

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES**

**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.**

**v.**

**Romania**

**(ICSID Case No. ARB/15/31)**

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**PROCEDURAL ORDER No. 1**

***Members of the Tribunal***

Ms. Teresa Cheng SC, President of the Tribunal  
Prof. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal Yetano

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August 26, 2016

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**Introduction**

The first session of the Tribunal was held on August 12, 2016, beginning at 8:00 a.m. EDT, by telephone conference. The session was adjourned at 10:00 a.m. EDT.

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 conference were:

**Members of the Tribunal:**

Ms. Teresa Cheng SC, President of the Tribunal  
Prof. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

**ICSID Secretariat:**

Ms. Sara Marzal Yetano, Secretary of the Tribunal

**Participating on behalf of the Claimants:**

Abby Cohen Smutny (White & Case LLP), Counsel  
Darryl S. Lew (White & Case LLP), Counsel  
Petr Polášek (White & Case LLP), Counsel  
Brody Greenwald (White & Case LLP), Counsel  
Andrei Popovici (White & Case LLP), Counsel  
Richard Brown, Claimants  
Simon Lusty, Claimants

**Participating on behalf of the Respondent:**

Mr. Veijo Heiskanen (LALIVE), Counsel  
Mr. Matthias Scherer (LALIVE), Counsel  
Ms. Lorraine de Germiny (LALIVE), Counsel  
Mr. David Bonifacio (LALIVE), Counsel  
Dr. Crenguta Leaua (Leaua & Asociatii), Counsel  
Ms. Andreea Simulescu (Leaua & Asociatii), Counsel

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on July 29, 2016;

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Procedural Order No. 1

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- The Draft Procedural Order circulated by the Tribunal Secretary on July 29, 2016; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on August 9, 2016, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

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 June 21, 2016 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

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 June 21, 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. 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/her 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. The presence, in person, of all Members of the Tribunal shall be necessary to constitute a quorum for all sittings of the Tribunal, without prejudice to the parties agreeing otherwise on a particular occasion.
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. In accordance with ICSID Arbitration Rule 16(2), the Tribunal may take any decision by correspondence, or by any other appropriate means of communication, provided that all Members of the Tribunal take part in the decision-making process. Where, however, the matter is urgent and consultation with the other Members of the Tribunal is not feasible, the President may decide procedural matters on her own, subject to possible reconsideration by the full Tribunal.
  - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every two months.
  - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal provided that all members of the Tribunal take part in the decision-making process in accordance with §5.2 above.
  - 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 Tribunal has the power to fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. If the matter is urgent and consultation with the other Members of the Tribunal is feasible, the President may fix or extend time limits on her own, subject to possible reconsideration by the full Tribunal.

7. Secretary of the Tribunal  
*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Ms. Sara Marzal Yetano, 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. Sara Marzal Yetano  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473-6434  
Fax: + 1 (202) 522-2615  
Email: smarzal@worldbank.org  
Paralegal email: fsanchez1@worldbank.org

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

Ms. Sara Marzal Yetano  
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 Claimants

Gabriel Resources Ltd. and  
Gabriel Resources (Jersey) Ltd.  
c/o Ms. Abby Cohen Smutny  
Mr. Darryl S. Lew  
Mr. Petr Polášek  
Mr. Brody Greenwald  
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and

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Ms. Lorraine de Germiny  
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and

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Ms. Aurora Damcali  
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liliana.deaconescu@leaua.ro  
carmen.saricu@leaua.ro

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 July 5, 2016, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received Claimants' and Respondent's payment on August 4, 2016.
- 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. Washington DC shall be the place of proceedings.
- 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, Translation and Interpretation  
*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.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If a document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously, subject to the possibility of changing to consecutive interpretation, if appropriate.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) 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  
*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.
- 12.5. If the matter is urgent and direct communication to the Tribunal necessary, the email addresses of the Members of the Tribunal are:

Ms. Teresa Cheng SC  
TeresaCheng@dvc.com.  
hk

Prof. Horacio Grigera  
Naón  
hgmlaw@gmail.com

Prof. Zachary Douglas QC  
zacharydouglas@matrixlaw.  
co.uk

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 exhibits.<sup>1</sup>
- 13.2. Within three business days of the email filing, the parties shall upload the materials filed by email as well as the supporting exhibits and legal authorities, including a list of legal authorities, to the file sharing platform created by ICSID for purposes of this case.
- 13.3. Within three business days of the electronic filing, the parties shall courier to the Tribunal Secretary:
- 13.3.1. one unbound, double-sided hard copy in A4/Letter format<sup>2</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);
- 13.3.2. one hard copy in A5 format (double-sided, spiral bound and in soft covers) of the entire submission including the pleading, the witness statements, expert reports, and exhibits (but not including legal authorities); and
- 13.3.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.
- 13.4. Also within three business days of the electronic filing, the parties shall courier to each Member of the Tribunal at the addresses indicated at §13.6 below:
- 13.4.1. one hard copy in A5 format (double-sided, spiral bound and in soft covers) of the entire submission including the pleading, the witness statements, expert reports, and exhibits (but not including legal authorities); and
- 13.4.2. one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

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

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

13.5. Also within three business days of the electronic filing, the parties shall courier to the opposing party at the addresses indicated at §8 above one hard copy in A4/Letter format (double-sided, spiral bound and in soft covers) of the submission including the pleading, the witness statements, and expert reports (but not including exhibits and legal authorities). The Claimants' copy shall be sent to the attention of counsel at White & Case in Washington, DC, at the address indicated in §8 above. The Respondent's copy shall be sent to the attention of counsel at Leaua & Asociatii in Bucharest, at the address indicated in §8 above.

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

Ms. Teresa Cheng SC 38/F Gloucester Tower The Landmark Central Hong Kong SAR Tel: + 852 2905 1681 Email: TeresaCheng@dvc.com.hk	Prof. Horacio A. Grigera Naón 5224 Elliott Road Bethesda, Maryland 20816 U.S.A. Phone: +1 301 229 1985 Email: hgmlaw@gmail.com hgrigeranaon@yahoo.com	Prof. Zachary Douglas QC Matrix Chambers 9 Rue de Candolle 1205 Geneva Switzerland Phone: +44 (0)20 7404 3447 Email: zacharydouglas@matrixlaw.co.uk
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13.7. A party may redact portions of an exhibit that contain privileged or confidential information. Within two weeks of its email filing, a party also may redact its principal submissions to remove confidential information for purposes of publication in accordance with the procedure set out in §23 below. If the other party disputes any such redactions, it may raise the issue with the other party and, ultimately, the Tribunal, which, if necessary, shall decide the issue.

13.8. If an exhibit is lengthy and relevant only in part, it is sufficient if only the relevant parts are submitted. If an exhibit is an electronic file that is not suitable for printing, as may be the case for example of certain Excel files, it is sufficient if the document is submitted only electronically. The Tribunal may request at any time hard copies of any exhibit submitted electronically.

13.9. Legal authorities shall be submitted in electronic format only. If a publicly available legal authority is lengthy and relevant only in part, it is sufficient if only the relevant parts are submitted. The Tribunal may request at any time hard copies of any legal authority submitted electronically.

13.10. Electronic versions of pleadings, witness statements, and expert reports shall be text searchable (i.e., OCR PDF or Word).

13.11. 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.

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

14. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

14.1. The proceeding shall consist of a written phase followed by an oral phase.

14.2. The number, sequence and time periods of pleadings are set forth in Annex A to this Procedural Order No. 1.

15. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*

15.1. Each party will be permitted to make requests for the production of documents. These requests shall be made by the parties following the first round of submissions, in accordance with Annex A.

15.2. Any request for production of documents must identify with precision each document or category of documents sought and explain their relevance and materiality to the outcome of the case. Such requests shall not be sent to the Tribunal or the ICSID Secretariat. The Parties shall use the form known as a “Redfern Schedule.” All Redfern Schedules shall be provided in an electronic version that permits responses to the requests and the Tribunal’s decision on any objections to be added, and its text to be searched, edited, copied, and pasted (Microsoft Word format or equivalent), unaccompanied by the communications exchanged between Parties’ in regards to document production.

15.3. Each party shall produce documents requested that are in its possession, custody or control (and not in the other party’s possession, custody or control), and to which it does not object as soon as practicable and in any event within 4 weeks of the request.

15.4. Each party shall state any objection(s) to any request within two weeks of the request.

15.5. Each party shall respond to any such objection(s) within one week after receipt of the objection(s).

- 15.6. If a party wishes the Tribunal to rule on one or more of the requests to produce that have been objected to, it shall notify the Tribunal within two weeks of receipt of the objections(s). The Tribunal will make its best efforts to rule on the requests referred to it within two weeks of receipt of the notification of the requests to produce that require its ruling.
- 15.7. A party shall produce the documents ordered by the Tribunal within two weeks of the Tribunal's ruling or such other time as may be directed by the Tribunal in the ruling.
- 15.8. Should a party fail to produce, without satisfactory explanation, documents as ordered by the Tribunal, the Tribunal may infer that such evidence would be adverse to the interests of that Party.
- 15.9. Documents shall be produced directly to the requesting party without copying the Tribunal. Documents so produced shall not be deemed part of the record unless and until the requesting party subsequently files them as exhibits in accordance with §16 below.
- 15.10. The Tribunal may at any time call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2). In that case, the documents shall be submitted to the other party and to the Tribunal in accordance with §16 below and shall be deemed part of the record.
- 15.11. The parties and the Tribunal are not bound, but shall be guided as appropriate by Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration.
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 (hereinafter "documents"). Further documents 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 set forth in §13 above.
- 16.3. Either party may submit an application to present additional evidence after the filing of its respective last written submission should it consider that

exceptional circumstances exist, based on a reasoned written request followed by observations from the other party. The Tribunal shall decide, in its discretion, on any such application.

- 16.4. The documents shall be submitted in the following form:
- 16.4.1. Documents shall be numbered consecutively throughout these proceedings.
- 16.4.2. The number of each document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.
- 16.4.3. Each document shall have a divider with the document identification number on the tab.
- 16.4.4. A party may produce several documents relating to the same subject matter within one exhibit, numbering each page of such exhibit separately and consecutively.
- 16.4.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.4.6. 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.
- 16.5. 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. All exhibits shall be referenced in the submitting party’s pleadings, in case of lengthy documents with reference to the relevant page and/or paragraph number.
- 16.6. 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 demonstrative 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 at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports

*Convention Article 43(a); Arbitration Rule 24*

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the witness statements and/or expert reports relied upon by the parties. Further witness statements and/or expert reports relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 17.2. Neither party shall be permitted to submit any testimony beyond what is contemplated in §18 below 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.
- 17.3. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

*Arbitration Rules 35 and 36*

- 18.1. The Tribunal may, if it deems necessary at any stage of the proceeding, call upon the parties to produce witnesses and experts.
- 18.2. On the date provided in Annex A, each party shall notify the other party, with a copy to the Tribunal, which 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 any part of the hearings.
- 18.5. The procedure for examining witnesses and experts at the hearing shall be the following:
  - 18.5.1. 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.

18.5.2. Fact witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes.

18.5.3. 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 1 hour.

18.5.4. Direct examination is followed by cross-examination by the other party, which may be followed by re-direct examination. The Tribunal shall decide upon any request for re-cross examination from the parties.

18.6. Witnesses and experts shall be made available for examination during the oral hearing. 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, 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.

19. Pre-Hearing Organizational Meetings  
*Arbitration Rule 13*

19.1. A pre-hearing organizational meeting shall be held at least 4 weeks before the hearing, on the date provided in Annex A (or another date determined by the Tribunal after consultation with the parties) by telephone between the Tribunal and the parties in order to resolve any 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 argument.

20.2. The hearing shall be held at a place to be determined in accordance with §10 above.

20.3. The duration of the hearing shall be two weeks. The date of the hearing shall be fixed and directed by the Tribunal on or before October 31, 2016.

- 20.4. 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.
- 20.5. Allocation of time between the parties at the hearing shall be agreed by the parties or determined by the Tribunal following the pre-hearing organizational meeting held in accordance with §19.
- 20.6. In accordance with Section I.1 of Annex C of the Agreement between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments, done at Bucharest on May 8, 2009 (the “Canada – Romania BIT”), the hearings shall be open to the public.
- 20.6.1. The hearing shall be broadcast on closed-circuit television at facilities made available by the ICSID Secretariat for such purposes.
- 20.6.2. To ensure the protection of confidential information, the Tribunal may hold portions of hearings in camera and establish such other procedures for the protection of confidential information as may be appropriate.
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 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 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 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties 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 parties in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*
- 22.1. The Tribunal shall, in consultation with the parties, determine the schedule for the filing of any post-hearing memorials and statements of costs, if necessary, in a future Procedural Order.
23. Publication and Public Access to Documents  
*Annex C of the Canada-Romania BIT; Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*
- 23.1. In accordance with Annex C of the Canada-Romania BIT, and subject to the procedures for the protection of confidential information that shall be agreed by the parties and established in a subsequent Procedural Order of the Arbitral Tribunal, the ICSID Secretariat will publish all of the principal submissions (but not the supporting witness statements, expert reports, exhibits, or legal authorities) submitted to, and all Procedural Orders issued by, the Tribunal, unless the parties otherwise agree, as part of the Procedural Details on the ICSID website, subject to the deletion of confidential information in accordance with the procedures for the protection of confidential information that shall be set out in a subsequent Procedural Order of the Arbitral Tribunal as indicated above.
- 23.2. Pursuant to §I.4 of Annex C of the Canada-Romania BIT, the Award shall be publicly available and will be published by the ICSID Secretariat, subject to the deletion of confidential information as may be warranted.
- 23.3. The parties shall seek to agree upon, and shall present to the Tribunal their agreement and any disagreements with respect to, a draft Procedural Order governing (i) the designation and protection of confidential information and (ii) the preparation of redacted copies of documents for disclosure under Annex C of the Canada – Romania BIT.
24. Non-Disputing Party Submissions and Amicus Curiae  
*Annex C of the Canada-Romania BIT; Arbitration Rule 37*
- 24.1. The Tribunal shall, in consultation with the parties, establish all necessary procedures and schedules in the event that a non-disputing party (or prospective *amicus curiae*) seeks leave to file a written submission pursuant to Annex C § III of the Canada-Romania BIT.
- 24.2. The terms of the Canada-Romania BIT and the ICSID Convention and §23 above (Publication and Public Access to Documents) shall govern the

access of any non-disputing parties or prospective *amicus curiae* to documents.

- 24.3. The procedure for considering any application by a non-disputing party or prospective *amicus curiae* to file a written submission shall take place on the dates provided in Annex A.
- 24.4. As per Annex A, both parties shall have the opportunity to comment in writing on any application by a non-disputing party or prospective *amicus curiae* to file a written submission, and the Tribunal shall determine whether to admit any such submission in the record.
- 24.5. If the Tribunal were to admit any written submission by a non-disputing party or prospective *amicus curiae*, the parties shall be permitted to respond in writing to the submission on the date set out in Annex A. The non-disputing party or *amicus curiae* shall not be permitted to make any further submissions.
25. Applications for extension of time
- 25.1. Any application for extension of time of a particular step in the procedural time-table in Annex A must be made as soon as the circumstances giving rise to such need for extension arises, and in any event before the expiration of the relevant period. The other party shall be allowed to respond to such application within 48 hours of receipt of such request.

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Ms. Teresa Cheng SC  
President of the Tribunal  
Date: August 26, 2016

**ANNEX A**

**PROCEDURAL SCHEDULE FOR THE PROCEEDINGS**

*\* The start date is to be fixed by the Tribunal after the questions relating to confidential and classified documents are resolved.*

Description	Party/Tribunal	Period of Time (from prior step)	Date	Paragraph in Procedural Order No. 1
First Session of the Arbitral Tribunal	All	August 12, 2016		-
Memorial	CLAIMANTS	7 months	TBD	§§13, 14, 16
Counter-Memorial	RESPONDENT	7 months	TBD	§§13, 14, 16
Requests for production of documents	CLAIMANTS AND RESPONDENT	1 month	TBD	§15
Production of non- objected documents and objections to produce	CLAIMANTS AND RESPONDENT	3 weeks	TBD	§15
Reply to objections to produce	CLAIMANTS AND RESPONDENT	2 weeks	TBD	§15
Decision on requests for production of documents	TRIBUNAL	3 weeks	TBD	§15
Production as ordered	CLAIMANTS AND RESPONDENT	1 month	TBD	§15
Reply	CLAIMANTS	5 months	TBD	§§13, 14, 16
Applications to File Non-Disputing Party Submissions	-	2 weeks	TBD	§24

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<b>Description</b>	<b>Party/Tribunal</b>	<b>Period of Time (from prior step)</b>	<b>Date</b>	<b>Paragraph in Procedural Order No. 1</b>
Comments on Non-Disputing Party Applications	CLAIMANTS AND RESPONDENT	2 weeks	TBD	§24
Decision on Non-Disputing Party Applications	TRIBUNAL	2 weeks	TBD	§24
Comments on Non-Disputing Party Submissions (if any are admitted by Tribunal)	CLAIMANTS AND RESPONDENT	4 weeks	TBD	§24
Rejoinder	RESPONDENT	5 months after Reply	TBD	§§13, 14, 16
Notification of witnesses and experts	CLAIMANTS AND RESPONDENT	6 weeks before Hearing	TBD	§18
Pre-Hearing Organizational Meeting	All	4 weeks before Hearing	TBD	§19
Hearing	All	-	TBD	§20
Post-Hearing Memorials	CLAIMANTS AND RESPONDENT	-	Need and Timing TBD	§22
Cost submissions	CLAIMANTS AND RESPONDENT	-	Need and Timing TBD	§22
Award / Decision	TRIBUNAL	-	TBD	§5, 23