

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gran Colombia Gold Corp.

v.

Republic of Colombia

(ICSID Case No. ARB/18/23)

**PROCEDURAL ORDER No. 7
On the Organization of the Hearing**

Members of the Tribunal

Ms. Jean Kalicki, President of the Tribunal
Professor Bernard Hanotiau, Arbitrator
Professor Brigitte Stern, Arbitrator

Assistant to the President of the Tribunal

Dr. Joel Dahlquist

Secretary of the Tribunal

Ms. Ana Constanza Conover Blancas

21 September 2020

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I. PROCEDURAL BACKGROUND

1. On 15 May 2020, the Tribunal advised the Parties that due to the COVID-19 pandemic, it invited the Parties to confer on the way they wished to proceed in relation to the hearing on jurisdiction (the “**Hearing**”). In order to preserve the Hearing dates of 28-30 September 2020, the Tribunal invited the Parties to confer and inform the Tribunal whether they would be amenable to conducting the Hearing virtually.
2. On 22 May 2020, the Parties agreed that ICSID should develop a contingency plan to hold the Hearing virtually. In addition, the Parties proposed to confer in the week of 3 August 2020 and at that time present a common view (or their separate views) on whether the Hearing should be in-person or virtual.
3. On 25 May 2020, the Tribunal confirmed that it was agreeable to the Parties’ proposal and invited them to report back to the Tribunal on whether the Hearing should be in-person or virtual during the week of 3 August 2020.
4. On 7 August 2020, the Parties confirmed their agreement to hold the Hearing virtually, subject to the Tribunal’s views. On the same date, the Tribunal confirmed that, in light of the Parties’ agreement, the Hearing would be held by video conference. In addition, and in view of the absence of cross-examination at the Hearing, the Tribunal released 30 September 2020 from the list of hearing dates.
5. Pursuant to Section 20.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by telephone conference on 11 September 2020 (the “**Pre-Hearing Conference**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Tribunal:

Ms. Jean Kalicki, President of the Tribunal
Prof. Bernard Hanotiau
Prof. Brigitte Stern

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Assistant to the President of the Tribunal:

Dr. Joel Dahlquist

ICSID Secretariat:

Ana Conover, Secretary of the Tribunal

On behalf of the Claimant:

John J. Hay, Dentons

Diora M. Ziyaeva, Dentons

Barton Legum, Dentons

On behalf of the Respondent:

Ana María Ordoñez, Agencia Nacional de Defensa Jurídica del Estado

Elizabeth Prado, Agencia Nacional de Defensa Jurídica del Estado

John Adam, Latham & Watkins

Diego Romero, Latham & Watkins

Paloma García Guerra, Latham & Watkins

6. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft agenda and the draft Procedural Order circulated to the Parties on 14 August 2020, and the Parties' joint statement of 2 September 2020 advising the Tribunal of the agreements reached on the various items, as well as their respective positions where no agreement was reached.
7. An audio recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on 11 September 2020.
8. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT

9. The Hearing will take place virtually through the video conference platform called Zoom, hosted by FTI Consulting, Inc., on 28 and 29 September 2020. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

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B. ORDER OF PROCEEDINGS AND SCHEDULE

10. In order to accommodate the multiple time zones of all Hearing Participants, the Hearing will start each day at 9:00 am (EDT). It is expected to conclude by 2:00 pm (EDT) at the latest, and may well conclude earlier each day, as reflected in the order of proceedings and notional timetable reflected in the agenda incorporated as **Annex A**.
11. There will be at least one break during each Hearing day, the first day of 20 minutes and the second day of 15 minutes. Additional short breaks may be taken as reasonably requested by any participant.
12. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION

13. A total number of five (5) hours are reserved for each Hearing day. For the first hearing day, time shall be allocated as follows: **(i)** twenty (20) minutes are reserved for housekeeping, introductions, and any procedural or logistical issues; **(ii)** one (1) hour and twenty (20) minutes shall be reserved for each Party for opening statements; **(iii)** forty (40) minutes are reserved for Tribunal questions; **(iv)** twenty (20) minutes are reserved for breaks; and the remaining time shall be reserved for slippage or to be allocated by the Tribunal as appropriate in the circumstances. For the second hearing day, time shall be allocated as follows: **(i)** fifteen (15) minutes are reserved for housekeeping; **(ii)** 30 minutes shall be reserved for each Party for rebuttal statements; **(iii)** fifteen (15) minutes are reserved for breaks; and the remaining time shall be reserved for Tribunal questions, slippage or to be allocated by the Tribunal as appropriate in the circumstances.
14. As per the above and as reflected in Annex A, each Party shall be allowed a maximum of one (1) hour and twenty (20) minutes for its opening statement, and each Party shall be allowed a maximum of thirty (30) minutes for its rebuttal statement.

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15. In calculating time used during the Hearing, the Tribunal incorporates the following presumptions:

- (a) Time used by the Parties in oral argument shall be attributable to the Party making such argument.
- (b) Time attributable to minor Tribunal questions to counsel, to clarify points being made, shall not interrupt the clock for the Party otherwise conducting that argument, but any extended Tribunal questioning will be allocated to reserved Tribunal time.
- (c) Time spent on incidental procedural discussions will not be allocated to Party time, but in the event of significant applications or objections requiring extended discussion, time spent resolving the matter will be charged against the Party which unsuccessfully made the application or objection or wrongfully resisted it.
- (d) Lost time attributed to the late arrival of counsel, other than for technological reasons outside of reasonable Party control, will be charged against the Party responsible.
- (e) The Parties are expected to seek to use the Hearing days efficiently and to avoid unnecessary slippage. In the event of excess slippage, the Tribunal may revisit the length of one or more sitting days, or in unusual circumstances the time allocations of the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.
- (f) The Secretary of the Tribunal will keep a chess clock account of time used and advise the Parties at the end of each Hearing day of the length of time used.

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D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

16. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared *jointly* by the Parties. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed.
17. The Electronic Hearing Bundle index shall identify with **RED** material that has been designated as “confidential information”, in accordance with Article 830(2) of the Canada-Colombia FTA and Section 21.7 of Procedural Order No. 1.
18. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform no later than **21 September 2020**. To ensure proper operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform and including a consolidated (non-hyperlinked) index.
19. Prior to the Hearing, the Members of the Tribunal, the Secretary of the Tribunal and the Parties shall download the Electronic Hearing Bundle from BOX into their own devices to have access to it offline during the Hearing. The Court Reporter and Interpreters will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
20. Pursuant to the Parties’ agreement, a USB device with a copy of the Electronic Hearing Bundle shall be delivered to the Members of the Tribunal, the Secretary of the Tribunal, the interpreters and the court reporters no later than **25 September 2020**.

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2. Demonstrative Exhibits

21. Demonstrative exhibits (including a Power Point or other slide presentations) shall be used in accordance with Section 16.8 of Procedural Order No. 1 (reproduced below), with certain adjustments indicated in paragraph 22 *infra*:

16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.

22. To account for the virtual/remote nature of the Hearing, Section 16.8 of Procedural Order No. 1 above is amended such that: **(i)** hard copy submission of demonstratives is not required; and **(ii)** an electronic copy of each demonstrative shall be distributed by the Party intending to use it via email sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Members of the Tribunal, to the court reporter, and interpreters, no later than one (1) hour *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired.

23. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibit to the case folder in the BOX filesharing platform, designating each with the corresponding number: “CD-__” for Claimant’s demonstrative exhibits, and “RD-__” for Respondent’s demonstrative exhibits.

3. Electronic Presentation of Evidence

24. Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 22 above downloaded into their own devices and available for access offline.

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25. Any Hearing Participant has the technical ability to display a document to all Hearing Participants using Zoom’s “Share Screen” function. The Participant displaying the document will be the only one with the ability to scroll through the document being displayed.
26. Documents that do not form part of the record may not be displayed at the Hearing.

E. AUDIO/VIDEO RECORDING

27. The provisions of Procedural Order No. 1, Section 22.1 concerning audio recording (reproduced below) apply.

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Members of the Tribunal.

28. The audio and video recording shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Tribunal at the conclusion of the Hearing. Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.

F. TRANSCRIPTION

29. The provisions of Procedural Order No. 1, Sections 11.8 and 22.2 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraphs 30 and 31 below.

11.8. Either procedural language, English or Spanish, may be used during hearings, with simultaneous interpretation to the other procedural language. Transcripts shall be taken in both procedural languages.

[...]

22.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

The parties shall agree on any corrections to the transcripts within thirty (30) days of the later of the dates of the receipt of the complete sound

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recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

30. Real-time court reporting in English and Spanish shall be made available to the Hearing Participants via an online link connection to be provided by the English and the Spanish court reporters. Hearing Participants shall connect to the transcript by opening this link in a browser window separate from the Zoom browser window. The details (link, password) and instructions to connect to the streamed transcripts shall be provided by the ICSID Secretariat to the Hearing Participants before the start of the Hearing day.
31. The deadline for corrections to the transcript shall be 30 days following the later of the dates of the receipt of the sound recordings and/or transcripts.

G. INTERPRETATION

32. ICSID will make the required arrangements for simultaneous interpretation into English and Spanish and communicate them to the Parties and Tribunal in due course.
33. Each Participant should select a language channel when connecting to the Hearing (English or Spanish). Once a language selection is made, it is highly recommended that the Participant only use that language and avoid switching interpretation channels.
34. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
35. Each Active Participant should, insofar as possible, circulate any speaking notes to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters (see Annex B with their email addresses) and are to be treated as confidential information.

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H. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS

36. The provisions of Procedural Order No. 1, Sections 23.1 and 23.2 (reproduced below) apply.
- 23.1. The Tribunal and the parties will consider the need for post-hearing submissions at the close of the hearing.
 - 23.2. The Tribunal shall fix the modalities (including format and time) for submissions of statements of costs at the close of the hearing.

I. OPEN HEARING

37. In accordance with Section 21.7 of Procedural Order No. 1 and Article 830(2) of the Canada-Colombia FTA, the Hearing shall be open to the public. The Tribunal may hold portions of the Hearing *in camera* to the extent necessary to ensure the protection of confidential information.
38. The recordings of the Hearing will be posted for viewing in the ICSID website, in English and Spanish.
39. Any information designated by one or both of the Parties as being confidential will be excluded from the public recordings. The required mechanics for the Parties to alert the Tribunal about the use of confidential information during the Hearing are addressed in the Protocol attached hereto as **Annex C**.
40. The availability of the Hearing recordings will be announced publicly via the ICSID website in English and Spanish.

J. VIRTUAL HEARING ARRANGEMENTS

41. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

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1. Testing

42. The Secretariat will conduct technical tests with the Tribunal and each Party in advance of the Hearing, to test connectivity to the video conference platform Zoom and to the real-time transcription. ICSID recommends a minimum of two tests for each site that will connect to the Hearing, and for as many Hearing Participants as possible to connect for each test. The date of each test and the access details will be communicated in due course.

2. Participants

43. Each Party has provided its List of Participants (“**Hearing List of Participants**”) for the Hearing, using the format provided in **Annex B**. In addition, each Party has designated the participants that will have an active speaking role (“**Active Participants**”), to distinguish them from those who will be passive attendees (“**Passive Participants**”).
44. All Hearing Participants shall clearly denote their names and affiliation when connecting to Zoom. Example: “Jane Doe (ICSID).” Any name appearing in Zoom shall also be listed on the Hearing List of Participants (See Annex B). Should there be a discrepancy at any point during the Hearing, the Secretary of the Tribunal will alert the Tribunal, and the Tribunal will promptly address the matter. A list of the Hearing Participants can be viewed in Zoom’s “Participants” tab. The Zoom moderator will also have an Active User Participants List which must match the Final List of Participants. This should take care of any privacy concerns.

3. Connectivity

45. To improve operation of the Zoom platform, the Parties are advised to keep the number of video connections to a minimum and to Active Participants only. Passive Participants should preferably join the meeting through their computer but connecting only their audio (*i.e.* turning off their video).
46. All Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording.

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4. Equipment and Set Up

47. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use a headset equipped with a microphone and connected through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. Internal microphones do not give as good a sound quality as external microphones. If not available, Active Participants are asked to speak close to the microphone of the computer or laptop from which they are connected to the Zoom session.
48. While not indispensable, Hearing Participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: **(i)** the Zoom video connection; **(ii)** the online real time transcript; and **(iii)** offline documents.
49. Hearing Participants joining via video shall avoid sitting with a window or source of light behind them because this darkens their image on screen.

5. Break-Out Rooms

50. FTI Consulting will arrange for Zoom break-out rooms for each Party and the Tribunal, which shall be separate from the Zoom virtual Hearing Room. Each party shall make its own arrangements for use of any other separate channel of communication to handle internal communications.

For and on behalf of the Tribunal,

[Signed]

Ms. Jean Kalicki
President of the Tribunal
Date: 21 September 2020

Procedural Order No. 7 – Annex A

ANNEX A

GRAN COLOMBIA GOLD CORP.
v.
REPUBLIC OF COLOMBIA
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AGENDA

Hearing on Jurisdiction

28 and 29 September 2020
Videoconference

Day 1: Monday, 28 September 2020

TIME	PROCEDURAL STEP
9 AM - 9:20 AM (EDT)	Housekeeping / procedural and logistical matters (20 min)
9:20 AM - 10:40 AM (EDT)	Respondent's Opening Statement (1h20min)
10:40 AM – 11:00 AM (EDT)	Tribunal's questions (20 min)
11:00 AM – 11:20 AM (EDT)	Break (20 min)
11:20 AM - 12:40 PM (EDT)	Claimant's Opening Statement (1h20min)
12:40 PM – 1:00 PM (EDT)	Tribunal's questions (20 min)
Remaining time	Slippage

Day 2: Tuesday, 29 September 2020

TIME	PROCEDURAL STEP
9 AM - 9:15 AM EDT	Housekeeping (15 min)
9:15 AM - 9:45 AM EDT	Respondent's Rebuttal Statement (30 min)
9:45 AM - 10:15 AM EDT	Claimant's Rebuttal Statement (30 min)
10:15 AM - 10:30 AM EDT	Break (15 min)
Remaining time	Tribunal's questions / procedural and logistical matters

Procedural Order No. 7 – Annex B

ANNEX B

GRAN COLOMBIA GOLD CORP.
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LIST OF PARTICIPANTS

Hearing on Jurisdiction

28 and 29 September 2020
Videoconference

Name	Role/ Affiliation	Time zone	Active speaker or not	Email address/ Phone number
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TRIBUNAL

Ms. Jean Kalicki	President	EDT	Active Speaker	jean.kalicki@kalicki-arbitration.com
Prof. Bernard Hanotiau	Arbitrator	CEST	Active Speaker	bernard.hanotiau@hvdb.com
Prof. Brigitte Stern	Arbitrator	CEST	Active Speaker	brigitte.stern@jstern.org

TRIBUNAL ASSISTANT

Dr. Joel Dahlquist	Assistant to the President of the Tribunal	EDT		joel.dahlquist@arbchambers.com
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ICSID SECRETARIAT

Ms. Ana Conover	Secretary of the Tribunal	EDT		aconover@worldbank.org
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CLAIMANT

Counsel:

John J. Hay	Dentons	EDT	Active Speaker	john.hay@dentons.com
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Barton Legum	Dentons	CEST	Active Speaker	barton.legum@dentons.com

Party representatives:

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Alejandro Ramirez Echeverry	Gran Colombia Gold Corp	COT		alejandro.ramirez@grancolombiagold.com.co
Jorge Neher	Dentons Cardenas and Cardenas	CDT		jorge.neher@dentons.com

Administrative and technical support:

Karen Ogle	Dentons	EDT		karen.ogle@dentons.com
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RESPONDENT

Counsel:

Camilo Gómez Alzate	Agencia Nacional de Defensa Jurídica del Estado	COT	Active speaker	camilo.gomez@defensajuridica.gov.co
Ana María Ordoñez	Agencia Nacional de Defensa Jurídica del Estado	COT	Active speaker	ana.ordonez@defensajuridica.gov.co

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Diego Romero	Latham & Watkins	CEST		Diego.Romero@lw.com
Paloma García Guerra	Latham & Watkins	CEST		Paloma.Garcia-Guerra@lw.com
<i>Party representatives:</i>				
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<i>Administrative and technical support:</i>				
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Christophe Tanguy	Latham & Watkins	CEST		Christophe.Tanguy@lw.com

NON-DISPUTING TREATY PARTY (GOVERNMENT OF CANADA)

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Maria Cristina Harris	Trade Law Bureau, Government of Canada	EDT		MariaCristina.Harris@international.gc.ca

COURT REPORTERS

Ms. Dawn Larson	Worldwide Reporting, LLP
Mr. Dante Rinaldi	D-R Esteno

INTERPRETERS

Ms. Silvia Colla	
Mr. Daniel Giglio	
Mr. Charles Roberts	

Procedural Order No. 7 – Annex B

Zoom OPERATOR	
Mr. Steve Schwartz	FTI Consulting Steve.Schwartz@fticonsulting.com

Procedural Order No. 7 – Annex C

ANNEX C

Gran Colombia Gold Corp.

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(ICSID Case No. ARB/18/23)

Hearing on Jurisdiction
28 and 29 September 2020
Videoconference

PROTOCOLS FOR PROTECTION OF “CONFIDENTIAL INFORMATION”

A. OBJECTIVES

1. These protocols are established to ensure:
 - a. Appropriate logistical arrangements for the open Hearing, in accordance with the transparency regime established by Article 830 of the Canada-Colombia FTA.
 - b. The protection of “confidential information” (as defined in Article 838 of the Canada-Colombia FTA).
 - c. An efficient, smooth and minimally disrupted Hearing.

B. GENERAL RULES

2. As agreed by the Parties, the Hearing will be recorded. A copy of the recording will be posted on the ICSID website within 30 days after the conclusion of the Hearing. The recording will be available for 2 days.
3. “Confidential information” shall be protected from disclosure by holding relevant parts of the Hearing “in private”, instead of publicly.
4. The privacy of the Hearing shall be achieved, when necessary, through the moderation of the video feed.
5. The term “moderation” means that the video recording of the hearing will be edited by ICSID to exclude confidential information, within 15 days after the hearing concludes. The Parties

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will have the opportunity to review the video recording before it is posted on the ICSID website.

6. The Parties shall follow the protocols established below to alert the Tribunal of the use of “confidential information” during the Hearing and request the “moderation” of the video feed.

C. PROTOCOLS

7. At any time during the Hearing, a Party may request that a part of the Hearing be held in private and that confidential information be excluded from the recording. To this effect, a Party shall inform the Tribunal **before** the “confidential information” is discussed, addressed or shown at the Hearing.
8. The Parties are responsible to identify, **before** discussing, addressing or showing documents or information, whether these are “confidential information” or could raise confidentiality issues.
9. To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements so that those which involve “confidential information” are grouped together, wherever possible.
10. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention.
11. If a Party has an objection to a moderation request made by the other Party, it shall alert the Tribunal as soon as possible. The Tribunal shall rule on any dispute between the Parties in that respect promptly after the hearing.
12. Resumption of the video feed shall be requested by the Party which requested and obtained moderation or proposed by the Tribunal. Resumption may also be requested by the other Party if it deems it necessary.