

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Aqua Power and Catalysis Capital Ltd

v.

United Republic of Tanzania

(ICSID Case No. ARB/24/42)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Jan Paulsson, President of the Tribunal

Mr. Brooks Daly, Arbitrator

Mr. Makhdoom Ali Khan, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

24 April 2025

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Introduction

The first session of the Tribunal was held on 6th March 2025, at 9: 00 a.m. Washington DC time, by video conference via Zoom. The session was adjourned at 10: 36 a.m.

A recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal:

Prof. Jan Paulsson, President of the Tribunal
Mr. Brooks Daly, Arbitrator
Mr. Makhdoom Ali Khan, Arbitrator

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal
Ms. Lucie Lacie, Paralegal

On behalf of the Claimants:

1. Natasha Behary Paray, Partner, Barrister-at-Law, Dentons (Mauritius)
2. Juhi Desai, Barrister at Law, Dentons (Mauritius)
3. Kiuna Ngugi Kiuna, Chairperson
4. Gachao Kiuna, Executive Director
5. Ngugi Kiuna, Director, Investment
6. Thierry Adolphe, Independent Director
7. Nusrath Bhugeloo, Independent Director
8. Pauline Mtui, Independent Director
9. Morten Pedersen, Chief Commercial Officer

On behalf of the Respondent:

10. Mr. Saddy R. Sevingi, Assistant Director of International Arbitration, OSG
11. Ms. Lydia Thomas, State Attorney, OSG
12. Ms. Neisha Shao, State Attorney, OSG
13. Mr. Edwin Webiro, State Attorney, OSG
14. Ms. Nkamba Mshuda, State Attorney, OSG
15. Mr. Caroli Chami, State Attorney, OSG

The Tribunal and the Parties considered the following:

- The Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on 22nd January 2025; and

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- The Parties' comments on the Draft Procedural Orders received on 18th February 2025, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on January 6, 2025, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted the Parties currently know of no facts or circumstances which would call into question the independence or impartiality of any Member of the Tribunal and therefore have no objection to their appointment.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on December 10, 2024, December 11, 2024, and January 6, 2025.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

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

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

4. Presence and Quorum

Arbitration Rule 33

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

5. Rulings of the Tribunal

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

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders 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 possible reconsideration of such decision by the full Tribunal.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. 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, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).

- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits
Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Ella Rosenberg, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Ella Rosenberg
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]
Paralegal name: Ms. Lucie Lacie
Paralegal email: [REDACTED]
ICSID case address: [REDACTED]

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

Ms. Ella Rosenberg
ICSID
1225 Connecticut Ave. N.W.

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(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: [REDACTED]

8. Representation of the Parties
Arbitration Rule 2

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

For the Claimants

Aqua Power
c/o Dr. Gachao Kiuna,
Executive Director
Aqua Power
5th Floor, the CORE Building
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and

c/o Ms. Natasha Behary Paray
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For the Respondent

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and

c/o Dr. Ally Possi, Solicitor General
Ms. Alice Mtulo, Deputy Solicitor
General
Ms. Lydia Thomas, State Attorney
Mr. Hemed Mkomwa, State Attorney
Mr. Aloyce D. Sekule
Mr. Saddy R. Sevingi
Ms. Neisha Shao
Mr. Edwin Webiro
Ms. Nkamba Mshuda
Mr. Caroli Chami
Dr. Elias mwashiuya, Director of Legal
Department-TPDC

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

- 9.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. Following registration of the Request for arbitration, by letter of December 12, 2024, ICSID informed the Parties that US\$400,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimants pay US\$200,000. ICSID received the Claimant(s)' payment on 8 January 2025. Upon the constitution of the Tribunal, by letter of January 6, 2025, ICSID requested that the Respondent pay US\$200,000. ICSID received the Respondent's portion of advance payment amounting to USD 100,000 on 6th February 2025. The remaining balance of USD 100,000 will be paid in due course.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 10.1. The place of the proceeding shall be Singapore.
- 10.2. The Tribunal may hold in-person 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 §21.2.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 11.1. English is the procedural language of the arbitration.
- 11.2. The Tribunal and the Secretariat shall communicate with the Parties in the English language.
- 11.3. Documents filed in any other language must be accompanied by a translation into English.
- 11.4. 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.
- 11.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 11.6. Documents exchanged between the Parties in a language other than English under §15 below (Production of Documents) need also to be translated in the manner prescribed under §11.3 to 11.5.
- 11.7. The Parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing (see Schedule Annex B below) and as soon as possible.
- 11.8. Where the testimony of a witness called for examination during the hearing is required to give evidence in a language other than English, the testimony shall be interpreted into English, presumptively through simultaneous translation. Where, special circumstances justifying consecutive translation, no simultaneous

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translation is possible, the hearing shall be adjourned to enable the Party not calling the witness to take cognizance of any transcript of the testimony of this witness to enable cross-examination or re-examination, as the case may be.). The ICSID Secretariat shall make appropriate arrangements for interpretation at the hearing, in consultation with the Parties.

- 11.9. 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.

12. Routing of Communications
Arbitration Rule 6

- 12.1. The Parties and their representatives shall not engage, directly or indirectly, in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject matter of the arbitration or any procedural issues related to the arbitration.
- 12.2. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.3. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.4. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal.
- 12.5. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 4, 5 and 9

- 13.1. By the relevant filing date, the Parties shall:

- 13.1.1. submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and

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

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- 13.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.²

- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.3. 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 and the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**.
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, a jointly prepared 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.³
- 13.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.6. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

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

- 14.1. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in **Annex B**. Any amendment to the Procedural Timetable shall be reflected in an updated **Annex B**.

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

³ 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 files sharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

- 14.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter Memorial), the Parties shall set forth the facts and legal arguments and submit the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 14.3. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen or discovered after the filing of the Party's last submission.
- 14.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 14.5. All written submissions shall be divided into consecutively numbered paragraphs.

15. Production of Documents

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

- 15.1. The Tribunal shall be guided by Article 3 and 9 of the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 15.2. On the date provided in Annex B, each Party may submit to the other Party a request for production of documents, or categories of documents within the other Party's possession, custody or control. The request shall be made in the form of a Redfern Schedule (in the format provided in Annex C), in both Word and PDF format, and shall not be copied to the Tribunal. The Parties shall send their request for production of documents to the Tribunal Secretary who will circulate the Parties' objections to the Parties once both Redfern Schedules have been received. Production requests shall contain:
 - 15.2.1. a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents reasonably believed to exist (in the case of documents maintained in electronic form, the requesting Party may, or the Tribunal may order that it shall be required to identify search terms, individuals or other means of searching for such documents in an efficient and economical manner);

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- 15.2.2. a statement as to how the documents requested are relevant and material to the outcome of the case.
 - 15.2.3. 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
 - 15.2.4. a statement of the reasons why the requesting Party assumes the documents requested are in the possession, custody, or control of another Party.
- 15.3. On the date provided in **Annex B**, the Party shall, using the Redfern Schedule provided by the first Party, provide the requesting Party with its reason and/or objections for its failure or refusal to produce responsive documents. The Parties shall send their objections to the Tribunal Secretary, who will circulate the Parties' objections to the Parties once both Redfern Schedules have been received.
 - 15.4. On the date provided in **Annex B**, the other Party shall produce the requested documents to which it has not filed any objection.
 - 15.5. On the date provided in **Annex B**, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal and the Tribunal Secretary. The Tribunal Secretary will circulate the Parties' objections to the Parties once both Redfern Schedules have been received (in both Word and PDF formats).
 - 15.6. The Tribunal will make its best efforts to rule on the objections within four weeks of receiving the Redfern Schedules. A Party shall produce documents ordered by the Tribunal by the date provided in **Annex B**.
 - 15.7. Documents shall be communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §16 below.
 - 15.8. In relation to any documentary evidence alleged to contain privileged, confidential, or highly sensitive information that a Party is directed by the Tribunal to produce, that Party shall present, together with the documents produced pursuant to §16.4 below, a privilege and confidentiality log, listing the responsive documentary evidence alleged to contain privileged, confidential, or highly sensitive information, including its description, date, author and recipient.

16. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13, above.
- 16.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other Party.
- 16.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
- 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such document.
- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 16.5. Documents shall be submitted in the following form:
- 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” 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 “RL-” for legal exhibits containing authorities etc.
- 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. 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 §16.5.4.
- 16.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.

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- 16.6. 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.
- 16.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. 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.
- 16.9. An electronic copy of each demonstrative exhibit, other than 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 Tribunals, the Tribunal Secretary to the court reporter and to the interpreters as necessary at the hearing, at a time to be decided at the pre-hearing organizational meeting.
- 16.10. 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 files sharing platform, designating each with the corresponding CD-__ or RD-__ number.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

- 17.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 17.2. Neither Party shall be permitted to submit any testimony 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 observations from the other Party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness and include:
 - 17.3.1. The full name of the witness;
 - 17.3.2. A disclosure statement detailing any past and present relations of the witness with any Party, counsel, or Member of the Tribunal;

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- 17.3.3. A description of the witness's position and qualifications, if relevant;
- 17.3.4. A full and detailed description of the relevant facts, and the source of the witness' information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
- 17.3.5. Any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as documents);
- 17.3.6. 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
- 17.3.7. An affirmation of the truth of the witness statement.
- 17.4. Witness Statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings, and paragraphs. In addition, expert reports shall have a detailed table of contents.
- 17.5. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses, potential witnesses, experts, and potential experts and to discuss their prospective testimony with them, to the extent that none of the witnesses are being coached in their testimony.
- 17.6. In addition to the items listed in sub-clause 17.3, Expert Reports shall contain:
 - 17.6.1. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - 17.6.2. A statement of his or her independence from the Parties, their legal advisors, and the Tribunal;
 - 17.6.3. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
 - 17.6.4. His or her expert opinions and conclusions, including a description of the methods, evidence, and information used in arriving at the conclusions;
 - 17.6.5. The documents, data and other information relied on by the expert in the preparation of his or her Expert Report, which shall be provided as annexes to the Expert Report (which may have 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, to the extent it may be reasonably identifiable;

17.6.6. An affirmation of his or her genuine belief in the opinions expressed in the Expert Report.

17.6.7. If the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.

18. Examination of Witnesses and Experts

Arbitration Rule 38

- 18.1. A Party may be called upon by the opposing Party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings. The examination of a fact or expert witness by video conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.2. On the date provided in **Annex B**, each Party shall notify the other Party, with a copy to the Tribunal, the identity of the witnesses and experts it wishes to examine at the hearing. Any witness or expert not called for cross-examination still may be cross-examined if called for examination by the Tribunal or direct examination by the Party that proffered his or her testimony.
- 18.3. The witnesses and experts shall be examined in the order agreed by the Parties. If not agreed by the Parties, the Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the pre-hearing organizational meeting.
- 18.4. Any person appearing before the Tribunal as a fact witness shall not be allowed to attend any part of the hearings before his/her testimony. Expert witnesses shall be permitted to attend the hearings, at the request of any Party and subject to additional modalities to be discussed at the pre-hearing organizational meeting.
- 18.5. Exceptionally, if a witness is unable to appear personally at the hearing on the merits for reasons of health or other reasons that the Tribunal considers to be compelling, the Tribunal may permit alternative arrangements (such as videoconference facilities) to be made for the examination of that witness, after consultation with the Parties.
- 18.6. Witnesses and experts shall be made available for examination during the oral hearing. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Arbitral Tribunal does not direct his or her appearance. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final Award. If a witness or expert whose appearance has been requested pursuant to §18.2 fails without a valid reason to appear at the hearing, the Tribunal may exclude any statement(s) or report(s) of such witness or expert from the record,

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and/or accord such weight, if any, to the written testimony as it deems appropriate. Further, a Party may request and the Tribunal may draw such adverse inference(s) as it deems appropriate.

- 18.7. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 38 (6), and experts shall make the declaration set out in ICSID Arbitration Rule 38 (8). Witnesses shall also be asked to confirm their statement or report.
- 18.8. The procedure for examining witnesses and experts at the hearing shall be as follows:
 - 18.8.1. The witness statement of each witness and expert shall stand in lieu of the examination by the Party producing the witness and expert (“direct examination”), subject to the provisions below.
 - 18.8.2. Fact witnesses giving oral testimony may first be examined in direct examination.
 - 18.8.3. Expert witnesses giving oral evidence may first give a presentation of the key points of their report either directly and/or through direct examination for no longer than a time-limit fixed after the determination of the controversial points of the respective expertise reports.
 - 18.8.4. During direct examination, counsel who is examining the witness may not introduce new matters not already covered by the written statement or report, save in response to new matters raised in any of the Parties’ respective Rejoinders.
 - 18.8.5. Direct examination is followed by cross-examination by the other Party, which may be followed by re-direct examination. Each Party will be allocated a fixed time for direct examination, cross-examination, and re-direct examination, of which the exact time shall be determined at the pre-hearing organizational meeting.
 - 18.8.6. The Tribunal shall decide upon any request for further cross examination from the Parties following re-direct examination. The members of the Tribunal may ask questions during or after the examination of any witnesses.
- 18.9. The scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report, (ii) impeachment of the witness unless for good cause shown the Tribunal agrees to a broader cross-examination and/or (iii) documents or facts about which the witness or expert has personal knowledge, provided that they are relevant to the dispute. Re-direct examination shall be limited to issues arising during the cross-examination.

18.10. Counsel may meet witnesses and potential witnesses to establish the facts, and assist with the preparation of witness statements and oral examinations.

18.11. Other matters regarding hearings shall be addressed at the pre-hearing organizational meeting.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 31

19.1. A pre-hearing organizational meeting shall be held as indicated in **Annex B**. It shall comprise a teleconference or videoconference between the Tribunal, or 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.

19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, 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.

20. Case Management Conferences

Arbitration Rule 31

20.1. The Tribunal shall convene case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence). It is expected that a case management conference will be held in accordance with **Annex B**.

21. Hearings

Arbitration Rule 32

21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

Procedural Order No. 1

- 21.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §0 above.
- 21.3. Having due regard to the views of the Parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 21.4. The hearing shall take place on the date set out in **Annex B**.
- 21.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.6. Allocation of time shall be discussed by Parties during the pre-hearing organizational meeting.
- 21.7. Hearings and publications of recordings and transcripts shall be closed to the public.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.
- 22.2. Verbatim transcript(s) in the procedural language(s) 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.
- 22.3. The Parties shall agree on any corrections to the transcripts within a timeframe to be decided at the pre-hearing organizational meeting, following 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.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. The Tribunal in consultation with Parties shall decide whether or not to order post hearing briefs at the last date of the hearing.

Procedural Order No. 1

- 23.2. Each Party shall file a statement of its costs and a written submission on the allocation of costs within the time to be agreed upon by the Parties on the last hearing date.
- 23.3. The written submissions on allocation of costs shall be accompanied by proof of costs reasonably incurred by the Parties in relation to the dispute.

24. Transparency matters

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

- 24.1. The Parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

25. Data Privacy and Cybersecurity

- 25.1. 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. They acknowledge having read ICSID's "[Personal Data Privacy Notice – Proceedings](#)".
- 25.2. 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.
- 25.3. 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.

26. Amicable Dispute Settlement

- 26.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding.
- 26.2. If the Parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2).

Procedural Order No. 1

- 26.3. Any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

On behalf of the Tribunal,

_____[Signature]_____
Prof. Jan Paulsson
President of the Tribunal
Date: 24 April 2025

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

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

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

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

Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
	<i>Observations to Request for [XX]-[Claimant]-SPA</i>

Annex B – Schedule

PROCEDURAL STEP		PROPOSED PERIOD	DEADLINE
1.	Claimants file Memorial	120 days from the First Session	4 th July 2025
2.	Respondent files Counter Memorial	120 days from the date of the Claimants filing memorial	1 st November 2025
3.	Parties exchange Document Requests	30 days from the counter memorial	1 st December, 2025
4.	Parties exchange acceptances/objections to Document Requests	30 days from Request	31 st December 2025
5.	Parties response to objections of Document Requests	30 days from Objections	30 th January 2026
6.	Tribunal rules on disputed Document Requests	30 days from Response to Objection	2 nd March 2026
7.	Production of documents ordered by the Tribunal	30 days from Order	1 st April 2026
8.	Claimants file Reply to counter memorial	90 days from production of documents	30 th June 2026
9.	Respondent files Rejoinder	90 days from Reply to counter memorial	28 th September 2026
10.	Parties provide notice of witnesses and/or experts they wish to cross-examine at the hearing	30 days before hearing date	28 th October 2026
11.	Pre-Hearing Conference	5 days after Notice	2 nd November 2026
12.	Hearing	60 days after Rejoinder	First evidentiary hearing – Week of 30 th November 2026
13.	Post hearing Briefs		TBD
14.	Costs submissions		TBD
15.	Award		In accordance with Article 58 of the ICSID Arbitration Rules 2022