



CERTIFICATION

This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate rendition into English of the original document entitled "2025-10-27 - *Decisión de CPA sobre Recusación de Radicati y Arias,*" which was written in Spanish.

City of Buenos Aires, November 3, 2025.

THE TR COMPANY TRANSLATION SERVICES

A handwritten signature in black ink, appearing to read 'Cynthia Farber'.

Cynthia Farber

Certified Translator

License recorded on Page 226:Book XV

Buenos Aires Translators' Association

CTPCBA No. 5402

CORTE PERMANENTE DE ARBITRAJE



PERMANENT COURT OF ARBITRATION

PCA Case No. AA920

**IN THE MATTER OF AN ARBITRATION UNDER THE CONCESSION CONTRACT FOR THE
NUEVAS DE LIMA PROJECT, DATED JANUARY 9, 2013**

("Contract")

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (2021)**

("UNCITRAL Rules")

- between -

RUTAS DE LIMA S.A.C.

("Claimant")

- and -

THE METROPOLITAN MUNICIPALITY OF LIMA

("Respondent" and, together with Claimant, "Parties")

**DECISION ON CHALLENGE TO
PROF. RADICATI DI BROZOLO AND PROF. ARIAS**

October 27, 2025

TABLE OF CONTENTS

I. BACKGROUND..... 3

A. The Arbitration 3

B. Constitution of the Tribunal, Execution of Minutes of the First Session, and Past Challenges..... 3

C. The Criminal Investigation and Request for Disclosure 4

D. The Challenge against Prof. Radicati di Brozolo and Prof. Arias 7

II. The Challenge 8

A. Respondent’s Position 8

i. The Legal Standard 9

ii. Admissibility of the Challenge 10

iii. The Merits of the Challenge 11

B. Claimant’s Position 13

i. The Legal Standard 13

ii. Admissibility of the Challenge 14

iii. The Merits of the Challenge 17

III. ANALYSIS OF THE CHALLENGE 19

A. Introduction 19

B. The Relevant Timeline 20

C. The Subpoena to MML’s State Counsel for Testimony and the Request for Disclosure
20

D. The Arbitrators’ Response to the Request for Disclosure and the Moment Non-Disclosure Occurred 22

E. The Anti-Corruption State Counsel’s Office’s Response of July 24, 2025, and Proof of Service for the Remaining Preliminary Measures 23

F. The “Cumulative Set of” Additional “Circumstances” Mentioned by Respondent 25

IV. COSTS..... 25

V. DECISION..... 26

I. BACKGROUND

A. The Arbitration

1. This challenge arises out of an arbitration between Rutas de Lima S.A.C. (“**Claimant**” or “**RDL**”) and the Metropolitan Municipality of Lima (“**Respondent**” or “**MML**,” and, collectively with Claimant, “**Parties**”) under the Arbitration Rules of the United Nations Commission on International Trade Law (“**UNCITRAL Rules**”) and the Concession Contract for the Nuevas de Lima Project, entered into on January 9, 2013. I was designated appointing authority by agreement of the Parties as per paragraph 47 of the Minutes of the First Session.
2. Claimant is represented in this proceeding by Ives Becerra, Miguel Oyarzo Vidal, Adriana Rojas, Rodrigo Franco, and Carlos Castro of Rutas de Lima S.A.C.; María del Carmen Tovar, Javier Tovar, Diana Collazos, Natalia Mori, Andrea Espejo, and Yassmin Muñoz-Najar of Estudio Eche copar; Rafael Llano, Marièle Coulet-Díaz, Paulo Maza Moreno, and Sabina Hidalgo Peralta of White & Case, S.C.; and Alejandro Martínez de Hoz of White & Case, LLP.
3. Respondent is represented by Evelin Giuliana García Luna, Omar Kadafi Jesús Rojas Silva, and Paula Judith Navarro Barrios of the Metropolitan Municipality of Lima; and Claudia Frutos-Peterson, Fernando Tupa, Arianna Sánchez, Ricardo Mier y Terán, Juan Jorge, Oscar Figueroa, and Marcelo Abramo of Curtis, Mallet-Prevost, Colt & Mosle LLP.

B. Constitution of the Tribunal, Execution of Minutes of the First Session, and Past Challenges

4. On December 29, 2022, in its Notice of Arbitration, Claimant appointed Prof. David Arias as co-arbitrator.
5. On January 30, 2023, in its Response to the Notice of Arbitration, Respondent appointed Ms. Elvira Martínez Coco as co-arbitrator in this proceeding.
6. On February 8, 2023, Prof. Luca Radicati di Brozolo accepted his appointment by the co-arbitrators as Presiding Arbitrator.
7. On April 20 and 21, 2023, respectively, the Parties signed the Minutes of the First Session of the Arbitral Tribunal. In turn, between April 24 and April 27, 2023, the Minutes were also signed by the Members of the Tribunal. Among other things, the Minutes established the method for calculating the fees of the Tribunal in this arbitration.
8. On June 22, 2023, Respondent filed its notice of challenge to Prof. Radicati di Brozolo.
9. On June 26, 2023, Respondent filed its notice of challenge to the Tribunal.
10. On July 13, 2023, Prof. Martínez Coco withdrew from her office as co-arbitrator in this

proceeding.

11. On July 24, 2023, Respondent stated it would not pursue its challenge to Prof. Radicati di Brozolo.
12. On July 26, 2023, Respondent confirmed it would pursue its challenge to the Tribunal and requested a ruling from me, stating that, in the face of Prof. Martínez Coco's withdrawal, the challenge would stand only against Professors Radicati di Brozolo and Arias.
13. On August 14, 2023, Respondent appointed Mr. Edgardo Raúl Mercado Neumann to serve as co-arbitrator; he accepted his appointment on August 16, 2023.
14. On November 6, 2023, I denied Respondent's challenge to the Tribunal.
15. In response to disclosures made by Mr. Mercado Neumann on December 12, 2023, and January 18, 2024, on January 24, 2024, Respondent invited him to withdraw from his appointment as arbitrator and, on the next day, Claimant and Mr. Mercado Neumann stated their disagreement. Following MML's challenge request of February 1, 2024, and its acceptance by Claimant on February 14, 2024, Mr. Mercado Neumann withdrew as arbitrator on February 22, 2024.
16. On March 19, 2024, Respondent appointed Mr. Jorge Balbi Calmet to serve as substitute arbitrator; he accepted his appointment the next day.

C. The Criminal Investigation and Request for Disclosure

17. In June 2023, MML's State Counsel filed a criminal complaint for an investigation into alleged crimes in Peru in connection with the Tribunal's determination of its fees in the Minutes of the First Session.¹ The complaint triggered an initial preliminary investigation under prosecution file No. 249-20232.²
18. On July 13, 2023, Ms. Martínez Coco withdrew as arbitrator.³
19. On January 29, 2024, Respondent informed the Tribunal that:

[the] complaint has not translated into any specific action, no formal charges have been filed, and, most importantly, no criminal proceeding is ongoing. The complaint is being dealt with by an independent prosecutor and MML's current state counsel may not withdraw. However, since it was filed, MML has taken no steps whatsoever to push forward and expedite the investigation. To the extent that the independent prosecutor requests MML's or its state counsel's involvement, the latter will take steps to resolve the situation and bring the

¹ Challenge, ¶¶ 24-26; Response, ¶ 3; Prosecution File No. 249-2023 (**MML-54**).

² Challenge, ¶ 26; Prosecution File No. 249-2023 (**MML-54**).

³ Response, ¶ 3; Email from Ms. Martínez Coco, p. 1 (**RDL-2**).

- investigation to a close as soon as possible.⁴
20. On August 15, 2024, the Second Corporate Provincial Prosecution Office for Crimes of Corruption by Public Officials of Lima ("**Second Prosecution Office**") decided not to formalize or continue to pursue the preliminary investigation against Prof. Radicati di Brozolo and Prof. Arias ("**Prosecution Order No. 7**").⁵
 21. On August 26, 2024, the Anti-Corruption State Counsel's Office ("**Anti-Corruption State Counsel's Office**") challenged the decision of the Second Prosecution Office and requested that the criminal investigation be reopened.⁶
 22. On August 30, 2024, Respondent stated that the complaint had been dismissed.⁷
 23. On February 10, 2025, the Lead Prosecutor of the Fourth Superior Prosecution Office for Crimes of Corruption ("**Fourth Prosecution Office**") issued Prosecution Order No. 70-2024-4°FSPDCFL-MP-FN, ordering, among other things, the reopening of the criminal investigation, a supplementary statement by Prof. Radicati di Brozolo and Prof. Arias, as well as by MML's State Counsel, in addition to various preliminary investigation measures, including compelling disclosure of the bank records of the accused "**Prosecution Order No. 70**").⁸
 24. As per the notice attached to Official Letter No. D000865-2025-JUS, Prof. Radicati di Brozolo and Prof. Arias were notified of Prosecution Order No. 70 by the Fourth Prosecution Office by email the very same day it was issued.⁹
 25. On May 26, 2025, MML's State Counsel was subpoenaed for a statement in connection with Prosecution Order No. 70.¹⁰
 26. On June 26, 2025, Respondent notified the Tribunal of Prosecution Order No. 70 and requested that, given their supplementary disclosure duty, Prof. Radicati di Brozolo and Prof. Arias be ordered to disclose ("**Request for Disclosure**"):
 - Whether they received notice from the Prosecution Office ordering the reopening and/or resumption

⁴ Response, ¶ 3; Letter from Respondent to the Tribunal, p. 5 (**RDL-1**).

⁵ Challenge, ¶ 27; Prosecution File No. 249-2023, Prosecution Order No. 7, August 15, 2024 (**MML-54**).

⁶ Challenge, ¶ 28; Case No. 506015506-2023-249, Prosecution Order REA No. 70-2024-4, Fourth Superior Prosecution Office for Crimes of Corruption, February 10, 2025, pp. 1-2 (**MML-56**).

⁷ Challenge, ¶ 28; Response, ¶ 3; Rejoinder and Reply to the Counterclaim, p. 2, footnote 2 (**RDL- 6**).

⁸ Challenge, ¶ 29; Response, ¶ 3; Case No. 506015506-2023-249, Prosecution Order REA No. 70-2024-4, Fourth Superior Prosecution Office for Crimes of Corruption, February 10, 2025, pp. 13-15 (**MML-56**).

⁹ Official Letter No. D000865-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to MML's Deputy State Counsel, July 24, 2025 (**MML-61**); Attachments to Official Letter No. D000865-2025-JUS, p. 3 (**MML-62, as updated**).

¹⁰ Challenge, ¶ 30; Case No. 506015506-2023-249, Subpoena to MML's Deputy State Counsel by the Prosecutor at the Second Corporate Provincial Prosecution Office for Crimes of Corruption by Public Officials, May 26, 2025 (**MML-58**).

of the investigations against them.

- Whether they were summoned by the Prosecution Office to provide a statement regarding the facts under investigation.
 - Whether they were summoned at all by the Judiciary in connection with the investigation against them.
 - Whether they received notice from the Judiciary ordering any measures restricting their rights (compelling disclosure of secret communications, compelling disclosure of bank records, etc.)
 - Should the Arbitral Tribunal learn of the document ordering the reopening of the investigation through this request, it shall make a disclosure as to whether it has created a conflict of interest.¹¹
27. On June 30, 2025, Prof. Radicati di Brozolo and Prof. Arias stated they had nothing to disclose and insisted on their impartiality and independence.¹²
28. On July 1, 2025, MML's State Counsel's Office requested that the Anti-Corruption State Counsel's Office update it on the status of the proceeding and, most particularly, whether Prosecution Order No. 70 had "been notified to the members of the arbitral tribunal: LUCA G. RADICATI DI BROZOLO and DAVID ARIAS LOZANO; or whether said arbitrators [had] been notified at all in connection with the prosecution file."¹³
29. On July 8, 2025, the Anti-Corruption State Counsel's Office stated that it was in the process of implementing the ordered preliminary measures and that "all parties to the proceeding [were] aware of the prosecution orders and/or rulings of the office."¹⁴
30. On July 10, 2025, MML's State Counsel's Office asked the Anti-Corruption State Counsel's Office to confirm whether Prosecution Order No. 70 had been notified to the members of the Tribunal and, if so, to produce a copy of the relevant proof of service.¹⁵
31. On July 15, 2025, the Anti-Corruption State Counsel's Office stated that it was unable to provide the requested information, as the criminal investigation was confidential.¹⁶
32. On July 17, 2025, MML's State Counsel's Office requested that the General State Counsel's Office be asked into a meeting with the Anti-Corruption State Counsel's Office in order to be able to obtain the requested proof of service.¹⁷

¹¹ Challenge, ¶ 31; Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, pp. 5-6 (**MML-59**).

¹² Challenge, ¶ 32; Emails from the Challenged Arbitrators, June 30, 2025 (**MML-60**).

¹³ Letter from Respondent, August 18, 2025, pp. 1-2; Official Letter No. D001833-2025-MML-PPM from the Municipal State Counsel's Office to the Anti-Corruption State Counsel's Office, July 1, 2025, p. 3 (**MML-71**).

¹⁴ Letter from Respondent, August 18, 2025, p. 2; Official Letter No. D000812-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the Lima Municipal State Counsel's Office, July 8, 2025 (**MML-72**).

¹⁵ Letter from Respondent, August 18, 2025, p. 2; Official Letter No. D001926-2025-MML-PPM from the Municipal State Counsel's Office to the Anti-Corruption State Counsel's Office, July 10, 2025, p. 2 (**MML-73**).

¹⁶ Letter from Respondent, August 18, 2025, p. 2; Official Letter No. D000833-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the MML's Deputy State Counsel, July 15, 2025, pp. 1, 3 (**MML-74**).

¹⁷ Letter from Respondent, August 18, 2025, p. 2; Official Letter No. D002006-2025-MML-PPM from the Municipal State Counsel's Office to the General State Counsel's Office, July 17, 2025, p. 2 (**MML-75**).

33. On July 22, 2025, the General State Counsel's Office, the MML's State Counsel's Office, and the Anti-Corruption State Counsel's Office held a meeting.¹⁸ According to Respondent, it was agreed at that meeting that the Anti-Corruption State Counsel's Office could share with MML's State Counsel's Office (i) a copy of the proof of service of Prosecution Order No. 70 on the challenged arbitrators; (ii) a copy of the proof of service of the request for a statement by the challenged arbitrators, and (iii) a copy of the prosecution's order to disclose the challenged arbitrators' bank records, if these documents actually existed.¹⁹
34. On July 24, 2025, the Anti-Corruption State Counsel's Office sent Respondent (i) a copy of the proof of service of Prosecution Order No. 70, addressed to Prof. Radicati di Brozolo and Prof. Arias; (ii) a copy of the proof of service of "Prosecution Order No. 09 issued in Prosecution File No. 249-2023" (according to Respondent, this is the summons for the arbitrators to provide a statement); and (iii) a copy of proof of submission of the prosecution's order compelling what appears to be the disclosure of the bank records for Prof. Radicati di Brozolo and Prof. Arias.²⁰

D. The Challenge against Prof. Radicati di Brozolo and Prof. Arias

35. On August 8, 2025, Respondent submitted its challenge request against Prof. Radicati di Brozolo and Prof. Arias ("**Challenge**").
36. On August 11, 2025, the Permanent Court of Arbitration ("**PCA**") acknowledged receipt of the Challenge and invited Claimant to submit its comments.
37. On August 12, 2025, Claimant requested that the arbitration proceedings not be stayed on account of the Challenge.
38. On August 15, 2025, Claimant noted that Respondent had failed to produce certain documents in connection with the correspondence exchanged between Respondent and the Anti-Corruption State Counsel's Office. In particular, Claimant stated that: "[b]ased on due process and procedural equality principles, in order to be able to prepare our comments, it is essential for Claimant to have access to and examine all of the documents reflecting the facts underlying MML's Challenge Request. Accordingly, Claimant requests that Respondent produce: (i) MML's State Counsel's Office's request leading to Official Letter No. D000865-2025-JUS; and (ii) the full and complete attachments to Official Letter No. D000865-2025-JUS, as transmitted by the State Counsel's Office alongside that Official Letter."²¹

¹⁸ Letter from Respondent, August 18, 2025, p. 2; Visitor Log at the General State Counsel's Office, July 22, 2025 (**MML-76**).

¹⁹ Letter from Respondent, August 18, 2025, pp. 2-3.

²⁰ Challenge, ¶ 33; Official Letter No. D000865-2025-JUS/PGE-PPEDC from the General State Counsel's Office to the MML's Deputy State Counsel, July 24, 2025 (**MML-61**); Attachments to Official Letter No. D000865-2025-JUS (**MML-62, as updated**).

²¹ Email from Claimant, August 15, 2025.

39. On that same day, the PCA acknowledged receipt of Claimant's email of August 15, 2025, and invited Respondent to submit its comments.
40. On August 18, 2025, in response to Claimant's request, and "in order that it may review 'all of the documents reflecting the facts underlying MML's Challenge Request,'"²² Respondent provided a timeline of certain events relating to its correspondence with the Anti-Corruption State Counsel's Office, producing new supporting documents in connection with these.²³
41. On August 25, 2025, Claimant submitted its response to the Challenge ("**Response**").
42. On August 27, 2025, the PCA acknowledged receipt of the Response and invited Prof. Radicati di Brozolo and Prof. Arias to submit their comments on the Challenge, also inviting the Parties to submit a second round of comments, if any.
43. That same day, Claimant requested a deadline extension to submit its second-round comments.
44. On August 28, 2025, Respondent stated that it did not object to the deadline extension requested by Claimant, which the PCA then granted the next day.
45. On August 29, 2025, Prof. Arias stated that he had no comments on the Challenge.
46. On September 1, 2025, Prof. Radicati di Brozolo stated that he had no comments on the Challenge.
47. On September 10, 2025, Respondent submitted its additional comments on the Challenge ("**Respondent's Additional Comments**").
48. On September 16, 2025, Claimant submitted its additional comments on the Challenge ("**Claimant's Additional Comments**").
49. On September 17, 2025, the PCA acknowledged receipt of the Claimant's Additional Comments and notified the Parties that the Challenge had been submitted to me for consideration.

II. THE CHALLENGE

A. Respondent's Position

50. Respondent's challenge against Prof. Radicati di Brozolo and Prof. Arias is based on their alleged non-disclosure of the reopening of the investigation against them in Peru.²⁴ Moreover, Respondent mentions the cumulative set of circumstances surrounding the lack of

²² Letter from Respondent, August 18, 2025, p. 1.

²³ Specifically, Respondent produced Exhibits MML-62, as updated, and MML-71 to MML-77.

²⁴ Challenge, ¶¶ 23, 31-34.

disclosure.²⁵

i. The Legal Standard

51. Respondent argues that Article 12(1) of the UNCITRAL Rules provides the standard applicable to the Challenge.²⁶ According to Respondent, such standard requires a showing not of an actual lack of independence or impartiality, but only of an appearance of a lack of independence or impartiality from the perspective of an objective, reasonable, and informed third party.²⁷ Respondent refers to the Code of Conduct for Arbitrators in International Investment Dispute Resolution (“**Code of Conduct**”) to argue that doubts as to the impartiality of an arbitration are justifiable if any reasonable party with knowledge of the relevant facts and circumstances would reach the conclusion that it is likely that the arbitrator will be influenced by factors external to the case.²⁸
52. Moreover—relying on *Merck v. Ecuador*—Respondent argues that, under this standard, one or more circumstances can be considered which, individually or collectively interpreted, will lead to justifiable doubts as to the impartiality or independence of the arbitrators.²⁹
53. Respondent notes that, under Article 11 of the UNCITRAL Rules, arbitrators have an ongoing obligation to disclose any circumstances that may bring into question their impartiality and independence.³⁰ This obligation must be fulfilled “without delay,” and it must be assessed from the parties’ perspective, not the arbitrator’s.³¹
54. Additionally, Respondent contends that both the Code of Conduct and the IBA Guidelines on Conflicts of Interest in International Arbitration (“**IBA Guidelines**”) reflect this understanding as to the arbitrators’ duty to disclose.³² Respondent adds that, faced with any questions, disclosure is always the default position, since a failure to discharge such duty may, in and of itself, result in justifiable doubts as to the arbitrator’s impartiality or independence.³³

²⁵ Challenge, ¶¶ 3, 23.

²⁶ Challenge, ¶ 10.

²⁷ Challenge, ¶¶ 11-14; D. D. Caron, L. M. Caplan, “The UNCITRAL Arbitration Rules: A Commentary (2nd ed.),” Oxford University Press, pp. 214, 218 (**MML-26**).

²⁸ Challenge, ¶ 18; UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and Commentary, ¶ 76 (**MML-25**).

²⁹ Challenge, ¶ 14; *Merck Sharpe & Dohme (I.A.) LLC v. The Republic of Ecuador*, PCA Case No. 2012-10, Decision on Challenge to Arbitrator Judge Stephen M. Schwebel, August 8, 2012, ¶ 94 (**MML-35**).

³⁰ Challenge, ¶¶ 8, 15-16.

³¹ Challenge, ¶ 15-16.

³² Challenge, ¶¶ 17-20; IBA Guidelines on Conflicts of Interest in International Arbitration, Part I: General Standards Regarding Impartiality, Independence and Disclosure, 2(b)-(c), 3(a), (d) and (f) (**MML-42**).

³³ Challenge, ¶¶ 18-22; *Commonwealth Coatings v. Continental Cas.*, 393 U.S. 145 (1968), p. 4 (**MML-47**).

ii. Admissibility of the Challenge

55. As a preliminary observation, and contrary to Claimant's argument, Respondent claims that the Challenge was timely submitted.³⁴ Respondent maintains that the relevant start date for the allowed time period is July 24, 2025, as it is then that it became aware that Prof. Radicati di Brozolo and Prof. Arias had been notified of the reopening of the criminal investigation.³⁵
56. First, Respondent rejects the alleged untimely nature of the challenge based on the June 2023 start date of the criminal investigation. According to Respondent, the Challenge "is not based on the existence of the criminal investigation itself, but rather on the fact that the Challenged Arbitrators failed to disclose" that it had been reopened.³⁶
57. Second, Respondent disagrees that July 8, 2025—when the Anti-Corruption State Counsel's Office notified it that "all parties to the [criminal] proceeding are aware of the prosecution orders and/or rulings of the office"—is the relevant date for the 15-day time limit to submit its Challenge.³⁷ In this regard, Respondent notes that (i) it is not a party to the criminal proceedings, and it therefore has no access to the relevant orders; and (ii) the Anti-Corruption State Counsel's Office did not confirm that the arbitrators had "actually [been] notified," which constituted essential and necessary information in order to submit its Challenge.³⁸ Therefore, Respondent "made efforts" to obtain the "essential information required" for the Challenge, including, most importantly, information as to when the arbitrators had been notified, and what they were actually notified of, as well as the fact that they "did not make any disclosures in that regard."³⁹ According to Respondent, it was only on July 24, 2025, that it received that information, and, consequently, this is the relevant date.⁴⁰
58. Third, Respondent also disagrees that June 30, 2025—the date when the challenged arbitrators stated they had no information to disclose regarding the reopening of the investigation—is the relevant date.⁴¹ Respondent argues that the burden of obtaining "clear and transparent" information regarding the arbitrators' awareness of the reopening of the criminal investigation was shifted to it when the arbitrators refused to volunteer that information.⁴² Accordingly, Respondent insists that the relevant date is July 24, 2025, not June

³⁴ Respondent's Additional Comments, Section IV.

³⁵ Respondent's Additional Comments, ¶ 26.

³⁶ Respondent's Additional Comments, ¶ 26.

³⁷ Respondent's Additional Comments, ¶ 28.

³⁸ Respondent's Additional Comments, ¶ 28.

³⁹ Respondent's Additional Comments, ¶¶ 29, 34, footnote 44.

⁴⁰ Respondent's Additional Comments, ¶¶ 29-30.

⁴¹ Respondent's Additional Comments, ¶ 31.

⁴² Respondent's Additional Comments, ¶ 31.

30, 2025, as it was on the former date that it learned that the challenged arbitrators had failed to fulfill their disclosure duty.⁴³

iii. The Merits of the Challenge

59. As to the duty of disclosure, Respondent argues that Prof. Radicati di Brozolo and Prof. Arias failed to disclose that they had been notified of the reopening of the criminal investigation against them, as well as certain measures ordered in the context of that investigation that may have legal implications for them.⁴⁴
60. First, Respondent notes that the reason for the Challenge is not tied to the merits of the criminal complaint; rather, the Challenge is a result of the challenged arbitrators' decision not to disclose to the Parties that the criminal investigation against them had been reopened.⁴⁵ Respondent argues that such lack of disclosure deprived "the Parties of the opportunity to state their position on the matter," and it prevented Respondent from "explaining that it is not responsible for the reopening of that criminal investigation" and "distancing itself from [any] adverse legal implications" for the arbitrators.⁴⁶
61. Respondent also insists that its failure to challenge the Tribunal back when it dealt with a portion of this arbitration while the "initial" criminal investigation was underway, is irrelevant.⁴⁷ Respondent explains its understanding that the criminal complaint "had reached its conclusion" after the criminal investigation was "originally underway" between June 2023 and August 2024.⁴⁸ According to Respondent, the Parties and the Tribunal were aware of this and it was therefore "able to exercise its right and address and set right the unfounded allegations made by Rutas based on that complaint."⁴⁹ Consequently, at the time, it was "neither necessary nor appropriate" for Respondent to challenge the Tribunal.⁵⁰
62. Second, Respondent argues that the cumulative set of circumstances leading to the alleged failure to disclose has created a justified appearance of, and justifiable doubt as to, a lack of impartiality on the part of Prof. Radicati di Brozolo and Prof. Arias.⁵¹ According to Respondent, that cumulative set of circumstances consisted of the following.

⁴³ Respondent's Additional Comments, ¶¶ 32-33.

⁴⁴ Challenge, ¶ 34; Respondent's Additional Comments, ¶ 18.

⁴⁵ Respondent's Additional Comments, ¶¶ 14-15.

⁴⁶ Respondent's Additional Comments, ¶¶ 14, 17, 22-23.

⁴⁷ Respondent's Additional Comments, ¶ 18.

⁴⁸ Respondent's Additional Comments, ¶ 16-17.

⁴⁹ Respondent's Additional Comments, ¶ 17.

⁵⁰ Respondent's Additional Comments, ¶ 17.

⁵¹ Challenge, ¶ 3.

63. First, after Ms. Martínez Coco withdrew as arbitrator as a result of the criminal complaint, Claimant used the complaint to “discredit Respondent and influence the way in which the Tribunal is to analyze MML’s conduct.”⁵² Respondent argues that Claimant “has made every effort to portray the criminal investigation as a personal attack by MML against” Prof. Radicati di Brozolo and Prof. Arias, with the aim of creating bias in the Tribunal.⁵³
64. Second, Respondent points out that the criminal investigation by the state authorities “may influence the state of mind” of the arbitrators.⁵⁴ It claims that Ms. Martínez Coco acknowledged as much when she withdrew from the Tribunal after the complaint was filed.⁵⁵
65. Third, according to Respondent, the criminal investigation that is currently ongoing is not a result of Respondent’s actions.⁵⁶ Respondent mentions that it did not prompt the investigation or push it forward, and that it was “unaware that an independent state counsel’s office for specific crimes had appealed the decision not to officially open the preliminary investigation.”⁵⁷ Moreover, according to Respondent, Prosecution Order No. 7 was the relevant authority’s decision to “definitively end the criminal investigation” and, based on that order, Respondent notified the Tribunal that the investigation had come to an end “and reasonably and justifiably assumed that it would no longer be pursued.”⁵⁸ Respondent claims that Prosecution Order No. 70 is an order adjudicating a challenge that “breathed new life” into the criminal investigation “at the request of a third party that is unrelated to the Parties and the Arbitration.”⁵⁹
66. According to Respondent, the adjudication of that challenge resulted in information asymmetry between the Parties and the Tribunal regarding the investigation and its implications for the challenged arbitrators.⁶⁰ Respondent claims that such asymmetry, “combined with the Challenged Arbitrators’ refusal to offer any insight into the matter” works to Respondent’s prejudice.⁶¹
67. Fourth, Respondent mentions that Prof. Radicati di Brozolo and Prof. Arias “refused”—in response to an express question from Respondent—to disclose the information available to them regarding the reopening of the criminal investigation, which could have direct legal

⁵² Challenge, ¶¶ 35- 36, 39.

⁵³ Challenge, ¶ 39; Respondent’s Additional Comments, ¶¶ 23-24.

⁵⁴ Challenge, ¶ 36.

⁵⁵ Challenge, ¶ 36.

⁵⁶ Challenge, ¶ 37.

⁵⁷ Challenge, ¶ 36; Respondent’s Additional Comments, ¶ 10.

⁵⁸ Respondent’s Additional Comments, ¶ 20.

⁵⁹ Respondent’s Additional Comments, ¶¶ 21, 24.

⁶⁰ Respondent’s Additional Comments, footnote 31.

⁶¹ Respondent’s Additional Comments, footnote 31.

implications for them.⁶²

68. To conclude, Respondent argues that the set of previous circumstances results in justifiable doubts around the impartiality of Prof. Radicati di Brozolo and Prof. Arias, as well as their ability to issue an award “without being influenced by factors external” to the case.⁶³

B. Claimant’s Position

69. Claimant opposes the Challenge and argues that it is untimely and unfounded.⁶⁴ According to Claimant, the Challenge is based on a criminal investigation against the arbitrators prompted by Respondent itself.⁶⁵ Claimant argues that Respondent manufactured the alleged bias it is now wielding as basis for its challenge against Prof. Radicati di Brozolo and Prof. Arias, which is “a display of bad faith and an instance of abuse of process.”⁶⁶

i. The Legal Standard

70. Claimant submits that the proper legal standard for the Challenge is contained in Article 12(1) of the UNCITRAL Rules, under which an arbitrator may be challenged if there are justifiable doubts as to the arbitrator’s impartiality or independence.⁶⁷ Once again, Claimant mentions that this is an objective standard, since the situation must be assessed from the perspective of a reasonable and informed third party, in light of all relevant circumstances.⁶⁸
71. Claimant adds that the “justifiable doubts” standard requires both exceptional circumstances and compelling evidence.⁶⁹ Moreover, the weight of that evidence will be determined by the set of relevant circumstances.⁷⁰ Claimant points out that this standard has not been disputed by Respondent.⁷¹
72. Claimant takes the view that the duty to disclose is not unlimited and that it does not include a duty to disclose circumstances that would not amount to potential bias.⁷² Moreover, lack of

⁶² Challenge, ¶¶ 38-39.

⁶³ Challenge, ¶ 40.

⁶⁴ Response, ¶ 2; Claimant’s Additional Comments, p. 1.

⁶⁵ Response, ¶¶ 3-4.

⁶⁶ Response, ¶ 4.

⁶⁷ Response, ¶ 47.

⁶⁸ Response, ¶ 47.

⁶⁹ Response, ¶¶ 48-49, 52; Claimant’s Additional Comments, p. 1; E. Gaillard, J. Savage, “Fouchard Gaillard Goldman on International Commercial Arbitration” (1999), ¶¶ 1074-1075 (**RDL-42**).

⁷⁰ Response, ¶ 53; *Vito G. Gallo v. The Government of Canada*, PCA Case No. 2008-03, Decision on the Challenge to Mr. J. Christopher Thomas, QC, October 14, 2009, ¶ 19 (**RDL-47**).

⁷¹ Claimant’s Additional Comments, pp. 1, 9.

⁷² Response, ¶¶ 85-88; Claimant’s Additional Comments, p. 6; IBA Guidelines on Conflicts of Interest in International Arbitration, Part I: General Standards Regarding Impartiality, Independence and Disclosure, (3)

disclosure is not, *per se*, evidence of partiality,⁷³ but it is the underlying facts that were not disclosed that need to be assessed.⁷⁴

73. Consequently, a failure to disclose should be assessed in light of whether (i) it was inadvertent or deliberate; (ii) it was the result of an honest, discretionary choice; (iii) the facts kept from disclosure gave rise to obvious concerns regarding impartiality and independence; and (iv) non-disclosure is an anomaly on the part of a conscientious arbitrator or fits within a pattern of circumstances that create doubt as to the arbitrator's impartiality.⁷⁵ Claimant underscores that there is no duty to disclose circumstances which are already known to the parties.⁷⁶

ii. Admissibility of the Challenge

74. To begin, Claimant contends that the Challenge is untimely.⁷⁷ Claimant argues that the 15-day period to file a challenge under the UNCITRAL Rules is a strict deadline.⁷⁸ Moreover, according to Claimant, "Article 13(1) does not enable a party to preserve its right to file a challenge at some future, undefined date on the basis of circumstances the party is already aware of."⁷⁹ Relying on *Belokon v. Kyrgyz Republic*, Claimant asserts that the relevant date is not the date when Respondent learned of the circumstances in question but the date on which it became aware of a sufficient number of circumstances that would constitute grounds for a challenge.⁸⁰
75. Claimant submits that the Challenge is untimely for the following reasons: (i) Respondent had been aware of the criminal investigation since June 2023; (ii) in any event, it had also learned

Disclosure by Arbitrator, p. 12 (**MML-42**).

⁷³ Claimant's Additional Comments, p. 2.

⁷⁴ Response, ¶¶ 85, 92-94; IBA Guidelines on Conflicts of Interest in International Arbitration, Part I: General Standards Regarding Impartiality, Independence and Disclosure, (3) Disclosure by Arbitrator, pp. 11, 12 (**MML-42**); UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution, Article 11(8) (**MML-25**); D. D. Caron, L. M. Caplan, "The UNCITRAL Arbitration Rules: A Commentary (2nd ed.)," Oxford University Press, p. 227 (RDL-11); *Merck Sharpe & Dohme (I.A.) LLC v. The Republic of Ecuador*, PCA Case No. 2012-10, Decision on Challenge to Arbitrator Judge Stephen M. Schwebel, August 8, 2012, ¶ 77 (**MML-35**).

⁷⁵ Response, ¶ 97; *Merck Sharpe & Dohme (I.A.) LLC v. The Republic of Ecuador*, PCA Case No. 2012-10, Decision on Challenge to Arbitrator Judge Stephen M. Schwebel, August 8, 2012, ¶ 77 (**MML-35**).

⁷⁶ Response, ¶¶ 85, 99; Claimant's Additional Comments, p. 6.

⁷⁷ Claimant's Additional Comments, p. 1.

⁷⁸ Claimant's Additional Comments, p. 9.

⁷⁹ Response, ¶ 101; PCA Case No. AA920, Decision on Challenge to Prof. Radicati di Brozolo and Prof. Arias, November 6, 2023, ¶¶ 53-54 (**RDL-3**).

⁸⁰ Response, ¶ 106; Claimant's Additional Comments, p. 8; *Valeri Belokon v. Kyrgyz Republic*, PCA Case No. AA518, Decision on Challenges to Arbitrators Professor Kaj Hober and Professor Jan Paulsson, October 6, 2014, ¶ 55 (**RDL-59**). Claimant also mentions that the LCIA Rules do not make provision for a party "preserving" potential grounds to challenge the arbitrators until sufficient evidence has been gathered by that party to rely on the cumulative effect of successive occurrences as grounds for its challenge. Response, ¶ 109; LCIA Case, Decision on Challenge, October 14, 2020, p. 38 (**RDL-60**).

that the investigation had been reopened and the challenged arbitrators had been notified more than 15 days before it submitted its Challenge; and (iii) the Challenge is also untimely insofar as it relies on comments submitted by Claimant in 2024.⁸¹

76. First, Claimant focuses on the fact that the reopening of the criminal investigation does not amount to a new criminal proceeding against the arbitrators due to facts other than those which are already known to, and were made the subject of a complaint by, Respondent in June 2023.⁸² In addition, Respondent was aware that a criminal investigation was being conducted,⁸³ and, on August 30, 2024, it notified the Tribunal when the complaint was initially dismissed.⁸⁴ Therefore, Respondent had sufficient information to file its Challenge at least since June 2023, based on the criminal investigation it started.⁸⁵
77. Claimant argues that the necessary tools to obtain information regarding the criminal proceedings were always available to Respondent,⁸⁶ and that Respondent repeatedly displayed its own awareness of the investigation throughout the arbitration.⁸⁷ Accordingly, Claimant contends that, if a ground to challenge the arbitrators currently exists on the basis of that investigation, that very same ground has existed for more than two years without Respondent having taken action at an earlier date.⁸⁸ Likewise, Claimant notes that Respondent “sat on” the possibility of acting on the basis of the criminal investigation for more than two years, as in none of its first three challenges did it rely on the accusations raised in its criminal complaint as grounds for those challenges.⁸⁹ According to Claimant, such conduct confirms that there is no bias in connection with the criminal investigation triggered by Respondent’s criminal complaint.⁹⁰
78. Claimant refutes the argument that Respondent became aware of the alleged lack of disclosure by the arbitrators upon receiving a letter from the Anti-Corruption State Counsel’s Office on July 24, 2025.⁹¹ It underscores the fact that Respondent was already aware of that investigation and that no explanation has been provided as to why the reopening of that very

⁸¹ Response, ¶¶ 8-9, 100; Claimant’s Additional Comments, pp. 6-7.

⁸² Response, ¶¶ 8, 69-70, 80, 83, 103.

⁸³ Response, ¶ 71.

⁸⁴ Response, ¶ 100; MML’s Rejoinder and Reply to the Counterclaim, August 30, 2024, p. 2, footnote 2 (**RDL-6**).

⁸⁵ Response, ¶ 111; Claimant’s Additional Comments, p. 7.

⁸⁶ Response, ¶¶ 75, 110; Letter from Respondent, August 18, 2025.

⁸⁷ Response, ¶ 98.

⁸⁸ Response, ¶ 103.

⁸⁹ Response, ¶ 36.

⁹⁰ Response, ¶ 81.

⁹¹ Response, ¶ 9.

same investigation has allegedly created a new bias that did not exist before, restarting the period allowed to submit the Challenge.⁹² Claimant also claims that Respondent used all diligence to learn about how the investigation was progressing when it suited its needs for the purposes of the Challenge.⁹³

79. Second, Claimant points out that Respondent was also aware that the arbitrators had been notified of the reopening of the investigation more than 15 days prior to the filing of its Challenge.⁹⁴ In line with the Anti-Corruption State Counsel's Office statement on July 8, 2025, to the effect that "all parties to the proceeding [were] aware of the prosecution orders and/or rulings of the office,"⁹⁵ Claimant argues that Respondent knew that the arbitrators were aware—since that date—of the reopening of the criminal investigation by virtue of Prosecution Order No. 70.⁹⁶ Since this happened more than 15 days prior to the date when the Challenge was filed,⁹⁷ Claimant submits that it was "unjustified" for Respondent to have needed to actually see the notices to the arbitrators regarding the reopening of the investigation before filing its Challenge.⁹⁸ Accordingly, Claimant underscores that Respondent had the information it needed to challenge the arbitrators since July 8, 2025.⁹⁹
80. Regardless of the above, Claimant notes that the Challenge is untimely because, on June 27, 2025, Respondent sent Prof. Radicati di Brozolo and Prof. Arias a copy of Prosecution Order No. 70, by virtue of which the criminal investigation was reopened.¹⁰⁰ Since Respondent claims that the arbitrators submitted "incomplete responses" on June 30, 2025, Claimant argues that the 15-day period to submit the Challenge had started on that date, because Respondent was already certain that the arbitrators had been notified of the reopening of the investigation.¹⁰¹
81. Lastly, the fact that Respondent asserts that, "throughout the entire proceedings," Claimant has relied on the complaint to discredit Respondent and influence the Tribunal—referring to

⁹² Response, ¶¶ 9, 38, 104.

⁹³ Response, ¶ 104; Claimant's Additional Comments, p. 10; Letter from Respondent, August 18, 2025, pp. 2-3; Official Letter No. D001833-2025-MML-PPM from the Municipal State Counsel's Office to the Anti-Corruption State Counsel's Office, July 1, 2025, p. 3 (**MML-71**).

⁹⁴ Response, ¶¶ 9, 111.

⁹⁵ Claimant's Additional Comments, pp. 7-8; Official Letter No. D000812-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the Lima Municipal State Counsel's Office, July 8, 2025 (**MML-72**).

⁹⁶ Claimant's Additional Comments, p. 8.

⁹⁷ Response, ¶¶ 104-105, 108; Claimant's Additional Comments, p. 8; Official Letter No. D000812-2025- JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the Lima Municipal State Counsel's Office, July 8, 2025 (**MML-72**).

⁹⁸ Response, ¶ 109.

⁹⁹ Claimant's Additional Comments, p. 8.

¹⁰⁰ Response, ¶ 112; Claimant's Additional Comments, p. 9; Letter from Respondent, June 26, 2025 (**RDL-52**).

¹⁰¹ Response, ¶ 112; Claimant's Additional Comments, p. 9.

Claimant's submissions and letters from January, May, and December 2024—shows that Respondent did not believe the arbitrators were biased due to the criminal investigation in those months.¹⁰² Accordingly, Claimant is of the view that Respondent is not permitted to claim an alleged bias now due to the reopening of the criminal investigation based on the same facts and the same complaint.¹⁰³

iii. The Merits of the Challenge

82. As to the merits of the Challenge, Claimant underscores that the Challenge is based on a criminal investigation against the arbitrators prompted by Respondent itself.¹⁰⁴ Claimant argues that the criminal complaint filed by Respondent is part of an alleged pattern of action taken in bad faith,¹⁰⁵ exacerbated by the alleged abuse of the criminal investigation by Respondent.¹⁰⁶ Claimant submits that basing a challenge on an alleged bias manufactured by the challenging party itself against the challenged arbitrators amounts to an abuse of process,¹⁰⁷ more specifically under the principle that “an alleged self-inflicted harm may not be relied upon as basis for a challenge.”¹⁰⁸ Therefore, Claimant equates the Challenge to “guerrilla tactics” turning a criminal complaint into a tool to force the arbitrator's resignation.¹⁰⁹
83. Additionally, Claimant argues that Respondent “does not deny that the reopened criminal investigation is the very same investigation Respondent started back in June 2023,”¹¹⁰ and that Respondent's proposed subdivision of the criminal investigation is “artificial,” since it is not a new criminal proceeding commenced against the arbitrators due to facts different from those Respondent originally complained of.¹¹¹ Claimant denies that Respondent assumed that the criminal investigation would not continue to be pursued after the initial dismissal of its

¹⁰² Response, ¶¶ 82-83.

¹⁰³ Response, ¶¶ 83, 113.

¹⁰⁴ Response, ¶ 3; Claimant's Additional Comments, p. 2.

¹⁰⁵ Response, ¶¶ 3, 15, 38, 45, 56, 63.

¹⁰⁶ Response, ¶ 21.

¹⁰⁷ Claimant's Additional Comments, pp. 3-4.

¹⁰⁸ Response, ¶¶ 4, 61-68; LCIA Case, Decision on Challenge, June 2, 2021, ¶¶ 3.15, 3.20 (**RDL-48**); LCIA Case No. 132551, Decision on Challenge, July 22, 2015, ¶¶ 66, 67 (**RDL-49**); LCIA Case No. 91431-91442, Decision on the Second Challenge, August 16, 2011, ¶¶ 3.11, 3.14 (**RDL-50**); IBA Guidelines on Party Representation in International Arbitration (2013), Guideline 5 (**RDL-51**).

¹⁰⁹ Response, ¶¶ 5, 18-19; G. Born, International Commercial Arbitration, “Chapter 12: Selection, Challenge and Replacement of Arbitrators in International Arbitration,” 3rd ed. (2021, updated in February 2024), § 12.05(M), p. 100 (**RDL-10**); G. J. Horvath *et al.*, Guerrilla Tactics in International Arbitration, “Chapter 1, §1.02: Categories of Guerrilla Tactics,” (2013), § 1.02(B)(6), “F frivolous Challenges,” pp. 10-11 (**RDL-26**).

¹¹⁰ Claimant's Additional Comments, pp. 2, 5.

¹¹¹ Claimant's Additional Comments, pp. 5-6.

criminal complaint.¹¹² It points out that Peruvian law expressly provides for an appeal from the dismissal and that Respondent, as an entity of the State of Peru, cannot claim ignorance of the applicable domestic law.¹¹³

84. Claimant also rejects Respondent's argument that the reopening of the criminal investigation resulted in information asymmetry between the Parties and the Tribunal regarding the implications for the challenged arbitrators.¹¹⁴ Claimant focuses on the fact that Respondent has shown that it has access to the Anti-Corruption State Counsel's Office, from which it obtained the criminal investigation files.¹¹⁵ In any event, it argues that it is Claimant that has no access to the proceedings.¹¹⁶ Claimant submits that Respondent has used the matter of the Tribunal's fees as a procedural strategy "to selectively and opportunistically charge against the arbitrators."¹¹⁷ In Claimant's view, that Respondent did not report or challenge Mr. Balbi is proof of this.¹¹⁸ Claimant points out that the procedural order of May 2, 2024, unanimously adjudicated Respondent's request for a reduction of the arbitrators' fees.¹¹⁹ Therefore, Claimant rejects Respondent's position that the complaint did not extend to Mr. Balbi because it was filed at the beginning of the arbitration, before he was appointed, and based on a decision he had no involvement in.¹²⁰ Claimant argues that Mr. Balbi (i) was involved in the procedural order of May 2, 2024, upholding the arbitrators' fees; and (ii) will be paid the same fees that were the subject of Respondent's complaint.¹²¹
85. Claimant rejects that the alleged bias is a result of the fact that the challenged arbitrators deprived Respondent of the chance to state its position on the reopening of the criminal investigation.¹²² According to Claimant, this is, "at best," a case of procedural harm, not bias.¹²³ Claimant underscores that Respondent is seeking to shift liability for an occurrence of

¹¹² Claimant's Additional Comments, p. 5.

¹¹³ Claimant's Additional Comments, p. 5; Prosecution Order REA No. 70-2024-4, Fourth Superior Prosecution Office for Crimes of Corruption, February 10, 2025, ¶ 2.3 (**MML-56**).

¹¹⁴ Claimant's Additional Comments, footnote 29.

¹¹⁵ Claimant's Additional Comments, footnote 29.

¹¹⁶ Claimant's Additional Comments, footnote 29.

¹¹⁷ Response, ¶¶ 34-35.

¹¹⁸ Response, ¶¶ 33-34, 36; Challenge, footnote 56.

¹¹⁹ Response, ¶ 33; Procedural Order No. 12, May 2, 2024 (**RDL-33**).

¹²⁰ Response, ¶ 33; Challenge, footnote 56; Claimant's Additional Comments, p. 3.

¹²¹ Response, ¶ 33; Procedural Order No. 12, May 2, 2024 (**RDL-33**).

¹²² Claimant's Additional Comments, p. 3.

¹²³ Claimant's Additional Comments, pp. 3-4, 6.

Respondent's own making onto the arbitrators.¹²⁴

86. Moreover, Claimant argues that the alleged failure to disclose is not, *per se*, evidence of bias.¹²⁵ It submits that there was no duty to disclose the existence of, and each procedural step in, a criminal investigation that was known to, and had been prompted by, Respondent itself,¹²⁶ and it rejects the argument that the burden of "reporting each step taken throughout a criminal proceeding prompted against them by the party filing the challenge" rested on the arbitrators.¹²⁷ Furthermore, Claimant argues that the failure to disclose the reopening of the criminal investigation, which all Parties had been aware of since June 2023, does not constitute a new fact that warrants disclosure, nor does it amount to bias.¹²⁸
87. Claimant requests that the Challenge be dismissed and costs be awarded accordingly.¹²⁹

III. ANALYSIS OF THE CHALLENGE

A. Introduction

88. I will start this analysis at Article 13(1) of the UNCITRAL Rules, which provides as follows:

A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

89. As pointed out in my decision of November 6, 2023, the 15-day period is final in nature. Furthermore, Article 13(1) does not allow a party to preserve its right to raise a challenge at some indeterminate future date on the basis of circumstances already known to that party. Therefore, any late-notified challenge must be rejected as inadmissible with no need to address its merits.¹³⁰ Moreover, the party asserting the challenge has the burden of proving that the challenge was filed within the permitted time period.
90. As to the filing date of the Challenge, I will begin by saying that, because the Challenge relies on the failure by Prof. Radicati di Brozolo and Prof. Arias to disclose the reopening of the criminal investigation, ascertaining the specific time at which Respondent became aware that the challenged arbitrators had failed to disclose the reopening of the criminal investigation is

¹²⁴ Claimant's Additional Comments, p. 4.

¹²⁵ Response, ¶¶ 92-94; UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution, Article 11(8) (**MML-25**); IBA Guidelines on Conflicts of Interest in International Arbitration, Part I: General Standards Regarding Impartiality, Independence and Disclosure, (3) Disclosure by Arbitrator, p. 11 (**MML-42**).

¹²⁶ Response, ¶¶ 6, 58, 91.

¹²⁷ Response, ¶ 6; Claimant's Additional Comments, p. 7.

¹²⁸ Response, ¶¶ 7, 89, 98; Claimant's Additional Comments, p. 7.

¹²⁹ Claimant's Additional Comments, p. 10.

¹³⁰ Decision on Challenge to Prof. Radicati di Brozolo and Prof. Arias, November 6, 2023, ¶ 54.

of the essence.

B. The Relevant Timeline

91. In this regard, the dates most relevant to an analysis of the admissibility of the Challenge are as follows:

- **February 10, 2025:** The Fourth Prosecution Office issues Prosecution Order No. 70. The challenged arbitrators are electronically notified on the very same date.¹³¹
- **February 28, 2025:** The alleged date when the challenged arbitrators are summoned to take their statement.¹³²
- **May 26, 2025:** MML's State Counsel is subpoenaed for testimony.
- **June 26, 2025:** Respondent notifies the Tribunal of Prosecution Order No. 70 and files its Request for Disclosure.
- **June 30, 2025:** Prof. Radicati di Brozolo and Prof. Arias state they have nothing to disclose and reaffirm their impartiality and independence.
- **July 1, 2025:** MML's State Counsel's Office starts requesting information from the Anti-Corruption State Counsel's Office regarding the criminal investigation.
- **July 8, 2025:** The Anti-Corruption State Counsel's Office states that preliminary measures are being conducted, which means that "all parties to the proceeding are aware of the prosecution orders and/or rulings of the office."¹³³
- **July 10, 2025:** MML's State Counsel's Office requests additional information from the Anti-Corruption State Counsel's Office, as well as copies of proof of service documents.
- **July 24, 2025:** The Anti-Corruption State Counsel's Office sends various documents to Respondent with proof of service in the context of the criminal investigation.
- **August 8, 2025:** Respondent files its Challenge.

92. Having engaged in a chronological analysis of these facts, I cannot accept that the relevant start date of the 15-day period is July 24, 2025, for the reasons stated below. An objective review of the facts shows that there were clear signs that should have alerted Respondent into action based on the information it received between May and July 2025. In essence, these elements evidence that it learned of the relevant facts prior to July 24, 2025.

C. The Subpoena to MML's State Counsel for Testimony and the Request for Disclosure

93. First, I will start by pointing out that, if May 26, 2025, was indeed the first time Respondent became aware that the reopening of the criminal investigation was ordered on February 10, 2025,¹³⁴ then it sat on that information for over a month before taking any sort of action on that

¹³¹ Attachments to Official Letter No. D000865-2025-JUS, p. 3 (**MML-62, as updated**).

¹³² Attachments to Official Letter No. D000865-2025-JUS, p. 5 (**MML-62, as updated**).

¹³³ Official Letter No. D000812-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the Lima Municipal State Counsel's Office, July 8, 2025 (**MML-72**).

¹³⁴ It should be noted that an examination of its briefs, as well as the evidence produced by Respondent, does not clearly show how or when Respondent was notified (or became aware) of Prosecution Order No. 70. Respondent has not specified either whether it was subpoenaed by the Second Prosecution Office to provide information on the arbitration, either before or after the MML's State Counsel was subpoenaed for a statement but merely mentioned that the subpoena to give testimony took place on May 26, 2025. Moreover, the May 26, 2025 (**MML-**

basis.¹³⁵

94. In addition to reopening the investigation, Prosecution Order No. 70 ordered, among other things, that statements be obtained from the parties under investigation (the arbitrators) and from MML's State Counsel. It also ordered that MML report on the procedural status of this arbitration, including the outcome of its previous challenge against the Tribunal, providing that all preliminary measures were to be carried out within a period of five months.
95. In this context, Respondent could reasonably have inferred that, by May 26, 2025—the date when MML's State Counsel was subpoenaed—it was highly likely that Prosecution Order No. 70 (which had been issued more than three and a half months earlier) had already been notified to the arbitrators, in their capacity as, most importantly, the parties under investigation in the criminal proceedings, and that, therefore, they had failed to disclose that fact. In fact, as established later, the arbitrators were actually notified electronically on the very same day Prosecution Order No. 70 was issued.¹³⁶
96. On June 26, 2025, one month after the State Counsel's subpoena was received, Respondent filed its Request for Disclosure with the Tribunal, where it reproduced the ruling in Prosecution Order No. 70, asking the arbitrators to confirm whether they had already been notified that the criminal investigation had been reopened.¹³⁷ It also requested that they state whether they had been notified at all of the preliminary measures ordered (in particular, their additional statement and the disclosure of their bank records).¹³⁸ The most important aspect of the Request for Disclosure was, however, the news that the criminal investigation had been reopened more than three months earlier, without the arbitrators having disclosed that information to the Parties. I will address the implications of the additional preliminary measures in more detail

58) subpoena, consisting of just one page, merely orders the State Counsel to appear to provide a statement; it does not fully or partially reproduce Prosecution Order No. 70, let alone refer to or provide the Prosecution Order as an attachment. Respondent claims to have found out about it when transcribing Prosecution Order No. 70 in its Request for Disclosure, "upon an examination of the case file" (Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, p. 3 (**MML-59**)), without discussing how it gained access to the documents on the criminal investigation case file.

¹³⁵ The different alternatives available to Respondent to confirm whether the challenged arbitrators had been notified of the reopening of the investigation (as was to be expected by late May) and, accordingly, had failed to disclose this fact, included (i) directly requesting information from the arbitrators themselves; or (ii) pursuing such request via institutional channels. Respondent's very own actions show that, in the end, it resorted to both alternatives, starting, just one month later, by submitting its Request for Disclosure.

¹³⁶ Challenge, ¶ 30; Subpoena to MML's Deputy State Counsel by the Prosecutor at the Second Corporate Provincial Prosecution Office for Crimes of Corruption by Public Officials of Lima, May 26, 2025 (**MML-58**); Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025 (**MML-59**); Attachments to Official Letter No. D000865-2025-JUS, p. 3 (**MML-62, as updated**).

¹³⁷ Caso No. 506015506-2023-249, Prosecution Order REA No. 70-2024-4, Fourth Superior Prosecution Office for Crimes of Corruption, February 10, 2025, pp. 13-15 (**MML-56**); Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, (**MML-59**).

¹³⁸ Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, pp. 5-6, items 2 and 4 (**MML-59**).

further below as part of my admissibility analysis.

D. The Arbitrators' Response to the Request for Disclosure and the Moment Non-Disclosure Occurred

97. Four days after receiving the Request for Disclosure, the challenged arbitrators' responses of June 30, 2025, gave rise to their failure to disclose. On that date, the arbitrators made a decision not to respond to the questions raised by Respondent (the questions included in the first four items of its Request for Disclosure), merely insisting on their independence and impartiality (in response to the final item in the Request).¹³⁹ In other words, they did not disclose that they had been notified and, in that case, when, nor did they disclose that they had not been notified. They simply decided not to address the Respondent's questions in the first four final items, while still responding (albeit partially) to the fifth and final item, confirming their independence and impartiality as regards Prosecution Order No. 70.
98. It is my view that, by then, Respondent already had more than enough information to make its challenge, insofar as it believed its rights to have been impaired by the arbitrators' non-disclosure. However, rather than filing its challenge, Respondent continued making internal inquiries, attempting, among other things, to obtain documents that would establish that notice had been given of Prosecution Order No. 70, as well as the measures ordered in connection with the arbitrators. Nevertheless, I believe obtaining such evidence (which, among other things, would prove the date of notice) was not decisive. It would only confirm what Respondent already knew, although without absolute certainty, through means that were more than adequate to prove that the arbitrators had already been notified and had elected not to disclose the information.
99. On July 1, 2025, Respondent sent an official letter to the Anti-Corruption State Counsel's Office stating that it was "of the utmost importance [...] to learn about the status of the proceedings," and, "in particular, whether said Prosecution Order [No. 70] had been notified to" the challenged arbitrators.¹⁴⁰
100. On July 8, 2025, Respondent received a response to its two questions. Making express reference to the inquiry that MML was seeking to be informed "of the current status of the prosecution file [...] also whether Prosecution Order [No. 70] [...] has been notified to the arbitrators—the parties under investigation," the Anti-Corruption State Counsel's Office stated that "preliminary measures are being conducted" and "all parties to the proceeding are aware of the prosecution orders and/or rulings of the office."¹⁴¹ As correctly pointed out by Claimant,

¹³⁹ Emails from the Challenged Arbitrators, June 30, 2025 (**MML-60**).

¹⁴⁰ Official Letter No. D001833-2025-MML-PPM from the Municipal State Counsel's Office to the Anti-Corruption State Counsel's Office, July 1, 2025 (**MML-71**).

¹⁴¹ Official Letter No. D000812-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the Lima

these letters were not submitted with the Challenge but came to light as a result of a later request by Claimant, who accuses Respondent of having concealed information that “demonstrates the belated nature of its request.”¹⁴²

101. On July 10, 2025, Respondent contacted the Anti-Corruption State Counsel’s Office once again. Despite arguing that confirmation that the preliminary measures ordered in Prosecution Order No. 70 were being conducted “[would] mean[] that” all parties to the proceeding are aware of the prosecution orders and/or rulings of the office, Respondent requested express confirmation that the prosecution order had been notified to the arbitrators. And, if it had, that it be provided with “a copy of the relevant proof of service.”¹⁴³
102. On July 15, 2025, the Anti-Corruption State Counsel’s Office stated that it was unable to provide the requested information, let alone the requested documents, since the criminal investigation was confidential.¹⁴⁴
103. It is my view that, even from a perspective favorable to Respondent’s admissibility arguments, based on the Anti-Corruption State Counsel’s Office’s response, since July 8, 2025, there is no doubt that Respondent had adequate information to file its Challenge. Making reference to the fact that “all parties to the proceeding” [*i.e.*, including the arbitrators under investigation] were aware of the “prosecution orders and/or rulings of the office” [*i.e.*, including Prosecution Order No. 70], the Anti-Corruption State Counsel’s Office’s categorical answer cleared up any questions that might still remain as to the non-disclosure by the challenged arbitrators.¹⁴⁵

E. The Anti-Corruption State Counsel’s Office’s Response of July 24, 2025, and Proof of Service for the Remaining Preliminary Measures

104. Through additional written requests and even in-person meetings, Respondent insisted on its efforts to obtain information and, in particular, evidence from the Anti-Corruption State Counsel’s Office, managing even to get the latter to disregard the confidential nature of the investigation and share investigation files with it.
105. Consistently with my previous statements, it is my view that the information contained in the Anti-Corruption State Counsel’s Office’s letter of July 24, 2025, is irrelevant for the purposes of the Challenge’s admissibility analysis, as it merely confirms circumstances which

Municipal State Counsel’s Office, July 8, 2025 (**MML-72**). Emphasis added.

¹⁴² Response, ¶ 105.

¹⁴³ Letter from Respondent, August 18, 2025; Official Letter No. D001926-2025-MML-PPM from the Municipal State Counsel’s Office to the Anti-Corruption State Counsel’s Office, July 10, 2025, pp. 1-2 (**MML-73**).

¹⁴⁴ Letter from Respondent, August 18, 2025; Official Letter No. D000833-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel’s Office to the MML’s Deputy State Counsel, July 15, 2025, pp. 1, 3-4 (**MML-74**).

¹⁴⁵ Official Letter No. D000812-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel’s Office to the Lima Municipal State Counsel’s Office, July 8, 2025 (**MML-72**).

Respondent had most certainly already been aware of since July 8, 2025, at the very least. As discussed in *Belokon v. Kyrgyz Republic*, the relevant start date for the 15-day period is the date on which the party learns of a cumulative set of circumstances sufficient to form the basis of its challenge,¹⁴⁶ not the date on which it gets confirmation of already-known circumstances. The triggering occurrence must be the receipt of new relevant or decisive information which, combined with the information that was previously available, could lead to the challenge, namely, the proverbial straw that broke the camel's back.

106. In essence, the new information contained in the July 24, 2025, letter consists of the three attachments provided by the Anti-Corruption State Counsel's Office to its response letter: (i) a copy of proof of service of Prosecution Order No. 70 on counsel for the challenged arbitrators; (ii) a copy of what appears to be notice of the summons to the arbitrators for a statement ("Prosecution Order No. 09, issued in Prosecution File No. 249-2023"); and (iii) a copy of what appears to be the receipt for the prosecution's order to release the bank records.¹⁴⁷
107. In my opinion, this information is altogether secondary in interpreting the situation in its proper context, as is confirmed also by Respondent's very own statements in its Request for Disclosure. In particular, Respondent's statement insisting on the relevance of the fact that the decision to reopen of the investigation be "noted on the record,"¹⁴⁸ in order that both the Parties and the Tribunal can assess its impact on the case and the appropriate course of action. Also, its statement expressly requesting the arbitrators to confirm whether Prosecution Order No. 70 "has created a conflict of interest."¹⁴⁹
108. Even though, up to July 24, 2025, Respondent did not have a copy of proof of service of Prosecution Order No. 70 to the challenged arbitrators, the fact of the matter is that it did not need a copy of that document to challenge the arbitrators due to their failure to disclose. Assuming that any question was still possible by then as to whether the challenged arbitrators had actually been notified, such questions were dispelled on July 8, 2025. The copy of proof of service did not contribute any information that would change that fact, but merely secondary information, such as the date of such notice (which, incidentally, matched the date of issuance of Prosecution Order No. 70). Additionally, confirmation that the Second Prosecution Office had requested the preliminary measures, and the date when these were enforced, did not contribute any materially new information that could be considered to form the basis of the

¹⁴⁶ *Valeri Belokon v. Kyrgyz Republic*, PCA Case No. AA518, Decision on Challenges to Arbitrators Professor Kaj Hober and Professor Jan Paulsson, October 6, 2014, ¶ 55 (**RDL-59**).

¹⁴⁷ Challenge, ¶ 33; Official Letter No. D000865-2025-JUS/PGE-PPEDC from the Anti-Corruption State Counsel's Office to the MML's Deputy State Counsel, July 24, 2025 (**MML-61**); Attachments to Official Letter No. D000865-2025- JUS (**MML-62, as updated**).

¹⁴⁸ Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, p. 5 (**MML-59**).

¹⁴⁹ Letter from MML's State Counsel's Office to the Tribunal, June 26, 2025, p. 6, final item (**MML-59**).

Challenge and thus “save” an untimely challenge.

109. For the reasons stated above, it is my conclusion that the Challenge was untimely under Article 13(1) of the UNCITRAL Rules, and, accordingly, it is inadmissible; an analysis of the merits of the challenge is unwarranted. In any event, it should be noted that, even if the Challenge had been filed within the proper time period, an examination of the non-disclosure in its proper context and in the light of all relevant circumstances would have led to a finding that there are no justifiable doubts as to the impartiality and independence of Prof. Radicati di Brozolo and Prof. Arias.

F. The “Cumulative Set of” Additional “Circumstances” Mentioned by Respondent

110. In addition, Respondent seems to be suggesting that there is a “cumulative set of circumstances” surrounding the alleged non-disclosure that would also serve as grounds for its Challenge.¹⁵⁰ However, it should be noted that, in its Additional Comments, Respondent stated that the Challenge was based solely on the first ground concerning the challenged arbitrators’ failure to disclose.¹⁵¹ Specifically, it pointed out that the Challenge (i) “is not based on the existence of the criminal investigation itself, but rather on the fact that the Challenged Arbitrators failed to disclose;”¹⁵² and that it (ii) “is not based on Rutas’ misrepresentations and accusations” but on the challenged arbitrators’ non-disclosure instead.¹⁵³
111. Moreover, Claimant argues that, insofar as the Challenge is based on its comments throughout 2024, it would also be untimely.¹⁵⁴ It further argues that the Challenge is based on the criminal proceeding Respondent itself initiated in 2023.¹⁵⁵
112. It is my view that, in any event, insofar as the Challenge is based on said additional circumstances, this ground would also be untimely and without merit.

IV. COSTS

113. As regards Claimant’s request for a costs award in connection with this Challenge, the power to rule on and allocate the costs of the arbitration, including the fees and expenses of the appointing authority and other costs associated with the Challenge, rests exclusively with the Tribunal, pursuant to Articles 40 and 42 of the UNCITRAL Rules. I thus lack the authority, in my capacity as appointing authority, to make any decisions on a costs claim.

¹⁵⁰ Challenge, ¶¶ 3, 23.

¹⁵¹ Respondent’s Additional Comments, ¶¶ 26, 33.

¹⁵² Respondent’s Additional Comments, ¶ 26.

¹⁵³ Respondent’s Additional Comments, ¶ 33.

¹⁵⁴ Claimant’s Additional Comments, p. 7.

¹⁵⁵ Response, ¶ 8.

V. DECISION

NOW, THEREFORE, I, Marcin Czepelak, Secretary-General of the PCA, having considered the submissions of the Parties and having established to my satisfaction my competence to act as appointing authority and decide this Challenge in accordance with the UNCITRAL Rules, do,

HEREBY REJECT the Challenge raised by Respondent against Prof. Radicati di Brozolo and Prof. Arias.

Done at The Hague, October 27, 2025.

[Signature]

Marcin Czepelak