

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Basel LLC and Ronald Waldmann

v.

Georgia

(ICSID Case No. ARB/23/23)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Prof. Eduardo Zuleta, President of the Tribunal

Prof. Andrés Jana Linetzky, Arbitrator

Mr. Mark A. Kantor, Arbitrator

Secretary of the Tribunal

Mr. Benjamin Garel

Assistant to the President of the Tribunal

Ms. María Marulanda

April 30, 2024

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Introduction

The first session of the Tribunal was held on March 14, 2024, at 9:30 a.m. (EDT) by video conference via Zoom. The session was adjourned at 10:35 a.m. (EDT).

A 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.

Participating in the conference were:

Members of the Tribunal:

Prof. Eduardo Zuleta, President of the Tribunal

Prof. Andrés Jana Linetzky, Arbitrator

Mr. Mark A. Kantor, Arbitrator

ICSID Secretariat:

Mr. Benjamin Garel, Secretary of the Tribunal

Assistant to the President of the Tribunal:

Ms. María Marulanda

On behalf of the Claimants:

Mr. Ronald Waldmann

Mr. Michael Ostrove, DLA Piper France LLP

Mr. Théobald Naud, DLA Piper France LLP

Ms. Lola Coutin (intern), DLA Piper France LLP

On behalf of the Respondent:

Mr. John Adam, Squire Patton Boggs

Mr. José Feris, Squire Patton Boggs

Ms. Naomi Briercliffe, Squire Patton Boggs

Ms. Karolina Latasz, Squire Patton Boggs

Ms. Mariam Antia, Head of Department of State Representation in Arbitration and Foreign Courts

Ms. Nino Chikhradze, Senior Specialist, Department of State Representation in Arbitration and Foreign Courts

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 circulated by the Tribunal Secretary on February 24, 2024; and
- The parties' comments on the Draft Procedural Order received on March 11, 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on January 17, 2024, 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 19(3)(b). Copies of these declarations were distributed to the parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on August 18, 2023, September 28, 2023, and January 17, 2024.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions, and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

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

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 in force at the time the fees and expenses are incurred.

4. Presence and Quorum
Arbitration Rule 33

4.1. Subject to §5.5, the participation of all Members of the Tribunal by any appropriate means of communications is required at the first session, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the parties agree otherwise.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions, and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions, and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal. The President may decide, whether or not urgent, issues related to document production, subject to possible reconsideration of such decision by the full Tribunal.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal or excluded for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. 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 Rules 9, 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the parties, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. Subject to § 22.4, short extensions of time may be agreed between the parties as long as (i) they do not affect any hearing dates or otherwise 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 28

- 7.1. The Tribunal Secretary is Mr. Benjamin Garel, Senior 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:

Mr. Benjamin Garel
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.

Paralegal name: Ms. Jaïdat Ali Djaé

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

Mr. Benjamin Garel
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)

3rd Floor
Washington, D.C. 20036
U.S.A.
[REDACTED]

8. Assistant to the President

- 8.1. By email of January 23, 2024, the President explained to the parties that he considered that it would benefit the overall cost and time efficiency of the proceedings if the President had an assistant. The President proposed, with the approval of the other members of the Tribunal, that Ms. María Marulanda Mürrle be appointed as Assistant to the President. Ms. Marulanda's *curriculum vitae* and her declaration of independence and impartiality was distributed to the parties.
- 8.2. The President further explained that the Assistant would (i) undertake only such specific tasks as are assigned to her by the President, such as the marshaling of evidence, research of specific issues of law and organization of case documents; (ii) assist the Tribunal during its deliberations; and (iii) be subject to the same confidentiality obligations as the Members of the Tribunal and sign a declaration to that effect. The President confirmed that he would not delegate to the Assistant any of the duties and obligations incumbent on the President as an arbitrator.
- 8.3. The parties consented to the appointment of Ms. María Marulanda Mürrle as Assistant to the President on the terms set out in the email dated January 23, 2024.
- 8.4. The parties also agreed that the Assistant would be reimbursed for expenses as described in the Secretariat's email of January 23, 2024.
- 8.5. The contact details of the Assistant are:

Ms. María Marulanda
[REDACTED]

9. Representation of the Parties

Arbitration Rule 2

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. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create conflict of interest with one or more Members of the Arbitral Tribunal.

For the Claimants

Mr. Michael Ostrove
Mr. Théobald Naud
Ms. Marie Morier
DLA Piper France LLP
27 rue Laffitte
75009 Paris
France

[REDACTED]

For the Respondent

Mr. John Adam
Mr. José Feris
Mr. Guillermo Salcedo Salas
Squire Patton Boggs
7, rue du Général Foy
75008 Paris
France

[REDACTED]

And

Ms. Naomi Briercliffe
Ms. Karolina Latasz
Squire Patton Boggs
60 London Wall
London
EC2M 5TQ
United Kingdom

[REDACTED]

and

Ms. Mariam Antia
Head of the Department of State
Representation in Arbitration and Foreign
Courts
Ministry of Justice of Georgia
Gorgasali Street 24a, 0114
Tbilisi
Georgia

[REDACTED]

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

- 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. Following registration of the Request for arbitration, by letter of June 29, 2023, ICSID informed the parties that US\$150,000 will be necessary to cover the estimated costs of the initial phase of the proceeding including the first session of the Tribunal and requested that the Claimants pay US\$150,000. ICSID received the Claimants' payment on July 25, 2023. Upon the constitution of the Tribunal, by letter of January 19, 2024, ICSID requested that the Respondent pay US\$150,000. ICSID acknowledged receipt of the Respondent's payment on February 7, 2024.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding and Hearings
Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Paris, France, shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the parties so agree. The method of holding a hearing will be determined in accordance with §22.2.
- 11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English shall be the procedural language of the arbitration.
- 12.2. The Tribunal and the Secretariat shall communicate with the parties in the English language.
- 12.3. Documents filed in any other language must be accompanied by a translation into English.

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- 12.4. It is sufficient to translate only the relevant part of a supporting document unless the Tribunal orders a party to provide a fuller or a complete translation.
- 12.5. Translations need not be certified, unless there is a dispute as to the content of a translation provided by either party and the Tribunal orders the party producing the translated document to provide a certified translation.
- 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. The parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing (see Annex B below) and as soon as possible.
- 12.8. The testimony of a witness called for examination during the hearing is required to give evidence in a language other than in the English shall be interpreted, simultaneously if possible.
- 12.9. The costs of interpretation 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
Arbitration Rule 6

- 13.1. Each party's written communications shall be transmitted by email or other electronic means to the opposing party, the Tribunal, the Tribunal Secretary, and the Assistant.
- 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 once all such communications are received.
- 13.3. Neither the Tribunal nor the Tribunal Secretary or the Assistant shall 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:

Prof. Eduardo Zuleta

[REDACTED]

Prof. Andrés Jana
Linetzky

[REDACTED]

Mr. Mark Kantor

[REDACTED]

14. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 4, 5 and 9

14.1. The parties shall:

14.1.1. by the relevant filing date, submit by email to the Tribunal, the Tribunal Secretary, the Assistant, and the opposing party an electronic version of the pleading with witness statements, expert reports, and an index of all supporting documentation;¹ and

14.1.2. within 3 business days from the relevant filing date, the parties shall upload the pleading with all the supporting documentation and updated consolidated index to the file sharing platform that has been created by ICSID for purposes of this case.²

14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be rendered text searchable (i.e., OCR PDF or Word) to the extent possible. Exhibits may be submitted in an extension other than .pdf when technically required (e.g., .xls (Excel) or .rar (WinRAR) files).

14.3. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of 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, and shall follow the naming conventions contained in **Annex A**.

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 Claimants (in agreement with the Respondent) shall upload to the file sharing platform, in a format that can be readily downloaded, 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.³

14.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal and the Tribunal Secretary by email.

14.6. A filing shall be deemed timely if sent by a party by 11:59 p.m., Washington, D.C. time, on the due date. If the due date falls on a Saturday, Sunday, or an otherwise non-business day in any of France, Switzerland, the United Kingdom, or Georgia,

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

² Supporting documentation shall be uploaded as individual files, not in .zip format.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

the following business day in all of those countries will be considered the due date. When setting deadlines or agreeing to extensions, the parties shall ensure that the due date falls on a business day in each of these countries.

15. Number and Sequence of Pleadings – Procedural Calendar

Arbitration Rule 30

- 15.1. The number and sequence of pleadings shall be as provided in **Annex B** to this order.
- 15.2. The written submissions shall be submitted in accordance with Arbitration Rule 30.
- 15.3. In respect of each factual allegation, the parties shall, whenever possible, identify, with reference to the record, the evidence adduced or to be adduced in support of that allegation.
- 15.4. In respect of each legal argument, the parties shall, whenever possible, identify, with reference to the record, the legal authority adduced or to be adduced in support of that argument.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. Each party may request the production of a reasonable number of documents, or narrow categories of documents, relevant and material to the outcome of the dispute from the other party in accordance with the procedural calendar set out in **Annex B**. Requests for the production of documents shall be in writing and briefly set forth reasons for the request in respect of each document or class of documents requested in the manner set forth in **Annex C** (modified Redfern schedule). Unless the requested party objects to production, it shall produce the requested documents within the applicable time limit.
- 16.2. If the requested party objects to production, the following procedure shall apply:
 - 16.2.1. Within the time limit set forth in **Annex B**, the requested party shall submit a response stating which documents or class of documents it objects to producing. The response shall briefly state the reasons for each objection.
 - 16.2.2. Within the time limit set forth in **Annex B**, the requesting party shall respond to the other Party's objection, indicating briefly, with reasons, whether it disputes the objection.
 - 16.2.3. The parties shall submit all outstanding requests, objections, and responses to objections to the Tribunal for decision in tabular form pursuant to the model appended to this Procedural Order as **Annex C** (modified Redfern

schedule). The parties shall use the same format throughout their exchange of requests, objections, and responses. No submissions or allegations may accompany the schedule.

- 16.2.4. The Tribunal shall rule on any outstanding requests and may for this purpose, refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 in regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this Procedural Order or the Arbitration Rules. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 16.2.5. The parties shall not copy the Tribunal or the Assistant on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the parties in response to document production requests shall only form part of the evidentiary record if a party subsequently submits them as exhibits to its written submissions or upon authorization of the Tribunal after the exchange of submissions.
- 16.2.6. Should a party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced, taking into consideration all relevant circumstances.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §14, above.
- 17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.
 - 17.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such document.

- 17.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.5. Documents shall be submitted in the following form:
- 17.5.1. 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. Translations of factual or legal exhibits shall be included in the same file as the original document.
- 17.5.2. Exhibits and legal authorities 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.
- 17.5.3. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 17.7. 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. The parties shall not re-submit documents already filed by the opposing party unless there is valid justification such as the document being incomplete.
- 17.8. The parties may use demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived and (ii) do not contain information not in the record. For the avoidance of doubt, presentations (such as PowerPoint slides) setting out the parties’ argument are not in themselves considered demonstrative exhibits. Charts, tabulations etc., which compile factual information in a manner which not on the record and are contained in PowerPoint slides are to be treated as demonstrative exhibits.
- 17.9. An electronic copy of each demonstrative exhibit shall be distributed by the party intending to use it via an electronic mail sent to the entire case email distribution for each party, the Members of the Tribunals, the Tribunal Secretary, the Assistant, the court reporter and to the interpreters as necessary by the deadline to be fixed at the pre-hearing organizational meeting.

17.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD- or RD- number.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

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 special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §17.3).

18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. Examination of Witnesses and Experts

Arbitration Rule 38

19.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any witness or expert whose written testimony has been advanced with the pleadings.

19.2. The parties shall notify the opposing party which witnesses and experts it intends to call for cross-examination by the date set forth in **Annex B**. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.

19.3. Each Party shall be responsible for the attendance of the witnesses it has presented at the hearing, except when the other party has waived cross-examination of a witness, and the Tribunal does not direct his or her appearance. The Tribunal will decide upon the appropriate allocation of any related costs in the Award.

19.4. Prior to the hearing the Tribunal may require that some or all of the experts submit an agreed summary of the material differences between their expert reports or, in the absence of an agreement, a separate summary by each expert listing such material differences.

19.5. Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.

- 19.6. At the hearing, the examination of each witness shall proceed as follows.
- 19.6.1. 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 that witness' written statement was signed (direct examination). As a rule, direct examination shall not exceed 10 minutes.
- 19.6.2. The other party may then cross-examine the witness about relevant facts addressed in the witness statements, matters for which the record demonstrates the witness has personal knowledge or raised during the direct examination.
- 19.6.3. 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.
- 19.6.4. The Tribunal may examine the witness at any time, either before, during or after examination by one of the parties.
- 19.7. In *lieu* of direct examination, an expert may present his or her report to the Arbitral Tribunal (potentially aided by a PowerPoint presentation), for no longer than 45 minutes. The rules applying to the examination of witnesses shall apply by analogy to the evidence of party and Tribunal-appointed experts.
- 19.8. Prior to their examination, witnesses (other than Mr. Waldmann, as the case may be) shall not be present in the hearing, discuss the examination of any other witness who has already appeared before the Arbitral Tribunal, read any transcript of oral arguments or oral testimony, or listen to or watch any audio or video recording of the oral arguments or of the oral testimony. Cross-examination of Mr. Waldmann and any other individuals who are also party representatives shall be accorded priority.
- 19.9. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party shall not be deemed established by 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.
- 19.10. Experts may be present in the hearing at all times.

20. Pre-Hearing Organizational Meetings
Arbitration Rule 31

- 20.1. A pre-hearing organizational meeting shall be held on the date fixed in accordance with the procedural calendar set out at **Annex B**. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and

should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

- 20.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing organizational meeting, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

21. Case Management Conferences

Arbitration Rule 31

- 21.1. The Tribunal may convene case management conferences (in the form of teleconferences or videoconferences between the Tribunal, or its President, and the parties) in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing Tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence). It is expected that a case management conference will be held at a date as set out in **Annex B**.

22. Hearings

Arbitration Rule 32

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. Subject to §22.3, the hearing will be held in-person at a place to be determined in accordance with §11 above.
- 22.3. Having due regard to the views of the parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid format.
- 22.4. The hearing shall take place on the dates determined in **Annex B**. The Tribunal considers that for a proper preparation of the hearing, no less than 8 weeks are required between the last written submission and the hearing. If as a result of amendments to the procedural calendar the term between the last submission and the hearing is reduced to less than 8 weeks the Tribunal may, after consulting the parties, postpone the hearing.
- 22.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.

- 22.6. In consultation with the parties, the Tribunal shall determine at the pre-hearing organizational meeting allocation of time to the parties to examine witnesses and experts at the hearing.
- 22.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
- 22.7.1. A chronology of relevant facts in tabular form;
- 22.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- 22.7.3. A list of the substantive issues required to be determined by the Tribunal.

23. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 23.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 23.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 24.1. The timing and content of post-hearing memorials, if any, and statement of costs are to be determined by the Tribunal after consultation with the parties at a later date.

25. Transparency Matters

Convention Article 48(5), Arbitration Rules 62-66

- 25.1. The parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

26. Data Privacy and Cybersecurity

- 26.1. The Members of the Tribunal, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

- 26.2. The Members of the Tribunal, 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 proceeding, 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.

- 26.3. The parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

27. Amicable Dispute Settlement

- 27.1. The Tribunal notes that the parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. If the parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2). Furthermore, any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

On behalf of the Tribunal,

Signed

Prof. Eduardo Zuleta
President of the Tribunal
Date: April 30, 2024

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 Exhibits	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	<i>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</i>
	<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	<i>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</i>
	<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-[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 Timetable⁴

Scenario 1 (No bifurcation request)

Item	Event	Date	Interval (days)
1	First Session	14 March 2024	
2	Claimants' Memorial	12 July 2024	120
3	Respondent's Counter-Memorial	18 December 2024	159
4	Parties' Requests for Production of Documents	31 January 2025	44
5	Parties' Responses and/or Objections to Requests for Production of Documents	21 February 2025	21
6	Parties' Replies to Objections to Requests for Production of Documents	14 March 2025	21
7	Case Management Conference	28 March 2025	N/A
8	Parties' Production of Documents which are not subject to Objections	4 April 2025	21 (from item 6)
9	Tribunal's Decision on Objections to Requests for Production of Documents	14 April 2025	31 (from item 6)
10	Parties' Production of Documents ordered by Tribunal	12 May 2025	28
11	Claimants' Reply	11 June 2025	30 (from item 10) 175 (from item 3)
12	Respondent's Rejoinder	19 September 2025	100
13	Parties to identify witnesses and experts for cross-examination at hearing		4 weeks prior to hearing
14	Pre-hearing organizational meeting		2 weeks prior to hearing
15	Hearing	Week of 8 December 2025	

⁴ The proposed dates for Tribunal decisions are indicative, not binding.

Scenario 2 (Bifurcation requested and granted)

Item	Event	Date	Interval (days)
1	First Session	14 March 2024	
2	Claimants' Memorial	12 July 2024	120
3	Respondent's Bifurcation Request	5 September 2024	55
4	Claimants' Reply to the Bifurcation Request	20 September 2024	15
5	Decision on Bifurcation	21 October 2024	31
6	Respondent's Objections to Jurisdiction	16 December 2024	56
7	Claimants' Counter-Memorial on Jurisdiction	10 February 2025	56
8	Parties' Requests for Production of Documents	20 February 2025	10
9	Parties' Responses and/or Objections to Requests for Production of Documents	27 February 2025	7
10	Parties' Replies to Objections to Requests for Production of Documents	6 March 2025	7
11	Case Management Conference	N/A	N/A
12	Parties' Production of Documents which are not subject to Objections	13 March 2025	7 (from item 10)
13	Tribunal's Decision on Objections to Requests for Production of Documents	20 March 2025	7 (from item 10)
14	Parties' Production of Documents ordered by Tribunal	27 March 2025	7
15	Respondent's Reply on Jurisdiction	15 April 2025	19 (from item 14) 64 (from item 7)
16	Claimants' Rejoinder on Jurisdiction	23 May 2025	38
17	Parties to identify witnesses and experts for cross-examination at the jurisdiction hearing		3 weeks prior to hearing
18	Pre-hearing organizational meeting		2 weeks prior to hearing
19	Hearing on Jurisdiction	Week of 23 June 2025	

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Procedural Order No. 1 – Annex B

Scenario 3 (Bifurcation requested and denied)

Item	Event	Date	Interval (days)
1	First Session	14 March 2024	
2	Claimants' Memorial	12 July 2024	120
3	Bifurcation Request	5 September 2024	55
4	Claimants' Reply to the Bifurcation Request	20 September 2024	15
5	Decision on Bifurcation	21 October 2024	31
6	Respondent's Counter-Memorial	14 February 2025	116
7	Parties' Requests for Production of Documents	7 March 2025	21
8	Parties' Responses and/or Objections to Requests for Production of Documents	28 March 2025	21
9	Parties' Replies to Objections to Requests for Production of Documents	11 April 2025	14
10	Case Management Conference	24 April 2025	N/A
12	Parties' Production of Documents which are not subject to Objections	2 May 2025	21 (from item 9)
13	Tribunal's Decision on Objections to Requests for Production of Documents	8 May 2025	27 (from item 9)
14	Parties' Production of Documents ordered by Tribunal	29 May 2025	21
15	Claimants' Reply	11 July 2025	43 (from item 14) 147 (from item 6)
16	Respondent's Rejoinder	6 November 2025	118
17	Claimants' Rejoinder on Jurisdiction	19 December 2025	43
17	Parties to identify witnesses and experts for cross-examination at the jurisdiction hearing		4 weeks prior to hearing
18	Pre-hearing organizational meeting		2 weeks prior to hearing
19	Hearing	Week of 23 February 2026	

Annex C- Model of Horizontal Schedule for Document Requests

Document Request No	
A. Documents or category of documents requested (requesting Party)	
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	
C. Reasoned objections to document request (objecting Party)	
D. Response to objections and request for resolution (requesting Party)	
E. Decision of the Tribunal	