

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Huawei Technologies Co., Ltd.

Claimant

v.

Kingdom of Sweden

Respondent

(ICSID Case No. ARB/22/2)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Jane Willems, Arbitrator
Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal

Ms. Martina Polasek

27 July 2022

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Introduction

The first session of the Tribunal was held on 14 July 2022, at 14:00 CET, by videoconference. The session was adjourned at 16:00 CET.

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.

A transcript of the session was prepared based on the audio recording. The transcript was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Professor Jane Willems, Arbitrator
Professor Zachary Douglas QC, Arbitrator

ICSID Secretariat:

Ms. Martina Polasek, Secretary of the Tribunal

Assistant to the Tribunal:

Mr. Lukas Montoya

Participating on behalf of the Claimant:

Dr. Yas Banifatemi, *GBS Disputes*
Mr. Anders Junker-Nilsson, *GBS Disputes*
Mr. Ashish Mitter, *GBS Disputes*
Ms. Arianna Rosato, *GBS Disputes*
Mr. Emmanuel Jacomy, *Shearman & Sterling*
Ms. Kitty Zheng, *Shearman & Sterling*
Mr. Yu Rui, *Huawei*
Mr. Xiong Mingtao, *Huawei*

Participating on behalf of the Respondent:

Ms. Mallory Silberman, *Arnold & Porter*
Mr. Bart Wasiak, *Arnold & Porter*
Ms. Caroline Kelly, *Arnold & Porter*
Mr. James Hope, *Vinge*
Mr. Rasmus Lyckhammar, *Vinge*
Ms. Lava Mustafa, *Vinge*
Mr. Jonas Hallberg, *The Office of the Chancellor of Justice*
Ms. Pernilla Smith, *The Office of the Chancellor of Justice*
Mr. Joel Dahlquist, *The Office of the Chancellor of Justice*

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 21 June 2022 and the proposed revised wording of §§ 3 and 8.5 below circulated by the Tribunal Secretary on 12 July 2022; and
- The Parties' comments on the Draft Procedural Order received on 5 July 2022, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

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 8 June 2022, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that neither Party had 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 8 June 2022.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability 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. Pursuant to ICSID Administrative and Financial Regulation 14, under the Memorandum on Fees and Expenses, from July 1, 2022, each Tribunal Member is entitled to:
- 3.2.1. US\$500 per hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings;
- 3.2.2. US\$900 as a *per diem* for each day spent away from their city of residence while traveling in connection with a proceeding when overnight lodging is required. This covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation, laundry, personal communications and internet;
- 3.2.3. US\$250 for each hour of travel and a *per diem* allowance of US\$200 for travel to and from a hearing on a day when lodging is not required. For work performed during travel, Members may charge the hourly rate for work (US\$500) in lieu of the hourly rate for travel. For day trips not requiring overnight lodging, Members are also entitled to a *per diem* of US\$200; and
- 3.2.4. reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 3.3. Non-refundable expenses incurred due to postponement or cancellation of a hearing shall be reimbursed, *e.g.*, the lesser of (a) actual non-refundable cost or (b) \$900 *per diem*.
- 3.4. Pursuant to ICSID Administrative and Financial Regulation 14, under the Memorandum on Fees and Expenses and Schedule of Fees applicable up to June 30, 2022, each Tribunal Member is entitled to:
- 3.4.1. US\$375 per hour of work performed in connection with the proceeding; and
- 3.4.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

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3.5. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

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.

4.2. While it is accepted by the Parties and the Tribunal that there are circumstances where an online or hybrid substantive hearing may be necessary or most appropriate, in particular for health reasons or/and to avoid a postponement, the Tribunal understands that the Parties have a strong preference for physical hearings and, to every extent possible, wish to avoid situations in which the Members of the Tribunal participate through different means, e.g. one remotely and the two others physically. Should such circumstances and situations arise, the Tribunal will consult with the Parties and seek to resort to a solution that does not put one of the Parties at a non-trivial disadvantage.

4.3. For purposes of hearings that pertain exclusively to procedural or logistical matters, the participation of all of the Members of the Tribunal shall be required. However, the relevant sessions may be conducted by telephone- or video-conference.

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. So long as all of the Members of the Tribunal are consulted, the Tribunal may take a decision by correspondence among its Members.

5.3. Notwithstanding the general rule set out above in §5.1, where the matter is urgent, the President may rule upon procedural matters without consulting the other Members of the Tribunal. However, the Parties shall have the right to request that the ruling be reconsidered by the full Tribunal.

5.4. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with regular status updates.

5.5. Subject to § 5.3 above, the President is authorized to issue Procedural Orders on behalf of the Tribunal.

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- 5.6. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.7. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

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 the power described in §6.1, the President shall consult with the other Members of the Tribunal and the Parties. If the matter is urgent, the President may fix or extend time limits without consulting the other Members and the Parties, subject to possible reconsideration of such decision by the full Tribunal after consultation of the Parties.
- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in Annex B and (ii) the Tribunal is informed.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Martina Polasek, Deputy Secretary-General of ICSID, or such other person as ICSID may notify to 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. Martina Polasek
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-4567
Email: mpolasek@worldbank.org
Legal Analyst name: Carlos Molina Esteban
Legal Analyst email: cmolinaesteban@worldbank.org

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

Ms. Martina Polasek
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-4567

8. Appointment of a Tribunal Assistant

- 8.1. By letter of 21 June 2022, the ICSID Secretariat, acting on instructions of the President of the Tribunal, noted that it would assist the overall cost and time efficiency of the proceedings if the Tribunal had an Assistant. In the same letter it was proposed that Lukas Montoya of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. Mr. Montoya's *curriculum vitae* and a disclosure were distributed to the Parties on that same date.
- 8.2. The Secretariat's letter also noted that the Assistant would not duplicate the work done by the Tribunal Secretary, and would undertake only such specific tasks as are assigned to him by the Tribunal or the President. Such tasks are as follows:
- 8.2.1. Assisting the Tribunal or the President in the review of the evidence and of the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, and research on specific factual or legal issues;
- 8.2.2. Assisting the Tribunal or the President in the preparation and communication of the Tribunal's decisions to the parties on issues of procedure and substance, including by preparing initial drafts of procedural orders and awards, under the direction and supervision of the President;
- 8.2.3. Providing other support to the Tribunal and the President, at any time, especially during hearings and deliberations, which the assistant may attend.
- 8.3. The Secretariat's letter further noted that under no circumstances would the Tribunal or the President delegate any decision-making functions to the Assistant, who would work at all times under the specific instructions and continuous control and supervision of the President.

- 8.4. The Secretariat's letter further stated that the Assistant was subject to the same confidentiality obligations as the Members of the Tribunal. Mr. Montoya has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 12 July 2022.
- 8.5. The Parties agree to the appointment of Mr. Montoya as Assistant to the Tribunal and that he will receive US\$ 280 for each hour of work performed in connection with the case or pro rata. Mr. Montoya will also receive actual expenses of overnight lodging and other charges when traveling to an ICSID hearing, session or meeting held away from his residence up to but not exceeding US\$900 and reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 8.6. The contact details of the Assistant are:

Mr. Lukas Montoya
Lévy Kaufmann-Kohler
3-5 rue du Conseil-Général, 1205 Geneva
Switzerland
Email: lukas.montoya@lk-k.com

9. Representation of the Parties
Arbitration Rule 18

- 9.1. Each Party shall be represented by the persons and counsel listed below, and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation, provided that no such designation shall take effect if it creates a conflict of interest with any Member of the Tribunal.

For Claimant

Dr. Yas Banifatemi
Mr. Anders Junker-Nilsson
Mr. Ashish Mitter
Ms. Arianna Rosato
Gaillard Banifatemi Shelbaya Disputes
22 rue de Londres, 75009 Paris
France
Tel. +33 1 88 40 51 25
Email:
ybanifatemi@gbsdisputes.com;
ajunkernilsson@gbsdisputes.com;
amitter@gbsdisputes.com
arosato@gbsdisputes.com

For Respondent

Ms. Anna Falk
Mr. Jonas Hallberg
Ms. Pernilla Smith
Ms. Clara Cederberg
The Office of the Chancellor of Justice
Box 2308
103 17 Stockholm
Tel. +46 10 475 93 00
Email:
Anna.Falk@justitiekanslern.se;
Jonas.Hallberg@justitiekanslern.se;
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Mr. Sebastian Örndahl
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Email:
James.Hope@vinge.se;
Cecilia.Moller-Norsted@vinge.se;
Sebastian.Orndahl@vinge.se;
Julia.Lindberg@vinge.se

10. Advance Payments to ICSID 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.

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- 10.2. By letter of 10 June 2022, ICSID requested that each Party pay US\$150,000.00 to cover the initial costs of the proceeding. ICSID received the Claimant's payment on 24 June 2022 and the Respondent's payment on 22 June 2022.
- 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 either (i) declare that neither it nor its counsel benefits 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 nor a corporate affiliate of a Party ("third-party funder"), or (ii) disclose to the Centre, the Tribunal and the other Party, that it has third-party funding and identify the third-party funder. The Tribunal may seek such other information about the funding arrangements that it deems appropriate. For the purpose of this provision, the term "third-party funder" does not include shareholders, parent or affiliated entities.
- 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 proceedings.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate, after consulting with the Parties as to the venue. Having consulted the Parties during the first session and ascertained that both mentioned Europe and in particular Geneva as a possible venue, the Tribunal finds it appropriate to hold the hearing(s) in Geneva taking all the circumstances into account. The Centre will specify the exact location closer to the date of the hearing.
- 11.3. After consultation with the Parties, the Tribunal may determine that hearings will be conducted online through an appropriate videoconferencing platform. If the hearing is held via remote technology, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 11.4. The Tribunal members may deliberate at any place and by any appropriate secure means of communication.

12. Procedural Language, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 12.1. English is the procedural language of the arbitration, and all pleadings, correspondence, orders, decisions, and awards shall be in English.
- 12.2. Documents filed by the Parties in any other language (exhibits, legal authorities, witness statements, and/or expert reports) must be accompanied by a translation into English, to be filed at the same time as the relevant documents.
- 12.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 12.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the Party disputing the translation specifically requests a certified version.
- 12.5. To the extent feasible, all translated documents must be in a similar format to the original document, including: pagination; page layout; indentation; bullet and numbered lists; tables and charts; font and font variations such as size, bolding, italicization and underlining; etc. For witness statements and expert reports filed in a language other than English, the translation of each page must be formatted as identically as possible to the original page utilizing these protocols.
- 12.6. Documents exchanged between the Parties in a language other than English under §16 below (Production of Documents) need not be translated.
- 12.7. A witness may testify in a language other than English with simultaneous interpretation into English if that witness submitted his/her signed written statement in the language in which he/she wishes to testify.
- 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.

13. Routing of Communications

Administrative and Financial Regulation 24

- 13.1. Subject to 13.2, written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 13.2. Where the Tribunal has ordered that communications be filed by the Parties simultaneously, or where the Parties have so agreed *inter se*, electronic versions of the communications shall be transmitted to the Tribunal Secretary only, who shall send them to both Parties, the Tribunal and the Assistant.
- 13.3. The Tribunal Secretary shall not be copied on 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 Tribunals are:

Prof. Gabrielle Kaufmann-Kohler:	Prof. Jane Willems:	Prof. Zachary Douglas QC:
gabrielle.kaufmann-kohler@lk-k.com	jwillems@bwarbintl.com	zacharydouglas@matrixlaw.co.uk

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 relevant Party shall submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation (including factual exhibits, legal authorities and documents appended to the witness statements and expert reports).¹
- 14.2. Within five business days of the filing deadline, the filing Party shall:
- 14.2.1. upload to the ICSID online platform electronic versions of (i) the pleading itself, (ii) all supporting documentation (including witness statements, expert reports, factual exhibits, and legal authorities), and (iii) indices of factual exhibits and legal authorities;² and
- 14.2.2. upload to the ICSID online platform a cumulative index hyperlinked to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. (Please follow the naming conventions contained in **Annex A.**)

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

² Translations of documents filed by the Parties in a language other than English shall be submitted in due course, in accordance with § 12.2.

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- 14.3. To the extent possible, electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).
- 14.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat at the address indicated at § 7.3 above and to each Member of the Tribunal at the addresses indicated at §14.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents. The costs associated with the preparation and dispatch of the USB drive shall be split equally between the Parties, subject to the Tribunal's final decision as to the allocation of costs.

- 14.5. The addresses of the Tribunal Members are as follows:

Prof. Gabrielle Kaufmann-Kohler
Lévy | Kaufmann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
CH-1211 Geneva 4
Switzerland

Prof. Jane Willems,
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Level 20, One IFC
1 Harbour View Street,
Central
Hong Kong
People's Republic of China

Prof. Zachary Douglas QC
Matrix Chambers
15 rue du Général Dufour
Genève 1204
Switzerland

- 14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.7. A filing shall be deemed timely if sent by a Party by 11:59 pm, Washington, D.C. time, on the relevant date.

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

- 15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex B, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.
- 15.2. In the first exchange of submissions on a given matter (in principle, the Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they intend to rely, including any evidence in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified, and comprehensive manner.

- 15.3. In their second exchange of submissions (in principle, the Reply and Rejoinder), the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing Party's last submission.
 - 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 in support of that argument.
 - 15.5. All written submissions shall be divided into consecutively numbered paragraphs.
 - 15.6. The Parties shall include in their submissions a list of abbreviations.
16. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36
- 16.1. The Tribunal and the Parties shall be guided by the 2020 IBA Rules on the Taking of Evidence in International Arbitration. They all understand that the document production phase is not designed to be a burdensome and expensive exercise.
 - 16.2. Within the time limit set in Annex B, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control. Such a request for production must (i) identify with precision each document or narrow category of documents being requested; (ii) explain why such documents are relevant to the dispute and material to the outcome of the case; and (iii) be submitted in the form of a Redfern Schedule as attached in Annex C hereto, in both Word and .pdf format. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
 - 16.3. Within the time limit set forth in Annex B, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, submit its objections. However, in exceptional circumstances, a party may seek the Tribunal's permission to request additional documents otherwise than in accordance with the timetable set out in Annex B and in accordance with §17 below.
 - 16.4. Within the time limit set forth in Annex B, the requesting Party may seek an order for the production of the 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.
 - 16.5. The Parties shall make no submissions in respect of the steps set out in §§ 16.2,

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16.4, and 16.5 above other than those incorporated in the Redfern Schedules.

- 16.6. On or around the date set forth in Annex B, 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 applicable privileges and if appropriate the burden of proof.
 - 16.7. Documents produced by a Party voluntarily or pursuant to the Tribunal's order 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 a Party subsequently files them as exhibits in accordance with §17 below.
 - 16.8. 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 a part of the record.
 - 16.9. If a Party does not produce documents ordered by the Tribunal, the Tribunal may deem, in light of all circumstances, including the reasons advanced by a Party to explain its non-production of any given document, that the document is adverse to the interests of that Party.
 - 16.10. The disclosure of documents under this Section shall be made electronically through an FTP (or similar) secure site, which can be accessed by counsel to the Parties, in PDF format (and where possible, text-searchable PDF). Any documents being produced shall be categorized in accordance with the document request to which the documents are responsive.
 - 16.11. Any Excel (or similar spreadsheet format) documents shall be produced in native format.
17. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 17.1. The written pleadings shall be accompanied by the evidence (documentary or otherwise) upon which the Parties seek to rely, including any exhibits and legal authorities, written witness statements and expert reports, if any, in conformity with §§ 15.2 and 15.3 above.

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- 17.2. Neither Party shall be permitted to submit additional or responsive evidence after the filing of its respective last written pleading, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.
- 17.2.1. Should a Party request leave to file additional or responsive documents, it may not annex the documents that it seeks to file to its request.
- 17.2.2. If the Tribunal grants such request, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document and/or to request leave to file rebuttal documents.
- 17.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.4. The documents shall be submitted in the following form:
- 17.4.1. The number of each Exhibit containing a document produced by the 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 the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 17.4.2. Factual and legal exhibits shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with § 17.4.4.
- 17.4.3. A Party may produce several documents relating to the same subject matter within one exhibit, numbering each page of such exhibit separately and consecutively.
- 17.4.4. Electronic files and the accompanying indices shall follow the naming conventions contained in **Annex A**.
- 17.5. 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 submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.

17.7. Demonstrative exhibits (such as charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively and reference on each demonstrative exhibit the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the 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. For the avoidance of doubt, PowerPoint slides in support of a Party's oral argument are not considered, as such, to be demonstrative exhibits. Such PowerPoint slides shall not contain any new evidence and shall systematically reference the documents on the record, including demonstrative exhibits, in support of that Party's argument.

18. Witnesses

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

- 18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 18.2. For each witness, a written, signed and dated 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 exceptional 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, via submission or by presenting a rebuttal witness.
- 18.3. Each witness statement shall state the witness's name, date of birth, involvement in the case, and a picture of that witness, unless the witness does not consent to include said picture.
- 18.4. Witness statements shall be submitted in English or with a translation into English.
- 18.5. In accordance with §§ 15.2 and 15.3 above, each Party will submit its witness statements together with its written submissions. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two or more witness statements by the same witness, the subsequent witness statement shall be identified as "Second," "Third," etc.
- 18.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.7. On the date provided in Annex B, each Party shall identify the witnesses of its opponent whom it intends to cross-examine.

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- 18.8. 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.
- 18.9. If a Party decides not to cross-examine a witness and therefore does not summon that witness to the hearing, such decision shall not be deemed to be an admission of the content of the relevant witness statement.
- 18.10. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.11. If it deems it necessary, the Tribunal may 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.
- 18.12. If a witness fails to appear when first summoned to a hearing, the 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 relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.13. The Tribunal may allow a witness to be examined by videoconference (in the context of an online hearing or otherwise) and will issue appropriate directions.
- 18.14. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness (called for cross-examination) who fails to appear and does not provide a valid reason.
- 18.15. At the hearing, the examination of each witness shall proceed as follows:
 - 18.15.1. Direct examination shall be limited to introductory questions, corrections to the written statement, and questions about matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements. In principle, it shall not exceed ten minutes;
 - 18.15.2. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge. During the pre-hearing organizational meeting mentioned in §20, the Tribunal will address the conduct of cross-examinations;

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- 18.15.3. 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;
 - 18.15.4. Re-cross examination may exceptionally be allowed in the Tribunal's discretion; and
 - 18.15.5. The Tribunal may ask its questions at any time, likely mainly at the end. In its discretion, the Tribunal may give each Party the opportunity to re-examine a witness with respect to questions raised by the Tribunal.
- 18.16. The order of the examination of witnesses and experts shall be decided at the pre-hearing telephone conference.
- 18.17. 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. Party representatives who are also fact witnesses may be present during opening submissions.
- 18.18. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 18.18.1. 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;
 - 18.18.2. Direct that a witness be recalled for further examination at any time; or
 - 18.18.3. Provide that the witnesses may be examined together ("witness conferencing"), in which case it will give appropriate directions.
19. Experts
Convention Article 43(a), Arbitration Rules 35 and 36
- 19.1. Each Party may retain and produce evidence of one or more experts.
 - 19.2. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Arbitral Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
 - 19.3. 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.

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- 19.4. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 19.5. After consultation with the Parties, the Tribunal may request experts to give a presentation summarizing their methodology and conclusions in lieu of direct examination, which shall not last longer than 30 minutes.
- 19.6. Unless inconsistent with this Section, all the rules set forth in § 18 above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts.
20. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 20.1. A pre-hearing organizational meeting shall be held on the date provided in Annex B by way of videoconference.
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, and for oral arguments.
- 21.2. Hearings shall not be open to the public, unless otherwise agreed by the Parties.
- 21.3. The hearing shall take place on the dates set in Annex B.
- 21.4. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.
- 21.5. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to reasonable adjustments in the Tribunal's discretion. The allocation will be discussed at the pre-hearing organizational meeting and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.
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, the Tribunal Members and the Assistant.

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- 22.2. Verbatim transcripts in the procedural language shall be made of any substantive hearing and procedural session. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 22.3. The Parties shall agree on any corrections to the transcripts within 30 days after the end of the hearing. The agreed corrections may be entered in the transcript by the court reporter (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered in the revised transcripts by the court reporter.
23. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for preparing, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave from or on request of the Tribunal.
- 23.2. The Tribunal will issue directions on the Parties’ statements of costs at the end of the hearing.
24. Transparency
- 24.1. Without prejudice to § 21.2 above, the Tribunal will establish the transparency regime governing these proceedings in a subsequent procedural order, after having consulted the Parties.
25. Data Protection and Cybersecurity
- 25.1. The Members of the Tribunal, the Assistant, and the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of these arbitration proceedings.
- 25.2. The Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.

- 25.3. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber-security of arbitration-related information and the Parties confirm that communications may be sent by email.

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 27 July 2022

ANNEX A

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 used 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	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S 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	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S 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	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<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>
	<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>

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	<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-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

ANNEX B

PROCEDURAL TIMETABLE³

Scenario 1—bifurcation not requested

	Procedural step	Author	Date
1.	Claimant’s Memorial	Claimant	16 January 2023
2.	Respondent’s Counter-Memorial	Respondent	17 July 2023
3.	Document production requests	Parties	28 August 2023
4.	Objections to document production requests and voluntary production of documents	Parties	18 September 2023
5.	Replies to objections to document production requests and submission of the Redfern to the Tribunal	Parties	9 October 2023
6.	Decision on the Parties’ requests for production of documents	Tribunal	30 October 2023
7.	Production of documents ordered by the Tribunal	Parties	20 November 2023
8.	Claimant’s Reply	Claimant	20 February 2024
9.	Respondent’s Rejoinder	Respondent	22 July 2024
10.	Identification of witnesses and experts to be called at the hearing	Parties	25 September 2024
11.	Pre-hearing videoconference	Parties and the Tribunal	14 October 2024 at 14:00 CET

³ **Tribunal note:** Timetable adjusted to avoid Saturdays and Sundays, but not public holidays in Sweden or China, which the Parties may check and flag if applicable. If any time limit outside of the procedural calendar falls on a Saturday or Sunday, or a public holiday in Sweden or China, the time limit shall be satisfied if the step is taken or a document is received on the subsequent business day.

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12.	Hearing	All	25 November to 6 December 2024 (exact number of days to be determined at the Pre-hearing videoconference)
13.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties	To be determined
14.	Cost Submissions	Parties	To be determined

Scenario 2—bifurcation is requested

	Procedural step	Author	Date
1.	Claimant’s Memorial	Claimant	16 January 2023
2.	Respondent’s Notice of Intended Objections and Request for Bifurcation	Respondent	13 February 2023
3.	Claimant’s Response to Respondent’s Request for Bifurcation	Claimant	27 February 2023
4.	Tribunal’s decision on Respondent’s Request for Bifurcation	Tribunal	13 March 2023

Scenario 2(a)—bifurcation is granted

	Procedural step	Author	Date
5.	Respondent’s Memorial on Bifurcated Objections	Respondent	8 May 2023
6.	Claimant’s Counter-Memorial on Bifurcated Objections	Claimant	8 August 2023
7.	Respondent’s Reply on Bifurcated Objections	Respondent	19 September 2023
8.	Claimant’s Rejoinder on Bifurcated Objections	Claimant	31 October 2023

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9.	Pre-hearing videoconference	All	6 November 2023 at 14:00 CET
10.	Hearing on Bifurcated Objections (2 days and 1 in reserve; precise length TBC at pre-hearing videoconference)	All	8-10 January 2024

Scenario 2(b)—bifurcation is not granted

	Procedural step	Author	Date
5.	Respondent’s Counter-Memorial	Respondent	19 September 2023
6.	Document production requests	Parties	31 October 2023
7.	Objections to document production requests and voluntary production of documents	Parties	21 November 2023
8.	Replies to objections to document production requests and submission of the Redfern Schedules to the Tribunal	Parties	12 December 2023
9.	Decision on the Parties’ requests for production of documents	Tribunal	11 January 2024
10.	Production of documents ordered by the Tribunal	Parties	1 February 2024
11.	Claimant’s Reply	Claimant	22 April 2024
12.	Respondent’s Rejoinder	Respondent	23 September 2024
13.	Identification of witnesses and experts to be called at the hearing	Parties	7 October 2024
14.	Pre-hearing videoconference	Parties and the Tribunal	14 October 2024 at 14:00 CET
15.	Hearing	All	25 November to 6 December 2024 (exact number of days to be determined at the Pre- hearing videoconference)

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16.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties	To be determined
17.	Cost Submissions	Parties	To be determined

ANNEX C

REDFERN SCHEDULE OF DOCUMENT REQUESTS

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			