

PCA CASE NO. 2018-37

IN THE ARBITRATION MATTER UNDER THE
THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW 1976

PROFESSOR CHRISTIAN DOUTREMEPUICH (France)

and

ANTOINE DOUTREMEPUICH (France)

Claimants

versus

REPUBLIC OF MAURITIUS

Respondent

TERMS OF APPOINTMENT

Arbitral Tribunal

Prof Maxi Scherer (Presiding Arbitrator)
Prof Olivier Caprasse
Prof Jan Paulsson

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I. PARTIES TO THE ARBITRATION

1. The claimants are PROFESSOR CHRISTIAN DOUTREMEPUICH (France) (the “**Claimant 1**”) and Mr ANTOINE DOUTREMEPUICH (France) (the “**Claimant 2**”) (together the “**Claimants**”).

2. Claimant 1’s address for this arbitration is at:

290 avenue d’Arès
33700 Mérignac
France

3. Claimant 2’s address for this arbitration is at:

5 rue Camille Vic
33700 Mérignac
France

4. The Claimants are represented in this arbitration by:

Me Bruno Poulain / Me Roxane Regaud
Ernst & Young Société d’Avocats
Quai de Bacalan, Hangar 16 Entrée 1
33 070 Bordeaux Cedex
France
Tel: +33 5 57 85 47 00
Email: [Bruno.Poulain@ey-avocats.com](mailto: Bruno.Poulain@ey-avocats.com) / [Roxane.Regaud@ey-avocats.com](mailto: Roxane.Regaud@ey-avocats.com)

5. The respondent is REPUBLIC OF MAURITIUS (the “**Respondent**”).

6. The Respondent’s address for this arbitration is at:

Office of the Attorney General
4th Floor, R. Seenevassen Building
Port Louis
Mauritius

7. The Respondent is represented in this arbitration by:

Dr Veijo Heiskanen / Ms Domitille Baizeau / Ms Laura Halonen / Ms Eleonore Caroit / Mr Augustin Barrier
LALIVE
Rue de la Mairie 35
P.O. Box 6569
1211 Geneva 6
Switzerland
Tel: +41 58 105 2000
Email: [vheiskanen@lalive.law](mailto: vheiskanen@lalive.law) / [dbaizeau@lalive.law](mailto: dbaizeau@lalive.law) / [lhalonen@lalive.law](mailto: lhalonen@lalive.law) / [ecaroit@lalive.law](mailto: ecaroit@lalive.law) / [abarrier@lalive.law](mailto: abarrier@lalive.law)

The Hon. Maneesh Gobin, Attorney General / Mr Dheerendra Kumar Dabee, Solicitor-General / Mr Rajeshsharma Ramloll, Deputy Solicitor-General
Office of the Attorney General
4th Floor, R. Seenevassen Building
Port Louis
Mauritius
Tel: +230 203 4742
Email: [sgo@govmu.org](mailto: sgo@govmu.org) / [ddabee@govmu.org](mailto: ddabee@govmu.org) / [rramloll@govmu.org](mailto: rramloll@govmu.org)

II. DISPUTE AND COMMENCEMENT OF ARBITRATION

8. By notice of arbitration dated 30 March 2018 (the “**Notice of Arbitration**”), the Claimants commenced arbitration proceedings against the Respondent. The Notice of Arbitration was served on the Respondent on the same day.
9. The Claimants allege that the Respondent, by its acts and omissions, breached various provisions of the Mauritius-France Bilateral Investment Treaty, dated 22 March 1973 (the “**Mauritius-France BIT**”) and request, among other things, damages provisionally quantified at EUR 11,600,000.
10. The Claimants invoke the arbitration agreement in Article 9 of the Mauritius-Finland Bilateral Investment Treaty, dated 12 September 2007 (the “**Mauritius-Finland BIT**”), which is applicable, according to the Claimants, pursuant to Article 8(2) of the Mauritius-France BIT.
11. Article 8(2) of the Mauritius-France BIT provides as follows:

“Pour les matières régies par la présente Convention autres que celles visées à l’article 7, les investissements des ressortissants, sociétés ou autres personnes morales de l’un des Etats contractants bénéficient également de toutes les dispositions plus favorables que celles du présent Accord qui pourraient résulter d’obligations internationales déjà souscrites ou qui viendraient à être souscrites par cet autre Etat avec le premier Etat contractant ou avec des Etats tiers.”

12. Article 9 of the Mauritius-Finland BIT provides as follows:

“1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within three months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made; or

(b) to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the “Centre”), if the Centre is available; or

(c) to any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraphs 2(b) or 2(c) of this Article if, before a judgment has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.”

13. The Respondent responded to the Notice of Arbitration by a letter, dated 30 April 2018, in which it argues, among other things, that the Claimants' claims have no jurisdictional basis and lack factual and legal merit.
14. The Parties agree that the present dispute is governed by the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (the "**UNCITRAL Rules**").
15. The Parties agree to the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2014 (the "**UNCITRAL Transparency Rules**") pursuant to Article 1(2)(a) of said rules.
16. According to Article 3(2) of the UNCITRAL Rules, these arbitral proceedings are deemed to have commenced on 30 April 2018, the date on which the Respondent received the Notice of Arbitration.

III. CONSTITUTION OF THE ARBITRAL TRIBUNAL

17. The Claimants, in the Notice of Arbitration, in accordance with Articles 3.4(b) and 7 of the UNCITRAL Rules, nominated Prof Olivier Caprasse as their party-appointed arbitrator. His contact details are as follows:

Prof Olivier Caprasse
Avenue de Tervueren 412 Bte 18
1150 Brussels
Belgium
Tel: +32 495 20 50 70
Email: caprasse@caprasse-arbitration.com

18. The Respondent, on 16 May 2018, in accordance with Article 7 of the UNCITRAL Rules, nominated Prof Jan Paulsson as its party-appointed arbitrator. His contact details are as follows:

Prof Jan Paulsson
THREE CROWNS
Washington Harbour
3000 K Street, N.W., Suite 101
Washington, D.C. 20007-5109
U.S.A.
Tel: +1 202 540 9470
Email: jan.paulsson@threecrownsllp.com

19. Prof Olivier Caprasse and Prof Jan Paulsson are individually referred to as "**Co-Arbitrator**" and together as "**Co-Arbitrators**".
20. On 21 June 2018, the Co-Arbitrators, in accordance with Article 7 of the UNCITRAL Rules, appointed Prof Maxi Scherer as the presiding arbitrator (the "**Presiding Arbitrator**"). Her contact details are as follows:

Prof Maxi Scherer
Wilmer Cutler Pickering Hale and Dorr LLP
49 Park Lane
London, W1K 1PS
United Kingdom
Tel: +44 2078721067
Email: maxi.scherer@wilmerhale.com

21. The Co-Arbitrators and the Presiding Arbitrator are together referred to as "**Arbitrators**" or the "**Tribunal**".

22. The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the UNCITRAL Rules.
23. The members of the Tribunal confirm that they are, and shall remain, impartial and independent of the Parties. The members of the Tribunal confirm that they have disclosed, to the best of their knowledge, all circumstances likely to give rise to justifiable doubts as to their impartiality or independence and that they will without delay disclose any such circumstances that may arise in the future, taking guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration 2014 (the “**IBA Guidelines on Conflicts of Interest**”).
24. The Parties confirm that they have no objection to the appointment of the members of the Tribunal on the grounds of conflict of interest and/or lack of independence or impartiality in respect of matters known to them as at the date of signature of these Terms of Appointment.

IV. PLACE AND LANGUAGE OF ARBITRATION

25. The Parties do not agree on the place and language of the arbitration.
26. The Tribunal will hear the Parties on this point and decide the place and language of the arbitration, pursuant to Articles 16(1) and 17(1) of the UNCITRAL Rules.

V. APPLICABLE PROCEDURAL RULES

27. As stated above, the Parties agree that this arbitration shall be conducted under the UNCITRAL Rules.
28. For issues not dealt with in the UNCITRAL Rules, the Tribunal shall apply the rules that the Parties have agreed upon. In the absence of such agreement, the Tribunal shall apply the rules it deems appropriate.
29. Procedural decisions shall be issued by the Presiding Arbitrator after consultation with her Co-Arbitrators or, in cases of urgency or if a Co-Arbitrator cannot be reached, by her alone, subject to possible reconsideration of such decision by the full Tribunal.
30. The Secretary-General of the Permanent Court of Arbitration shall act as the appointing authority in this arbitration for all purposes under the UNCITRAL Rules.

VI. PROCEDURAL MEETING

31. Further procedural details, including a schedule for submissions by and provisions governing the transmission of Party submissions, shall be discussed and, as far as possible, agreed at a procedural meeting to be held with the Parties.
32. Following consultation with the Parties, the Tribunal shall determine whether the procedural meeting shall be conducted utilizing video or teleconferencing or at a physical meeting to be held at a date and venue to be determined.
33. The results of the procedural meeting shall be included in a procedural order of the Tribunal.

VII. COMMUNICATIONS

34. Subject to any modification arising from the procedural meeting, the following provisions shall apply to communications.
35. The Parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the arbitration.

36. The Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel (listed at paragraphs 4 and 7, respectively), to the PCA and to the Tribunal.
37. A hard copy of all communications exceeding 30 pages (including all attached documents) shall also be sent by courier within two business days following their transmission by e-mail.
38. The Parties shall send copies of correspondence between them to the Tribunal only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event of which the Tribunal should be apprised.

VIII. REPRESENTATION

39. The Parties have designated their respective representatives and legal advisers listed above at paragraphs 4 and 7, respectively, as being authorized to act on their behalf in these arbitration proceedings.
40. To the extent they have not already done so, the Parties shall confirm these designations by each providing copies of the powers of attorney or letter of representation granted to their representative(s).
41. In the event of any change by a Party in the designation or contact details of any of its representatives and legal advisers, that change shall be notified promptly in writing to opposing counsel and to the Tribunal.
42. The Tribunal reserves the right not to permit the representation of a Party by new counsel and to exclude the participation of any representatives from any hearing or other meeting where their participation (i) either has not been duly notified sufficiently in advance of that hearing or meeting; or (ii) could compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment).

IX. DEPOSIT AND CASE ADMINISTRATION

43. The Parties have agreed and arranged to have the Permanent Court of Arbitration (the “PCA”) in The Hague hold and manage Party deposits and disburse the Tribunal’s fees and expenses, subject to the Tribunal’s supervision. The Parties further agree that the PCA staff may carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal.
44. Such tasks may include that of a suitable PCA staff acting as legal secretary to the Tribunal (“Secretary”), in order to assist it in the organisation of the file and in research. The Secretary shall be entitled to charge his or her time spent on the matter at the standard PCA hourly rate at the hourly rate of EUR 175. The Secretary shall be reimbursed for all reasonable expenses associated with his or her appointment. The Secretary shall be and remain impartial and independent and enjoy the same rights of immunity as the Arbitrators, and shall confirm impartiality and independence in writing prior to appointment. The Secretary undertakes to disclose to the Parties and the Arbitrators all circumstances that arise which could cast reasonable doubt on his/her independence or impartiality. The Secretary is subject in the performance of all such duties to the supervision of the Tribunal, which retains full responsibility personally to review the file and to draft its decisions and award(s).
45. The contact details of the PCA are as follows:

Permanent Court of Arbitration
Attn: Ms. Fedelma Claire Smith, Senior Legal Counsel
Peace Palace

Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel.: +31 70 302 4153 (direct)
E-mail: fsmith@pca-cpa.org / bureau@pca-cpa.org

46. The PCA will not charge any fees for acting exclusively as fund holder. If the PCA is requested to provide further administrative support, the time spent by the PCA will be charged in accordance with the PCA Schedule of Fees.
47. In accordance with Article 41(1) of the UNCITRAL Rules and in order to assure sufficient funds for the Tribunal's fees and expenses, the Parties shall establish an initial deposit of EUR 200,000 (i.e., EUR 100,000 from each side). The deposit shall be made by wire transfer not later than 15 days after both Parties have signed the Terms of Appointment. Deposits shall be made by wire transfer to the following PCA account:
- | | |
|-------------------|--|
| Bank: | ABN Amro Bank N.V.
Gustav Mahlerlaan 10
1082 PP Amsterdam
The Netherlands |
| BIC and SWIFT: | ABNANL2A |
| Account number: | 0480 4373 51 |
| IBAN: | NL56 ABNA 0480 4373 51 |
| Beneficiary Name: | Permanent Court of Arbitration |
| Reference: | 2018-37 (specify Claimants or Respondent) |
48. Any transfer fees or other bank charges will be charged to the deposit. No interest will be paid on the deposit.
49. The Tribunal will review the adequacy of the deposit from time to time and may request the Parties to make supplementary deposits in accordance with Article 41(2) of the UNCITRAL Rules. Any supplementary deposit shall be placed by wire transfer to the bank account referred to above in paragraph 47.
50. As provided for in Article 41(4) of the UNCITRAL Rules, if the required deposits are not paid in full within 30 days after the receipt of the request, the Tribunal shall so inform the Parties in order that one or more of them may make the required payment. If such payment is not made, the Tribunal may order the suspension or termination of the arbitral proceedings.
51. The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

X. TRIBUNAL FEES AND EXPENSES

52. In accordance with Article 39 of the UNCITRAL Rules, the fees and expenses of the Tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the members of the Tribunal, and any other relevant circumstances of the case.
53. The members of the Tribunal shall be remunerated at the rate of EUR 650 per hour for all time spent in connection with the arbitration, plus VAT, if applicable. Time spent on travel will be charged at 50% of this rate.
54. In respect of any hearing or other meeting for which any member of the Tribunal has been asked to reserve more than one day and which is cancelled, or postponed by more than one week, by one or both of the Parties less than four weeks before the first day of such hearing or meeting, the

member of the Tribunal shall be remunerated in the amount of 50% of his/her fees, for each day reserved for the hearing or other meeting.

55. The members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to business class air and first class train travel, expenses, telephone, fax, delivery, printing, and other expenses.
56. The members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the PCA periodic bills in respect of fees. All payments to the members of the Tribunal shall be made from the deposits administered by the PCA, and shall be without prejudice to a final allocation of costs by the Tribunal in an award.

XI. CONFIDENTIALITY

57. To the extent permitted by the UNCITRAL Transparency Rules, these arbitral proceedings shall be held in private, and documents or evidence produced by a Party in the proceedings not otherwise in the public domain shall be confidential – save and to the extent that disclosure may be required of a member of the Tribunal by a legal duty or to protect or pursue a legal right.

XII. IMMUNITY FROM SUIT

58. Save for intentional wrongdoing, the Parties shall not seek to make the Tribunal or any member of the Tribunal liable in respect of any act or omission in connection with any matter related to this arbitration.
59. The Parties shall not require any member of the Tribunal to be a party or witness in any judicial, administrative, or other proceedings arising out of or in connection with this arbitration.

XIII. DISPOSAL OF DOCUMENTS

60. Six months after the Tribunal has notified the final award to the Parties, the members of the Tribunal shall be at liberty to destroy the documents submitted throughout the course of the proceedings. In any event, the arbitrators shall at all times store and, if need be, destroy the documents submitted throughout the course of the proceedings in a safe and secure manner so as to preserve their confidentiality.

XIV. DUTY TO ASSIST

61. The Parties accept that they have a duty to assist the Tribunal and they agree that the Tribunal may direct any Party to do all such things during the arbitral proceedings as may reasonably be needed to enable an enforceable award to be made fairly and efficiently.

XV. SIGNATURE OF THE TERMS OF APPOINTMENT

62. These Terms of Appointment may be signed in counterparts, collectively forming one composite signed document.

[signature pages to follow]

CLAIMANT 1:

RESPONDENT:



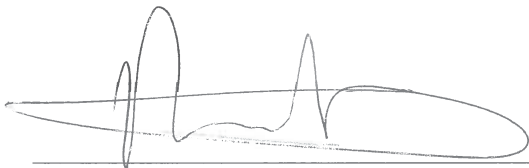
Prof Christian Doutremepuich

Republic of Mauritius

Date: 25.07.2018

Date:

CLAIMANT 2:



Mr Antoine Doutremepuich

Date: 25/07/2018

THE TRIBUNAL:

Prof Olivier Caprasse

Prof Jan Paulsson

Date:

Date:

Prof Maxi Scherer
(Presiding Arbitrator)

Date:

CLAIMANT 1:

RESPONDENT:

Prof Christian Doutremepuich

Date:



Republic of Mauritius

Date: 20 July 2018

CLAIMANT 2:

Mr Antoine Doutremepuich

Date:

THE TRIBUNAL:

Prof Olivier Caprasse

Date:

Prof Jan Paulsson

Date:

Prof Maxi Scherer
(Presiding Arbitrator)

Date:

CLAIMANT 1:

RESPONDENT:

Prof Christian Doutremepuich

Republic of Mauritius

Date:

Date:

CLAIMANT 2:

Mr Antoine Doutremepuich

Date:

THE TRIBUNAL:



Prof Olivier Caprasse

Prof Jan Paulsson

Date:

19/7/2018

Date:

Prof Maxi Scherer
(Presiding Arbitrator)

Date:

CLAIMANT 1:

RESPONDENT:

Prof Christian Doutremepuich

Republic of Mauritius

Date: 25/07/2018

Date:

CLAIMANT 2:

M. Antoine Doutremepuich

Date: 25/07/2018

THE TRIBUNAL:

Prof Olivier Caprasse

Date:

Prof Jan Paulsson

Date:

30/7/18

Prof Maxi Scherer
(Presiding Arbitrator)

Date:

CLAIMANT 1:

RESPONDENT:

Prof Christian Doutremepuich

Republic of Mauritius

Date:

Date:

CLAIMANT 2:

Mr Antoine Doutremepuich

Date:

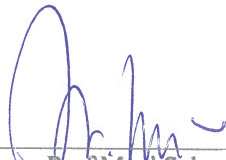
THE TRIBUNAL:

Prof Olivier Caprasse

Prof Jan Paulsson

Date:

Date:



Prof Maxi Scherer
(Presiding Arbitrator)

Date:

18 July 2018