

IN THE MATTER OF ARBITRATIONS COMMENCED PURSUANT TO
THE ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH AND
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES 2010

PCA CASE NO. 2016-36

between:

INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION
(the "Claimants")

- and -

[REDACTED]
("[REDACTED"])

AND

PCA CASE NO. 2016-37

between:

INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION

- and -

[REDACTED]
("[REDACTED"], together with [REDACTED], the "Respondents")

PROCEDURAL ORDER NO. 1

19 April 2017

The Tribunal

Mr Donald Francis Donovan (President)
Mr Graham Dunning QC
Professor Hans Petter Graver

Registry

Permanent Court of Arbitration
Tribunal Secretary: Ms Judith Levine

Pursuant to Article 5.4 of the Terms of Appointment and further to agreement among the Claimants and the Respondents (together, the “**Parties**”) on several matters reflected in their correspondence of 13 March 2017, and the discussions held amongst the Parties and the Tribunal during the Preliminary Procedural Conference in London on 17 March 2017, and the Parties’ positions set out in their correspondence of 23 and 24 March 2017, the Tribunal issues the following Procedural Order No. 1.

1 Coordination of Proceedings

- 1.1 As noted in Paragraph 2.5 of the Terms of Appointment, the Parties in PCA Case No. 2016-36 and PCA Case No. 2016-37 have agreed that while remaining formally distinct, the two cases will be heard by the same tribunal.
- 1.2 The Parties and the Tribunal shall strive to minimize duplication and avoid unnecessary costs whenever possible. To this effect, PCA Case No. 2016-36 and PCA Case No. 2016-37 shall be heard together but not formally consolidated. The Tribunal shall issue separate awards in relation to each case but may discuss these arbitrations in any award or procedural order as a single set of proceedings, except where the Tribunal determines that circumstances distinct to a particular Respondent necessitate separate treatment.
- 1.3 As the proceedings are being heard together, the Claimants, jointly, and the Respondents, jointly, shall file single submissions at each stage of briefing, but will separately address issues within a pleading where circumstances distinct to a particular Respondent and/or a case necessitate separate treatment.
- 1.4 Other specific modalities of coordinating the two cases are addressed in this Procedural Order.

2 Timetable for Submissions on Preliminary Issues

- 2.1 During the Preliminary Procedural Conference it became apparent that further briefing was required on (a) the Respondents’ admissibility objection; and (b) transparency and confidentiality, if the Parties are unable to reach an agreement (together, the “**Preliminary Issues**”). To the extent applicable law is relevant to the Tribunal’s decisions on these issues, the Parties agreed that they will plead the law and provide relevant authorities, but not submit expert opinions.
- 2.2 The Claimants have proposed, in their letter of 23 March 2017, that initial simultaneous submissions on the Preliminary Issues be filed on 3 April 2017, followed by simultaneous responses to be filed on 10 April 2017. The Claimants consider that the admissibility question is “narrow” and “limited in nature” and that the Parties “have already researched the issue and taken a position on” it and the need to brief governing law as it relates to the objection “does not increase the parties’ burden significantly.” With respect to transparency, the Claimants observe that “parties have already examined and taken positions on these issues” and submit that in any event it is not a matter that is “overly burdensome to brief if the parties are unable to reach agreement.”
- 2.3 The Respondents have proposed, in their letter of 24 March 2017, that initial simultaneous submissions be filed on 12 May 2017, with reply submissions to be filed on 26 May 2017. The Respondents submit that the admissibility issue, while discrete, raises a number of complex questions of fact and law which need to be fully investigated for the Tribunal to make an informed decision, as does the issue of transparency/confidentiality. The Respondents state they will need at least two weeks to consult with lawyers in Bangladesh and the Netherlands in order to plead relevant applicable law issues. The Respondents also submit that the Preliminary Issues may significantly impact the remainder of proceedings and the Tribunal should allow time proportionate to the complexity of the issues at stake, considered against the background of the length of the entire proceedings to date and the proposed March 2018 hearing dates.

- 2.4 The Tribunal, having considered the Parties' respective positions, directs:
- 2.4.1 By **24 April 2017**, the Parties shall file simultaneous submissions on the Preliminary Issues, including documents and legal authorities on which they wish to rely.
- 2.4.2 By **15 May 2017**, the Parties shall file simultaneous reply submissions on the Preliminary Issues, including documents and legal authorities on which they wish to rely.
- 2.5 As the Tribunal advised the Parties on 23 March 2017, the Tribunal may then reach a decision on the Preliminary Issues on the papers, and/or after sending questions to the Parties and/or after holding an in-person or telephonic hearing. In case a hearing is deemed necessary, the Tribunal requests the Parties to reserve **22 and 23 May 2017** pending confirmation of one of those dates.

3 Remainder of Procedural Timetable

- 3.1 As directed by the Tribunal at the Preliminary Procedural Conference and by email on 23 March 2017, a procedure for the merits will commence on a parallel track to resolution of the Preliminary Issues. This merits phase will include not only liability issues, but also specified issues of remedies whose determination during this merits phase would facilitate final resolution (including, for example, available heads of damages and principles to be applied to remedies). The following schedule shall apply to the remainder of the procedural timetable, as agreed and communicated by the Parties to the Tribunal on 13 April 2017:

Date	Time since last Procedural Step	Procedural Step
9 June 2017	12 weeks from First Procedural hearing	Claimants' submissions, together with documents and witness evidence (factual and any expert) relied upon
22 September 2017	+ 15 weeks	Respondent's submissions, together with documents and witness evidence (factual and any expert) relied upon
29 September 2017	+ 1 week	Parties to submit Requests to Produce Documents in the form of Redfern Schedules
6 October 2017	+ 1 week	Parties to submit objections to production or confirmation of documents the party will produce.
13 October 2017	+ 1 week	Production of Documents where no objection is made and replies to objections to production.
17 October 2017	+ 4 days	Reasoned application for an order on production of documents, in the form of a Redfern Schedule
31 October 2017	+ 2 weeks	Tribunal to rule on any outstanding Requests to Produce

Date	Time since last Procedural Step	Procedural Step
14 November 2017	+ 2 weeks	Parties to produce all documents as ordered by the Tribunal
-	[TBC]	Case Management Meeting (if needed)
22 December 2017	+ 5 weeks and 3 days	Claimants' Reply submissions, together with documents and rebuttal witness evidence (factual and any expert) relied upon
9 February 2018	+ 7 weeks	Respondents' Rejoinder submissions, together with documents and rebuttal evidence (factual and any expert) relied upon
16 February 2017		Pre-hearing Conference (if needed)
TBC	3.5 weeks before hearing	Parties to notify each other and the Tribunal of the witnesses to be called for cross-examination at the Oral Hearing
12-17 March 2018 [week commencing 19 March 2018 in reserve]		Oral Hearing ([10] days)
TBC	TBC	Post-hearing submissions (written) (if any)
TBC	TBC	Cost submissions (written)

4 Written Pleadings

- 4.1 On the date on which a submission is due, the submitting Parties shall submit their submission, together with expert reports and witness statements, and an index of its exhibits and legal authorities by e-mail (in MS Word format or "searchable" PDF format) to the Tribunal, the PCA, and opposing counsel. Within three business days following the filing of its written submissions by email, the submitting Parties shall send (1) by courier to the Tribunal and to the PCA (but not to the other Parties), hard copies of its submission and all accompanying documents (except legal authorities) printed in A4 format by courier; and (2) to the Tribunal, the PCA and the other Parties, a hyperlinked version of the submission (including exhibits and legal authorities) in electronic form on a USB flash memory drive and/or by uploading the documents to the FTP site for this case, as searchable PDF files (to the extent possible).
- 4.2 The paragraphs of each pleading shall be numbered consecutively, as shall the pages. Each pleading must include a hyperlinked table of contents (i.e. as with this document).
- 4.3 Each pleading must be responsive to the submission of the other Party that it follows.
- 4.4 Each pleading shall include all evidence upon which the submitting Party relies, such as documents, witness statements, and expert reports. In exceptional cases, the Tribunal may allow a Party, upon requesting leave and after hearing observations from the other Parties, to submit

additional exhibits at a later stage of the proceedings, if appropriate in view of all the relevant circumstances. The requesting Party may not annex the documents that it seeks to file to its request.

- 4.5 Submissions and correspondence shall be deemed to have been timely filed if sent via electronic mail at or before midnight in The Hague on the date due.

5 Document Production

- 5.1 As will be detailed in a subsequent procedural order on schedule, document production shall take place in a single phase, after the Parties' first round of written pleadings in each phase on liability and/or remedies.
- 5.2 The IBA Rules on the Taking of Evidence in International Commercial Arbitration (2010) shall provide non-binding guidance to the Parties and the Tribunal.
- 5.3 Each Party may serve a request for production of documents on the other Parties during the Production of Documents Phase. Such a request shall not be copied to the Tribunal.
- 5.4 A request for production of documents shall identify in sufficient detail each document, or category of documents, sought and include a statement as to how the requested document is relevant to the case and material to its outcome.
- 5.5 If and to the extent that a Party objects to the production of requested document(s), that Party shall submit such objection in writing to the requesting party only. The requesting Party shall comment in writing on any objection and submit the completed Redfern Schedule to the Tribunal and to the PCA, with copy to the other Parties (in both MS Word and PDF formats).
- 5.6 The Tribunal shall decide on any objections to production, and the Parties shall produce all documents for which no objection is sustained by the Tribunal. If a Party withholds documents on the basis of privilege or legal impediment, it shall submit to the requesting Party either: (a) a log identifying such documents (or categories of documents) and the grounds for withholding; or (b) redacted versions of such documents identifying the grounds for withholding. A Party may apply to the Tribunal to resolve a question regarding the sufficiency of a log or redaction.
- 5.7 Any disputes regarding the withholding of documents on the basis of a legal impediment or privilege shall be resolved by the Tribunal. In considering whether to exclude from production any documents on the grounds of a legal impediment or privilege, the Tribunal may consider, but is not bound by, the IBA Rules on the Taking of Evidence in International Commercial Arbitration (2010).
- 5.8 The request, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions shall be recorded in the form of a Redfern Schedule.
- 5.9 Documents shall be disclosed to the requesting Party in electronic format by sending via courier by the date fixed by the Tribunal, a USB key or other similar media containing the documents in electronic format. The media should also contain an index of the documents provided.
- 5.10 Each Party shall bear its own cost of production, without prejudice to the decision of the Tribunal as to the allocation of costs.
- 5.11 Documents so disclosed shall not be considered to be part of the record unless and until one of the Parties subsequently submits them in evidence to the Tribunal.

6 Documentary Evidence

- 6.1 Claimants in PCA Case No. 2016-36 and PCA Case No. 2016-37 shall submit joint exhibits. Unless otherwise indicated, such exhibits shall apply to both cases.
- 6.2 Respondents in PCA Case No. 2016-36 and PCA Case No. 2016-37 shall submit joint exhibits. Unless otherwise indicated, such exhibits shall apply to both cases.
- 6.3 Each exhibit submitted by the Claimants shall commence with the letter “C” followed by the applicable consecutive number, i.e. C-001, C-002, and so forth. Each exhibit submitted by the Respondents shall commence with the letter “R” followed by the applicable consecutive number, i.e. R-001, R-002, and so forth. To the extent that a Party submits an exhibit that applies to only one of the cases, that exhibit shall be numbered and indexed separately, commencing with the letter “C” or “R”, as applicable, followed by a parenthetical identifying the case number, i.e. C(2016-36)-001, R(2016-36)-001, and so forth.
- 6.4 All documentary evidence and legal authorities in a language other than English shall be submitted in the original along with a translation to English. Whenever lengthy documents need to be translated, the translation may be limited to the relevant passages together with such other portions of the document as may be necessary to put those passages in proper context. Translation of documents into English need not be certified. However, if a dispute arises as to the accuracy of a translation, the matter shall be decided by the Tribunal.
- 6.5 Each Party shall bear its own cost of translation, without prejudice to the decision of the Tribunal as to the allocation of costs.

7 Legal Authorities

- 7.1 Claimants in PCA Case No. 2016-36 and PCA Case No. 2016-37 shall submit joint legal authorities. Unless otherwise indicated, such legal authorities shall apply to both cases.
- 7.2 Respondents in PCA Case No. 2016-36 and PCA Case No. 2016-37 shall submit joint legal authorities. Unless otherwise indicated, such legal authorities shall apply to both cases.
- 7.3 Each legal authority submitted by the Claimants shall commence with the letters “CL” followed by the applicable consecutive number, i.e. CL-001, CL-002, and so forth. Each legal authority submitted by the Respondents shall commence with the letters “RL” followed by the applicable consecutive number, i.e. RL-001, RL-002, and so forth.

8 Witness and Expert Evidence

- 8.1 Witness statements and expert reports, if any, shall be filed together with the Parties’ pleadings. They will apply equally to both cases unless otherwise identified. Witness statements shall stand in lieu of direct examination during the Hearing(s).
- 8.2 Any person may present evidence as a witness, including a Party or a Party’s officer, employee or other representative.
- 8.3 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.

- 8.4 Each witness statement and expert report shall contain at least the following:
- (i) The name, date of birth and present address of the witness;
 - (ii) A description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
 - (iii) A description of any past and present relationship between the witness and the Parties, counsel or members of the Tribunal;
 - (iv) A description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
 - (v) The signature of the witness.
- 8.5 Expert witness statements 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.
- 8.6 Witness statements and expert reports shall be numbered separately from other documents and include each witness' / experts' surname (e.g. "CWS (Claimants' witness statement) - [surname of witness];" "CER (Claimants' expert report) - [surname of expert]"). Where a witness or expert submits more than one witness statement or expert report, his or her subsequent witness statements or reports shall be numbered accordingly (e.g. "CWS - [surname of witness] - 2"; "CER - [surname of witness] - 2"). To the extent that a Party submits a witness statement or expert report that applies to only one of the cases, such witness statement or expert report shall include a parenthetical identifying the case number, i.e. "CWS(2016-36) - [surname of witness]"; "RER(2016-37) - [surname of witness]."

9 Examination of Witnesses and Experts

- 9.1 Witness testimony in a language other than English shall be interpreted simultaneously to English. 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 the allocation of costs. The Parties shall notify the Tribunal no later than at the pre-hearing conference which witnesses and/or experts will require interpretation.
- 9.2 The examination of each witness or expert shall proceed as follows:
- (i) the Presiding Arbitrator shall invite the witness to make a solemn declaration that his or her testimony will be truthful and in accordance with his or her sincere belief;
 - (ii) the Party summoning the witness/expert may briefly examine the witness only for the purpose of introducing the witness/expert, correcting, if necessary, any errors in the witness statement or expert report, and addressing matters arising after the witness statement/expert report was given, if any;
 - (iii) the adverse Party may then cross-examine the witness/expert;
 - (iv) the Party summoning the witness/expert may then re-examine the witness/expert with respect to any matters or issues arising out of the cross-examination. At the discretion of the Tribunal, the adverse Party may re-cross examine the witness/expert, with the re-cross examination limited to the witness'/expert's testimony on re-examination; and

- (v) the Tribunal may examine the witness/expert at any time, either before, during or after examination by one of the Parties.

- 9.3 Each Party shall cover the cost of appearance of its own witnesses and experts.
- 9.4 Each Party shall be responsible for summoning its own witnesses and experts to the applicable hearing, except when the other Party has waived cross-examination of a witness or expert and the Tribunal does not direct his or her appearance. The Tribunal may direct that witnesses be examined through means of telecommunication that do not require their physical presence at the hearing.
- 9.5 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 9.6 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, either in person or by means of telecommunication, as directed by the Tribunal, the witness's or expert's testimony shall be struck 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 or expert to appear a second time if satisfied that the testimony is relevant and material.
- 9.7 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room prior to his or her examination, with the exception of one (1) corporate representative per each Claimant and Respondent. Expert witnesses may be present at any time.
- 9.8 Witness and expert examination shall be by way of live examination except in exceptional circumstances as determined by the Tribunal.

10 Pre-Hearing Conference

- 10.1 A pre-hearing conference shall be held by telephone or videoconference to confirm the logistical details and procedures for the hearing.
- 10.2 The Tribunal will advise the Parties at the pre-hearing conference whether it wishes to have the Parties prepare a hearing bundle.
- 10.3 Before or during the pre-hearing conference, the Tribunal will notify the Parties of any particular issues that it would like the Parties to address at the hearing.

11 Hearing

- 11.1 All hearings shall be held in the Peace Palace, unless otherwise agreed by the Parties and the Tribunal.
- 11.2 The scope and length of the hearing(s) shall be determined at the pre-hearing conference(s).
- 11.3 Prior to any hearing, the Parties will attempt to agree to the schedule for the hearing days, including start and stop times, and lunch and coffee breaks, taking into account how many hours are to be devoted to the hearing each day. In the absence of Party agreement by a date to be agreed, the Tribunal will decide on the schedule.
- 11.4 The chess-clock system shall be used to monitor the timing and shall be administered by the Registry. Each Party will have an equal amount of time to present its case. The time spent by a Party on opening, closing, direct (and re-direct) examination of its own witnesses/experts and the cross (and re-cross) examination of the other Party's witnesses/experts is counted against that

Party's time. The time allocated to each Party will take account of, in the Tribunal's discretion, (i) time of interpretation, if any, and (ii) time devoted to discussing and addressing any procedural objection raised by a Party. The time spent by any witness/expert answering questions from the Tribunal is not counted against any Party's time.

- 11.5 The Parties may agree in advance the maximum time to be allocated for opening and closing statements (if any).
- 11.6 Oral recordings and verbatim transcripts in English shall be made of any hearing other than hearings on procedural issues. Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the Parties and the Tribunal. 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 the allocation of costs.
- 11.7 The Parties should agree on any corrections to the transcripts within ten business days of receipt of the relevant transcripts. Any disagreement between the Parties over corrections to be made of the transcripts will be resolved by the Tribunal. Further, any correction adopted by the Tribunal or agreed between the Parties shall be reflected in a revised transcript.

12 Post-Hearing Proceedings

- 12.1 The Parties will determine the necessity of post-hearing briefs at the pre-hearing conference held in advance of a particular hearing or, failing that, during the course of that hearing.

13 Costs

- 13.1 The Tribunal shall render its decision on costs in the final Award on the merits.
- 13.2 The Parties shall submit simultaneous costs submissions following the submission of post-hearing briefs or, if there are no post-hearing briefs, following the hearing. In either case, the date for costs submissions shall be determined by the Tribunal at the pre-hearing conference or, failing that, during the course of the hearing.
- 13.3 Each costs submission shall set out the legal fees and related expenses incurred by the submitting Party, as well as its legal arguments on entitlement to costs and its method for allocating costs between the Parties.
- 13.4 The Parties may submit simultaneous reply costs submissions on a date to be determined by the Tribunal.

14 Governing Law

- 14.1 The Parties have not designated or agreed upon the rules of law to be applicable to the substance of the dispute. Accordingly, the Tribunal shall apply the law which it determines to be appropriate, pursuant to Article 35 of the UNCITRAL Rules 2010. To the extent necessary, the Tribunal may address applicable law in a subsequent procedural order, after the Tribunal has reviewed the Parties' submissions on Preliminary Issues. For the avoidance of doubt, prior to determining the rules of law applicable to the substance of the dispute, the Tribunal will afford the Parties the opportunity to be heard in the form of further written submissions on this topic, to be pled along with the merits.

15 Confidentiality and Transparency

- 15.1 Subject to the Parties' submissions on Preliminary Issues, the Tribunal notes that Article 28(3) of the UNCITRAL Rules provides that any hearing shall be held *in camera* unless the Parties otherwise agree.
- 15.2 Subject to the Parties' submissions on Preliminary Issues, the Tribunal notes that Article 35(2) of the UNCITRAL Rules provides that any award may be made public only with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
- 15.3 Pending an agreement or ruling on confidentiality, the Tribunal confirms its direction of 23 March 2017 that all details of the proceedings, including that they are pending, be kept confidential.

Place of Arbitration, The Hague

Dated, 19 April 2017



Mr. Donald Francis Donovan
Presiding Arbitrator