

PCA CASE NO. 2018-37

IN THE ARBITRATION MATTER UNDER THE
THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW 1976

PROFESSOR CHRISTIAN DOUTREMEPUICH (France)

and

ANTOINE DOUTREMEPUICH (France)

Claimants

versus

REPUBLIC OF MAURITIUS

Respondent

PROCEDURAL ORDER NO. 1

PLACE AND LANGUAGE OF THE ARBITRATION

Arbitral Tribunal

Prof Maxi Scherer (Presiding Arbitrator)
Prof Olivier Caprasse
Prof Jan Paulsson

WHEREAS in this procedural order, the Tribunal decides the place and language of the arbitration pursuant to Articles 16(1) and 17(1) of the UNCITRAL Rules; and

WHEREAS capitalized terms in this order that are not defined otherwise refer to those defined in the terms of appointment, dated 30 July 2018 (the “**Terms of Appointment**”).

I. PROCEDURAL HISTORY¹

1. On 30 March 2018, the Claimants filed their Notice of Arbitration, proposing Paris (France) as the place of arbitration and French as the language of the proceedings.²
2. On 30 April 2018, the Respondent replied, among other things, that it disagreed with the choice of Paris (France) as the place of arbitration, and proposed Geneva (Switzerland) instead.³ The Respondent also noted its disagreement with French being the language of the proceedings and suggested English instead.⁴
3. On 20 June 2018, the Tribunal, among other things, noted the Parties’ disagreement regarding the place and language of the arbitration and stated that it would decide these points pursuant to Articles 16(1) and 17(1) of the UNCITRAL Rules after having heard the Parties. Accordingly, it invited the Parties to provide their submissions as to the place and language of the arbitration by 12 July 2018.
4. On 12 July 2018, the Claimants provided their submission on the place and language of the arbitration (the “**Claimants’ Submission on Place and Language**”).
5. On the same day, the Respondent provided its submission on the place and language of the arbitration (the “**Respondent’s Submission on Place and Language**”).
6. On 13 July 2018, the Tribunal acknowledged the Claimants’ and the Respondent’s Submissions on Place and Language and invited the Parties to comment on the other side’s submission by 20 July 2018.
7. On 20 July 2018, the Claimants provided their comments on the Respondent’s Submission on Place and Language (the “**Claimants’ Rebuttal Submission on Place and Language**”).
8. On the same day, the Respondent provided its comments on the Claimants’ Submission on Place and Language (the “**Respondent’s Rebuttal Submission on Place and Language**”).
9. On 9 August 2018, after the signature of the Terms of Appointment, the Tribunal wrote to the Parties, noting that it was now in a position to decide on the place and language of the arbitration pursuant to Articles 16(1) and 17(1) of the UNCITRAL Rules, as stated at paragraph 26 of the Terms of Appointment. The Tribunal invited the Parties to confirm on or before 15 August 2018 that they did not wish to make any further comments on these points.
10. On 14 August 2018, the Respondent confirmed that it did not wish to make any further comments.
11. On 15 August 2018, the Claimants confirmed that they did not wish to make any further comments.

¹ This section is not a full summary of the procedural history of the arbitration; rather, it merely sets out the steps relevant to this order.

² Notice of Arbitration, at paras 49-50.

³ Respondent’s letter, dated 30 April 2018, at p. 3.

⁴ Respondent’s letter, dated 30 April 2018, at p. 3.

II. PARTIES' SUBMISSIONS

A. CLAIMANTS' SUBMISSIONS

12. Regarding the place of arbitration, the Claimants argue that:
- a. they should be able to rely on French courts for their supervisory and supportive functions for this arbitration;⁵
 - b. the mere fact that the Claimants are French nationals does not disqualify Paris as the place of the arbitration;⁶ and
 - c. hearings or meetings could be held elsewhere, including at the PCA in The Hague.⁷
13. Regarding the language of the proceedings, the Claimant argue that:
- a. French is the language of the Claimants and therefore English would disfavour the Claimants who are not able to express themselves in English;⁸
 - b. French would not disfavour the Respondent since the main language spoken in the Republic of Mauritius is French;⁹
 - c. the underlying project was in a French-speaking environment (i.e. in the Republic of Mauritius) and contemporaneous correspondence between the Parties was in French;¹⁰
 - d. the legal basis of the proceedings, the Mauritius-France BIT, is in French;¹¹
 - e. the populations most interested in the proceedings for transparency purposes are French-speaking;¹² and
 - f. enforcement of a future award would be in French-speaking countries.¹³
14. The Claimants note that they would agree that documents that are in English in their original would not need to be translated for the purpose of the present proceedings.¹⁴
15. The Claimants suggest that, alternatively, the arbitration could be bilingual in the sense that each Party could express itself in either French or English and the Tribunal's communications, decisions, awards and other instruments could be in either language, at the Tribunal's choice.¹⁵

⁵ Claimants' Submission on Place and Language, at p. 3.

⁶ Claimants' Rebuttal Submission on Place and Language, at p. 3.

⁷ Claimants' Submission on Place and Language, at p. 3.

⁸ Claimants' Submission on Place and Language, at p. 1.

⁹ Claimants' Submission on Place and Language, at p. 1; Claimants' Rebuttal Submission on Place and Language, at pp. 2-3.

¹⁰ Claimants' Submission on Place and Language, at p. 2.

¹¹ Claimants' Submission on Place and Language, at p. 2.

¹² Claimants' Submission on Place and Language, at p. 2.

¹³ Claimants' Submission on Place and Language, at p. 2.

¹⁴ Claimants' Submission on Place and Language, at p. 2.

¹⁵ Claimants' Submission on Place and Language, at p. 2.

16. The Claimants further note that proceedings where everything would have to be submitted in both languages would not be cost-effective and bear the risk of contradictions between the two linguistic versions.¹⁶

B. RESPONDENT'S SUBMISSIONS

17. Regarding the place of arbitration, the Respondent argues that:

- a. the place of the arbitration should be neutral to the Parties;¹⁷ and
- b. Geneva or London satisfy the criterion of neutrality.¹⁸

18. The Respondent submits that if the Tribunal were to consider a specific seat other than Geneva or London, it respectfully requests that the Parties be consulted with respect to that specific seat before the final decision is taken.¹⁹

19. The Respondent also notes that it has no objections for the venue of hearings to be at the PCA in The Hague.²⁰

20. Regarding the language of the proceedings, the Respondent argues that:

- a. English is the official language in Mauritius and used for official and legal matters;²¹
- b. English was used in the correspondence between the Parties in relation to the alleged investment;²²
- c. the criteria suggested by the Claimants, such as the languages spoken by counsel or third parties or possible places of enforcement of a future award, are irrelevant or inappropriate;²³ and
- d. a bilingual arbitration as suggested by the Claimant, in which each party uses a different language, would be impractical and inefficient,²⁴ and would entail additional costs, in particular if the Tribunal is required to draft all of its communications, orders and awards in both English and French.²⁵

21. The Respondent agrees that evidence and legal authorities that are in French in their original would not need to be translated or interpreted into English.²⁶

¹⁶ Claimants' Submission on Place and Language, at p. 2.

¹⁷ Respondent's Submission on Place and Language, at p. 2.

¹⁸ Respondent's Submission on Place and Language, at p. 2.

¹⁹ Respondent's Rebuttal Submission on Place and Language, at p. 2; Respondent's letter, dated 14 August 2018.

²⁰ Respondent's Submission on Place and Language, at p. 2.

²¹ Respondent's Submission on Place and Language, at p. 3; Respondent's Rebuttal Submission on Place and Language, at p. 2.

²² Respondent's Submission on Place and Language, at p. 3.

²³ Respondent's Rebuttal Submission on Place and Language, at p. 2.

²⁴ Respondent's Rebuttal Submission on Place and Language, at p. 3.

²⁵ Respondent's Submission on Place and Language, at p. 3.

²⁶ Respondent's Submission on Place and Language, at p. 3; Respondent's Rebuttal Submission on Place and Language, at p. 3.

III. TRIBUNAL'S DECISION

22. First, regarding the place of the arbitration, the Tribunal refers to Article 16(1) of the UNCITRAL Rules which provides:

“Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.”

23. The Parties in the present case have not agreed upon the place of arbitration.²⁷
24. The Tribunal, having carefully considered the Parties' submissions, and having regard to the circumstances of this arbitration, decides that the place of the arbitration shall be London (United Kingdom).
25. In reaching its decision, the Tribunal has taken into account, among other things, the fact that a place in the Parties' respective jurisdictions (i.e. France or Republic of Mauritius) would not be suitable as it would be seen to unduly favour one side over the other. Equally, the Tribunal is of the opinion that Geneva (Switzerland) is not ideal given the location of the Respondent's counsel.
26. The Tribunal has further noted that the Parties, in agreement, have selected a presiding arbitrator based in London (United Kingdom) and that this place therefore, having regard to the circumstances of the case, is the most suitable place of arbitration in the present proceedings.
27. Irrespective of the place of arbitration being London (United Kingdom), the Tribunal notes that the Parties agree that the venue for hearings could be elsewhere, including at the PCA's premises in The Hague (Netherlands). The dates and venue for hearings will be determined in a future procedural order, after further consultation with the Parties.
28. Second, regarding the language of the arbitration, the Tribunal refers to Article 17(1) of the UNCITRAL Rules which provides:
- “Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.”
29. The Parties in the present case have not agreed upon any language of the arbitration.²⁸
30. The Tribunal, having carefully considered the Parties' submissions, and having regard to the circumstances of this arbitration, decides that the languages of this arbitration shall be English and French. The Parties and the Tribunal may use either language, subject to the specifications set out below.²⁹
31. In reaching its decision, the Tribunal has taken into account, among other things:
- a. the language of the treaties invoked by the Claimants: (i) the Mauritius-France BIT on which the Claimants base their claims is in French;³⁰ and (ii) the Mauritius-Finland BIT from which the Claimants derive the arbitration agreement and, according to the Claimant, the Tribunal's

²⁷ Terms of Appointment, at para. 25.

²⁸ Terms of Appointment, at para. 25.

²⁹ See below at para. 35.

³⁰ Mauritius-France BIT, Exhibit CL-1; Terms of Appointment, at paras 9, 11.

jurisdiction, is in English (and Finish);³¹

- b. the language of the place of the (alleged) investment: while English is the language used for official and legal matters in the Republic of Mauritius, French is widely spoken and may be used in various official places, including in Parliament;³²
 - c. the language of the primary dealings between the Parties: from the documents submitted to the Tribunal so far, it appears that the majority of dealings between the Parties, including any official letters, were in English,³³ but the Parties also, in some instances, communicated in French.³⁴
32. In light of the above, the Tribunal finds that the circumstances of the case point towards both English and French, with neither language being predominant.
 33. The Tribunal also takes into account that all Parties wish to be able to submit documents and evidence in English or French, without the need for translation or interpretation, in order to save costs.³⁵
 34. The Tribunal further takes into account that Respondent insisted on the fact that requiring the Tribunal to draft all its communications, orders and awards in both English and French would entail additional costs and that Claimants, in their alternative proposition, suggested that the Tribunal's communications, decisions, awards and other instruments could be in either language, at the Tribunal's choice.
 35. For all these reasons, the Tribunal decides that French and English be the languages of the arbitration subject to the following directions and specifications (subject to further directions in subsequent procedural orders after consultation with the Parties):
 - a. written correspondence by the Parties to the Tribunal (or the PCA) and correspondence by the Tribunal (or the PCA) to the Parties shall be in either French or English without any translation being required;
 - b. at oral hearings and procedural meetings in person or by video/telephone conference, the Party's legal representatives shall address oral submissions to the Tribunal in either English or French, and members of the Tribunal may express themselves in either French or English;
 - c. the Parties' written submissions (memorials, briefs and other written pleadings) shall be in either French or English without any translation being required;
 - d. exhibits and legal authorities shall be submitted in their original language without any translation being required, if the original language is English or French;
 - e. witness statements shall be submitted in their original language without any translation being required, if the original language is English or French;

³¹ Mauritius-Finland BIT, Exhibit CL-4; Terms of Appointment, at paras 10, 12.

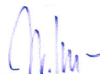
³² See Constitution of the Republic of Mauritius, Article 49 ("The official language of the Assembly shall be English but any member may address the chair in French"). See also the Government of Mauritius' website: <http://www.govmu.org/English/ExploreMauritius/Geography-People/Pages/Language.aspx>.

³³ See e.g., Exhibits C-3, C-5, C-6, C-7, C-8, C-8(2), C-10, C-12, C-13, C-14, C-15.

³⁴ See e.g., Exhibits C-2, C-4, C-9, C-11, C-16.

³⁵ See above at paras 14, 21.

- f. the Tribunal's procedural orders, award(s) and other decisions shall be in English only without any translation being required; the Tribunal may there cite the Parties' written submissions, exhibits, legal authorities etc. in their original language, provided that it is English or French without any translation being required.
36. Where no translation into English or French is required as per the above, each Party may, however, voluntarily provide a translation, if it so wishes, in the form of an uncertified and unofficial translation.
37. In sum, for the reasons set out above, and pursuant to Article 16(1) and 17(1) of the UNCITRAL Rules, the Tribunal finds that:
- a. the place of the arbitration is London (United Kingdom); and
- b. the languages of the arbitration are French and English, subject to the directions and specifications set out above (or in subsequent procedural orders after consultation with the Parties).



Prof Maxi Scherer
(Presiding Arbitrator, on behalf of the Tribunal)

Date: 16 August 2018