

ANNEX B

PROTOCOL FOR PROTECTION OF “PROTECTED INFORMATION”

HEARING

(7 to 14 February 2020)

A. OBJECTIVES

1. These protocols are established to ensure:
 - (a) The maximum transparency of the Hearing, under the transparency regime established by Article 10.21 of the U.S.-Peru FTA.
 - (b) The confidentiality of “protected information” (as defined in Article 10.29 of the U.S.-Peru FTA) excluded from disclosure under the regime established in Article 10.21 of the U.S-Peru FTA.
 - (c) An efficient, smooth and minimally disrupted Hearing.

B. GENERAL RULES

2. The Hearing will be broadcasted with a one-hour delay through the ICSID Website and in an overflow room.
3. “Protected information” shall be protected from disclosure by holding relevant parts of the Hearing “in private”, instead of publicly.
4. The privacy of the Hearing shall be achieved, when necessary, through the moderation of the video feed, and the redaction of relevant parts of the transcripts before publication.
5. The term “moderation” means that the video feed will be muted and the screen will be showing a sign indicating that the Hearing is temporarily held “in private”.
6. The Parties shall follow the protocols established below to alert the Tribunal of the use of “protected information” during the Hearing and request the “moderation” of the video feed.

C. PROTOCOLS

7. A Party may request at any time during the Hearing that part of the Hearing be held “in private” and that the broadcast be moderated temporarily to prevent disclosure of “protected information”.
8. The Parties shall request moderation of the video feed **before** the “protected information” is discussed, addressed or shown at the Hearing (whether by the counsel or by witnesses or experts).

9. The Parties shall still follow protocol 8 above. Requests for moderation after alleged “protected information” has been discussed can only be accommodated in **exceptional** circumstances and in a **minimum** number (*i.e.* no more than one moderation per hour). In such case, the Party requesting the delayed moderation is responsible for identifying and promptly communicating the exact video time stamp (hour, minute, second) of the moderation request **before** the end of the respective hour.
10. To avoid delayed requests for moderation, which may result in a breach of confidentiality, the Parties are responsible to identify, **before** discussing, addressing or showing (whether through counsel submissions or through witnesses or experts examination) documents or information, whether these are “protected information” or could raise confidentiality issues.
11. To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements and witness/expert examinations so that those which involve “protected information” are grouped together, wherever possible.
12. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention.
13. The Parties shall request moderation of the video feed both orally and by using the **RED** sign provided by the Secretary of the Tribunal before the start of the Hearing.
14. The Parties shall request the resumption of the video feed both orally and using the **GREEN** sign provided by the Secretary of the Tribunal before the start of the hearing.
15. When the Parties request the moderation or resumption of the video feed, the Secretary of the Tribunal shall inform the technician in charge of the video feed, using audiovisual alert device located in the technical booth. A **RED** light will be shown in the Hearing room to signal to participants when the video feed is closed to the public.
16. If a Party has an objection to the moderation or resumption of the video feed requested by the other Party, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held “in private” and the transcript shall be marked “confidential”.
17. If the Tribunal decides that documents and information about to be discussed, addressed or shown warrant the Hearing to be temporarily held “in private”, the video feed shall be moderated per the Tribunal’s instructions.
18. Resumption of the video feed shall be requested by the Party which requested and obtained moderation (subject to any objection to resumption under protocol 16 above) or proposed by the Tribunal. Resumption may also be requested by the other Party if it deems it necessary. The Tribunal shall rule on any dispute between the Parties in that respect.