

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE
TRADE AGREEMENT AND THE UNITED STATES-MEXICO-CANADA AGREEMENT**

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

Coeur Mining, Inc.

(the “Claimant”)

and

United Mexican States

(the “Respondent”)

ICSID Case No. UNCT/22/1

PROCEDURAL ORDER N°1

Tribunal

Ms. Sabina Sacco, President
Mr. Pierre Bienvenu, Ad. E.
Prof. Hugo Perezcano Díaz

Secretary of the Tribunal

Ms. Veronica Lavista

17 August 2023

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Introduction

The first procedural meeting of the Tribunal was held on 28 June 2023.

Participating in the first meeting video-conference were:

Members of the Tribunal:

Ms. Sabina Sacco, Presiding Arbitrator
Mr. Pierre Bienvenu, Ad. E., Arbitrator
Prof. Hugo Perezcano Díaz, Arbitrator

ICSID Secretariat:

Ms. Veronica Lavista

Participating on behalf of the Claimant:

Mr. Rahim Moloo, Gibson, Dunn & Crutcher LLP
Ms. Lindsey Schmidt, Gibson, Dunn & Crutcher LLP
Mr. Abdallah Salam, Gibson, Dunn & Crutcher LLP
Ms. Robyn Koyner, Coeur Mining, Inc.

Participating on behalf of the Respondent:

Mr. Alan Bonfiglio Ríos, Secretaría de Economía
Mr. Geovanni Hernández Salvador, Secretaría de Economía
Mr. Luis Fernando Muñoz Rodríguez, Secretaría de Economía
Ms. Ellionehit Sabrina Alvarado Sánchez, Secretaría de Economía
Ms. Erin Mireille Castro Cruz, Secretaría de Economía
Mr. Fabián Arturo Trejo Bravo, Secretaría de Economía
Ms. Alicia Monserrat Islas Martínez, Secretaría de Economía
Mr. Greg Tereposky, Tereposky & DeRose, LLP
Ms. Jennifer Radford, Tereposky & DeRose, LLP
Mr. Vincent DeRose, Tereposky & DeRose, LLP
Mr. Alejandro Barragan, Tereposky & DeRose, LLP
Ms. Ximena Iturriaga, Tereposky & DeRose, LLP

The Tribunal and the Parties considered the following:

- The Draft Terms of Appointment circulated by the Secretary of the Tribunal on 16 June 2023.
- The Draft Procedural Order No. 1 circulated by the Secretary of the Tribunal on 21 June 2023.
- The Parties' communications of 27 June 2023, indicating the procedural matters on which they agreed and their respective positions regarding the items on which they did not agree.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

Following the session, the Tribunal now issues the present order:

Order:

I. LANGUAGES

1. English and Spanish are the procedural languages of the arbitration, both being equally valid, subject to the rules set out below.
2. Regarding correspondence and procedural applications:
 - a. Routine, administrative, or procedural correspondence between the Parties (other than submissions on document production) may be sent in either procedural language without translation. Such routine communications as well as procedural requests or applications (other than related to document production, which is addressed at para. 2(b) below) addressed to or sent by the Tribunal or the ICSID Secretariat shall be in either procedural language but, if in Spanish, shall be accompanied by an English translation.
 - b. Submissions and decisions related to the production of documents between the Parties pursuant to Section III.B shall be made in English only, except that the Claimant shall also provide a Spanish translation of its Document Requests within 48 hours.¹ 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.
3. Regarding substantive submissions:
 - a. Written pleadings, witness statements, and expert reports (together, “**Main Documents**”) shall be submitted only to the ICSID Secretariat in English or Spanish by the deadline provided for in the Procedural Calendar. The Tribunal will review the Main Documents only when an English version is received. Should a Main Document require the Tribunal’s urgent attention, the Parties shall so inform the

¹ The obligation to translate relates exclusively to the description of the requested documents or category of documents (including the time frame), in order to allow the Respondent to better liaise with its departments to search for responsive documents. For the avoidance of doubt, the Claimant need not translate its submissions on the requirements for Document Requests, 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.

Tribunal, and the relevant section shall be provided in English or translated into English.

- b. Fact exhibits, legal authorities, and annexes (together the “**Supporting Documents**”) may be submitted in their original language.
 - c. The Main Documents shall be followed by a translation into the other language no later than 25 days after they were submitted to the ICSID Secretariat. Supporting Documents submitted in Spanish or in any language other than English shall be followed by a translation into English no later than the same 25-day time period, subject to para. 3(d) 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.
 - d. The governing language of documents shall be the original language of the document. Translations shall be accepted as accurate unless contested by the other Party, in which case the Tribunal shall decide.
4. Regarding oral testimony and argument:
- a. Any hearing(s) shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Word for word transcripts shall be made in both languages.
 - b. Oral testimony and argument before the Tribunal may be in either English or Spanish.
 - c. The Parties shall confer in advance of any hearing regarding proposed arrangements for interpretation and any issues concerning language. They will inform the ICSID Secretariat accordingly so that it can make appropriate arrangements.
 - d. The Parties shall notify the Tribunal of the language in which each witness and expert will be testifying in when they submit their respective witness notifications in accordance with the Procedural Calendar.
 - e. The Tribunal may address the Parties, witnesses and experts in English or Spanish.
 - f. In case of conflict between the transcripts in Spanish and in English, the transcription in the original language in which the oral testimony or the presentation of arguments was made will prevail. In the event of any discrepancy between the transcripts in

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Spanish or English, the Parties will inform the Tribunal together with any other correction to the transcripts that they deem appropriate, in the event of and at the time they are invited to do so.

- g. The costs of the interpreter(s) shall be borne by the Parties in equal shares and will be paid from the Parties' deposits, without prejudice to the decision of the Tribunal as to the allocation of costs.
- 5. Any sessions or meetings involving the Tribunal and the Parties, other than hearings, shall be conducted in English and Spanish with simultaneous interpretation into the other procedural language.
- 6. For the Tribunal's orders and decisions, and awards:
 - a. The Tribunal's working language shall be in English, and any orders, decisions and awards shall be initially drafted in English.²
 - b. The Tribunal shall initially make any order or decision in English and subsequently issue that order or decision in Spanish.³ Both language versions shall be equally authentic.
 - c. The Tribunal shall render any award in English and Spanish simultaneously. Both language versions shall be equally authentic.

II. PROCEDURAL CALENDAR AND WRITTEN SUBMISSIONS

A. Procedural calendar

- 7. The arbitration shall proceed in accordance with the procedural calendar attached hereto as **Annex A** (the "**Procedural Calendar**").
- 8. All time limits indicated in the Procedural Calendar shall expire on the relevant date at 11:59 pm EDT for the Claimant and 11:59 pm CST for the Respondent, except for submissions exchanged simultaneously *inter partes*, including document requests, objections thereto, and document productions, which shall be made at a time agreed upon by the Parties on the date indicated in the Procedural Calendar.

² Mr. Pierre Bienvenu does not speak Spanish.

³ With the exception of the Tribunal's decisions on the Parties' Document Requests that are included directly in the Parties' Document Production Schedules, which shall be in English only.

9. The Tribunal may modify the Procedural Calendar if it deems it necessary and/or appropriate in view of the development of the arbitration proceedings, or upon a reasoned request by one of the Parties.
10. Subject to Section 12 of the ToA, the President of the Tribunal may, in consultation with the other members of the Tribunal, grant extensions of time limits upon a written and reasoned request submitted before, or – if that is not possible – immediately after, the event that prevented the Party from complying with the time limit in question. The Parties may also agree to short extensions of time, provided that such extensions do not materially affect the Procedural Calendar and the Tribunal is immediately informed of, and approves such extensions.

B. Method of Filing of Parties’ Pleadings; Format and Number of Copies

11. All electronic filings shall be sent to opposing counsel and the ICSID Secretariat, who will then distribute them to the Tribunal Members. For any simultaneous submissions, each Party shall submit all electronic copies only to the ICSID Secretariat. The ICSID Secretariat will distribute copies to the Tribunal and opposing counsel once both submissions have been received.
12. By the relevant filing date set out in the Procedural Calendar, the Parties shall submit by email to the ICSID Secretariat and the opposing Party an electronic version of the Main Documents and a cumulative index of all the Supporting Documents (the “**Electronic Email Filing**”).⁴
13. Within three calendar days from the Electronic Email Filing, the Party filing the submission shall upload all Main Documents and Supporting Documents (without translations, which are addressed at para. 15) and the corresponding updated cumulative index to the file sharing platform that will be created by ICSID for purposes of this case (the “**Electronic Platform Filing**”).
14. Within 5 calendar days from the submission of the translations of the Main Documents, the Party filing the submission shall, send by courier service (the “**Physical Filing**”) to Ms. Sabina Sacco⁵ and Mr. Pierre Bienvenu:⁶
 - a. The pleading in A5 (mini-book) format, double-sided, soft-cover and spiral-bound;

⁴ For the avoidance of doubt, the documents specified in this paragraph shall be attached to the email (providing a link to a secure platform shall not suffice). Please note that the World Bank server does not accept emails larger than 25 MB.

⁵ Ms. Sacco will provide the address for these deliveries separately.

⁶ In the case of Mr. Pierre Bienvenu, only hard copies in English shall be sent. If the original document is in Spanish, any translations shall be sent on the same date as the Electronic Email Filing of Translations.

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- b. Witness statements and legal expert reports (without exhibits and annexes) in A5 (mini-book) format, double-sided, soft-cover and spiral-bound; and
- c. Technical or quantum expert reports (without exhibits and annexes) (in A4 or letter format, spiral bound, double-sided and in color).

There shall be no need to provide hard copies of fact exhibits or legal authorities to the Tribunal, unless specifically requested.

- 15. By the relevant filing date pursuant to para. 3(c), the Parties shall upload an electronic version of any required translation of the Main Documents and Supporting Documents (the “**Electronic Email Filing of Translations**”).
- 16. Any filing will be deemed filed on the date of the Electronic Email Filing, provided that the Electronic Email Filing of Translations, Electronic Platform Filing and the Physical Filing are complied with. A filing shall be deemed timely if sent by a Party in compliance with Section II.A above and this Section II.B.
- 17. In case of any differences between the versions of the pleadings or evidence in the Electronic Email Filing, Electronic Platform Filing and Physical Filing, the Electronic Email Filing shall prevail, unless the Party sending the submission, witness statement, or expert report has requested leave to submit a corrected version or errata, in which case the version authorized by the Tribunal shall prevail.
- 18. All documents filed shall comply with the following:
 - a. Main Documents and their corresponding translations shall:
 - i. have their paragraphs numbered consecutively throughout each document, as well as numbered pages and headings;
 - ii. be provided as Adobe Portable Document Format (PDF) files (computer-generated, not scanned);
 - iii. PDF files shall be readable, text searchable and without any restrictions so that they can be printed, annotated and their contents copied on PC and Mac devices;
 - iv. contain a list of acronyms and abbreviations used;
 - v. be preceded by a hyper-linked table of contents and bookmarked; and
 - vi. be accompanied by a cumulative index that includes two lists in the form of a table (one for fact exhibits and one for legal authorities), both of which shall be submitted in PDF format pursuant to subparas. (ii) and (iii) above, describing each

document by exhibit number, description, and date following the naming conventions contained in **Annex B**. Such lists shall be updated and consolidated as new submissions are filed, in which case the list shall identify which exhibits and legal authorities were provided with each submission.

- b. Supporting Documents shall be provided as PDF files in accordance with subparas. (a)(ii) and (iii), except that they may be scanned copies.

C. Pleadings or Written Submissions

19. In the first exchange of submissions (i.e., Statement of Claim and Statement of Defense), 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. 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).
20. 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, and (ii) addressing new facts that have arisen after the Statement of Claim or Statement of Defense, respectively. Together with their Reply and Rejoinder, respectively, the Parties may only file additional evidence intended to answer or refute evidence or facts first alleged by the other Party in its previous pleading, including documents obtained during the document production phase, to the extent that the Party wishes to rely on them, or evidence not otherwise known (or that could not have been known) to a Party at the time of the submission of the Statement of Claim or Statement of Defense (as relevant), and except for new facts and arguments arising from the documents obtained in the document production phase.
21. At or after the closure of any hearing on jurisdiction or on the merits, the Tribunal shall, in consultation with the Parties, determine the content, number, sequence and timing of the **Post-Hearing Briefs**. 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 addressed 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.
22. The Parties shall set forth their requests for relief in a separate section at the end of their pleadings. The Tribunal shall decide only on the final requests for relief of the Parties contained in their Post-Hearing Briefs.

III. TAKING OF EVIDENCE

A. General rules

23. The Tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered.
24. For matters concerning the gathering or taking of evidence that are not otherwise covered by a procedural order issued by the Tribunal, the UNCITRAL Rules or NAFTA Chapter 11, the Tribunal may refer to the IBA Rules on the Taking of Evidence in International Arbitration (2020) (the “**IBA Rules**”) for guidance as to the practices commonly accepted in international arbitration, but it shall not be bound to apply them.
25. The Tribunal may, on its own motion, order the production of certain documents, the preparation of expert opinions, the testimony of certain witnesses, or the taking of other evidence it deems appropriate.
26. The Tribunal shall only admit new evidence not filed with the corresponding pleadings as set out in this Procedural Order in exceptional circumstances, following a reasoned request by a Party, having heard the other Party and if 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.
27. If the Tribunal determines that a disputing party has failed to conduct itself in good faith or has in any way engaged in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.

B. Production of Documents

28. Document Requests and objections thereto, respectively, shall be made simultaneously *inter partes*, in writing and using the model Schedule attached to this Order as **Annex C**. The Schedule will be exchanged in Word format.
29. Within the time limit set out in the Procedural Calendar, a Party (the “**Requesting Party**”) may request the other party (the “**Requested Party**”) to produce Documents⁷ (“**Document Request**”). Document Requests shall be made in accordance with Article 3.3 of the IBA Rules, in the format set out in Annex C.

⁷ The term “**Document**” means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means. The term includes any annex or appendix to the main document.

30. Within the time limit set out in the Procedural Calendar, the Requested Party may object to the requests under any of the grounds set out under Art. 9.2, 9.3 and 9.4 of the IBA Rules, in the format set out in Annex C to this Procedural Order. If a Document Request objected to targets a category of Documents, the Requested Party shall, at the same time, indicate whether there is a narrower category of documents that it is willing to produce. To the extent a Party objects to an entire category of documents on grounds of privilege, legal impediment, commercial or technical confidentiality, or special political or institutional sensitivity, such objection must be included in the Parties' objections to document requests in the Annex C to this Procedural Order.
31. Within the time limit set out in the Procedural Calendar, the Requesting Party shall respond to the other Party's objections, indicating, with reasons, whether it disputes the objections. Together with its responses to the objections to any pending Document Requests, the Requesting Party shall submit the Schedule with any outstanding Document Requests to the Tribunal for decision.
32. Within the time limit set out in the Procedural Calendar, the Requested Party shall produce to the other Party all the Documents requested in its possession, custody or control as to which it makes no objection.
33. Within the time limit indicated in the Procedural Calendar, the Tribunal will rule on the Parties' outstanding Document Requests.
34. Each Party shall produce Documents pursuant to this Section, whether voluntarily or as ordered by the Tribunal, directly to the Requesting Party within the time limits specified in the Procedural Calendar, without copying the Tribunal. 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 Sections II.B and C of this Order. The correspondence or documents exchanged between the Parties in the course of the document production process shall not be copied to the Tribunal.
35. All Documents produced by a Party shall be produced electronically, and, where possible, in their native format (e.g., Word, Excel, Outlook, PDF, .jpg), each in a separate file. Each Party shall identify the Document Request that each document relates to.
36. A Party who objects to producing a Document or category of Documents for which production has been ordered (or that it has otherwise voluntarily agreed to produce) on the basis of legal impediment or privilege, commercial or technical confidentiality, or special political or institutional sensitivity, shall submit a privilege and confidentiality log ("**Privilege and Confidentiality Log**") (in Word and PDF format) identifying specific documents withheld on those grounds within three weeks of the Parties completing production of documents responsive to requests as to which an objection was not upheld by the Tribunal's decision. The Privilege and Confidentiality Log will (i) identify the

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Document (including type of document, its author(s), recipient(s), and subject matter), (ii) the basis for asserting the privilege, legal impediment, grounds of commercial or technical confidentiality or political or institutional sensitivity (including the law or ethical rules under which the legal impediment or privilege is said to exist, and for grounds of confidentiality or sensitivity, why those grounds are compelling) (iii) the number of the request(s) with respect to which the Document or category of Documents subject to privilege or legal impediment is responsive. The Tribunal will timely set a schedule to issue a decision in case of a challenge by either Party to assertions of privilege or legal impediment set out in the Privilege and Confidentiality Log.

37. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing the disputing Parties. In principle, such disputes shall not delay the Procedural Calendar.
38. If a Party fails, without good cause, to produce the Documents ordered by the Tribunal, the Tribunal may draw such inferences as it deems appropriate, taking into account all relevant circumstances.
39. The Tribunal may, on its own motion, order either Party to submit Documents. In this case, the Documents shall be filed with the Tribunal electronically, in accordance with the rules set out in Section III.C, with a copy to the other Party, and shall be part of the record on the date of their electronic submission. They shall bear the number as indicated in Section III.C and Annex B.

C. Documentary Evidence and Legal Authorities

40. Documentary evidence shall be submitted in the following form:
 - a. Each document shall be filed as a separate exhibit. Exhibits shall be numbered consecutively.
 - b. Each legal authority shall be filed separately and numbered consecutively.
 - c. Electronic filings shall follow the naming conventions contained in Annex B. Each annex will have a *short* title.⁸
 - d. Spreadsheets or other calculations performed by experts shall be provided in Excel format.
41. 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

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

authentication is necessary. If only a part of the document is submitted, the Party shall indicate so.

42. The Parties shall file all documents and legal authorities only once by attaching them to their pleadings. Documents or legal authorities so filed shall not be resubmitted by the other Party or with witness statements even if referred to in such statements.
43. Demonstrative exhibits to be used at the hearing shall be discussed during the Pre-Hearing Conference and addressed in the Pre-Hearing Procedural Order, as defined below.

D. Witnesses

44. 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.
45. Each witness shall submit a witness statement, which shall constitute his or her direct evidence. Nonetheless, the Party presenting the witness may conduct a brief direct examination. Should the Party presenting the witness wish to examine him or her with regard to events that occurred after the witness's last statement, it shall raise the matter with the other Party and, should there be an objection, apply to the Tribunal for determination of whether a supplemental witness statement relating to those events may, or should be submitted in advance of the hearing at which the witness is called to testify.
46. Each witness statement shall be in writing, dated and signed. Subject to para. 26 above, all witness statements shall be filed together with the Parties' written submissions.
47. Witness statements shall contain:
 - a. the name of the witness, a photograph, 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;
 - b. 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 to the witness statement if they have not already been submitted as documentary evidence in the proceedings;
 - c. 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;

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- d. the witness's confirmation of her or his availability to attend the hearing if called to testify;
 - e. an affirmation of the truth of the witness statement; and
 - f. the signature (physical or electronic) of the witness, with an indication of the date and place of signature.
48. 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.
49. 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. The Tribunal will then, by the date set forth in the Procedural Calendar, identify the witnesses or experts not called by the Parties whom it wishes to question, if any.
50. The facts contained in the written statement of a witness whose cross-examination has not been requested by the other Party shall not be deemed admitted by that Party or established by the sole fact that no cross-examination has been requested. Unless the Tribunal decides itself to call the witness for questioning at the hearing, the Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
51. If a Party wishes to examine one of its own witnesses who has not been called by the other Party, it must 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 to allow such testimony, having heard the other Party and having regard for the number of witnesses called, the time allocations for the hearing and other relevant circumstances.
52. 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 cross-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.
53. Where, notwithstanding para. 52 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.

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54. If a witness whose appearance has been requested pursuant to para. 49 fails without a valid reason to appear for testimony at a hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise.
55. The rules applicable to the examination of witnesses at the hearing shall be discussed at the Pre-Hearing Conference and, as appropriate, determined in a procedural order to be issued prior to the hearing.
56. Each Party shall be responsible for the practical arrangements, costs, and attendance of its witnesses at any hearing. The Tribunal will decide on the appropriate allocation of any related costs in the final award.

E. Experts

1. Party-Appointed Experts

57. Each Party may retain and produce evidence prepared by one or more experts, who shall be independent of that Party (“**Party-Appointed Experts**”).
58. The expert evidence offered by the Parties shall be submitted in writing, by way of expert reports. The provisions of Section D *supra* shall apply, *mutatis mutandis*, to expert evidence, subject to the provisions set out below.
59. Expert reports shall contain:
 - a. the full name, photograph, 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;
 - b. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - c. a statement of his or her independence from the Parties, their legal advisors and the Tribunal;
 - d. 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;
 - e. 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;

- f. 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;
 - g. an affirmation of his or her genuine belief in the opinions expressed in the expert report; and
 - h. the signature (physical or electronic) of the Party-Appointed Expert and its date and place.
60. If a Party wishes to examine one of its own experts who has not been called by the other Party, it must submit a written and reasoned request to the Tribunal, within five calendar days from the date on which the other Party notified the experts it wishes to call to the hearing. The Tribunal will decide whether to allow such testimony, having heard the other Party and having regard for the number of experts called, the time allocations for the hearing and other relevant circumstances.
61. 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.
62. If the Parties submit expert evidence, the Tribunal may, if it deems appropriate and in accordance with Article 5.4 of the IBA Rules, require the experts to meet and confer 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.⁹ 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, 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.

2. Tribunal-Appointed Experts

63. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts (“**Tribunal-Appointed Experts**”). The Tribunal shall consult the Parties regarding the selection and terms of reference of such expert(s).

⁹ In particular, the Tribunal may ask the quantum experts to prepare a joint valuation model.

64. The provisions of Article 6 of the IBA Rules shall apply to Tribunal-Appointed Experts.
65. The costs of Tribunal-Appointed Experts shall be borne by the Parties in equal shares and paid from the deposits made each Party, without prejudice to the Tribunal's final decision on the costs of the arbitration.

F. Pre-Hearing Conference

66. Unless they agree to dispense with a pre-hearing conference, the Parties and the Tribunal shall hold a pre-hearing telephone or videoconference call (the "**Pre-Hearing Conference**") to address any issues, including procedural and administrative issues, regarding the organization of the hearing, such as:
 - a. Time allocation;
 - b. The sequence and number of oral submissions;
 - c. The examination of witnesses and experts;
 - d. Hearing bundles and other materials to be used during the hearing;
 - e. Any logistical issues related to the hearing.
67. The Tribunal may issue a procedural order setting out the rules and procedure for the hearing in question (the "**Procedural Order on Hearing Organization**").

G. Hearings

68. Hearings before the Tribunal other than procedural or organizational meetings shall be subject to the rules set out in this Section.
69. The dates of any hearings are set out in the Procedural Calendar.
70. Hearings shall be held in-person ("**In-Person Hearings**"), unless otherwise agreed by the Parties or determined by the Tribunal. 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.
71. In-Person Hearings shall take place at the ICSID facilities in Washington, D.C., or at such location determined by the Tribunal in consultation with the Parties. ICSID 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. ICSID shall inform the Tribunal of the status of these arrangements within the time limit specified by the Tribunal.

72. 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.
73. Hearings shall be held *in camera* in accordance with Article 25(4) of the UNCITRAL Rules.
74. The costs of hearing rooms and of the services required for the hearing (including court reporters, interpreters) shall be borne by the Parties in equal shares and paid from the deposits made each Party, without prejudice to the Tribunal's subsequent decision on the costs of the arbitration.

H. Records of Hearing and Meetings

75. Procedural meetings. Procedural and organizational sessions or 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 to have a transcript prepared of such meetings.
76. Substantive hearings. The ICSID Secretariat shall arrange for any substantive (including evidentiary) hearings to be recorded and transcribed by a qualified court reporter.
 - a. There shall be a sound (or video and sound) recording of all oral argument and testimony, both in the language it is made and of any simultaneous interpretation.
 - b. Unless the Tribunal directs otherwise, *Live Note* or comparable transcription software shall be used to make the hearing transcripts instantaneously available to the Parties and members of the Tribunal in the hearing room.
 - c. Transcripts of proceedings shall be made available on a same day service basis.
 - d. The Parties shall endeavor to agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts, whether in the original language or its interpretation. The court reporter 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 reporter into the revised transcripts.

77. The costs of any recordings, transcripts and interpretation services shall be borne by the Parties in equal shares and paid from the deposits made each Party, without prejudice to the Tribunal's subsequent decision on the costs of the arbitration.

IV. NON-DISPUTING PARTY PARTICIPATION

A. Participation by Non-Disputing Parties

78. As reflected in Section 15 of the ToA, non-disputing NAFTA Parties or the non-disputing USMCA Annex Party (“**NDPs**”) may make submissions on questions of interpretation of the NAFTA or any applicable USMCA provisions (the “**NDP Submissions**”) subject to NAFTA Article 1128 and USMCA Article 14.D.7(2) of the USMCA, and in accordance with the rules set out below.
79. Any NDP that wishes to file an NDP Submission shall give notice to the Parties and the Tribunal on or before the date set out in the Procedural Calendar. NDP Submissions, if any, and comments by the Parties on such submissions shall be filed by the deadlines provided for in the Procedural Calendar.
80. NDP Submissions, as well as comments by the Parties on such submissions, shall comply with the rules set out in Sections I and II.B above and with any page limits set by the Tribunal, except that NDP Submissions in English need not be translated.
81. Pursuant to NAFTA Articles 1127, 1128 and 1129, NDPs may attend oral hearings, and are entitled to receive a copy of confidential versions of written submissions. NDPs shall be made aware of any confidentiality measures, and pursuant to Article 1129 of the NAFTA, shall treat all information received as if they were a disputing party, notably in respect of protection of confidential information.

B. Amicus Curiae Participation

82. Any person who wishes to file an amicus curiae submission (“**Amicus Submission**”) shall apply to the Tribunal on or before the date set out in the Procedural Calendar. The disputing Parties shall have a reasonable opportunity to make submissions on any application for leave to file an Amicus Submission and to comment on the Amicus Submission itself should the Tribunal allow it.

V. STATEMENTS OF COSTS

83. After the conclusion of the hearing, and having consulted with the Parties, 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.

VI. AMENDMENTS

84. The Tribunal may amend this Order and the Procedural Calendar – on its own motion or at the reasoned request of a Party – if it considers it appropriate and after granting the other Party an opportunity to comment on the proposed amendments.

[Signed]

Ms. Sabina Sacco
Presiding Arbitrator
Date: 17 August 2023

ANNEX A

PROCEDURAL CALENDAR

Procedural Step	Party	Number of Days	Due date
Statement of Claim	Claimant		Monday, 31 July 2023
Statement of Defense	Respondent	135	Wednesday, 13 December 2023
Document Requests (<i>inter partes</i>)	Parties	30	Friday, 12 January 2024
Exchange of objections to Document Requests (<i>inter partes</i>)	Parties	25	Tuesday, 6 February 2024
Application to file an Amicus Submission	Amici Curiae	61 (from SoD)	Monday, 12 February 2024
Voluntary production of non-objected documents (<i>inter partes</i>)	Parties	21	Tuesday, 27 February 2024
Replies to objections on Document Requests (<i>inter partes</i>) and submission to the Tribunal	Parties	21	Tuesday, 27 February 2024
Decision on Document Requests	Tribunal	29	Wednesday, 27 March 2024 (Target)
Production of documents ordered by the Tribunal	Parties	30	Friday, 26 April 2024
Reply	Claimant	63	Friday, 28 June 2024
Rejoinder	Respondent	91	Friday, 27 September 2024
NDP Submission under NAFTA Article 1128	Non-Disputing Parties	21	Friday, 18 October 2024
Parties' comments on NDP submissions	Parties	21	Friday, 8 November 2024

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Procedural Step	Party	Number of Days	Due date
Notification of witnesses and experts to be examined at the hearing	Parties	49 (from Rejoinder)	Friday, 15 November 2024
Tribunal's identification of witnesses and experts it wishes to examine	Tribunal		TBD (approx. five weeks prior to the Hearing)
Pre-Hearing Conference (PHC)	All		TBD (approx. one month prior to the Hearing)
Submission of hearing schedule	Parties		TBD
Hearing	All		First trimester of 2025
Post-Hearing Briefs			TBD
Statement of Costs			TBD

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. The Parties shall endeavor to make documents' names and paths as short as possible.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleadings
SUPPORTING DOCUMENTATION Exhibits	C-####-Short title R-####-Short title To be produced sequentially throughout the case.
	CLAIMANT'S FACTUAL EXHIBITS
	<i>C-0001-Company X Certificate of Incorporation</i>
	<i>C-0002-Company Y Construction License</i>
	RESPONDENT'S FACTUAL EXHIBITS
	<i>R-0001-Purchase and Sale Agreement of Lot B</i>
	<i>R-0002-2018-10-13 Letter from Company Y to Minister of Development</i>
Legal Authorities	CLA-####-Short title RLA-####-Short title To be produced sequentially throughout the case.
	CLAIMANT'S LEGAL AUTHORITIES
	<i>CLA-0001 – Glamis Gold v USA Award</i>
	<i>CLA-0002 – Siemens v. Argentina Decision on Jurisdiction</i>
	RESPONDENT'S LEGAL AUTHORITIES
	<i>RLA-0001 – Azinian v Mexico Award</i>
	<i>RLA-0002 – Waste Management v Mexico PO2</i>
Witness Statements	CWS-Name of Witness-### RWS-Name of Witness-###
	CLAIMANT'S WITNESS STATEMENTS
	<i>CWS-Maria Jones-001</i>
	RESPONDENT'S WITNESS STATEMENTS
	<i>RWS-Pedro Centeno-001</i>
Expert Reports (including expert legal opinions)	CER-Name of Expert-### RER-Name of Expert-###
	<i>CER-Tom Kaine-001</i>
	<i>RER-Lucia Smith-001</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Expert 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>
	<i>LS-0001</i>
<i>LS-0002</i>	

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Demonstrative Exhibits	CDM-###-Short title
	RDM-###-Short title
	CDM-01-Claimant's Opening
	RDM-02-Respondent's Closing
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]

ANNEX C

**DOCUMENT PRODUCTION
SCHEDULE**

Requesting Party: [...]

Requested Party: [...]

Document Request No. [...]			
Scope of request (max. 200 words)			
Requesting Party (Description of requested Documents or of a narrow and specific category of Documents that are reasonably believed to exist)	Requested Party (Objections to scope of request)	Requesting Party (Reply and reformulation of request, if appropriate)	Tribunal
Timeframe of request			
Relevance and materiality (max. 250 words)			
Requesting Party (Statement)	Requested Party (Objections)	Requesting Party (Reply)	Tribunal
References in Record (paras.)			
Possession, custody or control (max. 100 words)			
Requesting Party (Statement)	Requested Party (Objections, Statement)	Requesting Party (Reply)	Tribunal

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Legal impediment or privilege (max. 200 words)			
Requested Party (Objections)	Requesting Party (Response)	N/A	Tribunal
Production is unreasonably burdensome (max. 200 words)			
Requested Party (Objections)	Requesting Party (Response)	N/A	Tribunal
Loss or destruction (max. 100 words)			
Requested Party (Objections)	Requesting Party (Response)	N/A	Tribunal
Technical or commercial confidentiality (max. 200 words)			
Requested Party (Objections)	Requesting Party (Response)		Tribunal
Special political or institutional sensitivity (max. 200 words)			
Requested Party (Objections)	Requesting Party (Response)	N/A	Tribunal
Procedural economy, proportionality, fairness or equality (max. 100 words)			
Requested Party (Objections)	Requesting Party (Response)	N/A	Tribunal
Tribunal's Decision			