

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

RSM Production Corporation

v.

St. Lucia

**(ICSID Case No. ARB/12/10)
Annulment Proceeding**

PROCEDURAL ORDER NO. 1

Members of the Committee

Prof. Donald McRae, President of the *ad hoc* Committee

Prof. Andreas Bucher, Member of the *ad hoc* Committee

Mr. Alexis Mourre, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Aurélia Antonietti

June 2, 2017

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Introduction

The first session of the *ad hoc* Committee (the “Committee”) was held on May 16, 2017, by teleconference at 11 am EST. The session was adjourned at 12:40 pm EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Committee and the Parties.

Participating in the conference were:

Members of the *ad hoc* Committee

Prof. Donald McRae, President of the *ad hoc* Committee

Prof. Andreas Bucher, Member of the *ad hoc* Committee

Mr. Alexis Mourre, Member of the *ad hoc* Committee

ICSID Secretariat:

Ms. Aurélie Antonietti, Secretary of the *ad hoc* Committee

Participating on behalf of RSM Production Corporation (“RSM” or “the Applicant”):

Mr. Karel Daele, Mishcon de Reya LLP

Ms. Deepa Somasunderam, Mishcon de Reya LLP

Mr. A.M. Hunter III, representative of the receiver of RSM

Participating on behalf of Saint Lucia (“the Respondent”):

Ms. Brender Portland-Reynolds, Attorney General’s Chambers

Mr. Brian King, Freshfields Bruckhaus Deringer US LLP

Mr. Elliot Friedman, Freshfields Bruckhaus Deringer US LLP

Mr. Ben Love, Freshfields Bruckhaus Deringer US LLP

The Committee and the Parties considered the following:

- The Draft Agenda circulated by the Secretary of the Committee on April 28, 2017.
- The Draft Procedural Order circulated by the Secretary of the Committee on April 28, 2017, and
- The Parties’ comments on the Draft Agenda and the Draft Procedural Order received on May 12, 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

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Order

Pursuant to ICSID Arbitration Rules 19 and 53, this first Procedural Order sets out the Procedural Rules that the Parties have agreed and the Committee has determined that shall govern this annulment proceeding. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

2. Constitution of the Committee and the Committee Members' Declarations

Convention Article 52(3); Arbitration Rules 6 and 52

2.1. The Committee was constituted on January 4, 2017, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Committee was properly constituted and that no Party has any objection to the appointment of any Member of the Committee.

2.2. The Members of the Committee 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 January 4, 2017.

2.3. The Members of the Committee confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of the Committee Members

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

3.1. The fees and expenses of each Member of the Committee 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 Member of the Committee 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

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- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Committee shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred by the Members of the Committee 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 Committee constitutes a quorum for its sittings, including by any appropriate means of communication. In the event that a Member is unable to be present Arbitration Rule 14(2) will apply.
5. Rulings of the Committee
Convention Article 48(1); Arbitration Rules 16, 19 and 20
- 5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.
- 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 Committee.
- 5.3. The Committee will draft all rulings, including its final decision, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Committee will provide the Parties with status updates every three months.
- 5.4. The Committee's rulings on procedural matters may be communicated to the Parties by the Secretary of the Committee 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 Committee. If the matter is urgent, the President may fix or extend time limits

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without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.

7. Secretary of the Committee

Administrative and Financial Regulation 25

7.1. The Secretary of the Committee is Ms. Aurélia Antonietti, Senior Legal Adviser, ICSID, or such other person as ICSID may notify the Committee and the Parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aurélia Antonietti
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-7603
Fax: + 1 (202) 522-2615
Email: aantonietti@worldbank.org
Paralegal email: estarkey@worldbank.org

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

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

8. Representation of the Parties

Arbitration Rule 18

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

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For RSM Production Corporation

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9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. In accordance with Administrative and Financial Regulation 14(3)(e), the Applicant shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the costs following the Committee's constitution. This is without prejudice to the Committee's final decision as to the allocation of costs.
- 9.2. By letter of January 4, 2017, the Centre requested the Applicant to make an advance payment of US\$ 175,000, to cover the initial costs of the proceeding. The Centre acknowledged receipt of the Applicant's payment on April 10, 2017.
- 9.3. ICSID shall request advances as needed and in every case announce its intention to make such requests 45 days in advance. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. The Centre will exercise best efforts to ensure that the deadline for payment of the last such request will be fixed early enough before the date of the final hearing in this matter so as to avoid, or at least minimize the possibility of, any delay in the issuance of the Decision on Annulment due to the non-payment or untimely payment of advances requested by the Centre.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. The Centre's facilities in Washington DC shall be the place of the proceeding, although hearings shall be held at the New York International Arbitration Center in New York, New York.
- 10.2. The Committee may hold hearings at any other place that it considers appropriate if the Parties so agree.
- 10.3. The Committee may deliberate at any place it considers convenient.
11. Procedural Language, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rule 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.

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- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Committee 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. The costs of any interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Committee 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 Committee.
- 12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Committee Secretary, who shall send them to the Committee.
- 12.3. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing Party and the Committee. In such cases, the Secretariat will wait until receiving both Parties' communications before proceeding to transmit these to the Committee and the other Party.
- 12.4. The Committee Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Committee.
13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d), 23 and 53
- 13.1. By the relevant filing date, the Parties shall submit by email to the Committee Secretary and the opposing Party an electronic version of the pleading, with witness statements and expert reports (if any) and a list of any accompanying documents.¹
- 13.2. On the third business day following the electronic filing, the Parties shall upload

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

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the pleading with any supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case and courier to the Committee Secretary:

13.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, any witness statements or expert reports, together with documents (but not including legal authorities); and

13.2.2. one hard copy in A4 format of the entire submission including the pleading, any witness statements or expert reports, and documents (but not including legal authorities).

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

13.3. Also on the third business day following the electronic filing, the Parties shall courier to the opposing Party at the addresses indicated at §8.1 above and to each Member of the Committee at the addresses indicated at §13.4 below:

13.3.1. one hard copy in A4 format for Prof. Bucher and McRae, and one in A5 format for Mr. Mourre, of the entire submission including the pleading, any witness statements or expert reports, and documents (including legal authorities); and

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

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

Prof. Donald McRae
Faculty of Law, Common
Law Section
University of Ottawa
57 Louis Pasteur
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Prof. Andreas Bucher
16, Ch. des Prés-de-la-
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33-43, avenue du Président
Wilson
75116 Paris
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Tel. +33 1 4953 2947

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

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- 13.5. Electronic versions of a pleading shall be text searchable if possible (i.e., OCR PDF or Word).
 - 13.6. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation if possible.
 - 13.7. 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 Committee.
 - 13.8. 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)(e), 29, 31 and 53
- 14.1. **See Timetable attached as Annex A.**
15. Evidence: Supporting Documentation
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 15.1. The Parties are to refer primarily to the record of the arbitral proceeding and limit themselves to submitting evidence which is relevant to the grounds for annulment invoked.
 - 15.2. 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. In their second round written submissions, the Parties shall include only additional evidence that responds to or rebuts matters raised by the opposing Party's prior written submission.
 - 15.3. In principle, no new evidence shall be admitted in this proceeding. Should either Party wish to introduce new documents or other evidence (other than legal authorities) – including factual evidence, witness statements, or expert reports – that Party shall file a request seeking leave from the Committee to that effect, explaining the admissibility and relevance of such evidence having regard to the nature and purpose of annulment proceedings under the ICSID Convention. A party may not annex the evidence it seeks to file to its request. The other party will be provided with an opportunity to respond to such a request.
 - 15.4. Neither party shall be permitted to submit additional or responsive documents of any kind after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Committee upon a reasoned

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written request followed by observations from the other Party.

- 15.5. If the Committee grants any application for submission of additional evidence, the Committee shall ensure that the other party is granted the right to make written observations concerning such evidence, including the right to submit any responsive evidence within a reasonable time to be fixed by the Committee.
- 15.6. Any documents introduced as exhibits in this annulment proceeding shall be submitted in the following form:
 - 15.6.1. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, and each Party shall number the paragraphs of its written pleadings.
 - 15.6.2. The number of each document exhibited by the Applicant shall be preceded by the letters “A/C-” for factual exhibits and “A/CLA-” for legal authorities. The number for each document produced by the Respondent shall be preceded by the letters ‘A/R-’ for factual exhibits and “A/RLA-” for legal authorities.
 - 15.6.3. Each Party shall be permitted to exhibit any documents on the record of the original arbitration. Such documents shall be exhibited as described above, with an additional reference indicating its exhibit number in the original arbitration.
- 15.7. The Parties shall include all of the evidence on which they intend to rely – including factual documents, legal authorities, written witness statements or expert opinions or reports (if any), and other evidence in whatever form – with their written submissions.
- 15.8. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Committee deems the certification necessary.
- 15.9. 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 exhibit 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 Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

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16. Examination of Witnesses and Experts

Arbitration Rules 35, 36

16.1. As referenced in Section 15.3 above, in principle, no new evidence shall be introduced in this proceeding. If leave is granted to submit new evidence in the form of a witness statement or expert report, the opposing party shall have an opportunity to examine that witness or expert at the hearing on RSM's annulment application.

16.2. The manner in which the examination of witnesses and experts, if any, shall be conducted will be decided in consultation with the Committee once submissions have been filed.

17. Pre-Hearing Organizational Meetings

Arbitration Rule 13

17.1. A pre-hearing organizational meeting shall be held on a date determined by the Committee, but not less than 21 days before the hearing, after consultation with the Parties by telephone between the Committee, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

18. Hearings

Arbitration Rules 20(1)(e), 32 and 53

18.1. The hearing shall be held at the New York International Arbitration Center in New York, New York or at any other appropriate place if the Parties so agree.

18.2. The oral procedure shall consist of oral arguments and include the examination of witness and experts.

18.3. The hearing shall take place not before 30 days after the filing of the last written submission. It shall consist of two hearing days with an additional day held in reserve. The Parties and the Committee have agreed to reserve the following dates for the hearing: (TBD) See Annex A.

18.4. In principle, each Party shall have equal time according to a schedule to be agreed upon later or, barring agreement, to be decided by the Committee after consultation with the Parties.

18.5. The hearing shall be closed to the public.

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19. Records of Hearings and Sessions

Arbitration Rules 13 20(1)(g) and 53

- 19.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Committee Members.
- 19.2. Verbatim transcript in the English shall be made of any hearing and session other than sessions on procedural issues (such as at the First Session). 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 Committee on a same-day basis.
- 19.3. The Parties shall agree on any corrections to the transcripts within 21 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the Parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

20. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 20.1. The Parties shall file statements of costs within 30 days of either the conclusion of the oral hearing or of the filing of post-hearing briefs, if any, whichever is later, unless otherwise indicated by the Committee.
- 20.2. Issues related to post-hearing briefs, if any, shall be discussed at the close of the oral hearing.

21. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4) and 53

- 21.1. The ICSID Secretariat will publish the decision on annulment and any order or decision in the present case where both Parties consent to publication.

[Signed]

Donald McRae
President of the Committee
Date: June 2, 2017

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Annex A: Schedule

<i>Description</i>	<i>By</i>	<i>Date</i>
First Session	All	May 16, 2017
Memorial on Annulment	RSM	August 31, 2017
Counter-Memorial on Annulment	St. Lucia	November 30, 2017
Reply on Annulment	RSM	January 31, 2018
Rejoinder on Annulment	St. Lucia	March 30, 2018
Pre-Hearing Organizational Meeting	All	TBD – not less than 21 days before the Hearing on Annulment (see Section 17.1 above)
Hearing on Annulment	All	Week of July 2, 2018
Costs Submissions	Parties	TBD – within 30 days of the Hearing on Annulment or the filing of post-hearing briefs, if any
Decision on Annulment	Committee	If at all possible, within 90 days of the Hearing on Annulment or final submission filed thereafter (see Section 5.3 above)