

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Standard Chartered Bank (Hong Kong) Limited

v.

United Republic of Tanzania

(ICSID Case No. ARB/15/41)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Professor Lawrence Boo, President of the Tribunal
Mr. David Unterhalter SC, Arbitrator
Dr. Kamal Hossain, Arbitrator

Secretary of the Tribunal

Aurélia Antonietti

October 11, 2016

Contents

1. Applicable Arbitration Rules	4
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3. Fees and Expenses of Tribunal Members	5
4. Presence and Quorum	5
5. Rulings of the Tribunal	5
6. Power to Fix Time Limits	6
7. Secretary of the Tribunal	6
8. Representation of the Parties	7
9. Apportionment of Costs and Advance Payments to ICSID.....	8
10. Place of Proceeding.....	8
11. Procedural Language	9
12. Routing of Communications	9
13. Number of Copies and Method of Filing of Parties' Pleadings.....	9
14. Number and Sequence of Pleadings	11
15. Production of Documents	11
16. Submission of Documents	12
17. Witness Statements and Expert Reports	13
18. Examination of Witnesses and Experts.....	13
19. Pre-Hearing Organizational Meetings	14
20. Hearings	14
21. Records of Hearings and Sessions	14
22. Post-Hearing Memorials and Statements of Costs.....	15
23. Publication	15

Introduction

On July 20, 2016, the Tribunal Secretary circulated a Draft agenda for the first session to be held on August 5, 2016 together with a draft Procedural Order No. 2. Both Parties submitted their comments and on August 1, 2016, counsel for the Claimant circulated a consolidated mark-up version of the draft Procedural Order No. 2 containing the Parties' joint proposals where agreement has been reached and their respective positions on other issues.

The first session of the Tribunal was scheduled by the Tribunal to be held on August 5, 2016, at 9:30 a.m., at the IDRC in London. A request for the adjournment of the session was presented on August 1, 2016, and had been rejected by the Tribunal on August 3, 2016.

On August 4, 2016, counsel for the Respondent wrote to inform the Tribunal that they had been instructed, by the Attorney General of Tanzania, not to attend the session in his absence.

The first session of the Tribunal was held as scheduled on August 5, 2016, at 9:30 a.m., at the IDRC in London.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties. Participating in the session were the Members of the Tribunal, Francisco Abriani, ICSID Legal Counsel, and counsel for the Claimant.

Following consultations with respective counsel for the Parties, by letter of August 5, 2016, the Tribunal confirmed that a procedural hearing with the Parties be held in London on Friday September 23, 2016 to discuss bifurcation and to hear the Parties on all items contained in draft Procedural Order No. 2.

Participating at the hearing of September 23, 2016 were:

Members of the Tribunal

Prof. Lawrence Boo, President of the Tribunal
Mr. David Unterhalter SC, Arbitrator
Dr. Kamal Hossain, Arbitrator

ICSID Secretariat:

Mr. Marco Tulio Montañés-Rumayor, Legal Counsel

On behalf of the Claimant:

Mr. Joseph Casson, Standard Chartered Bank (Hong Kong) Limited
Mr. James Denham, Standard Chartered Bank
Mr. Matthew Weiniger QC, Linklaters LLP
Mr. Iain Maxwell, Herbert Smith Freehills LLP
Mr. Dominic Kennelly, Herbert Smith Freehills LLP
Mr. Adam McWilliams, Herbert Smith Freehills LLP
Mr. Divyanshu Agrawal, Herbert Smith Freehills LLP

On behalf of the Respondent:

Mr. Beredy Malegesi, Crax Law Partners
Prof. Bonaventure Rutinwa, R.K. Rweyongeza & Co. Advocates
Mr. David Hesse, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Galileo Pozzoli, Curtis, Mallet-Prevost, Colt & Mosle LLP

Procedural Order No. 2

Ms. Luciana Ricart, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. James Cockburn, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Valerio Salvatori, Curtis, Mallet-Prevost, Colt & Mosle LLP
Ms. Rebecca Johnston, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Dav Holat, IT technician, Curtis, Mallet-Prevost, Colt & Mosle LLP

The Tribunal heard the Parties on the bifurcation application and decided that no bifurcation will be directed. A separate Order will be issued in that regard.

On the items contained in the draft Procedural Order No. 2 that were to be discussed, the Tribunal and the Parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on July 20, 2016.
- The Draft Procedural Order circulated by the Tribunal Secretary on July 20, 2016; and
- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on August 1, 2016, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.
- A reviewed Draft Procedural Order No. 2 circulated by the Tribunal Secretary on September 13, 2016.
- The Parties' further comments received on September 22, 2016

Following the Hearing, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this second Procedural Order sets out the Procedural Rules that govern this arbitration and amends as indicated below when necessary the first Procedural Order issued on June 27, 2016 (PO1), attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. As agreed in PO1, these proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was initially constituted on May 19, 2016 in accordance with the ICSID Convention and the ICSID Arbitration Rules. Further to Sir Stanley's resignation on July 11, 2016, the Tribunal was reconstituted upon Mr. Unterhalter's acceptance of his appointment by the Claimant. The Parties confirmed that the Tribunal has been properly reconstituted and that no Party has any objection to the appointment of any Member of the Tribunal.

Procedural Order No. 2

- 2.2. The Members of the Tribunal submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on May 19, 2016 and on July 11, 2016.
 - 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
- 3.1. As agreed in PO1, 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 of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
- 4.1. PO1 is amended to reflect that given the Parties' disagreement, pursuant to Arbitration Rule 14(2), the presence of a majority of the Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
- 5.1. As agreed in PO1, decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. As agreed in PO1, ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where 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.

Procedural Order No. 2

- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period and will provide regular updates to the Parties.
- 5.4. As agreed in PO1, the President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. As agreed in PO1, the Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

- 6.1. As agreed in PO1, the President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. As indicated in PO1, the Tribunal Secretary is Ms. Aurélia Antonietti, Team Leader/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. Aurélia Antonietti
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-7603
Fax: + 1 (202) 522-2615
Email: aantonietti@worldbank.org
Paralegal email: aboissaye@worldbank.org

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

Ms. Aurélia Antonietti
701 18th Street, N.W. ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Representation of the Parties

Arbitration Rule 18

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 Claimant

c/o Mr. Iain Maxwell
Mr. Adam McWilliams
Mr. Dominic Kennelly
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Exchange House
Primrose Street
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Tel.: +44 20 7374 8000
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Email addresses:
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and
c/o Mr. Matthew Weiniger, QC
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London EC2Y 8HQ
United Kingdom
Postal Address
Tel.: +44 0 207 456 5523
Fax: +44 0 207 456 2222
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matthew.weiniger@linklaters.com

For Respondent

c/o Mr. Beredy Malegesi
Crax Law Partners
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malegesi@crax.co.tz
info@crax.co.tz
and
c/o Mr. Richard K. Rweyongeza
Prof. Bonaventure Rutinwa
R.K. Rweyongeza & Co. Advocates
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and
c/o Mr. David Hesse
Mr. James Cockburn
Ms. Luciana Ricart
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Procedural Order No. 2

jcockburn@curtis.com

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and

c/o Mr. Galileo Pozzoli

Prof. Tullio Treves

Mr. Fuad Zarbiyev

Ms. Irene Petrelli

Mr. Renato Treves

Curtis, Mallet-Prevost, Colt & Mosle LLP

Corso Matteotti, n. 3

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Italy

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ipetrelli@curtis.com

rtreves@curtis.com

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. As agreed in PO1, 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. By letter of May 23, 2016, ICSID requested that each party pay US\$175,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on June 23, 2016. By letter of August 5, 2016, the Tribunal Secretary notified the Parties of Tanzania's default to make the requested payment. Accordingly pursuant to ICSID Administrative and Financial Regulation 14(3)(d), each party was invited to pay the outstanding amount by August 22, 2016. On September 9, 2016, the Secretary of the Tribunal informed the Parties that no payment had been received and inquired about the status of that payment. During the hearing, the Tribunal reminded the Parties about the outstanding payment. The Respondent confirmed that the payment was being processed.
- 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

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. As agreed in PO1, London, England shall be the place of the proceeding.

Procedural Order No. 2

- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the Parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. As agreed in PO1, English is the procedural language of the arbitration.
12. Routing of Communications
Administrative and Financial Regulation 24
- 12.1. As agreed in PO1, the ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23
- 13.1. By the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with witness statements, expert reports, a list of documents and the supporting documentation to the file sharing platform that has been created by ICSID for purposes of this case.
- 13.2. Within three working days (as applied in England and Wales) following the electronic filing, the Parties shall courier to the Tribunal Secretary:
- 13.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
- 13.2.2. one hard copy in A4 or A5 –format of the entire submission including the pleading,

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

² The A4/Letter format is required for ICSID's archiving.

Procedural Order No. 2

the witness statements, expert reports, and documents (but not including legal authorities); and

13.2.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.3. Also within three working days (as applied in England and Wales) following the electronic filing, the Parties shall courier to the opposing Party at the addresses indicated at §8.1 above (with the Parties to indicate which of the multiple addresses listed is to be used for this purpose) and to each Member of the Tribunal at the addresses indicated at §13.4 below:

13.3.1. one hard copy in A4 format for Prof. Boo and Mr. Hossain, and format A5 for Mr. Unterhalter and ICSID of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

13.3.2. one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.4. The addresses of the Tribunal Members are as follows:

Professor Lawrence Boo
The Arbitration Chambers
32 Maxwell Road #02-03
Singapore 069115
Tel.: +65 65381277

David Unterhalter SC
Advocates Group 621
Ground Floor, Rex Welsh
House, Sandown Village
Corner Gwen Lane and
Maude Street
Sandton
Johannesburg 2196
South Africa
Tel: +27 11 263 9077

Dr. Kamal Hossain
122-124 Motijheel
Commercial Area
Dhaka-100
Bangladesh
Tel.: (8802) 9552946,
9560655, 9564954

13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.6. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

13.7. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.

13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.9. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

Procedural Order No. 2

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. The proceedings shall consist of a written procedure, followed by an oral procedure. The written procedure shall include the submission of two rounds of written pleadings before a hearing (Memorial, Counter-Memorial, Reply and Rejoinder).

14.2. The timetable for submission of written pleadings shall be as follows:

- Claimant's Memorial: **December 16, 2016**
- Respondent's Counter-Memorial: **June 16, 2017** (6 months from the Claimant's Memorial).
- Claimant and Respondent to request production of documents from each other: **July 7, 2017** (3 weeks from the Respondent's Counter-Memorial)
- The Claimant and the Respondent to serve objections to document requests, stating the reasons therefore on the opposing party's Redfern Schedule: **July 21, 2017** (2 weeks from document requests)
- The Claimant and the Respondent to make any applications for document production orders: **August 4, 2017** (2 weeks from objections to document requests)
- Tribunal's ruling on document production applications: **September 1, 2017** (4 weeks from document production applications)
- Production of documents (voluntary and as ordered by the Tribunal): **September 22, 2017** (3 weeks from Tribunal's order)
- Claimant's Reply Memorial: **October 19, 2017** (4 weeks from document production);
- Respondent's Rejoinder Memorial: **January 18, 2018** (13 weeks from the Claimant's Reply Memorial)

15. Production of Documents

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

15.1. The Tribunal may use the 2010 IBA Rules on the Taking of Evidence in International Arbitration as a nonbinding reference in deciding on disputed evidentiary issues.

15.2. Requests for production, objections, replies to objections and the Tribunal's decision shall be exchanged in the form of a "Redfern Schedule."

Procedural Order No. 2

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 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 §12.4 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless expressly so permitted by the Tribunal for good cause shown.
 - 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 a document.
- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 16.5.2. 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.
 - 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 16.5.4. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-001” and “R-001,” respectively.
 - 16.5.6. 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.
- 16.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.

Procedural Order No. 2

- 16.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 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 exceptional 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.
18. Examination of Witnesses and Experts
- 18.1. The Tribunal may use the 2010 IBA Rules on the Taking of Evidence in International Arbitration as a nonbinding reference in deciding on disputed evidentiary issues
- 18.2. Witnesses and experts shall be examined by each Party under the control of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure. Witness statements and expert reports shall constitute the direct testimony of each factual or expert witness, respectively. Direct examination should be limited to confirmation or correction of the written statement or report. Witnesses and experts may be cross examined by opposing Counsel.
- 18.3. Prior to the oral procedure and within time limits agreed to by the Parties or established by the Tribunal, each Party or the Tribunal may call upon the other Party to produce at the oral procedure for cross-examination any witness or expert whose written statement has been advanced by the requested Party with the written submissions.
- 18.4. Subject to the control of the Tribunal, any witness or expert so called may be cross-examined at the oral procedure. If a witness is not made available, the Tribunal shall decide, taking all circumstances into consideration, whether to accept or disregard a witness statement or expert report, and shall determine what weight, if any, to attach to the testimony of such witness or expert.

Procedural Order No. 2

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held on **March 19, 2018** (by telephone unless the Tribunal otherwise directs) for the purpose of resolving outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

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

20.2. The hearing shall be held in London, England within the weeks of **16 to 27 April, 2018**.

20.3. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.4. Time at the hearing shall be allocated equally between the Parties. Each Party may allocate its time as it sees fit for witness and expert examinations. The particulars of time allocation for the Parties' oral pleadings (i.e. opening and closing statements) shall be decided at the pre-hearing organizational meeting.

20.5. Hearings shall be closed to the public.

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session including sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

21.3. The Parties shall agree on any corrections to the transcripts within 28 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts ("revised transcripts"). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

Procedural Order No. 2

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

22.1. The approach to post-hearing memorials and statements of costs is to be discussed later in the proceedings.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

23.1. The Parties consent to ICSID publication of the Award and any order or decision issued in the present proceeding.

[Signed]

Lawrence Boo
President of the Tribunal
Date: October 11, 2016

Annex A

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Standard Chartered Bank (Hong Kong) Limited

v.

United Republic of Tanzania

(ICSID Case No. ARB/15/41)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Professor Lawrence Boo, President of the Tribunal
Sir Stanley Burnton, Arbitrator
Dr. Kamal Hossain, Arbitrator

Secretary of the Tribunal

Aurélia Antonietti

June 27, 2016

Contents

1. Applicable Arbitration Rules	3
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	3
3. Fees and Expenses of Tribunal Members	3
4. Presence and Quorum	3
5. Rulings of the Tribunal	4
6. Power to Fix Time Limits	4
7. Secretary of the Tribunal	4
8. Representation of the Parties	5
9. Apportionment of Costs and Advance Payments to ICSID.....	6
10. Place of Proceeding.....	6
11. Procedural Language	7
12. Routing of Communications	7

Before the first session of the Tribunal was held, the Parties have agreed by letters of June 14 and 27, 2016 to the following:

1. Applicable Arbitration Rules

Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on May 19, 2016 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Tribunal takes notes of the Respondent's letter of May 24, 2016.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on May 19, 2016.

3. Fees and Expenses of Tribunal Members

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

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 of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

4.1. Given that the Parties did not agree otherwise, the presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where 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.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period and will provide regular updates to the Parties.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Aurélia Antonietti, Team Leader/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. Aurélia Antonietti
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-7603
Fax: + 1 (202) 522-2615
Email: aantonietti@worldbank.org
Paralegal email: ating@worldbank.org

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

Ms. Aurélia Antonietti
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-1534

8. Representation of the Parties
Arbitration Rule 18

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 Claimant

c/o Mr. Iain Maxwell
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For Respondent

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and
c/o Mr. Richard K. Rweyongeza
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and
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Procedural Order No. 1

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c/o Mr. Galileo Pozzoli
Prof. Tullio Treves
Mr. Fuad Zarbiyev
Ms. Irene Petrelli
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9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 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. By letter of May 23, 2016, ICSID requested that each party pay US\$175,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on June 23, 2016 and has not yet received the Respondent's payment.
- 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
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. London, England, shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the Parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
12. Routing of Communications
Administrative and Financial Regulation 24
- 12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.

On behalf of the Tribunal

[Signed]

Lawrence Boo
President of the Tribunal
Date: June 27, 2016