

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Daniel W. Kappes and Kappes, Cassiday & Associates

v.

Republic of Guatemala

(ICSID Case No. ARB/18/43)

PROCEDURAL ORDER NO. 10

Hearing Protocol

Members of the Tribunal

Ms. Jean Kalicki, President of the Tribunal

Mr. John M. Townsend, Arbitrator

Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal

Mr. Francisco Grob

Ms. Daniela Argüello

Assistant to the Tribunal

Dr. Joel Dahlquist

Date of the Order: 25 January 2022

I. INTRODUCTION

1. 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 21 January 2022 at 10:00 a.m. (Washington, D.C. time) (the “Pre-Hearing Conference”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. The session was adjourned at 11:57 p.m.

Participating in the conference were:

Members of the Tribunal:

Ms. Jean Kalicki, President of the Tribunal
Mr. John Townsend, Co-Arbitrator
Prof. Zachary Douglas, Co-Arbitrator

Assistant to the Tribunal:

Dr. Joel Dahlquist

ICSID Secretariat:

Mr. Francisco Grob, Secretary of the Tribunal
Ms. Daniela Argüello, Legal Counsel, ICSID

Participating on behalf of the Claimants:

Ms. Andrea J. Menaker, White & Case LLP
Mr. McCoy Pitt, White & Case LLP
Ms. Poorvi Satija, White & Case LLP
Ms. Isabella Reynoso, White & Case LLP

Participating on behalf of the Respondent:

Ignacio Torterola, GST LLP
Diego Gosis, GST LLP
Katherine Sanoja, GST LLP
Bethel Kassa, GST LLP
Farhod Sharipov, GST LLP
Edith Flores de Molina, Vice Minister of Integration and Foreign Trade
Karla Liquez Aldana, Legal Advisor for the Department of Foreign Trade
Lilian Elizabeth Nájera Reyes, Head of the Unit of International Disputes (Office of the Attorney General of the Nation)
Julio Eduardo Santiz Gámez, Counsel (Office of the Attorney General of the Nation)

2. During the telephone conference, the President of the Tribunal and the Parties discussed the items of the draft Hearing Protocol circulated to the Parties on 20 December 2021, and the Parties' comments of 19 January 2022, as well as other matters raised by the Parties.
3. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and will be made available to the Members of the Tribunal and the Parties shortly.
4. Having consulted with the other Members of the Tribunal, the Tribunal President issues the present Order on behalf of the Tribunal.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

5. Given the exceptional circumstances created by the COVID-19 pandemic, including both safety considerations and travel restrictions which impact the ability of certain core Hearing participants to travel to Washington, D.C. and/or attend a group gathering, the Hearing will take place by a remote modality, using the video conference platform, Zoom, hosted by FTI. The Hearing will be held from **Monday, 28 February to Thursday, 10 March 2022**. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

B. SCHEDULE

6. In light of the location of the participants and their respective time zones, the Hearing will start at 7:00 a.m. Guatemala City/ 7:00 a.m. Mexico City/ 8:00 a.m. Washington D.C. / 1:00 p.m. London/ 2:00 p.m. Geneva time and will end presumptively by 2:00 p.m. Guatemala City/ 2:00 p.m. Mexico City/ 3:00 p.m. Washington D.C./ 8:00 p.m. London/ 9:00 p.m. Geneva time; there will be a 45-minute break in the middle of each Hearing day and two 15 minute breaks, one in each half of the day. The Tribunal reserves discretion to adjust the Hearing schedule, including to sit up to 30 minutes later on occasion, if needed to account for slippage or to achieve logical breaks in the agenda for any given Hearing day.

7. The order of proceedings and structure of the Hearing will be set forth in a Notional Hearing Agenda in the form suggested in Annex A. The Parties' Opening Statements will be held on the first day of the Hearing, to be followed by the examination of their witnesses and experts. Claimants' witnesses will be examined first (in a sequence to be determined by Claimants), followed by Respondent's witnesses (in a sequence to be determined by Respondent). As regards the Parties' experts, an examination of Claimants' expert on any particular topic (e.g., Guatemalan law or quantum), shall be followed by Respondent's expert on the same topic. The Parties are directed to prepare a joint draft of the Notional Hearing Agenda, on the basis of their respective sequences and estimated duration of witness examinations (including direct examination, cross-examination and redirect examination), and to submit this draft to the Tribunal no later than **Thursday, 10 February 2022**.
8. It is understood that the estimates of duration for any particular witness examination will not be precise, and may be adjusted to a reasonable extent during the Hearing. For this reason, the Parties shall ensure that each witness remains flexible to be called somewhat earlier or somewhat later than reflected in the Notional Hearing Agenda (including as necessary the day before or day after that shown).
9. Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any delays or disruptions for technical reasons or otherwise.

C. TIME ALLOCATION

10. The Hearing will proceed on the principle that the Parties should have equal time to present their case within the time allocation agreed upon for each phase of the Hearing (Opening Statements, Direct and Cross-Examination of Witnesses and Experts). The Hearing will not include oral Closing Arguments (see section F *infra*).
11. The Parties are each allocated a maximum of 3.0 hours for Opening Statements. Beyond this allocation, the Parties are each allocated 19.0 hours to be used at their discretion during the examination of witnesses, subject to the limits on direct examination set forth in Section

19 of Procedural Order No. 1 (15 minutes for direct examination of fact witnesses and 45 minutes for direct examination of or presentations by experts).

12. The remaining time of 8.0 hours are allocated to the Tribunal and to cover housekeeping and slippage. Time attributable to brief Tribunal questions to counsel, witnesses or experts, to clarify points being made, shall not interrupt the clock for the Party otherwise conducting that argument or examination, but any extended Tribunal questioning will be allocated to reserved Tribunal time, as will time spent on procedural discussions. Time used for housekeeping or to resolve technical difficulties shall be counted against the time allocated to the Tribunal.
13. The calculation of the Parties' total allocation of time takes into account the necessary lunch and coffee breaks and also presumes certain inevitable slippage in the sitting day (i.e., unused time from extra breaks, late returns from breaks, technical issues, etc.). Nonetheless, the Parties are expected to seek to use the hearing days efficiently and to avoid unnecessary slippage. In the event of excess slippage, the Tribunal may revisit the length of the sitting day, or in unusual circumstances the time allocations of the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard. Given inevitable uncertainties in the Hearing schedule, the Parties should ensure that their respective witnesses and experts are available to be called at least one half-day before and one half-day after the date(s) on which they are scheduled to be examined.
14. The Secretary of the Tribunal will keep account of time used and advise the Parties at the end of each hearing day of the length of time used, in accordance with Section 21.4 of Procedural Order No. 1.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

15. There shall be a single Electronic Hearing Bundle to be prepared jointly by the Parties. The Parties shall provide, no later than **Thursday, 3 February 2022**,¹ the Electronic Hearing Bundle which 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. Claimants
- B. Respondent

02. Witness Statements

- A. Claimants
- B. Respondent

03. Expert Reports

- A. Claimants
- B. Respondent

04. Exhibits

- A. Claimants
- B. Respondent

05. Legal Authorities

- A. Claimants
- B. Respondent

06. Tribunal Orders and Decisions

16. 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

¹ The Tribunal may revisit this date, based on its pending ruling on the Respondent's application to submit additional evidence to address Claimants' allegations regarding certain recent events.

to the BOX files sharing platform, in a sub-folder using the structure indicated at paragraph 15 *supra*, including a consolidated (non-hyperlinked) index.

17. Prior to the Hearing, the Members of the Tribunal, the Secretary of the Tribunal and the Parties shall download the Electronic Hearing Bundle from the BOX case folder into their own devices to have access to it offline during the Hearing. The court reporter and the interpreters will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.

2. Hearing Bundle for Cross-Examination

18. During cross-examination, the Parties will refer only to documents that already form part of the record of the case.
19. At the close of each witness examination, the Party intending to conduct cross-examination of the next witness shall provide a cross-examination bundle in electronic format to the opposing Party, each Member of the Tribunal, the Secretary, the Assistant to the Tribunal, and the court reporters and interpreters via the BOX folder created for this case, to enable this to be downloaded before the cross-examination. Witnesses and experts will be shown documents from this bundle by the Technical Operator through the Hearing Platform. Witnesses and experts will be permitted to have an IT specialist, paralegal, or equivalent assistant in the room to assist them, if necessary, in viewing the relevant documents on the Hearing Platform during the examination.

3. Demonstrative Exhibits

20. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
21. Demonstrative exhibits shall be used in accordance with Section 16.8 of Procedural Order No. 1, which states:

16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and

clearly indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

22. Documents that do not form part of the record may not be presented at the hearing unless authorized by the Tribunal following a prior application and for good cause shown.
23. To account for the remote component of any Hearing, Procedural Order No. 1 Section 16.8 is amended such that: (i) the advance submission of hard copies 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 Assistant to the Tribunal, the Members of the Tribunal, the court reporter and to the interpreters as necessary no later than 1 hour *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable remote participants to print the demonstrative if desired. For the avoidance of doubt, PowerPoint slides containing text or screen shots of exhibits are not considered to be demonstratives (unless they contain a demonstrative exhibit, such as a compiled chart or graph, for example). The Parties will distribute via email their PowerPoint slides 15 minutes prior to their use.
24. 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

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

26. Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with the paragraphs above downloaded into their own devices and available for access offline.
27. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Hearing Platform.² Any Hearing participant shall have the technical ability to display a document to all Hearing participants via the Hearing Platform, 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.

E. WITNESS AND EXPERT EXAMINATION

28. The rules set out in Section 19 of Procedural Order No. 1 for the examination of witnesses and experts are confirmed. In particular, the examination and cross-examination will proceed in accordance with paragraph 19.9 of Procedural Order No. 1, which reads as follows:

“19.9 At the hearing, the examination of each witness shall proceed as follows:

19.9.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3);

19.9.2. The party who has presented the fact witness may examine the witness for up to 15 minutes, for purposes of asking introductory questions limited to their professional background, corrections to his/her written statement, and to address matters which have arisen after that witness’s statement was signed (direct examination);

19.9.3. The party who has presented the expert witness may examine the expert for up to 45 minutes, which examination may take the form of a presentation given by the expert;

19.9.4. The Tribunal may modify the presumptive time limits set forth above for good cause shown, based on any applications received and following

² Highlighting, underlining or otherwise emphasizing any portion of the text in a document on the record is permissible.

consultation with the parties during the pre-hearing organizational meeting or other appropriate occasion.

19.10. Cross-examination:

19.10.1. Factual witnesses may be cross-examined on the content of his/her witness statement, and on any question directly related to the issues in dispute of which the witness has personal knowledge.

19.10.2. Cross-examination of experts should be limited to the issues contained in their report, with the exception of questions relating to credibility.

19.10.3. The party who has presented the witness or expert may then re-examine (re-direct) the witness or the expert with respect to any matters or issues arising out of the cross-examination;

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

19.10.5. To the extent that it may assist its understanding, following the cross examination by the parties, the Tribunal may order two or more experts to be examined concurrently (expert conferencing). The manner and conduct of such conferencing will be discussed at the pre-hearing organizational meeting referred to in §20.1.

19.11. Subject to a different agreement by the parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, or view the hearing through video conference facilities prior to his or her examination. This limitation does not apply to expert witnesses, who may be present at all times. However, in the event that one or more party representatives are also factual witnesses, each party may designate one such party representative-witness to attend the parties' opening statements. Party representative-witnesses shall otherwise be subject to the restrictions set out in the first sentence of this section. The Tribunal will discuss at the pre-hearing organizational meeting the possibility of hearing testimony from any such party representative-witnesses first, in order to enable the party representatives to attend the examination of subsequent witnesses to the extent possible.

29. The time-limit of up to 45 minutes for examination of expert witnesses, which may take the form of a presentation, as set out in Section 19.9.3 of Procedural Order No. 1, applies irrespective of whether an expert report has been authored by a single expert, or by two or more experts jointly.

30. Where two or more experts are listed as authors of an expert report and have been called for cross-examination, by **Thursday, 10 February 2022**, the Party that has presented the expert witness shall indicate with specificity which sections of the report were written by which co-author. To the extent that more than one co-authors contributed to a particular section, the Party shall indicate which of the co-authors will testify as to questions on that particular section. The Tribunal will ensure that this rule be applied fairly, considering that questions may relate to one or more areas that were written jointly by the experts.
31. For questions that do not concern a specific section of the report, the Tribunal will ask the experts at the time the question is made to indicate who will respond to those and any related questions. The enforcement of this election for related questions shall be subject to Tribunal control. However, only one of the co-authors of a report will be allowed to answer each question, and the co-authors may not confer amongst themselves before, during, or after answering a question.
32. Witnesses and experts that testify by remote modality are to follow the instructions provided in **Annex C**.
33. The Parties have called for examination the following witnesses and experts:
 - a. The Respondent has called the following witnesses and experts produced by the Claimants:
 - i. Mr. Daniel W. Kappes
 - ii. Ms. Telma García Recinos de Macario
 - iii. Mr. Hery Arodi Gálvez Rivera
 - iv. Mr. Jorge Rodolfo Carraza Muralles
 - v. Dr. Mike Armitage, SRK Consulting (UK) Ltd.
 - vi. Dr. James Siddorn, SRK Consulting (UK) Ltd.

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- vii. Mr. Garrett Rush, Versant Partners, LLC.
 - viii. Mr. Mario Fuentes Destarac.
 - ix. Ms. Margarita Mendoza Yaquián, Diestra Destreza Legal.
- b. The Claimants have called the following witnesses and experts produced by the Respondent:
- i. Mr. Oscar Rafael Pérez Ramírez;
 - ii. Mr. Álvaro Sandoval Palencia;
 - iii. Mr. Hugo Leonel Camey Castellanos;
 - iv. Mr. José Ramiro Oliva Torres;
 - v. Mr. Haniel Jezlias Aguilar Aroche;
 - vi. Mr. Richard J. Lambert, Mr. Stephan H. Theben, and Mr. Graham G. Glow of SLR Consulting Ltd.;
 - vii. Mr. Howard Rosen and Mr. Chris Milburn of Secretariat Advisors, LLC;
 - viii. Mr. Marcelo Pablo Ernesto Richter; and
 - ix. Dr. Ana María Esteves of Community Insights Group PTE LTD and Mr. Lloyd Lipsett of LKL International Consulting Inc.
- c. The Respondent has designated in addition the following of its own witnesses and experts to testify, pursuant to Section 19.3 of Procedural Order No. 1:
- i. Ms. Grace González
 - ii. Mr. Eddie García
 - iii. Mr. Francisco Guaré

F. AUDIO AND VIDEO RECORDING(S)

- 34. The provision of Section 22.1 of Procedural Order No. 1 concerning audio recording applies.
- 35. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
- 36. 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.
- 37. Except for the court reporters that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

G. TRANSCRIPTION

- 38. The provisions of Procedural Order No.1, Sections 22.2 and 22.3 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 39 and 40 *infra*.

“22.2. Verbatim transcripts in both 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 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the 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.”

- 39. Real-time court reporting in English and Spanish shall be made available to the Hearing participants *via* an online link connection to be provided by the court reporters. Hearing

participants shall connect to the transcript by opening a link in a browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing day.

40. The court reporters, who will be identified in the final **Annex B** (List of Participants), will provide court reporting remotely, via the Hearing Platform.

H. INTERPRETATION

41. ICSID has arranged interpretation in English/Spanish language.
42. The provisions of Procedural Order No.1, Sections 11.11 to 11.14 (reproduced below) apply, with the adjustments indicated in paragraph 43 *infra*:

“11.11. Either English or Spanish may be used during hearings. Simultaneous interpretation from one language into the other language shall be available at all times. Transcripts shall be taken in both languages.

11.12. The testimony of a witness called for examination during the hearing who prefers to give evidence other than the procedural languages shall be interpreted simultaneously.³

11.13. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §20 below), which witnesses or experts require interpretation.

11.14. 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.”

43. The interpreters, who will be identified in the final **Annex B** (List of Participants), will provide the interpretation remotely via the Hearing Platform.
44. Each Participant should, insofar as possible, circulate any speaking notes and PowerPoint slides to the interpreters prior to the start of each intervention. These notes should be

³ The Parties have confirmed that all witnesses and experts will be testifying in either English or Spanish.

emailed directly to the interpreters (see **Annex B** with their email addresses) and are to be treated as confidential information.

I. POST-HEARING SUBMISSIONS

45. The provisions of Procedural Order No. 1, Sections 23.1 to 23.2 apply.
46. Subject to further discussion with the Parties, the Tribunal envisions scheduling a single round of simultaneous written post-hearing briefs, with appropriate page limits. This may be followed by short oral Closing Arguments to address the Tribunal's questions and any rebuttal points arising out of the post-hearing briefs. The dates and parameters for these later stages will be set following consultation with the Parties.

J. OPEN HEARING

47. Pursuant to DR-CAFTA Article 10.21.2 and Section 21.6 of Procedural Order No. 1, the Tribunal shall conduct hearings open to the public by way of a live video and audio transmission to a publicly accessible separate viewing room at the Centre's headquarters in Washington, D.C. However, due to the exceptional circumstances created by the COVID-19 pandemic, the recordings of the Hearing instead will be posted for viewing on the ICSID website, in English and Spanish after the hearing.
48. Any information designated by one or both of the Parties as being confidential will be excluded from the public recordings.
49. The availability of the Hearing recordings will be announced publicly via the ICSID website in English and Spanish.
50. Pursuant to Section 21.6 of Procedural Order No. 1, the Parties have agreed that they will inform the Tribunal before referring to protected information during opening and/or closing statements, in order to allow the Secretariat to sequester the Non-Disputing Party's representatives during the display of such information. The Parties have also agreed that they will not use protected information during examination of factual and expert witnesses without any previous notice or action, and that they will redact the transcripts and video

recordings after the hearing to remove such references to protected information. This rule should be applied with a certain degree of flexibility. The Parties will undertake best efforts to ensure that they identify confidential information *before* its use, however, the failure to do so should not be used as a reason to interrupt oral argument or examinations. Any designations of confidential information that are not made before its use shall be made promptly following the close of the Hearing, in connection with the review and correction of Hearing transcripts, to enable the efficient redaction of transcripts and video recordings.

K. PARTICIPANTS

51. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by **Friday, 18 February 2022**, using the format provided in **Annex B**. Each Party shall designate those participants who will have an active speaking role (“**Active Participants**”), and who will be passive attendees (“**Passive Participants**”) (all together the “Hearing Participants”).

L. REMOTE HEARING ARRANGEMENTS

52. The Hearing Platform shall be hosted and operated by FTI.
53. The details and link to the Hearing Platform shall be provided to the Tribunal, the ICSID Secretariat, the Arbitral Assistant, court reporter(s), interpreters, technical assistance personnel, and the Parties’ delegations prior to the commencement of the Hearing. Hearing Participants shall not forward or share the Hearing link or password except to witnesses and experts when applicable.
54. The procedures specified in **Annex C** shall apply as needed.

M. DATA Privacy

55. 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

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to the Parties, their legal representatives, the Members of the Tribunal, the Arbitral Assistant, and other Participants providing services for the Hearing.

For and on behalf of the Tribunal,

[signed]

Ms. Jean Kalicki
President of the Tribunal
Date: 25 January 2022

ANNEX A

Hearing Agenda

Day 1: 28 February 2022

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
8:00 a.m. (D.C.)	15 min	Introductions and Housekeeping
8:15 a.m.	1.5 h	Claimants' Opening
9:45 a.m.	15 min	Break
10:00 a.m.	1.5 h	Claimants' Continued Opening
11:30 a.m.	30 min	Break
12:00 p.m.	1.5 h	Respondent's Opening
1:30 p.m.	15 min	Break
1:45 p.m.	1.5 h	Respondent's Continued Opening
3:15 p.m.		End

Day 2: 1 March 2022

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

Day 3: 2 March 2022

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

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		Break
		End

Day 4: 3 March 2022

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

Day 5: 4 March 2022

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

Day 6: 7 March 2022

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

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		Break
		Break
		End

Day 7: 8 March 2022

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

Day 8: 9 March 2022

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

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Day 9: 10 March 2022

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

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ANNEX B

LIST OF PARTICIPANTS⁴

Room	Name	Active speaker or not	Role / Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] –Ms. Jean Kalicki	A	President		Email: Phone:
T	[T] – Mr. John Townsend	A	Co-arbitrator		Email: Phone:
T	[T] – Prof. Zachary Douglas	A	Co-arbitrator		Email: Phone:
T	[T] – Dr. Joel Dalquist	A	Assistant to the Tribunal		Email: Phone:

Room	Name	Active speaker or not	Role / Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Mr. Francisco Grob	A	Secretary of the Tribunal		Email: Phone:
T	[T] – Ms. Daniela Arguello	A	Secretary of the Tribunal		

⁴ Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating remotely will activate their cameras during the Hearing, except as provided in para. [x].

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Room 5	Name	Active speaker or not	Role / 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			

⁵ Witnesses [W] and Experts [E] called to testify and who will be testifying remotely 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.

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Room ⁶	Name	Active speaker or not	Role / Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>				
R	[R] – Name Last name	A		Room [Firm] # 1 [R] [Washington, DC]	Email: Phone:
R	[R] – Name Last name	A		Room # 1 [R] [Washington, DC]	
	<i>Party Representatives:</i>				
R	[R] – Name Last name	P		Home [R] []	
R	[R] – Name Last name	P		Home [R] []	
	<i>Witnesses:</i>				
W	[W] – Name Last name	A			
	<i>Experts:</i>				
R E	[E] – Name Last name	A			

⁶ Witnesses [W] and Experts [E] called to testify and who will be testifying remotely 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.

Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala
(ICSID Case No. ARB/18/43)
Procedural Order No. 10

COURT REPORTERS				
Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[EST] – 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 Lastname [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 [Email]	P	[xx]	[xx]
N/A		P	Paralegal, ICSID	Home [City]

ANNEX C

PROTOCOL REGARDING REMOTE HEARING MATTERS

1. Since a fully remote hearing needs to take place, the Parties and the Tribunal will adhere to the following in order to ensure the good conduct of the remote hearing:

a. Testing

2. The ICSID Secretariat will conduct technical tests with the Tribunal and each Party in advance of the Hearing, to test connectivity to the Hearing Platform and to the real-time transcription. ICSID recommends a minimum of one test 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 and the access details will be communicated by the ICSID Secretariat in due course.

b. Participants

3. Each Party will provide its List of Participants (“**Hearing List of Participants**”) for the Hearing, using the format provided in **Annex B** by **Friday, 18 February 2022**. In addition, each Party has designated the participants that will have an active speaking role (“**Active Participants**”), to distinguish them from those who will be passive attendees (“**Passive Participants**”).
4. All Hearing Participants shall clearly denote their names and affiliation when connecting to the Hearing Platform. Example: “[ICSID] Jane Doe.” Any name appearing in the Hearing Platform shall also be listed on the Hearing List of Participants (see **Annex B**). Should there be a discrepancy at any point during the Hearing, the Secretary of the Tribunal will alert the Tribunal, and the Tribunal will promptly address the matter. A list of the Hearing Participants can be viewed in the Hearing Platform “Participants” tab. The Hearing Platform moderator will also have an Active User Participants List which must match the Final List of Participants. This should take care of any privacy concerns.

5. Access to the Hearing Platform shall be restricted to those included in the List of Participants. Should any non-listed Hearing Participant attempt to connect, the Technical Operator will alert the Secretary of the Tribunal, and, if necessary, the Tribunal will address the matter with the Parties. All Hearing Participants bear an ongoing duty to warn the Technical Operator and the Secretary of the Tribunal of the presence of any other person on the Hearing Platform or in the Breakout Rooms.
6. Remote Hearing Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification of remote Hearing Participants and to address any technical contingencies.

c. Connectivity

7. The Parties shall ensure that each of their representatives, witnesses and experts who will connect to the Hearing Platform use a stable internet connection offering sufficient bandwidth, and use a camera and microphone/headset of adequate quality.
8. If available, remote Hearing Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Remote Hearing Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing. For best connectivity, it is recommended that remote Hearing Participants (i) avoid streaming during the Hearing; and (ii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to www.speedtest.net). If a Hearing Participant experiences connectivity issues, the Hearing Platform will automatically prioritize the audio feed and may disconnect the video feed for a given remote Hearing Participant. In the event this occurs for a witness or expert during the course of examination, the Tribunal will determine the appropriate course of action, after consulting the Parties.
9. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a remote Hearing Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation

channels. Certain key remote Hearing Participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point (in such circumstances, it is important that no more than one device is unmuted at any given time, to avoid audio feedback). In the event this occurs for a key Hearing Participant during the course of witness or expert examination, the Tribunal will determine the appropriate course of action, after consulting the Parties.

10. If a remote Hearing Participant experiences any technical issue during the Hearing, they shall use the chat function in the Hearing Platform, or other means of direct communication as necessary, to communicate with the Technical Operator. Contact details for the Technical Operator will be provided by the Secretariat closer to the date of the Hearing. All other remote hearing support issues should be addressed to the Tribunal Secretary and the paralegal.

d. Equipment and Set Up

11. For optimum sound quality, especially for the audio recording and transcription, the Secretariat highly recommends that the main speakers who are connecting remotely use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they will be using for the videoconference. If an external headset is not available, Active Participants are asked to speak close to the microphone.
12. While not indispensable, remote 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 platform video connection; (ii) the online Real-time transcript; and (iii) offline documents.

e. Videoconference Etiquette

13. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, remote participants should remain connected throughout the Hearing day.

14. Upon the joining of the Hearing Participants to the videoconference on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak should turn off their video feed and mute their microphones.
15. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections (i.e., connections transmitting video of the remote Hearing Participant to the videoconference) to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but should keep their video feed off.
16. Remote Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Technical Operator shall have the ability to mute remote Hearing Participants if needed to avoid background noise, under the Tribunal’s control. Speakers should keep their phones and other devices on silent mode.
17. Remote Hearing Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Remote Hearing Participants transmitting video feeds shall avoid sitting with a window or source of light behind them.
18. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

f. Remote testimony

19. Each testifying witness shall be required to testify in a location with a 360 degree camera. Arrangements shall be made with FTI in advance for the testing and set-up of all such cameras, as well as the rental of equipment as necessary.
20. No person shall be present in the room with the testifying witness or expert during that witness’s testimony and examination, except that witnesses and experts will be permitted to have an IT specialist, paralegal, or equivalent assistant in the room to assist them, if

necessary, in connecting with the Hearing Platform and addressing any technical issues. Subject to this paragraph, nothing shall prevent either Party from having counsel and witnesses convening in the same premises for the Hearing.

21. 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. Witnesses subject to sequestration shall also affirm that they have not attended, watched a recording, or read the transcripts of the Hearing prior to their examination.
22. The witness or expert shall remain visible at all times during the examination. During the breaks, the witness or expert will be taken to a virtual waiting room.
23. 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.

g. Break-Out Rooms

24. If applicable and requested, break-out rooms separate from the remote Hearing Room, to be used securely by each Party and the Tribunal during breaks, will be arranged on the Hearing Platform.
25. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the Hearing Platform to enable all the remote Hearing Participants to promptly reconvene following breaks.
26. The List of Participants shall indicate the break-out room to which Hearing 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 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 platform

built-in chat function will be disabled, except for communications with the Technical Operator.

h. Technical Difficulties

28. Each Party shall designate, in its List of Participants, one of its representatives to act as videoconferencing emergency contact person (“VC Emergency Contact Person”) for purposes of addressing any technical incidents that might arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the Tribunal Secretary if an essential Hearing Participant on his/her side is disconnected or is otherwise unable to participate. In all other cases, the VC Emergency Contact Person shall notify and address technical issues with the Tribunal Secretary and the Technical Operator.
29. In the event a key Party representative (e.g. advocate or other critical team member) is disconnected from the video conference, the VC Emergency Contact Person or, in the absence of such individuals, other Party or Tribunal should alert all others to this development and the video conference should pause to enable that individual to re-join the conference. The Tribunal may order any necessary changes to the proceedings (e.g. order a pause and extend the hearing time if appropriate and possible) to ensure each Party has a fair opportunity to present its case during the virtual hearing.
30. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the Hearing Platform to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available to them, mitigating any potential prejudice arising from the failure of any given remote Hearing Participant to be able to follow the entire Hearing live on the Hearing Platform.