

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Glencore International A.G.**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/21/30)**

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**PROCEDURAL ORDER NO. 1**

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***Members of the Tribunal***

Ms. Sabina Sacco, President of the Tribunal

Prof. Bernard Hanotiau, Arbitrator

Prof. Donald M. McRae, Arbitrator

***Secretary of the Tribunal***

Ms. Alicia Martín Blanco

20 December 2023

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## **Introduction**

The first session of the Tribunal and preliminary procedural consultation with the Parties (“First Session”) was held on 24 October 2023, at 10 am EDT by videoconference. The First Session was adjourned at 12.30 pm EDT.

A recording of the First Session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

### **Members of the Tribunal:**

Sabina Sacco, President of the Tribunal  
Bernard Hanotiau, Arbitrator  
Donald M. McRae, Arbitrator

### **ICSID Secretariat:**

Alicia Martín Blanco, Secretary of the Tribunal

### **On behalf of the Claimant:**

Nigel Blackaby KC, Freshfields Bruckhaus Deringer US LLP  
Caroline Richard, Freshfields Bruckhaus Deringer US LLP  
Maria Julia Milesi, Freshfields Bruckhaus Deringer US LLP  
Nicolás Córdoba, Freshfields Bruckhaus Deringer US LLP  
José Vicente Zapata, Holland & Knight Colombia SAS

### **On behalf of the Respondent:**

Paolo Di Rosa, Arnold & Porter Kaye Scholer LLP  
Patricio Grané Labat, Arnold & Porter Kaye Scholer LLP  
Álvaro Nistal, Arnold & Porter Kaye Scholer LLP  
Natalia Giraldo Carrillo, Arnold & Porter Kaye Scholer LLP  
Andrea Mauri Paricio, Arnold & Porter Kaye Scholer LLP  
Martha Lucía Zamora Ávila, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia  
Ana María Ordoñez Puentes, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia  
Giovanny Andrés Vega Barbosa, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia  
Juana Martínez Quintero, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia  
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Colombia

Leiver Darío Palacios Ramos, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia

The Tribunal and the Parties considered the following:

- The draft of this Procedural Order No. 1 circulated by the Tribunal Secretary on 9 October 2023; and
- The Parties' comments on the draft Procedural Order No. 1 received on 23 October 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

After the First Session, on 5 December 2023, the Tribunal circulated a revised draft of this Order, which contained the Tribunal's decisions with respect to the disputed matters, as well as the Tribunal's proposals on several items on which the Tribunal requested the Parties' input. The Parties submitted their responses on 12 December 2023.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this Procedural Order No. 1 ("PO1") sets out the Procedural Rules that govern this arbitration, as well as the procedural calendar applicable to this arbitration, which is attached as Annex A.

**1. Applicable Arbitration Rules**

*Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, and the Agreement between the Republic of Colombia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, which was signed on 17 May 2006 and entered into force on 6 October 2009.

**2. Constitution of the Tribunal and Tribunal Members' Declarations**

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on 28 August 2023 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 28 August 2023.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

**3. Fees and Expenses of Tribunal Members**

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses*

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

**4. Presence and Quorum**

*Arbitration Rules 14(2) and 20(1)(a)*

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, except in situations where the Tribunal must deliberate on a matter that requires urgent directions in order to avoid irreparable harm to a Party or to the integrity of the proceedings, and one of the Tribunal members cannot be reached in a timely manner. In these cases, any decisions or directions shall be subject to a possible reconsideration by the full Tribunal.

**5. Rulings of the Tribunal**

*Convention Article 48(1); Arbitration Rules 16, 19 and 20*

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, and consultation with the other Members of the Tribunal is not practicable, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft and issue all rulings, including the award, within a reasonable time. If a ruling (other than a decision on jurisdiction or award) has not been issued within 30 days after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every 10 days. If a decision on jurisdiction or an award has not been issued within six or twelve months, respectively, after the final submission, status updates will be provided every month or every three months, respectively.
- 5.4. The President is authorized to sign Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary electronically by letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

**6. Power to Fix Time Limits**

*Arbitration Rule 26(1)*

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, and consultation with the other Members of the Tribunal is not practicable, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The Parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received electronically by the Secretary-General at 11:59 PM on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, with the day of such announcement being excluded from the calculation.
- 6.4. Short extensions of time may be agreed between the Parties without prior approval by the Tribunal provided that such extensions: (i) do not affect the hearing dates or otherwise materially affect the overall schedule of the proceeding set out in Annex A; and (ii) the Tribunal is promptly informed of the Parties' agreement.

**7. Secretary of the Tribunal**

*Administrative and Financial Regulation 28*

- 7.1. The Tribunal Secretary is Ms. Alicia Martín Blanco, Senior Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Alicia Martín Blanco  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
U.S.A.  
Tel.: + 1 (202) 458-1534  
Fax: + 1 (202) 522-2615  
Email: [amartinblanco@worldbank.org](mailto:amartinblanco@worldbank.org)  
Paralegal name: Andrea Denisse Clavijo Herrera  
Paralegal email: [aclavijoherrera@worldbank.org](mailto:aclavijoherrera@worldbank.org)  
ICSID case address: [arb/21/30@icsidcases.worldbank.org](mailto:arb/21/30@icsidcases.worldbank.org)

- 7.3. For local messenger deliveries, the contact details are:

Alicia Martín Blanco  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
U.S.A.  
Tel.: +1 (202) 458-1534

**8. Assistant to the Tribunal**

- 8.1. Subject to the Parties' consent as to the identity of the Assistant, during the course of the proceedings, the Tribunal may appoint an assistant (the "Assistant to the Tribunal"), to support the efficient conduct of the proceedings in the management of time and costs.<sup>1</sup>
- 8.2. The appointment of the Assistant to the Tribunal shall be made in accordance with the following procedure:

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<sup>1</sup> On 12 December 2023, both Parties provided their consent to the appointment of an Assistant to the Tribunal in accordance with the terms set out in this Section 8 of Procedural Order No. 1

Procedural Order No. 1

- 8.2.1. The Tribunal will send a letter proposing a candidate to the Parties and will circulate his or her *curriculum vitae*.
- 8.2.2. Within the time limit set by the Tribunal, the Parties shall indicate whether they accept the proposed candidate. The Parties undertake to raise only reasonable objections concerning the suitability, independence or impartiality of the proposed candidate.
- 8.2.3. If the Parties approve the proposed candidate, he or she will circulate a declaration of independence and impartiality, which also contains an undertaking to act in accordance with the Tribunal's instructions, and the Tribunal shall appoint the Assistant to the Tribunal.
- 8.3. The Assistant to the Tribunal will undertake only such specific tasks as are assigned to him/her by the President, such as (i) the marshaling of evidence; (ii) research of specific issues of law; (iii) organization of case documents; (iv) preparing for the Tribunal's review drafts of procedural orders, as well as drafts of factual or descriptive portions of an award, such as the procedural histories, chronologies of facts, and summaries of the Parties' positions; and (v) assisting the Tribunal during its deliberations. Under no circumstances shall the Tribunal delegate its decision-making functions to the Assistant to the Tribunal, nor shall it request him or her to perform any of the essential duties of the Tribunal on its behalf.
- 8.4. The Assistant to the Tribunal shall be subject to the same obligations of confidentiality as the Members of the Tribunal and will sign a declaration to that effect.
- 8.5. The Parties also agreed that the Assistant to the Tribunal would receive: (i) US\$ 250 for each hour of work performed in connection with the case; and expenses reimbursed as described in the Tribunal's letter described in para. 8.2.1 above.

**9. Representation of the Parties**

*Arbitration Rule 18*

- 9.1. Each Party has designated its representatives listed below as being authorized to act on its behalf in these arbitration proceedings and has provided the Tribunal and ICSID with copies of their respective powers of attorney or other appropriate authorization.

**For the Claimant**

Mr. Nigel Blackaby KC  
Ms. Caroline Richard  
Ms. Maria Julia Milesi  
Mr. Sam Prevatt  
Mr. Juan Pedro Pomés  
Mr. Nicolás Córdoba  
Ms. Daniela Cala

**For the Respondent**

Mr. Paolo Di Rosa  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001, USA  
Tel: +1 202 942 5000  
and  
Mr. Patricio Grané Labat

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Mr. José Vicente Zapata  
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- 9.2. Each Party shall be represented by its counsel (above) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.
- 9.3. A Party shall not appoint any new representatives when a relationship exists between the person and an arbitrator that would create a conflict of interest. If a Party fails to abide by this rule, the Tribunal may take appropriate measures to safeguard the integrity of the proceedings, including the exclusion of the new representative from participating in all or part of the arbitral proceedings. In determining the appropriate measures, the Tribunal shall have regard to all of the surrounding circumstances, including: the general principle that a Party may be represented by a legal representative chosen by that Party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

**10. Apportionment of Costs and Advance Payments to ICSID**

*Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 28*

- 10.1. The Parties shall cover the direct costs of the proceeding through periodic advance payments to be made in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. Upon the constitution of the Tribunal, by letter of 5 September 2023, ICSID requested that the Parties pay US\$400,000 to defray the estimated costs of the subsequent phase of the proceeding. ICSID received the Claimant's payment on 5 October 2023, and the Respondent's payment on 23 October 2023.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

**11. Place of Proceeding**

*Convention Articles 62 and 63; Arbitration Rule 13(3)*

- 11.1. The place of the arbitration will be the seat of ICSID in Washington D.C.<sup>2</sup>
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the Parties so agree.
- 11.3. The Tribunal members may deliberate and conduct internal meetings at any place and by any appropriate means they consider convenient, including by video or telephone conference.

**12. Procedural Language(s), Translation, and Interpretation**

*Arbitration Rules 20(1)(b) and 22*

- 12.1. English and Spanish are the procedural languages of the arbitration, subject to the rules set out below.
- 12.2. Regarding correspondence and procedural applications:
  - 12.2.1. Routine, administrative, or procedural correspondence (other than submissions on document production, which are addressed at Section 18 below) between the Parties, may be sent in either procedural language without translation. Such routine communications, as well as procedural requests or applications addressed to the Tribunal or ICSID, may be in either procedural language but, if in Spanish, shall be accompanied by an English translation.

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<sup>2</sup> The designation of the place of arbitration has the legal consequences set out in the Convention and the Arbitration Rules.

Procedural Order No. 1

- 12.2.2. Submissions and decisions related to document production shall be made in English only, except that the Claimant shall also provide a Spanish translation of its Document Requests within 48 hours.<sup>3</sup> Documents voluntarily produced by a Party or ordered to be produced by the Tribunal shall be produced to the other Party solely in their original language without the need for translation.
- 12.3. Regarding substantive submissions:
- 12.3.1. Written pleadings, witness statements, and expert reports or opinions (together, “Main Documents”) shall be submitted in English or in Spanish. If the Main Documents are submitted in Spanish, they shall be followed by a translation into English within the time limit set out in para. 16.3 below.
- 12.3.2. Fact exhibits, and legal authorities, (together the “Supporting Documents”) in English or Spanish may be submitted in their original language. Documents submitted in Spanish or in any language other than English shall be followed by a translation into English within the time limit set out in para. 16.3 below. If a Supporting Document is lengthy and relevant only in part, it is sufficient to translate only the relevant parts, provided that the entire original document has been submitted (or, if too voluminous, the entire part, section, chapter, etc., as the case may be) and the translated portion is sufficient to allow a complete understanding of its text and its context. The Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative. Supporting Documents originally in English do not need to be translated.
- 12.3.3. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal orders a certified translation. If a Party wishes to challenge the translation of a document, it may submit a new translation that clearly identifies the differences.
- 12.3.4. In the event of disagreement between the Parties as to the translation of any Main or Supporting Document, the original language of the relevant document will be authoritative. The Tribunal shall take the appropriate decision to address any such disagreement.

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<sup>3</sup> This is to allow the Respondent to better liaise with its departments to search for responsive documents. For the avoidance of doubt, only the original Document Requests shall be translated; the Claimant need not translate its objections to the Respondent’s Requests or its replies to the Respondent’s objections. The Respondent shall submit its objections and replies in English.

12.4. Regarding hearings, oral testimony and argument:

- 12.4.1. Any hearings (other than procedural hearings or meetings) shall be conducted in Spanish and English with simultaneous interpretation into both procedural languages. For the avoidance of doubt, the first session and preliminary procedural consultation, as well as the Pre-Hearing Conference, shall be conducted in English without interpretation into Spanish.
- 12.4.2. Oral testimony and argument before the Tribunal shall be given in either English or Spanish. Simultaneous interpretation into the procedural languages shall be provided. The Parties shall notify the Tribunal of the potential need for interpretation in a language other than the procedural languages one week after they submit their respective witness notifications.
- 12.4.3. The Tribunal may address the Parties, witnesses and experts in English or Spanish, with simultaneous interpretation into the other procedural language.
- 12.4.4. Verbatim transcripts of any hearing other than procedural hearings shall be made in both procedural languages.
- 12.4.5. The Parties shall confer with each other and the Tribunal with respect to the procedure for correcting transcripts on the last day of the oral hearing. The agreed corrections may be entered by the Parties 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 Parties in the revised transcripts. In any event, in case of conflict between the transcripts in Spanish and in English, the audio of the original language in which the oral testimony or the presentation of arguments was made will prevail.
- 12.4.6. 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 the allocation of costs. ICSID will be responsible for making arrangements with the interpreters, in consultation with the parties.

12.5. For the Tribunal’s orders and decisions, and award:

- 12.5.1. The Tribunal’s working language shall be English, and any orders, decisions and the award shall be initially drafted in English.
- 12.5.2. The Tribunal shall make any order or decision (other than a decision on jurisdiction) in English. If either Party so requests, ICSID will prepare and circulate to the parties a Spanish translation of any order promptly after such a request.
- 12.5.3. The Tribunal shall render any decision on jurisdiction or award in English and Spanish simultaneously. Both versions shall be equally authentic.

**13. Routing of Communications**

- 13.1. Written communications in the case shall be transmitted by email to the Parties, the Tribunal Secretary, and the Tribunal.
- 13.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal upon receipt of both communications.
- 13.3. The Tribunal Secretary shall not be copied on communications between the Parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:

Sabina Sacco (sabina.sacco@sacco-arbitration.com)

Bernard Hanotiau (bernard.hanotiau@hvdb.com)

Donald M. McRae (Donald.Mcrae@uottawa.ca)

**14. Number and Sequence of Pleadings – Procedural Calendar**

*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

- 14.1. The Parties shall submit their pleadings in accordance with the procedural calendars established in Annex A, which envisages three different scenarios:
- 14.2. **Scenario 1** shall apply in the event that objections to jurisdiction (if any) are made with the counter-memorial and there is no request for bifurcation.
- 14.3. **Scenario 2** shall apply in the event that objections to jurisdiction are made in response to the Memorial on the Merits, and there is a request for bifurcation which is granted.
- 14.4. **Scenario 3** shall apply in the event that objections to jurisdiction are made in response to the Memorial on the Merits, and there is a request for bifurcation which is refused.
- 14.5. In respect of Scenarios 2 and 3, in the event that the Respondent decides to raise objections to jurisdiction and requests the bifurcation of the proceedings:
  - 14.5.1. Respondent will submit a request for bifurcation in accordance with Annex A, providing a summary of its jurisdictional objections.
  - 14.5.2. The Claimant will be granted an opportunity to make any observations with respect to Respondent's request for bifurcation within the time limit specified in Annex A.
  - 14.5.3. The Tribunal will use its best efforts to issue its decision with respect to Respondent's request for bifurcation within the time limit specified in Annex A.

If necessary, the Tribunal may hold a video or conference call with the Parties during this period.

14.5.4. The proceedings on the merits shall be suspended from the date of the submission of Respondent's request for bifurcation until the date of the Tribunal's decision on the request for bifurcation. Should the Tribunal decide:

(a) To bifurcate, the proceedings on the merits shall remain suspended until the Tribunal decides to lift the suspension and Scenario 2 in Annex A shall apply.

(b) Not to bifurcate, the suspension shall be lifted and Scenario 3 in Annex A shall apply: Respondent shall file its Counter-Memorial on the Merits and Memorial on Jurisdictional Objections within the time limit specified in Annex A after the decision rejecting bifurcation, and the rest of the deadlines follow, *mutatis mutandis*, the terms established in Scenario 1.

## **15. Pleadings or Written Submissions**

15.1. In the first exchange of submissions (i.e., Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they rely. Together with such submissions, each Party shall produce all evidence, including documentary evidence (fact exhibits), witness statements and expert reports, as well as legal authorities, upon which it relies, if any, with the exception of documents to be obtained during the document production phase. Following each fact allegation and, wherever possible, legal argument, the Parties shall make specific reference in their submissions to the supporting evidence and legal authorities (i.e., indicating the document cited, and the relevant pages or paragraph numbers).

15.2. In the second exchange of submissions (i.e., Reply and Rejoinder), the Parties shall limit themselves to (i) responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, (ii) addressing evidence obtained through document production (if any); and (iii) addressing new facts that have arisen after the Memorial or Counter-Memorial, respectively. Together with their Reply and Rejoinder, respectively, the Parties may only file (i) additional evidence intended to answer or refute evidence or facts first alleged by the other Party in its previous pleading; (ii) any documents obtained through document production, to the extent that the Party wishes to rely on them; and (iii) documents discovered or obtained by a Party after the filing of its first written submission and not reasonably previously available.

15.3. After any hearing on jurisdiction or merits, the Parties shall file post-hearing briefs (the "Post-Hearing Briefs"). At or promptly after the closure of any such hearing, the Tribunal shall determine the content, number, sequence and timing of the Post-Hearing Briefs in consultation with the Parties. The Tribunal may limit the scope and/or length of the Post-Hearing Briefs, and may submit to the Parties a list of questions to be answered in them. Post-Hearing Briefs shall be limited to matters of fact and law presented in the submission(s) and at the hearing(s), and may not contain new allegations of fact or

arguments of law. No evidence may be submitted with Post-Hearing Briefs, unless authorized by the Tribunal. This provision does not preclude the possibility that the Parties may make oral closing statements at the hearing.

- 15.4. The Parties shall set forth their requests for relief in a separate section at the end of their pleadings. The Parties shall include the final and updated version of their requests for relief in their Post-Hearing Briefs, and the Tribunal shall decide only on those final requests for relief.

**16. Number of Copies and Method of Filing of Parties' Pleadings**

*Arbitration Rules 20(1)(d) and 23*

- 16.1. By the relevant filing date set out in the Procedural Calendar, the Parties shall submit by email to the Tribunal, the Secretary and the opposing Party an electronic version of any written pleadings, witness statements, and expert reports or opinions (together, “**Main Documents**”) and an updated index of all fact exhibits, and legal authorities (together the “**Supporting Documents**”) (the “**Email Filing**”).<sup>4</sup>
- 16.2. Within four calendar days from the Email Filing, the Party filing the submission shall:
- 16.2.1. Upload all Main Documents and Supporting Documents (without translations, which are addressed at para. 16.3 below) and the corresponding updated index to the file sharing platform that has been created by ICSID for purposes of this case (the “**Electronic Platform Filing**”), and
- 16.2.2. Send by courier service to the President<sup>5</sup> and Prof. Hanotiau<sup>6</sup> (the “**Physical Filing**”), the pleading in A5 (mini-book) format, double-sided, soft-cover and spiral-bound.<sup>7</sup> There shall be no need to provide hard copies of other documents to the Tribunal, unless specifically requested.
- 16.3. Within 30 calendar days of the Electronic Platform Filing, the Parties shall upload to the file sharing platform that has been created by ICSID for purposes of this case an electronic version of the translated Main Documents and Supporting Documents, in accordance with the rules on language set out in Section 12 above (the “**Electronic Filing of Translations**”). On the date of the Electronic Filing of Translations, the Party will upload

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<sup>4</sup> Please note that the World Bank server does not accept emails larger than 25 MB. Supporting documentation shall be uploaded as individual files, not in .zip format.

<sup>5</sup> The Parties shall send two sets of mini-books to the President, who will provide the address for courier deliveries separately.

<sup>6</sup> Prof. Hanotiau requires only one set of mini-books. Deliveries to Prof. Hanotiau shall be made to his office at Hanotiau & van den Berg.

<sup>7</sup> Mini-books should be provided in sufficiently large font (close to what the normal font would be prior to reducing the document to A5 format). While this may result in the mini-book having a different page number than the original submission, paragraph numbers and titles should remain the same. The Parties shall send two sets of mini-books to Ms. Sacco, and one to Prof. Hanotiau.

an updated hyperlinked index of all fact exhibits and legal authorities to the file sharing platform that has been created by ICSID for purposes of this case.

- 16.4. In case of any differences between the versions of the pleadings or evidence in the Email Filing, Electronic Platform Filing and Physical Filing, the Email Filing shall prevail, unless the Party sending the submission, witness statement, or expert report has requested the possibility of submitting a corrected version or errata, in which case the version authorized by the Tribunal shall prevail.
- 16.5. Main Documents and their corresponding translations shall:
  - 16.5.1. Have their paragraphs numbered consecutively throughout each document, as well as numbered pages and headings;
  - 16.5.2. Be provided as Adobe Portable Document Format (“PDF”) files (computer-generated, not scanned);
  - 16.5.3. In the case of PDF files, be readable, text searchable and without any restrictions so that they can be printed, annotated and their contents copied on PC and Mac devices;
  - 16.5.4. Contain a list of acronyms and abbreviations used; and
  - 16.5.5. Be preceded by a hyper-linked table of contents and bookmarked.
- 16.6. Supporting Documents shall be provided as PDF files in accordance with paras. 16.5.2 and 16.5.3 above, except that they may be scanned copies (as long as they are text searchable (i.e., OCR PDF), or as Excel files.
- 16.7. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted, the language of the document, date of the document, full name of the document, and shall follow the naming conventions contained in **Annex B**.
- 16.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall upload to the file sharing platform created by ICSID for this case an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 16.9. A filing shall be deemed timely if sent by a Party by 11:59 PM, Washington, D.C. time, on the relevant date. The Parties agree to tolerate reasonable delays (viz., of no more than a few hours) in the filing of a written submission and accompanying documentation. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

**17. Taking of Evidence – General Rules**

- 17.1. The Tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered.
- 17.2. The Parties and the Tribunal may seek guidance from, but shall not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration 2020 (the “**IBA Rules**”) in respect of issues that are not addressed in this Order, the ICSID Convention and the ICSID Arbitration Rules.
- 17.3. In principle, all evidence other than oral evidence shall be submitted together with the Parties’ pleadings, as set out in Section 16 above, during the written phase prior to any hearings on jurisdiction or the merits. The Tribunal shall only admit new evidence not filed with the corresponding pleadings when, following a reasoned request by a Party and having heard the other Party and considered all the relevant circumstances, the Tribunal in its discretion finds admission to be justified. A Party requesting to submit new evidence shall refrain from submitting such new evidence until the Tribunal has authorized its submission. If the request is granted, the Tribunal shall allow the other Party to comment on the new evidence and may also allow it to file responsive evidence. To the greatest extent possible, the Parties shall abstain from seeking to introduce new evidence in the period immediately preceding the hearing.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

**18. Production of Documents**

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

- 18.1. The Parties do not contemplate the need for a document production phase. Insofar as a Party wishes to request the production of a limited number of documents or a narrow category of documents from the other Party, it shall do so promptly, setting out the basis for such request in accordance with Article 3 of the IBA Rules, and it will send such request directly to the other Party without copying the Tribunal or the Tribunal’s Secretary. In making such requests, the Parties shall endeavor not to disrupt the procedural calendar. The Tribunal will decide on any unresolved requests.
- 18.2. All documents produced by a Party shall be produced electronically, in their original language and, where possible, in their native format (e.g., Word, Excel, Outlook, PDF, .jpg), each in a separate file, directly to the requesting Party, without copying the Tribunal or its Secretary. Documents so produced shall not be incorporated into the record unless and until they are filed as exhibits to the corresponding pleadings in accordance with Section 19 below.

**19. Documentary Evidence**

*Convention Article 44; Arbitration Rules 24 and 34(2)*

- 19.1. Documentary evidence (fact exhibits and legal authorities) shall be submitted in the following form:
- 19.1.1. Fact exhibits shall comply with the format specified in para. 16.6 above. Spreadsheets or other calculations performed by experts shall be provided in Excel format.
  - 19.1.2. Each fact exhibit or legal authority shall be filed as a separate exhibit.
  - 19.1.3. The Parties and their witnesses and experts shall avoid placing documents in subfolders.
- 19.2. Fact exhibits and legal authorities shall follow the naming conventions contained in Annex B. In particular:
- 19.2.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.
  - 19.2.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name.
  - 19.2.3. In the event that a Party produces a more complete copy of a Supporting Document or a translation of a Supporting Document already on the record in excerpted form, it shall add “bis”, “ter”, etc., as corresponding, at the end of the name of the Supporting Document.
  - 19.2.4. The electronic file with each exhibit shall have a *short* title that follows the nomenclature set out in Annex B.<sup>8</sup>

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<sup>8</sup> The Tribunal emphasizes the need for documents to have short titles and paths, in order to facilitate their filing. This is particularly important for Documents submitted by technical experts.

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- 19.3. Copies of documentary evidence shall be assumed to be authentic and complete unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary. If only a part of the document is submitted, the Party shall indicate so by adding the word “(excerpt)” at the end of the document title.
- 19.4. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 19.5. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at the hearing (by either Party or an expert), provided they contain no new evidence. The rules for demonstrative exhibits shall be discussed prior to the hearing. Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimant, and “RD-” for Respondent), and indicate on each page or slide of the demonstrative exhibit the number of the document(s) from which the information contained therein is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, 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 Conference.

**20. Witnesses**

*Convention Article 43(a); Arbitration Rules 34, 35, 36*

- 20.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee or other representative. Witnesses affiliated with a Party shall be treated in the same manner as any other witnesses.
- 20.2. Each witness shall submit a witness statement, which shall constitute his or her direct evidence.
- 20.3. Each witness statement shall be in writing, dated and signed.
- 20.4. Witness statements shall contain:
  - 20.4.1. The name of the witness and his or her professional address; a statement regarding his or her present and past relationship (if any) with any of the Parties or their counsel; a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement; and a statement of the witness’s role or involvement with the facts of the dispute;
  - 20.4.2. A full and detailed description of the facts that the witness testifies to, and the source of the witness’s information as to those facts. Any documents or materials on which the witness relies shall be identified clearly and accurately, and submitted as exhibits with sequential numbering and as part of the relevant Party’s pleading, to the extent that they have not already been submitted as documentary evidence in the proceedings;

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- 20.4.3. A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the hearing;
  - 20.4.4. The witness's confirmation of her or his availability to attend the hearing if called to testify;
  - 20.4.5. An affirmation of the truth of the witness statement; and
  - 20.4.6. The signature (physical or electronic) of the witness, with an indication of the date and place of signature.
- 20.5. It shall not be improper for counsel to meet or interact with witnesses for the purpose of discussing and preparing their respective witness statement, or to assist witnesses in the preparation of their oral testimony. Counsel shall ensure that witness statements reflect the witness's version of the relevant facts, events, and circumstances.
  - 20.6. The witness statement shall constitute the witness's direct evidence. Nonetheless, the Party presenting the witness may conduct a brief (e.g., 10-15 minutes) direct examination during the hearing. A Party may question a witness on events that occurred, or issues that were addressed for the first time by the other Party, after the witness's last statement, provided that these events or issues are strictly related to the witness's previous testimony.
  - 20.7. By the date set forth in the Procedural Calendar, each Party shall notify the other Party and the Tribunal which of the witnesses of the opposing Party it wishes to cross-examine at the hearing. If a Party considers that one of its own witnesses who has not been called by the other Party should be examined at the hearing, it shall submit a written and reasoned request to the Tribunal, within five calendar days from the date on which the other Party notified the witnesses it wishes to call to the hearing. The Tribunal will decide whether that witness shall be called, after hearing the other Party and having regard to all relevant circumstances.
  - 20.8. By the date set forth in the Procedural Calendar, the Tribunal shall identify the witnesses or experts not called by the Parties whom it wishes to question, if any.
  - 20.9. The procedure for examining any witnesses called to the hearing by the Tribunal, whether at a Party's request or its own motion, shall be set out in the Procedural Order on Hearing Organization referred to in para. 23.2 below, after consulting with the Parties.
  - 20.10. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party shall not be deemed established by the sole fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.

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- 20.11. Each Party shall ensure that each witness on whose testimony it relies is available to attend the hearing and that he or she attends when the other Party or the Tribunal has called the witness for examination. Unless otherwise agreed by the Parties or determined by the Tribunal, it shall be understood that witnesses shall participate at hearings in person. For this purpose, as soon as reasonably possible, each Party shall inform its witnesses of the dates of the hearing with the aim of ensuring their presence at the hearing should they be called and avoiding any disruption to the hearing.
- 20.12. Where, notwithstanding para. 0, in exceptional circumstances a witness is unable to attend the hearing in person, the Tribunal may allow the witness to be examined by videoconference upon a written and reasoned request by the Party presenting the witness, followed by observations from the other Party.
- 20.13. If a witness whose appearance has been requested pursuant to paras. 20.7 and 20.8 fails to appear at a hearing without a valid reason, the Tribunal may disregard any witness statement by that witness unless, in light of all of the relevant circumstances, the Tribunal decides otherwise. If the Tribunal decides to consider the witness's written testimony without hearing the witnesses' oral evidence, it shall take into account that the other Party has been deprived of the opportunity to cross-examine the witness when assessing the testimony.
- 20.14. The rules applicable to the examination of witnesses at the hearing shall be discussed at the Pre-Hearing Conference and determined in a procedural order to be issued prior to the hearing.

**21. Party-Appointed Experts**

*Convention Article 43(a); Arbitration Rules 34, 35, 36*

- 21.1. Each Party may retain and produce evidence prepared by one or more experts, who shall be independent of that Party (the "**Party-Appointed Experts**").
- 21.2. The expert evidence offered by the Parties shall be submitted in writing, by way of expert reports, subject to the possibility of submitting oral evidence at the hearing. The provisions of Section 20 *supra* shall apply, *mutatis mutandis*, to expert evidence, subject to the particularities set out below.
- 21.3. Expert reports shall contain:
- 21.3.1. The full name and professional address of the Party-Appointed Expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, their legal advisors and the Tribunal, and a description of his or her background, qualifications, training and experience;
- 21.3.2. A description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;

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- 21.3.3. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
  - 21.3.4. A statement of the facts on which he or she is basing his or her expert opinions and conclusions, and the source of the expert's information as to those facts;
  - 21.3.5. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Any documents or materials on which the expert relies shall be identified clearly and accurately, and submitted as exhibits to the expert report if they have not already been submitted as documentary evidence in the proceedings;
  - 21.3.6. If the expert report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Party-Appointed Expert anticipates giving testimony at the hearing;
  - 21.3.7. An affirmation of his or her genuine belief in the opinions expressed in the expert report; and
  - 21.3.8. The signature (physical or electronic) of the Party-Appointed Expert and its date and place.
  - 21.3.9. If the expert report has been signed by more than one person, the expert report shall also contain an attribution of the entirety or specific parts of the expert report to each author.
- 21.4. Each expert report shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs, as well as a detailed table of contents.
  - 21.5. Expert reports shall be accompanied by the documents or information on which they are based, unless such documents or information are already in the record, in which case the reference to such documents shall be sufficient. These documents shall be submitted in the manner set out in Section 19 and Annex B. The experts shall use their best efforts to ensure that the electronic documents have short names and paths (avoiding sub-folders), in order to facilitate their filing.
  - 21.6. It shall not be improper for counsel to meet or interact with the experts for the purpose of discussing and preparing their expert reports, nor to assist the experts in the preparation of their oral testimony. Counsel shall ensure that an expert report reflects the expert's own analysis and opinion.
  - 21.7. The rules applicable to the examination of experts at the hearing shall be discussed at the Pre-Hearing Conference and determined in a procedural order to be issued prior to the hearing.

- 21.8. If the Parties submit expert evidence, the Tribunal may, if it deems appropriate after consulting with the Parties and in accordance with Article 5.4 of the IBA Rules, require the experts to meet and confer before or after the hearing(s) for the purpose of (i) seeking to reach an agreement on issues on which they disagree; (ii) seeking to narrow their differences with respect to those issues; and/or (iii) prepare a joint report.<sup>9</sup> The experts shall record in writing the issues on which they have agreed or have succeeded in narrowing their differences, those on which they have not so agreed or succeeded in narrowing their differences, and, if feasible and requested by the Tribunal, shall issue a joint expert report. In the event that this exercise takes place after the hearing(s), the Tribunal may decide, on its own motion or at the request of a Party, to conduct a new examination of the experts according to the rules established for oral examination.
- 21.9. Personal privacy data shall be minimized where possible in witness statement and expert reports. Birthdates, passport numbers, tax identification numbers and personal identification numbers, and other personal data that is not relevant or material for the resolution of the dispute shall not be necessary unless specifically ordered by the Tribunal. Witness statements and expert reports shall not include a photograph of the witness or expert; however, at the hearing the Parties shall provide a single document listing all of its witnesses and experts called to testify at the hearing, with a photograph of each.

## **22. Tribunal-Appointed Experts**

- 22.1. If, after assessing the evidence of any Party-Appointed Experts, the Tribunal finds that it requires the assistance of another expert, it may, on its own initiative or at the request of a Party, appoint one or more experts (the “**Tribunal-Appointed Experts**”). The Tribunal shall consult the Parties regarding the selection and terms of reference of such expert(s). To the extent possible, any such appointment shall be made after the first exchange of submissions so as to avoid unnecessary costs and delays.
- 22.2. The provisions of Article 6 of the IBA Rules shall apply to Tribunal-Appointed Experts.
- 22.3. The costs of Tribunal-Appointed Experts shall be borne by the Parties in equal shares and paid from the deposits made by each Party, without prejudice to the Tribunal’s final decision on the allocation of costs of the arbitration.

## **23. Pre-Hearing Conference**

### *Arbitration Rule 21*

- 23.1. In the case of evidentiary hearings or other complex hearings, the Parties and the Tribunal shall hold a pre-hearing telephone or videoconference call (the “**Pre-Hearing Conference**”), at a date to be determined by the Tribunal after consultation with the Parties, to address any outstanding procedural, administrative, and logistical matters in preparation for the hearing, including:

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<sup>9</sup> In particular, the Tribunal may ask the quantum experts to prepare a joint valuation model after the hearing.

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- 23.1.1. Time allocation;
  - 23.1.2. The sequence and number of oral submissions;
  - 23.1.3. The examination of witnesses and experts;
  - 23.1.4. Hearing bundles and other materials to be used during the hearing; and
  - 23.1.5. Any logistical issues related to the hearing.
- 23.2. After the Pre-Hearing Conference, the Tribunal shall issue a procedural order setting out the rules and procedure for the hearing (the “Procedural Order on Hearing Organization”).

**24. Hearings**

*Arbitration Rules 20(1)(e) and 32, and Regulation 26*

- 24.1. Hearings before the Tribunal other than procedural or organizational meetings shall be subject to the rules set out in this Section.
- 24.2. The dates of any hearings shall be set out in the Procedural Calendar. Hearings shall take place at least twelve weeks after the filing of the last written submission on the merits, insofar as practicable. The Tribunal shall set a hearing date in relation to Scenario 1, in consultation with the Parties, as soon as practicable. In the event that a bifurcation request is submitted, the Tribunal and Parties shall consult in respect to any modification of the hearing date.
- 24.3. Barring any exceptional circumstances or agreement between the Parties and the Tribunal, the hearing dates so established shall be considered final and will not be changed.
- 24.4. Hearings shall be held in-person (“**In-Person Hearings**”), unless otherwise agreed by the Parties or determined by the Tribunal after consulting the Parties and considering all relevant circumstances. In such case, hearings may be held by any other appropriate means of communication as determined by the Tribunal after consultation with the Parties (i) that allows persons in more than one location to simultaneously participate (“**Remote Hearings**”), or (ii) partly in person with remote elements (“**Hybrid Hearings**”). In the case of a Remote or Hybrid Hearing, the Tribunal shall, in consultation with the Parties, prepare a protocol to deal with all necessary issues.
- 24.5. The hearing shall be held at ICSID’s headquarters in Washington D.C., unless otherwise agreed by the Tribunal and the Parties. The ICSID Secretariat shall make arrangements for the reservation of the hearing room, breakout rooms for the Parties and the Tribunal, and other logistical matters, including retention of interpreters and court reporters, in consultation with the Parties. The ICSID Secretariat shall inform the Tribunal of the status of these arrangements within the time limit specified by the Tribunal.

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- 24.6. The procedure for any hearings shall be determined in the Procedural Order on Hearing Organization. In principle, each Party will have an equal time allocation (regardless of its actual use or not) to make oral submissions and examine witnesses and/or experts at any hearings, subject to adjustments if due process so requires.
- 24.7. In accordance with Arbitration Rule 32(2), hearings shall be closed to the public.
- 24.8. The costs of hearing rooms and of the services required for the hearing (including court reporters, interpreters) shall be paid from the deposits made by each Party, without prejudice to the Tribunal's subsequent decision on the allocation of costs of the arbitration.

**25. Records of Hearings and Sessions**

*Arbitration Rules 13 and 20(1)(g)*

- 25.1. Procedural meetings. Procedural and organizational meetings shall be sound recorded, and the sound recordings shall be provided to the Parties and the Tribunal Members. Unless otherwise agreed by the Parties or determined by the Tribunal, there shall be no need for transcripts.
- 25.2. Substantive hearings. The ICSID Secretariat shall arrange for any substantive hearings to be recorded and transcribed by a qualified court reporter, in accordance with the following rules.
  - 25.2.1. There shall be an audio recording of all oral argument and testimony, both in the language it is made and of any simultaneous interpretation.
  - 25.2.2. Verbatim transcript(s) in the procedural languages shall be made of the original and interpreted oral argument and testimony in accordance with the rules on languages set out in Section 12 above.
  - 25.2.3. Unless the Tribunal directs otherwise, *Live Note* or comparable real time transcription software shall be used to make the hearing transcripts instantaneously available to the Parties and members of the Tribunal in the hearing room.
  - 25.2.4. Transcripts of proceedings shall be made available on a same day service basis.
  - 25.2.5. The Parties shall confer with each other and the Tribunal with respect to the procedure for correcting transcripts on the last day of the oral hearing. The Parties shall incorporate the agreed corrections into the revised transcripts. Any disagreement between the Parties shall be resolved by the Tribunal, and any correction adopted by the Tribunal shall be incorporated by the court reporters, under supervision of the ICSID Secretariat, into the revised transcripts.

25.3. The costs of any recordings, transcripts and interpretation services shall be paid from the deposits made each Party, without prejudice to the Tribunal's subsequent decision on the allocation of costs of the arbitration.

**26. Statements of Costs**

*Convention Article 44; Arbitration Rule 28(2)*

26.1. In accordance with Arbitration Rule 28(2), promptly after the closure of the proceeding, each Party shall submit a statement of costs reasonably incurred or borne by it in the proceeding. After consulting with the Parties (as appropriate), the Tribunal shall determine the content, number, sequence, and timing of cost submissions. The Tribunal may limit the scope and/or extent of submissions on costs and shall determine whether they should be accompanied by evidence relating to costs.

**27. Data Privacy**

27.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

27.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary.

27.3. The Members of the Tribunal, the Parties and their representatives shall always rely upon lawful bases for the use or processing of personal data (such as, by way of example, those set forth in Article 6 of the European General Data Protection Regulation, or any other applicable rules). Unless another legal basis is invoked, personal data in this arbitration is processed for the purpose of the legitimate interests of the Parties in resolving this dispute and to ensure that the arbitral process operates efficiently and expeditiously.

27.4. The Parties agree that they will reduce the amount of confidential or sensitive personal data (including, without limitation, national identification or social security numbers, bank account details, and dates of birth) exchanged or contained in the documentation submitted to the file to the minimum necessary, and that they will consult with each other to agree on the redaction or masking of such data to prevent unnecessary disclosure in this arbitration. The Parties shall refrain from submitting any confidential or sensitive information to the Tribunal without first having it redacted or masked, unless the Tribunal has previously approved such disclosure in consideration of the legitimate interests of the Parties and the relevance of the confidential or sensitive data.

27.5. If necessary, the Tribunal shall issue binding directions applying data protection principles during the arbitration to the extent appropriate for the efficient resolution of the dispute.

Procedural Order No. 1

- 27.6. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 27.7. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

**28. Cybersecurity**

- 28.1. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. The Parties agree that: (i) the security measures that they follow in the normal course of business are reasonable for the arbitration; and (ii) no additional information security measures are warranted for purposes of conducting this arbitration (except for situations falling under para. 28.2 below). Each Party shall maintain information security measures that are at least as robust as those in place at the time of this Procedural Order No. 1 when conducting this arbitration.
- 28.2. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber-security of arbitration-related information, and the Parties confirm that communications may be sent by email.

**29. Third-Party Funding**

- 29.1. If a Party has, directly or indirectly, received funds from any non-party for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“third-party funding”), it shall file a written notice disclosing, within 10 days of the issuance of this Order:
- 29.1.1. The name and address of such non-party. If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person; and
- 29.1.2. Whether the terms of the funding agreement provide the funder’s commitment to an adverse award on costs and, if so, the exact terms of that commitment. To comply with this requirement, it shall suffice for counsel for the Party receiving the funds to represent the terms of the full arrangement between the Party and the funder in relation to an adverse award on costs.

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- 29.2. Should any information be disclosed pursuant to para. 29.1.2 above, the other Party shall treat this information as confidential, destined only for use by the Parties and their counsel for the purposes of the present arbitral proceedings, and may not disclose it beyond the members of its outside counsel or internal legal team.
- 29.3. Each Party shall have a continuing obligation to disclose any changes to the information referred to in para. 29.1, occurring after this initial disclosure, including termination of the third-party funding arrangement and/or the conclusion of any new or additional third-party funding arrangement, and/or the change of addition of any other person which may have a direct interest in the outcome of these proceedings. The Party shall notify the Tribunal of any changes to the information in the notice within 10 days after those changes occur.

**30. Amicable Dispute Settlement**

- 30.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time during the proceeding. The Parties may agree to suspend the arbitration for this purpose. If the Parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 43(2).

On behalf of the Tribunal,

[Signed]

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Sabina Sacco  
President of the Tribunal

Date: 20 December 2023

## Annex A – Procedural Calendar

### Scenario 1: No Request for Bifurcation

Procedural Step	Party	Joint Proposal	
		Days	Due date
<b>INITIAL PHASE</b>			
First Session	All		Tuesday, October 24, 2023
Memorial on Merits	Claimant	129	Friday, March 1, 2024
Counter-Memorial on Merits, including any objection to the Tribunal’s jurisdiction and/or counterclaim	Respondent	131	Wednesday, July 10, 2024
<b>FURTHER WRITTEN PLEADINGS</b>			
Reply on Merits and Counter-Memorial on Jurisdiction	Claimant	120	Thursday, November 7, 2024
Rejoinder on Merits and Reply on Jurisdiction	Respondent	120	Friday, March 7, 2025
Rejoinder on Jurisdiction	Claimant	60	Tuesday, May 6, 2025
<b>ORAL PLEADINGS</b>			
Notification of witnesses and experts for examination at the Hearing	Parties	Hearing - 60	TBC
Tribunal to notify any witnesses or experts for examination at the hearing	Tribunal	Hearing - 30	TBC
Pre-hearing Conference	All	TBC	TBC

*Glencore International A.G. v. Republic of Colombia*  
(ICSID Case No. ARB/21/30)

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Procedural Order No. 1

Hearing	All	TBC	Monday, 10 November to Monday, 17 November 2025 <sup>10</sup>
Correction of transcripts	Parties	TBC	TBC
Post-Hearing Briefs	Parties	TBC	TBC
Costs Submissions	Parties	TBC	TBC

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<sup>10</sup> The specific number of effective hearing days within this period will be determined by the Tribunal in due course, in consultation with the Parties.

**Scenario 2: Bifurcation Requested and Granted**

Procedural Step	Party	Joint Proposal	
		Days	Due date
<b>INITIAL PHASE</b>			
First Session	All		Tuesday, October 24, 2023
Memorial on Merits	Claimant	129	Friday, March 1, 2024
Request for Bifurcation	Respondent	31	Monday, April 1, 2024
Answer to the Request for Bifurcation	Claimant	30	Wednesday, May 1, 2024
Decision granting bifurcation	Tribunal	30	Friday, May 31, 2024
<b>WRITTEN PLEADINGS ON BIFURCATED JURISDICTIONAL PHASE</b>			
Memorial on Jurisdiction	Respondent	60	Tuesday, July 30, 2024
Counter-Memorial on Jurisdiction	Claimant	62	Monday, September 30, 2024
Reply on Jurisdiction	Respondent	60	Friday, November 29, 2024
Rejoinder on Jurisdiction	Claimant	60	Tuesday, January 28, 2025
<b>ORAL PLEADINGS ON BIFURCATED JURISDICTIONAL PHASE</b>			
Notification of witnesses and experts for examination and the Hearing	Parties	Hearing - 60	TBD

*Glencore International A.G. v. Republic of Colombia*  
(ICSID Case No. ARB/21/30)

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Procedural Order No. 1

Tribunal to notify any witnesses or experts for examination at the hearing	Tribunal	Hearing - 30	TBC
Pre-hearing Conference	All	TBC	TBC
Hearing	All	TBC	TBC
Correction of transcripts	Parties	TBC	TBC
Post-Hearing Briefs	Parties	TBC	TBC
Costs Submissions	Parties	TBC	TBC

**Scenario 3: Bifurcation Requested and Denied**

Procedural Step	Party	Joint Proposal	
		Days	Due date
<b>INITIAL PHASE</b>			
First Session	All		Tuesday, October 24, 2023
Memorial	Claimant	129	Friday, March 1, 2024
Request for Bifurcation	Respondent	31	Monday, April 1, 2024
Answer to the Request for Bifurcation	Claimant	30	Wednesday, May 1, 2024
Decision rejecting bifurcation	Tribunal	30	Friday, May 31, 2024
Counter-Memorial on Merits, including any objection to the Tribunal's jurisdiction and/or counterclaim	Respondent	90	Thursday, August 29, 2024
<b>FURTHER WRITTEN PLEADINGS</b>			
Reply on Merits and Counter-Memorial on Jurisdiction	Claimant	120	Friday, December 27, 2024
Rejoinder on Merits and Reply on Jurisdiction	Respondent	122	Monday, April 28, 2025
Rejoinder on Jurisdiction	Claimant	60	Friday, June 27, 2025

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<b>ORAL PLEADINGS</b>			
Notification of witnesses and experts for examination at the Hearing	Parties	Hearing - 60	TBC
Tribunal to notify any witnesses or experts for examination at the hearing	Tribunal	Hearing - 30	TBC
Pre-hearing Conference	All	TBC	TBC
Hearing	All	TBC	TBC
Correction of transcripts	Parties	TBC	TBC
Post-Hearing Briefs	Parties	TBC	TBC
Costs Submissions	Parties	TBC	TBC

## **Annex B – Electronic File Naming Guidelines**

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g., SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be uploaded with each submission with the Electronic Filing of Translations).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
<b>MAIN PLEADINGS</b>	<b>C/R - Title of Pleading–LANGUAGE</b>
	<i>R - Memorial on Jurisdiction-FR</i>
	<i>R- Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>C- Memorial on Merits - ENG</i>
	<i>R - Rejoinder on Quantum-ENG</i>
<b>SUPPORTING DOCUMENTATION</b> <sup>11</sup>  Exhibits	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	

<sup>11</sup> In accordance with para. 19.3 above, if only a part of the document is submitted, the Party shall indicate so by adding the word “(excerpt)” at the end of the document title. Moreover, pursuant to para. 19.2.3 above, if a Party produces a more complete copy of a Supporting Document or a translation of a Supporting Document already on the record in excerpted form, it shall add “bis”, “ter”, etc., as corresponding, at the end of the name of the Supporting Document.

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Legal Authorities	<b>CL-####-LANGUAGE</b>
	<b>RL-####-LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANT’S LEGAL AUTHORITIES</b>
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	<b>CWS/RWS – Surname of Witness – Number of WS (after the second) – followed by Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>
	<i>RWS-Jones-Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>RWS-Jones 2-Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>CER/RER – Surname of Expert – Number of ER (after the second) – followed by Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<i>CER-Smith-Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>CER-Smith 2-Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<b>CLO/RLO – Surname of Expert – Number of LO (after the second) – followed by Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>
	<i>CLO-Kaine-Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>CLO-Kaine 2-Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Expert Reports, Legal Opinions	<b>EXPERT INITIALS-###</b>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>

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	<i>LS-0001</i>
	<i>LS-0002</i>
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
<b>OTHER APPLICATIONS</b>	<b>C/R - Name of Application-[Party]-LANGUAGE</b>
	<i>R - Preliminary Objections under Rule 41(5)-SPA</i>
	<i>R - Request for Bifurcation-ENG</i>
	<i>R - Request for Provisional Measures-[Respondent]-SPA</i>
	<i>C - Request for Production of Documents-[Claimant]-SPA</i>
	<i>R - Request for Stay of Enforcement-FR</i>
	<i>C - Request for Discontinuance-[Claimant]-ENG</i>
	<i>C-PHB - Post-Hearing Brief-[Claimant]-SPA</i>
	<i>R - Costs Submissions-[Respondent]-ENG</i>
	<i>C- Observations to Request for [XX]-[Claimant]-SPA</i>