

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC

v.

Democratic Republic of Timor-Leste

(ICSID Case No. ARB/15/2)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President
Mr. Stephen Jagusch, Arbitrator
Professor Campbell McLachlan QC, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Mr. Rahul Donde

13 October 2015

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Introduction

The first session of the Tribunal was held by telephone conference on 6 October 2015.

Participating in the first session were:

Members of the Tribunal:

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal

Mr. Stephen Jagusch, Arbitrator

Professor Campbell McLachlan QC, Arbitrator

Assistant to the Tribunal:

Mr. Rahul Donde

ICSID Secretariat:

Mr. Lindsay Gastrell, Secretary of the Tribunal

On behalf of the Claimants:

Professor Chester Brown, Counsel

Tony Johnson, Johnson Winter Slattery

Nicholas Briggs, Johnson Winter Slattery

Albert Jacobs, Director of Lighthouse Corporation Pty Limited and Lighthouse Corporation Limited, IBC

On behalf of the Respondent:

Mr. Shane Doyle QC, Counsel

Mr. Jonathan Kay Hoyle, Counsel

Mr. Liam Prescott, DLA Piper

Mr. Joel Borgeaud, DLA Piper

Ms. Janelle Saffin, DLA Piper

His Excellency, Mr Abel Guterres, Ambassador Extraordinary and Plenipotentiary of the Democratic Republic of Timor-Leste

The Tribunal and the Parties considered the following:

- The draft Agenda circulated by the Secretary of the Tribunal on 26 August 2015;
- The draft Procedural Order No. 1 circulated by the Secretary of the Tribunal on 26 August 2015; and
- The Parties' comments on the draft Agenda and the draft Procedural Order No. 1 received on 29 September 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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An audio recording of the session was made and deposited in the archive of ICSID. A copy of the recording was subsequently distributed to the Members of the Tribunal and the Parties.

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 Procedural Calendar 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 10 April 2006.

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

2.1. The Tribunal was constituted on 7 August 2015 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 submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were transmitted to the Parties by the ICSID Secretariat on 7 August 2015.

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

Professor Gabrielle Kaufmann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
1211 Geneva 4
Switzerland
gabrielle.kaufmann-kohler@lk-k.com

Mr. Stephen Jagusch
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United Kingdom
StephenJagusch@quinnemanuel.com

Professor Campbell McLachlan QC
Victoria University of Wellington Law School
Old Government Buildings
15 Lambton Quay
Wellington 6011
New Zealand
Campbell.McLachlan@vuw.ac.nz

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:
- 3.2.1.1. 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
- 3.2.1.2. 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 of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Decisions and Procedural 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 issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The President is authorized to issue Procedural Orders and procedural decisions on behalf of the Tribunal.
- 5.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal 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 Secretary of the Tribunal is Lindsay Gastrell, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. The contact details for the ICSID Secretariat are:

Ms. Lindsay Gastrell, ICSID
Tel.: + 1 (202) 458-0419
Fax: + 1 (202) 522-2615
Email: lgastrell@worldbank.org
Paralegal : Ms. Natalie O’Conner (noconner@worldbank.org)

Address for courier/parcel deliveries:

MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA

Address for local messenger deliveries:

701 18th Street, N.W. (“J Building”), 2nd Floor
Washington, D.C. 20433

8. Appointment of Assistant to the Tribunal

- 8.1. By the Secretary’s letter of 26 August 2015, the President of the Tribunal explained to the Parties that she considered that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant.
- 8.2. The President of the Tribunal proposed, with the approval of the other Members of the Tribunal, that Mr. Rahul Donde be appointed as assistant to the Tribunal. Mr. Donde’s *curriculum vitae* was distributed to the Parties on that same date.

- 8.3. In the letter of 26 August 2015, the President also set out the tasks which may be assigned to the assistant and noted that the assistant is subject to the same confidentiality obligations as the Members of the Tribunal. Mr. Donde has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 6 October 2015.
- 8.4. The Parties approved the appointment of Mr. Donde as assistant to the Tribunal on 1 and 29 September 2015. It was also agreed that he would receive US\$180 for each hour of work performed in connection with the case or *pro rata*. He would also receive subsistence allowances and be reimbursed for his travel and other expenses in the limits prescribed by ICSID Administrative and Financial Regulation 14.
- 8.5. The contact details for the assistant to the Tribunal are:

Mr. Rahul Donde
Lévy Kaufmann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
1211 Geneva 4
Switzerland
Email: rahul.donde@lk-k.com

9. Representation of the Parties
Arbitration Rule 18

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

For the Claimants

Mr. Tony Johnson
Mr. Nicholas Briggs
Johnson Winter & Slattery
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Australia
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For the Respondent

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Mr. Shane Doyle QC
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5th Floor Selbourne Chambers (Sydney)
Essex Court Chambers (London)
Level 27
239 George Street
Brisbane QLD 4000
Australia
Email: sdoyle@qldbar.asn.au

10. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 10.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. By letter of 10 August 2015, ICSID requested that each Party pay US\$150,000 to defray the initial costs of the proceeding. ICSID received the Claimants' payment on 9 September 2015 and the Respondent's payment on 8 September 2015.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 11.1. The Parties have agreed that Sydney, Australia, shall be the place of the arbitration and the venue where hearings will ordinarily be held.
- 11.2. After consultation with the Parties, the Tribunal may hold hearings at any other place that it considers appropriate.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 12.1. English is the procedural language of the arbitration.

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- 12.2. Documents filed in any other language must be accompanied by a translation into English.
 - 12.3. If the 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.
 - 12.4. 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.
 - 12.5. Documents exchanged between the Parties under §16 below (Document Production) in a language other than English need not be translated.
 - 12.6. 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.
 - 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational conference (see §20 below), which witnesses or experts require interpretation.
 - 12.8. 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.
13. Routing of Communications
Administrative and Financial Regulation 24
- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
 - 13.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Secretary of the Tribunal, who shall send them to the Tribunal and the Assistant to the Tribunal.
 - 13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing party and the Tribunal and the Assistant to the Tribunal.
 - 13.4. The Secretary of the Tribunal shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Written Submissions
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23
- 14.1. By the relevant filing date, the Parties shall:
- 14.1.1. submit by email to the Secretary of the Tribunal and the opposing Party an electronic version (without exhibits) of the written submission (also referred to in this Order as “pleading”), witness statements, expert reports and a list of exhibits;¹ and
 - 14.1.2. upload the pleading with all the supporting documentation to the folder created by ICSID for this case in the World Bank’s file-sharing platform.
- 14.2. By the following business day, the Parties shall courier to the Secretary of the Tribunal:
- 14.2.1. 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 exhibits (but not including legal authorities);
 - 14.2.2. one hard copy in A5 format of the pleading, and one copy in A4/Letter format of the witness statements, expert reports, and exhibits (not including legal authorities); and
 - 14.2.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.
- 14.3. At the same time, the Parties shall courier to the opposing Party at the address indicated at §9.1 above and to each Member of the Tribunal, at the addresses indicated at §2.3 above:
- 14.3.1. one hard copy of the pleading in A5 format (soft cover), and the witness statements, expert reports, and exhibits (but not including legal authorities) in A4/Letter format; and
 - 14.3.2. one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits, legal authorities and lists of exhibits.
- 14.4. Electronic versions of a written submissions, witness statements and expert reports shall be submitted in either .doc (Word) or “non-scanned” and text searchable .pdf format, and, if possible, in “e-brief” version, containing

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

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

hyperlinks to the evidence cited.

- 14.5. Written submissions on USB drives shall be accompanied by a hyperlinked index of exhibits.
 - 14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal.
 - 14.7. A filing shall be deemed timely if sent by a party by midnight Washington, D.C. time on the relevant date.
15. Written Submissions: Form, Number and Sequence
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 15.1. The Parties shall submit their written submissions in accordance with the Procedural Calendar set out in Annex A and the rules set out below.
 - 15.2. In the first exchange of submissions [within each phase], the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed and comprehensive manner, and shall respond specifically to all allegations of fact and legal arguments made by the other Party. Together with such submissions, each Party shall produce all evidence upon which it wishes to rely, including factual exhibits and legal authorities, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.
 - 15.3. In the second exchange of submissions [within each phase], the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase, unless new facts have arisen after the first exchange of submissions. Together with this second exchange of submissions, the Parties may file additional factual exhibits and legal authorities, witness statements and expert reports only insofar as relevant to the adverse Party's preceding submission (including the documents, witness statements and expert reports produced therewith) or the documents produced by the Parties during the document production phase.
 - 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.
 - 15.5. All written submissions, witness statements, and expert reports shall be divided into consecutively numbered paragraphs.

16. Production of Documents

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

- 16.1. Within the time limit set in Annex A, a Party may request another Party to produce documents or categories of documents within the other Party's possession, custody or control. Such a request for production shall identify each document or category of documents sought with precision, using a Redfern Schedule as attached in Annex B, in both Word and .pdf format, specifying why the documents sought are relevant to the case and material to its outcome.
- 16.2. Within the time limit set in Annex A, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, set forth its objections to the production sought.
- 16.3. Within the time limit set in Annex A, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule. The reply shall be limited to answering specific objections regarding (i) legal impediment, privilege, confidentiality or political sensitivity and/or (ii) unreasonable and/or over-burdensome nature of the production and other fairness-related considerations.
- 16.4. On or around the date set in Annex A, the Tribunal will, in its discretion, rule upon the production of the documents or categories of documents sought having regard to the legitimate interests of the other Party and all of the surrounding circumstances.
- 16.5. Documents shall be produced directly to the requesting Party without copying the Tribunal. Documents so produced shall not be deemed on record unless and until the requesting Party subsequently files them as exhibits in accordance with §17 below.
- 16.6. In addition, the Tribunal may at any time order a Party 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 §17 below and shall be deemed on record.

17. Submission of Documentary Evidence

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

- 17.1. The Memorial and Counter-Memorial shall be accompanied by exhibits and legal authorities, in accordance with §15.2 above. Further exhibits and authorities may be submitted in rebuttal with the Reply and Rejoinder, in accordance with §15.3 above.
- 17.2. Neither Party shall be permitted to submit additional or responsive documents

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after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

- 17.2.1. Should a Party request leave to file additional or responsive documents, that Party may not annex to its request the documents that it seeks to file.
 - 17.2.2. 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.
- 17.3. Documentary evidence shall be submitted in the following form:
- 17.3.1. Exhibits shall be numbered consecutively, in Arabic numerals, throughout these proceedings. The number of each exhibit containing a document produced by the Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities. Exhibits shall start with the number “C-0001” and “R-0001” (for fact exhibits), and “CL-0001” and “RL-0001” (for legal authorities).
 - 17.3.2. Fact exhibits shall be submitted in hard copy (in the size set out in §[14] above) and electronic format. For hard copies, each exhibit shall have a divider with the exhibit identification number on the tab.
 - 17.3.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
 - 17.3.4. Electronic versions of exhibits shall be submitted in PDF format and may be scanned, but shall be text searchable.
- 17.4. The Parties shall file all documents only once by attaching them to their written submission. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 17.5. All documents shall either be submitted to the Tribunal in complete form or the Parties shall indicate the respects in which any document is incomplete. All documents, including both originals and copies, submitted to the Tribunal shall be deemed authentic and complete, unless specifically objected to by the other Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.6. The Parties may use demonstrative exhibits (such as charts, tabulations, etc.)

at any hearing, provided such exhibits (i) identify the source in the record from which they are derived, (ii) do not contain information not in the record, and (iii) are filed in electronic format 48 hours before the start of the hearing if they are part of the opening presentations or by 8:00 pm on the eve of the day of their use if used in the course of the hearing. Hard copies of the demonstrative exhibits shall be submitted prior to their use (in the number specified in para. 12).

17.7. At the hearing, prior to stating the cross-examination of a witness or expert, a Party shall provide a witness bundle containing in principle all the documents on which the Party intends to ask questions to the witness or expert. It is not expected that the witness bundle contains the documents to which the witness written statement or the expert's report refers (to the extent no question is intended to be put to the witness in connection with such documents)..

18. Witnesses

Convention Article 43(a); Arbitration Rule 24, 35 and 36

18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative.

18.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal. A witness who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances; if such circumstances exist, the other Party shall be given an appropriate opportunity to respond to the testimony.

18.3. In accordance with §[15] above, each Party shall submit its witness statements together with its written submissions. The Tribunal shall not admit testimony that has not been filed with the written submissions, unless it considers it justified by exceptional circumstances.

18.4. Each witness statement shall state the witness's name, date of birth, present address, and involvement in the case. Each witness statement shall be signed and dated by the witness.

18.5. Witness statements shall be submitted in English or with a translation into English.

18.6. The first statement of a witness shall be identified as "First Witness Statement," the second as the "Second Witness Statement," and so on. In addition, the witness statements submitted by each Party shall be numbered consecutively using the prefixes "CWS-" and "RWS-" (for Claimants and Respondent witness statements, respectively).

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- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts or to help prepare the witness statements and examinations.
- 18.8. Each Party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.9. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party shall not be deemed established by virtue of the fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.10. Each Party shall be responsible for the practical arrangements, costs, and availability of the witnesses it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.11. The Tribunal may call upon a Party to produce as a witness or invite to appear as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.12. If appropriate, the Tribunal may in its discretion allow a witness to be examined by videoconference and will issue directions to that effect.
- 18.13. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason. For these purposes, it shall be understood that a witness who was not called to testify in person has a valid reason not to appear and that a witness whom the Tribunal has allowed to testify by videoconference has appeared at the hearing.
- 18.14. As a rule and subject to other arrangements during the pre-hearing telephone conference, fact witnesses shall be examined prior to expert witnesses, and the Claimants' fact (expert) witnesses shall be examined prior to the Respondent's fact (expert) witnesses.
- 18.15. At the hearing, the examination of each witness shall proceed as follows:
 - 18.15.1. The witness shall make the declaration specified at Arbitration Rule 35(2).
 - 18.15.2. The Party who presents the witness may briefly examine the witness (in principle no more than 10 minutes) for purposes of asking

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introductory questions, including to confirm and/or correct that witness's written statement, and to address facts which have arisen after such statement was drafted (“direct examination”).

18.15.3. The adverse Party may then cross-examine the witness on facts which are relevant and of which the witness has direct knowledge but not limited to facts addressed in that witness’s written statement (“cross-examination”).

18.15.4. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination (“redirect examination”).

18.15.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

18.15.6. The Tribunal may order two or more witnesses to be examined concurrently (“witness conferencing”).

18.16. Subject to a different agreement by the Parties or a different ruling by the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read transcripts of oral testimony or argument, prior to his or her examination.

18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness and expert. The Tribunal may in its discretion refuse to hear a witness or expert when it appears that the facts on which he or she is to testify are already proven by other evidence or are irrelevant. It may also order that a witness or expert be recalled for further examination at any time. Any witness or expert may only be recalled by the Tribunal (of its own motion or on request) if such intention is announced in time to assure the availability of the witness and expert during the hearing.

19. Experts

Convention Article 43(a); Arbitration Rules 24, 35 and 36

19.1. Each Party may retain and produce evidence of one or more experts.

19.2. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

19.3. Each expert report shall state the expert’s name, date of birth, present address, professional position, and instructions received for purposes of his or her report. Each expert report shall be signed and dated by the expert.

- 19.4. Expert reports shall be submitted in English or with a translation into English.
- 19.5. The first report of an expert shall be identified as “First Expert Report,” the second as the “Second Expert Report,” and so on. In addition, the expert reports submitted by each Party shall be numbered consecutively using the prefixes “CER-” and “RER-” (for Claimants and Respondent expert reports, respectively”).
- 19.6. Expert reports shall be accompanied by any documents or information upon which they rely unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 19.7. The rules set forth in §18 above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts, with the following specifications:
 - 19.7.1. Before giving oral evidence, the expert shall make the declaration specified at Arbitration Rule 35(3).
 - 19.7.2. After consultation with the Parties, the Tribunal may request non-legal experts to give a presentation lasting no longer than thirty minutes summarizing their methodology and conclusions in lieu of or in addition to brief direct examination.
 - 19.7.3. Subject to a different agreement by the Parties or a different ruling by the Tribunal, the limitation at §18.16 shall not apply to expert witnesses.
20. Organization of the Hearing
Arbitration Rule 13
 - 20.1. On or before the date indicated at Annex A, the Parties shall identify the witnesses and experts presented by the other Party whom they wish to cross-examine at the hearing.
 - 20.2. A Party’s witness or expert who has not been called for cross-examination by the other Party or as a result of an order from the Tribunal shall not testify at the hearing, except upon approval of Tribunal on the basis of a reasoned request from the relevant Party.
 - 20.3. On the date indicated in Annex A, a pre-hearing organizational conference will be held by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matter in preparation for the hearing.

20.4. After the pre-hearing conference, the Tribunal shall issue a procedural order setting any further rule with respect to the organization of the hearing.

21. Hearings

Arbitration Rules 20(1)(e) and 32

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

21.2. The hearing shall be held at a place to be determined in accordance with §11 above.

21.3. The hearing shall take place on the date indicated in Annex A.

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

21.5. In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if due process so requires, in particular if there is a significant imbalance in the number of cross-examinations.

21.6. Hearings are to be closed to the public.

22. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

22.1. Sound recordings shall be made of all hearings and sessions. The sound 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 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.

22.3. The Parties shall agree on any corrections to the transcripts within 2 weeks 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.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

23.1. In consultation with the Parties, the Tribunal will determine at the pre-hearing organizational conference or at the end of the hearing whether there shall be post-hearing briefs. In the affirmative, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No additional evidence may be produced together with the post-hearing briefs, except with leave from or on the request of the Tribunal.

23.2. The Tribunal will issue directions on the Parties' statements of costs at the appropriate stage.

24. Transparency, Including Publication of Award and Decisions

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

24.1. The ICSID Secretariat will publish the award and any order or decision in the present case provided both Parties consent to publication. Otherwise, ICSID will publish excerpts of the award pursuant to Arbitration Rule 48(4) and include bibliographic references to rulings made public by other sources on ICSID's website and in its publications.

24.2. The Claimants consent to ICSID's publication of any decision issued by the Tribunal and of the award. At this time, the Respondent is not in a position to give its consent to ICSID's publication of decisions and of the award. It will reconsider the matter and inform the Tribunal and the Secretariat accordingly.

24.3. Neither Party consents to ICSID's publication of other documents, including minutes or records of proceedings, or submissions.

25. Additional Guidance on Evidence

25.1. The Tribunal may seek guidance from, but shall not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration (2010 edition).

26. Other Matters

26.1. The Respondent confirmed that it will submit an application pursuant to ICSID Arbitration Rule 39 ("Provisional Measures"). In accordance with Rule 39(2), the Tribunal will give priority to consideration of the Respondent's application.

On behalf of the Tribunal,

[signed]

Professor Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 13 October 2015

**ANNEX A
PROCEDURAL CALENDAR**

[To be included once finalized]

