

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

GCM Mining Corp. (formerly Gran Colombia Gold Corp.)

v.

Republic of Colombia

(ICSID Case No. ARB/18/23)

PROCEDURAL ORDER NO. 12

on the Organization of the Hearing

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

19 July 2022

Procedural Order No. 12

Contents

| | | |
|-----|----------------------------------------------------------|----|
| I. | PROCEDURAL BACKGROUND..... | 1 |
| II. | ORGANIZATION OF THE HEARING | 2 |
| | A. Date and Format..... | 2 |
| | B. Order of Proceedings and Schedule..... | 5 |
| | C. Time Allocation | 6 |
| | D. Witness and Expert Examination..... | 8 |
| | E. Documents for Use at the Hearing..... | 13 |
| | F. Audio and Video Recordings..... | 15 |
| | G. Transcription..... | 16 |
| | H. Interpretation..... | 17 |
| | I. Post-Hearing Submissions and Statements of Costs..... | 18 |
| | J. Open Hearing..... | 18 |
| | K. Participants..... | 19 |
| | L. Health & COVID-19 Protocol | 19 |
| | Annex A | 21 |
| | Annex B | 24 |
| | Annex C | 26 |

Procedural Order No. 12

I. PROCEDURAL BACKGROUND

1. Pursuant to Section 20.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the President of the Tribunal was held by videoconference on 13 July 2022 (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:

Tribunal:

Ms. Jean Kalicki, President of the Tribunal

Assistant to the President of the Tribunal:

Dr. Joel Dahlquist

ICSID Secretariat:

Ms. Ana Conover, Secretary of the Tribunal

Ms. Andrea Clavijo, Paralegal

On behalf of the Claimant:

Mr. John J. Hay

Ms. Diora Ziyayeva

Ms. Julia Grabowska

Ms. Menglan Guo

Mr. Cody Anthony

Ms. Ana Restrepo

Dentons US LLP

Mr. Barton Legum

Mr. Antoine Weber

Honlet Legum Arbitration SARL

On behalf of the Respondent:

Ms. Elizabeth Prado López

Ms. Marcela Silva Zambrano

Agencia Nacional de Defensa Jurídica del Estado

Procedural Order No. 12

Mr. Fernando Mantilla-Serrano
Mr. Samuel Pape
Mr. Diego Romero
Mr. Ram Mashru
Mr. Hugo Varenne
Mr. Matias Zambrano

Latham & Watkins

2. During the Pre-Hearing Conference, the Parties and the President of the Tribunal discussed the draft Procedural Order circulated to the Parties on 30 June 2022, and the Parties' joint statements of 11 and 12 July 2022 advising the Tribunal of the agreements reached on the various items, as well as their respective positions where no agreement was reached.
3. 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 13 July 2022.
4. 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

5. The Hearing will take place in person in Washington DC on September 7-9 and September 12-16, 2022 at ICSID's Hearing Center located at 1225 Connecticut Ave., NW, Washington, D.C.
6. 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

Procedural Order No. 12

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

7. 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 Parties on the next steps, including whether to hold the Hearing remotely on the same scheduled dates.
8. To the extent any fact witness or expert is examined via video conference, the following rules shall apply in addition to the rules set out in Section D for the examination of witnesses and experts:
 - a. Each Party shall be responsible for ensuring that Hearing Participants in the examination connect to the Hearing Platform through a stable internet connection, offering sufficient bandwidth, and use a camera, microphone, and speaker of good quality.
 - b. Each Party shall instruct its witness or expert to testify from a quiet room, to the extent possible with a white or plain colored background, avoiding light sources (such as windows) behind them. The witnesses shall not use a virtual background, filter, or in any way prevent or limit the recording of them or the remote venue from which they are testifying.
 - c. Except for an unannotated copy of their witness statement(s) or expert report(s) pursuant to paragraph 22 *infra*, witnesses and experts shall give evidence sitting at an empty desk or table, and their face shall be clearly visible on the video. To the extent possible, the camera should be positioned at face level, relatively close to 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. 12

witness or expert, who shall speak directly to the camera while testifying and avoid making quick movements.

- d. The witness or expert shall use a computer set-up on which no programs other than the Hearing Platform and the real-time transcript are open and running. Except for an unannotated copy of his or her witness statement(s) or expert report(s) and the documents which will be shown on the screen during the examination, the witness or expert shall not be aided by any other documents, notes or otherwise, in hard copy or electronic format.
- e. During testimony, the witness or expert shall switch his or her mobile phone to flight mode and shall have no access to emails, chat programs, or other means of communication.
- f. Each Party will be responsible for arranging the technical set-up for the witness or expert it has produced for cross-examination by the other Party. The technical set-up shall include: (i) two monitors on which the witness or expert can view the Zoom meeting room and view the documents being presented electronically; (ii) one camera facing the witness or expert; (iii) one camera that provides a 360° view of the room in which the witness or expert is testifying; (iv) a computer or other device (*e.g.* an iPad) showing the live transcript; and (v) a microphone and speakers of good quality.
- g. Witnesses and Experts are to be alone in the room from where they participate except that one technician may be in the same room, unless determined otherwise by the Tribunal after consultation with the Parties.
- h. Prior to their examination, the witness or expert will confirm the identity of the individuals present in the room or, if applicable, he or she will confirm that they are the only person present in the room. Each witness and expert shall affirm at the start of the examination that he or she will not receive or make communications of any sort during the course of his or her examination.

Procedural Order No. 12

- i. The witness or expert to be examined shall connect to the virtual waiting room of the Hearing Platform 30 minutes before his or her examination to ensure that he or she is available in time to be brought into the virtual Hearing Room. During the breaks, the witness or expert will be placed in a virtual waiting room.
 - j. Any communication with the witness or expert related to the subject of the dispute is prohibited during his or her examination or during breaks in his or her examination.
 - k. The Parties shall (i) provide their respective witnesses and experts with the contact details of the Tribunal Secretary and the technical operator to be contacted (off platform) in the event of a disconnection or other technical failure, and (ii) instruct their witnesses and experts that it is impermissible to record the examination and to allow unauthorized observers, (*i.e.*, persons who are not Hearing Participants), to attend.
9. Witnesses and / or experts testifying remotely are encouraged to have two screens to facilitate simultaneous viewing of the video connection and documents.

B. ORDER OF PROCEEDINGS AND SCHEDULE

- 10. The Hearing presumptively will start each day at 9 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. On the final hearing day, September 16, 2022, the hearing must conclude by 2:15 p.m. (EDT).
- 11. The Hearing will start with opening remarks and housekeeping matters from the Tribunal, followed by Claimant's opening statements, Respondent's opening statements, the examination of witnesses and experts, and closing remarks from the Tribunal at the end of the Hearing.
- 12. Pursuant to Section 21.8 of Procedural Order No. 1 and Article 827(2) of the Canada-Colombia Free Trade Agreement (the "**Treaty**"), Canada may attend the hearing and make oral submissions to the Tribunal on questions of interpretation of the Treaty.

Procedural Order No. 12

On 18 July 2022, the Government of Canada confirmed that it would attend the Hearing and that it did not intend on making oral submissions at the Hearing unless an unexpected issue regarding the interpretation of the Treaty were to arise, in which case Canada would seek further directions to make any further submission in a way that did not disrupt the proceedings.

13. On or before 3 August 2022, the Parties will present to the Tribunal a joint, indicative hearing schedule setting out the order and structure of the Hearing, including the number and length of breaks, or each Party's separate position in the event they cannot agree 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. Nevertheless, the specific time allocations for individual examinations reflected in the Agenda are to be used for indicative purposes only, and do not strictly bind either Party.
14. 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 disruptions.

C. TIME ALLOCATION

15. A total number of 8.5 hours are reserved for Days 1-7 of the Hearing, and 5.25 hours are reserved for Day 8 of the Hearing. After excluding time reserved for breaks, Tribunal time and a certain amount of inevitable slippage, each Party shall have a total time allocation for the Hearing of no more than 20.5 hours, inclusive of opening statements.
16. Each Party shall be free to spend its allocated time in the manner it sees fit, so long as the total amount of time allotted to that Party, the order of presentations 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 3 hours for its opening statement.

Procedural Order No. 12

(b) *Examination of witnesses and experts:*

- *Direct examination of fact witnesses.* The direct examination of a fact witness shall not exceed 10 minutes, pursuant to section 18.10 of Procedural Order No. 1.
- *Direct presentations by experts.* The presentation by an expert shall not exceed 30 minutes, pursuant to section 18.10 of Procedural Order No. 1.

17. In calculating time used during the Hearing, the Tribunal incorporates the following presumptions:

- a. Time spent by a Party on direct and re-direct examination, as well as on expert presentations, shall count against the Party presenting the witness or expert. Time spent by a Party on oral argument and on the cross examination of the other party's witnesses or experts, is counted against that Party's time.
- b. Time attributable to minor Tribunal questions to counsel, to clarify points being made, shall not interrupt the clock for the Party otherwise conducting that argument, but any extended Tribunal questioning will be allocated to reserved Tribunal time.
- c. Time spent in addressing any logistical or housekeeping matters, will not be subtracted from the Parties' allotted time.
- d. Time spent on incidental procedural discussions will not be allocated to Party time, but in the event of significant applications or objections requiring extended discussion, time spent resolving the matter may be charged against the Party which unsuccessfully made the application or objection or wrongfully resisted it, or may be charged in equal amounts to both Parties, as the Tribunal considers appropriate in the circumstances.

Procedural Order No. 12

- e. Lost time attributed to the late arrival of counsel or witnesses, other than for reasons outside of reasonable Party control, will be charged against the Party responsible.
- f. The Parties are expected to seek to use the Hearing days efficiently and to avoid unnecessary slippage (e.g., requests for extra breaks between witnesses, or to defer the start of an examination until the next day despite time remaining in a given day). To this end, as a general rule, each witness/expert shall be available for examination half a day before and after the time at which his/her examination is anticipated in Annex A. In the event of excess slippage, the Tribunal may revisit the length of one or more sitting days, 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.
- g. The Secretary of the Tribunal will keep a chess clock account of time used and advise the Parties at the end of each Hearing day of the length of time used.

D. WITNESS AND EXPERT EXAMINATION

- 18. The rules set out in Procedural Order No. 1 for the examination of witnesses and experts are confirmed. The examination and cross-examination will proceed in accordance with Section 18 of Procedural Order No. 1, which reads as follows:
 - 18.1. Any person may present evidence as a witness, including a party or a party's officer employee or other representative.
 - 18.2. On the date indicated in Annex A, each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party, whose statement or report has been submitted, it wishes to cross-examine at the hearing.
 - 18.3. On the date indicated in Annex A, the Tribunal will indicate the names, if any, of the witnesses or experts whose statement or report has been submitted, not called by the parties, whom it wishes to examine at the hearing.
 - 18.4. Any witness who has submitted a witness statement or an expert report must, at the request of the other party made in accordance with the time-

Procedural Order No. 12

limits set out in the procedural timetable in Annex A, or at the request of the Tribunal, be made available for examination at the hearing.

- 18.5. Each party shall be responsible for summoning and securing the appearance of its own fact and expert witnesses to the hearing when called for cross-examination by another party or the Tribunal, and shall assume the costs of appearance of such witnesses in the first instance without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
- 18.6. If a witness or expert fails to appear at the hearing without justification, the Tribunal may, after hearing the parties, direct that the witness statement of such witness or report of such expert be struck from the record, or may attach such weight to the witness statement or expert report as it may consider appropriate in the circumstances.
- 18.7. The Tribunal may, in its discretion, keeping the facts and circumstances in view and after hearing the parties in this regard, permit a witness to be examined by video conference or permit alternative arrangements for taking of his/her testimony.
- 18.8. If a party has not called another party's fact or expert witness for cross-examination, that will not be deemed as an admission by that party nor will it imply that the party accepts that the substance of the relevant witness statement(s) or expert report(s) as correct or proven. Rather, the statement or report of such a witness or expert shall be examined and weighed by the Tribunal, in its discretion, in light of all the evidence presented by the parties.
- 18.9. Pursuant to ICSID Arbitration Rule 35(1), witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3).
- 18.10. Witnesses will first be briefly examined by counsel for the party that is presenting the witness ("direct examination"), for the purpose of introducing the witness and having him or her confirm the statement or report, including any corrections to be made thereto. Direct examination may not introduce new matters not already covered by the written statement or report, except as necessary to address new matters raised in the other party's last written submission. Experts may give a presentation before the start of their cross-examination, in lieu of traditional direct examination. Direct examination of fact witnesses presumptively shall not exceed 10 minutes, and expert presentations presumptively shall not exceed 30 minutes, subject to revisiting these presumptions with the parties during the pre-hearing organizational meeting or for good cause shown.

Procedural Order No. 12

- 18.11. Following direct examination and/or expert presentations, the witness may then be examined by counsel for the opposing party (“cross-examination”). Cross-examination of a witness shall not go beyond the scope of the issues and matters covered in the written witness statement and the documents on the record. The cross-examination of an expert shall remain within the confines of the issues on which the expert has opined.
 - 18.12. Following the cross-examination, “re-direct examination” of a witness or expert may be carried out by the party presenting that witness or expert, but shall be limited to the matters that arose during cross-examination of that witness or expert.
 - 18.13. The Tribunal may examine the witness or expert at any time during the oral procedure.
 - 18.14. The presence of fact and expert witnesses in the hearing room prior to giving their oral evidence shall be discussed between the parties prior to the pre-hearing organizational meeting... and, if required, decided by the Tribunal at that meeting.
19. After re-direct examination no further questioning, other than questions by the Tribunal, shall be permitted unless ordered by the Tribunal upon reasoned application.
 20. Experts who have presented joint reports will be examined simultaneously. For the cross-examination of these experts, the questions will be directed to the lead expert in the group as designated by the Party presenting the experts, or alternatively to the expert designated in advance by such Party as responsible for particular sections of a joint report. An expert to whom a question is directed may determine that the other expert should respond to the question. However, only one expert may respond to a given question, subject to possible exceptions granted by the Tribunal upon specific request by the experts themselves.
 21. 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 prior to their examination, including during oral submissions and testimony of other fact and expert witnesses.

Procedural Order No. 12

22. The witness or expert shall have an unannotated 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.

In addition, the Party conducting the cross-examination may provide a cross-examination bundle (*i.e.* a bundle of exhibits or legal authorities on the record to which the witness or expert is to be referred, including an index identifying the relevant tab and exhibit / legal authority number) immediately before the cross-examination. The Party conducting the cross-examination may provide hard copies to be distributed among the witness or expert being cross-examined (one copy), the Tribunal (three copies) and the other Party (two copies). The Tribunal may instruct the Parties to provide the court reporters and interpreters with an electronic copy of a cross-examination bundle before the start of a cross-examination, should they so require it.

23. Witnesses and experts shall have access to the real-time live transcripts during their examination.
24. If 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 that they may not speak with anyone about 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. The Parties will use their best efforts to try to complete the examination of a given fact or expert witness on the same day.
25. On 7 July 2022, the Parties called for cross-examination of the following witnesses and experts:

Procedural Order No. 12

a. The Respondent called for cross-examination of the following witnesses and experts produced by the Claimant:

i. Witnesses

1. Mr. Lombardo Paredes Arenas
2. Mr. Gabriel Gaviria
3. Mr. Alejandro Ramírez Echeverry
4. Mr. Alessandro Cecchi
5. Mr. Benjamin Parsons
6. Mr. José Ignacio Noguera

ii. Experts

1. Mr. Leonardo Güiza
2. Ms. Adriana Martínez
3. Mr. José Alberro
4. Mr. Bruce Kennedy

b. The Claimant called for cross-examination of the following witnesses and experts produced by the Respondent:

i. Witnesses

1. Mr. Alvaro José Chaves Guzmán
2. Mr. Javier García Granados
3. Mr. Fernando Gómez Molina
4. Mr. Luis Fernando Alvarado Ortiz

ii. Experts

1. Dr. Graham A. Davis
2. Ms. Bernarda Elizalde Mora

Procedural Order No. 12

3. Ms. Natalia González Parias

4. Mr. Mario E. Rossi

E. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

26. 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.
27. The Electronic Hearing Bundle index shall identify with **RED** material that has been designated as “confidential information”, in accordance with Article 830(2) of the Canada-Colombia FTA and Section 21.7 of Procedural Order No. 1.
28. The Electronic Hearing Bundle shall be uploaded by the Claimant to a designated sub-folder in the BOX filesharing platform no later than 24 August 2022. 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 filesharing platform and including a consolidated (non-hyperlinked) index. For the avoidance of doubt, the Electronic Hearing Bundle Format will be an extension of the one prepared for the jurisdictional hearing.
29. The court reporters and interpreters will be provided with a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
30. In addition to uploading the Electronic Hearing Bundle to Box, and unless otherwise advised, a USB device with a copy of the Electronic Hearing Bundle shall be delivered to the Members of the Tribunal, the Assistant to the President of the Tribunal, the Secretary of the Tribunal, the interpreters and the court reporters no later than a date to be decided by

Procedural Order No. 12

the Tribunal. For the President of the Tribunal, Professor Hanotiau and the Secretary of the Tribunal, the USB device with a copy of the Electronic Hearing Bundle shall be hand-delivered at the start of the Hearing. For Professor Stern, the USB device with a copy of the Electronic Hearing Bundle shall be couriered to her by 24 August 2022.

The final combined index will be submitted by Respondent to the Tribunal and the Claimant on USB drives.

2. Demonstrative Exhibits

31. Demonstrative exhibits (including a Power Point or other slide presentations) shall be used in accordance with Section 16.8 of Procedural Order No. 1 (reproduced below) with certain adjustments indicated in paragraph 32 *infra*:

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 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 hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.

32. Section 16.8 of Procedural Order No. 1 above is amended as follows:

- a. The term “demonstrative exhibit” is understood as including charts, tabulations and compilations that are based on evidence of record but that do not exist on the record in that form, and do not include PowerPoint slides that merely quote or reproduce documents already in the record.
- b. Hard copy submission of demonstrative exhibits is not required. However, each party shall distribute an electronic copy of any demonstrative exhibits no later than 5 p.m. the day before the demonstrative exhibit is intended to be used at the Hearing. A demonstrative exhibit shall be distributed by the Party intending to use it via email sent to the entire case email distribution for each Party, the Secretary of

Procedural Order No. 12

the Tribunal, the Assistant to the President of the Tribunal, the Members of the Tribunal, and to the court reporters and interpreters.

- c. The Parties and experts may use PowerPoint slides or other visual aids for their opening statements and expert presentations. Hard copies of these presentations or visual aids shall be distributed to the other Party (2 copies), Tribunal Members (three copies), the Assistant to the President of the Tribunal (one copy), the Secretary of the Tribunal (one copy), the court reporters (two copies), and the interpreters (two copies) immediately prior to the commencement of the oral statement or expert presentation. In addition, each Party shall distribute an electronic copy of any PowerPoint slides or other visual aids no later than 1 hour prior to their use at the Hearing via email sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Assistant to the President of the Tribunal, the Members of the Tribunal, and to the court reporters and interpreters.

33. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit, PowerPoint slide or other visual aid is used, the Parties shall upload such documents to the case folder in the BOX filesharing platform. With respect to demonstrative exhibits, these shall be saved in BOX with the corresponding number: “CD-__” for Claimant’s demonstrative exhibits, and “RD-__” for Respondent’s demonstrative exhibits.

F. AUDIO AND VIDEO RECORDINGS

34. The provisions of Procedural Order No. 1, Section 22.1 concerning audio recording (reproduced below) apply.

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

35. Further to Procedural Order No. 1 Section 22.1, video recordings shall also be made. The audio and video recording shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Tribunal at the conclusion of the Hearing. Except for

Procedural Order No. 12

the court reporters, Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.

G. TRANSCRIPTION

36. The provisions of Procedural Order No. 1, Sections 11.8 and 22.2 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraphs 37-41 below.

11.8. Either procedural language, English or Spanish, may be used during hearings, with simultaneous interpretation to the other procedural language. Transcripts shall be taken in both procedural languages.

[...]

22.2. Verbatim transcripts in the 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.

The parties shall agree on any corrections to the transcripts within thirty (30) days of the later of the dates of the receipt of the complete sound recordings and transcripts. The agreed corrections may be entered by the court reporter 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.

37. Real-time court reporting in English and Spanish shall be made available to the Hearing Participants and electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.

38. The Parties shall exchange their corrections to the transcripts within fifteen (15) days of the later of the dates of the receipt of the complete sound recordings and transcripts.

39. The Parties shall exchange comments to the other Party’s transcripts and submit any disagreements to the Tribunal within seven (7) days. The agreed corrections may be entered by the court reporter in the transcripts.

40. The Tribunal shall rule on any disagreements within seven (7) days.

Procedural Order No. 12

41. The court reporter shall finalize the revised transcripts within ten (10) days of either (i) the Parties' submission of their joint corrections pursuant to paragraph 39 above, if there are no disagreements, or (ii) the Tribunal's ruling pursuant to paragraph 40, if the Parties have submitted any disagreement to the Tribunal.

H. INTERPRETATION

42. ICSID will make the required arrangements for simultaneous interpretation into English and Spanish and communicate them to the Parties and Tribunal in due course. The following of the parties' witnesses and experts are expected to testify in Spanish:

a. Witnesses and experts produced by the Claimant:

i. Witnesses

1. Mr. Lombardo Paredes Arenas
2. Mr. Gabriel Gaviria
3. Mr. Alejandro Ramírez Echeverry
4. Mr. José Ignacio Noguera

ii. Experts

1. Mr. Leonardo Güiza
2. Ms. Adriana Martínez

b. Witnesses and experts produced by the Respondent:

i. Witnesses

1. Mr. Alvaro José Chaves Guzmán
2. Mr. Javier García Granados
3. Mr. Fernando Gómez Molina
4. Mr. Luis Fernando Alvarado Ortiz

Procedural Order No. 12

ii. Experts

1. Ms. Bernarda Elizalde Mora
2. Ms. Natalia González Parias

43. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
44. Each Participant should, insofar as possible, circulate any speaking notes 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

45. The provisions of Procedural Order No. 1, Sections 23.1 and 23.2 (reproduced below) apply.
 - 23.1. The Tribunal and the parties will consider the need for post-hearing submissions at the close of the hearing.
 - 23.2. The Tribunal shall fix the modalities (including format and time) for submissions of statements of costs at the close of the hearing.
46. For the avoidance of doubt, the reference to post-hearing submissions in Section 23.1 of Procedural Order No. 1 encompasses the possibility of either or both oral and written submissions, to be determined upon consultation with the Parties before the close of the Hearing.

J. OPEN HEARING

47. In accordance with Section 21.7 of Procedural Order No. 1 and Article 830(2) of the Canada-Colombia FTA, the Hearing shall be open to the public. The Tribunal may hold portions of the Hearing *in camera* to the extent necessary to ensure the protection of confidential information.

Procedural Order No. 12

48. To comply with the above-referenced open hearing provision, video recordings of the Hearing will be posted for viewing in the ICSID website, in the “floor” language, i.e., using the original language of the speaker.
49. Any information designated by one or both Parties as being confidential will be excluded from the public recordings, as further addressed in the Protocol attached hereto as **Annex C**.
50. The availability of the Hearing recordings will be announced publicly via the ICSID website in English and Spanish. The video recordings of the Hearing will be available online for 24 hours only.

K. PARTICIPANTS

51. Each Party shall provide its respective list of Hearing participants (“**List of Participants**”) by 19 August 2022, using the format provided in **Annex B**.
52. The ICSID Secretariat has reserved a hearing room and break out rooms for each Party and the Tribunal.

L. HEALTH & COVID-19 PROTOCOL

53. 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. The current requirements for entry to the Hearing room is that all individuals who will be attending the Hearing must be fully vaccinated against COVID-19. Counsel for each Party should confirm by the Pre-Hearing Conference (*i.e.*, 13 July 2022) whether all intended in-person participants are in compliance with this requirement.
54. Unless otherwise determined by the Tribunal after consultation with the Parties, all Hearing participants must wear surgical masks or N95/KN95/KF94 style masks, fully covering their

Procedural Order No. 12

nose and mouth, while in attendance in person in the hearing room.² Only the person who is addressing the Tribunal or a witness or expert, as well as the witness or expert who is being questioned, may remove their mask during their examination. Participants may remove their masks temporarily to drink.

55. 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 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.
56. 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.
57. If within 10 days after the Hearing has ended, any of the Hearing participants present symptoms or test positive with COVID-19, they must immediately inform the other Party and the Tribunal.

For and on behalf of the Tribunal,

[Signed]

Ms. Jean Kalicki
President of the Tribunal
Date: 19 July 2022

² Each Party shall be responsible for ensuring that they have enough masks throughout the duration of the Hearing.

Procedural Order No. 12 – Annex A

ANNEX A

GCM MINING CORP. (FORMERLY GRAN COLOMBIA GOLD CORP.)

V.

REPUBLIC OF COLOMBIA

(ICSID Case No. ARB/18/23)

AGENDA

Hearing on Jurisdiction and Merits

7 to 16 September 2022
Washington, D.C.

At least one morning break, one lunch break and one afternoon break should be included per hearing day. Small breaks every 1.5 – 2 hearing hours should also be included in the agenda for the benefit of the court reporters and interpreters.

Day 1: Wednesday, 7 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Day 2: Thursday, 8 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Procedural Order No. 12 – Annex A

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Day 3: Friday, 9 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Day 4: Monday, 12 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Day 5: Tuesday, 13 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Procedural Order No. 12 – Annex A

Day 6: Wednesday, 14 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Day 7: Thursday, 15 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Day 8: Friday, 16 September 2022

| <i>Hour</i> | <i>Duration</i> | PROCEDURAL STEP |
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Procedural Order No. 12 – Annex B

ANNEX B

GCM MINING CORP. (FORMERLY GRAN COLOMBIA GOLD CORP.)

V.

REPUBLIC OF COLOMBIA

(ICSID Case No. ARB/18/23)

LIST OF PARTICIPANTS

Hearing on Jurisdiction and Merits

7 to 16 September 2022
Washington, D.C.

| TRIBUNAL | |
|------------------------|----------------|
| Ms. Jean Kalicki | President |
| Prof. Bernard Hanotiau | Co- Arbitrator |
| Prof. Brigitte Stern | Co-Arbitrator |

| ASSISTANT TO THE PRESIDENT OF THE TRIBUNAL | |
|---------------------------------------------------|--------------------------------------------|
| Dr. Joel Dahlquist | Assistant to the President of the Tribunal |

| ICSID SECRETARIAT | |
|--------------------------|---------------------------|
| Ms. Ana Conover | Secretary of the Tribunal |

| CLAIMANT | |
|--------------------------------------|--------------------|
| Mr./Ms. First Name/ Last Name | Affiliation |
| <i>Counsel:</i> | |
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| <i>Parties:</i> | |
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| <i>Witness:</i> | |
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| <i>Expert:</i> | |
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Procedural Order No. 12 – Annex B

| RESPONDENT | |
|-------------------------------|-------------|
| Mr./Ms. First Name/ Last Name | Affiliation |
| <i>Counsel:</i> | |
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| <i>Parties:</i> | |
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| <i>Witness:</i> | |
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| <i>Expert:</i> | |
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| NON-DISPUTING TREATY PARTY (GOVERNMENT OF CANADA) | |
|---------------------------------------------------|-------------|
| Mr./Ms. First Name/ Last Name | Affiliation |
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| COURT REPORTERS | |
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| INTERPRETERS | |
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Procedural Order No. 12 – Annex C

ANNEX C

GCM Mining Corp. (formerly Gran Colombia Gold Corp.)

v.

Republic of Colombia

(ICSID Case No. ARB/18/23)

Hearing on Jurisdiction and Merits

7 to 16 September 2022

Washington, D.C.

PROTOCOLS FOR PROTECTION OF “CONFIDENTIAL INFORMATION”

A. OBJECTIVES

1. These protocols are established to ensure:
 - a. Appropriate logistical arrangements for the open Hearing, in accordance with the transparency regime established by Article 830 of the Canada-Colombia FTA.
 - b. The protection of “confidential information” (as defined in Article 838 of the Canada-Colombia FTA).
 - c. An efficient, smooth and minimally disrupted Hearing.

B. GENERAL RULES

2. As agreed by the Parties, the Hearing will be recorded. A copy of the recording will be posted on the ICSID website within six (6) weeks after the conclusion of the Hearing and shall be available online for 24 hours only.
3. The disclosure of confidential information shall be prevented, when necessary, through the moderation of the recording of the Hearing. The term ‘moderation’ means that the video recording of the hearing will be edited by ICSID to exclude confidential information, within six (6) weeks after the hearing concludes. The Parties will have the opportunity to review the video recording before it is posted on the ICSID website.

Procedural Order No. 12 – Annex C

4. The Parties shall follow the protocols established below to alert the Tribunal of the use of “confidential information” during the Hearing and request the “moderation” of the video feed.

C. PROTOCOLS

5. At any time during the Hearing, a Party may request that a part of the Hearing be held in private and that confidential information be excluded from the recording. To this effect, a Party shall inform the Tribunal **before** the “confidential information” is discussed, addressed or shown at the Hearing.
6. The Parties are responsible to identify, **before** discussing, addressing or showing documents or information, whether these are “confidential information” or could raise confidentiality issues.
7. To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements so that those which involve “confidential information” are grouped together, wherever possible.
8. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention.
9. If a Party has an objection to a moderation request made by the other Party, it shall alert the Tribunal as soon as possible. The Tribunal shall rule on any dispute between the Parties in that respect promptly after the hearing.