

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Daniel W. Kappes and Kappes, Cassidy & Associates

v.

Republic of Guatemala

(ICSID Case No. ARB/18/43)

PROCEDURAL ORDER NO. 14

Closing 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

Ms. Daniela Argüello

Assistant to the Tribunal

Dr. Joel Dahlquist

Date of the Order: 13 June, 2022

I. INTRODUCTION

1. At the end of the Hearing on Jurisdiction and the Merits held remotely from Monday, 28 February 2022 to Friday, 11 March 2022 (the “Hearing”), the Tribunal and the Parties agreed that a hearing for closing arguments (“Closing Hearing”) will be held on **Wednesday, 22 June 2022**.
2. On 31 May 2022, the Tribunal invited the Parties to confer on the rules concerning the organization of the upcoming hearing, on the basis of a draft version of this Procedural Order which was circulated on that date.
3. On 3 June 2022, the Claimants informed the Tribunal of their agreement on the procedural rules for the upcoming hearing.
4. On 8 June 2022, the Respondent confirmed its agreement.
5. On 9 June 2022, the Tribunal noted the Parties’ agreement on the procedural rules for the Closing Hearing as per the draft circulated on 31 May 2022, and confirmed that in light of the Parties’ agreement, it no longer would be necessary to proceed with the pre-hearing conference call that had been anticipated pursuant to Section 20 of Procedural Order No. 1 and Section V of Procedural Order No. 13.
6. The Tribunal confirms the Parties’ agreement for the procedural rules for the Closing Hearing as follows:

A. DATE AND FORMAT OF THE HEARING

7. The Hearing will be held on **Wednesday, 22 June 2022**. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

B. SCHEDULE

8. 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.

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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 30-minute break in the middle of the day and two
15 minute breaks, one in each half of the day.

C. PROCEDURE

9. The order of proceedings and structure of the Hearing presumptively will be as indicated
in the agenda incorporated below:

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
8:00 a.m. (D.C.)	10 min	Introductions and Housekeeping
8:10 a.m.	1.75 h	Claimants' Closing
9:55 a.m.	15 min	Break
10:10 a.m.	1.75 h	Respondent's Closing
11:55 p.m.	25	Initial Tribunal Questions to Parties
12:20 p.m.	30 min	Break
12:50 p.m.	45 min	Claimants' Reply Closing
1:35 p.m.	45 min	Respondent's Reply Closing
2:20 p.m.	15 min	Break
2:35 p.m.	25 min	Additional Tribunal Questions
3:00 p.m.		End

10. The Parties are each allocated a maximum of 2 hours and 30 minutes for the Closing and
Reply closing Arguments together.
11. The Tribunal is allocated 50 minutes to ask questions of either or both Parties, and may do
so at any point during the Hearing, although it will endeavor to structure its time as
indicated in the presumptive scheduled above.
12. The Secretary of the Tribunal will have a timekeeper (as was done during the opening
arguments) to properly allocate time to each Party or the Tribunal.

13. In case any procedural matters are not regulated in this Procedural Order, the Tribunal will apply, insofar as relevant, Procedural Order No. 10 and Procedural Order No. 13, which contains the rules of the Hearing.

D. PARTICIPANTS

14. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by **Friday, 17 June 2022**, using the format provided in **Annex A**. 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 “Closing Hearing Participants”).

E. REMOTE HEARING ARRANGEMENTS

15. The Hearing Platform shall be hosted and operated by FTL.
16. 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 Closing Hearing. Closing Hearing Participants shall not forward or share the Closing Hearing link or password except to witnesses and experts when applicable.
17. The procedures specified in **Annex C** of Procedural Order No. 10, shall apply as needed.

For and on behalf of the Tribunal,

[signed]

Ms. Jean Kalicki
President of the Tribunal
Date: 13 June 2022

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ANNEX A
LIST OF PARTICIPANTS¹

TRIBUNAL					
Room	Name	Role	Affiliation to Case	Location of Connection	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				

SECRETARY OF THE TRIBUNAL					
Room	Name	Role	Affiliation to Case	Location of Connection	Personal Contact
T	[T] – Ms. Daniela Arguello	A	Secretary of the Tribunal		Email: Phone:

¹ 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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CLAIMANTS					
Room ²	Name	Role	Affiliation to Case	Location of Connection	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] []	

² 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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RESPONDENT					
Room ³	Name	Role	Affiliation to Case	Location of Connection	
	<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] []	

³ 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.

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