

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**IC Power Ltd and Kenon Holdings Ltd**

**v.**

**Republic of Peru**

**(ICSID Case No. ARB/19/19)**

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**PROCEDURAL ORDER No. 5**

***Members of the Tribunal***

Prof. Luca G. Radicati di Brozolo, President of the Tribunal

Mr. David R. Haigh, Arbitrator

Mr. Eduardo Siqueiros T., Arbitrator

***Secretary of the Tribunal***

Mr. Marco Tulio Montañés-Rumayor

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November 28, 2021

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**I. PROCEDURAL BACKGROUND**

1. Subject to the terms of this order, the Hearing shall otherwise be conducted in accordance with the applicable provisions of Procedural Order No. 1 (“**PO1**”).
2. Pursuant to Section 22 of PO1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by videoconference on **November 12, 2021** (the “**Pre-Hearing Conference**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Tribunal:

Prof. Luca G. Radicati di Brozolo  
Mr. David R. Haigh  
Mr. Eduardo Siqueiros T.

Assistant to the Tribunal:

Mr. Fabio Giuseppe Santacroce

ICSID Secretariat:

Mr. Marco Tulio Montañés-Rumayor  
Ms. Ivania Fernández

On behalf of the Claimants:

Ms. Caroline Richard  
Ms. María Julia Milesi  
Ms. Carolina de Trazegnies

On behalf of the Respondent:

Ms. Jennifer Haworth McCandless  
Ms. Marinn Carlson  
Mr. Ricardo Puccio  
Ms. Maria Carolina Durán  
Ms. Courtney Hikawa

3. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on November 8, 2021, and the Parties’ joint statement of November 11, 2021 indicating to the Tribunal the agreements reached on the various items, as well as their respective positions where no agreement was reached.
4. 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 November 12, 2021.
5. 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

6. The Hearing will be held from Monday, December 13 to Sunday, December 19, 2021, excluding Saturday, December 18, 2021, with Monday, December 20, 2021 held in reserve.
7. The Hearing will take place virtually through the video conference platform Zoom and hosted by Sparq (the “**Operator**”). The details to join the Zoom session will be shared by ICSID in due course.

### B. ORDER OF PROCEEDINGS AND SCHEDULE

8. In order to accommodate the multiple time zones of the Participants, the Hearing will start each day at 9:30 am Washington DC time. It is expected to conclude by 3:00 pm Washington DC time. Exceptionally, Day 1 of the Hearing will start at 9:00 am Washington DC time and is expected to conclude by 4:00 pm Washington DC time.
9. The order of proceedings and structure of the Hearing will be as indicated in the schedule incorporated as **Annex A**.
10. 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

11. The Parties will allocate their time in accordance with this Order and Annex A containing the Hearing schedule.
12. Pursuant to Section 21.4 of PO1, “each party will be afforded equal time for the presentation of its case. Within that timing, opening and closing statements by each party should be allotted equal time, but otherwise the Tribunal will permit the parties to use their remaining allotted time in their discretion. The Tribunal will review these directions with the parties at the pre-hearing conference call and will, in any event, remain free to make any adjustments it may deem appropriate.”
13. Time used by the Parties in oral argument or in examination of witnesses and experts shall be attributable to the Party making such argument or conducting such examination. For clarity, the following will not be counted against any Party’s time:
  - a. Time spent on questions posed by the Tribunal and on responses to those questions;
  - b. Time spent on administrative or organizational matters; and
  - c. Time spent addressing objections during examinations.

14. The Tribunal will reserve 30 minutes each day for housekeeping, administrative issues, and questions to the Parties. Time used for housekeeping or to resolve technical difficulties shall be counted against the Tribunal's time, if needed.
15. There will be three breaks during the Hearing day, two of 15 minutes and another of 30 minutes.
16. Accordingly, considering a total of six (6) Hearing days, with a 7<sup>th</sup> day in reserve, each Party shall have a total of 12.75 working hours (considering the longer first day and not counting the day in reserve) available to it during the entire Hearing.
17. At an appropriate time after the examination of the fact witnesses, the Tribunal will consult with the Parties to determine whether the reserve hearing day, December 20, 2021, will be used.
18. For purposes of organization of the Hearing, the Parties shall have the following allocated time for each stage of the Hearing:
  - (a) *Opening Statement*. Each Party shall be allowed a maximum 2 hours 45 minutes for its Opening Statement.
  - (b) *Witnesses/Expert examinations*:
    - *Direct Examination of Fact Witnesses*. The direct examination of a fact witness envisioned by Section 19.6.2 of PO1 shall not exceed 15 minutes.
    - *Direct Presentations by Experts*. The presentation by an expert envisioned in Section 19.6.3 of PO1 shall not exceed 30 minutes, except for presentations by damages experts which shall not exceed 45 minutes. To be clear, where two experts are testifying on one report, the presentation by both experts shall not exceed the time limit (*i.e.* the time limit is not doubled).
  - (c) *Closing statements*. The Tribunal considers that under the circumstances it would be better assisted by receiving post-hearing briefs, in lieu of closing statements. The Parties will file post-hearing briefs simultaneously. At the end of the hearing, in consultation with the Parties, the Tribunal will provide guidance on: (a) the content of the post-hearing brief including (without limitation) any questions it would like addressed; (b) time limits; and (c) length and format. No additional evidence may be produced together with the post-hearing briefs, except with leave from or at the request of the Tribunal.
19. The Secretary of the Tribunal will keep a chess clock account of time used and advise the Parties of the total daily time used at the end of each Hearing day.
20. The Parties are expected to use the Hearing days efficiently and avoid unnecessary slippage (*e.g.*, delays in returning from breaks). 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.

**D. PARTICIPANTS**

21. On November 26, 2021, each Party provided to ICSID its respective list of Participants ("**List of Participants**"), including witnesses, experts, and Parties' counsel and representatives (**Annex B**).
22. Each Party shall designate in Annex B those participants that will have an active speaking role ("Active Participants"), and those who will be passive attendees ("Passive Participants").
23. For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for Claimant), [R] (for Participants for Respondent), [CE] (for Claimants' experts), [RE] (for Respondent's experts), [CW] (for Claimants' witnesses) and [RW] (for Respondent's witnesses). Should there be Participants joining from a common conference room, the conference room connection may be identified as "[C] [R] Conference Room #" as appropriate.
24. Participants will join the videoconference through a "waiting room" to be managed by the Operator.
25. Access to the videoconference shall be restricted to those included in the List of Participants. Should any non-listed Participant attempt to connect to the videoconference, the Operator will alert the Secretary of the Tribunal, and the Tribunal will promptly address the matter with the Parties. All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
26. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.

**E. WITNESSES AND EXPERTS**

**1. Examinations**

27. The examination of witnesses and experts shall be carried out in accordance with Section 19 of PO1.
28. Pursuant to Section 19.1 of PO1, **by November 5, 2021**, "each party will identify the factual witnesses and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Within three days of the opposing party's notification, each party may submit to the Tribunal a reasoned application to call its own factual and expert witnesses, not called by the opposing party. If their examination is allowed by the Tribunal, such witnesses will be examined pursuant to Article 19.6. One week after the parties' notifications or reasoned applications, if any, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question, if any. The fact that a party does not call a witness or expert whose statement has been submitted

with the other party's written submissions does not mean that it accepts the substance or content of the statement or expert opinion.”

29. Pursuant to Section 19.1 of PO1 and the revised procedural calendar, on November 5, 2021, the Claimants informed the Respondent that they intended to cross-examine the following individuals:
- Severo Buenalaya Cangalaya
  - Jaime Mendoza Gacon
  - Ricardo Leyva
  - César Gutiérrez
  - Richard Tabors
  - Ruxandra Ciupagea and Boaz Moselle
30. Also on November 5, 2021, the Respondent informed the Claimants that it intended to cross-examine the following individuals:
- Irwin Frisancho
  - Javier García Burgos
  - Jaime Guerra
  - Luis Espinoza
  - Daniela M. Bambaci and Santiago Dellepiane A. of BRG
  - Sociedad Integrada de Consultoría (SIDECA)
31. In accordance with Section 19.6 of PO1, the procedure for examining witnesses and experts at the Hearing shall be the following:
- i. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.
  - ii. Fact witnesses giving oral testimony may first be examined in direct examination.
  - iii. Expert witnesses giving oral evidence may first give a presentation of the key points of their report either directly and/or through direct examination.
  - iv. The direct examination of fact and expert witnesses shall be confined to the facts included in the witness statement, but the Tribunal may allow each witness to respond to any new contentions or evidence on the record unavailable to the witness before making his/her last written testimony submitted to the file.

- v. Direct examination is followed by cross-examination by the other party, which may be followed by re-direct examination. The members of the Tribunal shall have the right to pose questions during or after the examination of any witnesses.
32. The Claimants' fact witnesses will testify first, followed by Respondent's fact witnesses. After all fact witnesses have testified, the parties' technical and/or legal experts will testify after (first Claimants' experts and then Respondent's experts). Finally, the parties' damages experts shall be examined, starting with Claimants' experts, including SIDEC, and then Respondent's experts. The party presenting the witnesses or experts shall decide the order in which their witnesses and experts testify. The Parties will exchange the order in which they will present their witnesses and experts, as applicable, by Friday, November 19, 2021.
33. On November 19, 2021, the Parties exchanged the following order for the examination of their witnesses and experts:
- Claimants' witnesses:
- Javier García Burgos
  - Jaime Guerra
  - Irwin Frisancho.
- Claimants' technical expert:
- Luis Espinoza
- Claimants' damages experts and SIDEC:
- SIDEC
  - Daniela Bambaci and Santiago Dellepiane of BRG.
- Respondent's witnesses:
- Jaime Mendoza
  - Severo Buenalaya
- Respondent's technical and legal experts:
- Richard Tabors
  - César Gutiérrez
  - Ricardo Leyva
- Respondent's damages experts:
- Compass Lexecon
34. Pursuant to Section 19.7 of PO1, the "scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report unless for good cause shown the Tribunal agrees to a broader cross-examination, (ii) impeachment of the witness and/or (iii) documents or facts about which the witness or expert has personal knowledge, provided that they are relevant to the dispute. Re-direct examination shall be limited to the subject of the cross-examination."



35. If experts have submitted a report as a group, they will be cross-examined together as a group. All cross-examination questions will be directed to one expert in the group as designated by the Party presenting the group of experts. That expert will be responsible for determining which expert within the group should respond to the question.
36. Each witness and expert shall testify without conferring with anyone else during testimony.
37. With the exception of witnesses and experts testifying from [neutral venue TBD], witnesses and experts must be alone in the room from which they are testifying (except where two experts have signed one report, in which case they may testify from the same room). Witnesses and experts may have with them hard copies of their witness statement(s) or expert report(s) provided such documents do not have any annotations or marks. The testifying witness or expert will confirm that he/she is alone and that the hard copies are devoid of notations or marks prior to the start of his/her testimony. The witnesses and experts may not communicate with anyone during their examination (separate from their testimony before the tribunal) and will confirm at the start of their testimony that they do not have access to, have turned off or have disabled any electronic devices (*e.g.*, mobile phones, ipads, etc) and software (*e.g.*, email or chat software) that would allow them to have contact with others outside of the room in which they are testifying.

## **2. Sequestration**

38. In accordance with Section 19.8 of PO1, “[u]nless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. The Tribunal may, at its discretion and considering the circumstances of the case, allow one party representative for each party who is also a factual witness to be present in the hearing room during opening statements. Such witnesses, however, shall not otherwise be allowed to be present in the hearing room until after they have testified. Expert witnesses shall be allowed in the hearing room at any time.”
39. Sequestration shall also be observed during Hearing breaks as well as overnight if the testimony of a witness goes into the next Hearing day. Should there be a break in the course of a given witness or expert examination, the testifying witness/expert will be isolated in a separate virtual break out room identified as [W/E]. Witnesses shall not be granted access to or review the transcript of any part of the hearing until they have concluded their oral testimony.

## **F. DOCUMENTS FOR USE AT THE HEARING**

### **1. Electronic Hearing Bundle**

40. The Parties will prepare jointly an electronic Hearing bundle (PC and Mac compatible) (“**Hearing Bundle**”).

The Hearing Bundle shall contain all pleadings, expert reports, exhibits, legal authorities and the Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed.

41. The Hearing Bundle shall be organized as follows:

**01. Pleadings**

- A. Claimants
- B. Respondent

**02. Witness Statements/Expert Reports**

- A. Claimants
- B. Respondent

**03. Exhibits**

- A. Claimants
- B. Respondent

**04. Legal Authorities**

- A. Claimants
- B. Respondent

**05. Witness/Expert Exhibits**

- A. Claimants
- B. Respondent

**06. Tribunal's Rulings**

42. The Parties shall provide, no later than **December 6, 2021**, the Hearing Bundle to the Tribunal and ICSID by:

- uploading the Hearing Bundle to the designated BOX sub-folder here. To ensure operation of the hyperlinked index, the entire Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file.

and

- sending a USB with the Hearing Bundle directly to each Member of the Tribunal at the addresses provided in Section 14.4 of PO1.

43. ICSID will provide a copy of the Hearing Bundle to the court reporters and the interpreters.

44. It is recommended that prior to the Hearing, the Participants download the Hearing Bundle to their own devices to have offline access to it during the Hearing. In principle, unless a witness or expert does not require it, the Parties shall endeavor to provide a full set of unmarked printed copies of the exhibits in the record to be kept in the room in which each witness and expert is testifying.

45. The Hearing Bundle shall be updated after the Hearing to include the Parties' demonstratives and any new documents added into the record.

**2. Cross-examination Bundle**

46. During cross-examination, the Parties will refer to exhibits and legal authorities that already form part of the record of the case.

47. The witness and experts are entitled to be shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen). Witnesses and experts may also have access to the unmarked printed copies of the exhibits available at the room where they are testifying.
48. Each Party shall prepare cross-examination bundles to be provided to all Participants (the Witness/Expert, the other Party, the Tribunal, the Assistant to the Tribunal, ICSID, interpreters and court reporters at a minimum 30 min before the relevant cross-examination. This will enable Participants to download the documents before the cross-examination. The cross-examination bundles shall be uploaded to the BOX platform here, followed by an email to the entire case distribution list (including the other side, the Tribunal, the Assistant to the Tribunal, ICSID, the court reporters and interpreters) confirming such an upload.

### **3. Demonstrative Exhibits**

49. Pursuant to Section 17.10 of PO1, the Parties may use “demonstrative exhibits (meaning representations such as diagrams, charts, graphs, models and computer simulations that depict and explain evidence otherwise submitted)”, provided that they contain no new evidence.
50. 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
51. To account for the virtual nature of the Hearing, Section 17.10 of PO1 is amended such that: (i) the 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<sup>1</sup> to the entire case distribution list (including the other side, the Tribunal, the Assistant to the Tribunal, ICSID, the court reporters and interpreters) as necessary no later than 30 minutes prior to its use, to facilitate offline access to the demonstrative by the Participants. If the demonstrative cannot be distributed by email because of its size, it shall be uploaded to the BOX platform, followed by an email to the entire distribution list confirming the upload.
52. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the BOX case folder, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

### **4. Electronic Presentation of Evidence**

53. Each Party shall present demonstrative exhibits and evidence to the Participants *via* Zoom.
54. Participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with the above paragraphs downloaded into their own devices and available for access offline.

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<sup>1</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

55. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Participants *via* Zoom. Any Participant shall have the technical ability to display a document to other Participants *via* Zoom, and such person need not be an Active Speaker. The Participant displaying the document will be the only one with the ability to scroll through the document being displayed.

#### **G. AUDIO/VIDEO RECORDING**

56. Pursuant to Section 22.1 PO1, “[s]ound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.”
57. Participants shall not otherwise record, *via* audio, video or screenshot or stream the Hearing or any part of it.

#### **H. TRANSCRIPTION**

58. Section 22.2 of PO1 reproduced below apply:

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.

59. The Parties will submit corrected transcripts forty-five (45) days after receipt of the final transcripts and audio recording of the Hearing from the court reporters. The Parties will work together to create agreed corrections to the transcript. To the extent the Parties are unable to agree, each Party will identify their proposed corrections.
60. ICSID has arranged for real-time court reporting in English and Spanish. The Participants will access the transcripts *via* an online link connection to be provided by the court reporters. 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 ICSID in due course.

#### **I. INTERPRETATION**

61. Pursuant to Section 12.6 of PO1, ICSID has arranged for simultaneous interpretation from and into English and Spanish.
62. Pursuant to Section 12.8 of PO1, the Parties “will notify the Tribunal of the language in which each witness or expert will give evidence. The notification will be provided no later than the date of the pre-hearing organizational meeting,” *i.e.*, by **November 12, 2021**.
63. In accordance with Section 12.10 of PO1, the “costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.”

64. The interpreters will provide their services remotely using the Zoom platform. Each Participant should select a language channel (English or Spanish English, Spanish or the original audio of the language being spoken without interpretation (ie the “floor” audio)) when connecting to the Hearing.
65. The Active Participants should speak slowly, one person at a time, and pause briefly when handing the floor to another Participant, or when posing/responding to a question. This will hopefully avoid overlapping voices and allow the interpreters to provide a better service.
66. 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.

#### **J. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS**

67. Sections 23.1 and 23.2 of PO1 (reproduced below) apply.
  - 23.1. The Tribunal, in consultation with the parties, shall decide whether to order post-hearing briefs at an organizational meeting prior to the oral hearing or during the course of the oral hearing.
  - 23.2. In accordance with Arbitration Rule 28(2), promptly after the closure of the proceeding, each party shall submit to the Secretary of the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

#### **K. VIRTUAL HEARING ARRANGEMENTS**

68. The Hearing will be closed to the public.
69. The following procedures shall be followed in order to ensure the good conduct of the virtual Hearing:

##### **1. Testing**

70. The ICSID Secretariat and the Operator 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 the real-time transcription. The date of each test and the access details will be communicated in due course.
71. All Participants should strive to replicate the conditions under which they will participate in the Hearing. To the extent possible, at least one participant per device or connection to be used at the Hearing should attend the trial runs.
72. Each Party shall designate, no later than **December 6, 2021**, one of its representatives to act as videoconferencing contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents which arise during the videoconference.

73. The VC Emergency Contact Person shall be responsible for advising the Tribunal and ICSID if an essential Participant from their side is disconnected or otherwise cannot participate, such that the Tribunal is requested to suspend the Hearing. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with Marco Tulio Montañés-Rumayor, ICSID (email [mmontanes@worldbank.org](mailto:mmontanes@worldbank.org)), without interrupting the Hearing.

## **2. Connectivity**

74. The Parties shall ensure that each of their representatives, witnesses and experts who will connect to the videoconference use a stable internet connection offering sufficient bandwidth, and use a camera and microphone/headset of adequate quality.
75. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
76. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels.

## **3. Equipment and Set Up**

77. Witnesses and experts located in Lima, Peru (per Annex B), will testify from the offices of a neutral venue to be agreed by the Parties. An unmarked hard copy of the exhibits on the record will be available at this location, for use by witnesses and experts during their examination. The Sequestration rules in section E.2 above will apply to the testimony given at this venue. Each Party may send one representative to the venue to ensure that the rules established in this Procedural Order are respected and to facilitate access to hard copy documents, if any. The Parties shall indicate the names of any representatives that will attend in person the cross-examination of a witness or expert from the other party at this institution no later than **December 6, 2021**.
78. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the Active Participants 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.
79. While not indispensable, 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.

80. The Tribunal will verify with a witness or expert before testifying that the location from which the witness or expert is testifying conforms with the requirements listed above, *e.g.* the witness or expert is alone and does not have notes or electronic devices. No additional 360 degree cameras will be required.

#### **4. Break-Out Rooms**

81. The Operator 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. The Operator shall disable the Zoom built-in chat function, except for communications with ICSID or the Operator.

#### **5. Videoconference Etiquette**

82. Upon the joining of the Participants to the videoconference on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its relevant Participants, the Participants who are not expected to speak should turn off their video feed and mute their microphones.
83. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the Hearing day.
84. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but connecting only their audio (*i.e.* turning their video off).
85. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Operator shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
86. To facilitate the accurate transcription and interpretation, speakers are advised to speak at a reasonable speed and with pauses between phrases.

87. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

On behalf of the Tribunal

[signed]

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Prof. Luca G. Radicati di Brozolo  
President of the Tribunal



**Annex A**

88. The examination of witnesses and experts will take place starting on Day 2 of the Hearing in the order set out below:

- a. Claimants' fact witnesses.
- b. Respondent's fact witnesses.
- c. Claimants' technical expert.
- d. Respondent's technical and legal experts.
- e. Claimants' damages experts and SIDEC.
- f. Respondent's damages experts.

89. On November 19, 2021, the Parties exchanged the following order for the examination of their witnesses and experts:

Claimants' witnesses:

- Javier García Burgos
- Jaime Guerra
- Irwin Frisancho.

Claimants' technical expert:

- Luis Espinoza

Claimants' damages experts and SIDEC:

- SIDEC
- Daniela Bambaci and Santiago Dellepiane of BRG.

Respondent's witnesses:

- Jaime Mendoza
- Severo Buenalaya

Respondent's technical and legal experts:

- Richard Tabors
- César Gutiérrez
- Ricardo Leyva

Respondent's damages experts:

- Compass Lexecon