

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

South32 SA Investments Limited

v.

Republic of Colombia

ICSID Case No. ARB/20/9

**PROCEDURAL ORDER NO. 4
(Hearing Organization)**

Members of the Tribunal

Ms. Deva Villanúa, President of the Tribunal

Prof. Guido S. Tawil, Arbitrator

Dr. Andrés Jana Linetzky, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Assistant to the Tribunal

Ms. Francisca Seara Cardoso

15 de febrero de 2023

Procedural Order No. 4

Table of Contents

I. PROCEDURAL BACKGROUND.....	1
II. ORGANIZATION OF THE HEARING	2
A. Date and Format.....	2
B. Order of Proceedings and Schedule.....	3
C. Time Allocation	3
D. Witness and Expert Examination.....	5
E. Documents for Use at the Hearing.....	9
1. Documents to be presented before the Hearing	9
2. Electronic Hearing Bundle.....	9
3. Hearing Bundle for Cross-Examination, Oral Statements and Demonstrative Exhibits ..	
.....	10
4. Hard Copy Bundle	12
F. Audio Recording.....	12
G. Transcription.....	12
H. Interpretation.....	13
I. Post-Hearing Submissions and Statements of Costs.....	14
J. Closed Hearing.....	14
K. Participants.....	15
L. Health & COVID-19 Protocol	15
M. General Provisions	16
1. Confidentiality	16
2. Data Privacy.....	16
Annex A	18
Annex B	20

Procedural Order No. 4

I. PROCEDURAL BACKGROUND

1. On 22 December 2022, the Tribunal circulated to the Parties a Draft Procedural Order No. 4 regarding the organization of the Hearing for the Parties to discuss and confer, and to revert to the Tribunal with their comments.
2. On 25 January 2023, the Parties submitted the points on which they agreed, as well as the points of disagreement on the Draft Procedural Order No. 4.
3. Pursuant to paragraph 21.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by Zoom on 2 February 2023 [the “**Pre-Hearing Conference**”], to discuss any outstanding procedural, administrative, and logistical matters in preparation for the hearing on jurisdiction and merits [“**Hearing**”]. Participating were:

Arbitral Tribunal:

Ms. Deva Villanúa, President of the Tribunal
Prof. Guido S. Tawil, Arbitrator
Dr. Andrés Jana Linetzky, Arbitrator

Assistant to the Tribunal:

Ms. Francisca Seara Cardoso

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

On behalf of the Claimant:

Ms. Caroline Richard, Freshfields Bruckhaus Deringer US LLP
Ms. María Julia Milesi, Freshfields Bruckhaus Deringer US LLP
Mr. Juan Ignacio Amado Aranda, Freshfields Bruckhaus Deringer US LLP

On behalf of the Respondent:

Mr. Fernando Mantilla-Serrano, Latham & Watkins
Ms. Esperanza Barrón Baratech, Latham & Watkins
Mr. Kevin Cubeddu, Latham & Watkins
Mr. Nicolás Esguerra, Latham & Watkins
Ms. Ana María Ordoñez, Agencia Nacional de Defensa Jurídica del Estado
Ms. Elizabeth Prado, Agencia Nacional de Defensa Jurídica del Estado

Procedural Order No. 4

4. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order No. 4 and the Parties' respective positions where no agreement was reached.
5. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on 2 February 2023.
6. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules upon which the Parties have agreed and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT

7. The Hearing will take place in person from 15 to 17 March 2023 (the *Hearing Days*), with Saturday 18 March held in reserve, in Washington DC, at ICSID's Hearing Center located at 1225 Connecticut Ave., NW, Washington, DC.
8. Given the exceptional circumstances created by the COVID-19 pandemic, there will also be a remote connection to facilitate the participation of any attendees connecting to the Hearing remotely via Zoom [**"Hearing Platform"**]. Remote participation may be exceptionally requested by a participant and approved by the Tribunal. The ICSID Secretariat will share the details for joining the Hearing Platform prior to the Hearing and the Hearing Platform will be available through the same link throughout the Hearing.¹
9. In the event that any future health restriction or regulation related to the COVID-19 pandemic makes it unfeasible to hold the Hearing in person as planned, the Tribunal will consult the

¹ Other logistical details (e.g., testing, connectivity, equipment and setup) will be handled by correspondence directly by the Secretary of the Tribunal.

Procedural Order No. 4

Parties on the next steps, including whether to hold the Hearing remotely on the same scheduled dates.

10. The two weeks prior to the hearing shall be considered preparation time for the Parties and the Tribunal. Thus, starting on **27 February 2023**, any procedural complaint will be considered rejected *in limine*. Instead, the Parties should present any such procedural incidents at the beginning of the Hearing, and the Tribunal will adopt the appropriate decision after hearing the counterparty.

B. ORDER OF PROCEEDINGS AND SCHEDULE

11. The Hearing Days will start at 9:00 a.m. (EDT). Hearing Days are expected to conclude by 5:30 p.m. (EDT) at the latest and may well conclude earlier each day. There will be two coffee breaks of 15 minutes each during each Hearing day and a one-hour lunch break.
12. Hearing Day 1 will be used for the Parties' opening statements, Hearing Days 2 and 3 will be used for expert and fact witness examinations. The order and structure of the Hearing, including the number and length of breaks, shall be indicated in the notional agenda using the format incorporated as **Annex A** below [the "**Agenda**"]. The Parties will make a good-faith effort to adhere to the schedule reflected in the Agenda.
13. The Tribunal reserves discretion to adjust the Hearing schedule, including the sitting times on any day, as needed to accomplish the prescribed Agenda and to accommodate any technical and/or other disruptions.

C. TIME ALLOCATION

14. In accordance with paragraph 22.5 of Procedural Order No. 1, the allocation of time shall be determined by the Tribunal in advance of the Hearing in this separate procedural order following consultation with the Parties. The Tribunal will ensure that each Party is granted a full opportunity to present its case.

Procedural Order No. 4

15. A total number of 8 hours 30 minutes are reserved for each Hearing Day. After excluding time reserved for breaks (1 hour 30 minutes), Tribunal and administrative time (1 hour 45 minutes per day) and a certain amount of inevitable slippage (15 minutes per day), the Parties shall have a total of 5 hours available to them each Hearing day.
16. The Hearing will proceed on the principle that the Parties should have equal time to present their case through opening statements on Hearing Day 1 and expert examinations on Day 2 (as well as any submissions, additional expert examinations and/or Tribunal questions sessions to be made on the reserve day).
17. Each opening statement shall last no more than 2 hours 30 minutes. Any unused portion of that 3-hour allocation will be forfeited (and cannot be added to chess clock time for Hearing Days 2 and 3).
18. The remaining Hearing time on Days 2 and 3 will be used for witness examinations. Chess clock time will be allocated on a 50:50 basis on Hearing 2 (expert testimony) and on a 30/70 basis on Hearing Day 3 (fact witness testimony). Regardless of the time at which Day 2 concludes, the examination of fact witnesses will only start on Day 3.
19. Each Party shall be free to spend its allocated time on any given Hearing Day (which is non transferrable) in the manner it sees fit, so long as the total amount of time allotted to that Party, and the order of witnesses and experts set out in this order are maintained, and subject to the following:
 - (a) *Opening Statements*. Each Party shall be allowed a maximum of 2 hours 30 minutes for its opening statement.
 - (b) *Witnesses/Experts Direct examinations/presentations*:
 - *Direct examination of fact witnesses*. The direct examination of a fact witness shall not exceed 20 minutes.
 - *Direct presentations by experts*. The presentation by an expert shall not exceed 60 minutes.
20. Time used by the Parties in oral argument or in examination of witnesses and experts shall be attributable to the Party making such argument or conducting such examination.

Procedural Order No. 4

21. Tribunal Questions. Time taken by the Tribunal for its own questions during the Parties' presentations and examinations and the answers to those questions shall not be counted against the Parties' time.
22. Time used for housekeeping or administrative items, objections or to resolve technical difficulties shall be counted against the Tribunal's time, or slippage time if needed.
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 Hearing Days 2 and 3.
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. In principle, witnesses and experts should be available one-half day before and after the time they are scheduled to be examined.
25. The morning of the day held in reserve, 18 March 2023 (Day 4), will be used by the Tribunal to deliberate and, if the Tribunal so deems appropriate, to put forward a list of questions for the Parties to address in their post-hearing briefs. The Tribunal will transmit its questions to the Parties later in the afternoon of Day 4.

D. WITNESS AND EXPERT EXAMINATION

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

- 19.1. A Party may be called upon by the opposing Party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings. The examination of a fact or expert witness by video conference may be permitted for justified reasons at the discretion of the Tribunal. If a witness whose appearance has been requested pursuant to § 19.1 fails without a valid reason to appear for testimony at a hearing, even by

Procedural Order No. 4

video conference, the Tribunal shall assess the weight of the written statement taking into account the entire record and all the relevant circumstances.

- 19.2 The Parties shall notify the opposing Party which witnesses and experts presented by the opposing Party they intend to call for cross-examination on the date specified in the Procedural Timetable. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 19.3 Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure. The Tribunal shall, at all times, have the power to request the presence of any fact or expert witness presented by the parties for examination at the hearing, upon application by any Party or on its own motion.
- 19.4 Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness may conduct a brief direct examination at the hearing. Experts may summarize their reports and findings, either through direct examination or in the form of a brief presentation. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.
- 19.5 Being duly informed of the dates of the hearing, the Parties will as quickly as possible inform their potential fact witnesses of such dates to secure their presence at the hearing and avoid any disruption in the procedural timetable.
- 19.6 Witnesses (fact or expert) may be cross-examined on relevant matters that either were addressed or presented in the witness' statement(s) or the expert's report(s), or about any evidence in the record of which the fact witness could reasonably be expected to have personal knowledge and on matters of credibility. The scope of re-examination shall be strictly limited to the matters that have arisen in cross-examination.
- 19.7 The Tribunal may organize the confrontation of two or more fact or expert witnesses if it deems it appropriate, after consultation with the Parties.

Procedural Order No. 4

- 19.8 Each Party shall advance the costs connected with the evidence of its fact witnesses or any other witness (other than fact witnesses of the other Party) that such Party requests to attend the hearing, including the cost of preparing the witness statements and attending the hearing, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs. The costs of any fact or expert witness called to testify by the Party that presents such witness or called by the Tribunal shall be covered by the Party that is offering such witness.
27. While expert witnesses may address any matter, fact witnesses, on direct examination, may not introduce matters not already covered by the witnesses' written statement, save in response to new matters raised in the Rejoinder or to address new factual developments that took place after each Party's last pleading. Claimants shall provide a list of the (i) new matters raised in the Rejoinder and (ii) new factual developments that took place after each Party's last pleading, indicating the fact witness that will cover such topics, by **23 February 2023**.
28. Fact witnesses shall not, prior to his or her examination, be present in the Hearing room during oral testimony and arguments, read the transcript of oral testimony or argument, or be informed of its contents. Expert witnesses may be present in the Hearing room prior to their examination, including during oral submissions and testimony of other fact and expert witnesses. Fact witnesses and expert witnesses shall be allowed to observe the Hearing after testifying.
29. The witness or expert shall have an unannotated hard and/or electronic copy of their witness statement(s) or expert report(s) before them during their examination including all exhibits thereto. The Party that presented the witness or expert is responsible for providing such materials. Further, the Party that presented each expert witness shall provide such expert with copies of the expert reports of his/her counterpart (if applicable), for ease of reference during examination. Other than these materials, witnesses shall not have notes or other material before them during their examination, except as provided in para. 39 below.
30. It is desirable that witness examination is concluded within one session. The Parties shall use their best efforts to complete the examination of a given fact or expert witness on the same

Procedural Order No. 4

day. The Tribunal will accommodate the sitting hours to ensure that the examination is not interrupted.

31. If that, however, proves impossible and a fact or expert witness's cross-examination is interrupted and must continue in the following session, the fact or expert witness will be instructed not to speak with anyone about the case or the subject of the dispute until the examination is completed. To avoid potential disputes, the fact or expert witness shall minimize contact even on other subjects with the Parties, their representatives or counsel until the examination is completed.
32. On 7 December 2022, the Parties called for cross-examination of the following witnesses and experts:
 - a. The Respondent called for cross-examination of the following witnesses and experts produced by the Claimant:
 - i. Mr. *Ciro Ávila Del Vecchio*;
 - ii. Mr. *Ricardo Gaviria Jansa*;
 - iii. Mr. *Brian Purdy*; and
 - iv. Dr. *Manuel Abdala* and Mr. *Pablo López-Zadicoff*.
 - b. The Claimant called for cross-examination of the following witnesses and experts produced by the Respondent:
 - i. Mr *Brent C. Kaczmarek*
33. No later than **24 February 2023**, each Party shall inform the Tribunal and the other Party the order in which its witnesses will testify.

Procedural Order No. 4

E. DOCUMENTS FOR USE AT THE HEARING

1. Documents to be presented before the Hearing

34. The Parties shall submit to the Tribunal by no later than three weeks before the Hearing jointly or, where they are unable to agree, separately:

- A chronology of relevant facts in tabular form;
- A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- A list of the substantive issues requested to be decided by the Tribunal.

2. Electronic Hearing Bundle

35. Pursuant to paragraph 22.7 of Procedural Order No. 1, there shall be a single Electronic Hearing Bundle (PC- and Mac-compatible), to be prepared jointly by the Parties. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

01. Pleadings

- A. Claimant
- B. Respondent

02. Factual Exhibits

- A. Claimant
- B. Respondent

03. Legal Authorities

- A. Claimant
- B. Respondent

04. Witness Statements

- A. Claimant
- B. Respondent

05. Expert Reports

- A. Claimant

Procedural Order No. 4

B. Respondent

06. Expert Exhibits

A. Claimant

B. Respondent

07. Tribunal's Rulings

36. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX file-sharing platform no later than **3 March 2023**. To ensure proper 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 file-sharing platform, using the structure indicated at para. 35 *supra*, including a consolidated (non-hyperlinked) index.
37. The court reporters and interpreters will be provided with a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
- 3. Hearing Bundle for Cross-Examination, Oral Statements and Demonstrative Exhibits**
38. During any cross-examination or re-examination, the Parties will refer to documents that already form part of the record of the case.
39. Prior to the beginning of each cross-examination, the cross-examiner shall provide a cross-examination bundle (i) in electronic format to the opposing Party, each Member of the Tribunal, the Secretary, the Assistant of the Tribunal, and the court reporter via the BOX folder created for this case, to be downloaded before the cross-examination, and (ii) in paper copy to the witness or expert and to the opposing counsel (two copies).
40. 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).
41. Counsel can refer to exhibits or authorities that are not included in the cross-examination bundle during the examination of a fact witness or expert, provided that the document is on the record. The fact witness or expert may also have access to an electronic copy of any such

Procedural Order No. 4

exhibit when testifying. If a fact witness prefers to have access to a printed copy, such copy shall be provided by counsel presenting the witness in question within five minutes.

42. The Parties and experts may use PowerPoint or other demonstrative exhibits for their oral statements and direct presentations (respectively) to be distributed electronically (by uploading it to the BOX folder) not less than 20 minutes before their use. Hard copies shall be provided to each Member of the Tribunal (one copy each), the Secretary of the Tribunal (one copy) and the other Party (two copies) immediately prior to the oral statement or examination.
43. Demonstrative exhibits (including a Power Point or other slide presentations) shall be used in accordance with paragraph 17.11 of Procedural Order No. 1 (reproduced below):
 - 17.11 Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence or new calculations (except when so approved by the Tribunal). Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimant, and “RD-” for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic editable PDF format to the other Party, the Tribunal Members, the Tribunal Secretary, the Assistant of the Tribunal, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
44. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibit to the case folder in the BOX filesharing platform, designating each with the corresponding number: “CD-__” for Claimant’s demonstrative exhibits, and “RD-__” for Respondent’s demonstrative exhibits.
45. During the Hearing, the Parties may not refer to documents that are not part of the record of the case.
46. In addition to providing paper and/or electronic copies during the oral pleadings or cross-examinations, as established in Sections 38 and 42 above, each Party may display

Procedural Order No. 4

demonstrative exhibits and clean, unannotated electronic copies of documents on the record *via* the screen sharing system at the Hearing room (to be viewed by in-person participants) and, if applicable, the Hearing Platform (to be viewed by remote participants).

4. Hard Copy Bundle

47. The Parties shall provide a hard copy bundle in A5 format at the beginning of the Hearing containing the main documents that the Parties will use during the hearing, without the main filings, witness statements, expert reports or legal authorities. If the Parties are unable to agree on the contents of a joint bundle, the Parties will include the core documents that both Parties agree (in section 1 of the hard copy bundle) and each Party shall add any other document(s) that it deems appropriate (section 2 for Claimant's documents and section 3 for Respondent's documents). The hard copy bundle shall be accompanied of a consolidated index identifying the exhibit numbers.

F. AUDIO RECORDING

48. The provisions of Procedural Order No. 1, paragraph 23.1 concerning audio recording (reproduced below) apply.

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

49. The audio recording shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Tribunal upon the conclusion of the Hearing. Except for the court reporters, Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.

G. TRANSCRIPTION

50. The provisions of Procedural Order No. 1, paragraphs 12.9 and 23.2 concerning transcription (reproduced below) apply.

12.9. Either procedural language, English or Spanish, may be used during hearings, including during witness examination. Transcription

Procedural Order No. 4

requirements will be further discussed at the pre-hearing organizational meeting.

[...]

23.2. [T]he process relating transcripts shall be determined by the Tribunal in consultation with the Parties prior to the close of the Hearing. The Parties shall agree on the timing and method for corrections to the transcripts at the end of the hearing. In case of disagreement between the Parties, the Tribunal shall determine the timing and method for transcript corrections.

51. In addition, real-time court reporting shall be made available to the Participants via an online link connection to be provided by the court reporters. The Participants will be able to access the streamed transcripts from their own devices (laptop or tablet).

H. INTERPRETATION

52. The provisions of Procedural Order No. 1, paragraphs 12.10 to 12.12 concerning interpretation are reproduced below:

12.10 The Parties and the Tribunal shall further discuss at the pre-hearing organizational meeting the requirements of interpretation of a witness called for examination during the hearing who prefers to give evidence other than in either of the procedural languages.

12.11 The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require interpretation. At the pre-hearing organizational meeting, the Tribunal shall also determine, after consulting the Parties, whether simultaneous interpretation into English and/or Spanish is required for witnesses testifying in either procedural language.

12.12 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. However, the costs of interpretation for non-English or non-Spanish speaking witnesses or experts shall be borne by the Party presenting such witnesses or experts.

53. In accordance with the Parties' and the Tribunal's instructions provided during the pre-hearing organizational meeting, ICSID will make the required arrangements for simultaneous interpretation from Spanish into English and from English to Spanish during the Hearing.

Procedural Order No. 4

54. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
55. Each Participant should, insofar as possible, circulate any speaking notes or presentations to the interpreters prior to the start of each intervention. These notes should be emailed to the interpreters directly by requesting the email address to the Secretary of the Tribunal. The notes are to be treated as confidential information.

I. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS

56. The provisions of Procedural Order No. 1, paragraph 24.1 (reproduced below) apply.

24.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

57. The Parties shall file simultaneous post-hearing briefs, in lieu of closing statements. At the end of the Hearing, and in consultation with the Parties, the Tribunal will provide guidance on: (a) the content of the post-hearing brief including any questions it would like addressed; (b) time limits; and (c) length and format. No additional evidence may be produced together with the post-hearing briefs without first seeking leave in accordance with paragraph 17.6 of Procedural Order No 1.
58. In accordance with ICSID Arbitration Rule 28(2), promptly after the closure of the proceeding, each party shall submit to the Secretary of the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

J. CLOSED HEARING

59. In accordance with paragraph 22.6 of Procedural Order No. 1, the Hearing shall be closed to the public.

Procedural Order No. 4

K. PARTICIPANTS

60. Each Party shall provide its respective list of Hearing Participants (“**List of Participants**”) by **20 February 2023**, using the format provided in **Annex B**.
61. The ICSID Secretariat has reserved a hearing room and break-out rooms for each Party and the Tribunal.
62. Requests for a Hearing Participant to attend the Hearing remotely for justified reasons per paragraph 19.1 of Procedural Order No 1 should be made no later than 20 February 2023 or as soon as possible in the event of an unforeseen circumstance, indicating whether the remote Hearing Participant will have an Active speaking role (“Active Participant”) or will be a passive attendee (“Passive Participant”). Only Active Participants may turn their video cameras on when making an intervention.

L. HEALTH & COVID-19 PROTOCOL

63. The ICSID Secretariat will communicate any COVID-19 related restrictions regarding in-person attendance at the Hearing to the Parties and Tribunal; all in-person Hearing Participants are expected to abide by any applicable rules in this regard.
64. Hearing Participants will be required to take rapid antigen tests daily prior to entering the premises. Each Participant will secure its own rapid antigen tests for each day of the Hearing. Any Participant receiving a positive test result will not enter the Hearing premises and must immediately report the positive result to ICSID and the Tribunal for dissemination to the Parties. A representative for each party shall confirm by email to ICSID prior to the start of each day of the Hearing that all Hearing Participants attending the Hearing in-person have taken a rapid antigen test and tested negative. The ICSID Secretariat will obtain this confirmation for to the Tribunal for the technical support personnel in the hearing room, interpreters and stenographers/court reports.
65. A Hearing Participant who experiences fever or chills, cough, shortness of breath, sore throat, or any other COVID-19 symptoms shall immediately inform the Tribunal and the

Procedural Order No. 4

ICSID Secretariat and shall self-isolate and refrain from coming to the Hearing until they have obtained a negative rapid antigen or PCR test. Any other participant who was in close contact with the symptomatic Hearing participant shall also self-isolate and arrange for COVID-19 testing. A Participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing is asked to immediately inform the ICSID Secretariat of this development, pending the results of their test.

66. If a Hearing Participant with a speaking role in the Hearing tests positive for COVID-19 or is self-isolating, he/she will connect to the Hearing Platform from his/her place of self-isolation.

M. GENERAL PROVISIONS

1. Confidentiality

67. This ICSID proceeding, including all communications, is confidential. Participants 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 of 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

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

Procedural Order No. 4

services for the Hearing. The Parties, the Members of the Tribunal and ICSID will retain the information to the extent necessary pending the conclusion of the arbitration. All other hearing participants must delete all electronic copies and dispose of any printed copies, as confidential material, as soon as they fulfill their Hearing-related obligations.

By and on behalf of the Tribunal,

[Signed]

Ms. Deva Villanúa
President of the Tribunal
Date: February 15, 2023

Procedural Order No. 4 – Annex A

ANNEX A

SOUTH32 SA INVESTMENTS LIMITED

v.

REPUBLIC OF COLOMBIA

ICSID Case No. ARB/20/9

NOTIONAL AGENDA²

Hearing on the Merits

15-18 March 2023
Washington, D.C.

Day 1: Wednesday, 15 March 2023

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:00 AM	15 minutes	Preliminary procedural matters
9:15 AM	2.5 hours max	Claimant's Opening Statement
TBD	15 minutes	Break during Claimant's Opening Statement
12:00 PM	1 hour	Lunch break
1:00 PM	2.5 hours max	Respondent's Opening Statement
TBD	15 minutes	Break during Respondent's Opening Statement
6:00 PM		End

² The Notional Hearing Agenda is for indicative purposes only and without prejudice to each Party's discretion to allocate its allotted time within the chess clock system for Hearing Days 2 and 3 described above as it deems fit. For the avoidance of doubt, the Tribunal may pose questions at any time during the Parties' submissions or witness examinations.

Procedural Order No. 4 – Annex A

Day 2: Thursday, 16 March 2023

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:00 AM	60 minutes max	Direct presentation of Claimant’s damages experts
TBD	TBD	Cross examination of Claimant’s damages experts
TBD	TBD	Redirect examination of Claimant’s damages experts
TBD	15 minutes	Break
TBD	1 hour	Lunch break
TBD	60 minutes max	Direct presentation of Respondent’s damages experts
TBD	TBD	Cross examination of Respondent’s damages experts
TBD	TBD	Redirect examination of Respondent’s damages experts
TBD	15 minutes	Break
5:30 PM		End

Day 3: Friday, 17 March 2023

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
9:00 AM	20 minutes max	Direct examination of witness 1
TBD	TBD	Cross examination of witness 1
TBD	TBD	Redirect examination of witness 1
TBD	15 minutes	Break
TBD	20 minutes max	Direct examination of witness 2
TBD	TBD	Cross examination of witness 2
TBD	TBD	Redirect examination of witness 2
TBD	1 hour	Lunch break
TBD	20 minutes max	Direct examination of witness 3
TBD	TBD	Cross examination of witness 3
TBD	TBD	Redirect examination of witness 3
TBD	15 minutes	Break
5:30 PM		End

Day 4: Saturday, 18 March 2023

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
00:00 AM/PM	(# hours/min.)	
3:00 PM	TBD	TBD

Procedural Order No. 4 – Annex B

ANNEX B

SOUTH32 SA INVESTMENTS LIMITED

v.

REPUBLIC OF COLOMBIA

ICSID Case No. ARB/20/9

LIST OF PARTICIPANTS

Hearing on the Merits

15-18 March 2023

Washington, D.C.

TRIBUNAL	
Ms. Deva Villanúa	President
Prof. Guido S. Tawil	Co- Arbitrator
Dr. Andrés Jana Linetzky	Co-Arbitrator

ASSISTANT TO THE TRIBUNAL	
Ms. Francisca Seara Cardoso	Assistant to the Tribunal

ICSID SECRETARIAT	
Ms. Catherine Kettlewell	Secretary of the Tribunal

CLAIMANT	
Mr./Ms. First Name/ Last Name	Affiliation
<i>Counsel:</i>	
<i>Parties:</i>	
<i>Witness:</i>	

Procedural Order No. 4 – Annex B

<i>Expert:</i>	

RESPONDENT	
Mr./Ms. First Name/ Last Name	Affiliation
<i>Counsel:</i>	
<i>Parties:</i>	
<i>Witness:</i>	
<i>Expert:</i>	

COURT REPORTERS	
Mr./Ms. First Name/ Last Name	Affiliation

INTERPRETERS	
Mr./Ms. First Name/ Last Name	Affiliation