

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Ayat Nizar Raja Sumrain and others**

**v.**

**State of Kuwait**

**(ICSID Case No. ARB/19/20)**

---

**PROCEDURAL ORDER NO. 3**  
**On Organization of the Hearing on Jurisdiction**

***Members of the Tribunal***

Prof. Zachary Douglas QC, President of the Tribunal

Mr. Fernando Piérola Castro, Arbitrator

Mr. Samuel Wordsworth QC, Arbitrator

***Secretary of the Tribunal***

Ms. Leah W. Njoroge

---

29 April 2021

**TABLE OF CONTENTS**

I.	PROCEDURAL BACKGROUND.....	1
II.	ORGANIZATION OF THE HEARING .....	2
A.	Date and Format of the Hearing.....	2
B.	Order of Proceedings and Schedule.....	2
C.	Time Allocation .....	3
D.	Documents for Use at the Hearing.....	4
	1. Electronic Hearing Bundle.....	4
	2. Electronic Hearing Bundle for Cross-Examination .....	5
	3. Demonstrative Exhibits.....	6
	4. Electronic Presentation of Evidence .....	6
E.	Witness and Expert Examination.....	7
F.	Audio And video Recording .....	9
G.	Transcription .....	9
H.	Interpretation.....	10
I.	Virtual Hearing Arrangements.....	10
	1. Testing.....	10
	2. Participants.....	11
	3. Connectivity .....	12
	4. Equipment and Set Up .....	12
	5. Videoconference Etiquette.....	13
	6. Break-Out Rooms .....	14
	7. Technical Difficulties.....	15
J.	General Provisions .....	15
	1. Reservation of immunities .....	15
	2. Confidentiality .....	15
	3. Data Privacy.....	16

Procedural Order No. 3

**I. PROCEDURAL BACKGROUND**

1. On 1 February 2021, the Tribunal issued Procedural Order No. 2, deciding to bifurcate three of the Respondent's objections to the Tribunal's jurisdiction. In the same Order, the Tribunal invited the Parties confirm their position regarding the Tribunal's proposal to reserve 20 May 2021 in addition to the scheduled hearing dates of 18 and 19 May 2021 ("**Hearing**").
2. By email communication of 5 February 2021, the Claimants agreed to the Tribunal's proposal to reserve an additional hearing day and noted that if the sanitary situation persists into May 2021, a virtual hearing may be necessary and the additional day may be required to accommodate slightly shorter hearing days and time zone differences between the various locations of the Parties and the Tribunal members.
3. On 15 February 2021, the Respondent indicated that it did not object to the Claimants' proposal for the Tribunal to reserve the additional day for the Hearing. The Respondent did not object to the Claimants' proposal concerning the Hearing proceeding in a virtual format.
4. On 10 March 2021, the Tribunal advised that it welcomed the Parties' agreement to a virtual hearing on the scheduled dates, including 20 May 2021, and requested the Parties to confer as to the procedural aspects of organization of the Hearing.
5. Pursuant to Section 18.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held via videoconference on 29 April 2021 beginning at 9:30 a.m. Washington, D.C. time (the "**Pre-Hearing Conference**"), to discuss any procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Members of the Tribunal:

Prof. Zachary Douglas QC, President of the Tribunal  
Mr. Fernando Piérola Castro, Arbitrator  
Mr. Samuel Wordsworth QC, Arbitrator

ICSID Secretariat:

Ms. Leah W. Njoroge, Secretary of the Tribunal

Participating on behalf of the Claimants:

Mr. Noah Rubins QC, Freshfields Bruckhaus Deringer LLP  
Mr. Sami Tannous, Freshfields Bruckhaus Deringer LLP  
Mr. Matei Purice, Freshfields Bruckhaus Deringer LLP  
Ms. Camille Strosser, Freshfields Bruckhaus Deringer LLP

Procedural Order No. 3

Ms. Ayat Nizar Raja Sumrain, First Claimant

Participating on behalf of the Respondent:

Mr. Ed Poulton, Baker & McKenzie LLP

Mr. Steve Abraham, Baker & McKenzie LLP

Ms. Katia Finkel, Baker & McKenzie LLP

Mr. Janek Bednarz, Baker & McKenzie LLP

Ms. Hannah Murray, Baker & McKenzie LLP

Mr. Abdulrahim AlAwadhi, Department of Legal Advice and Legislation, Council of Ministers

6. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on 10 March 2021.
7. Audio and video recordings of the Pre-Hearing Conference were made and deposited in the archives of ICSID, and made available to the Members of the Tribunal and the Parties on 29 April 2021.
8. The Tribunal has considered the Parties' proposals and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

## **II. ORGANIZATION OF THE HEARING**

### **A. DATE AND FORMAT OF THE HEARING**

9. The Hearing will take place virtually through Zoom on **18 and 19 May 2021**, with **20 May 2021** to be held in reserve. The Zoom meeting will be hosted by Arbitration Place. The details for joining the Hearing will be shared by the ICSID Secretariat in advance of the Hearing.

### **B. ORDER OF PROCEEDINGS AND SCHEDULE**

10. In order to accommodate the range of time zones of in which Hearing participants are located, the Hearing will start at 6:00 a.m. (Washington, D.C.) / 11:00 a.m. (London) / 12:00 p.m. (Cairo and Geneva) / 1:00 p.m. (Kuwait) / 2:00 p.m. (Dubai) and conclude by 2:00 p.m. (Washington, D.C.) / 7:00 p.m. (London) / 8:00 p.m. (Cairo and Geneva) / 9:00 p.m. (Kuwait) / 10:00 p.m. (Dubai). There will be three breaks during each Hearing day, two of 30 minutes and one break of up to 1 hour, resulting in 6 hours of usable time per Hearing day (assuming no slippage).

Procedural Order No. 3

11. The order of proceedings and structure of the Hearing will follow an agenda in the format incorporated as **Annex A** (the “**Hearing Schedule**”). The Parties are to endeavor to seek agreement on the proposed Hearing Schedule and convey such agreement to the Tribunal by 11 May 2021.
12. The Hearing Schedule is subject to any changes that the Tribunal may deem necessary or appropriate during the Hearing, including to accommodate logical breaks between witness examinations or due to delays or other interruptions caused by technical problems in the functioning of the videoconference.

**C. TIME ALLOCATION**

13. The Hearing will proceed on the principle that hearing time will be divided approximately equally. Each side will be allotted a total of 5 hours to be used as the Parties see appropriate (allowing 2 hours of Tribunal time). The Tribunal may, however, adjust the time allocation when appropriate in the circumstances. The Parties may use their time as they wish, subject to the following provisions.
14. Time used by the Parties in oral argument or in examination of witnesses and experts shall be attributable to the Party making such argument or conducting such examination.
15. Time shall be deducted from a Party’s remaining time as a result of it:
  - a. making an objection which ultimately proves unjustified (thus, an unsuccessful objection is generally to be charged against the Party who made it, and a successful objection against the Party who resisted it);
  - b. arriving late; and
  - c. setting up displays while the Tribunal is sitting.
16. Time attributable to Tribunal questions to witnesses, counsel or experts, to clarify points being made, shall not interrupt the clock for the Party otherwise making a presentation or conducting an examination. However, any Tribunal questioning lasting longer than 3 minutes (including the answers) will be allocated to reserved Tribunal time, subject to the Tribunal’s discretion to shift time to a Party when the answers of its counsel, witnesses or experts are not succinct.

Procedural Order No. 3

17. Time used for housekeeping or to resolve technical difficulties shall not be counted against the Parties' time, but shall be considered Tribunal time.
18. Time shall be kept using the chess-clock method, with the understanding however that the projected lengths of individual examinations to be set out in the Hearing Schedule in **Annex A** are real targets, which should not be exceeded by such amounts as to introduce significant uncertainty regarding the projected days on which subsequent witnesses or experts will be called.
19. The Respondent shall provide the Claimants with its proposals on the time allocations for each stage of the Hearing by 4 May 2021, following which the parties shall seek to reach an agreement.
20. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.
21. The Tribunal emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

**D. DOCUMENTS FOR USE AT THE HEARING**

**1. Electronic Hearing Bundle**

22. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties.
23. The Respondent shall provide, in coordination with the Claimants, no later than 11 May 2021 the Electronic Hearing Bundle which shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

**01. Pleadings**

A. Claimants

B. Respondent

**02. Witness Statements**

Procedural Order No. 3

- A. Claimants
- B. Respondent

**03. Expert Reports**

- A. Claimants
- B. Respondent

**04. Exhibits**

- A. Claimants
- B. Respondent

**05. Legal Authorities**

- A. Claimants
- B. Respondent

**06. Expert Exhibits**

- A. Claimants
- B. Respondent

**07. Tribunal's Rulings**

24. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single .zip file. Should the size of the .zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on the BOX filesharing platform, using the structure indicated at paragraph 23 above, and including a consolidated (non-hyperlinked) index.
25. Prior to the Hearing, the Members of the Tribunal, the Secretary of the Tribunal and the Parties shall download the Electronic Hearing Bundle from the BOX Case Folder into their own devices to have access to it offline during the remote Hearing. The court reporter will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
26. The Respondent shall also distribute the Electronic Hearing Bundle in a USB drive to be sent by courier no later than 13 May 2021 directly to each Member of the Tribunal. The USB shall contain the hyperlinked version of the index.

**2. Electronic Hearing Bundle for Cross-Examination**

27. During cross-examination, the Parties will refer only to exhibits and legal authorities that already form part of the record of the case.
28. The witnesses and experts are entitled to be shown a full copy of any exhibit or authority on which they will be questioned (i.e., they are not to be restricted to reviewing excerpts of documents shown

Procedural Order No. 3

on a screen). Each Party shall be responsible for making available to each witness/experts a full copy of all exhibits or authority on the record.

**3. Demonstrative Exhibits**

29. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
30. Demonstrative exhibits shall be used in accordance with Section 16.9 of PO1 (reproduced below), with certain adjustments indicated in paragraph 31 below:

“15.8. 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 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 hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.”

31. To account for the virtual nature of the Hearing, Section 15.8 of PO1 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Members of the Tribunal and the court reporter(s) as necessary no later than 24 hours *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired.
32. In addition, promptly after the conclusion of the Hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibit to the case folder in the BOX filesharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

**4. Electronic Presentation of Evidence**

33. Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 31 above downloaded onto their own devices and available for access offline.



Procedural Order No. 3

34. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. The Parties may use any Hearing participant to display a document to all Hearing participants via Zoom, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed. The Parties are advised to limit their use of this scrolling function, to minimize pressure on the internet bandwidth and on the stability of the connection.

**E. WITNESS AND EXPERT EXAMINATION**

35. The rules set out in PO1 for the examination of witnesses and experts are confirmed. In particular, the examination and cross-examination will proceed in accordance with Sections 17.4-17.7 of PO1 with certain adjustments indicated in paragraph 36 below. Sections 17.4-17.7 of PO1 read as follows:

“17.4 The procedure for examining witnesses and experts at the hearing shall be the following:

17.4.1. The Tribunal will be in control of any examination of witnesses and experts and shall intervene as appropriate should any questions go beyond the scope of the witness’s knowledge or expert’s competence.

17.4.2. The witness statement of each witness and the expert report of each expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.

17.4.3. Without leave of the Tribunal, direct examination of fact witnesses shall not exceed 15 minutes and shall be limited to the scope of prior testimony.

17.4.4. Without leave of the Tribunal, direct examination of experts shall not exceed 20 minutes and shall be limited to the scope of prior testimony. The direct examination of an expert may take the form of a presentation by the expert.

17.4.5. The direct examination of witnesses is followed by examination by the other party (“cross-examination”), and subsequently by the party producing the witness (“redirect examination”).

17.4.6. The redirect examination shall be limited to matters raised in cross-examination.

17.4.7. The Tribunal may pose questions during or after the examination of any witness or expert.

Procedural Order No. 3

17.5. The parties shall organize their allotted time at the hearing including with respect to witnesses, subject to the rules set forth herein. The Tribunal may, of its own initiative or at the request of a party, direct that a witness be recalled for further examination at any time or summon any other witness to appear.

17.6. Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence. In the event that a witness of fact is also a party representative, that witness may designate another individual to serve as party representative until that witness has testified. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.

17.7. If a witness who has submitted a witness statement or an expert who has submitted an expert report does not appear without a valid reason at the hearing, the Tribunal shall disregard that witness statement or expert report unless, in exceptional circumstances, the Tribunal determines otherwise. In this latter case, the Tribunal shall take into account that such testimony has not been subject to cross-examination.”

36. Section 17.6 of PO1 is modified such that fact witnesses shall not be admitted into the virtual Hearing Room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination, with the understanding however that witnesses who are also party representatives will be permitted to enter the virtual Hearing Room for the opening statements and will be called to testify first.
37. No person shall be present in the room with the testifying witness or expert.
38. Any communications with the witness or expert during their examination are prohibited.
39. Each witness and expert shall affirm at the start of the examination that he or she is the only person present in the room, and will not receive or make communications of any sort, other than on the record audible to all, during the course of his or her examination.
40. The witness or expert shall remain visible at all times during the examination. With respect to all factual witnesses, an additional camera will be set up at the location of their examination, to enable a 360-degree view of the room during their examination, provided that the Parties either agree to a hearing host who offers this service (e.g., Arbitration Place) or otherwise are able to make the necessary arrangements.
41. The witness or expert will be connected to the virtual Hearing Waiting Room 30 minutes before his/her examination to ensure that s/he is available in time to be brought into the virtual Hearing Room. During the breaks, the witness or expert will be placed in a virtual Hearing Waiting Room.

Procedural Order No. 3

42. The witness or expert shall not use a “virtual background” or in any way prevent or limit the visibility of the remote venue from which he or she is testifying.
43. The witness or expert shall be able to view the Tribunal Members, the attorneys conducting the examination, and documents presented by the examining attorney through the Zoom platform/uploaded onto BOX. The witness or expert may bring into the room only a clean, unannotated hardcopy of his or her witness statement(s) or expert report(s). The witness or expert shall not have access to any other documents, notes, information, or materials of any kind (whether in hardcopy or electronic form).
44. The Parties shall each confirm which witnesses and experts, if any, they wish to call for examination by exchange of emails at 6:00 a.m. (Washington, D.C.) / 11:00 a.m. (London) / 12:00 p.m. (Cairo and Geneva) / 1:00 p.m. (Kuwait) / 2:00 p.m. (Dubai) on 29 April 2021. As mentioned during the Pre-Hearing Conference, the Parties have called Dr. Khaled El Shalakany and Mr. Steve Harris for examination.

**F. AUDIO AND VIDEO RECORDING**

45. Section 20.1 of PO1 concerning the audio recording (reproduced below) continues to apply.

“20.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members. The audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.”

46. A video recording will also be made of the Hearing. It will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
47. Except for the court reporters, who will make their own audio recording of the Hearing for the purposes of preparing the transcript, the Tribunal and the Parties agree that the attendees will not otherwise record the Hearing or any part of it, including via audio, video or screenshot methods of recording.

**G. TRANSCRIPTION**

48. The provisions of PO1, Sections 20.2 and 20.3 concerning transcription (reproduced below) apply.

“20.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless

Procedural Order No. 3

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.

20.3. The parties shall agree on any corrections to the transcripts within 20 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter 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.”

49. Real-time court reporting in English shall be made available to the Hearing participants via an online link connection to be provided by the court reporter. Hearing participants shall connect to the transcript by opening a link on a separate device to the device used for the Zoom conference. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing day.
50. The Secretariat will inform the Parties and the Tribunal of the court reporter who will be providing transcription services. The court reporter may seek to clarify the record from time to time during the course of the Hearing.

**H. INTERPRETATION**

51. The Parties confirm that none of the witnesses and experts require interpretation and, if called, they will all provide their evidence in English.

**I. VIRTUAL HEARING ARRANGEMENTS**

52. ICSID will provide guidance regarding the logistics of the virtual hearing throughout the period before and during the virtual Hearing.
53. The following procedures shall be followed in order to ensure the good conduct of the virtual Hearing:

**1. Testing**

54. The Secretariat will conduct technical tests with the Tribunal and each Party in advance of the Hearing, to test connectivity to the Zoom video conference platform and to the transcription service. The Tribunal notes that the Secretariat recommends a minimum of two tests for each site that will connect to the Hearing, and for as many Hearing participants as possible to connect for each test.

Procedural Order No. 3

The Parties agreed at the pre-hearing conference that there will be a general test with all the Hearing participants on Thursday, 13 May 2021 starting at 9:00 a.m. (Washington, D.C.) / 2:00 p.m. (London) / 3:00 p.m. (Cairo and Geneva) / 4:00 p.m. (Kuwait) / 5:00 p.m. (Dubai). Tests will also include the court reporters.

55. Each participant should join the tests with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing.

**2. Participants**

56. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by 11 May 2021, using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”). The Parties should also indicate if several participants will be connecting to the Hearing from the same location (in such circumstances, participants shall continue to follow applicable social distancing guidelines).
57. For ease of identification, participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [T] (for Members of the Tribunal), [C] (for Participants for the Claimants), [R] (for Participants for the Respondent), [E] (for experts), or [W] (for witnesses). Should there be participants joining from a common conference room, the conference room connection may be identified as “[C or R] Conference Room #” as appropriate.
58. Participants will join the videoconference through a “waiting room” to be managed by Arbitration Place, the external service provider retained for the hosting and technical support of the remote Hearing.
59. Access to the videoconference shall be restricted to those included in the List of Participants. Should any non-listed participant attempt to connect to the videoconference, the technical operator hosting the meeting will alert the Secretary of the Tribunal, and the Tribunal will promptly address the matter with the Parties. All participants in the Hearing bear an ongoing duty to warn of the presence of any unauthorized person(s) on the videoconference.
60. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification of participants and to address any technical contingencies.

### **3. Connectivity**

61. The Parties shall ensure that each of their representatives, witnesses and experts will connect to the videoconference through a stable internet connection offering sufficient bandwidth, and using a camera and microphone/headset of adequate quality.
62. If available, participants are advised to have recourse to a wired Ethernet connection as an alternative to Wi-Fi to ensure maximum stability of their connection. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing. For best connectivity, it is recommended that participants (i) avoid streaming during the Hearing; and (ii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to [www.speedtest.net](http://www.speedtest.net)). If a participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed for a given participant.
63. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels. Certain key participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point (in such circumstances, it is important that no more than one device is unmuted at any given time, to avoid audio feedback).
64. If a participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the dedicated technician; or (ii) send an email to the technician with copy to the ICSID Secretariat. Contact details for technicians will be provided by the Secretariat closer to the date of the Hearing. All other remote Hearing support issues should be addressed to the Tribunal Secretary and the paralegal.

### **4. Equipment and Set Up**

65. For optimum sound quality, especially for the audio recording and the transcription, the Secretariat highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom

Procedural Order No. 3

videoconference. If an external headset is not available, Active Participants are asked to speak close to the microphone.

66. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

**5. Videoconference Etiquette**

67. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the Hearing day.
68. Upon the joining of participants to the videoconference on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its participants, the participants who are not expected to speak should turn off their video feed and mute their microphones.
69. Generally, the Tribunal members shall enable their video function throughout the Hearing, and when necessary will unmute their microphones to speak or disable their video to conserve bandwidth.
70. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections (i.e., connections transmitting video of the participant to the videoconference) to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but should keep their video feed off.
71. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The service provider serving as host of the videoconference may have the ability to mute participants if needed to avoid background noise, under the Tribunal’s control. Speakers should keep their phones and other devices on silent mode.
72. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants transmitting video feeds shall avoid sitting with a window or source of light behind them.

Procedural Order No. 3

73. Objections should be made by an Active Participant, to the extent possible, to limit potential interruptions. When making an objection, the relevant Active Participant should unmute themselves and audibly object.
74. During witness examination, the Tribunal, the witness, the party questioning the witness and at least one counsel from the other party will appear on the screen. All other participants shall switch their camera off during that time unless an objection is raised in accordance with paragraph 73 above.
75. When the Hearing day concludes, Participants should use the “Leave Meeting” button to leave the Hearing or move to their assigned breakout room. Arbitration Place will terminate the meeting after all Participants have logged off the Zoom platform.
76. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

**6. Break-Out Rooms**

77. Break-out rooms separate from the virtual Hearing Room, to be used securely by each Party and the Tribunal during breaks, will be arranged by Arbitration Place on the Zoom platform.
78. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the videoconference platform to enable all Participants to promptly reconvene following breaks.
79. The List of Participants (in the form set out in **Annex B**) shall indicate the break-out room to which Participants shall be assigned, with [C] for the Claimants’ break-out room and [R] for the Respondent’s break-out room. Should there be a break in the course of a given witness- or expert-examination, the testifying witness/expert will be isolated in a separate break out room identified as [W/E].
80. Each Party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the technical service provider acting as Zoom operator.



**7. Technical Difficulties**

81. Each Party shall designate, in its List of Participants, one of its representatives to act as videoconferencing emergency contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents which arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and ICSID if an essential participant on his/her side is disconnected or otherwise cannot participate. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with the Tribunal Secretary and/or the technical operator.
82. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available, mitigating any prejudice arising from the failure of any given participant to be able to follow the entire Hearing live on the videoconference platform.

**J. GENERAL PROVISIONS**

**1. Reservation of immunities**

83. Nothing in this Order shall constitute or be considered to be a limitation upon or a waiver of the privileges and immunities provided in Section 6 of the ICSID Convention, which privileges and immunities are specifically reserved.

**2. Confidentiality**

84. Participants in the remote Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All participants providing services to facilitate the remote Hearing shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the Hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the Hearing; and (iii) dispose all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their Hearing-related work has been completed.

**3. Data Privacy**

85. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the remote Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.

For and on behalf of the Tribunal,

[signed]

---

Prof. Zachary Douglas QC  
President of the Tribunal  
Date: 29 April 2021

Procedural Order No. 3

**ANNEX A**  
**Hearing Agenda<sup>1</sup>**

**Day 1: [date]**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
		<b>End</b>

**Day 2: [date]**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
		<b>End</b>

**Day 3: [Date]**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	

---

<sup>1</sup> Indicate language of testifying for any witnesses/ experts.

*Ayat Nizar Raja Sumrain and others v. State of Kuwait*  
(ICSID Case No. ARB/19/20)

---

Procedural Order No. 3

		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
		<b>End</b>

Procedural Order No. 3

**ANNEX B**  
**LIST OF PARTICIPANTS<sup>2</sup>**

<b>TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>	<b>Personal Contact (Optional)</b>
T	[T] – First Name Last Name	A	President	Office [City]	Email: Phone:
T	[T] –	A	Co-arbitrator	Office [City]	Email: Phone:
T	[T] –	A	Co-arbitrator	Home [City]	Email: Phone:

<b>SECRETARY OF THE TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>	<b>Personal Contact</b>
T	[T] – First Name Last Name	A	Secretary of the Tribunal	Home [City]	Email: Phone:

<b>CLAIMANTS</b>					
<b>Room<sup>3</sup></b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>	<b>Personal Contact</b>
	<i>Counsel:</i>				
C	[C] – First Name Last Name	A		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A		Room [Firm] [C] [City]	Email: Phone:

---

<sup>2</sup> Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” will activate their cameras during the Hearing, except as provided in para. 68.

<sup>3</sup> Witnesses [W] and Experts [E] called to testify will be assigned to the waiting room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [C] if they are present during any other time.

*Ayat Nizar Raja Sumrain and others v. State of Kuwait*  
(ICSID Case No. ARB/19/20)

Procedural Order No. 3

C	[C] –	A			Email: Phone:
	<i>Party Representative:</i>				
C	[C] – First Name Last Name	P		Home [C] []	
	<i>Witnesses:</i>				
W	[W] – First Name Last Name	A			
	<i>Experts:</i>				
C	E	[E] – First Name Last Name	A		

RESPONDENT					
Room <sup>4</sup>	Name	Role	Affiliation to Case	Location of Connection	
	<i>Counsel:</i>				
R	[R] – First Name Last Name	A		Room [Firm] # 1 [R] [Location]	Email: Phone:
R	[R] – First Name Last Name	A		Room # 1 [R] [Location]	
	<i>Party Representatives:</i>				
R	[R] – First Name Last Name	P		Home [R] []	
R	[R] – First Name Last Name	P		Home [R] []	
	<i>Witnesses:</i>				
W	[W] – First Name Last Name	A			
	<i>Experts:</i>				
R	E	[E] – First Name Last Name	A		

<sup>4</sup> Witnesses [W] and Experts [E] called to testify will be assigned to Waiting Room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [R] if they are present during any other time.

Procedural Order No. 3

<b>COURT REPORTERS</b>				
<b>Room</b>	<b>Name and Contact</b>	<b>Role</b>	<b>Affiliation</b>	<b>Location of Connection</b>
N/A	[TRA] – First Name Last Name [Email/Phone]	P		[City]
N/A		P		

<b>TECHNICAL SUPPORT STAFF</b>				
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>
N/A	[IT] – First Name Last Name [Email]	P	Arbitration Place	[City]
N/A		P	Paralegal, ICSID	Home [City]
N/A		P	IT FROM THE LAW FIRMS	Room [Firm] # 1 [C] [City]
N/A		P		Room [Firm] # 1 [R] [City]