

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Freeport-McMoRan Inc.**  
Applicant on Annulment

v.

**Republic of Peru**  
Respondent on Annulment

**(ICSID Case No. ARB/20/08)**  
**Annulment Proceeding**

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**PROCEDURAL ORDER NO. 1**

***Members of the ad hoc Committee***

Sir Christopher Greenwood, President of the *ad hoc* Committee  
Prof. José A. Moreno Rodríguez, Member of the *ad hoc* Committee  
Ms. Carita Wallgren-Lindholm, Member of the *ad hoc* Committee

***Secretary of the ad hoc Committee***

Ms. Marisa Planells-Valero

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12 February 2025

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## **Introduction**

The first session of the *ad hoc* Committee (the “Committee”) was held on 27 January 2025, at 11.00 a.m. (EST) by video conference. The session was adjourned at 12.00 pm (EST).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Committee and the parties on 28 January 2025.

Participating in the session were:

### Members of the Committee:

Sir Christopher Greenwood, President of the *ad hoc* Committee  
Prof. José A. Moreno Rodríguez, Member of the *ad hoc* Committee  
Ms. Carita Wallgren-Lindholm, Member of the *ad hoc* Committee

### ICSID Secretariat:

Ms. Marisa Planells-Valero, Secretary of the Committee

### On behalf of Freeport-McMoRan Inc. (Applicant on Annulment):

Dr. Dietmar W. Prager, Debevoise & Plimpton LLP  
Ms. Laura Sinisterra, Debevoise & Plimpton LLP  
Ms. Julianne Marley, Debevoise & Plimpton LLP  
Mr. Nawi Ukabiala, Debevoise & Plimpton LLP  
Mr. Federico Fragachan, Debevoise & Plimpton LLP  
Mr. Luis Carlos Rodrigo, Estudio Rodrigo Elias & Medrano Abogados  
Mr. Francisco Cardenas, Estudio Rodrigo Elias & Medrano Abogados  
Ms. Lucia Rodrigo, Estudio Rodrigo Elias & Medrano Abogados  
Mr. Dan P. Kravets, Freeport-McMoRan Inc.  
Mr. Scott Statham, Freeport-McMoRan Inc.  
Ms. Julia Torreblanca, Sociedad Minera Cerro Verde S.A.A.

### On behalf of the Republic of Peru (Respondent on Annulment):

Mr. Stanimir A. Alexandrov, Stanimir A. Alexandrov PLLC  
Ms. Jennifer Haworth McCandless, Baker Botts LLP  
Ms. María Carolina Durán, Baker Botts LLP  
Mr. Ricardo Puccio, Estudio Navarro & Pazos  
Ms. Vanessa Rivas Plata, Ministerio de Economía y Finanzas  
Mr. Mijail Cienfuegos, Ministerio de Economía y Finanzas

The Committee and the parties considered the following:

- The Draft Procedural Order circulated by the Secretary of the Committee on 16 January 2025; and

- The parties' comments on the Draft Procedural Order received on 24 January 2025, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree, and their proposed schedule (Annex B) received on 27 January 2025.

Having considered the above documents and the parties' views, the Committee now issues the present Order:

### **Order**

Pursuant to ICSID Arbitration Rules 19, 20 and 53, this Procedural Order sets out the Procedural Rules that govern this annulment proceeding. A timetable is attached as **Annex B**.

#### 1. Applicable Arbitration Rules

*Convention Article 44; Arbitration Rule 53*

- 1.1. This proceeding is conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

#### 2. Constitution of the Committee and Committee Members' Declarations

*Convention Article 52(3); Arbitration Rules 6 and 52*

- 2.1. The Committee was constituted on 12 December 2024 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that no party has any objection to the appointment of any Member of the Committee.
- 2.2. The Members of the Committee 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 12 December 2024.
- 2.3. The Members of the Committee confirmed that they have sufficient availability to dedicate to this case.

#### 3. Fees and Expenses of Committee Members

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

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

4. Presence and Quorum

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

4.1. The presence of all Members of the Committee constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Committee

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

5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.

5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that, where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.

5.3. The Committee will draft and issue all rulings, including its Decision on Annulment, within a reasonable time. If a ruling, other than the Decision on Annulment, has not been issued within three months after the final submission on a particular matter, the Committee will provide the parties with status updates every month. If the Decision on Annulment has not been issued within six months after the final submission, the Committee will provide the parties with status updates every month.

5.4. The President is authorized to sign Procedural Orders on behalf of the Committee.

5.5. The Committee's rulings on procedural matters may be communicated to the parties by the Committee's Secretary electronically by letter or email.

5.6. Any ruling of the Committee, including the certified copy of the Decision on Annulment, 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 steps in the proceeding.

6.2. In exercising this power, the President shall endeavour to consult with the other Members of the Committee. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.

- 6.3. The parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday, Sunday, or U.S. holiday. A time limit shall be computed from the date on which the limit is announced, with the day of such announcement being excluded from the calculation.

7. Secretary of the Committee

*Administrative and Financial Regulation 28*

- 7.1. The Secretary of the Committee is Ms. Marisa Planells-Valero, Legal Counsel, ICSID, or such other person as ICSID may notify the Committee 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. Marisa Planells-Valero  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
U.S.A.  
Tel.: + 1 (202) 458-9273  
Fax: + 1 (202) 522-2615  
Email: [mplanellsvalero@worldbank.org](mailto:mplanellsvalero@worldbank.org)  
Paralegal email: [mposadavelandia@worldbank.org](mailto:mposadavelandia@worldbank.org)  
ICSID case address: [arb/20/8/annulment1@icsidcases.worldbank.org](mailto:arb/20/8/annulment1@icsidcases.worldbank.org)

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

Ms. Marisa Planells-Valero  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3<sup>rd</sup> Floor - MSN C300  
Washington, D.C. 20036  
U.S.A.  
Tel.: +1 (202) 458-1534

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 Committee and the Committee Secretary promptly of such designation.

Freeport-McMoRan Inc.

Mr. Dietmar W. Prager  
Ms. Laura Sinisterra  
Mr. Nawi Ukabiala  
Ms. Julianne J. Marley  
Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001  
USA

Emails:

[dwprager@debevoise.com](mailto:dwprager@debevoise.com)  
[lsinisterra@debevoise.com](mailto:lsinisterra@debevoise.com)  
[nukabiala@debevoise.com](mailto:nukabiala@debevoise.com)  
[jjmarley@debevoise.com](mailto:jjmarley@debevoise.com)

Mr. Luis Carlos Rodrigo Prado  
Mr. Francisco Cardenas Pantoja  
Rodrigo, Elias & Medrano  
Av. Pardo y Aliaga 652 piso 8  
San Isidro  
Lima 15073

Republic of Peru

Emails:

[lcrodrigo@estudiorodrigo.com](mailto:lcrodrigo@estudiorodrigo.com)  
[fcardenas@estudiorodrigo.com](mailto:fcardenas@estudiorodrigo.com)

For the Republic of Peru

Ms. Vanessa Rivas Plata Saldarriaga  
Mr. Mijail Feliciano Cienfuegos Falcon  
Comisión Especial que representa al Estado en  
Controversias Internacionales de Inversión  
Ministerio de Economía y Finanzas  
Jr. Junin No. 319  
Cercado de Lima,  
Lima

Republic of Peru

Emails:

[vrivasplata@mef.gob.pe](mailto:vrivasplata@mef.gob.pe)  
[mcienfuegos@mef.gob.pe](mailto:mcienfuegos@mef.gob.pe)

Mr. Stanimir A. Alexandrov  
Stanimir A. Alexandrov PLLC  
1501 K Street, NW, Suite C-072  
Washington, D.C. 20005

United States of America

Email: [salexandrov@alexandrovlaw.com](mailto:salexandrov@alexandrovlaw.com)

Mr. Alejandro A. Escobar  
Ms. Ana Martínez Valls  
Mr. Ernesto Félix De Jesús  
Baker Botts LLP (UK)

Level 30

20 Fenchurch Street

London EC3M 3BY

United Kingdom

Emails: [alejandro.escobar@bakerbotts.com](mailto:alejandro.escobar@bakerbotts.com)  
[ana.martinez.valls@bakerbotts.com](mailto:ana.martinez.valls@bakerbotts.com)  
[ernesto.feliz@bakerbotts.com](mailto:ernesto.feliz@bakerbotts.com)

Ms. Jennifer Haworth McCandless  
Ms. María Carolina Durán  
Ms. Natalia Zuleta  
Ms. Veronica Restrepo

Baker Botts LLP  
700 K Street, NW Washington, D.C. 20001  
United States of America  
Emails:[j.haworth.mccandless@bakerbotts.com](mailto:j.haworth.mccandless@bakerbotts.com)  
[mariacarolina.duran@bakerbotts.com](mailto:mariacarolina.duran@bakerbotts.com)  
[veronica.restrepo@bakerbotts.com](mailto:veronica.restrepo@bakerbotts.com)  
[natalia.zuleta@bakerbotts.com](mailto:natalia.zuleta@bakerbotts.com)

8.2. Freeport-McMoRan Inc. (“Freeport”) will be designated as the Claimant and the Republic of Peru will be designated as the Respondent, as in the original arbitration proceeding. The party that filed the Application for Annulment, Freeport, may also be referred to as the Applicant.

9. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 28*

9.1. In accordance with Administrative and Financial Regulation 15(5), the Applicant, in this case shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the direct costs of the proceeding, without prejudice to the final decision of the Committee as to the allocation of costs.

9.2. By letter of 30 September 2024, ICSID requested the Applicant to make an advance payment of US\$150,000 to cover the initial costs of the proceeding. ICSID received the Applicant’s payment on 28 October 2024.

9.3. ICSID shall request further advances from the Applicant as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding  
*Convention Articles 62 and 63; Arbitration Rule 13(3)*

10.1. Washington DC shall be the place of the proceeding. The Committee may hold hearings at any location other than Washington D.C. that it considers appropriate if the parties so agree.

10.2. The Committee Members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language, Translation and Interpretation  
*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.

*For Parties' Pleadings*

- 11.3. All written submissions, including written requests, and applications, and pleadings, shall be submitted in English.
- 11.4. English translations of non-English language accompanying documentation, including any expert report admitted under §§15.4 and 16.1, shall be submitted within three (3) weeks as set out in §13.1.3 below.
- 11.5. If translation of an exhibit is being provided and the exhibit is lengthy and relevant only in part, it is sufficient to translate only the relevant parts, provided that the Committee may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.6. Translations need not be certified. If a party disagrees with a translation, the parties shall attempt to reach agreement on the translation. If no agreement is reached within 14 calendar days of a party notifying its disagreement with the translation to the other party, the Committee shall take the necessary decision, for which it may appoint a certified translator to have the document(s) in question translated.

*For Hearing*

- 11.7. Simultaneous interpretation from English to Spanish and from Spanish to English shall be available throughout the annulment hearing, when necessary, in accordance with §11.9.
- 11.8. The testimony of an expert whose report has been admitted under §§15.4 and 16.1 of this Order and who is called for cross-examination during the hearing and prefers to give evidence in a language other than the English or Spanish language(s) shall be interpreted, simultaneously, if possible, into English and Spanish.
- 11.9. The Parties shall notify the Committee, as soon as possible, and no later than at the pre-hearing organizational meeting (see §18 below), which experts require interpretation.
- 11.10. The costs of the interpreter(s) shall be paid from the advance payments made by the Applicant, without prejudice to the decision of the Committee as to which party shall ultimately bear those costs.

*For Committee's Documents Except the Annulment Decision*

- 11.11. The Committee shall make any order or decision in English.

*For the Committee's Decision on Annulment*

11.12. The Committee shall render the Annulment Decision in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Committee.

12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Committee Secretary, who shall send them to the Committee.

12.3. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing party and the Committee.

12.4. The Committee Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Committee.

13. Number of Copies and Method of Filing of Parties' Pleadings  
*Arbitration Rules 20(1)(d) and 23*

13.1. By the relevant filing date, the parties shall:

13.1.1. Submit an electronic version of the pleading (with any expert report which may have been admitted under §§15.4 and 16.1 of this Order), and an updated index of all supporting documentation by email to the Committee Secretary and the opposing party;<sup>1</sup> (the "Electronic Email Filing")

13.1.2. Within five (5) business days after the Electronic Email Filing, upload the pleading with all supporting documentation and updated index to the file sharing platform created by ICSID for purposes of this case ("Electronic Platform Filing"); and

13.1.3. Within three (3) weeks of the Electronic Platform Filing, any translations required by §11.4 shall be uploaded to the file sharing platform for the case ("Electronic Translations Filing").

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<sup>1</sup> Please note that the World Bank server does not accept emails larger than 25 MB. Supporting documentation shall be uploaded as individual files, not in .zip format.

13.1.4. For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the parties.

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- 13.2. Electronic versions of pleadings, any expert report admitted under §§15.4 and 16.1 of this Order, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.3. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the party has submitted up to the date of the pleading in this proceeding. The index shall indicate the document number in the annulment proceeding, the corresponding number, if any, in the underlying arbitration proceeding, the language of the document, the name or description of the document, and the pleading with which it was submitted (pursuant to the templates in **Annex C**).
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Committee or at any other time determined by the Committee or the ICSID Secretariat, the parties shall courier to the ICSID Secretariat at the address indicated at §§7.2 and 7.3 above and to each Member of the Committee at the addresses indicated at §13.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, expert reports (if any), exhibits, legal authorities and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents submitted by either party.
- 13.5. The addresses of the Committee Members are as follows:
- |   |  |   |
|---|--|---|
| Sir Christopher Greenwood,<br>GBE, CMG, KC<br>Master<br>Magdalene College<br>Cambridge CB3 0AG<br>United Kingdom<br>Tel.: +44 1223 332 100/332<br>144 | Prof. José A. Moreno<br>Rodríguez<br>Avenida Aviadores del Chaco<br>N° 2581<br>Edificio Sky Park, Torre 2,<br>Piso 19<br>Asunción, Paraguay<br>Tel.: +595 21 2376695 | Ms. Carita Wallgren-<br>Lindholm<br>Lindholm Wallgren,<br>Attorneys Ltd.<br>Bulevardi 17 A 38<br>FI-00120 Helsinki<br>Finland<br>Tel.: +358 (0)9 684 5343 |
|---|--|---|
- 13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Secretary of the Committee by email.
- 13.7. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday, Sunday or U.S. holiday, the relevant date is the subsequent business day.

14. Number and Sequence of Pleadings

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

- 14.1. The proceedings shall follow the agreed schedule set out in Annex B, subject to any amendment agreed by the parties or approved by the President or the Committee.

15. Submission of Documents

*Convention Article 44; Arbitration Rule 24*

- 15.1. The Memorial and Counter-Memorial shall be accompanied by the supporting documents relied upon by the parties, including exhibits and legal authorities. Further supporting documents relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 15.2. Neither party shall be permitted to submit additional or responsive documents after the filing of its last written submission, unless the Committee determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party. 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.
- 15.3. Given the nature of an annulment proceeding, the Committee expects that the parties will refer primarily to the evidentiary record from the arbitration proceeding (e.g., exhibits, witness statements or expert reports discussed during the original arbitration), and, subject to §§15.4 and 16.1, it does not expect to receive new evidence (namely, exhibits, or expert reports). For the avoidance of doubt, “new evidence” here does not include new legal authorities.
- 15.4. Therefore, without prejudice to each party’s right to submit new legal authorities, no new evidence or expert report shall be admitted in this proceeding, unless the Committee, based on a reasoned written request followed by observations from the other party, decides to admit it. The procedure to be followed should a party wish to apply to admit new evidence or an expert report on annulment issues is set out in §16.1. For the avoidance of doubt, correspondence on the record of the underlying arbitration proceeding as well as decisions or orders issued by the Tribunal do not constitute new evidence for the purpose of this paragraph.
- 15.5. Any documents introduced as exhibits or legal authorities in the annulment proceeding shall be labelled with numbers and organized in a clear order:
- 15.5.1. Exhibits and legal authorities shall be submitted anew in this proceeding, regardless of whether they already form part of the record of the underlying arbitration proceeding. Exhibits and legal authorities already included in the evidentiary record of the underlying arbitration proceeding shall be

submitted in PDF format using the same numbering as in the arbitration proceeding (i.e., for the Claimant(s) include reference to the numbering used in the arbitration proceeding e.g. “C-0001” for factual exhibits and “CLA-0001” for legal authorities; and for the Respondent include reference to the numbering used in the arbitration proceeding e.g. “R-0001” for factual exhibits and “RLA-0001” for legal authorities).

- 15.5.2. Exhibits and legal authorities shall be numbered consecutively throughout the entire annulment proceeding and labelled according to the naming convention contained in **Annex A**. For this purpose, “exhibits” refers to: (i) exhibits already included in the evidentiary record of the underlying arbitration proceeding; (ii) correspondence on the record in the underlying arbitration proceeding as well as decisions or orders issued by the Tribunal; and (iii) any new exhibits (if any) admitted in accordance with §§15.4 and 16.1 of this Order.
- 15.5.3. The Applicant on Annulment’s exhibits and legal authorities shall be submitted in PDF format using the numbering “AA-0001” or “AALA-0001”, as appropriate. The Respondent on Annulment’s exhibits and legal authorities shall be submitted in PDF format using the numbering “RA-0001” or “RALA-0001”, as appropriate. They shall also clearly indicate the number which the relevant exhibit or authority bore in the original arbitration proceeding (if any).
- 15.5.4. Any witness statements or expert reports from the underlying arbitration proceeding which are submitted in the annulment proceeding, as well as any expert report admitted in accordance with §15.4 of this Order shall be labelled according to the naming convention contained in **Annex A**.
- 15.5.5. The numbering shall also indicate the language of the document, adding “-ENG” or “-SPA”, as appropriate (e.g., AA-0001-ENG / RALA-0001-SPA).
- 15.6. The Parties shall number the paragraphs of their written pleadings consecutively.
- 15.7. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Committee will determine whether authentication is necessary.
- 15.8. The Parties shall file all documents on which they intend to rely only once by submitting them with their pleadings.
- 15.9. The parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record, and (iii) do

not contain information from documents from the underlying arbitration that have not been resubmitted in the annulment proceeding.

15.10. In addition, promptly after the conclusion of the Hearing Day on which the corresponding demonstrative exhibit is used, the parties shall upload such demonstrative to the case folder in the BOX files sharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

16. Submission of New Evidence

*Convention Article 43(a); Arbitration Rule 24*

16.1. A party that wishes to make a request to include new evidence with its written submission (i.e., evidence other than documents submitted on the record in the underlying arbitration, or new expert reports on matters related to annulment issues) shall file its request pursuant to §15.4 to do so no later than 25 working days before the due date of the relevant written submission. The other party shall file observations on the request 10 working days after receiving the request. The Committee shall issue its decision no later than 5 working days after the other party files its observations. Any documents admitted under §15.4 and this provision shall be filed with the relevant pleading. Neither party shall be permitted to submit new evidence after the filing of its respective last written submission, unless the Committee determines that special circumstances exist based on a reasoned written request followed by observations from the other party.

16.2. Each new expert report admitted under §§15.4 and 16.1, if any, shall be signed and dated by the expert.

17. Examination of Experts

*Arbitration Rules 35 and 36*

17.1. Examination of experts on annulment matters, if any, will be decided by the parties once submissions have been filed. In the event that the parties are unable to agree, the issue on which they differ shall be decided by the Committee.

18. Pre-Hearing Organizational Meetings

*Arbitration Rule 13*

18.1. A pre-hearing organizational meeting shall be held at a date determined by the Committee after consultation with the parties. It shall comprise a teleconference between the Committee, or its President, and the parties and should address any outstanding procedural, administrative or logistical matter (including modality of interpretation and transcription) in preparation for the hearing.

18.2. At a date to be determined by the Committee, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Committee jointly

– or, where they are unable to agree, separately – proposals regarding a daily schedule for the hearing.

19. Hearings

*Arbitration Rules 20(1)(e) and 32*

- 19.1. The oral procedure shall consist of a hearing for oral arguments.
- 19.2. The hearing shall be held in-person at a place to be determined in accordance with §10 above unless the Committee, after consultation with the parties, decides that exceptional circumstances (including any relevant travel restrictions and/or social distancing measures or public health/security) require that the hearing be held by other means.
- 19.3. The hearing shall take place at a date to be determined.
- 19.4. The Members of the Committee shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 19.5. Hearing time shall be allocated equally between the parties on a basis to be determined at the pre-hearing organizational meeting.
- 19.6. Hearings will be open to the public by livestream or other electronic means.

20. Records of Hearings and Sessions

*Arbitration Rules 13 and 20(1)(g) and 53*

- 20.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Committee Members.
- 20.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Committee, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the parties and the Committee on a same-day basis.
- 20.3. The parties shall agree on any corrections to the transcripts within 30 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 Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.



21. Post-Hearing Memorials and Statements of Costs

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

- 21.1. The Committee, after hearing the Parties, will decide on the necessity of submitting Post-Hearing Memorials, and may limit their length and scope.
- 21.2. Promptly after the closure of the proceeding, at a date to be agreed at the hearing, each party shall submit to the Secretary of the Committee a statement of costs reasonably incurred or borne by it in the proceeding, without arguments.

22. Non-Disclosure of Information

*Articles 10.21, 10.28, 22.2 and 22.4 of the US-Peru TPA*

- 22.1. The parties agree that “protected information” is as defined in Article 10.28 of the US-Peru TPA. Article 10.28 states in relevant part, “protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law.” Article 10.21 of the US-Peru TPA applies to such protected information.
- 22.2. In addition, and in accordance with Articles 22.2 or Article 22.4 of the US-Peru TPA, Respondent shall not be required to disclose information that Respondent deems to be “contrary to its essential security interests” or to “impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises public or private” (hereinafter, Article 22.2 and 22.4 Information). The production of such information may not be compelled from the Respondent, nor may such information be publicly disclosed, in accordance with §23 (Transparency) below.
- 22.3. For the purposes of this Order, “protected information” and “Article 22.2 and 22.4 Information” are collectively referred to as “non-disclosure information”.
- 22.4. The parties agree that the US-Peru TPA applies to the extent applicable and that this Order does not add or subtract any rights from the TPA.

23. Transparency

*Convention Article 48(5), Administrative and Financial Regulation 25, Arbitration Rule 48(4); Article 10.21 of the US-Peru TPA*

- 23.1. In accordance with Article 10.21 of the US-Peru TPA, hearings shall be open to the public, subject to a procedure to ensure that “non-disclosure information” is not disclosed to the public.
- 23.2. Any hearing held remotely over a secure video-conference platform will be video recorded, and the video recording will be streamed in the English and Spanish



languages on the ICSID website as soon as possible after the conclusion of the hearing, subject to a procedure to ensure that “non-disclosure information” is not disclosed to the public. An announcement to this effect will be published on the ICSID website.

- 23.3. The parties consent to ICSID’s publication of the documents listed in Article 10.21.1 of the US-Peru TPA, subject to the applicable protective procedures required under Articles 10.21.2, 10.21.3, and 10.21.4 of the US-Peru TPA. Applying Article 10.21.1 *mutatis mutandis* to these annulment proceedings, the documents are: (a) the request for annulment; (b) pleadings, memorials and briefs submitted to the *ad hoc* Committee by a party and any written submissions submitted to the *ad hoc* Committee pursuant to Article 10.20.2, 10.20.3 and Article 10.25 of the US-Peru TPA; (c) minutes or transcripts of hearings, where available; and (d) orders, and decisions of the *ad hoc* Committee.
- 23.4. For purposes of § 23.3 above, the reference to “pleadings, memorials and briefs” does not include accompanying material (i.e., expert reports, exhibits and legal authorities).
- 23.5. The parties agree that Respondent, and not ICSID, retains the obligation to transmit the documents listed in § 23.3 above to the United States of America (the Non-Disputing Party under the US-Peru TPA), and make them available to the public as required by Article 10.21 of the US-Peru TPA.
- 23.6. The parties agree that the following procedure applies to the redaction of “non-disclosure information” prior to publication.

23.6.1. For the application for annulment, which pre-date this Order:

Within 21 calendar days of the date of this Order, Claimant shall submit redacted versions that do not contain any “non-disclosure information.” Within 21 calendar days of the date that the redacted versions are submitted to the Committee, Respondent shall notify Claimant and the Committee whether it objects to any of Claimant’s redactions. If Respondent objects to any of Claimant’s redactions, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve Respondent’s objections within 14 calendar days and upon the request of either party, then the *ad hoc* Committee will decide the issue.

23.6.2. For pleadings, memorials, and briefs:

Any party claiming that certain information constitutes “non-disclosure information” shall clearly designate the information at the time it is submitted to the Committee and submit a redacted version of the document, in electronic form only, that does not contain the information within 10

calendar days. Within 21 calendar days of the date of the redacted document's submission to the Committee, the other party shall notify the party submitting the document and the Committee whether it objects to any of the redactions. The parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 calendar days and upon the request of either party, then the Committee will decide the issue.

If the Committee determines that any information that a party sought to redact is not "non-disclosure information," that party may resubmit the document according to the procedures set out in Article 10.21.4(d) of the US-Peru TPA.

23.6.3. For minutes or transcripts of hearings and orders and decisions of the Committee other than the Decision on Annulment:

The parties shall within 21 calendar days of dispatch by the ICSID Secretariat submit redacted versions that do not contain any "non-disclosure information." Within 21 calendar days of the date that the redacted versions are submitted to the Committee, each Party shall notify the other party and the Committee whether it objects to any of the redactions. If there are objections, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 calendar days and upon the request of either party, then the Committee will decide the issue.

23.6.4. For the Decision on Annulment:

The parties shall within 21 calendar days of dispatch by the ICSID Secretariat submit redacted versions of the Annulment Decision that do not contain any "non-disclosure information." Within 21 calendar days of the date that the redacted versions are submitted to the Committee, each party shall notify the other party and the Committee whether it objects to any of the redactions. If there are objections, the parties shall undertake their best efforts to resolve these objections. If the parties cannot resolve the objections within 14 calendar days and upon the request of either party, then the Committee will decide the issue.

To ensure that the former Members of the Committee can be compensated for the time spent in deciding on any such disputes, ICSID will maintain the case trust fund open after the proceeding is concluded. The former Members of the Committee will be able to submit claims for such fees at the same hourly rate and through the same process used during the proceeding, and the claims will be paid from the advance payments made by the parties.

If the parties have not submitted any disputes regarding proposed redactions to the Decision on Annulment to the former Members of the Committee within 21 calendar days of the date on which the Decision on Annulment is dispatched, ICSID will proceed to close the case trust fund. If the parties do submit such disputes by this date, ICSID will close the case trust fund once the claims for fees and expenses relating to the resolution of disputes over redactions of the Decision on Annulment, if any, are received and paid.

- 23.7. Neither the parties nor the Committee shall disclose to the United States of America (the Non-Disputing Party under the US-Peru TPA) or to the public any “non-disclosure information” redacted in accordance with this Order or a subsequent ruling of the ad hoc Committee.

24. Other Matters – Document Security

- 24.1. Unless otherwise provided in this Procedural Order, all communications and submissions in this Proceeding shall be transmitted using only secure email accounts used primarily for business purposes and USB drives and file transfer platforms that are duly encrypted. In the event that any party becomes aware of an actual or reasonably suspected data breach, i.e., unauthorized or unintentional access to any documents disclosed in connection with the arbitration, that party shall immediately notify the Committee and the other party. In case of special need, the parties may agree upon or request from the Committee any further cybersecurity measures.
- 24.2. In the event of specific concerns about document security, any party may, at any time during the Proceeding, request that the Committee issues a Confidentiality Order in respect of any particular document/s that contain sensitive information or a procedural order concerning document security or confidentiality more generally. The Committee will consult with the parties before making any such order.

On behalf of the Committee,

[signed]

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Sir Christopher Greenwood  
President of the Committee  
Date: 12 February 2025

## Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index.

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

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
<b>MAIN PLEADINGS</b>	<b>Title of Pleading–[LANGUAGE]</b>
<b>EXHIBITS</b>	<b>AA-0001–[LANGUAGE]</b> <b>RA-0001–[LANGUAGE]</b> To be produced sequentially throughout the proceeding. If the exhibit also formed part of the record before the Tribunal, the original number should also be displayed on the first or title page.
<b>LEGAL AUTHORITIES</b>	<b>AALA-0001–[LANGUAGE]</b> <b>RALA-0001–[LANGUAGE]</b> To be produced sequentially throughout the proceeding. If the legal authority also formed part of the record before the Tribunal, the original number should also be displayed on the first or title page.
<b>WITNESS STATEMENTS (if applicable)</b>	<b>Witness Statement-Name of Witness-Name of Submission–[LANGUAGE].</b> The original number used in the proceedings before the Tribunal must also be displayed on the first or title page.
<b>EXPERT REPORTS (if applicable)</b>	<b>Expert Report-Name of Expert-Name of Submission–[LANGUAGE]</b> If the expert report formed part of the record before the Tribunal, the original number used in the proceedings before the Tribunal must also be displayed on the first or title page.
<b>EXHIBITS TO WITNESS STATEMENTS OR EXPERT REPORTS (if applicable)</b>	<b>WITNESS/EXPERT INITIALS–0001</b>
<b>INDICES</b>	See <b>Annex C</b>
<b>OTHER APPLICATIONS OR REQUESTS</b>	<b>Name of Application–[Party]- [LANGUAGE]</b>

**Annex B – Procedural Calendar**

<b>Procedural Step</b>	<b>By</b>	<b>Date</b>
First Session	All	Monday, January 27, 2025
Memorial on Annulment	Applicants	Friday, May 23, 2025
Counter-Memorial on Annulment	Respondent	Tuesday, September 16, 2025
Reply on Annulment	Applicants	Wednesday, December 10, 2025
Rejoinder on Annulment	Respondent	Friday, February 20, 2026
Pre-Hearing Organizational Meeting	All	TBD
Hearing on Annulment	All	TBD
Post-Hearing Submissions (if any)	Both Parties	TBD
Costs Submissions	Both Parties	TBD

**Annex C – List of Exhibits**

<b>Exhibit Number in Annulment Proceeding</b>	<b>Exhibit Number in Original Proceeding (if applicable)</b>	<b>Name of Document/ Description</b>
Submitted with [Applicant’s / Respondents’] [Name of Memorial] [AA/RA]-0001 to [AA/RA]-0001		
[AA/RA]-0001-[ENG/SPA]		
[AA/RA]-0002-[ENG/SPA]		
[AA/RA]-0003-[ENG/SPA]		

**C-** = Claimants’ Exhibit (Underlying Arbitration Proceeding)  
**R-** = Respondent’s Exhibit (Underlying Arbitration Proceeding)  
**AA-** = Applicant’s Exhibit (Annulment Proceeding)  
**RA-** = Respondents’ Exhibit (Annulment Proceeding)