

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Astrida Benita Carrizosa

v.

Republic of Colombia

(ICSID Case No. ARB/18/5)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Diego P. Fernández Arroyo, Arbitrator
Mr. Christer Söderlund, Arbitrator

Secretary of the Tribunal

Ms. Alicia Martín Blanco

Assistant to the Tribunal

Mr. David Khachvani

19 February 2019

Contents

| | |
|--|----|
| 1. Applicable Arbitration Rules..... | 4 |
| 2. Constitution of the Tribunal and Tribunal Members' Declarations | 4 |
| 3. Fees and Expenses of Tribunal Members..... | 4 |
| 4. Presence and Quorum..... | 5 |
| 5. Rulings of the Tribunal..... | 5 |
| 6. Power to Fix Time Limits..... | 5 |
| 7. Secretary of the Tribunal | 5 |
| 8. Appointment of Assistant to the Tribunal | 6 |
| 9. Representation of the Parties | 7 |
| 10. Costs, Advances, and Third-Party Funding..... | 8 |
| 11. Place of Proceeding | 8 |
| 12. Procedural Language, Translation and Interpretation | 9 |
| 13. Routing of Communications..... | 10 |
| 14. Number of Copies and Method of Filing of Parties' Pleadings | 11 |
| 15. Pleadings..... | 13 |
| 16. Production of Documents | 13 |
| 17. Submission of Documents..... | 14 |
| 18. Witness Statements and Expert Reports..... | 16 |
| 19. Witnesses..... | 16 |
| 20. Experts..... | 19 |
| 21. IBA Rules on the Taking of Evidence..... | 19 |
| 22. Pre-Hearing Organizational Meetings..... | 19 |
| 23. Hearings..... | 20 |
| 24. Records of Hearings and Sessions..... | 20 |
| 25. Post-Hearing Memorials and Statements of Costs..... | 21 |
| 26. Publication..... | 21 |
| 27. Transparency | 21 |
| 28. Data Protection | 21 |
| 29. Disposal of Documents..... | 21 |

Introduction

The first session of the Tribunal and preliminary procedural consultation with the Parties (“First Session”) was held on 5 February 2019 at 15:00 (CET), by telephone conference.

An audio recording of the First Session was made and deposited in the archives of ICSID.

Participating in the conference were:

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Prof. Diego P. Fernández Arroyo, Arbitrator

Mr. Christer Söderlund, Arbitrator

Assistant to the Tribunal

Mr. David Khachvani

ICSID Secretariat:

Ms. Alicia Martín Blanco, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Pedro J. Martinez-Fraga

Mr. C. Ryan Reetz

Mr. Mark Leadlove

Mr. Domenico Di Pietro

Participating on behalf of the Respondent:

Mr. Paolo Di Rosa

Mr. Patricio Grané Labat

Ms. Katelyn Horne

Mr. Michael Rodríguez

Ms. Ana María Ordoñez Puentes

Mr. Andrés Felipe Esteban Tovar

Ms. Sylvia García

Ms. María Paula Arenas

The agenda of the First Session consisted in the discussion of a draft of this Procedural Order circulated by the Tribunal Secretary on 9 January 2019 and of the Parties’ comments on such draft received on 25 and 29 January 2019.

In light of the above, 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 10 April 2006.

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

2.1. The Tribunal was constituted on 11 December 2018 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 11 December 2018.

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 of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
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. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent and consultation with the other Members of the Tribunal is not practicable, 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 issue Procedural Orders on behalf of the Tribunal.
 - 5.4. The Tribunal's rulings on procedural matters will 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 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 Tribunal Secretary is Ms. Alicia Martín Blanco, 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. Alicia Martín Blanco
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-9105
Fax: + 1 (202) 522-2615
Email: amartinblanco@worldbank.org
Paralegal email: jargueta@worldbank.org

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

Ms. Alicia Martín Blanco
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-9105

8. Appointment of Assistant to the Tribunal

- 8.1. By letter of 9 January 2019, the ICSID Secretariat, acting on instructions of the President of the Tribunal, noted that the Tribunal considered that it would assist the overall cost and time efficiency of the proceedings if it had an Assistant. In the same letter it was proposed that Mr. David Khachvani of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. Mr. Khachvani’s *curriculum vitae* was distributed to the Parties on that same date.
- 8.2. The Secretariat’s letter also set out the tasks which may be assigned to the Assistant and noted that the Assistant was subject to the same confidentiality obligations as the Members of the Tribunal. Mr. Khachvani has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 15 February 2019.
- 8.3. The Parties agree to the appointment of Mr. Khachvani as Assistant to the Tribunal and that he receive US\$ 280 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.

8.4. The contact information of the Assistant to the Tribunal is as follows:

Mr. David Khachvani
Lévy Kaufmann-Kohler
3-5 rue du Conseil-Général, 1205 Geneva
Switzerland
Email: david.khachvani@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 Tribunal Secretary promptly of such designation.

For Claimant

Mr. Pedro J. Martínez-Fraga
Mr. C. Ryan Reetz
Mr. Domenico Di Pietro
Mr. Joaquín Moreno Pampín
Mr. Mark Leadlove
Bryan Cave LLP
200 S. Biscayne Boulevard, Suite 400
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Ryan.Reetz@bryancave.com
Domenico.DiPietro@bryancave.com
joaquin.pampin@bryancave.com
mbleadlove@bclplaw.com

For Respondent

Mrs. Ana María Ordóñez Puentes
Mr. Andrés Felipe Esteban Tovar
Agencia Nacional de Defensa Jurídica del Estado
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arbitrajesdeinversion@defensajuridica.gov.co

Mr. Nicolás Palau van Hissenhoven
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Bogotá, Colombia
npalau@mincit.gov.co

Mr. Paolo Di Rosa
Arnold & Porter Kaye Scholer LLP
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Washington, DC 20001, USA
Paolo.DiRosa@arnoldporter.com

Mr. Patricio Grané Labat
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Tower 42
25 Old Broad Street
London EC2N 1HQ, UK
Patricio.Grane@arnoldporter.com
xColombiaCarrizosa@arnoldporter.com

9.2. Following the Tribunal's constitution, neither Party shall accept that a person takes on the representation of a Party in the arbitration when a relationship exists between that person and a Member of the Tribunal that would create a conflict of interest, unless none of the Parties objects after proper disclosure. In the event of breach of this rule, the Arbitral Tribunal may take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new Party Representative from participating in all or part of the arbitral proceedings. In assessing whether a conflict of interest exists, the Tribunal shall be guided by the IBA Guidelines on Conflict of Interest in International Arbitration.

10. Costs, Advances, and Third-Party Funding

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 17 December 2018, ICSID requested that each Party pay US\$ 150,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on 18 January 2019. Respondent informed the Tribunal by letter of 15 January 2019 that it had started the internal process to obtain approval and disbursement of the necessary funds and would make the advance payment as soon as practicable.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10.4. Each Party shall declare that it (or its counsel) does not benefit from the provision of funds or other material support for the pursuit or defense of its case in these proceedings, by a natural or juridical person that is not a party to the dispute ("third-party funder"), or, as the case may be, shall disclose to the Centre that it has third-party funding and name the third-party funder.

10.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.

11. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

11.1. Washington D.C. 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 and in any form 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 and Spanish are the procedural languages of the arbitration.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.
- 12.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language. The Tribunal may require that a Party translate any document in whole or in part, in which case it shall set an appropriate deadline for the filing of the translation.
- 12.4. Documents filed in any other language must be accompanied by a translation into a procedural language.
- 12.5. 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.
- 12.6. Translations need not be certified unless there is a dispute as to the content of a translation provided and the Tribunal requests a certified version. It shall not be improper for counsel to provide their own translations, provided that such circumstance is indicated.
- 12.7. For ease of reference, the Parties shall paginate any translation in the same way as the original document, placing the translation first in the electronic version.
- 12.8. Documents exchanged between the Parties in a language other than English or Spanish under §16 below (Production of Documents) need not be translated. When such documents are submitted to the Tribunal, they will be translated in whole or in relevant part into a procedural language.
- 12.9. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or Spanish shall be interpreted simultaneously.
- 12.10. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §22 below), which witnesses or experts require interpretation.

12.11. 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.

12.12. The Tribunal shall make any order or decision in either procedural language.

12.13. The Tribunal shall render its Award in English and Spanish simultaneously.

13. Routing of Communications

Administrative and Financial Regulation 24

13.1. Written communications in the case shall be transmitted by email or other electronic means to the Parties, the Tribunal Secretary, the Tribunal, and the Assistant to the Tribunal.

13.2. 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, the Tribunal, and the Assistant to the Tribunal.

13.3. 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.

13.4. The email addresses of the Members of the Tribunal are as follows:

(a) Prof. Gabrielle.Kaufmann-Kohler – gabrielle.kaufmann-kohler@lk-k.com

(b) Prof. Diego P. Fernández Arroyo – diego.fernandezarroyo@dpfa-arb.com

(c) Mr. Christer Söderlund – christer.soderlund@mornyc.com

13.5. For purposes of cyber security, the Parties confirm that they consent to the transmittal of written communications and other data by email or other electronic means.

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, the Tribunal, and the opposing Party an electronic version of the pleading with witness statements, expert reports and a list of factual exhibits and legal authorities.¹ On the same date, the Parties shall upload to the file sharing platform that will be created by ICSID for purposes of this case the pleading with witness statements, expert reports, as well as the exhibits and legal authorities.
- 14.2. Within three business days 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 submission³, including signed originals of the pleading, witness statements, and expert reports, together with factual exhibits (but not including legal authorities) and the updated index;
- 14.2.2. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, factual exhibits, and legal authorities.
- 14.3. Also within three business days following the electronic filing, the filing Party shall courier to each Member of the Tribunal at the addresses indicated at §14.6 below, one USB drive, with a full copy of the entire submission, including the pleading (memorial), the witness statements, expert reports, factual exhibits, and legal authorities. On the same day, the Party shall courier hard copies of the submission as follows:
- 14.3.1. To the President of the Tribunal: two A5 copies of the pleading (memorial), witness statements and expert reports (but *not* the factual exhibits and legal authorities);
- 14.3.2. To Arbitrator Fernández Arroyo: no hard copies are required.
- 14.3.3. To Arbitrator Söderlund: no hard copies are required.
- 14.4. The Parties will not be required to submit a hard copy of the record in advance of the hearing mentioned in §23 below.

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.

³ The Secretariat's copy will be kept in the official repository of ICSID and is not intended to be used at hearings.

- 14.5. Also within three business days following the electronic filing, each Party shall courier to the opposing Party at the address(es) indicated at §9.1 above one USB drive, with a full copy of the entire submission, including the pleading, the witness statements, expert reports, factual exhibits, and legal authorities.
- 14.6. The addresses of the Tribunal Members are as follows:
- | | | |
|---|--|---|
| Prof. Gabrielle Kaufmann-Kohler 3-5, rue du Conseil-Général P.O. Box 552, CH-1211, Geneva 4 Switzerland | Prof. Diego P. Fernández Arroyo Sciences Po Law School 13 rue de l'Université Paris 75007 France | Mr. Christer Söderlund P.O. BOX 3277 SE-103 65 Stockholm Sweden Tel: +46 70 388 41 22 |
|---|--|---|
- Tel: +41 22 809 62 08 Tel: +33 662 08 70 47
- 14.7. Electronic versions of a pleading, witness statements, expert reports, and to the extent possible also factual exhibits and legal authorities, shall be text searchable (i.e., OCR PDF or Word).
- 14.8. Pleadings shall be accompanied by an index of actual exhibits evidence and legal authorities. To the extent possible, the exhibit index will be hyperlinked to those documents. The indexes shall mention the number of each document and the written pleading with which it was filed originally.
- 14.9. Upon the conclusion of the written phase of the proceedings, if the Tribunal so requests, the Parties shall send to the Secretary and each Member of the Tribunal a USB drive containing an electronic copy of the full case file (including written pleadings, witness statements, expert reports, factual exhibits, legal authorities, as well as the Tribunal's orders) together with a consolidated and, if possible, hyperlinked index of all the documents.
- 14.10. 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.
- 14.11. A filing shall be deemed timely if sent by a Party by 11:59pm, Washington, D.C. time, on the relevant date.

15. Pleadings

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

- 15.1. The number and sequence of pleadings shall be as provided in Annex A to this order.
- 15.2. In the first exchange of submissions (Memorial and Counter-Memorial), 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, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 15.3. In their second exchange of submissions (Reply and Rejoinder), 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, unless new facts have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments.
- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.5. All written submissions shall be divided into consecutively numbered paragraphs.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24, 33 and 34

- 16.1. Upon the request of a Party filed within the time limit set in Annex A, each Party may request from the other Party a disclosure of documents or categories of documents within its possession, custody or control. Such a request for production shall identify each document or narrow category of documents sought with precision, in the form of a Redfern Schedule as attached in Annex B hereto, in both Word and .pdf format, specifying why the documents sought are relevant to the dispute and material to the outcome of the case.
- 16.2. Within the time limit set forth by Annex A, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.3. Within the time limit set forth by Annex A, the requesting Party may seek an order for production of documents sought and not produced, in which case it shall reply to the other Party's objections in that same Redfern Schedule. At

the same time it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.

- 16.4. The Parties shall make no submissions in respect of the steps set out in §§ 16.1 to 16.3 above other than those incorporated in the Redfern Schedules.
 - 16.5. On or around the date set forth by Annex A, the Arbitral Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the Parties and all the relevant circumstances, including if appropriate the burden of proof.
 - 16.6. Documents shall be communicated directly to the requesting Party without copying the Arbitral Tribunal. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.
 - 16.7. In addition, the Arbitral Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Arbitral Tribunal in accordance with §17 below and shall be considered to be on record.
 - 16.8. If a Party fails to produce document ordered by the Tribunal, the Tribunal may deem, in light of all circumstances including the reasons advanced by a Party to explain its inability to produce any given document, that the document is adverse to the interests of that Party.
17. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 17.1. With the Memorial and Counter-Memorial the Parties shall produce all the evidence upon which they wish to rely, including documentary evidence, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.
 - 17.2. [With the Reply and Rejoinder the Parties may file additional documents, witness statements and expert reports only insofar as the relevance of such additional evidence has arisen as a result of 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.]
 - 17.3. The documents shall be submitted in the manner and form set forth in §14 above.

- 17.4. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.
- 17.4.1. 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, nor disclose any of the contents of any such documents, except for a general description.
- 17.4.2. 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.
- 17.5. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.6. The documents shall be submitted in the following form:
- 17.6.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 17.6.2. The number of each exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 17.6.3. Each exhibit shall have a divider with the exhibit identification number on the tab.
- 17.6.4. Each exhibit shall comprise of one document. A Party may not produce two or more documents within one exhibit.
- 17.6.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 17.7. 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.
- 17.8. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements (or expert reports, as indicated in §20.3 below) even if referred to in such statements (or reports).

- 17.9. 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 number of the document(s) from which it is derived. The number of each demonstrative exhibit shall be preceded by the letter “CDE-” for demonstrative exhibits submitted by Claimants and by the letter “RDE-” for demonstrative exhibits submitted by Respondent. The Party submitting such 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 and in electronic format at its earliest convenience but no later than at the end of the relevant hearing day.
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.
- 18.2. Neither Party shall be permitted to submit any testimony 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 (following the procedure outlined in §0).
- 18.3. Each witness statement and expert report shall be signed and dated by the relevant witness or expert.
19. Witnesses
Arbitration Rules 35 and 36
- 19.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 19.2. For each witness, a written and signed witness statement, which shall stand as direct testimony, shall be submitted to the Arbitral Tribunal, unless a person refuses or is unable to provide such a statement. A person who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
- 19.3. Each witness statement shall state the witness’s name, date of birth, current address, and involvement in the case.
- 19.4. Witness statements shall be submitted in English or Spanish or with a translation into English or Spanish.

- 19.5. In accordance with Section 1 above, each Party will submit its witness statements together with its written submission, or indicate when filing the submission, the reasons for which a statement cannot be filed for a particular witness. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as “Second”.
- 19.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 19.7. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Arbitral Tribunal does not direct his or her appearance. If a witness or expert who was presented by a Party has not been called by the other Party or by the Tribunal for examination at the hearing, the presenting Party may only call such witness or expert to testify at the hearing upon establishment of compelling reasons to do so and upon approval by the Tribunal, following an opportunity to comment by the other Party.
- 19.8. 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 the sole 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.
- 19.9. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Arbitral Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 19.10. The Arbitral Tribunal may, if it deems it necessary at any stage of the proceeding, call upon the Parties to produce as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 19.11. If a witness fails to appear when first summoned to a hearing, the Arbitral Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears to be relevant to the adjudication of the dispute, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 19.12. If the circumstances so justify, the Arbitral Tribunal may allow a witness to appear and be examined by videoconference and will issue appropriate directions.

- 19.13. The Arbitral 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 Arbitral Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 19.14. As a general rule and subject to other arrangements during the pre-hearing telephone conference, fact witnesses shall be examined prior to expert witnesses, the Claimant's fact (expert) witnesses being examined prior to the Respondent's fact (expert) witnesses and each Party determining the order of the fact witnesses that it presents.
- 19.15. At the hearing, the examination of each witness shall proceed as follows:
- a) The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements (direct examination). As a rule, direct examination shall not exceed 10 minutes;
 - b) The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement;
 - c) The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination;
 - d) The Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties;
 - e) The Arbitral Tribunal may order two or more witnesses to be examined concurrently (witness conferencing).
- 19.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. A Party representative who is also a fact witness may be present during opening submissions, but not during the testimony of fact witnesses testifying before him or her, being understood that party representatives should, as far as possible, be examined first.

- 19.17. The Arbitral Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Arbitral Tribunal may in its discretion:
- a) Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
 - b) Direct that a witness be recalled for further examination at any time.
20. Experts
- 20.1. Each Party may retain and produce evidence of one or more experts.
- 20.2. The Arbitral Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Arbitral Tribunal shall consult with the parties on the selection, terms of reference and conclusions of any such expert. The Arbitral Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
- 20.3. 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.
- 20.4. The rules set forth in §19 above shall apply by analogy to the evidence of party- and Tribunal-appointed experts. The Party presenting the expert – or, after consultation with the Parties, the Tribunal – may also request non-legal experts to give a presentation lasting no longer than thirty minutes, before the start of their cross-examination, summarizing their methodology and conclusions.
21. IBA Rules on the Taking of Evidence
- 21.1. Without being bound by such rules, the Tribunal may look for guidance to the IBA Rules for the Taking of Evidence in International Arbitration.
22. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 22.1. On the date indicated in Annex A, a pre-hearing organizational meeting shall be held 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.

23. Hearings

Arbitration Rules 20(1)(e) and 32

- 23.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The hearing shall be held at a place to be determined in accordance with §11 above.
- 23.3. The hearing shall take place on the dates set forth in the Procedural Calendar (Annex A).
- 23.4. In principle, the Parties will have an equal time allocation to examine witnesses and experts at the hearing, subject to adjustments if there is a severe imbalance in the number of cross-examinations or if due process so requires.
- 23.5. For the allocation of time, the Parties agree to a chess-clock approach. The Tribunal shall allocate the number of hours to each Party, in advance of the hearing.

24. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 24.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 24.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Verbatim transcripts of sessions on procedural issues may be made upon the request of either Party. 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. Issues of translation arising in the course of the hearing shall as a rule be raised immediately at the hearing to the extent they are detected at the hearing.
- 24.3. The Parties shall endeavor to agree on corrections to the transcripts, within 21 days of the date of the receipt of the sound recordings or of the receipt of the transcripts, whichever is later. 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.

25. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 25.1. In consultation with the Parties, the Tribunal will determine 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.
- 25.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.
26. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)
- 26.1. The Parties consent to ICSID publication of the award in the present proceeding.
27. Transparency
- 27.1. After consulting with the Parties, the Tribunal will issue a separate order governing the transparency regime of the proceedings.
28. Data Protection
- 28.1. The Parties shall comply with applicable data protection and privacy rules, where necessary by obtaining the consent of relevant individuals and requiring witnesses and experts to expressly agree in their relevant statements to the use of their personal data in this arbitration.
29. Disposal of Documents
- 29.1. Six months after the Centre has notified the final award to the Parties or one month after the conclusion of annulment proceedings, whichever is later, the arbitrators shall be at liberty to destroy the documents submitted with the arbitration.

[signed]

Professor Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 19 February 2019

ANNEX A
REVISED PROCEDURAL CALENDAR (29.01.2020)

| <u>DESCRIPTION</u> | <u>BY</u> | <u>REVISED DATE</u> |
|--|-------------------------|--|
| 1) First Session | All | 5 February 2019 |
| 2) Memorial on Jurisdiction | Claimant | 13 June 2019 |
| 3) Answer on Jurisdiction | Respondent | 23 October 2019 |
| 4) Reply on Jurisdiction | Claimant | 20 December 2019 |
| 5) Rejoinder on Jurisdiction | Respondent | 21 February 2020 |
| 6) US non-disputing Party submission | US | 3 July 2020 |
| 7) If Parties agree between themselves, written comments on US submission | Claimant and Respondent | 1 September 2020 |
| 8) Notification of witnesses and experts for examination at the Hearing (if any) | Claimant and Respondent | 1 September 2020 |
| 9) Pre-hearing telephone conference (PHTC) | All | 8 September 2020 |
| 10) Hearing on Jurisdiction | All | 10 and 11 November 2020, morning of 12 November 2020 held in reserve |

ANNEX C

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name use to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

| SUBMISSION TYPE | ELECTRONIC FILE NAMING GUIDELINES |
|---|--|
| MAIN PLEADINGS | Title of Pleading–LANGUAGE |
| | <i>Memorial on Jurisdiction-FR</i> |
| | <i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i> |
| | <i>Reply on Annulment-FR</i> |
| | <i>Rejoinder on Quantum-ENG</i> |
| SUPPORTING DOCUMENTATION Exhibits | C-####-LANGUAGE R-####-LANGUAGE To be produced sequentially throughout the case. |
| | CLAIMANTS’ FACTUAL EXHIBITS |
| | <i>C-0001-ENG</i> |
| | <i>C-0002-SPA</i> |
| | RESPONDENT’S FACTUAL EXHIBITS |
| | <i>R-0001-FR</i> |
| | <i>R-0002-SPA</i> |
| | Legal Authorities |
| CLAIMANTS’ LEGAL AUTHORITIES | |
| <i>CL-0001-ENG</i> | |
| <i>CL-0002-FR</i> | |
| RESPONDENT’S LEGAL AUTHORITIES | |
| <i>RL-0001-SPA</i> | |
| <i>RL-0002-ENG</i> | |
| Witness Statements | |
| | <i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i> |
| | <i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i> |
| Expert Reports | Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE |
| | <i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i> |

Astrida Benita Carrizosa v. Republic of Colombia
(ICSID Case No. ARB/18/5)

Procedural Order No. 1

| | |
|---|---|
| | <i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i> |
| Legal Opinions | Legal Opinion-Name of Expert-Name of Submission-LANGUAGE |
| | <i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i> |
| | <i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i> |
| Exhibits to Witness Statements, Expert Reports, Legal Opinions | WITNESS/EXPERT INITIALS-### |
| | <i>For exhibits filed with the Witness Statement of [Maria Jones]</i> |
| | <i>MJ-0001</i> |
| | <i>MJ-0002</i> |
| | <i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i> |
| | <i>TK-0001</i> |
| | <i>TK-0002</i> |
| | <i>For exhibits filed with the Expert Report of [Lucia Smith]</i> |
| | <i>LS-0001</i> |
| <i>LS-0002</i> | |
| INDICES | Consolidated Hyperlinked Index |
| | Index of Exhibits-C-##### to C-##### |
| | <i>Index of Exhibits-C-0001 to C-0023</i> |
| | Index of Legal Authorities-RLA-### to RLA-### |
| | <i>Index of Legal Authorities-RLA-0001 to RLA-0023</i> |
| OTHER APPLICATIONS | Name of Application-[Party]-LANGUAGE |
| | <i>Preliminary Objections under Rule 41(5)-SPA</i> |
| | <i>Request for Bifurcation-ENG</i> |
| | <i>Request for Provisional Measures-[Respondent]-SPA</i> |
| | <i>Request for Production of Documents-[Claimants]-SPA</i> |
| | <i>Request for Stay of Enforcement-FR</i> |
| | <i>Request for Discontinuance-[Claimants]-ENG</i> |
| | <i>Post-Hearing Brief-[Claimants]-SPA</i> |
| | <i>Costs Submissions-[Respondent]-ENG</i> |
| <i>Observations to Request for [XX]-[Claimants]-SPA</i> | |