

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Galway Gold Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/18/13)

**PROCEDURAL ORDER No. 4
On the Organization of the Hearing**

Members of the Tribunal

Mr. Eduardo Siqueiros T., President of the Tribunal

Mr. Alfredo Bullard, Arbitrator

Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Date: June 10, 2022

I. PROCEDURAL BACKGROUND

1. On August 18, 2021, the Tribunal invited the Parties to provide an update on their conversations regarding the modality of the hearing originally scheduled from November 2 to 6, 2021.
2. On September 11, 2021, counsel for the Respondent informed, on behalf of the Parties, that the Parties had conferred with regards to the hearing. In light of the restrictions then in place for traveling to Washington, DC, the Parties proposed that the hearing be rescheduled to a date on which a full in-person hearing could be conducted with all counsel in attendance. In that communication, the Parties requested the Tribunal's availability for the 5-day hearing.
3. On September 14, 2021, the Tribunal informed the Parties that they consulted their calendars and suggested to hold the hearing from June 20 to 24, 2022. On September 21 and 27, 2021, the Respondent and the Claimant, respectively, confirmed their availability on the Tribunal's proposed dates for the hearing.
4. On September 27, 2021, the Tribunal confirmed the rescheduling of the hearing to be held from June 20 to 24, 2022.
5. On March 21, 2022, the Tribunal invited the Parties to confirm the in-person modality of the Hearing. On March 28, 2022, the Respondent's counsel confirmed the modality on behalf of the Parties and Claimant's counsel confirmed their agreement on April 11, 2022.
6. Pursuant to Section 19.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on June 2, 2022 (the "**Pre-Hearing Conference**"), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

President of the Tribunal (on behalf of the Tribunal):
Mr. Eduardo Siqueiros T., President of the Tribunal

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

On behalf of the Claimant:

Ms. Mari Trowbridge, Galway Gold Inc.

Mr. Lawrence Thacker, Lenczner Slaght LLP

Mr. Christopher Yung, Lenczner Slaght LLP

Mr. Andrew Locatelli, Lenczner Slaght LLP

Mr. Ricardo Convers Ortega, Lenczner Slaght LLP

On behalf of the Respondent:

Mr. Giovanni Vega Barbosa, Agencia Nacional de Defensa Jurídica del Estado

Ms. Yadira Castillo Meneses, Agencia Nacional de Defensa Jurídica del Estado

Mr. Andrés Felipe Reina Arango, Agencia Nacional de Defensa Jurídica del Estado

Mr. Fernando Mantilla-Serrano, Latham & Watkins

Mr. Samuel Pape, Latham & Watkins

Mr. Diego Romero, Latham & Watkins

Mr. Matías Zambrano, Latham & Watkins

7. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on April 19, 2022, and the Parties' joint statement of May 27, 2022 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached. On the same date that the Tribunal distributed the draft Procedural Order, the Tribunal advised the Parties that certain provisions in the Procedural Order would be revised if any counsel, witnesses, or experts joined by teleconference due to COVID-19 related restrictions.
8. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on June 2, 2022.
9. The Tribunal has considered the Parties' positions 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

10. The Hearing will take place in person in Washington DC from June 21 to 23, 2022 at ICSID's Hearing Center located at 1225 Connecticut Ave., NW, Washington, DC.

B. ORDER OF PROCEEDINGS AND SCHEDULE

11. The first Hearing day will start at 9:00 am, while the second and third Hearing days will start at 9:30 am.
12. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
13. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any disruptions.

C. TIME ALLOCATION

14. Section 20.9 of Procedural Order No. 1 indicated that “[a]ll matters concerning the allocation of time for the hearing shall be discussed at the pre-hearing organizational meeting.” The President of the Tribunal invited the Parties to propose a time allocation by June 8, 2022. On June 8, 2022, the Respondent submitted a proposal. On the basis of that proposal, the Tribunal decides the time allocation as follows. Each Party will have 430 minutes (7 hours and 10 minutes) total to be allocated as follows: up-to 2.5 hours for opening statement, 30 minutes for direct presentation of expert, 10 minutes (maximum) for direct examination of witness, and 120 minutes for cross-examination for each witness and expert (*i.e.* total of 240 minutes).
15. 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. Time used by expert witnesses for their presentation shall be attributable to the Party that has presented the witness.

16. Time attributable to Tribunal questions to counsel or experts, to clarify points being made, shall not interrupt the clock for the Party otherwise making a presentation or conducting an examination, but any extended Tribunal questioning lasting longer than 5 minutes will be allocated to reserved Tribunal time.
17. Time used for housekeeping or to resolve technical difficulties shall be counted against the time for housekeeping or against the Tribunal's time, if needed.
18. For avoidance of doubt, each Party shall have the following allocated time for each stage of the Hearing:
 - (a) *Opening Statement*. Each Party shall be allowed a maximum of 2.5 hours for its Opening Statement.
 - (b) *Witnesses/Expert cross-examinations*:
 - *Direct Examination of Fact Witnesses*. The direct examination of a fact witness shall not exceed 10 minutes and in the manner indicated in section 18.7 of Procedural Order No. 1.
 - *Direct Presentations by Experts*. The presentation by an expert shall not exceed 30 minutes.
 - *Cross-Examination of Fact Witnesses and Experts*: The cross-examination of each witness and experts shall not exceed 120 minutes.
19. 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.
20. The Tribunal emphasizes that the Parties are expected to use the Hearing days 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, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard. In principle, witnesses and

experts should be available one-half day before and after the time they are scheduled to be examined.

D. DOCUMENTS FOR USE AT THE HEARING

1. Hearing Bundle

21. There shall be a single Hearing Bundle to be prepared jointly by the Parties.
22. In accordance with Section 20.5 of Procedural Order No. 1, the Parties shall provide, no later than **Monday, June 13, 2022**, the Hearing Bundle which shall contain all pleadings, 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:

Hearing Bundle:

- 01. Pleadings**
 - A. Claimant
 - B. Respondent
- 02. Witness Statements**
 - A. Claimant
 - B. Respondent
- 03. Expert Reports**
 - A. Claimant
 - B. Respondent
- 04. Exhibits**
 - A. Claimant
 - B. Respondent
- 05. Legal Authorities**
 - A. Claimant
 - B. Respondent
- 06. Tribunal's Rulings**

23. As per the statements made by counsel to each of the Parties during the Pre-Hearing Conference the Tribunal understands that there will not be any confidential information in the Hearing Bundle.

24. In addition to providing the USB as provided in Section 20.5 of Procedural Order No. 1, the 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 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 Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 22 *supra*, including a consolidated (non-hyperlinked) index.
25. The court reporter and the interpreters will also be provided a copy of the Hearing Bundle via the ICSID Secretariat.
26. At the conclusion of the Hearing and following the submission of any scheduled post-hearing submissions, the Parties shall also distribute an updated Hearing Bundle and updated consolidated and hyperlinked index in a USB (PC and Mac compatible) to be sent by courier no later than a date to be decided by the Tribunal directly to: (i) each Member of the Tribunal and (ii) the Secretary of the Tribunal. The USB shall contain the hyperlinked version of the index and be updated to include exhibits, authorities and demonstratives introduced during the hearing and any post-hearing submissions.

2. Demonstrative Exhibits

27. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
28. Demonstrative exhibits shall be used in accordance with Sections 16.8 of Procedural Order No. 1 (reproduced below):

“16.8. 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 Secretary of the Tribunal, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.”

29. For the avoidance of doubt, experts may use demonstrative exhibits during their direct examinations or presentations. The Party submitting such demonstrative exhibits will provide electronic copies and Sufficient Copies to the other Party, the Tribunal Members, the Secretary of the Tribunal, the court reporters, and the interpreters at the Hearing at any time before referring to such exhibit and will ensure that each slide provides the source of the evidence on the record on which it relies. “**Sufficient Copies**” means sufficient hard copies for 10 copies to be provided to the other Party (two copies), Tribunal Members (three copies), the Secretary of the Tribunal (one copy), the court reporters (two copies), and the interpreters (two copies).
30. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

E. WITNESS AND EXPERT EXAMINATION

31. The rules set out in Procedural Order No. 1 for the examination of witnesses and experts are confirmed. In particular, the examination and cross-examination will proceed in accordance with Section 18.7 of Procedural Order No. 1, which reads as follows:

“18.7 Witnesses giving oral evidence shall, before giving evidence, make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3). The witnesses will be asked to confirm their statement or report and may then be briefly examined by counsel for the party that is presenting the witness for “direct examination” which may not introduce new matters not already covered by the written statement or report. During the brief direct examination, the party who has presented the witness may ask the witness introductory questions, including about any corrections to be made to the written statements, and to address new matters raised in the Rejoinder. Experts may give a presentation before the start of their cross-

examination. The witness may then be examined by counsel for the opposing party (“cross-examination”), and subsequently by counsel for the party offering the witness, limited to matters that arose during cross-examination (“re-direct examination”).”

32. For the avoidance of doubt, Section 18.3 of Procedural Order No. 1, reproduced below shall also apply:

“18.3. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.”

33. Sufficient Copies of cross-examination bundles (*i.e.* bundles of exhibits or legal authorities on the record to which the witness or expert is to be referred, including an index identifying the relevant tab and exhibit / legal authority number) are to be provided immediately before the cross-examination. The Party conducting the cross-examination will provide at least two copies of the cross-examination bundle and two additional copies of the index to the cross-examination bundle to the opposing Party. The cross-examination bundle provided to the witness or expert must remain in the hearing room.
34. Section 18.9 of Procedural Order No. 1 with respect to sequestration is confirmed. Witnesses shall be sequestered prior to giving testimony but shall be allowed to observe the hearing after testifying. Experts shall not be sequestered and shall be allowed to observe the hearing when not testifying.
35. If a fact or expert witness’s cross-examination is interrupted and must continue in the following session, the fact or expert witness may not speak with or contact any of the Parties, their representatives or counsel until the examination is completed. The Parties will use their best efforts to ensure that the examination of a given fact or expert witness is conducted in its entirety on the same day.
36. The Parties have called for cross-examination of the following witnesses and experts:

- a. The Respondent has called for cross-examination of the following witnesses and experts produced by the Claimant:
 - i. Robert Hinchcliffe
 - ii. Margarita Ricaurte
- b. The Claimant has called for cross-examination of the following witnesses and experts produced by the Respondent:
 - i. Eduardo Amaya Lacouture
 - ii. Felipe De Vivero

F. AUDIO RECORDINGS

37. The provision of Section 21.1 of Procedural Order No. 1 concerning audio recording (reproduced below) applies.

“21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members. The parties shall discuss the provision of recordings of simultaneous interpretations at the pre-hearing conference.”

38. The audio recordings shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Tribunal at the conclusion of the Hearing. Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.

G. TRANSCRIPTION

39. The provisions of Procedural Order No. 1, Sections 21.2 and 21.3 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 41 *infra*.

“21.2. 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.

21.3. The parties shall agree on any corrections to the transcripts within 28 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“Revised Transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the Revised Transcripts.”

40. Real-time court reporting in English and Spanish shall be made available to the Hearing participants.
41. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
42. Both the original language (non-translated) and translated versions of the transcript will be considered authoritative transcripts for use in any other subsequent pleading or presentation.
43. In accordance with Section 21.3 of Procedural Order No. 1, the deadline for corrections to the transcript shall be 28 days following the later of the dates of the receipt of the sound recordings and/or transcripts.

H. INTERPRETATION

44. ICSID will make the required arrangements for simultaneous interpretation into English and Spanish and communicate them to the Parties and Tribunal in due course.
45. The Parties confirm that the following witnesses and experts require interpretation when testifying:
 - a. *Fact witnesses:*
 - Eduardo Amaya Lacouture
 - Robert Hinchcliffe

b. *Expert witnesses:*

- Felipe De Vivero
- Margarita Ricaurte

46. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
47. Each Participant should, insofar as possible, circulate any speaking notes and PowerPoint slides to the interpreters prior to the start of each intervention. These notes should be emailed to the interpreters directly by requesting the email address to the Secretary of the Tribunal. The notes are to be treated as confidential information.

I. OPEN HEARING

48. In accordance with Section 20.7 of Procedural Order No. 1 and Article 830(2) of the Canada-Colombia FTA, the Hearing shall be open to the public. The Tribunal may hold portions of the Hearing *in camera* to the extent necessary to ensure the protection of confidential information.
49. To comply with the open hearing provisions above, video recordings of the Hearing will be posted for viewing in the ICSID website, in the original language.
50. As indicated during the Pre-Hearing Conference, the Parties confirmed that they will not be using any information designated by one or both of the Parties as being confidential during the Hearing.
51. The availability of the Hearing recordings will be announced publicly via the ICSID website in English and Spanish. The video recordings of the Hearing will be available online for 24 hours only.

J. POST-HEARING SUBMISSIONS

52. Section 22.1 of Procedural Order No. 1, reproduced below shall apply.

“22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing.”

53. During the Pre-Hearing Conference, the Parties confirmed that they wish to submit post-hearing submissions in lieu of closing statements. Should the Tribunal have additional questions to pose to the Parties after conclusion of the Hearing, it shall submit them to the Parties in writing within 30 days from the date on which the Revised Transcript is circulated to the Tribunal and the Parties. The Tribunal shall give instructions about the due date, length, content and format of Post-Hearing Submissions at the end of the Hearing. No additional evidence may be produced together with the Post-Hearing Submissions, except with leave from or at the request of the Tribunal.

K. PARTICIPANTS

54. Each Party shall provide its respective List of Hearing Participants (“List of Participants”) by **Monday, June 13, 2022**, using the format provided in **Annex B**. Each Party shall designate those participants that will be attending.

55. The ICSID Secretariat has reserved a hearing room and break out rooms for each Party and the Tribunal.

56. The ICSID Secretariat will communicate any COVID-19 related restrictions regarding in-person attendance at the Hearing to the Parties and Tribunal; all in person Hearing Participants are expected to abide by any applicable rules in this regard. The ICSID Secretariat will liaise with the Parties in this respect. The current requirements for entry to the Hearing room is that all individuals who will be attending the Hearing must be fully-vaccinated against COVID-19. Counsel for each party should have conveyed by the Pre-Hearing Conference (*i.e.* June 2, 2022) that all intended in-person participants are in compliance with this requirement. On June 3, 2022, the Respondent confirmed that all its

intended participants on behalf of the Respondent complied with the requirement. To this date, counsel for the Claimant has not provided the confirmation.

57. Any participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until they have obtained a negative rapid antigen test (the results of which are usually available within a matter of hours). A participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing is asked to immediately inform the ICSID Secretariat of this development, pending the results of their test.

L. GENERAL PROVISIONS

1. Confidentiality

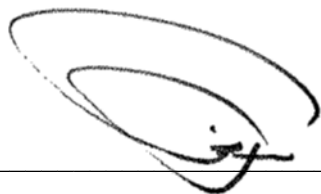
58. Subject to the provisions on Open Hearing above, this ICSID proceeding, including all communications, is confidential. Participants in the remote Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All participants providing services 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.

2. Data Privacy

59. 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. The Parties, the Members of the Tribunal and ICSID will retain the information to the extent necessary pending the conclusion of the arbitration. All other hearing participants must delete all electronic copies and dispose of any printed copies, as confidential material, as soon as they fulfill their Hearing-related obligations.

For and on behalf of the Tribunal,



Mr. Eduardo Siqueiros
President of the Tribunal
Date: June 10, 2022

ANNEX A
Hearing Agenda

Day 1: June 21, 2022

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:00 am	30 mins	Housekeeping, Procedural and Logistic Matters
9:30 am	120 mins	Claimant's Opening Statement
11:30 am	15 mins	BREAK
11:45 am	30 mins	Tribunal's questions
12:15 pm	60 mins	LUNCH BREAK
1:15 pm	120 mins	Respondent's Opening Statement
3:15 pm	30 minutes	Tribunal's questions
3:45 pm	15 mins	BREAK
4:00 pm	30 mins	Presentation of Margarita Ricaurte
4:30 pm	10 mins	BREAK
4:40pm	120 mins	Cross-examination of Margarita Ricaurte
6:40 pm	30 mins	Tribunal's questions
7:10 pm		End

Day 2: June 22, 2022

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:30 am	30 mins	Housekeeping, Procedural and Logistic Matters
10:00 am	30 mins	Presentation of Felipe Vivero
10:30 am	120 mins	Cross examination of Felipe Vivero
12:30 pm	15 mins	BREAK
12:45 pm	30 mins	Tribunal's questions
1:15 pm	60 mins	LUNCH BREAK
2:15 pm	10 mins	Direct examination of Eduardo Amaya Lacouture
2:25 pm	120 mins	Cross-examination of Eduardo Amaya Lacouture
4:25 pm	15 mins	BREAK
4:40 pm	30 mins	Tribunal's questions
5:10 pm		End

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Day 3: June 23, 2022

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:30 am	30 mins	Housekeeping, Procedural and Logistic Matters
10:00 am	10 mins	Direct examination of Robert Hinchcliffe
10:10 am	120 mins	Cross examination of Robert Hinchcliffe
12:10 am	15 mins	BREAK
12:25 pm	30 mins	Tribunal's questions
12:55 pm	60 mins	LUNCH BREAK
1:55 pm	60mins	Final instructions
2:55 pm		End

ANNEX B

Galway Gold Inc.
v.
Republic of Colombia

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Hearing on Jurisdiction and the Merits

June 21 – 23, 2022

Washington, D.C.

LIST OF PARTICIPANTS

TRIBUNAL	
Mr. Eduardo Siqueiros T.	President
Mr. Alfredo Bullard	Co- Arbitrator
Prof. Brigitte Stern	Co-Arbitrator

ICSID SECRETARIAT	
Ms. Catherine Kettlewell	Secretary of the Tribunal

CLAIMANT	
Mr./Ms. First Name/ Last Name	Affiliation
<i>Counsel:</i>	
<i>Parties:</i>	
<i>Witness:</i>	
<i>Expert:</i>	

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RESPONDENT	
Mr./Ms. First Name/ Last Name	Affiliation
<i>Counsel:</i>	
<i>Parties:</i>	
<i>Witness:</i>	
<i>Expert:</i>	