

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Claimant

v.

Respondent

(ICSID Case No. ARB/xx/xxx)

[DRAFT] PROCEDURAL ORDER NO. [1]

Members of the Tribunal

[], President of the Tribunal

[], Arbitrator

[], Arbitrator

Secretary of the Tribunal

[]

[DATE]

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Introduction

The first session of the Tribunal was held on [], at [] [a.m./p.m.], by telephone conference/at []. The session was adjourned at [insert time].

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.

Participating in the conference were:

Members of the Tribunal

[], President of the Tribunal

[], Arbitrator

[], Arbitrator

ICSID Secretariat:

[], Secretary of the Tribunal

Attending / [Participating] on behalf of the Claimant:

[], [Affiliation]

Attending / [Participating] on behalf of the Respondent:

[], [Affiliation]

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on [insert date] [as amended by the parties on [insert date]].
- The Draft Procedural Order circulated by the Tribunal Secretary on [insert date]; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on [insert date(s)], 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. The timetable is attached as Annex A [TBD].

1. Applicable Arbitration Rules
Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of [April 10, 2006].

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

2.1. The Tribunal was constituted on [] in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on [].

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

3. Fees and Expenses of Tribunal Members

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

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

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

3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a) [to be discussed by the parties]

Option 1: 2 Person Quorum

4.1. The presence of two Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].

Option 2: 3 Person Quorum

4.2. The presence of all Members of the Tribunal constitutes a quorum for its sittings, [including by any appropriate means of communication].

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence [except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal. – **to be decided by the parties**]

5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within [three – **or as decided by the parties**] months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every [insert time – **to be decided by the parties**] months.

5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is [], 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:

[]
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 4[]
Fax: + 1 (202) 522-2615
Email: []@worldbank.org
Paralegal email: []@worldbank.org

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

[]
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Representation of the Parties

Arbitration Rule 18

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

For Claimant[s]

For Respondent[s]

X	Y
Postal Address	Postal Address
Tel.	Tel.
[Fax]	[Fax]
Email	Email

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. 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.
- 9.2. By letter of [], ICSID requested that each party pay US\$[] to cover the initial costs of the proceeding. ICSID received Claimants' payment on [] and the Respondent's payment on [].
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. [Insert city and state/province] shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

Option 1: One Language

- 11.1. [English] is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into [English].

- 11.3. 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.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than [English] under §[15] below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the [English] language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §[19] below), which witnesses or experts require interpretation.
- 11.8. 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.

Option 2: Two Languages Using Both Languages

- 11.1. [Insert language English, Spanish or French] and [insert language] are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language. **[To be discussed by the parties]**

[For Parties' Pleadings]

- 11.3. Any written requests and applications shall be submitted simultaneously in both procedural languages.
- 11.4. Pleadings, expert opinions, witness statements, and any other accompanying documentation shall be submitted in one procedural language, provided that a translation of such document to the other procedural language is filed within [#] days thereafter.
- 11.5. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.

- 11.6. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 11.7. Documents exchanged between the parties under §[15] below (Production of Documents) may be produced in the original language and need not be translated.

[For Hearing]

- 11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the [insert languages] languages shall be interpreted simultaneously.
- 11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §[19] below), which witnesses or experts require interpretation.
- 11.10. 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.

[For Tribunal's Documents Except the Award]

Option A

- 11.11. The Tribunal shall make any order or decision in [insert language] and [insert language]. Both language versions shall be equally authentic.

Option B

- 11.12. The Tribunal may initially make any order or decision in [insert language] and subsequently issue that order or decision in [insert language]. Both language versions shall be equally authentic.

[For Tribunal's Award]

Option A

- 11.13. The Tribunal shall render the Award in [insert language] and [insert language] simultaneously. Both language versions shall be equally authentic.

Option 3: Two Languages Using Either Procedural Language

11.1. [Insert language English, Spanish or French] and [insert language] are the procedural languages of the arbitration.

11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language. **[To be discussed by the parties]**

[For Parties' Pleadings]

11.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation [may add other documents] may be submitted in either procedural language.

11.4. The Tribunal may require that a party translate any document in whole or in part.

11.5. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.

11.6. Documents exchanged between the parties under §[15] below (Production of Documents) may be produced in the original language and need not be translated.

[For Hearing]

11.7. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the [insert language(s)] language(s) shall be interpreted simultaneously.

11.8. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §[19] below), which witnesses or experts require interpretation.

11.9. 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.

[For Tribunal's Documents Except the Award]

Option A

11.10. The Tribunal shall make any order or decision in [insert language] and [insert language]. Both language versions shall be equally authentic.

Option B

11.11. The Tribunal may initially make any order or decision in [insert language] and subsequently issue that order or decision in [insert language]. Both language versions shall be equally authentic.

Option C

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

[For Tribunal's Award]

Option A

11.13. The Tribunal shall render the Award in [insert language] and [insert language] simultaneously. Both language versions shall be equally authentic.

Option B

11.14. The Tribunal shall render the Award only in [insert language].

12. Routing of Communications
Administrative and Financial Regulation 24

Option 1: All Communications via ICSID Secretariat

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.
- 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties which are not intended to be transmitted to the Tribunal.

Option 2: Direct Communication Between Parties

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send

them to the opposing party and the Tribunal.

- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

Option 3: Direct Communication Between Parties and Tribunal

- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 12.2. 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 and the Tribunal.
- 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.4. The email addresses of the Members of the Tribunal are:

X	Y	Z
Email	Email	Email

13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

Option 1: All Documents to be Sent to ICSID

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. On the day following the electronic filing, the parties shall courier to the Tribunal Secretary:
- 13.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert

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

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

reports, together with documents (but not including legal authorities);

13.2.2. [four minimum] hard copies in [A4/A5 – **to be decided by Tribunal**] format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

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

13.3. Also on the day following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §[8.1] above:

13.3.1. one hard copy in [A4/A5 – **to be decided by parties**] format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

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

Option 2: Hard Copies of Documents to be Sent to ICSID and to Tribunal Members Directly

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,³ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

13.2. On the day following the electronic filing, the parties shall courier to the Tribunal Secretary:

13.2.1. one unbound hard copy in A4/Letter format⁴ of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.2.2. one hard copy in [A4/A5 – **depends on what the Tribunal decides below – follow the same format**] format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

³ Please note that the World Bank server does not accept emails larger than 25 MB.

⁴ The A4/Letter format is required for ICSID's archiving.

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

13.3. Also on the day following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §[8.1] above and to each Member of the Tribunal at the addresses indicated at §[13.4] below:

13.3.1. [one] hard copy in [A4/A5 – **to be decided by parties/Tribunal**] format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

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

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

X	Y	Z
Postal Address	Postal Address	Postal Address
Tel.	Tel.	Tel.

[To be discussed by the parties]

13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.6. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

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

13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

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

[To be discussed by the parties]

15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36

[To be discussed by the parties]

16. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. 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.

16.2. The documents shall be submitted in the manner and form set forth in §[13] above.

16.3. 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 exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

16.3.1. 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.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. The documents shall be submitted in the following form:

16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.

- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §[16.3]).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness.
18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36
- [To be discussed by the parties]**
19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

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

20. Hearings

Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing shall be held at a place to be determined in accordance with §[10] above.

20.3. The hearing shall take place on [insert date, not before 4 weeks after the filing of the last written submission]. / **OR** The date of the hearing shall be determined at a later stage.

20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. [Allocation of time – **to be discussed by the parties**]

20.6. [Hearings open /closed to the public – **to be discussed by the parties.**]

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

21.3. The parties shall agree on any corrections to the transcripts within [#] 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/court reporter] in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the [parties/court

reporter – **to be decided by the parties**] in the revised transcripts.

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

22.1. **[To be discussed by the parties]**

23. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4) **[To be discussed by the parties]**

Option 1

23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

Option 2

23.1. The ICSID Secretariat will publish the award and any order or decision in the present case where both parties consent to publication. Otherwise, ICSID will publish excerpts of the award pursuant to Arbitration Rule 48(4) and include bibliographic references to rulings made public by other sources on ICSID's website and in its publications.

24. [Other Matters]

[]
President of the Tribunal
Date: