

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Scholz Holding GmbH**

**v.**

**Kingdom of Morocco**

**(ICSID Case No. ARB/19/2)**

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**PROCEDURAL ORDER No. 5  
On the Organization of the Hearing**

***Members of the Tribunal***

Mr. Alexis Mourre, President  
Professor Zachary Douglas QC, Arbitrator  
Professor Nassib G. Ziadé, Arbitrator

***Secretary of the Tribunal***

Mr. Francisco Abriani

***Assistant to the Tribunal***

Ms. Marina Matousekova

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28 December 2021

## I. PROCEDURAL BACKGROUND

1. On 7 November 2021, the Parties informed the Tribunal that they had agreed to hold the Hearing virtually.
2. Pursuant to Section 20 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 8 November 2021 (the “**Pre-Hearing Meeting**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating at this meeting were:

Members of the Tribunal:

Mr. Alexis Mourre, President of the Tribunal  
Professor Zachary Douglas QC, Arbitrator  
Professor Nassib G. Ziadé, Arbitrator

ICSID Secretariat:

Mr. Francisco Abriani, Secretary of the Tribunal

Assistant to the Tribunal:

Ms. Marina Matousekova

On behalf of the Claimant:

Prof. Guglielmo Verdirame QC, Counsel  
Mr. Hussein Haeri, Counsel  
Ms. Camilla Gambarini, Counsel

On behalf of the Respondent:

Mr. Dany Khayat, Counsel  
Dr. José Caicedo, Counsel  
Ms. Laila Slassi, Counsel  
Ms. Luciana Attiye, Counsel  
Ms. Nicole Araygi, Counsel  
Ms. Laila Slassi, Counsel  
Mr. Mohamed Kasri, Party Representative  
Mr. Said Maghraoui Hassani, Party Representative  
Mr. Zakaria Laghzaoui, Party Representative  
Ms. Hind Benmoussa, Party Representative

3. During the Pre-Hearing Meeting, the Parties and the Tribunal discussed the draft Pre-Hearing Meeting Agenda circulated to the Parties on 2 November 2021, and the Parties’ joint proposal of 7 November 2021 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached. In addition, the Tribunal confirmed that, in light of the Parties’ agreement, the Hearing would be held by video conference.

4. An audio recording of the Pre-Hearing Meeting was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal, the Assistant to the Tribunal and the Parties on 11 November 2021.
5. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

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

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

6. The Hearing will take place remotely through Zoom from 10 to 14 January 2021 to be hosted by Sparq. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

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

7. The Hearing will start at 10 am CET. It is expected to conclude by 6 pm CET. There will be three breaks during the Hearing day, two breaks of 15 minutes (one in the morning, one in the afternoon) and one break of 1 hour for lunch.
8. The Hearing will last 5 days.
9. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
10. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

### **C. TIME ALLOCATION**

11. Time will be kept using the chess clock system.
12. Each Hearing day will last 6h30 hours (excluding 1h30 for breaks), with 1 hour for questions from the Tribunal and 5h30 hours for the Parties.
13. The Parties will be granted an equal allocation of time.

14. On 5 days, the Parties will be granted a total amount of available time of 27h30 hours, i.e., 13h45 each all-inclusive (including Openings and Closings).
15. Time will be allocated on a rolling basis, each Party being able to use its time as it wishes during the week.
16. Adjustments will be made if the time used on a particular day exceeds or falls under the total allotted hours.
17. Unless otherwise directed by the Arbitral Tribunal, time shall be deducted from a Party's remaining time as a result of it: (i) making oral submissions (including opening and closing statements); (ii) examining a witness (irrespective of who proposed the witness); (iii) making an objection which ultimately proves unjustified (thus, an unsuccessful objection is generally to be charged against the Party who made it, and a successful objection against the Party which resisted it); (iv) arriving late; and (v) setting up displays while the Arbitral Tribunal is sitting. In the event of a breakdown in the video connection, any time spent troubleshooting the connection shall be attributed in equal proportions to each Party.
18. The Tribunal Secretary shall keep a daily record of time spent by each Party and shall advise that record, along with the amount of each Party's remaining time, on the next day.
19. The Arbitral Tribunal shall have full discretion to resolve any disputes as to the allocation of time as it sees fit. The Parties agree that the Arbitral Tribunal's determination shall be final and binding on the Parties, and that they shall abide by any such determination.
20. Time incurred by the Tribunal's questions will be per the time indicated for the Tribunal, unless the Tribunal considers that more time is required for its questions in which case neither Party shall object to it.
21. Time used for housekeeping or to resolve technical difficulties shall be counted against the time for housekeeping or against the Tribunal's time, if needed.
22. Each Party shall have the following allocated time for each stage of the Hearing:
  - (a) *Opening Statement*. Each Party shall be allowed a maximum of 3 hours for its Opening Statement, within its total allocated time.

(b) *There will be no Rebuttal of Opening Statements.*

(c) *Examination of Witnesses and Experts.* The time used by each Party will be within the total amount of time allocated to it.

(d) *Closing statements:* Each Party shall be allowed a maximum of 45 minutes for its Closing Statement, within its total allocated time. Further to the Tribunal's decision of 14 December 2021, the scope of the Parties' closing submissions should not be restricted provided that they address elements that are part of the record. The Parties will therefore not be precluded from addressing in their closing statements the content of the opening arguments as well as the evidence taken during the hearing.

23. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.

24. The Tribunal emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

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

##### **1. Electronic Hearing Bundle**

25. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties.

26. The Parties shall provide, no later than **20 December 2021**, the Electronic Hearing Bundle which shall contain all pleadings, expert reports, exhibits, legal authorities and Tribunal's orders or decisions on file to date, with a chronological consolidated list of factual exhibits with hyperlinks. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

##### **01. Pleadings**

- A. Claimant
- B. Respondent

**02. Expert Reports**

- A. Claimant
- B. Respondent

**03. Exhibits**

- A. Claimant
- B. Respondent

**04. Legal Authorities**

- A. Claimant
- B. Respondent

**05. Expert Exhibits**

- A. Claimant
- B. Respondent

**06. Tribunal's Rulings**

27. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 26 *supra*, and including a consolidated (non-hyperlinked) index.
28. Prior to the Hearing, the Members of the Tribunal, the Assistant to the Tribunal, the Secretary of the Tribunal and the Parties shall download the Electronic Hearing Bundle from the BOX Case Folder into their own devices to have access to it offline during the remote Hearing. The court reporter and the interpreters will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
29. The Parties shall also distribute the Electronic Hearing Bundle in a USB to be sent by courier no later than **20 December 2021** directly to: (i) each Member of the Tribunal, (ii) the Assistant of the Tribunal, and (iii) the Secretary of the Tribunal (to addresses to be communicated by the ICSID Secretariat in due course). The USB shall contain the hyperlinked version of the index.

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

30. During cross-examination, the Parties will refer to exhibits and legal authorities that already form part of the record of the case.

31. The witness and experts are entitled to be shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen). Documents used in cross examinations will be projected on the screen.

**3. Demonstrative Exhibits**

32. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
33. Demonstrative exhibits shall be used in accordance with Sections 17.8 of PO1 (reproduced below), with certain adjustments indicated in paragraph 34 *infra*:

Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the Assistant to the Tribunal, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.

34. To account for the virtual nature of the Hearing, PO1 Section 17.8 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed by the Party intending to use it *via* an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Members of the Tribunal, the Assistant to the Tribunal, to the court reporter and to the interpreters as necessary no later than 15 minutes *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired. It is advisable to transmit the demonstrative exhibits to the members of the Tribunal and the ICSID Secretary with more than 1-hour notice.
35. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

**4. Electronic Presentation of Evidence**

36. Each Party shall present demonstrative exhibits and evidence to the participants in the Hearing *via* the video platform system.

37. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. Any Hearing participant shall have the technical ability to display a document to all Hearing participants via Zoom, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed. The Parties are advised to limit their use of this function, to minimize pressure on the internet bandwidth and on the stability of the connection.
38. Documents that do not form part of the record may not be presented at the Hearing.
39. No new evidence shall be admitted at the Hearing, save upon leave of the Tribunal in case of exceptional circumstances. The Party seeking to introduce new evidence into the record bears the burden of establishing the existence of such circumstances. It must do so separately for each piece of evidence sought to be admitted.

**E. SCOPE AND MANNER OF WITNESS AND EXPERT EXAMINATION**

40. Examination of witnesses and experts shall be subject to the following rules:
- a. *Examination of Fact Witnesses.*
- *Direct Examination of Fact Witnesses.* The Tribunal will admonish the witness and ask it to confirm the content of its statement, and, as the case may be, to correct it as necessary. There will be no further direct examination of the witnesses by the Parties, save in exceptional circumstances and upon leave of the Tribunal.
  - *Cross-Examination of Witnesses.* The other Party shall have the opportunity to cross-examine the witness in the usual manner, subject to the ability of the Arbitral Tribunal to direct questions to the witnesses at any time in its discretion.
  - *Re-Examination of Witnesses.* The first Party may then re-examine the witness if it so wishes. Such re-examination shall be limited to matters that have arisen in the cross-examination and will be no longer than 15 minutes.
  - *No re-cross examination of the witnesses will be allowed following their re-examination.*



b. *Examination of Experts.*

- The Arbitral Tribunal will admonish the expert and ask it to confirm the accuracy of its report, and, as the case may be, to correct it as necessary. Each expert will have the opportunity to provide a presentation of his report up to 30 minutes. Further to the Tribunal's decision of 14 December 2021, the experts should be able to address in their presentations points made by the other side's expert in its own presentation. This will not entail any breach of the adversarial principle as long as these presentations do not include any information that is not already in the record.
- The other Party shall have the opportunity to cross-examine the expert in the usual manner, subject to the ability of the Arbitral Tribunal to direct questions to the experts at any time in its discretion.
- The first Party may then re-examine the expert if it so wishes. Such re-examination shall be limited to matters that have arisen in the cross-examination.

c. *Scope of Witness Examination.*

- The examination of witnesses will cover the content of each witness' respective witness statement(s) and facts related to the case within their knowledge.
- The Parties agree to provide factual witnesses with hard copies bundles. The Parties agree that the bundles will be sent in a sealed envelope to be opened in front of the screen when the witness is called to testify. The Parties agree that the witness must have the ability to show his surroundings in the room he is in, as well as his desk. The witness also undertakes to turn off any application of any sort (e.g. emails, WhatsApp etc.) on his mobile or computer, as well as notifications from such applications. Both the Claimant and the Respondent's witnesses will give evidence from either their home or office.
- The Parties shall ensure that the oath or affirmation to be administered to each witness according to the declaration provided in the ICSID rules.

*d. Scope of Expert Examination.*

- The examination of experts will cover the content of each expert's respective report.
- The Parties agree to provide the expert witnesses with hard copies bundles except for files that contain excel spreadsheets. There will be a placeholder in the hard copy and excel spreadsheets, if any at all, will be made available only in electronic format. The bundles will be sent in a sealed envelope to be opened in front of the screen when the witness is called to testify. The Parties agree that the expert must have the ability to show his surroundings in the room he is in, as well as his desk. The expert also undertakes to turn off any application of any sort (e.g. emails, WhatsApp etc.) on his mobile or computer, as well as notifications from such applications.
- The Parties shall ensure that the oath or affirmation to be administered to each witness according to the declaration provided in the ICSID rules.

41. Sequestration of witnesses and experts:

- a. No witness who is to give evidence at the hearing, but has not yet completed their evidence, shall be present during the examination of any other witness.
- b. Witnesses must not have access to any transcript, live audio feed or recording of the testimony given by witnesses testifying in these proceedings until after the witness has completed his or her own oral testimony.
- c. Witnesses must not discuss any testimony, any part of the transcript, any live audio feed or any recording of the hearing, with any other witness in these proceedings until after all of the witnesses have provided their own oral testimony.
- d. Where there is a break in the Hearing, whether for tea, lunch or overnight, and a witness is in the course of giving oral evidence but has not yet completed that evidence, that witness is not permitted to discuss their evidence with their counsel or any other person, until they have completed their evidence.

- e. Counsel for each Party shall use their best efforts to ensure compliance with this sequestration order and shall inform the witnesses for its respective clients about the terms of this ruling and the need to fully respect the terms of this ruling.
  - f. The Parties agree that factual witnesses should all be sequestered including for the openings and testimony of other witnesses until they have given testimony.
  - g. Rules (a), (b), (c) and (e) above do not apply to experts, who are allowed to participate to the Hearing before they are heard. Rule (d) however applies as experts will be sequestered pending their presentation and cross-examination, during breaks and interruptions, until they are released.
42. Location of factual witnesses and experts:
- a. *Location of factual witnesses.* The Parties agree that the factual witnesses in Germany will attend the cross-examination from home or office given the covid situation in Germany. Mr Lamdouar will attend the cross-examination from home or an office in Morocco. No person shall be present in the room with the testifying factual witness. The Respondent's factual witnesses will attend the cross-examination from home or office in Morocco.
  - b. *Location of experts.* The Parties agree that when an expert is testifying he shall be in a room alone and must have the ability to show his surroundings in the room he is in, as well as his desks. The expert also undertakes to turn off any application of any sort (e.g. emails, WhatsApp, etc.) on his mobile or computer, as well as notifications from such applications.
43. Each witness and expert shall affirm at the start of the examination that he or she will not receive or provide communications of any sort during the course of his or her examination.
44. The witness or expert shall remain visible at all times during the examination. The witness or expert will be connected to the Hearing Waiting Room 30 minutes before his/her examination to ensure that s/he is available in time to be brought into the Hearing Room. During the breaks, the witness or expert will be taken to a virtual waiting room.
45. The witness or expert shall not use a “virtual background” or in any way prevent or limit the recording of the remote venue from which he or she is testifying.

46. The witness or expert shall be able to view the Tribunal Members, the attorneys conducting the examination, and documents presented by the examining attorney through the Zoom platform/uploaded onto BOX. The witness or expert shall not have access to any other documents, notes, information, or materials of any kind (whether in hard copy or electronic form).
47. The order of the Claimant's factual witnesses is as follows: Mr Barth (testifying in English), Mr Maier (testifying in English), and Mr Lamdouar (testifying in French). The order of the Respondent's witnesses is Mr. Benkirane, Mr. Souiri, Mr. Zeryouh and they will all testify in French.

**F. AUDIO AND VIDEO RECORDING**

48. The provision of Section 22.1 of PO1 concerning audio recording (reproduced below) will apply.

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

49. Sparq shall record the Hearing, and the audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
50. Videos: A video recording will also be made of the Hearing and the Parties agree that it will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
51. Option: The video recording will not be made public or become part of the record of this arbitration. However, the video recording may be used to guide transcript corrections, and once transcript corrections have been completed, the transcript shall serve as the record of the Hearing. The Tribunal also may refer to the video recording, as it deems necessary.
52. Except for the court reporters that will do an audio recording of the Hearing, the Tribunal and the Parties agree that the attendees will not otherwise record, *via* audio, video or screenshot the Hearing or any part of it.

**G. TRANSCRIPTION**

53. The provisions of PO1, Sections 22.2 and 22.3 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 54 *infra*.

- 22.2. 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 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 agree on any corrections to the transcripts within 14 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporters in the revised transcripts.
54. Real-time court reporting in English and French shall be made available to the Hearing Participants *via* an online link connection to be provided by the English and the French court reporters. Hearing Participants shall connect to the transcript by opening this link in a browser window separate from the Zoom browser window. The details (link, password) and instructions to connect to the streamed transcripts shall be provided by the court reporters to the Hearing Participants before the start of the Hearing day.
55. Transcription services in English will be provided by Diana Burden, and transcription services in French will be provided by Catherine Le Madic and Christine Rouxel-Merchet (the “court reporters”). The court reporters may seek to clarify the record from time to time during the course of the hearing.
56. Participants may access the remote Real-time transcript on a laptop or iPad separate from the device used for Zoom. The Tribunal directs the testing of the Real-time transcription platform. That platform shall be used during trials of the Zoom platform as far as possible.
57. In accordance with Section 22.3 of PO1, the deadline for corrections to the transcript shall be 14 days following the later of the dates of the receipt of the sound recordings and/or transcripts.

#### **H. INTERPRETATION**

58. ICSID has arranged interpretation in English and French languages.
59. The following witnesses will testify in English: Mr Barth and Mr Maier. The following witnesses will testify in French: Mr Lamdouar, Mr. Benkirane, Mr. Souiri and Mr. Zeryouh.

60. The interpreters will provide the interpretation remotely using the Zoom platform.
61. Each Participant should select a language channel when connecting to the Hearing (English or French). Once a language selection is made, it is highly recommended that the Participant only use that language and avoid switching interpretation channels.
62. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
63. Each Active Participant should, insofar as possible, circulate any speaking notes to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters (see **Annex B** with their email addresses) and are to be treated as confidential information.
64. Interpretation will be simultaneous and not consecutive.

**I. POST-HEARING SUBMISSIONS**

65. The provisions of Procedural Order No. 1, Section 23.2 (reproduced below) apply.

23.2. The parties and the Tribunal will decide during the last day of the Hearing, upon the closing of the Parties' Oral Submissions, whether Post-Hearing Memorials will be filed. Should the Tribunal decide to order the Parties to file Post-Hearing Memorials, they will be exchanged simultaneously.

**J. VIRTUAL HEARING ARRANGEMENTS**

66. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

**1. Testing**

67. The Secretariat will conduct technical tests with the Tribunal and each Party in advance of the Hearing, to test connectivity to the Zoom video conference platform and to the transcription service. The Tribunal notes that the Secretariat recommends a minimum of two tests for each site that will connect to the Hearing, and for as many Hearing participants as possible to connect for each test. The date of each test will be communicated in due course. It will also include the court reporters and the interpreters.

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

## **2. Participants**

69. Each Party shall provide its respective List of Hearing Participants (“List of Participants”) by **5 January 2022**, using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“Active Participants”), and those who will be passive attendees (“Passive Participants”).

70. For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for Claimant), [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.

71. 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.

72. 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.

73. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.

## **3. Connectivity**

74. The Parties shall ensure that each of their representatives, witnesses and experts will connect to the videoconference through a stable internet connection offering sufficient bandwidth, and using a camera and microphone/headset of adequate quality.

75. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. 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.

76. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels.

#### **4. Transcripts**

77. Instructions to access the live transcript will be provided by the Secretary of the Tribunal. Further to the Tribunal’s decision of 14 December 2021, experts of each party will have access to the Live Notes. Fact witnesses, however, will not have that same possibility.

#### **5. Interpretation**

78. The participants who will be speaking should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the Zoom platform, there will be English and French channel in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing. Participants on one channel can only be heard by other participants on that channel.

#### **6. Equipment and Set Up**

79. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. If not available, Active Participants are asked to speak close to the microphone.
80. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.



**7. Videoconference Etiquette**

81. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the Hearing day.
82. The Parties are advised to keep the number of video connections to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but connecting only their audio (i.e. turning their video off).
83. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The service provider serving as host of the videoconference shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
84. To facilitate the accurate transcription and interpretation, speakers are advised to speak at a reasonable speed and with pauses between phrases.
85. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

**8. Break-Out Rooms**

86. Break-out rooms separate from virtual Hearing Room, to be used securely by each Party and the Tribunal during breaks, will be arranged by Sparq on the Zoom platform.
87. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the videoconference platform to enable to promptly reconvene all Participants following breaks.
88. The List of Participants (**Annex B**) shall indicate the break-out room to which Participants shall be assigned, with [C] for the Claimant’s 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 witness/expert will be isolated in a separate break out room identified as [W/E].
89. 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.

**9. Hearing Protocol**

90. A Hearing Protocol summarizing the above is attached as **Annex C**.

**K. GENERAL PROVISIONS**

**1. Confidentiality**

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

**2. Data Privacy**

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

For and on behalf of the Tribunal,

[signed]

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Mr. Alexis Murre  
President of the Tribunal  
Date: 28 December 2021

**ANNEX A**  
**Hearing Agenda**

**Day 1: 10 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
10:00 AM	10 minutes	Housekeeping matters
10:10 AM	1h30	Claimant's Opening Statement
<b>11:40 AM</b>	<b>15 minutes</b>	<b>Break</b>
11:55 AM	1h30	Claimant's Opening Statement
<b>1:25 PM</b>	<b>1 hour</b>	<b>Lunch Break</b>
2:25 PM	1h30	Respondent's Opening Statement
<b>3:55 PM</b>	<b>15 minutes</b>	<b>Break</b>
4:10 PM	1h30	Respondent's Opening Statement
<b>6:00 PM</b>		<b>End</b>

**Day 2: 11 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
10:00 AM		Examination of Claimant's Fact Witnesses
	<b>15 minutes</b>	<b>Break</b>
		Examination of Claimant's Fact Witnesses
	<b>1 hour</b>	<b>Lunch Break</b>
		Examination of Claimant's Fact Witnesses
	<b>15 minutes</b>	<b>Break</b>
		Examination of Claimant's Fact Witnesses
<b>6:00 PM</b>		<b>End</b>

**Day 3: 12 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
10:00 AM		Examination of Respondent's Fact Witnesses
	<b>15 minutes</b>	<b>Break</b>
		Examination of Respondent's Fact Witnesses
	<b>1 hour</b>	<b>Lunch Break</b>
		Examination of Respondent's Fact Witnesses
	<b>15 minutes</b>	<b>Break</b>
		Examination of Respondent's Fact Witnesses
<b>6:00 PM</b>		<b>End</b>

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**Day 4: 13 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
10:00 AM		Examination of Claimant's Damages Expert
	<b>15 minutes</b>	<b>Break</b>
		Examination of Claimant's Damages Expert
	<b>1 hour</b>	<b>Lunch Break</b>
		Examination of Respondent's Damages Expert
	<b>15 minutes</b>	<b>Break</b>
		Examination of Respondent's Damages Expert
<b>6:00 PM</b>		<b>End</b>

**Day 5: 14 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
12:00 PM	45 minutes	Claimant's Closing Statement
	<b>15 minutes</b>	<b>Break</b>
13:00 PM	45 minutes	Respondent's Closing Statement
		<b>End</b>

**ANNEX B**  
**LIST OF PARTICIPANTS**

<b>TRIBUNAL</b>						
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>In person (IP) or virtual (V)</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Alexis Mourre	A	IP	President	Office [City]	Email: Phone:
T	[T] – Zachary Douglas	A	IP	Co-arbitrator	Office [City]	Email: Phone:
T	[T] – Nassib G. Ziadé	A	IP	Co-arbitrator	Home [City]	Email: Phone:

<b>SECRETARY OF THE TRIBUNAL</b>						
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>In person (IP) or virtual (V)</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Francisco Abriani	A		Secretary of the Tribunal	Home [City]	Email: Phone:

<b>ASSISTANT TO THE TRIBUNAL</b>						
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>In person (IP) or virtual (V)</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Marina Matousekova	A		Assistant to the President	Office [City]	Email: Phone:

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<b>CLAIMANTS</b>						
Room <sup>1</sup>	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>					
C	[C] – Name Last name	A			Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A			Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A				Email: Phone:
	<i>Party Representative:</i>					
C	[C] – Name Last name	P			Home [C] []	
	<i>Witnesses:</i>					
W	[W] – Name Last name	A				
	<i>Experts:</i>					
C	E	[E] – Name Last name	A			

<b>RESPONDENT</b>						
Room <sup>2</sup>	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>					
R	[R] – Name Last name	A			Room [Firm] # 1 [R]	Email: Phone:

<sup>1</sup> Witnesses [W] and Experts [E] called to testify and who will be testifying virtually will be assigned to the waiting room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [C] if they are present during any other time.

<sup>2</sup> Witnesses [W] and Experts [E] called to testify and who will be testifying virtually will be assigned to Waiting Room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [R] if they are present during any other time.

					[Washington, DC]	
R	[R] – Name Last name	A			Room # 1 [R] [Washington, DC]	
<b>Party Representatives:</b>						
R	[R] – Name Last name	P			Home [R] []	
R	[R] – Name Last name	P			Home [R] []	
<b>Witnesses:</b>						
W	[W] – Name Last name	A				
<b>Experts:</b>						
R	E	[E] – Name Last name	A			

COURT REPORTERS				
Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[TRA] – Name Lastname [Email/Phone]	P		[City]
N/A		P		

INTERPRETERS				
Room	Name and Contact	Role	Affiliation to Case	Location of Connection
N/A	[INT] – Name Last name [Email/Phone]	P	Interpreter	[City]
N/A		P	Interpreter	[City]
N/A		P	Interpreter	[City]

TECHNICAL SUPPORT STAFF				
Room	Name	Role	Affiliation to Case	Location of Connection
N/A	[IT] – Name Lastname	P	[xx]	[xx]

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	[Email]			
N/A		P	Paralegal, ICSID	Home [City]
N/A		P	IT FROM THE LAW FIRM	Room [Firm] # 1 [C] [City]
N/A		P		Room [Firm] # 1 [R] [City]



**ANNEX C – HEARING PROTOCOL**

**PROTOCOL REGARDING REMOTE HEARING MATTERS**

**1. JOINING THE HEARING**

- a. Joining the Hearing Room: The Secretary of the Tribunal will circulate a portal link and password, provided by Sparq, to the individuals in the official email distribution list of this proceeding. Click on the Tab “Join Zoom Meeting” in the link. The link and password will remain the same for the duration of the Hearing.
- b. The Parties will make sure to transmit the information to the rest of their teams and to the witnesses and experts. The ICSID Secretariat will also provide the portal link to the interpreters and the court reporters.
- c. Participants: Each Party shall provide its respective List of Hearing Participants (“List of Participants”) using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”). For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for Claimant), [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.
- d. 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.
- e. Connection Time: All participants should connect 30 minutes prior to the scheduled starting time on each day to allow timely access to the Hearing Room. This will also allow to facilitate identification and address any set-up, connectivity and other IT issues before the starting time.
- f. Joining the Real-time Transcript: Instructions to access the live transcript will be provided by the Secretary of the Tribunal.
- g. Witness/Expert Declarations: The witnesses and experts will be prompted by the President to read the

corresponding ICSID Arbitration Rule 35 declaration, which will be projected by Sparq on the screen in English or French depending on the language in which the witness or expert will testify.

- h. Starting on Time. The Tribunal will start promptly on time unless a key participant (Member of the Tribunal, lead counsel expected to speak, or a witness or expert) is unable to join the Hearing Room. If a participant has any doubt or questions concerning their connectivity or the functionality of any of the platforms, they should contact Sparq prior to the first day of the Hearing.
- i. Upon the joining of participants in Zoom on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each party to introduce its team. After each party has introduced all of its participants, the participants who are not expected to speak will turn off their videos and mute their microphones.
  - i. Only participants who will be speaking and the Members of the Tribunal shall appear on video. They shall ensure that they have adequate front lighting and avoid a light source behind them (e.g., a window).
  - ii. All participants shall keep their microphones muted when they are not speaking, whether or not they appear on video.
  - iii. Participants who will be speaking shall have headsets with microphones or a high-quality microphone close to their head and keep their phones and other devices on silent mode.

## **2. DURING THE HEARING**

- a. Technical Issues. If a participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the dedicated Sparq technician; (ii) send an email to the Sparq technician with copy to the ICSID Secretariat. The name and email address of the Sparq technician will be included in the consolidated list of participants to be circulated by the Tribunal Secretary in advance of the hearing.
- b. All other remote hearing support issues should be addressed to the Tribunal Secretary Francisco Abriani (+1-240-467-4821) and the Paralegal Maria-Rosa Rinne (+1-202-473-5028).
- c. Chat Function: The Zoom chat function is reserved for communications dealing with technical matters with the Zoom operator. The Parties will use their own arrangements for any internal communications.

- d. Connectivity Issues. If a participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed. For best connectivity, it is recommended that participants (i) use an ethernet connection if available; (ii) avoid streaming during the Hearing; and (iii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to [www.speedtest.net](http://www.speedtest.net)).
- e. Sound Recording and Transcript. The court reporters will send the transcript of each Hearing day by email to the individuals in the official distribution list. The parties will be provided with a video recording of the Floor, and audio recordings of the Floor and the English and the French channels shortly after the Hearing week has concluded.
- f. Interpretation. The participants who will be speaking should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the Zoom platform, there will be an English and French channel in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing. Participants on one channel can only be heard by other participants on that channel. If participants wish to address the Members of the Tribunal in English, they need to select the “English” channel. If they wish to address the Members of the Tribunal in French with interpretation, they may do so from the “French” channel.
- g. Presentation of Evidence. During the Hearing, as agreed by the Parties and reflected in paragraph 37 of Procedural Order No. 5, documents referred to by the participants will be displayed and managed on the Zoom platform by the respective persons in charge of evidence presentation for each Party. A maximum of two documents may be presented at the same time, side-by-side.