

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Lupaka Gold Corp.**

**v.**

**Republic of Peru**

**(ICSID Case No. ARB/20/46)**

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**PROCEDURAL ORDER No. 6  
On the Organization of the Hearing**

***Members of the Tribunal***

Prof. John R. Crook, President of the Tribunal  
Mr. Oscar M. Garibaldi, Arbitrator  
Dr. Gavan Griffith KC, Arbitrator

***Secretary of the Tribunal***

Ms. Luisa Fernanda Torres

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16 March 2023

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**I. INTRODUCTION**

1. Pursuant to Section 20.1 of Procedural Order No. 1, a pre-hearing organizational call between the Parties<sup>1</sup> and the Tribunal was held by video conference on 27 February 2023 (the “**Pre-Hearing Conference**” or “**PHC**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Tribunal:

Prof. John R. Crook, President of the Tribunal

Mr. Oscar M. Garibaldi, Arbitrator

Dr. Gavan Griffith KC, Arbitrator

ICSID Secretariat:

Ms. Luisa Fernanda Torres, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Jaime Gallego, LALIVE

Mr. Luis Miguel Velarde Saffer, LALIVE

Ms. Stela Negran, LALIVE

On behalf of the Respondent:

Ms. Vanessa del Carmen Rivas Plata Saldarriaga, Republic of Peru

Ms. Mayte Remy Castagnola, Republic of Peru

Mr. Oscar Wilfredo Paredes Loza, Republic of Peru

Mr. Erick Vargas Guevara, Republic of Peru

Ms. Esperanza Molla León, Republic of Peru

Mr. Jhans Armando Panihuara Aragón, Republic of Peru

Mr. Patricio Grané Labat, Arnold & Porter

Mr. Timothy Smyth, Arnold & Porter

Ms. Bailey Roe, Arnold & Porter

Ms. Laura Arboleda, Arnold & Porter

Interpreters

Mr. Daniel Giglio

Ms. Anna Sophia Chapman

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

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Technical Support

Mr. Mike Young, Sparq

2. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on 19 February 2023, and the Parties' joint statement of 24 February 2023 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached.
3. 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 27 February 2023.
4. Following the Pre-Hearing Conference, on 3 March 2023, the Parties informed the Tribunal that they had agreed to reduce the number of witness/expert oral examinations at the Hearing. Subsequently, on 6 March 2023, the Parties submitted to the Tribunal a joint proposed revised Agenda for the Hearing (with only one area of disagreement). Lastly, on 7 March 2023, the Parties informed the Tribunal that one of the Respondent's fact witnesses (Mr. Román Retuerto) would not be able to attend the Hearing in person, and that the Parties had therefore agreed to conduct his examination in a remote (videoconference) format.
5. The Tribunal has considered the Parties' positions on the various items, and in the present Order it 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**

6. The Hearing is scheduled to take place from **Monday, 27 March 2023** to **Monday, 3 April 2023**.

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**B. FORMAT**

7. The Hearing will be held in-person at ICSID's Hearing facilities in Washington, DC., located at 1225 Connecticut Ave. N.W. (World Bank C Building) subject to the protocols established in **Annex B**. Given the exceptional circumstances created by the COVID-19 pandemic, and in an exercise of precaution, arrangements will also be made to facilitate connection to the Hearing Room through the Zoom platform to Participants that might need to attend remotely (*see* arrangements detailed in **Annex C**). Should any unexpected circumstance arise and make it unfeasible to conduct the Hearing in-person as planned, in accordance with Section 10.2 of Procedural Order No. 1, the Tribunal will discuss next steps with the Parties, including whether the Hearing could still be held in an entirely remote format on the same dates planned (*see* in that regard protocols detailed in **Annex C** as a precaution).

**C. ORDER OF PROCEEDINGS AND SCHEDULE**

8. Each day, the Hearing will start promptly at 9:30 AM and it will conclude by 5:40 PM (except for Day 1, which will conclude by 5:45 PM). Subject to the Tribunal's directions, the order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
9. Following consultation with the Parties, the Tribunal may adjust the Agenda in **Annex A** to adapt time allocations as needed for exigencies and the efficient disposition of the hearings.

**D. TIME ALLOCATION**

10. The time allocation shall be guided by the principles established in Section 21.5 of Procedural Order No. 1 (reproduced below):

“In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if there is a severe imbalance in the issues to be covered on cross-examination or if due process so requires.”

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11. Considering the start and end times, the Tribunal anticipates that each Hearing day shall comprise a total of 8 hours and 10 minutes (except for Day 1, which will comprise 8 hours and 15 minutes). A total of 1 hour and 30 minutes a day shall be reserved for breaks (except for Day 1, which will reserve 1 hour and 20 minutes), leaving 6 hours and 40 minutes of working time in each Hearing day (except for Day 1, which will have 6 hours and 55 minutes). It is anticipated that this will be allocated as follows: (i) 20 minutes a day will be available for housekeeping matters (except for Day 1, which anticipates 15 minutes); (ii) 1 hour a day will be available for the Tribunal (except for Day 1, which anticipates 40 minutes); and (iii) the remaining time in a day 5 hours and 20 minutes (except for Day 1, which anticipates 6 hours) will be available for use by the Parties.
12. Accordingly, taking account of the total number of Hearing days (6 days) and the specifications above, the Tribunal will seek to conduct the Hearing so that the Parties shall have a total of 32 hours and 40 minutes of working time available to them during the entire Hearing, to be allocated as agreed by the Parties, namely: 17 hours and 20 minutes for the Claimant, and 15 hours and 20 minutes for the Respondent. However, time allocations specified in this Order may be adjusted as required by the Tribunal in order to assure efficient and timely completion of the Hearing, bearing in mind the principles of predictability, equal treatment, and a fair opportunity for the Parties to be heard.
13. Time shall be kept using the chess-clock method. Each Party may use the time available to it at each stage of the Hearing in the manner it desires, subject to the following:
  - (a) *Opening Statements.* Each Party shall be allowed a maximum of 3 hours for its Opening Statement.
  - (b) *Closing Statements.* There shall be no oral Closing Statements.

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- (c) *Direct Examination of Fact Witnesses.* Pursuant to Section 19.11.2 of Procedural Order No. 1, the direct examination of a fact witness shall not exceed 10 minutes.<sup>2</sup>
  - (d) *Direct Presentations by Experts.* The direct presentation by an expert envisioned in Section 19.13. of Procedural Order No. 1 shall not exceed 30 minutes. The time taken for these presentations shall be counted against the time allotment for the Party presenting the expert.
  - (e) *Tribunal Questions.* Time taken by the Tribunal for its own questions during the Parties' presentations and examinations and the answers to those questions shall not be counted against the Parties' time.
  - (f) *Housekeeping.* Time used for housekeeping or to resolve technical difficulties shall be counted against the time reserved for housekeeping or against the Tribunal's reserved time, if needed.
14. The Secretary of the Tribunal shall keep the time, under the direction of the Tribunal, and she will advise the Parties of the total daily time used at the end of each Hearing day.
15. The Parties are expected to use each Hearing day efficiently. The Tribunal will seek to prevent unnecessary slippage (*e.g.*, delays in returning from breaks). In the event of excess slippage or other unanticipated delays, the Tribunal may take necessary measures, including in unusual circumstances adjusting the time available to the Parties, bearing in mind principles of predictability, equal treatment, and a fair opportunity for the Parties to be heard.

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<sup>2</sup> The Tribunal will ensure that direct examination is confined to the matters listed in Section 19.11.2 of Procedural Order No. 1.

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

**1. Electronic Hearing Bundle**

16. Pursuant to Section 13.5 of Procedural Order No. 1, there shall be a single Electronic Hearing Bundle (PC and Mac compatible),<sup>3</sup> to be prepared *jointly* by the Parties. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal 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. Claimant
- B. Respondent
- C. Non-Disputing FTA Party

**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. Expert Exhibits**

- A. Claimant
- B. Respondent

**07. Tribunal Rulings**

17. The Parties distributed the Electronic Hearing Bundle in a USB sent by *courier* on **Monday, 6 March 2023** (original version) and **Thursday, 9 March 2023** (revised version) directly to: (i) each Member of the Tribunal (3 copies); (ii) the Secretary of the Tribunal; (iii) each court reporter (2 copies); and (iv) each interpreter (3 copies), to the

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<sup>3</sup> The Parties must make sure that the USB devices they provide to the Tribunal do not only contain a MAC-compatible program, but one that is compatible with the latest MAC requirements and can in fact be opened by a MAC computer.

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*courier* addresses communicated by the ICSID Secretariat.<sup>4</sup> The Tribunal may also request the Parties to produce hard copies of certain key documents for use at the Hearing; which will be identified in due course (as needed). The costs of the *courier* will be split between the Parties evenly.

18. In addition, on that same day, the Electronic Hearing Bundle was uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index in BOX, the Parties were instructed to proceed as follows: *if feasible*, the entire Electronic Hearing Bundle should be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the single zip file make uploading it to BOX not possible, the Parties could simply upload the Electronic Hearing Bundle to a designated sub-folder in the BOX filesharing platform organized in sub-folders using the structure indicated at paragraph 16 *supra*, including a consolidated (but non-hyperlinked) index. In any event, the USB to be distributed in accordance with paragraph 17 *supra* should contain the hyperlinked version of the index.
19. Hearing Participants are advised to have the Electronic Hearing Bundle downloaded into their own computer devices and available for access offline, if necessary.

**2. Demonstrative Exhibits**

20. Demonstrative exhibits (including a Power Point or other slide presentations) may be used in accordance with Sections 17.8 of Procedural Order No. 1 (reproduced below), with the clarifications indicated in the paragraphs 21-22 *infra*:

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<sup>4</sup> On 6 March 2023, the Parties informed the Tribunal that the Electronic Hearing Bundle included a corrected version of the Second Witness Statement of Mr. Luis Felipe Bravo. The Claimant submitted that the revisions referred to “*minor corrections*”, while the Respondent contends that some of the revisions “*are substantive and therefore should not be allowed by the Tribunal.*” The Tribunal has considered the matter and decides that the corrected version of the Second Witness Statement of Mr. Luis Felipe Bravo is admitted.

Thereafter, on 9 March 2023, the Parties informed the Tribunal that they had agreed to add a number of translations of certain expert exhibits to the record, namely: MD-0009, MD-0016, MD-0027, MD-0031, MD-0081 and MD-0094 to MD-0138. As a result, the Parties submitted a revised version of the Electronic Hearing Bundle by *courier* and Box on 9 March 2023.



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“Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimant, and “RD-” for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Members of the Tribunal, the Secretary of the Tribunal, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.”

21. The Parties may make use of PowerPoint presentations during their opening statements at the Hearing, provided that they reflect evidence on the record and contain no new evidence. Each slide shall display the number of the documents displayed. The Parties shall provide electronic copies of any PowerPoint or similar presentations, including any demonstratives contained therein, by e-mail to all Participants (including the Tribunal, the Secretary of the Tribunal, opposing counsel, the court reporters and the interpreters) at the commencement of the Party’s respective presentation. The Party submitting any other demonstratives (*i.e.*, a visual aid presented to communicate the evidence already on record) shall provide electronic copies to all Participants (including the Tribunal, the Secretary of the Tribunal, opposing counsel, the court reporters and the interpreters) at least 30 minutes before the start of the session (morning or afternoon) in which they are intended to be used. For the avoidance of doubt, where a PowerPoint presentation includes a demonstrative, it may be submitted with the PowerPoint presentation at the commencement of the relevant presentation. In addition, each Party shall have at least 8 hard copies of any PowerPoint presentation or any other demonstrative exhibit available for distribution to: each Member of the Tribunal (3 copies), and the interpreters (3 copies) and court reporters (2 copies). Any hard copies shall be identical to the electronic copy.
22. In addition, promptly after the conclusion of a Hearing day in which a demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating it with the corresponding CD-\_\_ or RD-\_\_ number. At the conclusion of the Hearing, but **no later than 11 April 2023**, each Party shall also present a unified index of all the demonstrative exhibits it distributed during the Hearing, with the respective CD-\_\_ or RD-\_\_ designations.

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**3. Examination Bundles**

23. The Parties may, if they so wish, use Examination Bundles when cross-examining a witness or expert, provided that the Examination Bundle shall (i) contain only documents that are on the record in this arbitration; (ii) contain numbered tabs and an index that clearly specifies the documents included in the bundle and their relevant exhibit or reference number; (iii) be provided to the witness or expert (1 copy), opposing counsel (2 copies), the Tribunal (3 copies) and Secretary of the Tribunal (1 copy), the court reporters (2 copies) and the interpreters (3 copies) prior to the examination of the witness or expert. In addition, when conducting the examination, the Parties shall also ensure that any document presented to the witness or expert via an Examination Bundle (if any) shall also be projected electronically, such that the document is visible in the screens available in the Hearing Room and to any Participants attending remotely.
24. For the avoidance of doubt, if a Party decides to use an Examination Bundle for cross-examination of a witness or expert, the witness or expert may be taken to and asked about documents that are on the record but not in the Examination Bundle. Such documents shall ordinarily be shown to the witness or expert electronically, but the Parties will also ensure that one full set of the factual record (*i.e.*, C, R, AC, MD, MI, AP, DV and IMM Exhibits) will be available in hard copy in order to show any Exhibit to the witness/expert during his or her cross-examination at the request of the witness/expert, opposing counsel or the Tribunal.

**4. Other Provisions on Documents**

25. Documents that do not form part of the record may not be used at the Hearing.

**F. WITNESS AND EXPERT EXAMINATIONS**

26. The examination of witness and experts shall be conducted in accordance with the provisions in Section 19 of Procedural Order No. 1 (reproduced as **Annex F**), with the clarifications indicated in paragraph 27-29 *infra*.

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27. Pursuant to Section 19.13 of Procedural Order No.1, in lieu of direct examination the expert may provide a brief presentation of the key points of his or her report, subject to a time limit of 30 minutes. The provisions of paragraphs 21 and 22 *supra* in relation to demonstrative exhibits will apply equally with respect to any PowerPoint presentations and demonstrative exhibits used by experts during their presentations.
28. For the purposes of Sections 19.11.6 and Section 19.13 of Procedural Order No. 1, the Parties have agreed that: unless the Parties and the Tribunal agree otherwise, fact witnesses shall not be allowed in the Hearing room before giving their oral evidence with the exception of Mr. Gordon Ellis who the Parties agree is the only Party representative that is also a witness. Witnesses will however be allowed into the Hearing room once they have given their testimony. Before being heard, they shall not be given access to the audio recordings and the transcripts of the opening statements and the examinations of the other witnesses and shall not otherwise be informed of other witnesses' examinations. Experts shall be permitted to attend the entire Hearing. Mr. Ellis, as the only Party representative, will be allowed in the Hearing room at all times (bearing in mind that he has not been called to testify orally).
29. As discussed during the Pre-Hearing Conference, where a valuation expert report has been authored by various individuals, such individuals will testify together. The testifying experts who are being examined together are free to decide which one of them will answer a given question, provided that for each question asked, only one of the testifying experts may provide an answer.

**G. INTERPRETATION**

30. The provisions of Sections 11.7 to 11.10 of Procedural Order No. 1 concerning interpretation at the Hearing (reproduced below) apply, with the clarifications indicated at paragraph 31 and 32 *infra*.

“11.7. The Hearing shall be conducted in English. There shall be simultaneous interpretation from English into Spanish (or from Spanish into English), and transcripts shall be taken in both procedural languages.

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11.8. The testimony of a witness or expert called for examination during the hearing who prefers to give evidence other than in English shall be interpreted simultaneously into English. A Party shall apply to the Tribunal should it find it necessary that a witness or expert testifying in a language other than English or Spanish also be interpreted into Spanish.

11.9. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (*see* §20 [of Procedural Order No. 1]), which witnesses or experts require interpretation.

11.10. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs. ICSID will hire the interpreters for the hearing, but the Parties will be consulted about the interpreters whose hiring is proposed.”

31. The Parties have confirmed that only interpretation English-Spanish will be required for the Hearing.
32. In accordance with Section 11.10 of Procedural Order No. 1, the Parties were informed in advance of the Pre-Hearing Conference that the English-Spanish interpreters booked by ICSID for this hearing were Ms. Silvia Colla, Mr. Daniel Giglio and Mr. Charles Roberts. Neither Party raised any observations, and the interpreters were thus confirmed.
33. It is planned that the interpreters will attend the Hearing in person.

**H. TRANSCRIPTION**

34. The provisions of Sections 22.2 to 22.3 of Procedural Order No. 1 concerning transcription (reproduced below) apply.

“22.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

22.3. The Parties shall endeavor to agree on any corrections to the English transcript within 21 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections shall be jointly entered by the Parties in the transcripts (‘Revised Transcripts’). The Tribunal shall decide upon any disagreement between the Parties, and any correction adopted by the Tribunal shall be entered by the court reporter in the Revised Transcripts.”

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35. To facilitate the accurate transcription and interpretation, Participants making an oral intervention at the Hearing should speak at a reasonable speed and with pauses between phrases.
36. It is planned that the court reporters will attend the Hearing in person. Should an unexpected development require the court reporter(s) to participate remotely, the real-time court reporting shall be made available via an online link connection to be provided by the court reporters. In that case, Participants must access the streamed transcripts from their own electronic devices (as no court reporter devices will be available on-site to display the transcript). The connectivity details (links and instructions) to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.

**I. RECORDINGS**

37. The provisions of Section 22.1 of Procedural Order No. 1 concerning audio recording (reproduced below) apply.

“22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Members of the Tribunal.”

38. ICSID shall make the arrangements for the sound and video recordings, which will be shared with the Parties and the Members of the Tribunal at the conclusion of the Hearing. Except for the court reporters, Hearing Participants shall not otherwise record the Hearing or any part thereof.

**J. POST-HEARING SUBMISSIONS**

39. In accordance with Section 23.1 of Procedural Order No. 1:

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

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40. As discussed during the Pre-Hearing Conference, the Tribunal has decided that it will request the Parties to produce Post-Hearing Submissions (in lieu of oral closing statements). The Tribunal will address the specific instructions with regard to filing date, length, format, and content at the end of the Hearing.

**K. STATEMENTS OF COSTS**

41. In accordance with Section 23.2 of Procedural Order No. 1:

“The Tribunal will issue directions on the Parties’ statements of costs at the end of the hearing.”

**L. ATTENDANCE OF THE NON-DISPUTING FTA PARTY**

42. Pursuant to Article 832 of the Canada-Peru FTA:

“1. On written notice to the disputing parties, the non-disputing Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

2. The non-disputing Party shall have the right to attend any hearings held under this Section, whether or not it makes submissions to the Tribunal.”

43. In accordance Section 25.1 of Procedural Order No. 1 “[t]he provisions of Article 832 of the Canada-Peru FTA concerning participation by the ‘non-disputing [FTA] Party’ are applicable.” In turn, in accordance with Section 8(e) of Procedural Order No. 2, “[p]ursuant to Article 832.2 of the FTA, the Non-Disputing Party (Canada) may attend hearings in person or, if the hearing is held by videoconference in accordance with paragraph 10.2 of POI, may attend virtually.”
44. Having been consulted by the Tribunal, on 8 March 2023 the Non-Disputing [FTA] Party (Canada) confirmed (i) its intention to attend the Hearing (remotely) and (ii) that it did not wish to make an oral submission at the Hearing.

**M. HEARING PUBLICITY, CONFIDENTIAL INFORMATION**

45. Section 21.6 of Procedural Order No. 1 provides:

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“In accordance with Article 835(1) of the Canada-Peru FTA, hearings shall be open to the public. In accordance with Article 835(2) of the Canada-Peru FTA, in due course, the ‘Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties’ i.e. the Claimant and the Respondent.”

46. In turn, Section 8 of Procedural Order No. 2 provides:

“8. The following logistical arrangements will be made to facilitate public access to hearings:

a. In the case of an in-person hearing at the seat of the Centre in Washington, DC, the hearing will be broadcast on closed-circuit television in a separate room at the seat of the Centre. An audio-video recording will also be made of hearings. In the event that in-person access to the Centre’s facilities by the public is restricted at the time, or in the event of any hearing held by video-conference in accordance with paragraph 10.2 of PO1, the Tribunal will establish alternative arrangements in relation to public access to such hearing after consultation with the Disputing Parties.

b. The Tribunal will discuss with the Disputing Parties at a later stage, whether in order to protect Confidential Information, the broadcast can be technically delayed or whether alternative protocols shall be established;

c. At any time during a hearing, a Disputing Party may request, on a reasoned basis and subject to the right of the other Disputing Party to object, that a part of the hearing be held in private, that is, that the broadcast of the hearing be temporarily suspended such that Confidential Information is excluded from the video transmission. A Disputing Party shall inform the Tribunal before raising topics where Confidential Information could reasonably be expected to arise. The Tribunal will then consult the Parties in camera and the transcript shall be marked “confidential.” After consultation with the Parties, the Tribunal will decide whether the broadcast of the hearing will be temporarily suspended to prevent public disclosure of the information in question, and whether to mark the relevant portion of the transcript as ‘confidential.’

d. The Tribunal may revisit these protocols or establish further protocols for the conduct of the public Hearing and the protection of ‘Confidential Information’ at a later stage, in consultation with the Disputing Parties.

e. Pursuant to Article 832.2 of the FTA, the Non-Disputing Party (Canada) may attend hearings in person or, if the hearing is held by videoconference in accordance with paragraph 10.2 of PO1, may attend virtually. Physical attendance in the hearing room by third parties will not be permitted.”

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47. In accordance with Sections 8(b) and (d) of Procedural Order No. 2, following consultations with the Parties, and in light of technical constraints, the Tribunal will apply the following protocol for the conduct of the public Hearing and the protection of “Confidential Information”:
- (i) An audio-video recording of the Hearing will be made,<sup>5</sup> which shall subsequently be uploaded to the ICSID website after the Parties have edited the recording to remove any information deemed “Confidential Information” disclosed during the Hearing. The Parties shall confer and endeavor to provide the jointly edited recordings for publication within 21 days from the date of receipt of the recordings.
  - (ii) In accordance with Section 8(c) of Procedural Order No. 2, the Parties agree to the protocol for the identification and prevention of public disclosure of “Confidential Information” at the Hearing included as **Annex D**.
  - (iii) The index of the Electronic Hearing Bundle and the index of any Examination Bundle, (if any) shall identify with **RED** material that has been designated as “Confidential Information”.
  - (iv) Any demonstrative exhibits and Examination Bundles, (if any) shall identify any document containing “Confidential Information” in **RED**.
48. Consistent with Section 9(g) of Procedural Order No. 2, should officials of the Non-Disputing FTA Party (Canada) be present at the Hearing, they may remain connected to the Hearing room during the discussion of “Confidential Information”.

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<sup>5</sup> The video recording will cover the English and Spanish language channels only, but not the floor.



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**N. LIST OF PARTICIPANTS AND DATA PRIVACY**

49. Each Party has provided its respective List of Participants for the Hearing (“**List of Participants**”) on **Monday, 13 March 2023**, using the format provided in **Annex E**.
50. The List of Participants will contain personal data provided to ICSID in the context of the Hearing, including names and contact information, such as business email addresses and telephone numbers. This data are 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]\_\_\_\_\_

John Crook  
President of the Tribunal  
Date: 16 March 2023

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**ANNEX A**  
**ANTICIPATED HEARING SCHEDULE**

(See attached)

**Lupaka Gold Corp. v. Republic of Peru (ICSID Case No. ARB/20/46)**  
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**Annex A**  
**Anticipated Hearing Schedule**

Hour (EDT)	Duration	Day 1: Monday, 27 March 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:15:00	Housekeeping ( <i>reserved allocation</i> )
9:45:00 AM	1:30:00	Claimant's Opening Statement
<b>11:15:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:25:00 AM	1:30:00	Claimant's Opening Statement
12:55:00 PM	0:20:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:15:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:55:00 PM	1:30:00	Respondent's Opening Statement
<b>3:25:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:35:00 PM	1:30:00	Respondent's Opening Statement
5:05:00 PM	0:20:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:25:00 PM	0:20:00	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:45:00 PM</b>	<b>8:15:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

Hour (EDT)	Duration	Day 2: Tuesday, 28 March 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
9:40:00 AM	1:30:00	Examination of Claimant's Fact Witnesses (Mr. Castañeda)
<b>11:10:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:20:00 AM	1:10:00	Examination of Claimant's Fact Witnesses (Mr. Castañeda)
12:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:00:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:40:00 PM	1:30:00	Examination of Claimant's Fact Witnesses (██████████)
<b>3:10:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:20:00 PM	1:10:00	Examination of Claimant's Fact Witnesses (██████████)
4:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:00:00 PM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
<b>5:10:00 PM</b>	<b>0:30:00</b>	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:40:00 PM</b>	<b>8:10:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

Hour (EDT)	Duration	Day 3: Wednesday, 29 March 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
9:40:00 AM	1:30:00	Examination of Claimant's Fact Witnesses (Mr. Bravo)
<b>11:10:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:20:00 AM	1:10:00	Examination of Claimant's Fact Witnesses (Mr. Bravo)
12:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:00:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:40:00 PM	1:30:00	Remote Examination of Respondent's Fact Witnesses (Mr. Román Retuerto)
<b>3:10:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:20:00 PM	1:10:00	Remote Examination of Respondent's Fact Witnesses (Mr. Román Retuerto)
4:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:00:00 PM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
<b>5:10:00 PM</b>	<b>0:30:00</b>	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:40:00 PM</b>	<b>8:10:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

Hour (EDT)	Duration	Day 4: Thursday, 30 March 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
9:40:00 AM	1:30:00	Examination of Respondent's Fact Witnesses (Mr. Trigos)
<b>11:10:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:20:00 AM	1:10:00	Examination of Respondent's Fact Witnesses (Mr. Trigos)
12:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:00:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:40:00 PM	1:30:00	Examination of Respondent's Fact Witnesses (Mr. León)
<b>3:10:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:20:00 PM	1:10:00	Examination of Respondent's Fact Witnesses (Mr. León)
4:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:00:00 PM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
<b>5:10:00 PM</b>	<b>0:30:00</b>	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:40:00 PM</b>	<b>8:10:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

Hour (EDT)	Duration	Day 5: Friday, 31 March 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
9:40:00 AM	1:30:00	Examination of Respondent's Fact Witnesses (Mr. Saavedra)
<b>11:10:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:20:00 AM	1:10:00	Examination of Respondent's Fact Witnesses (Mr. Saavedra)
12:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:00:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:40:00 PM	1:30:00	Examination of Respondent's Legal Mining Expert (Ms. Dufour)
<b>3:10:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:20:00 PM	1:10:00	Examination of Respondent's Legal Mining Expert (Ms. Dufour)
4:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:00:00 PM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
<b>5:10:00 PM</b>	<b>0:30:00</b>	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:40:00 PM</b>	<b>8:10:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

Hour (EDT)	Duration	Day 6: Monday, 3 April 2023
00:00 AM/PM	(# hours/min.)	
9:30:00 AM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
9:40:00 AM	1:30:00	Examination of Claimant's Valuation Experts (Accuracy)
<b>11:10:00 AM</b>	<b>0:10:00</b>	<b>Break</b>
11:20:00 AM	1:10:00	Examination of Claimant's Valuation Experts (Accuracy)
12:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
<b>1:00:00 PM</b>	<b>0:40:00</b>	<b>Break (Lunch)</b>
1:40:00 PM	1:30:00	Examination of Respondent's Valuation Experts (AlixPartners)
<b>3:10:00 PM</b>	<b>0:10:00</b>	<b>Break</b>
3:20:00 PM	1:10:00	Examination of Respondent's Valuation Experts (AlixPartners)
4:30:00 PM	0:30:00	Tribunal Questions ( <i>reserved time allocation</i> )
5:00:00 PM	0:10:00	Housekeeping ( <i>reserved allocation</i> )
<b>5:10:00 PM</b>	<b>0:30:00</b>	<b>Break (reserved allocation for short 5 minute stretch-breaks to be distributed during the day)</b>
<b>5:40:00 PM</b>	<b>8:10:00</b>	<b>End</b>

(\*) Tribunal reserved time allocation for questions is to be distributed at the Tribunal's discretion during the day.

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**ANNEX B**  
**IN-PERSON MODALITY ADDITIONAL PROTOCOLS**

1. This Annex contemplates additional protocols applicable for an in-person hearing.

**I. Protocols for Entry to the World Bank Facilities in Washington D.C.**

2. This Section discusses the conditions currently in force for entry to the premises of the World Bank facilities in Washington D.C. for purposes of attending an ICSID Hearing. These apply at present and might be subject to changes notified by the World Bank.
3. Each Participant must present a valid identity document with a photograph.
4. Each Participant attending in person must abide by any sanitary guidelines applicable in the World Bank's premises in Washington D.C.
5. The Parties and the Tribunal are aware that the conditions described in this Annex only concern the requirements for entry into World Bank facilities in Washington D.C. Each Hearing Participant planning to attend in person must make all necessary arrangements to ensure that the Participant meets any other conditions necessary to attend in person. Hearing Participants planning to travel from abroad must check the conditions of entry into the U.S. to determine if they can participate in person at the Hearing in compliance with applicable U.S. legal requirements.

**II. Other Sanitary Protocols**

6. Any Participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked not to come to the Hearing until they have obtained a negative rapid antigen test. Pending the results of that test, any Participant who has already been in attendance at the Hearing and experiences such symptoms shall immediately inform the Tribunal and the ICSID Secretariat of this development.
7. If any Participant experiences COVID-19 symptoms, the Tribunal and the Parties will discuss whether such Participant can continue participating at the Hearing remotely.

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**III. Other Logistical Arrangements**

8. Other logistical details (*e.g.*, set up day details, instructions for access of files into the Hearing room premises on the set-up day, confirmation of break-out room number assignments, on-site internet access codes, and catering orders, etc.) will be handled through correspondence directly by the ICSID Hearing Organization Team.

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**Annex C**  
**PROTOCOL FOR HYBRID OR REMOTE MODALITY**

1. This Annex contemplates additional precautionary protocols applicable to remote Participants in the event of a hybrid (some Participants attending remotely while others attend in person) or fully remote (all Participants attending remotely) Hearing, it being understood that it is expected that the Hearing will be held in person.

**I. Videoconference Platform and Streamed Transcript**

2. In a hybrid or remote scenario, the Hearing shall be held using the Zoom platform, which facilitates simultaneous interpretation and provides break out-rooms. The Parties agree that, in a remote scenario, the Hearing may be supported by an external service provider to be retained by ICSID to provide hosting, recording and technical assistance.
3. Real-time court reporting shall be made available to remote Participants via an online link connection to be provided by the court reporters. Remote Participants will only be able to access the streamed transcripts from their own devices.
4. The connectivity details (links and instructions) to join the Hearing videoconference session, and to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing. The connection link to the Hearing shall be communicated to the Members of the Tribunal, counsel for the Parties, the court reporters, and the interpreters, who shall neither transmit nor communicate this link (except that counsel for the Parties may share the link with its witnesses and experts, as necessary to allow their participation at the Hearing subject to the rules on sequestration applicable to an in-person Hearing).

**II. Technical Testing**

5. There shall be a technical test with all the remote Participants for each Party in advance of the Hearing, to test connectivity with the videoconference platform and the online real-

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time transcriptions. For these tests, remote Participants should replicate the technical conditions in which they will participate in the Hearing (location and equipment).

**III. Participants**

6. Each Party shall provide its respective List of Participants for a remote or hybrid Hearing (“**List of Participants**”) no later than **Monday, 13 March 2023**, using the format provided in **Annex E**.
7. In the List of Participants, each Party shall designate those Participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).
8. For ease of identification, remote Participants shall join the videoconference using the naming convention indicated in the format in **Annex E**, namely, first and last name preceded by [C] (for Participants for Claimants), [R] (for Participants for Respondent), [E] (for experts), [W] (for witnesses). Should there be Participants joining from a common conference room, the conference room connection may be identified as “[C] [R] Conference Room #” as appropriate.
9. All remote Participants will join the videoconference through a “*waiting room*” to be managed by the external service provider retained for the hosting and technical support of the remote Hearing.
10. 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 other person on the videoconference.
11. All remote Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate identification and to address any technical contingencies.



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**IV. Connectivity**

12. The Parties shall ensure that each of their representatives, witnesses and experts participating remotely will connect to the videoconference through a stable internet connection offering sufficient bandwidth, and using a camera and microphone/headset of adequate quality.
13. If available, remote Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Remote 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.
14. The Zoom videoconference platform will also offer a dial-in telephone audio connection as a backup option should a remote Participant experience a temporary technical difficulty. The Parties are advised that the Zoom dial-in back up telephone connection provides access to the “*floor*” audio channel only, not to the interpretation channels.

**V. Equipment and Set Up**

15. For optimum sound quality for audio recording, transcription and interpretation, remote Active Participants are encouraged to use a headset which incorporates a microphone.
16. Remote Participants are also encouraged to have at least two screens, and preferably three. These can be one device with multiple screens or a combination of devices (including tablets) to allow simultaneous viewing of: (i) the video connection; (ii) the online real time transcripts; and (iii) documents.

**VI. Electronic Document Display**

17. Each Party shall have the ability to display documents (*e.g.*, PowerPoint presentations, demonstrative exhibits, exhibits and authorities) through the screen-sharing function of the videoconference Zoom platform, which allows the speaker and the relevant document to be seen simultaneously. Each Party will designate a person(s) in its own team (“**Party**

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**Document Manager**”) to manage the document display during that Party’s interventions at the Hearing.

18. The Parties are advised to use the screen-sharing function selectively and only when necessary, to minimize pressure on the internet bandwidth and stability of the connection.
19. Participants are also advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed downloaded into their own devices and available for access offline, if necessary.

**VII. Videoconference Etiquette**

20. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives participating remotely should remain connected throughout the Hearing day.
21. For optimum operation of the videoconference platform, the Parties are advised to keep the number of video connections to remote Active Participants only. Remote Passive Participants should normally join the meeting through their computer with their video off.
22. All remote 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 hosting the videoconference can mute remote Participants if needed to avoid background noise, under the Tribunal’s control.
23. To facilitate accurate transcription and interpretation, speakers are requested to speak at a reasonable speed and with pauses between phrases.
24. All remote Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Any remote Participant joining via video shall avoid sitting with a window or source of light behind them.

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**VIII. Break-Out Rooms**

25. During the designated Hearing breaks, remote Participants will be assigned to breakout rooms within the videoconference platform.
26. The List of Participants (**Annex E**) shall indicate the remote break-out room to which remote Participants shall be assigned, with [C] for the Claimants' break out room, [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 remote witness/expert will be isolated in a separate break out room identified as [W/E].
27. 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.

**IX. Technical Issues**

28. In the List of Participants, each Party shall designate one of its representatives as the contact person for purposes of addressing any technical incidents which arise during the videoconference ("**VC Emergency Contact Person**"). The VC Emergency Contact Person shall be responsible for advising the Tribunal and ICSID if an essential Participant on his/her side is temporarily disconnected from the remote Hearing room.
29. 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 Party or the integrity of the proceeding. Full recordings and real-time streamed transcripts will also be available to mitigate any prejudice arising from the temporary failure of a given remote Participant to be able to follow the entire Hearing on the videoconference platform.
30. The above provisions on videoconference protocols may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

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**ANNEX D**  
**PROTOCOL FOR PROTECTION OF “CONFIDENTIAL INFORMATION”**

**I. Objectives**

1. This Protocol is established to ensure: (i) the transparency of the Hearing, under the transparency regime established by Article 835 of the Canada-Peru FTA; (ii) the confidentiality of “Confidential Information” (as defined in Procedural Order No. 2) excluded from disclosure under Article 835 of the Canada-Peru FTA; and (iii) an efficient, smooth and minimally disrupted Hearing.

**II. General Rules**

2. As agreed by the Parties, the Hearing will be made public in the manner described in Procedural Order No. 6, paragraph 47 *supra*.
3. “Confidential Information” shall be protected from disclosure by holding relevant parts of the Hearing “in private”, instead of publicly.
4. The privacy of the Hearing shall be achieved, when necessary, through the moderation/editing of the videorecording prior to publication, and the redaction of relevant parts of the transcripts before publication.
5. The term “moderation” means that the videorecording will be edited by the Parties following the conclusion of the Hearing and prior to publication, in order to remove portions of the Hearing that were temporarily held in “private”.
6. The Parties shall follow the protocols established below to alert the Tribunal of the use of “Confidential Information” during the Hearing and of the consequent need for “moderation” of the videorecording.

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**III. Protocols**

7. A Party may request at any time during the Hearing that part of the Hearing be held “in private” and that the recording be moderated/edited prior to publication, to prevent disclosure of “Confidential Information”.
8. Whenever a Party anticipates that “Confidential Information” will be discussed, addressed or shown at the Hearing (whether by counsel or by witnesses or experts), it shall request moderation of the video **before** this occurs.
9. To avoid delayed requests for moderation endangering confidentiality, the Parties are responsible to identify whether documents are “Confidential Information” or could raise confidentiality issues **before** discussing, addressing or showing them through counsel submissions or through witnesses or experts examination.
10. To minimize interruptions, the Parties are invited to organize their oral statements and witness/expert examinations so that portions involving “Confidential Information” are grouped together wherever possible.
11. The Parties’ active speaker shall bring any moderation request to the Tribunal’s attention in the course of speaking and shall notify the Tribunal when the material containing Confidential Information is finished.
12. The Parties shall orally request moderation of the videorecording and notify the Tribunal at the end of statements or examinations addressing “Confidential Information” during the Hearing.
13. If a Party objects to a request for the moderation or resumption of the public part of the Hearing, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held “in private” and the transcript shall be marked “confidential”.

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14. If the Tribunal decides that documents and information about to be discussed, addressed or shown warrant the Hearing to be temporarily held “in private”, the video recording shall be moderated/edited per the Tribunal’s instructions.
15. Resumption of the public part of the Hearing shall be requested by the Party which requested and obtained moderation (subject to any objection to resumption under protocol 13 *supra*) or proposed by the Tribunal. Resumption may also be requested by the other Party. The Tribunal shall rule on any dispute between the Parties in this respect.

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**ANNEX E**  
**[TEMPLATE] LIST OF PARTICIPANTS<sup>6</sup>**

(1)	(2)	(3)	(4)	(5)	(6)
<b>TRIBUNAL</b>					
Break Out Room	Name	Mode <sup>7</sup>	Type	Affiliation	Place of Connection [for RP only]
T	[T] – Name and Last name [Email]	IP	A	President	
T	[T] – Name and Last name [Email]	IP	A	Co-arbitrator	
T	[T] – Name and Last name [Email]	IP	A	Co-arbitrator	

<b>ICSID SECRETARIAT</b>					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
T	[T] – Name and Last name [Email]	IP	A	Secretary of the Tribunal	

<b>CLAIMANT</b>					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
	<b><i>Counsel:</i></b>				
C	[C] - Name and Last name [Email]				[C] Room # 1 [City]
C					[R] Office / Home [City]
	<b><i>Party Representatives:</i></b>				
C	[C] - Name and Last name [Email]				

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<sup>6</sup> Note: Columns (1) and (6) only applicable if remote modality.

<sup>7</sup> “IP” (In-Person Participant) / “RP” (Remote Participant)

<sup>8</sup> “A” (Active Participant) / “P” (Passive Participant).

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C					
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RESPONDENT					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
	<i>Counsel:</i>				
R	[R] - Name and Last name [Email]				[R] Room # 1 [City]
R					[R] Office / Home [City]
	<i>Party Representatives:</i>				
R	[R] - Name and Last name [Email]				
R					

COURT REPORTERS					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
N/A	[CR] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		

INTERPRETERS					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
N/A	[INT] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		



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TECHNICAL SUPPORT					
Break Out Room	Name	Mode	Type	Affiliation	Place of Connection [for RP only]
N/A	[TECH] - Name and Last name [Email]		P		
N/A			P		
N/A			P		
N/A			P		

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**ANNEX F**  
**WITNESS AND EXPERT EXAMINATIONS**

**Section 19 of Procedural Order No. 1**

“19.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.

19.2. For each witness, a written, signed, and dated witness statement shall be submitted to the Tribunal.

19.3. Each witness statement shall state the witness’s name, date of birth, and involvement in the case.

19.4. In accordance with §18.1 [of Procedural Order No. 1], each Party will submit its witness statements together with its written submission. The witness statements shall be numbered independently from other documents and properly identified (including the language of the statement). If a Party submits more than one witness statement by the same witness, the subsequent witness statement shall be identified as ‘Second Witness Statement,’ ‘Third Witness Statement,’ and so on. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, identify relevant documents, or prepare the witness statements and the examinations.

19.5. Each Party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. If a witness or expert who was presented by a Party has not been called by the other Party or by the Tribunal for examination at the hearing, the presenting Party may not call such witness or expert to testify at the hearing, except in exceptional circumstances.

19.6. Each Party shall notify the other Party of the witnesses or experts it intends to cross-examine by the date to be established by the Tribunal. The Tribunal shall then identify the remaining witnesses or experts (if any) that it wishes to call for examination.

19.7. The facts contained in the written statement of a witness or expert whose cross-examination has been waived by the other Party, or not called by the Tribunal, shall not be deemed to have been accepted or established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement or expert report taking into account the entire record and all the relevant circumstances.

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19.8. Each Party shall be responsible for the practical arrangements, cost, and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final Award.

19.9. The Tribunal may allow a witness to appear and be examined by videoconference, provided that there exist valid and exceptional reasons that prevents the witness from appearing in person. In such an event, the Tribunal will issue appropriate directions for the witness's examination by videoconference.

19.10. As a general rule and subject to other arrangements during the pre-hearing organizational meeting (§20 [of Procedural Order No. 1]), fact witnesses shall be examined prior to expert witnesses, with the Claimant's fact (and expert) witnesses being examined prior to the Respondent's fact (and expert) witnesses. The order in which the witnesses and experts shall be heard shall be discussed at the pre-hearing telephone conference.

19.11. At the hearing, the examination of each witness shall proceed as follows:

19.11.1. The witness shall make the declaration provided in Rule 35(2) of the Arbitration Rules.

19.11.2. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes. Direct examination of witnesses shall be conducted only if and as necessary to introduce the witness, confirm the accuracy of and completeness of the witness's written statement(s), offer any corrections or clarifications that may be necessary to prevent a misunderstanding of that witness's written direct testimony, to highlight briefly the key points of his or her witness statement, and to address any relevant development that occurred after the witness signed the witness statement.

19.11.3. Witnesses may be cross-examined in relation to relevant matters that were addressed or presented in the witness statements, the pleadings, or documents on the record, or oral evidence of other witnesses, to the extent the witness may have knowledge of those matters.

19.11.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination ('redirect examination').

19.11.5. The Tribunal may examine the witness at any time, either before, during, or after examination by one of the Parties.

19.11.6. Subject to a different agreement by the Parties or decision of the Tribunal, a fact witness (other than a Party representative), prior to his or her examination, shall not be present in the hearing room during

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oral testimony and arguments, read the transcript of oral testimony or argument, or be informed of its contents. Party representatives who are also fact witnesses may be present during opening submissions, but not during the testimony of fact witnesses testifying before him or her. Such Party representatives should testify first, to the extent possible.

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

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

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

19.13. The rules set forth above with respect to the examination of witnesses shall apply *mutatis mutandis* to the examination of Party-appointed experts, except that in lieu of direct examination the expert may provide a brief presentation of the key points of his or her report, subject to a precise time limit to be determined at the pre-hearing organizational meeting referred to at §20 [of Procedural Order No. 1].”