

# PROCEDURAL ORDER 1

of the Arbitral Tribunal

President: Dr. Inka Hanefeld

Co-Arbitrators: Professor Franco Ferrari and Ms. Anna Joubin-Bret

in the ad hoc arbitration proceedings between

**R.S.E. Holdings AG**, CH-320.3.060.394-6, Zürcherstrasse 61, Sargans, 7320  
Switzerland

**- Claimant -**

Counsel for Claimant:

Winston & Strawn LLP

Ms. Maria Kostytska

Ms. Lara Elborno

48 rue Cambon

75001 Paris

France

T: +33 (0) 1 53 64 82 82

F: +33 (0) 1 53 64 82 20

E: *MKostytska@winston.com*

*LElborno@winston.com*

Varul  
Ms. Justine Haka  
Mr. Janis Zelmenis  
Mr. Pāvels Tjusevs  
Kaļķu 15  
Riga, 1050  
Latvia

T: +37 16 72 22 237  
F: +37 16 72 22 236  
E: *janis.zelmenis@varul.com*  
*justine.haka@varul.com*  
*pavels.tjusevs@varul.com*

versus

**The Republic of Latvia**, Her Excellency Prime Minister Laimdota Strajuma,  
Office of the Prime Minister, Brīvības Boulevard 36, Riga, LV-1520, Latvia

**- Respondent -**

Counsel for Respondent: Belot Malan & Associés  
Dr. Alexandre Malan  
Dr. Frédéric Belot  
Dr. Anamaria Bianov  
91 avenue Kléber  
75116 Paris  
France

T: +33 1 45 53 51 48  
F: +33 1 47 27 90 90  
E: *a.malan@bmavocats.com*  
*f.belot@bmavocats.com*

- Claimant and Respondent referred to as **Party** and collectively referred to as  
**Parties** -

## **A. CONSTITUTION OF THE ARBITRAL TRIBUNAL**

- 1 As confirmed by the Parties, the Arbitral Tribunal consisting of Professor Franco Ferrari and Ms. Anna Joubin-Bret as Co-Arbitrators and Dr. Inka Hanefeld as President, has been constituted in the above referenced ad hoc arbitration initiated by Claimant with its Request for Arbitration dated 26 March 2014.
- 2 The Parties confirmed that the Arbitral Tribunal was properly constituted and that no Party had any objection to the appointment of any member of the Arbitral Tribunal.
- 3 The contact details of the arbitrators are as follows:

President:

**Dr. Inka Hanefeld, LL.M. (New York)**

HANEFELD RECHTSANWÄLTE

Rechtsanwaltsgesellschaft mbH

Brooktorkai 20

20457 Hamburg

Germany

T: +49 40 180 482 93 0

F: +49 40 180 482 93 9

E: *hanefeld@hanefeld-legal.com*

Co-Arbitrators:

**Professor Franco Ferrari**

New York University School of Law

40 Washington Square South - 409B

New York, NY 10012

USA

T: +1 212 992 8123

F: +1 212 995 4341

E: *franco.ferrari@nyu.edu*

**Ms. Anna Joubin-Bret**

Avocat à la Cour  
Cabinet d'avocats  
4bis, rue du Colonel Moll  
75017 Paris  
France

T: +33 17 41 80 340  
F: +33 17 41 80 559  
E: [ajb@joubin-bret.com](mailto:ajb@joubin-bret.com)

**B. ARBITRATION AGREEMENT**

4 Claimant relies in its Request for Arbitration dated 26 March 2014 on the following excerpt from Article 9 of the “Agreement between the Swiss Federal Council and the Government of the Republic of Latvia on the Promotion and Reciprocal Protection of Investments” (“**Treaty**” or “**BIT**”):

*Disputes between a Contracting Party and an investor of the other Contracting Party*

*(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), consultations will take place between the parties concerned.*

*(2) If these consultations do not result in a solution within six months, the dispute shall upon request of the investor be submitted to an arbitral tribunal. Such arbitral tribunal shall be established as follows:*

*(a) The arbitral tribunal shall be constituted for each individual case. Unless the parties to the dispute have agreed otherwise, each of them shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State. The arbitrators are to be appointed within two months of the receipt of the request for arbitration and the chairman is to be nominated within further two months.*

*(b) If the periods specified in paragraph (a) of this Article have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the*

*International Chamber of Commerce in Paris to make the necessary appointments. If the President is prevented from carrying out the said function or if he is a national of a Contracting Party the provisions in paragraph (5) of Article 10 of this Agreement shall be applied mutatis mutandis.*

*(c) Unless the parties to the dispute have agreed otherwise, the tribunal shall determine its procedure. Its decisions are final and binding. Each Contracting Party shall ensure the recognition and execution of the arbitral award.*

#### **C. PLACE OF ARBITRATION**

5 The place of arbitration shall be Paris, France.

6 Unless otherwise agreed by the Parties, hearings shall take place in Paris, France. The Arbitral Tribunal may also meet at any location it considers appropriate for any other purpose.

#### **D. LANGUAGE OF THE PROCEEDINGS**

7 The language of the proceedings shall be English.

#### **E. FURTHER COURSE OF PROCEEDINGS**

8 The further course of the proceedings will be determined in accordance with the procedural timetable set forth in Appendix 1 to this Procedural Order.

9 The Arbitral Tribunal requests the Parties to take into account the supplementary procedural rules pursuant to section G. of this procedural order.

#### **F. LAW APPLICABLE TO THE PROCEDURE**

10 This arbitration shall be governed by the mandatory provisions of the *lex arbitri*, any rules as may be agreed upon by the Parties and any procedural rules which the Arbitral Tribunal considers appropriate, including the supplementary procedural rules set forth below (see G.). In all other cases, the UNCITRAL Arbitration Rules (as revised 2010) shall apply. The Arbitral Tribunal may seek guidance from the IBA Rules on the Taking of Evidence (see also para. 24 of this Procedural Order).

## **G. SUPPLEMENTARY PROCEDURAL RULES**

11 The following supplementary procedural rules shall apply:

### **I. Submissions and communications**

12 The Parties shall address communications directly to each member of the Arbitral Tribunal (with a copy to counsel for the respective other Party) by email. In addition, written submissions containing factual and/or legal allegations (“**Written Submissions**”) shall be submitted in hard-copy by courier to be dispatched at the latest on the following day.

13 Written Submissions must be filed by the Parties only upon request of and within the time limits set by the Arbitral Tribunal. Unsolicited Written Submissions will, in general course, be rejected by the Arbitral Tribunal. However, the Arbitral Tribunal reserves the right to exceptionally admit such Written Submissions upon reasoned request of the respective Party.

14 The Parties’ Written Submissions have to be conclusive and shall be numbered with paragraphs in order to facilitate references. Written Submissions have to be submitted as pdf- and word-documents. Claimant is requested to mark any exhibits by using the letter “C” and consecutive numbers (“C1, C2, [...]”). Respondent is requested to mark any exhibits by using the letter “R” and consecutive numbers (“R1, R2, [...]”).

15 Each Party shall draw up a list of its exhibits, keep it up to date and make it available to the Arbitral Tribunal and the other Party when filing a Written Submission.

16 In all correspondence the reference of the case “RSE Holdings AG ./ The Republic of Latvia” is to be used.

### **II. Evidence**

17 Following each disputed factual allegation, the Parties shall clearly identify all evidence adduced or to be adduced in support of that allegation and specifically refer to it. Documents have to be filed together with the submissions in which reference is made to them for the first time.

18 All documents submitted to the Arbitral Tribunal are deemed authentic and complete, including those submitted in copy form, unless the other Party expressly disputes their authenticity and/or completeness.

19 The Parties may provide documentary evidence to the Arbitral Tribunal in English language only. In case any evidence is produced in a language other than English, such evidence shall be accompanied with a translation into English language. In the event that a translation is contested by the opposing Party or upon request by the Arbitral Tribunal, the Party producing the document may be ordered to submit a certified translation.

Whenever voluminous documents need to be translated, the translation may be limited to the relevant passages, together with such other portions of the document necessary to put such passages in proper context. In the event that the opposing Party requests the submission of the full translation of a document or upon request by the Arbitral Tribunal, the Party producing the document may be ordered to submit a full translation.

The Parties shall paginate any translation in the same way as the original document. The Party producing the document shall advance the costs for the translation, without prejudice to the decision of the Arbitral Tribunal in the final award as to which Party shall bear those costs.

The Arbitral Tribunal will not consider documents or portions of documents in a language other than English.

20 Each person, including legal representatives of a Party, can be a witness. Each Party shall have the right to cross-examine the other side's witnesses and/or experts. Prior to any hearing, the Parties will exchange the lists of witnesses and/or experts they wish to examine at the hearing. Prior to any hearing, the Arbitral Tribunal will issue a Procedural Order with further instructions concerning the conduct of the hearing.

21 It is the obligation of each Party to inform its witnesses and experts about the hearing and to secure that its witnesses/experts are present at a hearing. As a rule, the Arbitral Tribunal will not issue a separate summons to any witness/expert. Should a witness/expert refuse to attend a hearing, the Party who named this witness/expert shall inform the Arbitral Tribunal without undue delay.

22 In case a witness/expert does not have sufficient command of the English language, the Party presenting the witness/expert has to take care for an interpreter being present at the hearing. The Arbitral Tribunal and the respective other Party has to be informed about the need for an interpreter in due time (no later than two weeks prior to the hearing). Each Party shall advance the costs of appearance of its own witnesses/experts including potential costs for an

interpreter. The Arbitral Tribunal will decide upon the appropriate allocation of such costs in its final award.

23 The Arbitral Tribunal reserves the right to appoint, after consultation with the Parties, tribunal-appointed experts, and may issue further directions on witness / expert hearings, including the question of written witness statements.

24 The Arbitral Tribunal may seek guidance from the IBA Rules on the Taking of Evidence (see also para. 10 of this Procedural Order).

### **III. Legal Authorities**

25 The Parties shall comprehensively argue the law (including but not limited to legal norms, statutes, conventions, case law, treatises and commentaries) they deem applicable and explain how they suggest that it applies to the facts of the case. The Parties shall make concrete references to legal authorities that they deem supportive of their case.

26 The Parties shall file all legal authorities (including but not limited to legal norms, statutes, conventions, case law, treatises and commentaries) referred to in their Written Submissions together with such submissions. The submission of legal authorities may be limited to the relevant passages, on which the Parties intend to rely, together with such portions of the respective legal authority necessary to put such passages in proper context. This is without prejudice to the right of the Arbitral Tribunal and/or the respective other Party to request submission of the full legal authority.

27 Legal authorities in other languages than English shall be translated into English. The specifications set forth in para. 19 of this Procedural Order shall apply *mutatis mutandis*. Legal authorities not submitted or not submitted in English will not be considered by the Arbitral Tribunal.

28 The legal authorities shall be submitted separately from the evidentiary exhibits. The legal authorities submitted by Claimant shall be marked by using the letters “C-Lex” and consecutive numbers (“C-Lex 1, C-Lex 2 [...]”), the legal authorities submitted by Respondent shall be marked by using the letters “R-Lex” and consecutive numbers (“R-Lex 1, R-Lex 2 [...]”).



#### **IV. Time limits**

- 29 A Party complies with a time limit for a Written Submission or any other communication if the Arbitral Tribunal receives a Party's Written Submission or any other communication on the last day of the time limit by email.
- 30 The Arbitral Tribunal may grant an extension of a time limit in special circumstances and provided that a reasoned request for the extension of the time limit is submitted in writing immediately after learning about the event preventing the Party from complying with the original time limit.
- 31 The Arbitral Tribunal reserves its right to reject any Written Submission or other communication that has been made untimely.
- 32 The deadlines and dates stipulated in the enclosed Procedural Timetable (Appendix 1) are binding for the Parties. The Procedural Timetable (Appendix 1) forms an integral part of this Procedural Order. To ensure continued effective case management, the Arbitral Tribunal, after consulting the Parties by means of a case management conference or otherwise, may adopt further procedural measures or modify the Procedural Timetable.

#### **V. Miscellaneous**

- 33 The President shall be empowered to sign Procedural Orders alone after consultation with the Co-Arbitrators.
- 34 Any award or other decision of the Arbitral 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 Arbitral Tribunal so authorizes, the President may decide on her own, subject to revision, if any, by the Arbitral Tribunal.
- 35 The Arbitral Tribunal reserves the right to issue further procedural rules and to further specify or determine procedural issues by means of Procedural Orders.

**Place of arbitration:** Paris, France

**Date:** 13 November 2015

On behalf of the Arbitral Tribunal:



Dr. Inka Hanefeld

President of the Arbitral Tribunal

Copy to:

Professor Franco Ferrari

Ms. Anna Joubin-Bret

**Enclosure:** Appendix 1 (Procedural Timetable)

Appendix 2 (Summary Minutes of the Case Management Conference)