

II.3.1

International Chamber of Commerce
International Court of Arbitration

ICC Arbitration N°

CLAIMANT

(Country)

Claimant

v.

RESPONDENT

(Country)

Respondent

collectively referred herein as **the Parties**

PROCEDURAL ORDER No. 1

ICC Arbitration N°

Claimant (Country)

vs.

Respondent (Country)

PROCEDURAL ORDER No. 1

Provisional Timetable established by the Sole Arbitrator in accordance with Article 18(4) of the ICC Rules of Arbitration and other procedural directions

[Procedural summary]

1. On [date], the Sole Arbitrator sent a letter to the parties in the above referenced arbitration stating, amongst other things, the following:

“As pointed out by the Secretariat of the ICC International Court of Arbitration in its correspondence dated [...] transmitting the file to the Sole Arbitrator (with copy to the parties), the Sole Arbitrator – when drawing up the Terms of Reference or as soon as possible thereafter (after having consulted the parties) – shall establish in a separate document a provisional timetable that it intends to follow for the conduct of the arbitration (see Article 18(4) of the Rules). With a view to establishing such provisional timetable, the Sole Arbitrator would be grateful if the parties could convey to it, [date], their preference regarding the following procedural issues:

- (i) number of exchanges of submissions between the parties after the Terms of Reference (*e.g.* one, two, etc.);
- (ii) timetable for those exchanges (*e.g.*, precise dates or 15 / 30 days for each of the parties);
- (iii) the manner in which documentary evidence should be filed (*e.g.*, with the Statement of Claim/Statement of Defense);
- (iv) the need for organizing a hearing;
- (v) the tentative hearing dates;
- (vi) the manner in which witness (including expert witness) evidence should be presented (*e.g.*, witness statements/expert reports should be filed with the Statement of Case/Statement of Defense); and
- (vii) any other procedural issue that the parties may wish to raise with the Sole Arbitrator at this stage of the arbitral proceedings.”

2. Within the time-limit granted by the Sole Arbitrator in its letter of [...] set out in Paragraph No. 1 above, Claimant, [by communicated dated ...], expressed the following preferences with respect to the procedural issues listed by the Sole Arbitrator:

3. By communication dated [...], Respondent expressed the following preferences with respect to the procedural issues listed by the Sole Arbitrator:
4. On [date] the Chairman of the Sole Arbitrator sent, on behalf of the Sole Arbitrator, a letter to the parties enclosing a Draft of Procedural Order No. 1 which constitutes a procedural timetable and other procedural directions, inviting the Parties to comment by [...]:
5. On [date] Claimant provided its comments on the Draft of Procedural Order No. 1, stating the following:
6. On [date] Respondent provided its comments on the Draft of Procedural Order No. 1, stating the following:
7. On [date], the Terms of Reference were signed and dated by the Sole Arbitrator, and transmitted to the ICC International Court of Arbitration in accordance with Article 18(2) of the ICC Rules of Arbitration.
8. On [date] the Sole Arbitrator, issued and communicated this Procedural Order No. 1 to the Parties.

PROVISIONAL TIMETABLE
and Other Procedural Directions

Exchange of Submissions between the parties

9. Claimant is to file its Statement of Claim on [date].
10. Claimant shall submit to the Sole Arbitrator any documentary evidence that it intends to rely on in support of its case together with its Statement of Claim, as well as written witness statements and/or expert reports, if any.
11. Respondent is to file its Statement of Defence on [date].
12. Respondent shall submit to the Sole Arbitrator any documentary evidence that it intends to rely on in support of its case together with its Statement of Defence, as well as written witness statements and/or expert reports, if any.
13. Claimant is to file its Reply to the Statement of Defence on [date].
14. Claimant shall not raise new factual and legal arguments in its Reply, unless such arguments respond directly to Respondent's arguments in its Statement of Defence.
15. Respondent is to file its Rejoinder to Claimant's Reply on [date].
16. Respondent shall not raise new factual and legal arguments in its Rejoinder, unless such arguments respond directly to Claimant's arguments in its Reply.
17. After the exchange of briefs, neither party shall be allowed to make new allegations or present new documentary evidence, as well as written witness statements and/or expert reports, unless

it submits a reasoned request to the Sole Arbitrator showing that it had, without fault, no possibility or reason to make such new allegation or to offer such new evidence before. The Sole Arbitrator shall decide on the merits of such request.

18. The present Provisional Timetable may be modified in light of changed circumstances in the present case or upon a reasoned request made by either party. Pursuant to Article 18(4), *in fine*, of the ICC Rules of Arbitration (herein after the "**Rules**"), "Any subsequent modification of the provisional timetable shall be communicated to the Court and the parties."

Documentary evidence

19. Documents shall be submitted as exhibits to the Sole Arbitrator and shall be numbered and attached, with a separate tab bearing the exhibit's number, to the party's written submission which refers to them. Claimant's exhibits will be numbered "C-1, C-2..."; Respondent's exhibits will be numbered "R-1, R-2...".
20. The exhibits submitted to the Sole Arbitrator shall be accompanied by an updated list specifying the nature of each document, its date and its author.
21. All exhibits shall be submitted in the original language, together with a translation into English, unless otherwise agreed by the parties or decided by the Sole Arbitrator.
22. All documents submitted to the Sole Arbitrator shall be deemed to be authentic and complete, including those submitted in copy form, unless disputed by the other party. The Sole Arbitrator shall decide on any objection to the authenticity or completeness of the exhibits.
23. Any request by a party for the production of documents which are in another party's possession, custody or control shall first be addressed to such other party. If the request is denied, the party seeking production may make a request to the Sole Arbitrator to order the production. Such request shall identify the individual documents, or a narrow and specific requested category of documents, in sufficient detail for such documents to be clearly recognized and described, and shall state why such documents are relevant and material to the outcome of the case and confirm that the documents are not in the possession, custody or control of the requesting party.
24. The Sole Arbitrator shall, in its discretion, rule on the issue of production of documents, taking account of the legitimate interests of the parties. It will refer to the IBA Rules on the Taking of Evidence in International Arbitration as guidelines.
25. If a party, contrary to an order by the Sole Arbitrator, fails to produce the documents without showing sufficient cause for such failure, the Sole Arbitrator may draw from such failure any conclusion which it deems reasonable, in particular with respect to the content of such document.
26. Unless expressly authorized or requested by the Sole Arbitrator, documents may only be submitted together with the written submissions which refer to them. In particular, new documents shall not be admitted at the hearing, if any, save for exceptional circumstances as determined by the Sole Arbitrator. In such circumstances, the other party shall be afforded sufficient opportunity to study and make its observations concerning the new document.

Witnesses and Experts

27. Any individual may present evidence as a witness, including parties and their representatives.
28. For each witness, a written and signed witness statement shall be submitted to the Sole Arbitrator together with any documentary evidence it relies upon. It shall be in sufficient detail so as to exempt the witness from direct oral examination.
29. If a party wishes to present evidence from a person who will not appear voluntarily at its request, the party may, within the time ordered by the Sole Arbitrator, ask it to take whatever steps are legally available to obtain the testimony of that person. The party shall identify the intended witness, shall describe the subjects on which the witness' testimony is sought and shall state why such subjects are relevant and material to the outcome of the case. The Sole Arbitrator shall decide on this request and shall take the necessary steps if in its discretion it determines that the testimony of that witness would be relevant and material.
30. Each party may submit the evidence of one or more experts to the Sole Arbitrator. The evidence shall be in the form of an expert report together with any documentary evidence it relies upon. It shall be in sufficient detail so as to exempt the expert from direct oral examination.
31. The Sole Arbitrator may, upon the request of a party, or *ex officio*, after consultation with the parties, appoint one or more experts. The Sole Arbitrator shall consult with the parties on the selection and terms of reference of any such expert.
32. The Sole Arbitrator may, upon the request of a party or *ex officio*, require appearance at a hearing of an expert, whether appointed by itself or by a party.

Hearing

33. Given that neither of the parties has requested a hearing, the Sole Arbitrator does not propose to schedule a hearing at this time, subject to the provisions of Article 20(2) of the Rules. Furthermore, the arbitration proceedings may be limited to "Documents only Arbitration" as provided for in Article 20 (6) of the Rules provided neither party requests a hearing.
34. In the event a hearing is requested by either party, its purpose shall be limited to the cross-examination of witnesses/experts, the statements/reports of which were filed with the parties' briefs, save for the examination of witnesses or experts as foreseen under Paragraphs Nos. 27 and 30 above. Furthermore, the Sole Arbitrator, having due regard to all the circumstances, may decide to include other issues in the agenda of the hearing.
35. The Sole Arbitrator shall freely assess all evidence, oral or written, including the written statements/expert reports of those witnesses/experts who have not been called to appear for cross-examination.
36. Where a witness/expert was called to appear and does not appear, the Sole Arbitrator shall, upon its own assessment and having due regard to all the circumstances, including whether the non-appearance was justified, either reschedule the examination of such witness to a later date or consider and evaluate the value of his or her statement/report.

Closing of the Proceedings and General

37. In accordance with Article 22(1) of the Rules, the Sole Arbitrator shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to

present their case. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Sole Arbitrator.

38. In accordance with Article 22(2) of the Rules, when the Sole Arbitrator has declared the proceedings closed, it shall indicate to the Secretariat of the ICC International Court of Arbitration an approximate date by which the draft Award will be submitted to the ICC International Court of Arbitration for approval pursuant to Article 27 of the Rules. Any postponement of that date shall be communicated to the Secretariat of the ICC International Court of Arbitration by the Sole Arbitrator.
39. If a party considers that the applicable procedural rules are not complied with, or that a procedural decision of the Sole Arbitrator is objectionable, such party should object immediately. In absence of such objection, the parties shall be deemed to have waived their right to object.

Place of Arbitration:

Dated this day,

Sole Arbitrator

[original signed]