

**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]

**AND**

**PCA CASE NO. 2016-37**

**between:**

**INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION**

- and -

[REDACTED]

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**PROCEDURAL ORDER NO. 4**

**(PROTOCOL ON CONFIDENTIALITY AND TRANSPARENCY)**

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9 October 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 Paragraph 104.B.4 of Procedural Order No. 2 of 4 September 2017 and Paragraph 5.4 of the Terms of Appointment, the Tribunal issues the following Procedural Order No. 4.

## **I. INTRODUCTION**

1. This Procedural Order adopts a Protocol on Confidentiality and Transparency following consultations with the Parties on an earlier draft.

## **II. PROCEDURAL BACKGROUND**

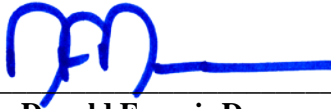
2. On 4 September 2017, the Tribunal issued Procedural Order No. 2, of which paragraph 104.B stated:
  3. The Tribunal directs the Parties to confer and develop a Protocol on Confidentiality and Transparency in line with the guidelines set out in this Procedural Order, and to report to the Tribunal with a draft indicating areas of agreement and/or disagreement, by 19 September 2017. The Tribunal invites the Parties to use as a model Annex I to this Procedural Order.
  4. The Tribunal will subsequently issue the Protocol on Confidentiality and Transparency in the form of a procedural order.
3. The Tribunal annexed to Procedural Order No. 2 the following draft texts: a model Protocol on Confidentiality and Transparency (“**Annex I**”), a model confidentiality undertaking for third parties (“**Annex II**”), a proposed website entry about the proceedings for the PCA website (“**Annex III**”), and a proposed PCA Press Release (“**Annex IV**”). The Parties were encouraged to use these Annexes as the starting point for their discussions pursuant to the above paragraph.
4. On 19 September 2017, the Parties informed the Tribunal that they had (a) agreed on a revised version of Annex I, save for the question of whether to include the procedures set out in Sections A.5 to A.8; (b) agreed on revised versions of Annexes II, III and IV, and (c) were in discussions about redactions to Procedural Order No. 2 for publication.
5. By letters dated 20 September 2017, the Parties sent letters noting their agreed redactions to Procedural Order No. 2 and respective positions on certain other proposed redactions.
6. By e-mail dated 5 October 2017, the PCA conveyed to the Parties that:
  - (i) the Tribunal, taking into account the points made by the Respondents that the mechanism for redaction in Paragraph B.5 provides an adequate and efficient means of identifying material for redaction prior to redaction, decided that the provisions in Sections A.5 to A.8 of the original draft Annex I appended to Procedural Order No. 2 were not necessary; and
  - (ii) the Tribunal, noting the redactions agreed by both Parties and the reasons set forth by the Respondents for their additional proposed redactions, directed that both sets of redactions would be adopted in the published version of Procedural Order No. 2.

## **III. DECISION**

7. The Tribunal hereby adopts the Protocol on Confidentiality and Transparency at Annex I to this Order, including the Model Undertaking at Annex II to this Order.

Place of Arbitration, The Hague

Dated, 9 October 2017

A handwritten signature in blue ink, consisting of stylized initials 'DFD' followed by a horizontal line.

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**Donald Francis Donovan**  
**Presiding Arbitrator**

## ANNEX I

### PROTOCOL ON CONFIDENTIALITY AND TRANSPARENCY

**PCA Case No. 2016-36**

**INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION**

**v.** [REDACTED]

**AND**

**PCA Case No. 2016-37**

**INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION**

**v.** [REDACTED]

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#### **A. CONFIDENTIAL MATERIALS, INFORMATION AND HEARINGS**

1. “Confidential Materials” are all documents produced, filed or exchanged in the present arbitrations, including:
  - a. all correspondence between or among the Parties, the Tribunal and/or any third parties in relation to the arbitrations;
  - b. all documents filed in the arbitrations, including all pleadings, memorials, submissions, witness statements, annexures, and other evidence, and all documents produced (whether by a Party or a third party);
  - c. all awards, decisions and orders and directions of the Tribunal that have not been subject to redaction to remove all Confidential Information pursuant to Section B.5 below.
  - d. all minutes, records (including recordings), and transcripts of hearings, meetings and conferences; and,
  - e. information contained in or derived from any such documents.
2. Documents and information shall not be considered Confidential Materials to the extent that they are in the public domain (including on the Accord website), other than as a result of a breach of this Procedural Order No. 4.
3. Neither Party shall disclose or publish any Confidential Materials unless provided for in the UNCITRAL Arbitration Rules 2010, authorized under this Procedural Order No. 4, or agreed between the Parties.
4. “Confidential Information” shall include (i) information that discloses (directly or indirectly) the identity of the Respondents or their representatives, or enables their specific identities or that of their representatives to be inferred; and (ii) any information not in the public domain that is designated as such by a Party for legal and business reasons (for example, if it connects the identity of a specific signatory brand to information about factories).
5. Confidential Materials and Confidential Information may be disclosed to non-parties if and when necessary for the purposes of the arbitrations. Any third party to whom it is necessary to disclose Confidential Materials and Confidential Information shall be required, prior to such disclosure, to give written undertakings

to keep Confidential Materials and Confidential Information confidential and to comply with this Procedural Order No. 4. Such undertakings are to be in the form set out in **Annex II** to this Procedural Order No. 4.

6. The requirement to give such undertakings does not apply to:
  - a. the Tribunal and the clerks and arbitration secretaries to the members of the Tribunal, and the Registry;
  - b. The Parties and their affiliates and respective directors;
  - c. The officers and employees and legal representatives of the Parties and of the persons and entities referred to in subsection (b); and
  - d. Court reporters or interpreters retained by the Registry in connection with any hearing in the present arbitrations.
7. Notwithstanding the foregoing, a Party may disclose Confidential Materials and Confidential Information to the extent necessary to:
  - a. prosecute or defend the arbitrations or proceedings related to them (including enforcement or annulment proceedings), or to pursue a legal right;
  - b. respond to a compulsory order or request for information of a governmental or regulatory body;
  - c. make disclosure required by law or by the rules of a securities exchange; or
  - d. seek legal, accounting or other professional services, or satisfy information requests of potential acquirers, investors or lenders, provided that in case of any disclosure allowed under the foregoing circumstances (a) through (d) where possible the producing Party takes reasonable measures to ensure that the recipient preserves the confidentiality of the information provided,

provided that the entity making the disclosure informs the other Parties of the proposed disclosure 7 days in advance of the proposed disclosure.
8. The Tribunal may permit further disclosure of Confidential Materials and Confidential Information where there is a demonstrated need to disclose that outweighs any Party's legitimate interest in preserving confidentiality.
9. All hearings, meetings and conferences shall be held *in camera*, and the transcripts shall be kept confidential.

**B. PUBLICATION OF INFORMATION ABOUT THE ARBITRATIONS AND TRIBUNAL'S AWARDS AND DECISIONS**

1. Upon direction of the Tribunal, the PCA shall publish on its website the information modelled on that set out in **Annex III** to Procedural Order No. 2, after providing an advance draft to the Parties.
2. Upon direction of the Tribunal, the PCA shall publish a Press Release, modelled on that set out in **Annex IV** to Procedural Order No. 2, after providing an advance draft to the Parties.

3. The Tribunal shall from time to time direct the PCA to issue other Press Releases reporting on the nature and progress of the arbitration proceedings, taking into account the principles set out in Procedural Order No. 4, and after providing advance drafts to the Parties.
4. The PCA shall publish the Tribunal's awards, decisions, and orders on its website, subject to prior redaction pursuant to Section B.5 below. In addition, neither Party shall be precluded from publishing any of the Tribunal's awards, decisions and orders in the redacted form approved for publication on the PCA website.
5. Each Party shall identify within 21 days after receipt of any award, decision, or order from the Tribunal all redactions that the Party proposes to be made. To the extent that the other Party disagrees with any of the proposed redactions, the following procedure shall apply:
  - a. The Party opposing the redaction may, within 14 days after being notified of the other Party's proposal, submit a reasoned application to the Tribunal for an order that the publication of the document be permitted without the redaction.
  - b. Within 14 days after the making of any such application, the Party seeking the redaction may respond to the application.
  - c. The Tribunal will thereafter make an order in relation to the proposed redaction. Pending any such order, the disputed portion may not be published.

The Tribunal will remain constituted for the purpose of making any order under this Section in relation to its final award or other final decision.

6. Following the publication of the redacted version of the Tribunal's awards, decisions, and orders by the PCA, the published versions of such documents shall no longer be considered Confidential Materials.

### **C. TRIBUNAL'S AUTHORITY**

7. In accordance with the UNCITRAL Rules and the provisions of Procedural Order No. 2, the Tribunal retains full authority to determine all issues concerning confidentiality and transparency and the implementation of Procedural Order No. 4, including the disclosure of any information about the arbitrations, the content of the website or any press releases, and the publication of decisions and awards, as well as redactions thereto.

**ANNEX II**

**MODEL CONFIDENTIALITY UNDERTAKING**

**PCA Case No. 2016-36**

**INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION**

**v.** [REDACTED]

**AND**

**PCA Case No. 2016-37**

**INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION**

**v.** [REDACTED]

**CONFIDENTIALITY UNDERTAKING**

I, [name], [title], [affiliation], hereby undertake as follows.

1. I have read a copy of Procedural Order No. 2 and Procedural Order No. 4 (containing a protocol on confidentiality and transparency) in the above-mentioned arbitrations.
2. I have been informed that [name of parties] proposes to disclose Confidential Materials or Confidential Information (as defined in Procedural Order No. 4) to me.
3. I will abide by all of the terms of Procedural Order No. 4 in respect of any Confidential Materials and Confidential Information disclosed to me, including the obligation not to disclose any such Confidential Materials or Confidential Information other than to persons permitted by Procedural Order No. 4 to have access to such Materials and Information and will utilize any Confidential Materials or Confidential Information solely for the purpose for which it is provided to me.

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Signed

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date