

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gran Colombia Gold Corp.

v.

Republic of Colombia

(ICSID Case No. ARB/18/23)

PROCEDURAL ORDER NO. 9

Members of the Tribunal

Ms. Jean Kalicki, President of the Tribunal
Professor Bernard Hanotiau, Arbitrator
Professor Brigitte Stern, Arbitrator

Assistant to the President of the Tribunal

Dr. Joel Dahlquist

Secretary of the Tribunal

Ms. Ana Constanza Conover Blancas

6 May 2021

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I. PROCEDURAL BACKGROUND

1. On 29 April 2021, the Respondent requested a 7-week extension of the deadline to submit its Memorial on Jurisdiction and Counter-Memorial on the Merits (the “**Counter-Memorial**”), currently scheduled for 13 May 2021 (the “**Request**”). In its Request, the Respondent referred to restrictions related to the COVID-19 pandemic, which it said had significantly affected its work on the Counter-Memorial. The Respondent also argued that its requested extension could be accommodated within the procedural calendar already in place.
2. On the Tribunal’s invitation, the Claimant responded to the Respondent’s Request on 3 May 2021, objecting to the Request as being “excessive and unreasonable.” The Claimant also included a counterproposal, affording the Respondent a 2-week extension for its Counter-Memorial while also extending by 2 weeks the Claimant’s overall briefing time for its later Counter-Memorial on Jurisdiction and Reply on the Merits (the “**Reply**”). The Claimant contended that this would accommodate the concerns the Respondent raised in the Request, without causing prejudice to either party.
3. The Tribunal has considered the Parties’ positions, and now issues this Procedural Order No. 9, setting out the revised dates of the procedural calendar for this arbitration.

II. THE TRIBUNAL’S ANALYSIS

4. The Tribunal is sympathetic to the difficulties posed by the COVID-19 pandemic for parties and counsel in many jurisdictions, including those cited by the Respondent in its Request. On the other hand, the Tribunal notes that such challenges are hardly new at this point in the life of the pandemic, and expects that the Parties already took them into account in the discussions in December 2020 which led to their agreed prior extension of 8 weeks for the Respondent’s Counter-Memorial. The Tribunal also notes that the further 7-week extension the Respondent seeks would bring the final stages of the procedural schedule very close to the reserved Hearing dates, and would leave virtually no flexibility to address future unforeseen circumstances. In these circumstances, the Tribunal considers a further 7-week extension to be unwarranted.

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5. At the same time, the Tribunal does not accept that an extension granted to one party based on particular circumstances said to be creating difficulties for it automatically warrants a commensurate extension of the other party's briefing intervals, absent claims that it is experiencing commensurate difficulties. Equal treatment of the parties in arbitration is not a rigid mathematical concept to be applied reflexively without consideration of applicable circumstances. In this instance, the Claimant has not articulated why it anticipates needing an extension for its Reply, and therefore why any extension granted to the Respondent for the Counter-Memorial should be measured by what extension equivalently might be incorporated for the Reply. Moreover, the existing schedule already provides for a quite extended period of time for the Claimant's Reply, as measured from its receipt of the Respondent's Counter-Memorial (37 weeks) and not solely from the completion of the intervening document production phase (16 weeks from the second-stage document production after the Tribunal's ruling on disputed issues).

6. Taking these considerations into account, the Tribunal grants the Respondent 4 additional weeks to complete its Counter-Memorial, on the understanding that *no additional extension requests* will be entertained for that filing, absent some new and particularly compelling developments of such a nature as might justify adjourning the scheduled hearing dates. As for the Claimant's subsequent Reply, the Tribunal will address any potential extension request on its own merits, if and when presented.

III. ORDER

7. For the reasons stated above, Scenario 2 of Annex A to Procedural Order No. 1 is hereby amended as follows:

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PROCEDURAL SCHEDULE FOR THE PROCEEDINGS			
Description	Party/Tribunal	Period of Time (from prior step)	Date
Respondent's Memorial on Jurisdiction and Counter-Memorial on the Merits	Respondent	28 weeks from Decision on Jurisdiction	10 June 2021
Requests for production of documents	Claimant and Respondent	4 weeks	8 July 2021
Cut-off date to apply for leave to file a non-disputing party submission pursuant to Art. 831 of the FTA	Non-Disputing Parties		
Responses, including any objections, to requests for production, and production of non-objected documents	Claimant and Respondent	4 weeks	5 August 2021
Responses to non-disputing party applications, if any	Claimant and Respondent	1 week	12 August 2021
Reply to objections to requests for document production and transmittal of schedules to the Tribunal	Claimant and Respondent	4 weeks	9 September 2021
Decision concerning applications from Non-Disputing Parties	Tribunal		
Deadline for Non-Disputing Party Submissions	Non-Disputing Parties	2 weeks	23 September 2021
Decision by the Tribunal on parties' requests for document production	Tribunal	2 weeks	7 October 2021
Production of documents as ordered by the Tribunal	Claimant and Respondent	4 weeks	4 November 2021
Claimant's Counter-Memorial on Jurisdiction and Reply on the Merits	Claimant	16 weeks (37 weeks from Counter-Memorial)	24 February 2022
Respondent's Reply on Jurisdiction and Rejoinder on the Merits	Respondent	16 weeks	16 June 2022

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PROCEDURAL SCHEDULE FOR THE PROCEEDINGS			
Description	Party/Tribunal	Period of Time (from prior step)	Date
Claimant's Rejoinder on Jurisdiction	Claimant	5 weeks	21 July 2022
Parties to exchange list of witnesses and experts to be cross-examined at the hearing	Claimant and Respondent	1 week	28 July 2022
Additional witnesses called by the Tribunal to be cross-examined at the hearing	Tribunal	1 week	4 August 2022
Pre-hearing organizational meeting (by telephone conference) ¹	All	6 days	10 August 2022
Hearing on the Merits	All	4 weeks	7 September 2022 through 16 September 2022
Post-Hearing Memorials	Claimant and Respondent	–	Need and Timing TBD
Submissions on Costs	Claimant and Respondent	–	TBD
Award/Decision	Tribunal	–	TBD

For and on behalf of the Tribunal,

[Signed]

Ms. Jean Kalicki
President of the Tribunal
Date: 6 May 2021

¹ The pre-hearing organizational meeting shall begin at 6 p.m. London time. In accordance with section 20.1 of Procedural Order No. 1, the Tribunal reserves the right to have the President participate on her own on behalf of the Tribunal.