

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

LUPAKA GOLD CORP.

v.

REPUBLIC OF PERU

(ICSID CASE NO. ARB/20/46)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Prof. John R. Crook, President of the Tribunal

Mr. Jonathan D. Schiller, Arbitrator

Dr. Gavan Griffith QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

16 April 2021

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Introduction¹

The First Session of the Tribunal was held on 13 April 2021, by videoconference, starting at 8:05 AM (EDT). Participating were:

Members of the Tribunal

Prof. John R. Crook, President of the Tribunal
Mr. Jonathan D. Schiller, Arbitrator
Dr. Gavan Griffith QC, Arbitrator

ICSID Secretariat:

Ms. Luisa Fernanda Torres, Secretary of the Tribunal

Participating on behalf of Claimant:

Dr. Marc D. Veit, LALIVE
Mr. Timothy L. Foden, LALIVE
Mr. Jaime Gallego, LALIVE
Ms. Rona Amigues-MacRae, LALIVE
Mr. Juan Pablo Charris, LALIVE
Mr. Nicolas Pralica, LALIVE
Mr. Gordon Ellis, Lupaka Gold Corp.

Participating on behalf of Respondent:

Ms. Vanessa Rivas Plata Saldarriaga, Comisión Especial del Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión
Ms. Mónica Guerrero Acevedo, Comisión Especial del Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión
Ms. Fabiola Sponza Príncipe, Comisión Especial del Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión
Mr. Paolo Di Rosa, Arnold & Porter
Mr. Patricio Grané Labat, Arnold & Porter
Mr. Timothy Smyth, Arnold & Porter
Ms. Cristina Arizmendi, Arnold & Porter

The following was considered during the First Session:

- The Draft Procedural Order circulated by the Secretary of the Tribunal on 29 March 2021; and

¹ In this Order, the term “Parties” is used to refer to the Claimant and the Respondent in this proceeding, and the term “Party” is used to refer to either the Claimant or the Respondent. (The Tribunal is mindful that Chapter 8, Sections B and C of the Canada-Peru FTA refer to the Claimant and the Respondent together as the “disputing parties” and to either of them as a “disputing party.”) In this Order, the State signatories of the FTA (Canada and Peru) will be referred to as “FTA Party” or the “FTA Parties,” for clarity. (The Tribunal is mindful that the Canada-Peru FTA refers to the States signatories to the FTA as “Party.”)

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- The Parties' comments on the Draft Procedural Order received on 9 April 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The First Session was adjourned at 9:25 AM (EDT). An audio recording 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

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The Procedural Calendar is attached as **Annex A**.

1. Applicable Arbitration Rules

Convention Article 44; Canada-Peru FTA Article 824(3)

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006, except to the extent provided otherwise by Section B of Chapter 8 of the Free Trade Agreement between Canada and the Republic of Peru signed on 29 May 2008, in force on 1 August 2009 (“**Canada-Peru FTA**”), in which case the Canada-Peru FTA provision shall apply.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

- 2.1. The Tribunal was constituted on 19 February 2021 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 15 and 16 December 2020, and 19 February 2021.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 2.4. The contact details for the Members of the Tribunal are:

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John R. Crook
10610 Belfast Place
Potomac, MD 20854
United States of America
jrc1648@yahoo.com

Jonathan D. Schiller
Boies Schiller Flexner
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New York, NY 10001
United States of America
jschiller@bsflp.com

Dr. Gavan Griffith QC²
205 William St
Melbourne, VIC 3000
Australia
ggqc@gavangriffith.com

3. Fees and Expenses of Members of the Tribunal

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Canada-Peru FTA Article 826(3)-(4)

- 3.1. The fees and expenses of each Member of the Tribunal shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Member of the Tribunal receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Tribunal shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

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.

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.

² Before sending any *courier*, the Parties shall seek confirmation (through the ICSID Secretariat) of the appropriate address.

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- 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 shall issue all rulings, including the Award, within a reasonable time period. With the exception of the Award, if a decision on any matter has not been issued within three months of the final submission on that matter, the Tribunal will provide the Parties with status updates every month. The Tribunal shall endeavor to issue any Award within six months of the final submissions (including any post-hearing briefs which might be ordered). If the Award has not been issued within six months of the final submissions, the Tribunal will provide the Parties with status updates every month.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal in the form of a 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, or involves fixing or extending time limits for short periods, the President may fix or extend such limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Secretary of the Tribunal is Ms. Luisa Fernanda Torres, 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:

Ms. Luisa Fernanda Torres
ICSID

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MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-5018
Fax: + 1 (202) 522-2615
Email: ltorresarias@worldbank.org

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

Ms. Luisa Fernanda Torres
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
Tel.: + 1 (202) 473-5018

8. Representation of the Parties

Arbitration Rule 18

8.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such designation.

For Claimant:

Dr. Marc D. Veit
Mr. Timothy L. Foden
Ms. Rona Amigüe-MacRae
Mr. Juan Pablo Charris
Mr. Nicolas Pralica
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npralica@lalive.law
and
Mr. Jaime Gallego
LALIVE SA
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1207, Geneva

For Respondent:

Ms. Vanessa Rivas Plata Saldarriaga
Presidenta de la Comisión
Ms. Mónica del Pilar Guerrero Acevedo
Comisión Especial que
Representa al Estado en Controversias
Internacionales de Inversión
Sede Central
Ministerio de Economía y Finanzas
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and

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Tower 42
25 Old Broad Street
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United Kingdom
Patricio.Grane@arnoldporter.com
Tim.Smyth@arnoldporter.com

8.2. Communications destined for the Republic of Peru shall also be sent to xPeruLupaka@arnoldporter.com.

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of 19 February 2021, ICSID requested that each Party pay US\$ 200,000.00 to cover the initial costs of the proceeding. ICSID received Claimant's payment on 17 March 2021, and Respondent's payment on 23 March 2021.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. Each Party shall either declare that it (or its counsel) does not benefit from the provision of funds or other material support for the pursuit or defense of its case in these proceedings, by a natural or juridical person that is not a party to the dispute (“**third-party funder**”), or, as the case may be, disclose to the Centre and the Tribunal that it has third-party funding and the name of the third-party funder.
- 9.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); Canada-Peru FTA Article 833

- 10.1. Washington, D.C., United States of America, shall be the place of the proceeding.

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- 10.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the Parties so agree. The Tribunal, after consulting the Parties, may decide to hold the hearing by video conference, should it decide that an in-person hearing is not practicable or safe.
- 10.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in English or with an English translation. The same provision applies for procedural applications to the Tribunal.

For Parties' Pleadings

- 11.3. Pleadings, witness statements, expert reports, and any other accompanying documentation may be submitted in either procedural language by the relevant filing date. For any documents filed in Spanish, translations in English are to be filed no later than 30 days thereafter. Translations are to be filed on a rolling basis. The filing Party will make a reasonable endeavor to file translations of the pleading, witness statements and expert reports in a shorter timeframe. The Parties agree that any documents filed in English need not be translated into Spanish.
- 11.4. If an exhibit or legal authority is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 11.5. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal orders a certified version.
- 11.6. Documents exchanged between the Parties under §16 *infra* (Production of Documents) may be produced in the original language and need not be translated.

For Hearing

- 11.7. The Hearing shall be conducted in English. There shall be simultaneous interpretation from English into Spanish (or from Spanish into English), and transcripts shall be taken in both procedural languages.
- 11.8. The testimony of a witness or expert called for examination during the hearing who prefers to give evidence other than in English shall be interpreted simultaneously into English. A Party shall apply to the Tribunal should it find it

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necessary that a witness or expert testifying in a language other than English or Spanish also be interpreted into Spanish.

- 11.9. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (*see* §20 *infra*), which witnesses or experts require interpretation.
- 11.10. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs. ICSID will hire the interpreters for the hearing, but the Parties will be consulted about the interpreters whose hiring is proposed.

For Tribunal's Rulings Except the Award

- 11.11. The Tribunal may make procedural orders or decisions in English, provided that a Spanish translation is provided thereafter. Both language versions shall be equally authentic.

For Tribunal's Award

- 11.12. The Tribunal shall render the Award in English and Spanish simultaneously. In case of conflict, the English language of the Award will prevail.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Secretary of the Tribunal, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing Party and the Tribunal once both Parties communications are received.
- 12.4. The Secretary of the Tribunal shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. The Parties shall:

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- 13.1.1. By the relevant filing date, submit by email to the Secretary of the Tribunal and the opposing Party an electronic version of the pleading, witness statements, expert reports and an updated index of all the supporting documentation (listing exhibits, legal authorities, witness statements and expert reports);³ and
- 13.1.2. Within two business days following the filing by email, the Parties shall upload the pleading with all the supporting documentation and the updated index to the folder created by ICSID for purposes of this case in ICSID's electronic file sharing platform; and any translations into English as per §11.3 *supra* shall be uploaded within the time specified therein (§§13.1.1 and 13.1.2 together, the “**Electronic Filing**”).
- 13.2. One business day following the completion of the Electronic Filing including the translations referred to at §11.3 *supra*, the Parties shall *courier* to each of the Members of the Tribunal at the addresses indicated at §2.4 *supra*, one USB drive with a full copy of the entire submission both in the original language and translations into English if required, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated index of all the supporting documentation.⁴ The content of the USB shall be identical to the Electronic Filing referred to in §13.1 *supra*. Together with the USB, the Parties shall courier to each Member of the Tribunal A/5, double sided, soft bound, hard copies of the pleading, the witness statements, the expert reports and the consolidated index.
- 13.3. Electronic files of pleadings, witness statements, expert reports, and (to the extent possible) exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.4. All pleadings shall be accompanied by a consolidated and updated index to the supporting documentation. The index shall indicate the document number, the pleading with which it was submitted and the original language of the document, if such language is not English. The index shall use the naming conventions in **Annex B**.
- 13.5. 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 courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities

³ Please note that the World Bank server does not accept emails larger than 25 MB.

⁴ The Tribunal notes that it only wishes to receive these USBs in connection with the filings of the main pleadings in the case contemplated in the Procedural Calendar in **Annex A**.

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and Tribunal decisions and orders to date) with a consolidated and updated hyperlinked index of all documents.

- 13.6. The official date of receipt of a pleading or communication shall be the day, according to Washington DC time, on which the electronic file is sent to the Secretary of the Tribunal by email.
- 13.7. A filing shall be deemed timely if sent by a Party by 11:59 pm, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

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

- 14.1. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in **Annex A**.
- 14.2. The Parties will submit the pleadings by the deadlines established in the Procedural Calendar.
- 14.3. In the first exchange of submissions (Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified, and comprehensive manner.
- 14.4. In their second exchange of submissions (Reply and Rejoinder), the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, unless new facts have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments.
- 14.5. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 14.6. All written submissions shall be divided into consecutively numbered paragraphs.
- 14.7. A hearing will take place in accordance with the terms of §21 *infra* and the Procedural Calendar (**Annex A**).

15. Evidence

- 15.1. The Tribunal will use the IBA (International Bar Association) Rules on the Taking of Evidence in International Arbitration (adopted by a resolution of the IBA Council on 17 December 2020) as guidelines, insofar as they are consistent with the ICSID Convention and Arbitration Rules.

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16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36; Canada-Peru FTA Article 835(7)

- 16.1. Within the time limit set out in the Procedural Calendar in **Annex A**, any Party may submit to the other Party (without copying the Members of the Tribunal or the Secretary of the Tribunal) a request to produce a limited number of documents or narrow categories of documents within the other Party's possession, custody or control in accordance with the IBA Rules. The request shall identify with precision each document or narrow category of documents sought and establish its relevance to the case and materiality to the outcome. The requests to produce, responses and replies and any applications to the Tribunal shall be made in the form of a Redfern Schedule in the format set out in Annex C hereto. An electronic MS Word version of the Redfern Schedule is to be transmitted to the Party to whom the request is made and, when requesting the Tribunal's decision, to the Tribunal.
- 16.2. Each request for a document shall contain:
 - 16.2.1. A description that is sufficient to identify the document and its subject matter, or else a sufficiently detailed description of the specific category of documents reasonably believed to exist;
 - 16.2.2. A declaration as to why the documents sought are relevant to the dispute and material to the outcome of the case; and
 - 16.2.3. A declaration that the documents sought are not within the requesting Party's possession, custody, or control, as well as a declaration stating the requesting Party's reasons for believing that the documents sought are within the other Party's possession, custody, or control.
- 16.3. Within the time limit set out in the Procedural Calendar, using column 4 of the schedule provided by the first Party (the "**Requesting Party**"), the Party to whom the request is made (the "**Requested Party**") shall either confirm that it will produce the requested documents that are in its possession, custody or control or set forth its objections to the production sought, and the reasons for such objections. At this stage, the Redfern Schedule should be sent to the first Party only (not to the Tribunal or the Tribunal Secretary).
- 16.4. Within the time limit set out in the Procedural Calendar, the Requesting Party shall reply to the Requested Party's objections in column 5 of the same schedule. Such reply shall be limited to answering specific objections made in column 4. Each Party shall then file simultaneously (in accordance with §12.3 *supra*) with the Tribunal the completed schedule (in both MS Word and PDF formats).
- 16.5. The Tribunal shall endeavor to resolve any contested document requests on or before the relevant date set out in the Procedural Calendar, having regard to all of the surrounding circumstances, as well as the requirements under this section and

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the IBA Rules (including specificity, materiality, and any rules on legal privilege and confidentiality).

- 16.6. Within the time limit set out in the Procedural Calendar, documents shall be produced which are responsive to requests for which no objection has been made, and where objections have been made, documents shall be produced to the extent directed by the Tribunal. Documents shall be produced to the Requesting Party without copying the Tribunal or the Secretary of the Tribunal.
- 16.7. Documents produced in accordance with this Section (either voluntarily or pursuant to Tribunal order) shall not be considered to be part of the record unless and until a Party subsequently files them as exhibits in accordance with the Procedural Calendar or with any other applicable procedural order or decision.
- 16.8. The Tribunal shall have discretion to order a Party to produce documents or other evidence without regard to whether the evidence has been requested by the other Party. In the event the Tribunal intends to exercise that discretion, it will give due notice to the Parties and provide the Parties with an opportunity to make submissions as to whether the Tribunal should exercise its discretion in the particular circumstances.
- 16.9. In case of the failure by a Party, without satisfactory explanation, to comply with an order of the Tribunal to produce a document, or a category of documents, the Tribunal may make any inferences it deems appropriate in light of the relevant circumstances.
- 16.10. At any time in the proceeding, a Party can request the production of documents either by agreement of the Parties or by applying to the Tribunal.
- 16.11. The Parties and the Tribunal take note of the provision in Article 835(7) of the Canada-Peru FTA.

17. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §13 *supra*.
- 17.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.

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- 17.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
- 17.3.2. To the greatest extent possible, the Parties shall abstain from presenting new documents in the period immediately preceding the hearing. As the hearing approaches, the Tribunal shall require increasingly exceptional circumstances to submit new documents.
- 17.3.3. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.5. The documents shall be submitted in the following form:
 - 17.5.1. Exhibits and Legal Authorities shall be numbered consecutively throughout these proceedings.
 - 17.5.2. The number of each document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.
 - 17.5.3. Exhibits and Legal Authorities shall be submitted in PDF format and start with the number “C-0001”, “CL-0001”, “R-0001”, “RL-0001”, respectively. The numbering shall also indicate the language of the document, *e.g.*, C-0001-SPA, or otherwise indicate (SPA) in the title of the document if the original language of the document is not English.
 - 17.5.4. The number of the Exhibit or Legal Authority shall appear on the first page of the document, and shall be used for the electronic file name in accordance with the naming conventions referred *infra* §17.5.6 and **Annex B**.
 - 17.5.5. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 17.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex B**.

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- 17.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements. If a witness or expert refers to a document which is, or is to be, part of the record, they shall include the relevant document number whenever they make reference to that document.
- 17.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimant, and “RD-” for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Members of the Tribunal, the Secretary of the Tribunal, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24; Canada-Peru FTA Article 839

- 18.1. Copies of witness statements and expert reports shall be filed together with the Parties’ pleadings.
- 18.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §17.3 *supra*).
- 18.3. Each witness statement and expert report shall contain numbered paragraphs and be signed and dated by the witness.
- 18.4. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties’ submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §11 *supra*.
- 18.5. Pursuant to Article 839 of the Canada-Peru FTA, the “Tribunal, at the request of a disputing party [i.e. Claimant or Respondent], or on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.”

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19. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 19.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 19.2. For each witness, a written, signed, and dated witness statement shall be submitted to the Tribunal.
- 19.3. Each witness statement shall state the witness's name, date of birth, and involvement in the case.
- 19.4. In accordance with §18.1 *supra*, each Party will submit its witness statements together with its written submission. The witness statements shall be numbered independently from other documents and properly identified (including the language of the statement). If a Party submits more than one witness statement by the same witness, the subsequent witness statement shall be identified as "Second Witness Statement," "Third Witness Statement," and so on. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, identify relevant documents, or prepare the witness statements and the examinations.
- 19.5. Each Party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. If a witness or expert who was presented by a Party has not been called by the other Party or by the Tribunal for examination at the hearing, the presenting Party may not call such witness or expert to testify at the hearing, except in exceptional circumstances.
- 19.6. Each Party shall notify the other Party of the witnesses or experts it intends to cross-examine by the date to be established by the Tribunal. The Tribunal shall then identify the remaining witnesses or experts (if any) that it wishes to call for examination.
- 19.7. The facts contained in the written statement of a witness or expert whose cross-examination has been waived by the other Party, or not called by the Tribunal, shall not be deemed to have been accepted or established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement or expert report taking into account the entire record and all the relevant circumstances.
- 19.8. Each Party shall be responsible for the practical arrangements, cost, and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final Award.
- 19.9. The Tribunal may allow a witness to appear and be examined by videoconference, provided that there exist valid and exceptional reasons that prevents the witness

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from appearing in person. In such an event, the Tribunal will issue appropriate directions for the witness's examination by videoconference.

- 19.10. As a general rule and subject to other arrangements during the pre-hearing organizational meeting (§20 *infra*), fact witnesses shall be examined prior to expert witnesses, with the Claimant's fact (and expert) witnesses being examined prior to the Respondent's fact (and expert) witnesses. The order in which the witnesses and experts shall be heard shall be discussed at the pre-hearing telephone conference.
- 19.11. At the hearing, the examination of each witness shall proceed as follows:
- 19.11.1. The witness shall make the declaration provided in Rule 35(2) of the Arbitration Rules.
- 19.11.2. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes. Direct examination of witnesses shall be conducted only if and as necessary to introduce the witness, confirm the accuracy of and completeness of the witness's written statement(s), offer any corrections or clarifications that may be necessary to prevent a misunderstanding of that witness's written direct testimony, to highlight briefly the key points of his or her witness statement, and to address any relevant development that occurred after the witness signed the witness statement.
- 19.11.3. Witnesses may be cross-examined in relation to relevant matters that were addressed or presented in the witness statements, the pleadings, or documents on the record, or oral evidence of other witnesses, to the extent the witness may have knowledge of those matters.
- 19.11.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination ("**redirect examination**").
- 19.11.5. The Tribunal may examine the witness at any time, either before, during, or after examination by one of the Parties.
- 19.11.6. Subject to a different agreement by the Parties or decision of the Tribunal, a fact witness (other than a Party representative), prior to his or her examination, shall not be present in the hearing room during oral testimony and arguments, read the transcript of oral testimony or argument, or be informed of its contents. Party representatives who are also fact witnesses may be present during opening submissions, but not during the testimony of fact witnesses testifying before him or her. Such Party representatives should testify first, to the extent possible.

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19.12. The Tribunal shall, at all times, have complete control over the procedure for the examination of witnesses. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

19.12.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or

19.12.2. Direct that a witness be recalled for further examination at any time.

19.13. The rules set forth above with respect to the examination of witnesses shall apply *mutatis mutandis* to the examination of Party-appointed experts, except that in lieu of direct examination the expert may provide a brief presentation of the key points of his or her report, subject to a precise time limit to be determined at the pre-hearing organizational meeting referred to at §20 *infra*.

20. Pre-Hearing Organizational Meeting

Arbitration Rule 13

20.1. A pre-hearing organizational meeting shall be held on the date indicated in **Annex A**. It shall be conducted by telephone or videoconference between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription, the order of examination of witnesses and experts and the allocation of time between the Parties) in preparation for the hearing.

20.2. At a date to be determined by the Tribunal, and in any event prior to the date of the pre-hearing organizational meeting, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding the daily schedule for the hearing.

21. Hearings

Arbitration Rules 20(1)(e) and 32

21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

21.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §10 *supra*.

21.3. The hearing shall take place on the date indicated in **Annex A**.

21.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

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- 21.5. In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if there is a severe imbalance in the issues to be covered on cross-examination or if due process so requires.
- 21.6. In accordance with Article 835(1) of the Canada-Peru FTA, hearings shall be open to the public. In accordance with Article 835(2) of the Canada-Peru FTA, in due course, the “Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties” i.e. the Claimant and the Respondent.
- 21.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the Parties shall submit skeletons to the Tribunal. These should not exceed 30 pages in length. They should list (1) important matters of fact that are in dispute, and (2) any disputes as to the legal standards the Tribunal is to apply, including disputes concerning the content or interpretation of those legal standards. Each skeleton should include references to briefing, key authorities, exhibits, and witness statements or expert reports directly relevant to particular disputed issues.

22. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Members of the Tribunal.
- 22.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 22.3. The Parties shall endeavor to agree on any corrections to the English transcript within 21 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections shall be jointly 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 court reporter in the Revised Transcripts.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing submissions. If so, the Tribunal will address the filing date, length, format, and content of the post-hearing submissions.

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23.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

24. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); Canada-Peru FTA Article 835

24.1. With regard to Article 835(3) of the Canada-Peru FTA, and unless the Parties otherwise agree, the ICSID Secretariat will publish (i) all pleadings, expert opinions, and witness statements (but not exhibits, legal authorities and annexes) submitted to the Tribunal; and (ii) all Procedural Orders and Decisions issued by the Tribunal, as part of the Procedural Details on the ICSID web site, subject to the deletion of confidential information.

24.2. Notwithstanding §24.1 *supra*, and in accordance with Article 835(4) of the Canada-Peru FTA, the Award shall be publicly available and will therefore be published by the ICSID Secretariat, subject to the deletion of confidential information.

24.3. The Parties shall seek to agree upon, and shall present to the Tribunal their agreement and any disagreements with respect to, a draft procedural order governing (i) the designation and protection of confidential information and (ii) the preparation of redacted copies of documents for disclosure under Article 835 of the Canada-Peru FTA. The Parties are invited to provide the draft procedural for the Tribunal's consideration within 28 days of issuance of the present Procedural Order. Notwithstanding the foregoing, the Tribunal records that during the First Session, the Parties confirmed their agreement that Procedural Order No. 1 may be published by the ICSID Secretariat as soon as it is issued.

25. Submissions and Attendance to Hearing of the "non-disputing [FTA] Party"

Canada-Peru FTA Article 832

25.1. The provisions of Article 832 of the Canada-Peru FTA concerning participation by the "non-disputing [FTA] Party" are applicable.

26. Submissions by "Other Persons"

Arbitration Rule 37(2); Canada-Peru FTA Article 836 and Annex 836.1

26.1. The provisions of Article 836 and Annex 836.1 of the Canada-Peru FTA are applicable.

27. Data Protection

27.1. The Parties shall comply with applicable data protection and privacy rules, where necessary by obtaining the consent of relevant individuals and requiring witnesses

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and experts to expressly agree in their relevant statements to the use of their personal data in this arbitration.

28. Disposal of Documents

- 28.1. Six months after the Centre has notified the final Award to the Parties or one month after the conclusion of annulment proceedings, whichever is later, the arbitrators shall be at liberty to destroy the documents submitted with the arbitration.

For and on behalf of the Tribunal,

[Signed]

Prof. John R. Crook
President of the Tribunal
Date: 16 April 2021

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Annex A
Procedural Calendar

Scenario 1:⁵ No Preliminary Objections

Date	Lapse (in days)⁶	Party / Tribunal	Description
Friday, 16 April 2021		TRIBUNAL	Procedural Order No. 1
Friday, 24 September 2021	161	CLAIMANT	Memorial
Thursday, 3 March 2022	160	RESPONDENT	Counter-Memorial
Thursday, 24 March 2022	21	CANADA	Canada's Notice of Intent to File a Submission under Article 832 of the Canada-Peru FTA
Document Production			
Thursday, 31 March 2022	28 ⁷	CLAIMANT AND RESPONDENT	Request for Production of Documents
Thursday, 21 April 2022	21	CLAIMANT AND RESPONDENT	Responses and/or Objections to the Request for Production of Documents
Thursday, 5 May 2022	14	CLAIMANT AND RESPONDENT	Reply to Objections to the Request for Production of Documents – Sent to Tribunal
Thursday, 19 May 2022	14	TRIBUNAL	Decision on Production of Documents

⁵ Per a agreement of the Parties. *See* Parties' communications of 9 April 2021.

⁶ All lapses in days and counted from the immediately prior step unless otherwise indicated.

⁷ Lapse counts from Counter-Memorial.

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Date	Lapse (in days) ⁶	Party / Tribunal	Description
Thursday, 26 May 2022	7	CLAIMANT AND RESPONDENT	Production of Non-Contested Documents and Documents Ordered by the Tribunal
Thursday, 5 May 2022	63 ⁸	CANADA	Canada's Submission under Article 832 of the Canada-Peru FTA
Thursday, 5 May 2022	Same above	OTHER PERSONS	Applications/Submissions by "Other Persons" under Article 836 and Annex 836.1 of the Canada-Peru FTA
Monday, 5 September 2022	102 ⁹	CLAIMANT	Reply
Tuesday, 10 January 2023	127	RESPONDENT	Rejoinder
Monday, 13 February 2023	34	CLAIMANT AND RESPONDENT	Notification of Witness(es)/Expert(s) to be Cross-Examined at the Hearing
Monday, 20 February 2023	7	CLAIMANT AND RESPONDENT	Proposal on Hearing Schedule (<i>supra</i> , § 20.2)
Monday, 27 February 2023	7	ALL	Pre-Hearing Organizational Meeting
Monday, 13 March 2023	14	CLAIMANT AND RESPONDENT	Pre-Hearing Skeletons (<i>supra</i> , § 21.7)
27 March 2023 to 6 April 2023	14 ¹⁰	ALL	Hearing (<i>Note</i> : Parties estimate 9 hearing days at most)

⁸ Lapse counts from Counter-Memorial.

⁹ Lapse counts from Production of Non-Contested and Ordered Documents.

¹⁰ This 14 days lapse is counted from the prior step (Pre-Hearing Skeletons). If counted from the Rejoinder, the total lapse is 76 days.

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Date	Lapse (in days)⁶	Party / Tribunal	Description
TBD	TBD	CLAIMANT AND RESPONDENT	Post-Hearing Briefs (<i>supra</i> , § 23.1)
TBD	TBD	CLAIMANT AND RESPONDENT	Statements of Costs (<i>supra</i> , § 23.2)
		TRIBUNAL	Award

Scenario 2: Preliminary Objections with Request for Bifurcation

The Tribunal records the Respondent's indication during the First Session that it reserves the right to file preliminary objections to jurisdiction and request bifurcation of the proceeding. In light of that, the Parties are invited to confer and provide to the Tribunal a proposed Procedural Calendar for that Scenario, within 28 days of issuance of the present Procedural Order.

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Annex B
Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files, and for the accompanying consolidated 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 any accompanying documentation whose original language is not English, shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG=English). Such indication shall be reflected both (i) in the name of each individual electronic file and (ii) in the consolidated Index (which shall be attached to each submission).

For the avoidance of doubt, every Supporting Document shall be contained in one file, with the translation into English first (if not in English) followed by the original, except that when the original language document is not submitted simultaneously with the English translation, the original language document and the English translation may be submitted in two separate PDF files, with each PDF file identified with the appropriate language indication.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-ENG</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION	
Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001</i>
	<i>CL-0002-SPA</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001</i>
<i>RL-0002-SPA</i>	
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement–Maria Jones–Memorial on Jurisdiction–SPA</i>
	<i>Witness Statement–Maria Jones–Reply on Jurisdiction–[Second Statement]–</i>

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	<i>FR</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-SPA</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-SPA</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-####-LANGUAGE
	For exhibits filed with the Witness Statement of [Maria Jones]
	<i>MJ-0001</i>
	<i>MJ-0002-SPA</i>
	For exhibits filed with the Expert Report of [Lucia Smith]
	<i>LS-0001</i>
	<i>LS-0002-SPA</i>
	For exhibits filed with the Legal Opinion of [Tom Kaine]
	<i>TK-0001</i>
<i>TK-0002-SPA</i>	
INDICES (Consolidated Index)	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RL-### to RL-###
	<i>Index of Legal Authorities-RL-0001 to RL-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-[Respondent]-SPA</i>
	<i>Request for Bifurcation-[Respondent]</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-[Respondent]-FR</i>
	<i>Request for Discontinuance-[Claimant]</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submission-[Respondent]</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

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Annex C
Redfern Schedule

1	2	3		4	5	6
Request No.	Documents or Category of Documents Requested [Requesting Party]	Relevance and Materiality [Requesting Party]		Responses / Objections to Document Requests [Requested Party]	Replies to Objections to Document Requests [Requesting Party]	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			