

PCA CASE NO. 2018-37

IN THE ARBITRATION MATTER UNDER THE
THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW 1976

PROFESSOR CHRISTIAN DOUTREMEPUICH (France)

and

ANTOINE DOUTREMEPUICH (France)

Claimants

versus

REPUBLIC OF MAURITIUS

Respondent

PROCEDURAL ORDER NO. 2

PROCEDURAL RULES AND TIMETABLE

Arbitral Tribunal

Prof Maxi Scherer (Presiding Arbitrator)
Prof Olivier Caprasse
Prof Jan Paulsson

WHEREAS the Parties and the Tribunal signed the Terms of Appointment, dated 30 July 2018;

WHEREAS this procedural order records the agreement of the Parties on the procedural matters set out herein; and

WHEREAS capitalized terms in this order that are not defined otherwise refer to those defined in the Terms of Appointment or Procedural Order No. 1, dated 16 August 2018.

1. Procedural Timetable

- 1.1 The procedural timetable is enclosed as Annex 1 to this order, any deadline may be amended or supplemented by subsequent procedural orders.
- 1.2 A Party complies with a deadline for a written submission or any other communication if a written submission or any other communication is sent to the Tribunal (and the other Party/Parties and the PCA, respectively) on the last day of the deadline by 24:00 Central European Time (GMT+1) by email.
- 1.3 Extensions may be agreed between the Parties or, in exceptional cases, granted by the Tribunal for justifiable reasons provided that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline, and in any event before the deadline expires.
- 1.4 The Tribunal shall decide in its discretion on the admissibility of written submissions, evidence or other documents that are submitted after the expiration of the corresponding deadline

2. Written Submissions

- 2.1 In the written submissions, the Parties shall express their factual and legal claims and allegations with appropriate precision. The Parties shall specify the evidence relied upon by providing specific references to the factual exhibits and other evidence furnished in support of their allegations. If written evidence contains more than one page, the Parties shall refer to the relevant page or paragraph number.
- 2.2 The first round of the Parties' submissions shall include all claims of the Parties and the supporting evidence for those claims. Unless the Tribunal orders otherwise, the following submissions shall be limited exclusively to addressing and responding to the claims presented in the first round of submissions.
- 2.3 On or before the date of the deadline for any written submission, the Party in question shall send the submission, together with any witness statements and expert reports (but excluding other supporting documents and legal authorities), to the Tribunal, the PCA, and opposing counsel by e-mail in accordance with section VII of the Terms of Appointment.
- 2.4 To facilitate filing, citations, and word processing, all written submissions, including witness statements and expert reports, as well as long exhibits, if possible, shall be provided as searchable Adobe Portable Document Format ("**PDF**") files, and preceded by a hyper-linked table of contents, where applicable.
- 2.5 Hard copies of the written submissions identified in Annex 1 (including all attached documents) and a CD/DVD-ROM or a memory stick (compatible with both Macs and PCs) containing a searchable copy of the submission shall also be dispatched to the opposing Party/Parties, the PCA,

and the members of the Tribunal at the physical addresses provided in the Terms of Appointment, by courier service or other rapid means within two business days of their transmission by e-mail.

2.6 Hard copies shall be submitted as follows:

- a) for each member of the Tribunal: one hard copy in A5 format, double-sided in spiral bindings, of the entire submission, including witness statements, expert reports and documents (including legal authorities); and
- b) for the PCA: two hard copies in A5 format, double-sided in spiral bindings, of the entire submission, including witness statements, expert reports and documents (but not including legal authorities).

2.7 For any simultaneous submissions, each side shall submit all electronic and hard copies only to the PCA. The PCA will then distribute copies to the Tribunal (hard and electronic copies) and opposing Party/Parties (electronic copies only) once both submissions have been received.

3. Evidence and Legal Authorities

3.1 In addition to the relevant articles of the UNCITRAL Rules and to any other procedural rule agreed upon by the Parties, the Tribunal may use, as an additional guideline, the IBA Rules on the Taking of Evidence in International Arbitration 2010 (the “**IBA Rules**”), when considering matters of evidence.

3.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form.

3.3 Lists of exhibits and legal authorities, enumerating all exhibits and legal authorities consecutively and identifying each of them by a number, date, description, author, and recipient (as applicable), shall be submitted with each submission. With each new submission including exhibits and legal authorities, the Parties shall submit an updated consolidated list of all exhibits filed.

3.4 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimants shall begin with the letter “C” followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with the letter “R” followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

3.5 Statements of fact witnesses or reports of experts shall be numbered separately as “CWS” for Claimants’ witness statements and as “CER” for Claimants’ expert reports, and “RWS” for Respondent’s witness statements and “RER” for Respondent’s expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]).

3.6 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimants shall begin with the letters “CL” followed by the applicable number (i.e., CL-1, CL-2, etc.); each legal authority submitted by the Respondent shall begin with the letters “RL” followed by the applicable number (i.e., RL-1, RL-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

3.7 All exhibits and legal authorities shall be submitted in the original language, together with a translation into English, if the original language is not English or French. Whenever voluminous documents need to be translated, the translation may be limited to all relevant passages together

with such other portions of the document necessary to put such passages in proper context. The Tribunal may, however, order, by a Party's request or on its own motion, a translation of additional portions of the document or the whole document, as appropriate to the circumstances. The Parties shall paginate any translation in the same way as the original document.

- 3.8 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete (to the extent a Party knows a document is incomplete, it shall so state).

4. Fact Witnesses

- 4.1 Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 4.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions.
- 4.3 If a witness statement is filed in a language other than English or French, it shall be accompanied by an English translation.
- 4.4 Each witness statement shall contain at least the following:
- (a) the name, date of birth, and present address of the witness;
 - (b) a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
 - (c) a description of any past and present relationship between the witness and the Parties, counsel, or the members of the Tribunal;
 - (d) a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
 - (e) the signature of the witness.
- 4.5 Before any oral hearing, and within the deadline set forth in the procedural timetable, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness whose written testimony has been submitted with the written submissions.
- 4.6 Where a Party does not intend to cross-examine a specific witness of an opposing Party, the Tribunal is free to assess the witness's written statement and the witness need not appear, unless the Tribunal requests her/his testimony.
- 4.7 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 4.8 Should a Party wish to present any of its own witnesses for examination at the hearing who have not been called by the Tribunal or the other Party, it shall request leave from the Tribunal.

- 4.9 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 4.10 If a witness who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.
- 4.11 Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 4.12 At any hearing, the examination of each witness shall proceed as follows:
- (a) the witness shall make a declaration of truthfulness;
 - (b) although direct examination will be given in the form of witness statements and expert reports, the Party presenting the witness may conduct a brief direct examination;
 - (c) the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;
 - (d) the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination;
 - (e) the adverse Party may then re-cross-examine the witness on matters arising out of the re-examination; and
 - (f) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.
- 4.13 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
- (a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either definitively proven by other evidence or are irrelevant;
 - (b) limit the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
 - (c) direct that a witness be recalled for further examination at any time.
- 4.14 Witness examinations shall be conducted in English or French, without any need for translation. Witness examinations shall be made in another language only if the written witness statement of the witness in question has been submitted in a language other than English or French. In this case, the witness' testimony shall be translated into English during the hearing. Interpreters shall be arranged for by the Parties. Each Party shall bear the costs of the interpreters it arranges for until the Tribunal decides on the final allocation of such costs in an award.

- 4.15 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 4.16 Unless the Parties agree otherwise, a fact witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination. This rule shall not apply to each Party's designated representative, to be specified prior to the hearing.

5. Expert Witnesses

- 5.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.
- 5.2 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be sufficient.
- 5.3 The provisions set out in relation to fact witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
- 5.4 After the submission of expert reports, any party-appointed experts who have submitted expert reports on the same or related issues may confer on such issues. In doing so, the party-appointed experts shall attempt to reach agreement on those issues as to which they had differences of opinion in their expert reports and they shall record in writing any such issues on which they reach agreement. Communication between the Parties' experts (at a meeting of experts, in correspondence, by exchange of drafts or otherwise) shall take place on a without prejudice basis.
- 5.5 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 (including expert fees), and issues to be addressed by any such expert.

6. Hearings

- 6.1 Expenses relating to the organization of any hearing (e.g., services of a court reporter, booking of a hearing room and break-out rooms, filing of core bundles if any, etc.) shall be directly advanced by the Parties in equal shares until the Tribunal decides on the final allocation of these hearing costs in an award.
- 6.2 Other details of the manner in which hearings will be conducted, including time management and the order in which witnesses of fact and experts, if any, shall appear, shall be determined at pre-hearing conferences to be scheduled by the Tribunal and the Parties, and in further procedural directions issued by the Tribunal.



Prof Dr Maxi Scherer
(Presiding Arbitrator, for the Tribunal)

Date: 14 September 2018
Seat of Arbitration: London, UK

Annex 1: Procedural Timetable

Date	Party	Submission/Event
23 November 2018	Respondent	Memorial on Jurisdiction together with documentary evidence, legal authorities, written witness statements and expert reports, if any, and limited to the issues of the jurisdiction of the Tribunal and the admissibility of Claimants' claims
1 February 2019	Claimants	Counter-Memorial on Jurisdiction together with documentary evidence, legal authorities, written witness statements and expert reports, if any, and limited to the issues of the jurisdiction of the Tribunal and the admissibility of Claimants' claims
29 March 2019	Respondent	Reply on Jurisdiction together with any rebuttal fact witness statements, responsive expert reports, documents and legal authorities relied upon
24 May 2019	Claimants	Rejoinder on Jurisdiction together with any rebuttal fact witness statements, responsive expert reports, documents and legal authorities relied upon
3 June 2019 (11 am CET)	All	Pre-hearing telephone conference with the Tribunal to agree the organization of the hearing
Week of 10 June 2019 (except 10 June 2019), exact length to be determined	All	Hearing on Jurisdiction (Peace Palace, The Hague)
To be determined	Claimants/ Respondent	Post-hearing briefs (if any)