, the Parties and the Tribunal will consult as to the next procedural steps promptly following the Tribunal's decision.			
<b><i>Scenario 3: Request for bifurcation is denied</i></b>				
1.	Memorial on the Merits	Claimants	25 weeks from Wednesday, 2 April 2025	Wednesday, 24 September 2025
2.	Request for Bifurcation	Respondent	10 weeks	Wednesday, 3 December 2025
3.	Observations on the Request for Bifurcation	Claimants	10 weeks	Wednesday, 11 February 2026
4.	Decision on the Request for Bifurcation	Tribunal	4 weeks	Wednesday, 11 March 2026
5.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	12 weeks	Wednesday, 3 June 2026

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6.	Document Production Requests	Claimants and Respondent	3 weeks	Wednesday, 24 June 2026
7.	Applications to Intervene as <i>Amicus Curiae</i> (if any)	<i>Amicus curiae</i> applicants	4 weeks from Step #5 (Counter-Memorial on the Merits)	Wednesday, 1 July 2026
8.	Responses to Document Production Requests	Claimants and Respondent	2 weeks from Step # 6 (Document Production Requests)	Wednesday, 8 July 2026
9.	Parties' Observations on Applications to Intervene as <i>Amicus Curiae</i>	Claimants and Respondent	2 weeks from Step # 7 (Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 15 July 2026
10.	Replies on Document Production Requests and Submission of Disputed Requests to the Tribunal	Claimants and Respondent	2 weeks from Step # 8 (Responses to Document Production Requests)	Wednesday, 22 July 2026
11.	Tribunal's Decision on Applications to Intervene as <i>Amicus Curiae</i>	Tribunal	2 weeks from Step # 9 (Parties' Observations on Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 29 July 2026
12.	Voluntary Productions	Claimants and Respondent	3 weeks from Step # 8 (Responses to Document Production Requests)	Wednesday, 29 July 2026
13.	Decision on the Parties' Objections to Document Production Requests	Tribunal	2 weeks from Step # 10 (Submission of Disputed Document Requests to the Tribunal)	Wednesday, 5 August 2026

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14.	Submissions by Non-Disputing Parties and Authorized <i>Amicus Curiae</i>	Non-Disputing Parties and Authorized <i>Amicus Curiae</i>	2 weeks from Step # 11 (Tribunal's Decision on Applications to Intervene as <i>Amicus Curiae</i> )	Wednesday, 12 August 2026
15.	Production of Documents Ordered by the Tribunal	Claimants and Respondent	3 weeks from Step # 13 (Decision on the Parties' Objections to Document Production Requests)	Wednesday, 26 August 2026
16.	Reply on the Merits and Counter-Memorial on Jurisdiction	Claimants	14 weeks	Wednesday, 2 December 2026
17.	Rejoinder on the Merits and Reply on Jurisdiction	Respondent	18 weeks	Wednesday, 7 April 2027
18.	Rejoinder on Jurisdiction (if necessary)	Claimants	8 weeks	Wednesday, 2 June 2027
19.	Non-Disputing Parties Express Intention to Make an Oral Submission at the Hearing	Non-Disputing Parties	2 weeks	Wednesday, 16 June 2027
20.	Notification of Witnesses and Experts to be Cross-Examined at the Hearing	Claimants and Respondent	2 weeks from Step # 18 (Rejoinder on Jurisdiction)	Wednesday, 16 June 2027
21.	Pre-Hearing Conference	Claimants, Respondent, and Tribunal	Subject to the Tribunal's convenience, the parties propose reserving: 30 June 2027	
22.	Hearing	Claimants, Respondent, and Tribunal	From Monday, September 20 to Tuesday, 28 September 2027 (reserved)	

**Annex C – Document Production Schedule**

Requesting Party:  
Requesting party

Requested Party:  
Requested party

Document Request No. 1.		
R1: Description of requested Documents (max. 200 words)		
Requesting party	Requested party	Tribunal
Time frame of issuance		
R2: Relevance and materiality (max. 250 words)		
Requesting party	Requested party	Tribunal
Reference in Memorial (paras.)		
R3: Not in possession of requesting party (max. 100 words)		
Requesting party	Requested party	Tribunal
O1: Legal or settlement privilege (max. 250 words)		
Requested party	Requesting party	Tribunal
O2: Production is unreasonably burdensome (max. 200 words)		
Requested party	Requesting party	Tribunal
O3: Loss, destruction or inexistence (max. 100 words)		
Requested party	Requesting party	Tribunal
O4: Technical or commercial confidentiality (max. 200 words)		
Requested party	Requesting party	Tribunal
O5: Special political or institutional sensitivity (max. 250 words)		
Requested Party	Requesting party	Tribunal
O6: Production affects fairness or equality of procedure (max. 100 words)		
Requested party	Requesting party	Tribunal
Tribunal's Decision		

**Annex D – Privilege Log Template**

**Requesting party: Requesting party**

**Requested party: Requested party**

<b>Doc. No.</b>	<b>Date of issuance (in chronological order)</b>	<b>Author/Sender (identifying any attorney to the Requested party)</b>	<b>Recipient(s) (including any individuals in copy)</b>	<b>Brief description of the Document or Category of the Documents</b>	<b>Asserted privilege (O1, O4, O5)</b>	<b>Reasons for objection</b>

**Annex E – Transparency Schedule**

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	

**Annex F – Affidavit of Chief Legal Officer or Other Representative**

**AFFIDAVIT**

My name is Full name, Position of Requested party. This Affidavit is issued in accordance with Procedural Order No. 5 in the arbitration between Honduras Próspera Inc., St. John’s Bay Development Company LLC, and Próspera Arbitration Center LLC as Claimants and the Republic of Honduras as Respondent. Terms defined in Procedural Order No. 5 have the same meaning when used in this Affidavit.

I declare that, to the best of my knowledge and belief:

Requested party has carried out a reasonable search of the Documents which it was ordered or voluntarily undertook to produce;

No Document which Requested party was ordered or voluntarily undertook to produce has been destroyed or concealed;

All Documents for which legal or settlement privilege has been claimed, meet the requirements established in Procedural Order No. 5;

Requested party has produced all Documents which it was ordered or voluntarily undertook to produce (except for the privileged or confidential Documents duly identified in the Privilege Log).

Date: Date

\_\_\_\_\_

Full name

## Annex G – Affidavit of Head External Legal Counsel

### AFFIDAVIT

My name is Full name, external legal counsel of Requested party. This Affidavit is issued in accordance with Procedural Order No. 5 in the arbitration between Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC as Claimants and the Republic of Honduras as Respondent. Terms defined in Procedural Order No. 5 have the same meaning when used in this Affidavit.

I declare that:

- (i) I have explained to the Requested party (a) its obligation not to destroy or conceal any Document potentially relevant to the above-referred arbitration, and (b) the necessity of producing, and the potential consequences of the failure to produce, any Document which Requested party has been ordered or has voluntarily undertaken to produce;
- (ii) I have advised Requested party to carry out a reasonable search, and to produce all Documents it was ordered or it voluntarily undertook to produce (except for the privileged or confidential Documents duly identified in the Privilege Log);
- (iii) All Documents for which legal or settlement privilege has been claimed, meet the requirements established in Procedural Order No. 5.

Date: Date

\_\_\_\_\_  
Full name