

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER CHAPTER 10 OF THE DOMINICAN
REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT AND
THE UNCITRAL ARBITRATION RULES (2010)**

**SPENCE INTERNATIONAL INVESTMENTS, LLC, BERKOWITZ ET AL V. THE REPUBLIC OF COSTA
RICA
(UNCT/13/2)**

PROCEDURAL ORDER NO 1

Daniel Bethlehem, Presiding Arbitrator
Mark Kantor, Arbitrator
Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal
Anneliese Fleckenstein

February 26, 2014

Contents

1.	Applicable Arbitration Rules	4
2.	Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3.	Fees and Expenses of Tribunal Members	5
4.	Decisions of the Tribunal.....	5
5.	Administering Authority	6
6.	Representation of the Parties	6
7.	Deposits of Costs	7
8.	Place of Arbitration.....	8
9.	Procedural Language(s), Translation and Interpretation	8
10.	Routing of Written Communications.....	9
11.	Number of Copies and Method of Filing of Parties' Pleadings.....	10
12.	Number and Sequence of Pleadings	12
13.	Production of Documents	12
14.	Submission of Documents	13
15.	Submission of Legal Authorities	15
16.	Witness Statements and Expert Reports	15
17.	Examination of Witnesses and Experts.....	15
18.	Pre-Hearing Organizational Meetings	17
19.	Hearings	17
20.	Records of Hearings and Sessions	18
21.	Post-Hearing Memorials, Statements of Costs and Closure of Hearings	18
22.	Drafting of Rulings	19
23.	Publication	19
	Annex A – Pleadings / Hearings Timetable.....	20

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

Introduction

The first session of the Tribunal was held on February 4th, 2014, by telephone conference.

Participating in the conference call were:

Members of the Tribunal:

Daniel Bethlehem, Presiding Arbitrator
Mark Kantor, Arbitrator
Raúl E. Vinuesa, Arbitrator

ICSID Secretariat:

Anneliese Fleckenstein, Secretary of the Tribunal

Participating on behalf of the Claimant:

Geoffrey Cowper, Fasken Martineau DuMoulin LLP
Tina Cicchetti, Fasken Martineau DuMoulin LLP
Tracey Cohen, Fasken Martineau DuMoulin LLP
Mónica Jimenez Gonzalez, Fasken Martineau DuMoulin LLP
Todd Weiler

Participating on behalf of the Respondent:

Stanimir A. Alexandrov, Sidley Austin LLP
Jennifer Haworth McCandless, Sidley Austin LLP
Courtney Hikawa, Sidley Austin LLP
María Carolina Durán, Sidley Austin LLP
Adriana González, Ministerio de Comercio Exterior de Costa Rica
Andrea Zumbado, Ministerio de Comercio Exterior de Costa Rica

The Presiding Arbitrator opened the session at 12:05 p.m. (EST) and welcomed the participants. The Presiding Arbitrator introduced the Tribunal and the Secretary of the Tribunal (Tribunal Secretary) and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on January 2, 2014.
- The Draft Procedural Order circulated by the Tribunal Secretary on January 2, 2014;

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

- The Parties' Draft Procedural Agreement of August 2013; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on January 17, 2014, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The session was adjourned at 1:45 p.m. (EST).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present order:

Order

This first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Article 1 UNCITRAL Arbitration Rules

Articles 10.16.3 (c), 10.16.5 and 10.22 of the DR-CAFTA

- 1.1. These proceedings are conducted in accordance with the UNCITRAL Arbitration Rules, as revised in 2010, except as modified by Section B Chapter 10 of the Dominican Republic-Central America-United States Free Trade Agreement (the "DR-CAFTA"). The Tribunal takes note of the Parties' Draft Procedural Agreement of August 2013.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Section II UNCITRAL Arbitration Rules

Article 10.19 of the DR-CAFTA

- 2.1. The Tribunal was constituted on December 2, 2013 in accordance with the DR-CAFTA and the UNCITRAL 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 Article 11 of the UNCITRAL Arbitration Rules. Copies of these declarations were distributed to the parties by ICSID on December 19, 2013. On December 23, 2013, a party in correspondence with the

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

Tribunal Secretary requested further details on arbitrator Raúl Vinuesa's declaration, which was provided on December 26, 2013.

2.3. In order for the Members of the Tribunal to fulfill their continuing disclosure obligations under Article 11 of the UNCITRAL Arbitration Rules, the Tribunal seeks the cooperation of each party in promptly drawing to the Tribunal's attention any such circumstances known to that party in respect of which it considers that further information would be appropriate as soon as such circumstances become known to that party.

3. Fees and Expenses of Tribunal Members
Article 41 UNCITRAL Arbitration Rules
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 claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

4. Decisions of the Tribunal
Article 33 of the UNCITRAL Arbitration Rules

4.1. Decisions of the Tribunal shall be made by a majority of the arbitrators. In the case of questions of procedure, when there is no majority or when the Tribunal so authorizes, the Presiding Arbitrator may decide alone, subject to revision, if any, by the Tribunal.

4.2. Decisions of the Tribunal shall be issued in writing and be final and binding on the parties.

4.3. 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.

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

5. Power to Set Time Limits

Article 25 of the UNCITRAL Arbitration Rules

5.1. The Tribunal has the power to extend time limits if it concludes that an extension is justified.

6. Administering Authority

6.1. On October 16, 2013, the parties confirmed the agreement of the parties to the designation of the International Centre for Settlement of Investment Disputes (ICSID) as the Administering Authority. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID's services shall be included in the costs of the arbitration.

6.2. The Tribunal Secretary is Anneliese Fleckenstein, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

6.3. Copies of communications sent by email to the ICSID Secretariat should be sent to: afleckenstein@worldbank.org

6.4. To send copies of communications by mail and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Anneliese Fleckenstein
ICSID
MSN J2-200
3301 Pennsy Dr.
Landover, MD 20785-1606
USA
Tel.: + 1 (202) 458 4038
Fax: + 1 (202) 522-2615

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

Anneliese Fleckenstein
701 18th St, NW ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4038

7. Representation of the Parties

Article 5 UNCITRAL Arbitration Rules

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)

Procedural Order No. 1

- 7.1. Each party shall be represented by its respective counsel and representatives listed below and may designate additional persons by promptly notifying the Tribunal and the Secretary of the Tribunal of such designation, as provided for in Article 5 of the UNCITRAL Arbitration Rules.

For Claimant

Todd Weiler (todd@treatylaw.com)
#19 – 2014 Valleyrun Blvd.
London, ON N6G 5N8
Phone: + 1 202 684 6840
Fax: + 1 877 887 7840

Tina Cicchetti (tcicchetti@fasken.com)
Geoffrey Cowper
(gcowper@fasken.com)
Tracey Cohen (tcohen@fasken.com)
Mónica Jimenez Gonzalez
(mjimenez@fasken.com)

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, British Columbia, Canada
V6C0A3
Phone: + 1 604 631 3131
Fax: + 1 604 631 3232

Vianney Saborío Hernández
(v.saborio@saboriolaw.com)
Barrio Maynard #56
San Rafael, Escazú
San José, Costa Rica

For Respondent

Adriana González, Legal Unit Coordinator
(Adriana.gonzalez@comex.go.cr)
Andrea Zumbado, Legal Unit Advisor
(andrea.zumbado@comex.go.cr)
**Ministerio de Comercio Exterior de
Costa Rica**

Plaza Tempo, costado oeste del Hospital
CIMA
Escazú, Costa Rica
Phone: 506.2205-4000
Fax: 506.2205-4166
e-mail: Adriana.gonzalez@comex.go.cr

Stanimir A. Alexandrov
(salexandrov@sidley.com)
Marinn Carlson (mcarlson@sidley.com)
Jennifer Haworth McCandless
(j.haworth.mccandless@sidley.com)

Sidley Austin LLP
1501 K Street NW
Washington, D.C. 20005, USA
Phone: +1 202 736 8000
Fax: +1 202 736 8711

8. Deposits of Costs

Articles 40 - 43 UNCITRAL Arbitration Rules

- 8.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs pursuant to Article 42 of the UNCITRAL Rules.
- 8.2. By letter of December 5, 2013 ICSID requested that Claimant pay US\$170,000 and Respondent US\$180,000 to defray the initial costs of the proceeding. ICSID received Claimants' payment on January 13, 2014 and Respondent's payment on January 15, 2014.

Procedural Order No. 1

- 8.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the global fees and expenses of all arbitrators.
- 8.4. After a termination order or final award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

9. Place of Arbitration

Article 18 UNCITRAL Arbitration Rules
Article 10.20.1 of the DR-CAFTA

- 9.1. Washington, D.C. shall be the place of the proceeding, and the hearing shall be held in Washington D.C.
- 9.2. The Tribunal may meet at any location it considers appropriate for deliberations.
- 9.3. Unless otherwise agreed by the parties, the Tribunal may also meet at any location it considers appropriate for any other purpose.

10. Procedural Languages, Translation and Interpretation

Article 19 UNCITRAL Arbitration Rules

- 10.1. English and Spanish are the procedural languages of the arbitration.
- 10.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in either English or Spanish.

For Parties' Pleadings

- 10.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language. Mindful of the costs, the Tribunal takes note of the Parties' agreement that if a party wishes to provide a translation from English into Spanish or Spanish into English, each party shall have the discretion to submit any such translation within 30 days of its submission. In exercising its discretion, each party will be mindful of the fact that not all members of the Tribunal speak Spanish.
- 10.4. If the document being translated is lengthy and the party submitting the document considers that it is relevant only in part, it is sufficient if only the relevant parts are translated.

Procedural Order No. 1

- 10.5. If the Tribunal requests additional translations (*e.g.*, new, more extensive or complete translations), it shall so notify the party that submitted the document(s) into evidence. That party will undertake to have the document(s) translated within 30 days of the Tribunal's request. Expenses for such translations shall be paid for by the Secretariat out of the advance payments made by the parties.
- 10.6. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation, or the Tribunal, specifically requests a certified version.
- 10.7. Witnesses and experts may testify at the hearing in their native language. Witness and expert testimony in Spanish shall be translated simultaneously into English and witness and expert testimony in English shall be translated simultaneously into Spanish.
- 10.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or Spanish shall be interpreted simultaneously into these languages. The party proposing to call such a witness shall give the Tribunal notice as soon as possible, and no later than at the pre-hearing organizational meeting (see §22 below), that the witness in question will be called and of the language in which it is proposed that the witness will testify.
- 10.9. The Secretariat will arrange for translation services to be provided during the hearings.
- 10.10. The costs of interpretation and translation provided during the hearing will be paid from the deposit 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

- 10.11. The Tribunal shall make any order or decision in either English or Spanish.

For Tribunal's Award

- 10.12. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be authentic. In the event of a dispute about the meaning of the Award arising from a perceived difference between the two language versions of the Award, the English language version of the Award shall prevail.

11. Consolidation
Article 10.25 of the DR-CAFTA

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

- 11.1. The Tribunal takes note of the parties' agreement to consolidate the claims of the investors named in the two notices of intent dated October 9, 2012 into a single arbitration and so orders that the claims in question be consolidated.
- 11.2. The Tribunal notes that the parties jointly oppose any attempts made by any person or party to consolidate the arbitration of the claims with any other claim raised by any other alleged investor.

12. Routing of Written Communications
Article 17(4) UNCITRAL Arbitration Rules

- 12.1. The ICSID Secretariat shall be the channel of written communications including routine, administrative, or procedural correspondence 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 after both parties' submissions have been received.
- 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.
- 12.5. The parties shall only communicate with each other through their appointed counsel.

13. Number of Copies and Method of Filing of Parties' Pleadings
Article 17(4) UNCITRAL Rules

- 13.1. By the relevant filing date of a pleading or submission, the parties shall submit by email to the Tribunal, the Secretary of Tribunal 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 FTP server created for this case.

13.1.1. courier to the Tribunal Secretary by the following business day:

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

- 13.1.1.1. one unbound hard copy in letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);
- 13.1.1.2. one hard copy in letter format of the entire submission including the pleading as well as the witness statements, expert reports, and exhibits (but not including legal authorities); and
- 13.1.1.3. two USB drives with full copies of the entire submission, including the pleading as well as the witness statements, expert reports, factual exhibits, and legal authorities.

13.1.2. at the same time, courier to the opposing Party at the address(es) indicated at §7.1 above and each Member of the Tribunal at the addresses indicated at §13.2 below:

- 13.1.2.1. one hard copy in letter format of the entire submission including the pleading as well as the witness statements, expert reports, and exhibits (but not including legal authorities); and
- 13.1.2.2. one USB drive with a full copy of the entire submission, including the pleading as well as the witness statements, expert reports, factual exhibits, and legal authorities.

13.2. The Members of the Tribunal's addresses are as follows:

Daniel Bethlehem
20 Essex Street
London WC2R 3AL
United Kingdom
Tel. +(44) 20 7842 6760
Email: DBethlehem@20essexst.com

Mark Kantor
110 Maryland Ave., N.E., Suite
311B
Washington, D.C. 20002
Tel. +(1) 202 544 4953
Email:
mkantor@mark-kantor.com

Raúl E. Vinuesa
Alsina 2360
San Isidro
Buenos Aires (1642)
Argentina
Tel: +(54) 11 4723 6664
+(54) 11 4723 6780
Email:
raul.vinuesa43@gmail.com

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

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

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

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

13.5. 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.

13.6. 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

Article 23- 25 UNCITRAL Arbitration Rules

Article 10.20.2 through Article 10.20.5 of the DR-CAFTA

14.1. Each party shall number the paragraphs of its written pleadings and each pleading shall include all factual and legal arguments in support thereof, including written witness statements, expert opinions or reports, and exhibits. The schedule shall be as follows:

14.1.1. Claimants' Memorial on the merits shall be submitted by April 25, 2014;

14.1.2. Respondent's Counter-Memorial on the Merits and Memorial on Jurisdiction shall be submitted by July 14, 2014;

14.1.3. Claimants' Reply on the Merits and Counter-Memorial on Jurisdiction shall be submitted by October 2, 2014;

14.1.4. Respondent's Rejoinder on the Merits and Reply on Jurisdiction shall be submitted by December 21, 2014; and

14.1.5. Claimants' Rejoinder on Jurisdiction shall be submitted by February 4, 2015.

15. Interim Measures and Procedural Orders

Article 26 of the UNCITRAL Arbitration Rules

Article 10.20.8 of the DR-CAFTA

15.1. Any application by either party for any interim measure or procedural order shall be made at the earliest possible time.

16. Production of Documents

16.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) may guide the Tribunal and the parties regarding document production in this case.

16.2. No later than 15 days after the submission of the Respondent's Counter-Memorial on the Merits and Memorial on Jurisdiction, the parties shall notify each other

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)

Procedural Order No. 1

whether they intend to present document production requests. If the parties do so elect, the parties shall engage in a single round of document production and shall make best efforts to ensure that such production shall not negatively impact upon the aforementioned pleadings schedule.

- 16.3. Any request, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal’s decisions regarding document production shall be recorded in a joint schedule in the form below:

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal’s Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			

17. Submission of Documents
Article 27 of the UNCITRAL Arbitration Rules
Article 10.21 of the DR-CAFTA

- 17.1. The written pleadings shall be accompanied by the documentary evidence relied upon by the parties. Further documentary evidence of a responsive nature relied upon by the parties may be submitted in rebuttal with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

- 17.3.1. 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.
- 17.3.2. 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.
- 17.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 24 of the UNCITRAL Arbitration Rules.
- 17.5. The documents shall be submitted in the following form:
 - 17.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 17.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter "C". The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter "R".
 - 17.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 17.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 17.5.5. Exhibits shall also be submitted in PDF format and start with the number "C-0001" and "R-0001," respectively.
 - 17.5.6. 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.
- 17.6. The Tribunal encourages the parties to cross refer to documents included in the evidential bundle of the other party.
- 17.7. To avoid duplicating submissions, 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.
- 17.8. Demonstrative exhibits (such as Power Point 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.

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

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.

18. Submission of Legal Authorities

Article 27 of the UNCITRAL Arbitration Rules

18.1. The written pleadings shall be accompanied by the legal authorities relied upon by the parties. The parties may submit rebuttal legal authorities of a responsive nature with the Reply and Rejoinder.

18.2. The legal authorities shall be submitted in the manner and form set forth in §13 above.

19. Witness Statements and Expert Reports

Article 27 of the UNCITRAL Arbitration Rules

19.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

19.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.

19.3. Each witness statement and expert report shall be signed and dated by the witness.

20. Examination of Witnesses and Experts

Article 28(2)-(4) of the UNCITRAL Arbitration Rules

20.1. Each witness and expert who has submitted a witness statement or expert report in these proceedings shall be available for examination at the hearing, subject to the provisions of this Order.

20.2. At least ten weeks prior to the hearing, each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing. At least eight weeks prior to the hearing, each party shall notify the other party, with a copy to the Tribunal, which of its own witnesses and experts it wishes to examine.

20.3. The fact that a party does not call a witness or expert of the other party to appear at the hearing does not mean that it accepts the substance or content of the statement or expert opinion or report.

20.4. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

- 20.5. The procedure for examining witnesses and experts at the hearing shall be the following:
- 20.5.1. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.
 - 20.5.2. The examination shall be limited to matters relevant to the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal), and/or oral evidence of the other party’s witnesses, to the extent the witness is competent to testify on these statements and materials.
 - 20.5.3. Witnesses giving oral testimony may first be briefly examined in direct examination.
 - 20.5.4. Experts giving oral evidence may first give a brief summary of their report, followed by a brief direct examination, if necessary.
 - 20.5.5. The direct examination of witnesses and experts may be followed by examination by the other party (“cross-examination”), and subsequently by the party producing the witness (“redirect examination”).
 - 20.5.6. The redirect examination shall be limited to matters raised in cross-examination.
 - 20.5.7. The principle of equal time set out in paragraph 24.5 below shall include the time available for the examination and cross-examination of experts and witnesses.
- 20.6. Save as indicated in this paragraph, a witness may be present at the hearing if he or she so chooses. As an exception to this, a witness (witness 1) may not be present during the evidence of any other witness (witness 2) that addresses the same issues that will be addressed in the testimony of witness 1, in advance of the testimony of witness 1. In the event of dispute about whether the evidence of any witnesses addresses the same issues, this shall be a matter to be determined by the Tribunal, after hearing the parties.
- 20.7. If, based on exceptional circumstances, a witness or expert fails to appear at the hearing, the Tribunal may order the witness statement of such witness or report of such expert to be struck from the record, or may attach such weight as it deems appropriate.

Procedural Order No. 1

- 20.8. The Tribunal may, in exceptional circumstances, direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).
- 20.9. At least six weeks prior to the hearing, each party will propose to the Tribunal, with a copy to the other side, a schedule indicating the order in which its witnesses and experts will be called to testify at the hearing. The Tribunal, having regard to the principle that it is for each party to present its case as it chooses, and subject to the provisions of Article 17(1) of the UNCITRAL Rules, shall only vary that proposed schedule if it considers that it is necessary to do so in the interests of the good management of the proceedings.
21. Site Visit
- 21.1. Absent further agreement of the parties, there shall be no Guanacaste site visit.
22. Pre-Hearing and Other Organizational Meetings
Article 28 of the UNCITRAL Arbitration Rules/
- 22.1. A pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its Presiding Arbitrator, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
- 22.2. A pre-hearing organizational meeting by telephone shall be held approximately 4 weeks before the hearing.
- 22.3. The parties shall agree to schedule status calls with the Tribunal during the time period leading up to the organizational meeting.
- 22.4. The Tribunal may require such other organizational meetings as seem expedient to the efficient management of the arbitration.
23. Hearings
*Article 28 of the UNCITRAL Arbitration Rules/
Article 10.21.2 of the DR-CAFTA*
- 23.1. The oral procedure shall consist of a hearing for the examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The hearing shall be held in Washington, D.C.
- 23.3. The Tribunal takes note of views of the parties that a three-day hearing should be sufficient but that five days should be set aside for such hearing. The hearing shall

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

take place in the week of April 20, 2015.

- 23.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 23.5. The principle of equal time shall be observed with flexibility at the hearing.
- 23.6. Pursuant to Article 10.21.2 of the DR-CAFTA, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The Tribunal shall make appropriate arrangements to protect the information from disclosure.

24. Records of Hearings and Sessions
Article 28 of the UNCITRAL Arbitration Rules
Article 10.21.1 of the DR-CAFTA

- 24.1. Sound recordings shall be made of all hearings and sessions.
- 24.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 24.3. Verbatim transcripts in the procedural languages 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. The Secretariat will arrange for court reporting services.
- 24.4. The parties shall agree on any corrections to the transcripts within 15 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 in the transcripts (“revised transcripts”). In case of disagreement between the parties, the Tribunal shall decide upon such disagreement and any correction adopted by the Tribunal shall be entered by the parties in the revised transcripts.

25. Post-Hearing Memorials, Statements of Costs and Closure of Hearings
Article 31 of the UNCITRAL Arbitration Rules

- 25.1. The Tribunal notes that the parties do not at this stage see the need for post-hearing submissions. At the conclusion of any hearing, the Tribunal shall decide whether the parties may or are requested to file Post-Hearing Memorials as well as when and in what form the parties shall file evidence regarding the

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
(UNCT/13/2)
Procedural Order No. 1

quantification of the costs. The Tribunal shall thereafter, at an appropriate point, declare the hearings closed.

26. Drafting of Rulings

26.1. The Tribunal will endeavor to draft the required rulings within a reasonable period of time after the latest step taken in relation to the matter concerned, such as a hearing or submission.

26.2. The Tribunal will send regular updates to the parties regarding the status of the drafting of the ruling if it has not been issued within the following periods of time:

<i>Ruling</i>	<i>First Update After Last Step</i>	<i>Further Updates</i>
Award	6 months	Every 4 months
Decisions on Challenges, Provisional Measures	1 month	Every month

27. Publication

Article 34.5 UNCITRAL Arbitration Rules
Article 10.21 of the DR-CAFTA

27.1. Subject to the qualifications set forth in Article 10.21 of the DR-CAFTA, the parties consent to ICSID publication of any ruling issued in the present proceeding.



Daniel Bethlehem
Presiding Arbitrator
Date: 26 February 2014

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
 (UNCT/13/2)
 Procedural Order No. 1

Annex A – Pleadings / Hearings Timetable

Date/Period of Time	Party/Tribunal	Description	Section of this Order
April 25, 2014	CLAIMANTS	Memorial on the Merits	14.1.1.
July 14, 2014	RESPONDENT	Counter-Memorial on the Merits and Memorial on Jurisdiction	14.1.2.
No later than 15 days after the submission of Respondent's Counter-Memorial on the Merits and Memorial on Jurisdiction	PARTIES	Notification to each other on whether the parties intend to present document production requests.	16.2.
October 2, 2014	CLAIMANTS	Reply on the Merits and Counter-Memorial on Jurisdiction	14.1.3.
December 21, 2014	RESPONDENT	Rejoinder on the Merits and Reply on Jurisdiction	14.1.4.
February 4, 2015	CLAIMANTS	Rejoinder on Jurisdiction	14.1.5.
February 9, 2015	PARTIES	Each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing.	20.2

Spence International Investments, LLC, Berkowitz et al v. the Republic of Costa Rica
 (UNCT/13/2)
 Procedural Order No. 1

Date/Period of Time	Party/Tribunal	Description	Section of this Order
February 23, 2015	PARTIES	Each party shall notify the other party, with a copy to the Tribunal, which of its own witnesses and experts it wishes to examine.	20.2
Approximately 4 weeks prior to the hearing	ALL	Pre-hearing organizational meeting	22.2.
April 20-24, 2015	ALL	Hearing on the Merits and Jurisdiction	23.
6 months after the last step; and every 4 months thereafter	TRIBUNAL	Update on Award	26.2.