

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PT Ventures, SGPS, S.A.

v.

Republic of Cabo Verde

(ICSID Case No. ARB/15/12)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Juan Fernández-Armesto, President of the Tribunal
Mr. Fernando Mantilla-Serrano, Arbitrator
Mr. Benfeito Mosso Ramos, Arbitrator

Assistant to the Tribunal

Ms. Maria Drummond Borges

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

Date: November 30, 2015

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Introduction

The first session of the Tribunal was held on November 12, 2015, by telephone conference at 18:00 h (Paris time). The session was adjourned at 20:20 h (Paris time).

Participating in the conference were:

Members of the Tribunal

Mr. Juan Fernández-Armesto, President of the Tribunal

Mr. Fernando Mantilla-Serrano, Arbitrator

Mr. Benfeito Mosso Ramos, Arbitrator

Assistant to the Tribunal

Maria Drummond Borges

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Miguel Pinto Cardoso, Vieira de Almeida e Associados

Mr. Frederico Gonçalves Pereira, Vieira de Almeida e Associados

Mrs. Carla Gonçalves Borges, Vieira de Almeida e Associados

Mrs. Matilde Líbano Monteiro, Vieira de Almeida e Associados

Participating on behalf of the Respondent:

Mr. José Manuel Gomes Andrade

Mr. Oliver Melo Araújo

Mr. Olivier Cousi, Gide Loyrette Nouel A.A.R.P.I

Mr. José Gabriel Lopes Pires Assis de Almeida, J.G. Assis de Almeida & Associados

Mr. João Marcelo Sant'Anna, J.G. Assis de Almeida & Associados

Mr. Mickael Viglino, J.G. Assis de Almeida & Associados

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 14, 2015;
- The Draft Procedural Order circulated by the Tribunal Secretary on October 14, 2015; and
- The parties' comments on the Draft Procedural Order received on November 9, 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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.

The revised Draft Procedural Order, reflecting discussions and determinations of the Tribunal, was circulated to the parties for their comments after the first session on November 18, 2015.

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 September 15, 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. The agreement of the Republic of Cape Verde on the constitution of the Tribunal does not constitute a recognition of the arbitrability of the dispute before ICSID or the recognition of the jurisdiction of the Tribunal regarding the dispute.

- 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 September 15 and 16, 2015.

- 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 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 votes of all its Members.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The President is authorized to sign Procedural Orders on behalf of the Tribunal, upon the decision having been made by the Tribunal.
- 5.4. 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 may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Jara Mínguez Almeida, 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. Jara Mínguez Almeida
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-0831
Fax: + 1 (202) 522-2615
Email: jminguez@worldbank.org
Paralegal email: oakinyode@worldbank.org

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

Ms. Jara Mínguez Almeida
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
U.S.A.
Tel.: + 1 (202) 458-4567

8. Tribunal Assistant

- 8.1. Ms. Maria Drummond Borges, lawyer from the firm Armesto & Asociados, in Madrid, Spain, is appointed as assistant to the Tribunal.

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- 8.2. The assistant will undertake only such specific tasks as assigned to her by the Tribunal that would otherwise be undertaken by the Tribunal Members themselves at greater cost. Such tasks will include the support in the marshaling and compilation of evidence, the summary of witnesses' evidence, research of specific issues of law, and the organization of the case documents for the Tribunal.
- 8.3. The assistant to the Tribunal will be paid by the President for her work. She will only be reimbursed by the parties for her travel and transportation expenses, in accordance with the ICSID Memorandum on the Fees and Expenses.
- 8.4. The assistant to the Tribunal will be subject to the same confidentiality obligations as the Members of the Tribunal, and will sign a declaration to that effect.

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 Tribunal Secretary promptly of such designation.

For Claimant

Mr. Frederico Gonçalves Pereira
Mr. Miguel Pinto Cardoso
Ms. Carla Gonçalves Borges
Ms. Joana Neves
Ms. Matilde Líbano Monteiro
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For Respondent

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Brasil
Tel. +55 21 22 42 10 77
Emails: jgaa@aaalaw.com.br;
jmsc@aaalaw.com.br;
mv@aaalaw.com.br

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 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.
- 10.2. By letter of September 21, 2015, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on October 7, 2015 and the Respondent's payment on October 16, 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. Paris, France, shall be the place of the proceeding.
- 11.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 12.1. English and Portuguese are the procedural languages of the arbitration as per the rules below.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat, as well as any decisions issued by ICSID, shall be in English.
- 12.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation shall be submitted in Portuguese.
- 12.4. Notwithstanding the above, any expert opinions, witness statements, or accompanying documentation may be submitted in their original language, if in English, but for the right of the Tribunal to require that a party translate any such document in whole or in part into Portuguese.
- 12.5. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 12.6. Documents exchanged between the parties under §16 below (Production of Documents) may be produced in the original language – if Portuguese or English – and need not be translated.
- 12.7. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Portuguese shall be interpreted simultaneously.
- 12.8. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §20 below), which witnesses or experts require interpretation.
- 12.9. 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.
- 12.10. The Tribunal shall make any order or decision in Portuguese.
- 12.11. The Tribunal shall render the Award only in Portuguese.

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 Tribunal Secretary, who shall send them to the Tribunal.
- 13.3. 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.
- 13.4. 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.

14. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 14.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and, except on the circumstances of item 13.3, also to the opposing party an electronic version of the pleading and a list of documents,¹ and upload the pleading with the supporting documentation (including witness statements and expert reports) to the file sharing platform that will be created by ICSID for purposes of this case.
- 14.2. On the second business day following the electronic filing, the parties shall courier to the Tribunal Secretary:
 - 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 documents;
 - 14.2.2. one hard copy in A4 format of the entire submission including the pleading, the witness statements, expert reports, and documents; and
 - 14.2.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, and documents.
- 14.3. Also on the second business day following the electronic filing, the parties shall courier to the opposing party at the addresses indicated at §9.1 above and to each Member of the Tribunal at the addresses indicated at §14.4 below:
 - 14.3.1. one minimum USB drive with a full copy of the entire submission, including

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

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

the pleading, the witness statements, expert reports, and documents.

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

Mr. Juan Fernández-Armesto Armesto & Asociados General Pardiñas, 102 8º izda. 28006 Madrid Spain +34 91 562 16 25 jfa@jfarmesto.com	Mr. Fernando Mantilla-Serrano Latham & Watkins LLP 45 Rue Saint-Dominique 75007 Paris France +33 (0)1 40 62 00 00 fernando.mantilla@lw.com	Mr. Benfeito Mosso Ramos Supremo Tribunal de Justiça PB # 117 Rua Cesário Lacerda, 11 Cidade da Praia Cabo Verde +238 261 5808 mossoramos@yahoo.com
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14.5. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

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

14.7. 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.

14.8. A filing shall be deemed timely if sent by a party by midnight in the place of business of its legal counsel, on the relevant date.

15. **Number and Sequence of Pleadings**

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

15.1. The number and sequence of pleadings are defined in the timetable attached as Annex A.

16. **Production of Documents**

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

16.1. **Requests for document production**

16.1.1. Any Party wishing to request document production [the “**Requesting Party**”] must do so by the date set forth in the timetable attached as Annex A.

16.1.2. Such request will be formalized in an “Improved Redfern Schedule” [“**IRS**”] attached as Annex 1.

16.1.3. The requests for document production shall comply with the following requirements [“R”]:

(a) [“R1”]: Identification of each Document³ or description of a narrow and specific category⁴

16.1.4. The description of the requested Document must be in sufficient detail to identify it or, if the request is for a category of documents, the category must be narrow and specific.

16.1.5. If a narrow and specific category of Documents is requested, the Requesting Party shall identify the initial and the final date of issuance of the documents being requested within such category. Failure to identify time limits shall lead to the dismissal of the request *ad liminem*, except if the absence of identification of time limits is justified.

(b) [“R2”]: Relevance and materiality⁵

16.1.6. One of the criteria to be considered for determining relevance and materiality is the burden of proof. As a general principle, parties affirming a fact or submitting an allegation bear the burden of proof; requests which support the Claimant’s efforts to make its claims or the Respondent’s efforts to make its defense are likely to be relevant and material. Conversely, it is not for a party to disprove allegations made by the counterparty, and production should only be ordered in exceptional circumstances: since the counterparty bears the burden of proof, its failure to discharge such burden will by itself lead to dismissal of its argument.

(c) [“R3”]: Not in the possession, custody or control of the Requesting Party⁶

16.1.7. The Requesting Party must submit that the documents sought are not in its possession, custody or control, and explain why it assumes the documents requested are in the possession, custody or control of the Requested Party. The requirement is not met if the documents are located in the premises of a third party, to which the Requesting Party has access.

³ Articles 3 and 9 of the IBA Rules use the concept of Document as defined in the Definitions section of the IBA Rules: “‘Document’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”. The same definition will be used by the Arbitral Tribunal.

⁴ Article 3.3 (a) (i) and (ii) IBA Rules.

⁵ Articles 3.3 (b) and 9.2 (a) IBA Rules.

⁶ Article 3.3 (c) (i) and (ii) IBA Rules.

16.2. Objections to the requests for document production

16.2.1. On the date set forth in the timetable attached as Annex A each Party is to submit the IRS indicating which requests it will voluntarily comply with and to which requests it opposes, and the specific reasons for such opposition.

16.2.2. The opposition may be based either on the argument that the request does not meet one or more of the requirements R1, R2 or R3 or to one of the following Objections⁷:

(a) [“O1”]: Legal and settlement privilege⁸

16.2.3. A Requested Party may demand that Documents should not be produced, alleging grounds of legal impediment or privilege under applicable legal or ethical rules. The same principle shall apply to Documents prepared in connection with settlement negotiations⁹. In this case, para. 16.2.12 *infra*, regarding the delivery of a Privilege Log, shall apply.

16.2.4. Alternatively, the Requested Party may redact parts of Documents which fall within this category and deliver such redacted Documents.

(b) [“O2”]: Production is unreasonably burdensome¹⁰

16.2.5. The Requested Party may also object on the grounds that production of the requested Document would create an unreasonable burden.

(c) [“O3”]: Loss, destruction or inexistence¹¹

16.2.6. The Requested Party may object on the grounds of loss or destruction, if it can show with reasonable likelihood that the Documents being requested have been lost or destroyed, or do not exist for other reasons.

(d) [“O4”]: Technical or commercial confidentiality¹²

16.2.7. The Requested Party may object to the production of a Document alleging compelling grounds of commercial or technical confidentiality. In this case, para. 16.2.12 *infra* shall apply.

16.2.8. Alternatively, if a responsive Document contains certain parts which include

⁷ The IBA Rules also provide for a number of objections to the production of documents in Article 9.

⁸ Article 9.2 (b) IBA Rules.

⁹ Article 9.3 (b) IBA Rules.

¹⁰ Article 9.2 (c) IBA Rules.

¹¹ Article 9.2 (d) IBA Rules.

¹² Article 9.2 (e) IBA Rules.

confidential information, the confidential part may be redacted before production.

(e) [“O5”]: Special political or institutional sensitivity¹³

16.2.9. The Requested Party may allege grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) to justify non-production of a Document. In this case, para. 16.2.12 *infra* shall apply.

16.2.10. Alternatively, it may redact those parts of the Document it considers to be of special political or institutional sensitivity and deliver the redacted Document.

(f) [“O6”]: Production would affect the fairness or equality of the procedure¹⁴

16.2.11. The Requested Party may also object to the request for document production alleging considerations of procedural economy, proportionality, fairness or equality of the Parties.

(g) Privilege Log

16.2.12. Should the Requested Party raise any of the objections O1, O4 or O5, it is required to deliver to the Requesting Party a Privilege Log, with its opposition to the requests for document production, drafted in accordance with Annex 2, providing the date, the issuer, the recipient and a summary description of any document for which privilege, technical or commercial confidentiality or special or political institutional sensitivity is being claimed.

16.3. Delivery of non-objected Documents

16.3.1. On the date set forth in the timetable attached as Annex A, the Requested Party is to deliver non-objected Documents to the Requesting Party. All Documents shall be delivered directly to the Requesting Party.

16.4. Decision of the Arbitral Tribunal

16.4.1. The Tribunal will endeavor to issue a decision on the requests for Document production by the date set forth in the timetable attached hereto.

16.4.2. Upon receipt of the Arbitral Tribunal’s decision, the parties will have until the date set forth in the timetable attached as Annex A to comply with it.

¹³ Article 9.2 (f) IBA Rules.

¹⁴ Article 9.2 (g) IBA Rules.

16.5. Affidavits

16.5.1. Each Requested Party will deliver to its Requesting Party, together with the final batch of Documents produced, two affidavits, one signed by the Party's Representative or Agent and the other signed by one of its Chief External Legal Advisers, drafted substantially in accordance with Annex 3 and 4 hereto.

16.6. Production

16.6.1. Documents to be produced shall only be delivered to the counterparties, without copy to the Arbitral Tribunal. The receiving Party may submit such Documents as evidence together with the First or Second Pleadings if it so wishes.

16.6.2. Documents may be produced to the counterparties in their original language and if the Documents are to be submitted to the Tribunal in the First or Second Pleadings, sections 14 *supra* and 17 *infra* shall apply.

16.7. Negative inference

16.7.1. If a Party, without satisfactory explanation, fails to deliver any of the affidavits provided for in para 16.5.1 *supra*, or fails to produce a Document, in contravention of the Tribunal's instructions, the Arbitral Tribunal may assume negative inferences adverse to the interest of that Party. In such event, the Arbitral Tribunal shall explain and present a proper legal and/or factual justification for such negative inference adverse to the interest of such Party.

17. Submission of Documents

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

17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

17.2. The documents shall be submitted in the manner and form set forth in §14 above.

17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless agreed by the parties, or if the Tribunal so decides upon a reasoned written request followed by observations from the other party.

17.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

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- 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 17.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.5. The documents shall be submitted in the following form:
- 17.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 17.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-”. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-”.
- 17.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 17.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-001” and “R-001,” respectively.
- 17.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 17.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 17.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Assistant, 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.

18. **Witness Statements and Expert Reports**

Convention Article 43(a); Arbitration Rule 24

- 18.1. Witness statements and expert reports shall be filed together with the parties' pleadings, unless the Tribunal determines that reasonable circumstances exist.
- 18.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines otherwise based on a reasoned written request followed by observations from the other party (following the procedure outlined in §17.3).
- 18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. **Examination of Witnesses and Experts**

Arbitration Rules 35 and 36

- 19.1. Examination of witnesses shall be made under the cross-examination system. The party against whom the witness statement has been produced, may require the cross-examination of the witness at the hearing. The cross-examination can only cover the facts set forth at the witness written statement. The party who produced the witness statement will be entitled to redirect examination of the witness limited to the facts that may have arisen during cross-examination.
- 19.2. The experts will be examined simultaneously.

20. **Pre-Hearing Organizational Meetings**

Arbitration Rule 13

- 20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal prior consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. **Hearings**

Arbitration Rules 20(1)(e) and 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any. The parties may agree, after the first hearing, to have a second hearing for oral arguments and simultaneous presentation of written post-hearing memorials.
- 21.2. The hearing shall be held in Paris at a place to be determined in accordance with §11 above.

- 21.3. The hearing shall take place on the date set forth in the timetable attached hereto as Annex A.
- 21.4. 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.
- 21.5. Regarding the examination of witnesses and experts, the Tribunal will decide on the allocation of time after consulting with the parties.
- 21.6. Hearings shall 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, if available, and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis if possible.
- 22.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the hearing. 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 court reporter in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

- 23.1. The parties will present written post-hearing memorials at the date set forth in the timetable attached hereto as Annex A. Upon agreement between the parties, the written post-hearing memorials may be presented at a second hearing scheduled for the presentation of oral arguments.

24. Publication
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

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present case where 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.

[signed]

Juan Fernández-Armesto
President of the Tribunal
Date: November 30, 2015