

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Freeport-McMoRan Inc.**

**v.**

**Republic of Peru**

**(ICSID Case No. ARB/20/8)**

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**PROCEDURAL ORDER No. 4  
(HEARING ORGANIZATION)**

***Members of the Tribunal***

Dr. Inka Hanefeld, President of the Tribunal  
Prof. Dr. Guido Santiago Tawil, Arbitrator  
Dr. Bernardo M. Cremades, Arbitrator

***Assistant to the Tribunal***

Ms. Charlotte Matthews

***Secretary of the Tribunal***

Ms. Marisa Planells-Valero

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23 March 2023

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**I. INTRODUCTION**

1. Pursuant to Section 20.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 20 March 2023 (the “**Pre-Hearing Call**” or “**PHC**”). Participating in the video conference were:

Tribunal:

Dr. Inka Hanefeld, President of the Tribunal  
Prof. Dr. Guido Santiago Tawil, Arbitrator  
Dr. Bernardo M. Cremades, Arbitrator

ICSID Secretariat:

Ms. Marisa Planells-Valero, Secretary of the Tribunal  
Ms. Anastasia Tsimberlidis, ICSID Paralegal

Assistant to the Tribunal:

Ms. Charlotte Matthews

On behalf of the Claimant:

Mr. Dietmar W. Prager, Debevoise & Plimpton LLP  
Ms. Laura Sinisterra, Debevoise & Plimpton LLP  
Mr. Nawi Ukabiala, Debevoise & Plimpton LLP  
Mr. Sebastian Dutz, Debevoise & Plimpton LLP  
Mr. Luis Carlos Rodrigo Prado, Rodrigo, Elias & Medrano  
Mr. Francisco Cardenas Pantoja, Rodrigo, Elias & Medrano  
Mr. Scott Statham, Freeport McMoRan Inc.  
Ms. Patricia Quiroz Pacheco, Sociedad Minera Cerro Verde S.A.A.

On behalf of the Respondent:

Ms. Jennifer Haworth McCandless, Sidley Austin LLP  
Ms. María Carolina Durán, Sidley Austin LLP  
Ms. Courtney Hikawa, Sidley Austin LLP  
Mr. Ricardo Puccio, Estudio Navarro & Pazos Abogados  
Mr. Mijail Feliciano Cienfuegos Falcon, Republic of Perú

2. During the Pre-Hearing Call, the Parties and the Tribunal discussed the draft procedural order circulated to the Parties on 6 March 2023, and the Parties’ joint statement of 15 March 2023 advising the Tribunal of the agreements reached on the open procedural items, as well as their respective positions where no agreement was reached.

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3. An audio recording of the Pre-Hearing Call was made and deposited in the archives of ICSID. The recording was made available to the Members of the Tribunal and the Parties on 22 March 2023.
4. Having considered the Parties' positions, this 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 Venue

5. The Hearing is scheduled to take place from 1-12 May 2023, excluding 6-7 May 2023 (Saturday and Sunday).
6. The Hearing will take place in person at the ICSID facilities in Washington D.C., subject to the arrangements detailed in **Annex B**. Given the limitations on the number of participants allowed in the in-person Hearing Room, arrangements will also be made to facilitate connection to the Hearing Room through a virtual platform for participants that might need to attend remotely (*see* arrangements detailed in **Annex C**).
7. Should any future sanitary restriction or regulation in connection with the COVID-19 pandemic make it infeasible to conduct the Hearing in-person as planned, or if members of the Tribunal or lead counsel for Claimant or Respondent are unable to attend the Hearing in-person due to Covid-19, the Tribunal will discuss next steps with the Parties, including whether the Hearing could still be held in an entirely remote format on the same dates planned.

### B. Order of Proceedings and Schedule

8. Each day, the Hearing will start at 9:30am (EST) and it will, if possible, conclude by 5:30pm (EST). There will be two 15-minute coffee breaks (one in the morning and one in the afternoon), other 5-minute breaks at transition points as needed, and a lunch break of one hour each day.
9. The order of proceedings and structure of the Hearing will be as tentatively indicated in the agenda incorporated as **Annex A**.
10. The Tribunal will enforce, with a degree of flexibility, the tentative Hearing agenda in **Annex A**, understanding that the Parties reserve the right to decide how long they will ultimately spend examining each witness and expert, within their allocated time. The Tribunal will seek, when reasonably possible, to avoid that the examination of a factual witness or an expert be interrupted and postponed to the following day.

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11. Following consultation with the Parties, the Tribunal may adjust the tentative Hearing agenda in **Annex A** to account for unexpected disruptions during the Hearing.

**C. Time Allocation**

12. Considering the start and end times, each Hearing day shall comprise a total of 8 hours. A total of 1 hour and 30 minutes a day shall be reserved for breaks. Thus, excluding the time reserved for breaks, there will be a total of 6 hours and 30 minutes of working time in each Hearing day, to be allocated as follows: (i) 1 hour each day will be reserved for the Tribunal for housekeeping matters and questions, subject to overrun where necessary; and (ii) the remaining time in a day (5 hours and 30 minutes) will be available for use by the Parties.

13. Accordingly, considering the total number of Hearing days, excluding weekends, (*i.e.* 10 days), each Party shall have a total of **27.5** working hours available to it during the entire Hearing, subject to equal reduction to account for the hearing time used for the Statement from the Non-Disputing Party (if any).

14. Time shall be kept using the chess-clock method. Each Party may use the time available to it at each stage of the Hearing in the manner it desires, subject to the following:

- a. *Opening Statements.* Each Party shall be allowed a maximum of **3.5** hours for its Opening Statement.
- b. *Statement from Non-Disputing Party (if any):* The Non-Disputing Party shall be allowed up to **1** hour to make a statement on its Non-Disputing Party submission following the Opening Statements by the Parties.
- c. *Closing Statements.* Each Party shall be allowed a maximum of **1.5** hours for its Closing Statement.
- d. *Direct Examination of Fact Witnesses.* The direct examination of a fact witness envisioned by Section 19 of Procedural Order No. 1 shall not exceed **15** minutes.
- e. *Direct Presentations by Experts.* The direct presentation by an expert envisioned in Section 19 of Procedural Order No. 1 shall not exceed **30** minutes.
- f. *Tribunal Questions.* Time taken by the Tribunal for its own questions during the Parties' presentations and examinations and the answers to those questions shall not be counted against the Parties' time.
- g. *Housekeeping.* Time used for housekeeping or to resolve technical difficulties shall be counted against the time reserved for housekeeping or against the Tribunal's reserved time, if needed.

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15. If a Party objects or otherwise intervenes during the other Party's speaking time, that time will be counted as part of the objecting Party's time.
16. The Secretary of the Tribunal will maintain Hearing time using the chess-clock method, and report the time used and remaining to the Parties after each day of the Hearing or whenever so requested. Any disagreement between the Parties concerning Hearing time shall be dealt with outside sitting hours whenever possible and referred to the Tribunal only as a last resort.
17. The Parties are expected to use each Hearing day efficiently and to avoid unnecessary slippage (*e.g.* delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day, 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. Documents for Use at the Hearing**

**1. Electronic Hearing Bundle and Core Hearing Bundle**

18. There shall be a single Electronic Hearing Bundle in USB form, to be prepared jointly by the Parties.
19. In accordance with Section 14.6 of Procedural Order No. 1, the Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders on file to date in searchable version, with a unified hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

**01. Pleadings**

- A. Claimant
- B. Respondent
- C. NDP

**02. Witness Statements**

- A. Claimant
- B. Respondent

**03. Legal and Regulatory Expert Reports (with exhibits)**

- A. Claimant
- B. Respondent

**05. Quantum Expert Reports (with exhibits)**

- A. Claimant
- B. Respondent

**06. Factual Exhibits**

- A. Claimant
- B. Respondent

**07. Legal Authorities**

- A. Claimant
- B. Respondent

**08. Tribunal's Rulings and Procedural Orders**

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20. The Parties shall upload the Electronic Hearing Bundle to a designated sub-folder in the BOX filesharing platform by **19 April 2023**. To ensure operation of the hyperlinked index in BOX, if feasible, 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 single zip file make uploading it to BOX not possible, the Parties may simply upload the Electronic Hearing Bundle to a designated sub-folder in the BOX filesharing platform organized in sub-folders using the structure indicated at paragraph 19 *supra*, including a consolidated (but non-hyperlinked) index.
21. Hearing participants are advised to have the Electronic Hearing Bundle downloaded into their own computer devices and available for access offline, if necessary.
22. In addition, the Parties shall courier the Electronic Hearing Bundle USB, which shall be Mac compatible, to each Member of the Tribunal and to the Assistant of the Tribunal with the hyperlinked version of the index by **19 April 2023** at the following addresses:

**Dr. Inka Hanefeld**  
Hanefeld Rechtsanwälte  
Rechtsanwalts-gesellschaft  
mbH  
Brooktorkai 20  
20457 Hamburg  
Germany

**Prof. Dr. Guido Santiago  
Tawil**  
Brickell Flatiron  
1000 Brickell Plaza  
Unit 3414  
Miami, 33131 Fla.  
United States of America

**Mr. Bernardo M. Cremades**  
B. Cremades y Asociados  
Goya, 18,  
28001 Madrid,  
Spain

**Ms. Charlotte Matthews**  
Hanefeld Rechtsanwälte  
16, Avenue de Friedland  
75008 Paris  
France

23. At the onset of the Hearing, the Parties shall distribute:
- 23.1. To each Member of the Tribunal (one copy), the Secretary of the Tribunal (one copy), court reporters (one copy), and interpreters (one copy): a USB with a joint hearing bundle containing only a set of essential factual/legal documents on which the Parties are most likely to rely, together with a table of contents for such bundle (the **Core Hearing Bundle**).
- 23.2. Additionally, a hard copy of the Core Hearing Bundle shall be distributed to Prof. Dr. Tawil (in A5 format, spiral bound) and to Dr. Cremades (in A4 format, spiral bound).

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**2. Demonstrative Exhibits**

24. Demonstrative exhibits shall be used in accordance with Section 17.8 of Procedural Order No.1 reproduced as clarified below:

*Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc. that compile or display record evidence in new formats) may be used at any hearing, provided they contain no new evidence or calculations (except simple illustrative or hypothetical calculations based on the evidence on record). 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 electronic form and, if requested, in hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.*

25. The Parties will provide a hard copy of any Demonstrative Exhibits at the beginning of the respective argument, examination, or presentation, to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the Assistant to the Tribunal (1 copy); the other Party (2 copies), the court reporters (2 copies), and the interpreters (2 copies). At the beginning of the respective argument, examination, or presentation, the Parties shall also provide electronic copies of any Demonstrative Exhibits (both in PDF editable format and its original format if different) via email.
26. The Parties understand that Demonstrative Exhibits are not an opportunity to submit, nor should they resemble supplementary briefs. Demonstrative Exhibits shall indicate the source of the information contained therein through references to the record.
27. In addition, promptly after the conclusion of the Hearing day in which the corresponding Demonstrative Exhibit is used, the Parties shall upload each Demonstrative Exhibit to the case folder in the electronic file sharing system (“BOX”), with the required CD-\_\_ or RD-\_\_ number.

**E. Documents used when examining witnesses and experts**

28. At the beginning of each witness or expert direct examination, the Party who is putting forward the witness or expert will provide the witness or expert with clean, *i.e.* unedited, copies of his or her signed statements or reports.
29. The Party cross-examining the witness or expert will distribute hard copies of a bundle, containing the documents on the record (or, exceptionally, their relevant extracts, when the document is excessively long) upon which the Party will rely during its examination to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the other Party (2 copies), the witness or expert (1 copy), the court reporters (2 copies), and the interpreters (1 copy).

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30. The fact that a document on the record is not in the examination bundle will not prevent the examiner from using such document during the witness or expert examination.
31. The Parties shall coordinate to ensure there is one laptop with the Electronic Hearing Bundle available to the witnesses and experts during the Hearing in case a witness or expert is asked about a document not included in the hard copy examination bundle.
32. Documents on which the witnesses and experts are to be examined shall be shown electronically by each Party in both the original language and in English (where applicable) and displayed on screens in the Hearing Room. Each document shall be clearly identified by reference to its number in the record.
33. The witnesses and experts are entitled to ask to be shown a full paper or electronic 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).
34. The Parties are not to use at the Hearing any documents that are not part of the record, save upon reasoned request and with leave from the Tribunal. Before the Tribunal makes a determination, it will allow the other Party to present its views and formulate any objections.
35. During witness and expert examination, the Parties shall refer to documents that already form part of the record of the case.

**F. Witness and Expert Examinations**

36. The Parties shall provide notice of the witnesses and expert to be examined in accordance with Section 19.2 of Procedural Order No. 1 and the Procedural Calendar.
37. The witnesses and experts called for examination shall attend the Hearing in person unless under justified circumstances with leave from the Tribunal.
38. The rules and procedures concerning the conduct of examinations are established in Section 19.7 of Procedural Order No. 1 as clarified below

*19.7.1. Although direct examination of witnesses will be given in the form of witness statements, the Party presenting the witness may conduct a brief direct examination. Such direct examination shall be confined to the facts included in the witness statement, save that there may be limited direct examination of witnesses in respect of new facts or issues that arose, or new documents submitted into the record since the date of the witness's last signed statement.*

*19.7.2. Experts giving oral evidence may first give a presentation of the key points of their reports either directly and/or through direct examination. In their direct presentation or examination, experts may also address new facts or issues that arose, or new documents submitted into the record since the date of the expert's last signed report.*



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*19.7.3. The adverse party may cross-examine a witness on matters that were addressed or presented in the witness statement or during direct examination. The adverse Party may cross-examine an expert on matters that were addressed or presented in the expert report or during direct examination or presentation.*

*19.7.4. The Party presenting the witness or expert may then re-examine the witness or expert with respect to any matters or issues arising out of the cross-examination.*

*19.7.5. The Tribunal may examine a witness or expert at any time, either before, during or after examination by any of the Parties.*

39. Pursuant to Section 19.8 of Procedural Order No. 1, 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 (or have access to the hearing transcript) until after they have testified.
40. Unless the Parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the Hearing Room before giving their oral evidence. Expert witnesses shall be allowed in the Hearing Room at any time.
41. Pursuant to Section 19.10 of Procedural Order No. 1, once direct examination begins, a witness shall remain sequestered until his or her testimony is complete. Once direct examination begins, an expert shall remain sequestered until his or her testimony is complete.
42. If two experts have jointly submitted a report, they will be cross-examined jointly. All cross-examination questions will be directed to one expert as designated by the Party presenting the two experts. That expert will be responsible for determining which expert should respond to the question. The expert not answering the question shall not comment, supplement or rectify in any way the answer provided by the other expert, unless the Tribunal grants him or her prior leave to do so.
43. The Tribunal may, if it deems so appropriate, conduct expert conferencing (“hot tubbing”) of experts of the same discipline.

**G. Interpretation**

44. In accordance with Section 12.8 of Procedural Order No. 1, simultaneous interpretation from English to Spanish and from Spanish to English shall be available throughout all hearings.
45. The Parties shall notify the Tribunal, as soon as possible, and no later than at the PHC, which witnesses or experts require interpretation.
46. It is planned that the interpreters will attend the Hearing in person. Interpretation will also be available for those participating remotely.

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47. The Parties shall provide by **24 April 2023** a concrete list of key individuals and agreed translations of key terms in Spanish and English solely for the convenience of the interpreters. This list is not for the Tribunal and does not constitute any admission with respect to relevance or materiality or with respect to the meaning, interpretation, or implications of any term.
48. The costs of interpretation services will be paid from the deposits made by the Parties, without prejudice to the decision of the Tribunal as to the allocation of costs.

**H. Sound Recordings and Transcripts**

49. Pursuant to Section 22.1 of Procedural Order No. 1, sound recordings will be made of the Hearing in the two procedural languages. The sound recordings shall be provided to the Parties and the Tribunal. Any such recordings may not be used in the parallel proceeding *SMM Cerro Verde Netherlands B.V. v Republic of Peru* (ICSID Case No. ARB/20/14), except in the cases set out in Section 22.1 of Procedural Order No. 1.
50. ICSID has also made arrangements to have English and Spanish verbatim transcripts available in real-time using Live Note or a similar software during the Hearing.
51. It is planned that the court reporters will attend the Hearing in person. Should court reporters be participating remotely, the real-time court reporting shall be made available to the participants via an online link connection to be provided by the court reporters, and the participants shall be required to access the streamed transcripts from their own devices (as there will be no court reporter devices available on-site to display the transcript). The connectivity details (links and instructions) to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.
52. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
53. The Parties shall agree on any major corrections to the transcripts within 45 days of the date of receipt of the sound recordings or transcripts, whichever is last. Corrections shall be made to the entire English transcript and to the Spanish transcripts to the extent a witness or expert testifies in Spanish. The agreed corrections may be entered by the court reporters in the transcripts. Any disagreement between the Parties on the accuracy of the translations shall be resolved between the Parties in good faith. The Tribunal shall decide upon any disagreement between the Parties regarding the translations and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

**I. Participation of the NDP**

54. The NDP advised on 7 March 2023 that it would decide whether to provide an oral NDP submission after having the opportunity to review the Parties' responses to its written submission and reserved the right to an oral submission under Article 10.20(2) of the U.S.-Peru TPA.

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**J. Transparency**

55. In accordance with Section 28 of Procedural Order No. 1, the Hearing shall be open to the public. It will be video recorded, and the video recording will be streamed in the Spanish and English languages on the ICSID website shortly after the conclusion of the Hearing. An announcement to this effect will be published on the ICSID website.

**K. Post-Hearing Briefs**

56. Pursuant to Section 23.1 of Procedural Order No. 1, “[t]he scope and format of post-hearing submissions, if any, will be determined by the Tribunal at the conclusion of the Hearing, upon consultation with the Parties.”

**L. Statement on Costs**

57. Pursuant to Section 23.2 of Procedural Order No. 1, “[t]he scope and format of the statements of costs will be determined by the Tribunal at the conclusion of the hearing, upon consultation with the Parties.”

**M. List of Participants**

58. Each Party shall provide its respective list of participants for the Hearing (“**List of Participants**”) no later than **17 April 2023**, using the format provided in **Annex D**.

For and on behalf of the Tribunal,

[signed]

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Dr. Inka Hanefeld  
President of the Tribunal  
Date: 23 March 2023

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**FREEPORT-MCMORAN INC.**

v.

**REPUBLIC OF PERU**

**(ICSID CASE NO. ARB/20/8)**

**ANNEX A – TENTATIVE HEARING SCHEDULE**

<b>Day 1: Monday, May 1, 2023</b>	<u>Housekeeping</u>  <u>Opening Statements</u> <ul style="list-style-type: none"><li>• Claimant’s Opening Statement</li><li>• Respondent’s Opening Statement</li></ul>
<b>Day 2: Tuesday, May 2, 2023</b>	<u>NDP Statement</u>  <u>Claimant’s fact witnesses</u> <ul style="list-style-type: none"><li>• Claimant’s fact witness #1</li><li>• Claimant’s fact witness #2</li></ul>
<b>Day 3: Wednesday, May 3, 2023</b>	<u>Claimant’s fact witnesses</u> <ul style="list-style-type: none"><li>• Claimant’s fact witness # 3</li><li>• Claimant’s fact witness #4</li></ul>
<b>Day 4: Thursday, May 4, 2023</b>	<u>Claimant’s fact witnesses</u> <ul style="list-style-type: none"><li>• Claimant’s fact witness #5</li><li>• Claimant’s fact witness #6</li></ul> <u>Respondent’s fact witnesses</u> <ul style="list-style-type: none"><li>• Respondent’s fact witness #1</li></ul>
<b>Day 5: Friday, May 5, 2023</b>	<u>Respondent’s fact witnesses</u> <ul style="list-style-type: none"><li>• Respondent’s fact witness #2</li><li>• Respondent’s fact witness #3</li><li>• Respondent’s fact witness #4</li></ul>
<b>Day 6: Monday, May 8, 2023</b>	<u>Respondent’s fact witnesses</u> <ul style="list-style-type: none"><li>• Respondent’s fact witness #5</li><li>• Respondent’s fact witness #6</li><li>• Respondent’s fact witness #7</li></ul>

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<b>Day 7: Tuesday, May 9, 2023</b>	<u>Expert on Jurisdictional Issues</u> <ul style="list-style-type: none"><li>• Claimant's expert #1</li></ul> <u>Experts on International Mining and International Mining Tax and Tax Policy</u> <ul style="list-style-type: none"><li>• Claimant's expert #1</li><li>• Respondent's expert #1</li></ul>
<b>Day 8: Wednesday, May 10, 2023</b>	<u>Experts on Peruvian Law:</u> <ul style="list-style-type: none"><li>• Claimant's expert #1</li><li>• Claimant's expert #2</li><li>• Respondent's expert #1</li><li>• Respondent's expert #2</li></ul>
<b>Day 9: Thursday, May 11, 2023</b>	<u>Experts on Peruvian Tax Law</u> <ul style="list-style-type: none"><li>• Claimant's expert # 1</li><li>• Respondent's experts #1 and #2</li></ul> <u>Experts on Damages</u> <ul style="list-style-type: none"><li>• Claimant's damages experts #1 and #2</li><li>• Respondent's damages expert #1</li></ul>
<b>Day 10: Friday, May 12, 2023</b>	<u>Closing Arguments</u> <ul style="list-style-type: none"><li>• Claimant's Closing Argument</li><li>• Respondent's Closing Argument</li></ul>

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**ANNEX B**  
**IN-PERSON MODALITY ADDITIONAL ARRANGEMENTS**

1. This Annex contemplates certain additional protocols applicable for an in-person format.

**I. CONDITIONS AT THE WORLD BANK FACILITIES IN WASHINGTON D.C.**

2. The conditions currently in force for entry to the premises of the World Bank facilities in Washington D.C. for purposes of attending an ICSID Hearing are reproduced in this Section. These constitute the applicable conditions at present and might be subject to changes that may be notified by the World Bank should the circumstances related to the pandemic change.

**A. ID DOCUMENTS**

3. Each participant must present a valid identity document with a photograph.

**B. COVID-19 SANITARY REQUIREMENTS**

4. All individuals who will be attending the Hearing in person must be fully vaccinated against COVID-19<sup>1</sup> or otherwise provide daily proof of a negative COVID test.<sup>2</sup> Counsel for each Party should convey this requirement to all intended Hearing Participants as soon as possible.
5. Each participant attending in person will have to abide by any other sanitary guidelines that might be communicated by the World Bank in Washington D.C. Additional COVID-19 testing may be required closer to the date of the Hearing.

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<sup>1</sup> Being fully vaccinated is defined as being two weeks out from having received the full primary series of vaccine (whether one or two doses). At this time, booster doses are not required in order to be considered fully vaccinated for the purposes of the World Bank vaccine requirements.

<sup>2</sup> This test should be taken daily and the relevant individual is to send the results to the Secretariat via email each day.

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**C. ACCESS OF DOCUMENTS**

6. The number of document boxes that can enter the premises of the World Bank in Washington DC may be limited. ICSID will provide further guidance in this regard. Any materials are to be brought by the Parties directly on the day of the set up.

**D. FOOD SERVICES**

7. Food services (lunch and break refreshments) will be provided. Lunches for the Parties will be served in the breakout rooms.

**E. OTHER REQUIREMENTS**

8. The Parties and the Tribunal are aware that the above only concerns the requirements for entry into the premises of the World Bank facilities in Washington D.C. Each Hearing participant planning to attend in person bears the responsibility for making all necessary arrangements to ensure that they meet any other conditions necessary to attend in person. For example, Hearing participants planning to travel from abroad bear the responsibility of checking the conditions of entry into the USA to determine whether they will be able to participate in person at the Hearing in compliance with all the conditions provided for by USA law and regulations.

**II. ADDITIONAL SANITARY CONDITIONS**

9. Any participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until they have obtained a negative rapid antigen test. Any participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing shall immediately inform the Tribunal and the ICSID Secretariat of this development, pending the results of their test.
10. If any participant is to experience COVID-19 symptoms, the Tribunal and the Parties will discuss at the Hearing to what extent it will be possible for such participant to continue participating at the Hearing remotely.

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**III. OTHER LOGISTICAL ARRANGEMENTS**

11. Other logistical details (*e.g.*, confirmation of break-out room number assignments, set up day details, on-site internet access codes, and catering orders, etc.) will be handled through correspondence directly by the ICSID Hearing Organization Team.



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**ANNEX C**  
**HYBRID MODALITY ADDITIONAL ARRANGEMENTS**

12. This Annex contemplates certain additional protocols applicable to a hybrid format, *i.e.*, a scenario with certain participants attending in-person at the World Bank facilities in Washington D.C. (“**In-Person Participants**”), and others joining the Hearing remotely (“**Remote Participants**”). The protocols for an in-person scenario in **Annex B** will remain applicable to the In-Person Participants.

**IV. LOGISTICAL ARRANGEMENTS**

**1. Videoconference Platform and Streamed Transcript**

13. The virtual platform shall be managed by the AV technicians on site at the World Bank facilities in Washington D.C. (“**Operator**”).
14. Real-time court reporting shall be made available to the Remote Participants via an online link connection to be provided by the court reporters. The Remote Participants will be able to access the streamed transcripts from their own devices.
15. The connectivity details (links and instructions) for Remote Participants to join the videoconference session, and to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.

**2. Participants**

16. As provided *supra* each Party shall provide its respective List of Participants for the Hearing (“**List of Participants**”) no later than **17 April 2023** using the format provided in **Annex D**. In that List of Participants, each Party shall identify those who will attend in person (“**In-Person Participants**”) and those participating remotely (“**Remote Participants**”). Each Party shall also designate those Participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).
17. For ease of identification, Remote Participants shall join the videoconference using the naming convention indicated in the format in **Annex D**.

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18. Access to the videoconference session shall be restricted to those identified in the List of Participants as Remote Participants.
19. Remote 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.

**3. Technical Testing of Zoom Platform**

20. The ICSID Secretariat and the Operator will conduct a technical test with the Remote Participants in advance of the Hearing, to test connectivity to the videoconference platform Zoom and the real-time transcriptions. The date of each test and the access details will be communicated in due course. For the efficient conduct of this test, Remote Participants are advised to replicate the technical conditions in which they will participate in the Hearing (location and equipment).

**4. Connectivity**

21. The Parties shall ensure that each of their representatives, witnesses and experts planning to attend as Remote Participants will connect to the videoconference through a stable internet connection offering sufficient bandwidth and using a camera and microphone/headset of adequate quality.
22. If available, Remote Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Remote 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.
23. The Zoom platform will also offer a dial-in telephone audio connection as a backup option should a Remote Participant experience a temporary technical difficulty with a computer online connection.

**5. Remote Witness and Expert Examinations**

24. Rules provided in Section F of Procedural Order No. 4 are applicable to remote witness and expert examinations.

Procedural Order No. 4

25. Witnesses and experts testifying remotely (per **Annex D**), will testify from the offices of a neutral venue to be agreed by the Parties. At the beginning of each remote witness or expert direct examination, the Party who is putting forward the witness or expert will provide the witness or expert with clean, i.e. unedited, paper copies of his or her signed statements or reports. Prior to cross-examining a witness or expert remotely, the examining party shall distribute to the witness or expert paper copies of the documents on the record that they intend to use for such examination. A USB drive and laptop with the Electronic Hearing Bundle shall be available to the witness or expert in case the direct or cross examiner wishes to discuss a document not provided in paper copy to the witness or expert. The sequestration rules in Section F.41 above will apply to the testimony given at the remote neutral venue. Each Party may send one representative to the venue to ensure that the rules established in this Procedural Order are respected and to provide hard copy documents. The Parties shall indicate the names of any representatives that will attend in person the direct or cross-examination of a witness or expert from the other Party at this institution no later than **17 April 2023**.
26. Witnesses and experts testifying remotely 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, and except the Party representatives pursuant to Section 26 above). The testifying witness or expert(s) will confirm that he/she/they is/are accompanied only by the Party representatives pursuant to Section 25 above and that the hard copies are devoid of notations or marks prior to the start of his/her/their 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.
27. Each witness and expert shall testify without conferring with anyone else during testimony.

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**6. Equipment and Set Up for Remote Participants**

28. For optimum sound quality, especially important for the audio recording, the transcription, and the interpretation, Remote Participants that are also Active Participants are encouraged to use a headset which incorporates a microphone.
29. While not indispensable, Remote Participants are also encouraged 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 video connection; (ii) the online real time transcripts; and (iii) documents.

**7. Electronic Document Display**

30. During their interventions at the Hearing, each Party shall have the ability to electronically display documents (*e.g.*, PowerPoints presentations, demonstrative exhibits, exhibits and authorities) through the screen-sharing function of the Zoom platform, and the displayed document will be visible to the In-Person Participants and the Remote Participants. Each Party will designate a person(s) in its own team (“**Party Document Manager**”) to manage the document display during the respective Party’s interventions at the Hearing.

**8. Videoconference Etiquette for Remote Participants**

31. For optimum operation of the videoconference platform, the Parties are advised to keep the number of Remote Participants with video connection to a minimum. Remote Participants that are Passive Participants should preferably join the meeting through their computer but turning their video off.
32. Remote Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Zoom Operator serving as host of the videoconference shall have the ability to mute Remote Participants if needed to avoid background noise, under the Tribunal’s control.

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

**9. Technical Issues**

34. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system for Remote Participants to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. Full recordings and real-time streamed transcripts will also be available to mitigate any prejudice arising from the temporary failure of a given Remote Participant to be able to follow the entire Hearing on the videoconference platform.

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**ANNEX D**  
**[TEMPLATE] LIST OF PARTICIPANTS<sup>3</sup>**

TRIBUNAL					
(1)	(2)	(3)	(4)	(5)	(7)
Break Out Room	Name	Mode <sup>4</sup>	Type <sup>5</sup>	Affiliation	Place of Connection
T	[T] – Inka Hanefeld hanefeld@hanefeld-legal.com		A	President	
T	[T] – Guido Santiago Tawil arb-gtawil@arb-chambers.com		A	Arbitrator	
T	[T] – Bernardo M. Cremades bcremades@bcremades.com		A	Arbitrator	

ASSISTANT TO THE TRIBUNAL					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection
T	[T] – Charlotte Matthews matthews@hanefeld-legal.com		P	Assistant to the Tribunal	

ICSID SECRETARIAT					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection
T	[T] – Marisa Planells Valero mplanellsvalero@worldbank.org		A	Secretary of the Tribunal	

CLAIMANT					
Break Out Room <sup>6</sup>	Name	Mode	Type	Affiliation	Place of Connection
	<b>Counsel:</b>				
C	[C] - Name and Last name				[C] Room # 1

<sup>3</sup> Note: Columns (1) and (7) only applicable if remote modality.

<sup>4</sup> “IP” (In-Person Participant) / “RP” (Remote Participant)

<sup>5</sup> “A” (Active Participant) / “P” (Passive Participant).

<sup>6</sup> [For remote modality: Witness [W] or Experts [E] called to testify to be assigned to the W/E Break-Out Room during breaks occurring during their examinations. Experts [E] may be assigned to the [C] break out room if connected at any other time.]

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	[Email]				[City]
C					[R] Office / Home [City]
	<b>Party Representatives:</b>				
C	[C] - Name and Last name [Email]				
C					
	<b>Witnesses:</b>				
W/E	[W] - Name and Last name [Email]				
W/E					
	<b>Experts:</b>				
W/E	[E] - Name and Last name [Email]				
W/E					

RESPONDENT					
Break Out Room <sup>7</sup>	Name	Mode	Type	Affiliation	Place of Connection
	<b>Counsel:</b>				
R	[R] - Name and Last name [Email]				[R] Room # 1 [City]
R					[R] Office / Home [City]
	<b>Party Representatives:</b>				
R	[R] - Name and Last name [Email]				
R					
	<b>Witnesses:</b>				
W/E	[W] - Name and Last name [Email]				
W/E					
	<b>Experts:</b>				
W/E	[E] - Name and Last name [Email]				

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<sup>7</sup> [For remote modality: Witness [W] or Experts [E] called to testify to be assigned to the W/E Break-Out Room during breaks occurring during their examinations. Experts [E] may be assigned to the [R] break out room if connected at any other time.]

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<b>COURT REPORTERS</b>					
<b>Break Out Room</b>	<b>Name</b>	<b>Mode</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
N/A	[CR] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		

<b>INTERPRETERS</b>					
<b>Break Out Room</b>	<b>Name</b>	<b>Mode</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
N/A	[INT] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		

<b>TECHNICAL SUPPORT</b>					
<b>Break Out Room</b>	<b>Name</b>	<b>Mode</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
N/A	[TECH] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		