

**IN THE MATTER OF AN ARBITRATION UNDER
THE RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES**

BETWEEN:

SARAMA RESOURCES LTD

Claimant

-and-

PEOPLE'S REPUBLIC OF BURKINA FASO

Respondent

CLAIMANT'S MEMORIAL

31 October 2025

BSF

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TABLE OF ABBREVIATIONS

Defined Term	Definition
2003 Mining Code	Loi N° 031-2003/AN Code Minier du Burkina Faso dated 8 May 2003
2015 Mining Code	Loi N° 036-2015/CNT Code Minier du Burkina Faso
AC	Air core drilling
Acacia	Acacia Mining plc
ACTLABS	Activation Laboratories Ltd
Adama Kindo or Mr Kindo	Burkinabe mining entrepreneur whose relative, Ousmane Birba, owned the Tankoro Permit when Sarama began its commercial activities in Burkina Faso
Additional Projects	The Koumandara Project and the Karankasso Project
AFS	Audited financial statements
ALS	ALS Group
APT	Appropriate Process Technologies
Arrêté	An administrative record or receipt of the permit ownership
ASX	Australian Securities Exchange
August Application	Permit Application Form No. 4272 for Tankoro 2 Permit by Sarama Mining Burkina SARL dated 6 August 2021
Barrick	Barrick Exploration Africa Ltd
BIOX	Biological Oxidation
BIT	Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments (2015)
Bondi Deposit	A neighbouring deposit located to the northeast of the Tankoro Deposit within 35 km trucking distance
Burkina Faso	People's Republic of Burkina Faso
BVI	British Virgin Islands
Cadastre	The Mining Cadastre General Directorate in Burkina Faso
Canada-Peru FTA	Canada-Peru Free Trade Agreement
CIL	Carbon-in-leach gold extraction method
CIMVAL	Canadian Institute of Mining, Metallurgy and Petroleum
Cube	Cube Consulting Pty Ltd

December Application	Permit Application form No. 4045 for Tankoro 2 permit by Sarama Mining Burkina SARL dated 18 December 2020
DFS	Definitive Feasibility Study
Djarkadougou 2 Permit	Second exploration permit covering the Bondi Deposit
Djarkadougou Permit	First exploration permit covering the Bondi Deposit
DRC	Democratic Republic of the Congo
Endeavour	Endeavour Mining plc
FET	Fair and equitable treatment
First Information Notice	Information Notice issued by the Ministry of Energy, Mines and Quarries dated 12 October 2020
FMV	Fair market value
ICJ	The International Court of Justice
ILC Articles	International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts
IP	Induced polarisation
IPO	Initial public offering
JORC	Australian Joint Ore Reserve Committee
<i>journaliers</i>	Local day-labourers
Karankasso JV	A joint venture between Sarama and Savary Gold Corp.
Karankasso Project	Sarama's joint venture with Endeavour Mining plc over the Karankasso gold project
Korea – Burkina Faso BIT	Agreement Between the Government of the Republic of Korea and the Government of Burkina Faso for the Promotion and Protection of Investments (2004)
Koumandara Project	Sarama's wholly owned Koumandara gold project located in the nearby Banfora Belt to the west of the Sanutura Project
MC Prospect	Certain mineralised gold corridor in the Tankoro Deposit discovered by Sarama
MD&A	Management's Discussion and Analysis
MFN	Most favoured nation treatment
Minister of Mines	The Minister of Energy, Mines and Quarries
MM Prospect	Certain mineralised gold corridor in the Tankoro Deposit discovered by Sarama
Moto Gold	Moto Goldmines Limited

MST	Customary international law minimum standard of treatment
NAFTA	North American Free Trade Agreement
NI 43-101	Canadian National Instrument 43-101
NOBOs	Non-objecting beneficial owners
Notice of Intent	Letter from Sarama Resources Ltd to Minister of Energy, Mines and Quarries dated 29 November 2023
OBOs	Objecting beneficial owners
Orezone	Orezone Gold Corporation
<i>orpaillage</i>	Artisanal gold mining projects
Ousmane Birba or Mr Birba	The former owner of the Tankoro Permit and relative of Adama Kindo
PCIJ	Permanent Court of International Justice
PEA	Preliminary Economic Assessment
PFS	Pre-Feasibility Study
PMSR	The Patriotic Movement for Safeguard and Restoration
ppb	Parts per billion
QP	Qualified person
RAB	Reverse air blast drilling
RC	Reverse circulation drilling
Sagax	Sagax Afrique S.A
Sanutura Project or the Project	Sarama's flagship gold project in Burkina Faso
Sarama Faso	Sarama Faso SUARL
Sarama or the Claimant or the Company	Sarama Resources Ltd
Savary	Savary Gold Corp.
Second Information Notice	Information Notice issued by the Ministry of Energy, Mines and Quarries dated 1 June 2021
SEMAFO	SEMAFO Inc.
SGS	SGS Bureau de Liaison
SMB	Sarama Mining Burkina SARL
Soleil	Soleil Mining S.A.
SOMIKA	La Societe Minière Kindo Adama, a Burkinabe mining company beneficially owned by Mr Birba and Mr Kindo
SOPAMIB	La Société de Participation Minière du Burkina

SOREMIB	la Société de Recherche et d'Exploitation Minière du Burkina
South Houndé Project	The predecessor to the Sanutura Project
SWA	SWA SARL
Tankoro 2 Permit	Second exploration permit over the Tankoro Deposit granted by the Ministry of Mines on 24 November 2021 to Sarama
Tankoro Deposit	A mineral resource of approximately 2.5 million ounces of gold which Sarama discovered and formed the central component of the Sanutura Project
Tankoro Permit	First exploration permit over the Tankoro Deposit, acquired by Sarama from Ousmane Birba in
Tankoro Property	250 square kilometres in the middle of the Houndé Greenstone Belt
Taurus	Taurus Funds Management
The Ministry	Ministry of Energy, Mines and Quarries
ThreeBee Project	A group of Sarama's three properties in the Houndé Greenstone Belt
TSX	Toronto Stock Exchange
VALMIN	Australian Institute of Mining and Metallurgy and the Australian Institute of Geoscientists
VCLT	Vienna Convention on the Law of Treaties
WAF	West African Resources Ltd
Zanawa Prospect	A prospective area in the vicinity of the Bondi Deposit

1. INTRODUCTION

1. Sarama Resources Ltd (“**Sarama**” or the “**Claimant**”) submits this Memorial in support of its claims against the People’s Republic of Burkina Faso (“**Burkina Faso**” or the “**Respondent**”) under the Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments (the “**BIT**”),¹ and in accordance with Rule 30 of the ICSID Arbitration Rules and the procedural calendar established by the Tribunal.²
2. This dispute arises out of Burkina Faso’s unvarnished expropriation of the Claimant’s marquee mining asset, inevitably destroying the value of Sarama’s other projects in the country. Burkina Faso thereby breached the BIT in relation to the Claimant’s protected investments in Burkina Faso. The Claimant made those investments in the Sanutura gold project (the “**Sanutura Project**” or the “**Project**”) located in the prolific Houndé Greenstone Belt (the “**Houndé Greenstone Belt**”), a highly prospective gold belt in south-west Burkina Faso, and in the related **Koumandara** and **Karankasso Projects** (together, the “**Additional Projects**”).
3. A team of experienced mining and financial professionals incorporated Sarama in Vancouver, Canada in 2010. They focussed their expertise on Burkina Faso because of its promising but underexploited geology and its attractive, transparent regulatory environment. After closely studying the geography and permitting landscape, the company acquired an exploration permit in southwest Burkina Faso (the “**Tankoro Permit**”), which was already home to an artisanal mining operation. Over the ensuing decade, Sarama went to lengths to establish an industrial-scale gold mine and to progress the Project toward development. It conducted a series of increasingly successful drilling campaigns comprising tens of thousands of metres, which yielded a deep understanding of a major orebody with great promise. Sarama’s efforts eventually revealed a mineral resource of approximately 3 million tons of gold, which would become the focal point of the Sanutura Project.
4. Inspired by the promise of the Tankoro Permit, Sarama expanded its operations in the region. In December 2016, Sarama acquired an exploration permit covering the nearby **Bondi Deposit**, a smaller but gold-rich resource located 35 kilometres of trucking distance to the northeast, as well as the two Additional Projects located to the west.

¹ Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments, signed 20 April 2015 (entered into force on 11 October 2017) (“**BIT**”), **Exhibit CL-0003-ENG-FR**.

² See Procedural Order No. 1, dated 17 September 2025, at Annex B.

5. Sarama devised an accelerated, multi-stage approach to mining the underlying deposits. It planned a modular processing facility adjacent to its flagship Tankoro Deposit, which would serve as a shared hub for processing ore mined from the other areas of the Project. For instance, although the Bondi Deposit was too small to mine economically on its own, it would contribute high-quality feed to the central processing facility. That facility would expand to accommodate increasing quantities of ore extracted from Bondi and other deposits over their respective mine lives.
6. In late 2021, as the expiration date of its Tankoro Permit approached, Sarama lodged a new permit application with the Ministry. The Ministry approved the application as a matter of routine, and Sarama paid the requisite fee, thereby becoming the legal owner of the **Tankoro 2 Permit**.
7. By 2022, with its new permit in hand, Sarama began to prepare a preliminary economic assessment (“**PEA**”) and was in advanced negotiations with prefabricated plant manufacturers and specialist mining lenders. This work did not go unnoticed. Sarama gained international recognition for the quality and scale of the mineral resource it had uncovered and for its novel approach to mine development. For instance, at the 2022 Mining Indaba Conference in Cape Town, South Africa – arguably the world’s largest mining conference – an independent panel of mine finance professionals awarded Sarama the “Investment Battlefield” award, which aims to recognise the year’s most outstanding junior mining company.
8. That recognition did little to insulate Sarama and its carefully defined investment strategy from the political upheaval and resultant resource nationalism that followed in Burkina Faso. In September 2022, Capitaine Ibrahim Traoré, a fervently anti-Western 34-year-old military strongman, seized power in a *coup d’état*. In a campaign to rid Burkina Faso of “economic imperialism”, Capitaine Traoré targeted investments in the gold mining sector by Western investors, including Sarama, whilst ingratiating himself with Vladimir Putin’s Russia and its Wagner Group mercenaries.
9. Simon-Pierre Boussim, Capitaine Traoré’s hand-picked Minister of Mines, soon began to impose irregular demands upon Sarama for bizarre diplomatic assistance and extraordinary payments as unlawful preconditions for issuing the *arrêté* — *i.e.*, the formal title paperwork — for the Tankoro 2 Permit. In 2023, in one of a series of strange shifts in regulatory position, Minister Boussim informed Sarama that the Tankoro Deposit had allegedly become a “State-owned asset”, even though the Ministry had validly granted the permit in November 2021. The Minister offered to issue the *arrêté* only if Sarama could satisfy two unrelated and illegitimate

demands: first, to secure the reversal of a Canadian ban on exporting drone software technology; and subsequently, to make an arbitrary payment to the Ministry of 6 billion CFA francs (approximately US\$ 10.68 million) that had no basis in Burkinabe law.

10. As a junior miner, Sarama was patently in no position to influence the Canadian government's foreign policy and defence decisions. Nor could it comply with the Minister's exorbitant payment demand as all of its cash was dedicated to exploration and mine development efforts. Although Sarama attempted to negotiate a mutually satisfactory resolution, it ultimately could not accede to Burkina Faso's illegal demands.
11. On 25 August 2023, the Ministry retaliated for Sarama's inability to meet its ever-changing demands by revoking retroactively the Tankoro 2 Permit. The Ministry did not attempt to hide its retaliatory intent. The letter offered no pretext, no reasoning or even any legal basis for the measure. Indeed, its sole justification was Sarama's "inability to pay" the arbitrary and excessive sum that the Ministry had demanded. As Minister Boussim's letter made clear, the Ministry's demands amounted to little more than a naked cash grab.
12. The Minister quickly capitalised on the unlawful revocation of Sarama's permit. In September 2023, speaking at a mining conference in Perth, Australia, he advertised the Tankoro 2 Permit as being open "for sale". Not long after, the Ministry sold the permit and the property to a Burkinabe company beneficially owned by a political ally of Capitaine Traoré. The Ministry thereby ensured the Tankoro 2 Permit was permanently beyond Sarama's grasp. These discriminatory actions had no basis in Burkinabe law and were antithetical to the requirements of due process and transparency under international law.
13. The Tankoro 2 Permit had been the centrepiece of Sarama's investments in Burkina Faso. As such, its revocation had devastating and inevitable consequences for all of Sarama's projects. Indeed, Burkina Faso's unlawful revocation of the Tankoro 2 Permit destroyed not just Sarama's investment in developing the Tankoro Deposit, but the value of the entire Sanutura Project, including the Bondi Deposit. Because the Bondi Deposit was too small to mine economically on its own, divorced from the Tankoro Deposit it lost substantially all of its value. It became a stranded asset marketable only at a distressed price.
14. Burkina Faso's measures likewise denied Sarama the ability to utilise the Sanutura Project to generate the cash necessary to develop the Additional Projects. What is more, those measures sapped the confidence of potential investors who could otherwise have provided the funds to do so. In the absence of funding, Sarama's exploration work at the Koumandara Project ground

to a halt, erasing the project's potential value. This left Sarama with only one option: to realise the properties *de minimis* residual value through a distressed asset sale. Sarama's interest in the Karankasso Project is doomed to meet a similar fate. Without the ability to meet minimum expenditures Sarama's interests in that venture will gradually dilute until it approaches zero.

15. By virtue of its retroactive and unlawful revocation of the Tankoro 2 Permit, Burkina Faso breached its obligations under the BIT, including its obligation not to expropriate Sarama's investments under Article 10 of the BIT and its obligations to accord Sarama's investments fair and equitable treatment, national treatment, and most favoured nation treatment under Articles 6, 4, and 5, respectively.
16. Sarama is entitled to full compensation for Burkina Faso's treaty breaches. Under the standard of compensation set forth in Article 10(2) of the BIT, Burkina Faso must compensate Sarama for the fair market value of its lost investments.
17. Sarama provides the factual background to its claims in **section 2**. The Tribunal has jurisdiction over the dispute and Sarama's claims are admissible, as demonstrated in **section 3**. Burkina Faso's breaches of its obligations under the BIT are set out in **section 4**. Sarama's case on damages and its request for relief are set out in **sections 5 and 6**, respectively.
18. This Memorial is supported by the following witness statements:
 - (a) **Andrew Robert Mune Dinning**, Executive Chairman and Chief Executive Officer of the Claimant.³
 - (b) **Paul Schmiede**, Vice President of Corporate Development of the Claimant.⁴
 - (c) **Jack Hamilton**, Vice President of Exploration of the Claimant.⁵
19. In addition, the Memorial is supported by the expert report of **Edmond Richards** and **Simon Procopiou**, respectively a partner and a director at Accuracy who specialise in the assessment of damages.⁶

³ First Witness Statement of Mr Andrew Robert Mune Dinning, dated 31 October 2025 ("**Dinning WS1**").

⁴ First Witness Statement of Mr Paul Schmiede, dated 31 October 2025 ("**Schmiede WS1**").

⁵ First Witness Statement of Mr Jack Hamilton, dated 21 October 2025 ("**Hamilton WS1**").

⁶ Expert Report of Mr Edmond Richards and Mr Simon Procopiou, dated 31 October 2025 (the "**Accuracy Report**").

20. This Memorial is accompanied by the Claimant’s factual exhibits **C-0074** to **C-0381** and legal authorities **CL-0005** to **CL-0131**, listed in the Claimant’s Index of Factual Exhibits and Legal Authorities.

2. FACTUAL BACKGROUND TO THE CLAIM

21. Sarama is a Canadian company founded with a strategic focus on West Africa, and particularly on Burkina Faso – once an attractive jurisdiction for foreign investment. Sarama invested in gold exploration and development projects in Burkina Faso through locally incorporated subsidiaries (**section 2.1**).
22. Over the span of a decade, Sarama invested substantially in the Sanutura Project, which it advanced through to pre-development. After discovering the promising Tankoro Deposit, Sarama later acquired the nearby Bondi Deposit, laying the groundwork for a multi-deposit project which would process ore through a single, central facility. Sarama secured the required permits and approvals and commenced work on an accelerated development pathway. To that end, it actively advanced several workstreams towards the completion of a detailed Preliminary Economic Assessment (“**PEA**”) that would allow it to skip the preparation of a Pre-Feasibility Study (“**PFS**”) and move directly to a Definitive Feasibility Study (“**DFS**”) and, ultimately, construction of the Project (**section 2.2**).
23. In November 2022, however, Burkina Faso alluded to a potential “problem” with the Tankoro 2 Permit. By December 2022, Burkina Faso alleged that the Tankoro 2 Permit was a “state asset”. After Sarama refused to meet Burkina Faso’s series of extortionate payment demands, on 25 August 2023, nearly two years after Burkina Faso had granted Sarama the Tankoro 2 Permit, Burkina Faso unlawfully and retroactively revoked the Tankoro 2 Permit. Burkina Faso’s hostile acts destroyed Sarama’s investments in the Sanutura Project and the Additional Projects (**section 2.3**).

2.1 Sarama is a Canadian Company that Invested Substantially in Gold Exploration and Development Projects in Burkina Faso

24. A team of mining experts with a history of successfully discovering large gold deposits in Africa founded Sarama in Canada in 2010 (**section 2.1.1**). Sarama’s founders fixed the company’s strategic focus on West Africa, particularly Burkina Faso, owing to its known geological opportunity and the availability of underexplored and underexploited concessions (**section 2.1.2**). Sarama viewed Burkina Faso as a favourable jurisdiction for foreign investment because of, *inter alia*, its prescriptive Mining Code (**section 2.1.3**). Sarama

conducted operations in Burkina Faso through several wholly owned, locally incorporated subsidiaries (section 2.1.4).

2.1.1 A team of experienced mining professionals founded Sarama in Vancouver, Canada in 2010

25. In early 2010, Mr Andrew Dinning founded Sarama alongside a team of experienced mining and financial industry professionals. They incorporated Sarama in Canada on 8 April 2010, with its registered office in Vancouver, British Columbia.⁷
26. Several of Mr Dinning's co-founders, including Mr Jack Hamilton, previously worked together as employees or directors at Moto Goldmines Limited ("**Moto Gold**") in the Democratic Republic of the Congo ("**DRC**"). Whilst at Moto Gold, Mr Dinning and Mr Hamilton led the exploration team that discovered the main deposit at the Kibali Gold Mine, now Africa's largest gold mine.⁸ Randgold Resources Limited ultimately acquired Moto Gold in 2009 for over CA\$ 700 million.⁹
27. Given the Moto Gold team's success in the DRC, Mr Dinning determined to reunite the team in a new company focussed on gold exploration and development in Africa.¹⁰ In March 2010, Mr Dinning and Mr Sean Harvey, a previous director of Moto Gold, prepared the business plan for Sarama at Mr Harvey's home in Toronto, Canada.¹¹ On 8 April 2010, Mr Dinning and Mr Harvey incorporated Sarama in Canada with a registered office at Suite 2200, RBC Building, 885 West Georgia Street, Vancouver BC, Canada V6C 3E8.¹²
28. Sarama's founders elected to incorporate Sarama in Canada for several reasons. **First**, Sarama needed a significant amount of capital over a sustained period of time to invest in and advance exploration projects. As Mr Dinning explains, at the time, the Canadian market had the depth and breadth of capital required to fund Sarama's needs.¹³

⁷ Incorporation Certificate of Sarama Resources Ltd, dated 8 April 2010, **Exhibit C-0001-ENG**; see Dinning WS1, at para. 28.

⁸ Dinning WS1, at para. 14; Hamilton WS1, at para. 17.

⁹ Dinning WS1, at para. 15.

¹⁰ Dinning WS1, at paras. 17-19.

¹¹ Dinning WS1, at para. 21.

¹² Incorporation Certificate of Sarama Resources Ltd, dated 8 April 2010, **Exhibit C-0001-ENG**; see Dinning WS1, at para. 22.

¹³ Dinning WS1, at para. 26.

29. **Second**, Sarama’s founders understood the Canadian market was comfortable with investing in mining and mineral exploration in Africa. Mr Dinning confirmed this understanding through dialogue with stockbrokers with experience investing on the Toronto Stock Exchange (“**TSX**”).¹⁴ The Canadian market was amenable to investing in Burkina Faso due to the successes of other Canadian companies such as Orezone Gold Corporation (“**Orezone**”) and SEMAFO Inc. (“**SEMAFO**”).¹⁵ As a junior exploration company, operating in a confident market was critical for Sarama. Like many junior miners, Sarama does not maintain substantial cash reserves and therefore fundraises on a stage-by-stage basis to advance its exploration projects.¹⁶
30. **Third**, many of Sarama’s founding shareholders were Canadian nationals and/or Canadian domiciled,¹⁷ including Mr Hamilton, Mr Harvey and Mr Simon Jackson.
31. **Fourth**, Moto Gold had been incorporated in Canada, so the ex-Moto Gold members of the Sarama team were comfortable with the commercial and regulatory landscape in Canada. Furthermore, Sarama’s key contacts required to head up a new business, including lawyers and brokers, were located in Canada.¹⁸
32. By November 2010,¹⁹ Sarama had built its core exploration and development team:
- (a) **Mr Dinning**: an Australian mine engineer and manager by training with over 30 years of experience in the mining industry, and with particular expertise in the discovery and exploration of gold deposits in Africa and the management of gold mines in several jurisdictions.²⁰
 - (b) **Mr Hamilton**: an experienced Canadian geologist with a career-long focus on gold exploration, Mr Hamilton was the former Exploration Manager at Moto Gold where he played a pivotal role in the discovery of the main deposit at the Kibali Gold Mine.²¹

¹⁴ Dinning WS1, at para. 20.

¹⁵ Dinning WS1, at para. 24.

¹⁶ Dinning WS1, at para. 29.

¹⁷ Dinning WS1, at para. 27.

¹⁸ Dinning WS1, at para. 27.

¹⁹ Dinning WS1, at para. 22.

²⁰ See Andrew Dinning, Curriculum Vitae, dated September 2020, **Exhibit C-0191-ENG**; Dinning WS1, at s. 2.

²¹ See Jack Hamilton, Curriculum Vitae, dated 14 October 2025, **Exhibit C-347-ENG**; Hamilton WS1, at s. 2.

- (c) **Mr Paul Schmiede:** an Australian mining engineer by training with nearly 30 years of experience in the mining industry, and the former Vice President of Operations and Project Development at Moto Gold, where he managed pre-feasibility, bankable and definitive feasibility studies.²²
 - (d) **Mr Michel Mercier:** an experienced Quebecois, francophone geochemist, who had extensive experience working in West Africa, including in Burkina Faso, Niger and Mali. Mr Mercier sadly passed away in 2020.²³
33. In addition, Sarama’s founding Board of Directors comprised individuals with deep experience in the mining industry and in Africa, including:
- (a) **Mr Harvey:** a former investment banker and CEO of TVX Gold, non-executive chairman of Victoria Gold & Adina Minerals, and a non-executive director of Perseus Mining and Allied Gold.²⁴
 - (b) **Mr Jackson:** the former Vice President of Corporate Development and CFO at Red Back Mining.²⁵
 - (c) **Mr Walter Kansteiner:** a former Moto Gold director, the former United States Assistant Secretary of State for African Affairs under President George W. Bush and Chairman of Titanium Resources group in Sierra Leone.²⁶
34. Sarama listed on the TSX through an initial public offering (“**IPO**”) in November 2011.²⁷

²² See Paul Schmiede, Curriculum Vitae, dated 2025, **Exhibit C-0357-ENG**; Schmiede WS1, at s. 2; see also Dinning WS1, at para. 22.

²³ Dinning WS1, at para. 22; Hamilton WS1, at para. 25.

²⁴ Dinning WS1, at para. 18; Sarama Resources Ltd, *Pre-IPO* (Presentation), dated September 2010, at slide 6, **Exhibit C-0085-ENG**.

²⁵ Dinning WS1, at para. 19; Sarama Resources Ltd, *Pre-IPO* (Presentation), dated September 2010, at slide 6, **Exhibit C-0085-ENG**.

²⁶ Dinning WS1, at para. 18; Sarama Resources Ltd, *Pre-IPO* (Presentation), dated September 2010, at slide 6, **Exhibit C-0085-ENG**.

²⁷ Dinning WS1, at para. 29; TSX Listing Page, *Sarama Resources Ltd*, dated 10 December 2024, **Exhibit C-0004-ENG**; Mining.com, *Sarama Resources Completes IPO to Raise \$16.7 Million for Burkina Faso Gold Exploration*, dated 2 November 2011, available at <https://www.mining.com/sarama-resources-completes-ipo-to-raise-16-7-million-for-burkina-faso-gold-exploration/>, **Exhibit C-0371-ENG**.

35. Although Sarama’s strategic focus has always been West Africa, Sarama has conducted its essential business activities in Canada since its founding. A team of permanent staff resided in and worked out of Canada, including Mr Hamilton who still resides in and works out of Canada today. From time to time, and up until Burkina Faso’s actions destroyed the Claimant’s investments in Burkina Faso, Sarama’s office manager and a team of geologists also resided in and worked out of Canada.²⁸ Mr Mercier also lived and worked out of Canada until he passed away in 2020.²⁹ Sarama has raised significant funds on the TSX, and has spent significant funds on services suppliers in Canada, including its lawyers, accountants, brokers and insurers.³⁰ Sarama’s Annual and Special General Meetings are held in Canada, and it performs its primary shareholder and investor relations activities in Canada.³¹
36. In May 2022, Sarama completed a secondary listing on the Australian Securities Exchange (“**ASX**”).³² Sarama decided to also list on the ASX to gain access to additional sources of capital, as investors on the Canadian stock market had shifted their focus from natural resources to cryptocurrencies and cannabis products.³³
37. As at 25 August 2023, and as explained further in **section 3**, Sarama was not majority owned or controlled by investors of any one nationality pursuant to the definition of “investor of a Party” in the BIT. A summary of shareholders by domicile as at 25 August 2023, and a copy of Sarama’s share register, which includes Sarama’s shareholders on both the TSX and ASX, is at **Exhibit C-0314-ENG**.³⁴

2.1.2 Sarama’s executive team set the strategic focus for the Company on West Africa, particularly Burkina Faso

38. Mr Dinning and his co-founders set the strategic focus for Sarama on West Africa because of the wealth of known geological opportunity there.³⁵ Sarama’s initial strategy, as a junior exploration company, was to acquire properties in multiple West African jurisdictions with

²⁸ Dinning WS1, at para. 28.

²⁹ See Hamilton WS1, at paras. 25-26; Dinning WS1, at para. 28(a).

³⁰ Dinning WS1, at para. 28(e).

³¹ Dinning WS1, at para. 28(g).

³² Dinning WS1, at para. 29.

³³ Dinning WS1, at para. 30.

³⁴ See Sarama Resources Ltd, Share Register as at 25 August 2023, **Exhibit C-0314-ENG**.

³⁵ Dinning WS1, at para. 16.

promising geology and attractive commercial and legal environments, including Burkina Faso, Liberia and Mali.³⁶

39. Sarama targeted prospective properties in Burkina Faso for several reasons. **First**, the country had a centuries-old, established history of artisanal gold mining, indicating a highly promising geologic context.³⁷ As Mr Hamilton explains, Burkina Faso sits in the middle of a 400-kilometre-long geological formation known as the Birimian Greenstone Province.³⁸ The Birimian Greenstone Province had been producing gold for centuries and Mr Hamilton, Sarama's Vice President of Exploration and a geologist with over three decades of experience at the time, believed that a particular part of the belt, known as the Houndé Greenstone Belt, remained underexploited for industrial gold mining.³⁹
40. **Second**, several gold mines had economically reached commercial production in Burkina Faso, including the State-owned Burkinabe company la Société de Recherche et d'Exploitation Minière du Burkina ("**SOREMIB**")'s Poura mine, IAMGOLD Corporation's Essakane mine and SEMAFO's Mana mine.⁴⁰ In parallel, other companies, including Orezone, had discovered new gold deposits.⁴¹
41. **Third**, due to the presence of operating mines in the jurisdiction, Burkina Faso provided investors with quality infrastructure, plentiful manual labour, ambitious and well-educated young geologists and other mining industry technicians, service-providers and engineers.⁴² Suppliers were readily available for essential exploration and development services including construction, drilling and laboratory testing.⁴³
42. **Fourth**, Burkina Faso was, at that time, a regulatorily attractive jurisdiction for foreign investment. In 2003, Burkina Faso had revised its Mining Code, Loi N° 031-2003/AN *Code Minier du Burkina Faso* (the "**2003 Mining Code**"),⁴⁴ which was modelled on the Western

³⁶ Dinning WS1, at para. 25; Hamilton WS1, at para. 19.

³⁷ Hamilton WS1, at paras. 20 *et seq.*

³⁸ Hamilton WS1, at paras. 20-21.

³⁹ Hamilton WS1, at paras. 20-21.

⁴⁰ Hamilton WS1, at para. 21-22; Dinning WS1, at para. 24.

⁴¹ Dinning WS1, at para. 24.

⁴² Dinning WS1, at para. 25; Hamilton WS1, at para. 24; Cube Consulting, *South Houndé Project NI 43-101 Technical Report*, dated 23 August 2012 ("**First Cube Report**"), at pp. 44-45, **Exhibit C-0102-ENG**.

⁴³ Dinning WS1, at para. 25.

⁴⁴ Loi N° 031-2003/AN Code Minier du Burkina Faso, dated 8 May 2003 ("**2003 Mining Code**"), **Exhibit C-0075-FR**.

Australian Mining Act 1978 and provided a clear and transparent framework for mineral exploration and development in Burkina Faso.⁴⁵ The permitting process under the 2003 Mining Code and its successor, Loi N° 036-2015/CNT *Code Minier du Burkina Faso* (the “**2015 Mining Code**”),⁴⁶ was particularly prescriptive, as explained further in the following section.

43. Burkina Faso also enjoyed a relatively stable political landscape. As of Sarama’s founding in 2010, Blaise Compaoré was Burkina Faso’s president and had held office since 1987.⁴⁷

2.1.3 Burkina Faso was a favourable jurisdiction for foreign investment because of its prescriptive Mining Code

44. Sarama operated the Sanutura Project and the Additional Projects under several exploration permits held by its Burkinabe subsidiaries and in full compliance with Burkinabe law. As Mr Dinning explains, the 2003 Mining Code enumerated a transparent series of steps for obtaining and renewing exploration permits.⁴⁸ Those requirements did not change materially between 2011 and 25 August 2023,⁴⁹ when Burkina Faso retroactively revoked the Tankoro 2 Permit.
45. The process for obtaining an exploration permit in Burkina Faso between 2011 and 25 August 2023 entailed the following steps:
- (a) An applicant completed the ‘Demande de Titres Miniers – Permis’ form, which requested information including the proposed coordinates for the permit area and certain information about the applicant.⁵⁰

⁴⁵ Dinning WS1, at para. 23.

⁴⁶ Loi N° 036-2015/CNT Code Minier du Burkina Faso, dated 26 June 2015 (“**2015 Mining Code**”), **Exhibit C-0130-FR**.

⁴⁷ Africa Confidential, *Cracks Appear in Traoré’s YouTube Persona*, dated 2 May 2025, available at <https://www.africa-confidential.com/article/id/15467/cracks-appear-in-traores-youtube-persona>, **Exhibit C-0337-ENG**.

⁴⁸ Dinning WS1, at para. 45.

⁴⁹ Dinning WS1, at para. 45.

⁵⁰ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 28, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Art. 24, **Exhibit C-0275-FR**; Dinning WS1, at para. 46; *see also* Permit Application Form No. 4045 for Tankoro 2 permit by Sarama Mining Burkina SARL, dated 18 December 2020, **Exhibit C-0054-ENG**.

- (b) The applicant lodged the completed form with the Mining Cadastre General Directorate in Burkina Faso (the “**Cadastre**”), part of the Ministry of Energy, Mines and Quarries (the “**Ministry**”).⁵¹
- (c) The Minister of Energy, Mines and Quarries (the “**Minister of Mines**”) considered each application on a “first come, first served” basis and either accepted or rejected each application.⁵²
- (d) If the Minister of Mines approved the application, the Minister or an authorised delegate sent the applicant a letter granting the exploration permit subject to the condition precedent that the applicant pay a fee fixed by the mining regulations, ordinarily 2 million CFA francs (approximately US\$ 3,500), within 10 working days.⁵³
- (e) The applicant paid the fixed fee within ten working days and presented proof of payment at the Cadastre to satisfy the condition precedent. The Ministry stamped the receipt to confirm that it had been presented to the Ministry and the applicant thereby became the legal owner of the permit.⁵⁴
- (f) The Minister of Mines then issued an administrative record or receipt of the permit ownership (the “*arrêté*”).⁵⁵ The Minister of Mines was required to issue the *arrêté* within 60 days of receiving proof of payment of the permit fee.⁵⁶ As Mr Dinning

⁵¹ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 12, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Art. 9, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁵² Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 1, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Arts. 1, 26, 32, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁵³ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Art. 26, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁵⁴ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Art. 26, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁵⁵ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Art. 26, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁵⁶ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 32, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Arts. 27, 32, **Exhibit C-0299-FR**.

explains, the *arrêté* is required to apply for tax exonerations and, as a matter of practice, the Minister often took more than 60 days to issue the *arrêté*.⁵⁷

46. An exploration permit granted its holder the right to conduct exploration works for an initial permit term of three years.⁵⁸ Upon the expiry of the initial permit term, the permit holder was entitled to apply for two further ‘automatic’ renewal terms of three years each.⁵⁹
47. The process for renewing an exploration permit in Burkina Faso between 2011 and 25 August 2023 entailed the following steps:
- (a) The permit holder completed the ‘Demande de Renouvellement d’un Permis de Recherche’ form and lodged it with the Cadastre.⁶⁰
 - (b) If a renewal application was approved, the Minister of Mines or an authorised delegate sent the applicant a letter granting the renewal term on the exploration permit subject to the condition precedent of payment of the fee fixed by the mining regulations, ordinarily 2 million CFA francs (approximately US\$ 3,500), within 10 working days.⁶¹
 - (c) The applicant paid the fixed fee within ten working days and presented proof of payment at the Cadastre to satisfy the condition precedent.⁶² The Ministry stamped the payment receipt to confirm that it had been presented to the Ministry, and the applicant retained its rights as the legal owner of the permit over the renewed permit term.⁶³

⁵⁷ Dinning WS1, at para. 46.

⁵⁸ 2015 Mining Code, at Arts. 32-34, **Exhibit C-0130-FR**; Dinning WS1, at para. 46.

⁵⁹ 2015 Mining Code, at Art. 34, **Exhibit C-0130-FR**; Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 33, **Exhibit C-0275-FR**.

⁶⁰ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 34, **Exhibit C-0275-FR**.

⁶¹ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Arts. 26, 32, **Exhibit C-0299-FR**; Dinning WS1, at para. 46.

⁶² Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**.

⁶³ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**.

- (d) The Minister of Mines then issued the *arrêté* for the renewal term.⁶⁴
 - (e) If a permit holder exhausted the two ‘automatic’ renewal terms, *i.e.* total consecutive permit terms of nine years on that exploration permit, the permit holder was entitled to apply for an ‘exceptional’ renewal term of an additional three years.⁶⁵ Exceptional renewal terms were granted at the discretion of the Minister of Mines.⁶⁶
 - (f) The application and approval process for an exceptional renewal term was the same as the process for an ‘automatic’ renewal.⁶⁷
48. At the lapse of the exceptional renewal term, the permit holder could apply for a second, new exploration permit over the same area. There was no prohibition against this in the 2003 Mining Code or the 2015 Mining Code. Burkina Faso’s new Mining Code *Loi N°016-2024/ALT Code Minier du Burkina Faso*, adopted in July 2024, introduced a provision requiring companies to move to an exploitation permit at the end of the nine-year term on an exploration permit.⁶⁸
49. The 2015 Mining Code also contained provisions outlining the proper procedure and criteria for revocation of an exploration permit by the Minister of Mines. Under Article 112 of the Mining Code, the Minister of Mines could revoke a permit following a 60-day formal notice period, without indemnifying or paying compensation to a permit holder, if the permit holder:
- (a) began to exploit a mine within its licence area and without obtaining the necessary exploitation permit;
 - (b) delayed or suspended its exploration activities, without valid reason, for more than six months;

⁶⁴ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**.

⁶⁵ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 33, **Exhibit C-0275-FR**.

⁶⁶ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 33, **Exhibit C-0275-FR**.

⁶⁷ Decree n°2017/0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Arts. 33 and 34, **Exhibit C-0275-FR**; Dinning WS1, at para. 46.

⁶⁸ *Loi N°016-2024/ALT Code Minier du Burkina Faso*, dated 18 July 2024 (“**2024 Mining Code**”), at Art. 62, **Exhibit C-0328-FR**.

- (c) delayed or suspended preparatory or exploitation work, without authorisation, for more than two years, and with authorisation, for more than six years for industrial exploitation permits;
- (d) delayed or suspended operating works, without authorisation, for more than one year, and with authorisation, for more than two years for industrial quarrying permits;
- (e) delayed or suspended preparatory or operating work, without authorisation, for six months, and with authorisation, for three years for semi-mechanised operating permits;
- (f) delayed or suspended operating work, without authorisation, for six months, and with authorisation, for one year for semi-mechanised quarrying permits;
- (g) transferred or transmitted the licence without authorisation;
- (h) failed to pay duties and taxes set forth in the mining regulations;
- (i) failed to meet the minimum annual expenditure stipulated by the mining regulations;
- (j) failed to comply with obligations relating to the environmental and social impact study or the environmental and social impact notice; or
- (k) committed a serious breach of rules relating to hygiene, health and safety at work.⁶⁹

50. Similarly, Article 113 of the 2015 Mining Code provided for revocation of a permit without formal notice if the permit holder:

- (a) engaged in illicit sale or transaction of mineral substances;
- (b) employed or tolerated the use of child labour on its site;
- (c) failed to renew a permit or authorisation at the end of its validity;
- (d) committed a breach of trust or fraud involving a mining permit; or
- (e) used dangerous chemicals, including cyanide and mercury, or explosive substances in the context of artisanal mining.⁷⁰

⁶⁹ 2015 Mining Code, at Art. 112, **Exhibit C-0130-FR**.

⁷⁰ 2015 Mining Code, at Art. 113, **Exhibit C-0130-FR**.

51. Additionally, under Article 114 of the 2015 Mining Code, the Minister of Mines could “take appropriate measures to suspend... or withdraw” a permit if the permit became the “subject of litigation or dispute likely to threaten the public order”.⁷¹ In the event of the renunciation or revocation of a permit, Burkina Faso would receive “all works permanently installed for mining purposes”, including “[b]uildings, outbuildings, shafts [and] galleries” through an automatic transfer by “operation of law and free of charge”.⁷²
52. The 2003 and 2015 Mining Codes also provided a straightforward process for advancing from an exploration to an exploitation permit. An exploration permit holder maintained the exclusive right to apply for an exploitation permit during the validity of its exploration permit.⁷³ The Minister of Mines would grant an exploitation permit to the holder of an exploration permit provided the applicant had complied with the relevant Burkinabe mining regulations.⁷⁴ The 2003 and 2015 Mining Codes required an exploitation permit holder to grant the State of Burkina Faso a 10% free carried interest in the project.⁷⁵
53. Thus Burkinabe law provided a clear framework for Sarama to obtain exploitation permits over the Tankoro and Bondi Deposits once it had advanced the Project closer to production. However, Sarama never got the chance to do so before Burkina Faso’s hostile actions, including the unlawful and retroactive revocation of the Tankoro 2 Permit, destroyed the totality of Sarama’s investments in the Sanutura Project and the Additional Projects, as set out in **section 2.3**.

2.1.4 Sarama conducted its operations in Burkina Faso through several wholly owned, locally incorporated subsidiaries

54. Sarama invested in the Sanutura Project and the Additional Projects through its locally incorporated Burkinabe subsidiaries, which it held via companies incorporated in the British Virgin Islands (“BVI”) to facilitate the efficient movement of capital, asset sales and the formation of joint ventures.⁷⁶

⁷¹ 2015 Mining Code, at Art. 114, **Exhibit C-0130-FR**.

⁷² 2015 Mining Code, dated 26 June 2015, at Art. 117, **Exhibit C-0130-FR**.

⁷³ 2015 Mining Code, at Art. 32(3), **Exhibit C-0130-FR**; 2003 Mining Code, at Art. 12(2), **Exhibit C-0075-FR**.

⁷⁴ 2015 Mining Code, at Arts. 40, 41, **Exhibit C-0130-FR**; 2003 Mining Code, at Arts. 17-18, **Exhibit C-0075-FR**.

⁷⁵ 2015 Mining Code, at Art. 43, **Exhibit C-0130-FR**; 2003 Mining Code, at Art. 18, **Exhibit C-0075-FR**.

⁷⁶ See Dinning WS1, at para. 33.

55. On 23 July 2010, Sarama established Sarama Investments Limited, a wholly owned subsidiary of Sarama, in the BVI.⁷⁷ Sarama Investments Limited, in turn, owned a series of separately incorporated BVI entities through which it held the Burkinabe operating companies. Sarama Investments Limited established the following BVI subsidiaries relevant to these arbitration proceedings:
- (a) on 23 July 2010, Sarama established Sarama Investments (No. 2) Limited;⁷⁸
 - (b) on 16 April 2012, Sarama established Burkina Faso Holdings Limited;⁷⁹ and
 - (c) on 7 June 2016, Sarama SWA BF No. 3 Investments Limited.⁸⁰
56. Sarama also established the following locally incorporated subsidiaries in Burkina Faso to carry out its projects and investments:
- (a) on 9 June 2010, Sarama established Sarama Mining Burkina SARL (“**SMB**”), a wholly owned subsidiary of Sarama Investments (No. 2) Limited, for the purpose of, *inter alia*, holding the permits over the Tankoro Deposit and investing in the Sanutura Project;⁸¹
 - (b) on 10 June 2013, Sarama established Sarama Faso SUARL (“**Sarama Faso**”), a wholly owned subsidiary of Burkina Faso Holdings Ltd, for the purpose of, *inter alia*, holding the permits related to the Koumandara Project and investing in that project;⁸² and

⁷⁷ Sarama Investments Limited, Certificate of Incorporation, dated 23 July 2010, **Exhibit C-0082-ENG**.

⁷⁸ See Dinning WS1, at para. 34; Memorandum and Article of Association of Sarama Investments (No. 2) Limited, dated 23 July 2010, **Exhibit C-0083-ENG**.

⁷⁹ See Dinning WS1, at para. 34; Burkina Faso Holding Limited, Certificate of Incorporation, dated 16 April 2012, **Exhibit C-0100-ENG**.

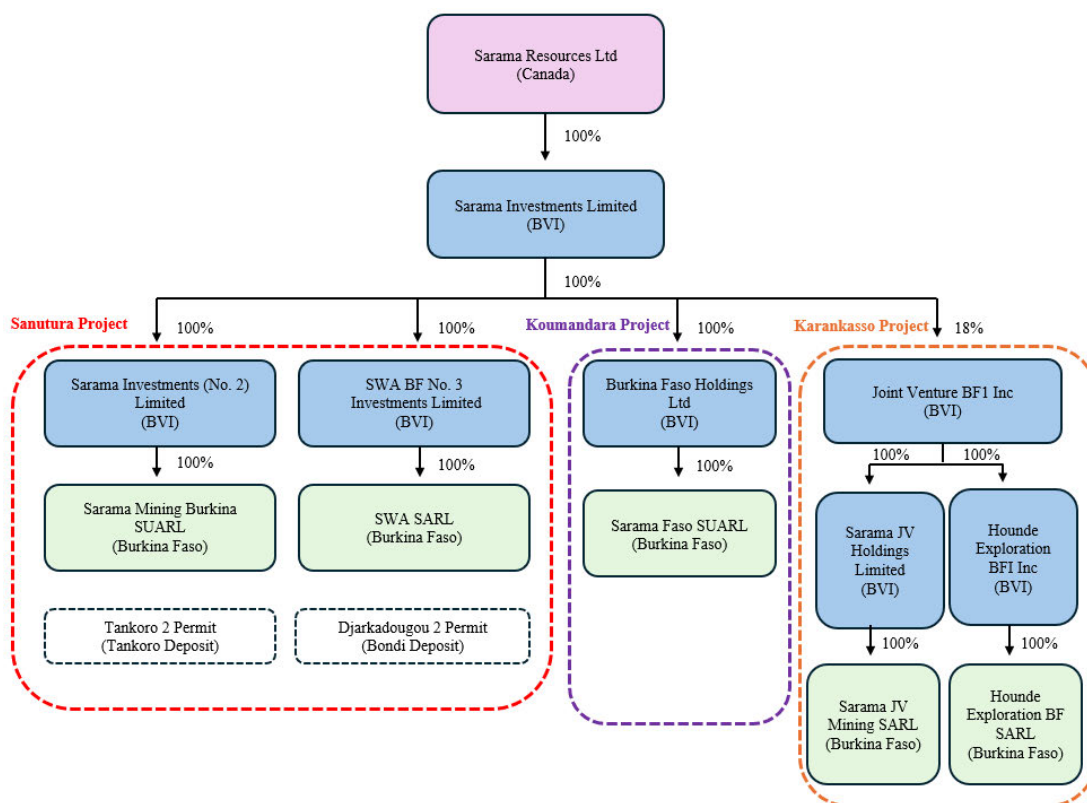
⁸⁰ See Dinning WS1, at para. 34; SWA BF No. 3 Investments Limited, Certificate of Incorporation, dated 7 June 2016, **Exhibit C-0143-ENG**.

⁸¹ See Dinning WS1, at para. 35; Sarama Mining Burkina, Extrait Registre du Commerce et du Crédit Mobilier, dated 22 June 2010, **Exhibit C-0080-FR**.

⁸² See Dinning WS1, at para. 35; Sarama Faso SUARL, Déclaration de Modification de la Personne Morale d’un Etablissement, dated 6 June 2013, **Exhibit C-0111-FR**.

- (c) on 25 November 2016, Sarama established SWA SARL (“SWA”), a wholly owned subsidiary of SWA BF No. 3, for the purpose of, *inter alia*, holding the permits over the Bondi Deposit and investing in the Sanutura Project.⁸³

57. The diagram below depicts the ownership structure of Sarama in relation to the Sanutura Project and the Additional Projects as of 25 August 2023, when Burkina Faso destroyed Sarama’s investments in the Sanutura Project and the Additional Projects:⁸⁴



58. As explained further below in **section 2.3.5**, the Claimant no longer owns all of the entities depicted above. Because of Burkina Faso’s breaches of the BIT, Sarama was forced to sell Burkina Faso Holdings Ltd (and, therefore, indirectly Sarama Faso SUARL). Sarama has attempted to sell SWA BF No. 3 Investments Limited (and, therefore, indirectly SWA SARL) to mitigate its losses, however, that sale is pending the approval of the Minister of Mines, which has not been forthcoming.⁸⁵

⁸³ See Dinning WS1, at para. 35; SWA Sarl, Déclaration de Constitution de Personne Morale, dated 29 November 2016, **Exhibit C-0145-FR**.

⁸⁴ Dinning WS1, at para. 37.

⁸⁵ Dinning WS1, at para. 177.

2.2 Sarama's Development of the Sanutura Project and the Additional Projects

59. Sarama created and advanced the Sanutura Project over more than a decade. As set out below, the Tankoro Deposit, a mineral resource of approximately 2.5 million ounces of gold in Burkina Faso's Houndé Greenstone Belt, was a greenfield discovery by Sarama in the early 2010s (**section 2.2.1**). Sarama made significant investments in exploratory works to define the size and grade of the Tankoro Deposit (**section 2.2.2**). In 2016, Sarama acquired the nearby Bondi Deposit with a plan to establish a multi-deposit project in the region (**section 2.2.3**). Consistent with that vision, in September 2020 Sarama consolidated the Tankoro Deposit and the Bondi Deposit into a single project, the Sanutura Project, which would form the basis for an accelerated, multi-stage mine (**section 2.2.4**). In the years that followed, Sarama continued to invest further resources in the Sanutura Project, which it advanced to the pre-development stage with several workstreams of a PEA near completion (**section 2.2.5**).
60. In parallel, Sarama invested in the Additional Projects to continue to "build its project portfolio" in Burkina Faso.⁸⁶ Sarama was engaged in exploration works at its 100% owned Koumandara Project, which established a new and significant exploration position within Burkina Faso to the west of the Houndé Greenstone Belt. In addition, Sarama's investment in the Karankasso Project gave Sarama a "material stake" in a project adjacent to its existing projects within the Houndé Greenstone Belt, which complemented its strategy to consolidate deposits in the area into a multi-deposit project. Burkina Faso's actions destroyed Sarama's investments in the Additional Projects (**section 2.2.6**).
61. Throughout all this time, Sarama contributed substantially to the social and economic welfare of the surrounding community and to Burkina Faso; as a result, it had established a close connection with the local community and gained a social license for the Sanutura Project (**section 2.2.7**).

⁸⁶ Dinning WS1, at para. 178.

2.2.1 Sarama's early exploration work led to the discovery of the Tankoro Deposit

2.2.1.1 *Mr Hamilton and Mr Mercier identified the Tankoro Permit after meeting with local Burkinabe mining entrepreneurs in 2010 and 2011*

62. Mr Mercier, Sarama's General Manager for Africa, and Mr Hamilton, Sarama's Vice President of Exploration, played pivotal roles in laying the groundwork for Sarama to acquire the Tankoro Permit and to discover the Tankoro Deposit.⁸⁷ Mr Mercier, a Quebecois geochemist, had worked in Ouagadougou in the 1980s teaching mapping software to local geologists and functionaries at the Ministry's Cadastre. He therefore benefited from a broad network of connections in the mining industry in Burkina Faso.⁸⁸ As a native francophone, Mr Mercier interacted easily with French-speaking Burkinabe colleagues and mining entrepreneurs.⁸⁹ In preparation for Sarama's TSX IPO in November 2011, Mr Dinning and Mr Hamilton tasked Mr Mercier with identifying promising exploration properties in Burkina Faso that Sarama might wish to acquire.⁹⁰
63. In the autumn of 2010, Mr Mercier introduced Mr Hamilton to Mr Ousmane Birba and his cousin, Mr Adama Kindo, at a meeting in Mr Kindo's office in Ouagadougou.⁹¹ Mr Birba and Mr Kindo were Burkinabe mining entrepreneurs who had acquired several exploration permits from the Ministry in the Birimian Greenstone Province in Burkina Faso in the 2000s.⁹² Through their locally incorporated company, *La Societe Minière Kindo Adama* ("SOMIKA"), they sold permits to junior mining companies like Sarama that were searching for development properties in Burkina Faso, attracted by the investor-friendly regime established by Burkina Faso's 2003 Mining Code.⁹³

⁸⁷ Hamilton WS1, section 3.2.

⁸⁸ See Hamilton WS1, at para. 26.

⁸⁹ See Hamilton WS1, at para. 26; Dinning WS1, at para. 22(b).

⁹⁰ Hamilton WS1, at paras. 19, 26-27; Dinning WS1, at para. 41; Sarama Resources Ltd, *Pre-IPO Round* (Presentation), dated September 2010, at slide 7, **Exhibit C-0085-ENG**.

⁹¹ Hamilton WS1, at para. 28.

⁹² Hamilton WS1, at para. 28.

⁹³ See Email from M. Mercier (Sarama) to A Dinning (Sarama), cc. J. Hamilton (regarding Permits in Burkina), dated 15 July 2010, **Exhibit C-0081-ENG** (stating that Mr Miman was in contact with Mr Kindo and Mr Kindo's son, Arouna Kindo, regarding different exploration permits held by their family members and exploration company, SOMIKA); Hamilton WS1, at paras. 30, 39. See generally, 2003 Mining Code, **Exhibit C-0075-FR**.

64. Mr Birba and Mr Kindo informed Mr Mercier that they had several exploration permits available for sale, some owned by SOMIKA and others owned by Mr Birba, Mr Kindo and their relatives.⁹⁴ Mr Birba and Mr Kindo agreed to provide Sarama all relevant geologic and legal documentation for the permits from the Cadastre so that Sarama could study them and decide which, if any, it might be interested in acquiring.⁹⁵ Mr Birba and Mr Kindo thus provided to Mr Mercier and Mr Hamilton the exploration permits; the associated *arrêtés*; geologic coordinates and greyscale maps of the permit areas; and relevant correspondence with the Ministry of Mines and the Cadastre.⁹⁶
65. Between approximately September and December 2010, Mr Hamilton and Mr Mercier studied the exploration permits and the documentation provided to them by Mr Birba.⁹⁷ Mr Hamilton, as a veteran geologist with decades of experience, zeroed in on a particular permit granting exploration rights to a 250-kilometre area located in the Burkinabe provinces of Poni, Bougouriba, and Comoé in the central part of the Houndé Greenstone Belt, approximately 6-7 hours' drive southwest from Ouagadougou (the “**Tankoro Permit**”).
66. The Houndé Greenstone Belt is a 400 kilometre-long geological formation that forms part of the larger Birimian Greenstone Province, a geological region that stretches across West Africa.⁹⁸ Along with the Boromo Belt (another stretch of greenstone rocks in the Birimian Greenstone Province, located approximately 50 kilometres to the east), the Houndé Greenstone Belt contains metamorphosed volcanic and sedimentary rocks, which are ideal for hosting orogenic gold deposits.⁹⁹ Although a major gold mining project had never been developed in the Houndé Greenstone Belt at that time, the Boromo Belt had hosted the prolific Poura gold

⁹⁴ See Hamilton WS1, at paras. 28-30, 39.

⁹⁵ See Hamilton WS1, at paras. 31-32.

⁹⁶ See Hamilton WS1, at paras. 30-31.

⁹⁷ Hamilton WS1, at paras. 31-36.

⁹⁸ Hamilton WS1, at paras. 27-34.

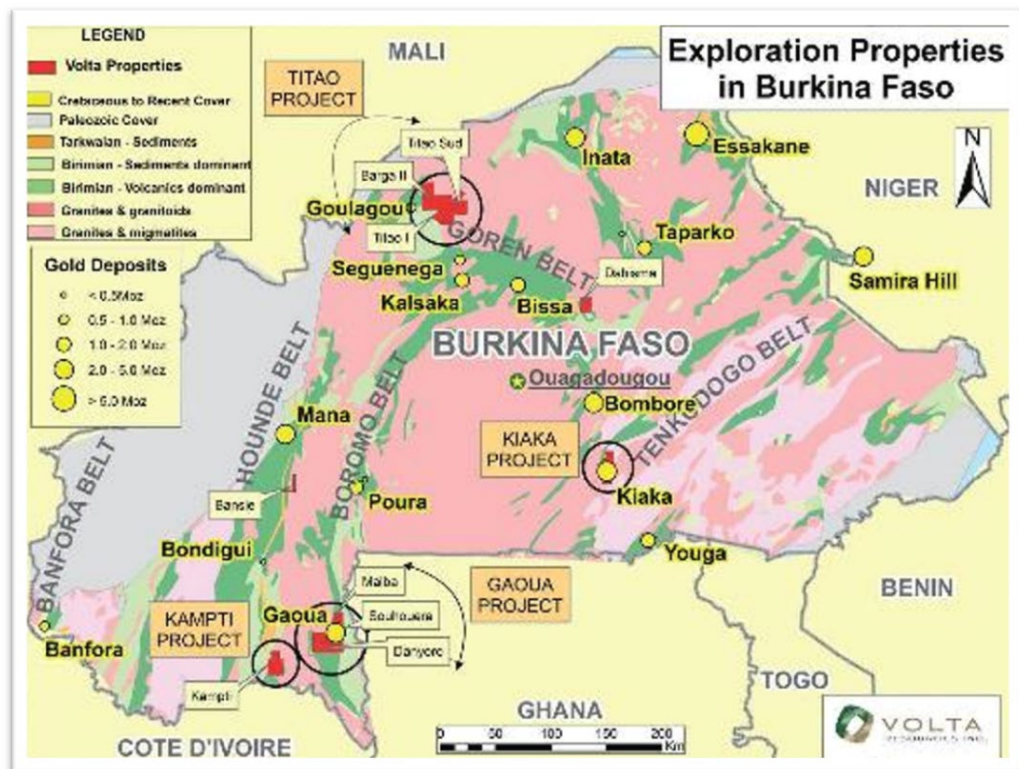
As Mr Hamilton explains in further detail in his witness statement, the Birimian Greenstone Province comprises rocks from the Proterozoic age (2.5 billion to approximately 550 million years ago). Gold forms over hundreds of millions of years in such “greenstone” terrains due to the interaction of heat, pressure and friction generated by tectonic events, metamorphism (changing in types of rocks) and deformation. See Hamilton WS1, at paras. 20-22.

⁹⁹ Hamilton WS1, at para. 22.

The term “greenstone” is simply another way to describe metamorphosed sedimentary and volcanic or igneous rocks. See Hamilton WS1, at para. 7.

mine between 1973 and 1999.¹⁰⁰ In the hands of SOREMIB, the Poura mine had produced multiple tonnes of gold during its operating life.¹⁰¹

67. The dark and light green areas in the following map of Burkina Faso highlight the location of the Birimian Greenstone Province, including the Houndé and Boromo Belts.¹⁰² The yellow circles also indicate, as of 2024, the sites where major gold deposits have been found:¹⁰³



Map of Burkina Faso showing Birimian Greenstone Province and locations of major gold deposits.

68. Prior to joining Sarama, Mr Hamilton had studied the Houndé Greenstone Belt in his role as a consultant geologist for Barrick Exploration Africa Ltd (“**Barrick**”). At the time, the Houndé Greenstone Belt had scored highly on Barrick’s exploration “points” scale for having: (a) the

¹⁰⁰ Hamilton WS1, at para. 21.

¹⁰¹ Hamilton WS1, at para. 21; IOL, *Burkina Faso to Close Key Poura Gold Mine*, dated 30 August 1999, available at <https://iol.co.za/business-report/international/1999-08-30-burkina-faso-to-close-key-poura-gold-mine/>, **Exhibit C-0074-ENG**.

¹⁰² Map of Birimian Greenstone Belt, **Exhibit C-0365-ENG**.

¹⁰³ Map of Birimian Greenstone Belt, **Exhibit C-0365-ENG**.

right greenstone geologic environment; (b) evidence of gold endowment; and (c) major crustal structures.¹⁰⁴

69. Although the Houndé Greenstone Belt had been the site of artisanal gold mining projects (“*orpaillage*”) for centuries, Mr Hamilton believed that the area remained underexploited for large-scale commercial mining. He knew that SEMAFO had experienced initial success exploring an area in the Houndé Greenstone Belt, which would later produce over 2.1 million ounces of gold.¹⁰⁵ In Mr Hamilton’s view, there was no reason why the Houndé Greenstone Belt should not contain significant quantities of commercially recoverable gold.¹⁰⁶
70. Under the instruction of Mr Dinning, Mr Hamilton and Mr Mercier evaluated the permits offered by Mr Kindo and Mr Birba.¹⁰⁷ The Tankoro Permit, which covered 250 square kilometres in the middle of the Houndé Greenstone Belt (the “**Tankoro Property**”), caught Mr Hamilton’s attention for its promising geologic features.¹⁰⁸ Mr Hamilton explains that certain of the Houndé Greenstone Belt’s features often accompanied large gold deposits in the Earth’s upper crust.¹⁰⁹ Based on those considerations and their favourable view of the Houndé Greenstone Belt, Mr Hamilton and Mr Mercier decided that they were most interested in purchasing the Tankoro Permit.¹¹⁰
71. The documentation Mr Birba had provided regarding the Tankoro Permit showed that:
- (a) on 17 December 2008, the Minister of Mines had granted the Tankoro Permit to Mr Birba for an initial three-year term;¹¹¹
 - (b) on 21 September 2011, Mr Birba had then applied for a first automatic renewal of the Tankoro Permit at Sarama’s direction;¹¹² and

¹⁰⁴ Hamilton WS1, at para. 14.

¹⁰⁵ Hamilton WS1, at paras. 21-22.

¹⁰⁶ See Hamilton WS1, at para. 22.

¹⁰⁷ Dinning WS1, at paras. 41-42; Hamilton WS1, s. 3.2.

¹⁰⁸ Hamilton WS1, at paras. 30-34.

¹⁰⁹ Hamilton WS1, at para. 30.

¹¹⁰ Hamilton WS1, at para. 31.

¹¹¹ Request for Arbitration, dated 10 December 2024 (“**RFA**”), at para. 41; Arrêté N° 2008/08-242/MCE/SG/DGMGC in relation to the grant of the TANKORO Permit to Mr Ousmane Birba dated 17 December 2008, *exhibited with* Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, at p. 28, Annex B, **Exhibit C-0041-FR**.

¹¹² RFA, at para. 41.

- (c) on 21 November 2011, the Minister of Mines approved Mr Birba's request for a first automatic renewal and, on 15 December 2011, issued an *arrêté* for the Tankoro Permit, recording a further three-year exploration period until 17 December 2014.¹¹³
72. After taking advice from Burkinabe counsel, Mr Mercier concluded that Mr Birba had acquired the Tankoro Permit in accordance with Burkinabe law and regulations.¹¹⁴
73. Mr Mercier and Mr Hamilton expressed their interest in the Tankoro Permit, and Mr Birba organised a visit for them on 6 October 2010.¹¹⁵ Mr Hamilton noted that Mr Birba had not done much work to study the Tankoro Property; however, he observed that there was a small quartz vein in the eastern part of the property on which Mr Birba's relatives conducted *orpaillage*.¹¹⁶
74. The Tankoro Property's size and central location in the Houndé Greenstone Belt, coupled with its exposed quartz veins and other geological formations, gave Mr Hamilton confidence that it could contain significant recoverable gold.¹¹⁷ He therefore recommended to Mr Dinning that it merited further investment and exploration work by Sarama. Mr Dinning, who trusted Mr Hamilton's intuition, agreed.¹¹⁸
75. Consistent with the practice of many foreign mining companies in West Africa, Mr Dinning instructed Mr Hamilton and Mr Mercier to negotiate an exclusive agreement with Mr Birba that "would give Sarama exclusive rights to conduct exploration works on the Tankoro Permit for a defined period of time, with the option to acquire the Tankoro Permit at the end of that period".¹¹⁹ Sarama considered this type of agreement a "win-win" for both itself and Mr Birba: on one hand, Sarama would be able to assess, by deploying its geologic and mining expertise and financial resources, whether the Tankoro Property would yield commercially recoverable gold; on the other hand, Mr Birba would handle administrative correspondence and day-to-day

¹¹³ RFA, at para. 41; Arrêté N° 2011-11/407/MCE/SG/DGMGC in relation to the first renewal of the TANKORO permit to Mr Ousmane Birba, dated 15 December 2011, **Exhibit C-0042-FR**.

¹¹⁴ See Hamilton WS1, at paras. 29, 32; Email from M. Mercier (Sarama) to A. Dinning and J. Hamilton (Sarama), dated 2 December 2010, **Exhibit C-0093-ENG** (containing a draft version of the Option Agreement as revised by Maître Savadogo).

¹¹⁵ Hamilton WS1, at para. 33; Tankoro Visit Memorandum, dated 8 October 2010, **Exhibit C-0089-ENG**.

¹¹⁶ Hamilton WS1, at para. 33; First Cube Report, at p. 55, **Exhibit C-0102-ENG**.

¹¹⁷ Hamilton WS1, at paras. 33-34.

¹¹⁸ Dinning WS1, at para. 41; Hamilton WS1, at paras. 31, 34.

¹¹⁹ Dinning WS1, at para. 42; see also Hamilton WS1, at para. 35.

interactions with the Cadastre to ensure regulatory compliance and continue to conduct *orpaillage* on the site.¹²⁰

76. Over the course of several weeks in late December 2010 and early January 2011, Mr Mercier conducted negotiations with Mr Birba and Mr Birba's cousin, Mr Kindo.¹²¹

2.2.1.2 *SMB entered an Option Agreement with Mr Birba for the Tankoro Permit*

77. On 18 January 2011, SMB entered into an Option Agreement with Mr Birba.¹²² Under the agreement, SMB obtained:

- (a) the immediate, irrevocable and exclusive right to undertake exploration works on the Tankoro Property to quantify and delimit the potential gold resources available;¹²³ and
- (b) the right to acquire 100% ownership of the Tankoro Permit.¹²⁴

78. In exchange, SMB paid Mr Birba US\$ 300,000 in a series of instalments¹²⁵ and undertook to conduct at least 12.15 million CFA francs (approximately US\$ 25,000)¹²⁶ in exploration works on the Tankoro Property within a three-year period.¹²⁷ SMB also granted Mr Birba (i) the right

¹²⁰ See Hamilton WS1, at para. 35.

¹²¹ Mr Kindo often acted as Mr Birba's representative and the two closely collaborated in their work as mining entrepreneurs. See Hamilton WS1, at para. 36.

¹²² See Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, **Exhibit C-0041-FR**.

¹²³ Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, at p. 4, Art. 3.2, **Exhibit C-0041-FR**.

¹²⁴ The Option Agreement also required Mr Birba to sign and deliver in favour of SMB an act of transfer for the Tankoro Permit and its formal title paperwork (the *arrêté*), within 30 days of receipt from SMB of its official exercise of the option. See Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, at p. 6, Art. 6.1, **Exhibit C-0041-FR**.

¹²⁵ Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, at Art. 3.1, **Exhibit C-0041-FR**.

As Mr Hamilton explains in his statement, this US\$ 300,000 total payment was broken down into five instalments over the course of three years. See Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, at pp. 3-4, **Exhibit C-0041-FR**; Hamilton WS1, at para. 38, fn. 55.

¹²⁶ ExchangeRates.org.uk, *US Dollar to West African CFA franc History: 2011*, available at <https://www.exchangerates.org.uk/USD-XOF-spot-exchange-rates-history-2011.html>, **Exhibit C-0373-ENG**. This conversation is according to the historical exchange rate between U.S. dollars and CFA francs in late January 2011.

¹²⁷ RFA, at para. 41; Option Agreement between Sarama Mining Burkina Faso Suarl and Ousmane Birba, dated 18 January 2011, **Exhibit C-0041-FR**.

to 1.5% of the total revenues from any gold extracted from the Tankoro Permit (which SMB could repurchase for a price of US\$ 1 million),¹²⁸ and (ii) the right to continue *orpaillage* on the Tankoro Property until Sarama began commercial production of gold or obtained an exploitation permit.¹²⁹

2.2.1.3 Sarama achieved early exploration success on the Tankoro Property

79. Soon after SMB signed the Option Agreement, Sarama began exploration works on the Tankoro Property.¹³⁰ Mr Hamilton first decided to conduct a gridded soil survey of the site to identify geochemical signs of underlying gold deposits.¹³¹ As the Tankoro Property was situated around 6-7 hours' drive from Ouagadougou and lacked infrastructure to house a field team, Sarama established a camp in the nearby town of Diébougou, around 40 kilometres from the Tankoro Property.¹³²
80. Sarama next hired a Burkinabe company, Le Bureau D'Etudes des Géosciences, des Energies et de l'Environnement, as well as Quebecois geologist Guy Scherrer, to undertake the soil sampling.¹³³ They took thousands of samples at intervals of 400 metres north to south by 100 metres east to west.¹³⁴ Later infill soil sampling doubled the density of the grid to 100 metres north to south by 100 metres east to west to enable Sarama to focus on areas that showed the strongest anomalies for gold.¹³⁵
81. Between 2011 and 2022, Sarama tested over 12,050 soil samples from the Tankoro Property.¹³⁶ Sarama sent the samples to ALS Group, a global provider of assaying and analytical testing for the mining industry, for testing at ALS's Ouagadougou laboratory.¹³⁷ ALS Group

¹²⁸ Option Agreement between Sarama Mining Burkina Faso Sual and Ousmane Birba, dated 18 January 2011, at Art. 4, p. 5, **Exhibit C-0041-FR**; see also First Cube Report, at p. 18, **Exhibit C-0102-ENG**.

¹²⁹ Option Agreement between Sarama Mining Burkina Faso Sual and Ousmane Birba, dated 18 January 2011, at Art. 4, **Exhibit C-0041-FR**; see also First Cube Report, at p. 18, **Exhibit C-0102-ENG**; Hamilton WS1, at para. 39.

¹³⁰ Hamilton WS1, at para. 40.

¹³¹ See Hamilton WS1, at para. 42.

¹³² See Hamilton WS1, at para. 41.

¹³³ See Hamilton WS1, at para. 42; First Cube Report, at p. 79, **Exhibit C-0102-ENG**.

¹³⁴ First Cube Report, at p. 84, **Exhibit C-0102-ENG**.

¹³⁵ First Cube Report, at p. 84, **Exhibit C-0102-ENG**.

¹³⁶ First Cube Report, at p. 85, **Exhibit C-0102-ENG**; see also Hamilton WS1, at para. 43.

¹³⁷ First Cube Report, at p. 28, **Exhibit C-0102-ENG**.

undertook a gold cyanide leach analysis of the samples to measure gold concentration in parts per billion (“ppb”).¹³⁸

82. The results of the initial soil sampling were promising. ALS’s analysis indicated two large dispersions of soil anomalism over the Tankoro Property. The first, in the west of the Tankoro Property, was about 20 kilometres long by 1 to 2 kilometres wide, trending north to north-east.¹³⁹ The second, in the east of the Tankoro Property, was about ten kilometres long by one to two kilometres wide, trending north to south.¹⁴⁰ ALS Group’s analysis produced consistent data indicating the presence of gold at around 20 ppb on average from all soil samples taken and 29 ppb at the 95th percentile.¹⁴¹ Further, 241 of the 12,050 total samples taken between 2011 and 2012 from the Tankoro Property returned values greater than 49 ppb gold with a maximum value of 3,132 gold.¹⁴² As Mr Hamilton explains, the data indicated that the gold anomalisms on the Tankoro Property were exceptionally coherent and strong compared to other soil surveys in Burkina Faso and Mali that he had been involved in.¹⁴³
83. Cube Consulting Pty Ltd (“Cube”), an independent geoservices consulting group, later verified the results in its August 2012 Technical Report. Cube confirmed that “anomalous values (greater than 10 ppb Au) clearly delineate the soil anomaly peaks, and confirm the soil anomalies identified by Sarama [across the Tankoro Property]”.¹⁴⁴ In Cube’s view, these

ALS’ Ouagadougou laboratory at that time was in the process of being certified to ISO 17025 and operated under the same procedures used by other ALS laboratories worldwide that have achieved both ISO 17025 and ISO 9001 standards. *See* First Cube Report, at p. 143, **Exhibit C-0102-ENG**.

¹³⁸ First Cube Report, at pp. 144-145, **Exhibit C-0102-ENG**.

¹³⁹ First Cube Report, at p. 85, **Exhibit C-0102-ENG**.

¹⁴⁰ *See* Hamilton WS1, at para. 44; First Cube Report, at p. 85, **Exhibit C-0102-ENG**.

¹⁴¹ *See* Hamilton WS1, at para. 44; First Cube Report, at p. 85, **Exhibit C-0102-ENG**.

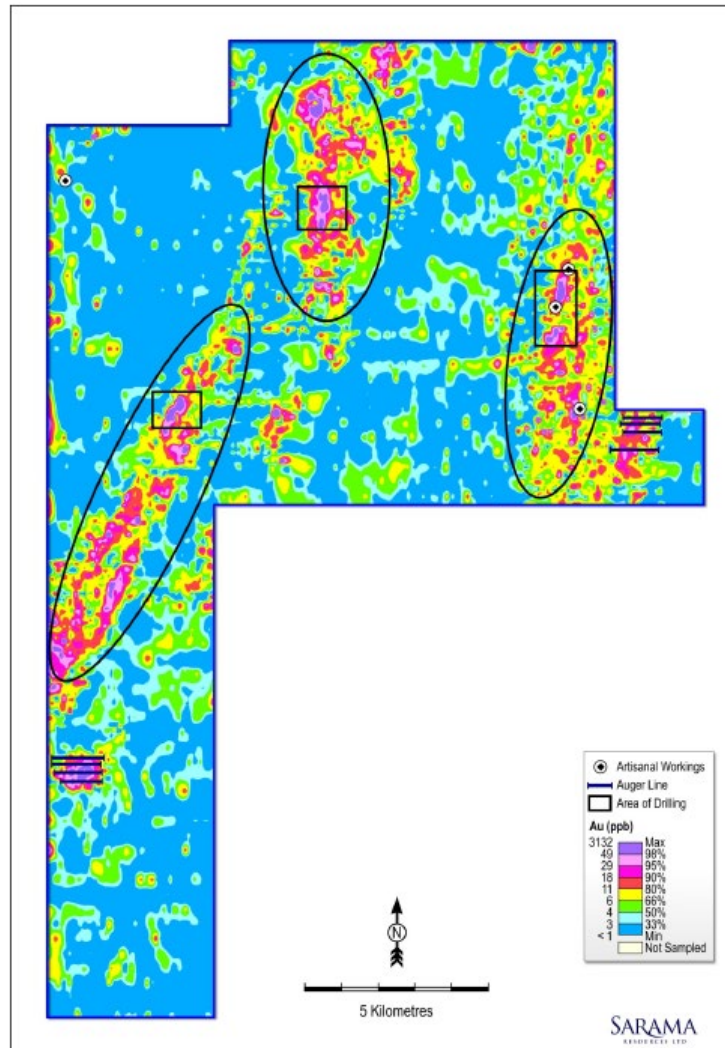
¹⁴² First Cube Report, at p. 85, **Exhibit C-0102-ENG**.

¹⁴³ Hamilton WS1, at para. 43.

¹⁴⁴ First Cube Report, at p. 170, **Exhibit C-0102-ENG**. The author of this report is Adrian Shepherd, a Senior Consultant Geologist for Cube and Chartered Professional geologist and member of the Australian Institute of Mining and Metallurgy (AusIMM No. 211818). At the time of his authorship of the report, Mr Shepherd had over 20 years of experience as a geologist since his graduation with a Bachelors in Applied Geology from the South Australian Institute of Technology in 1987. *See* First Cube Report, at p. 189, **Exhibit C-0102-ENG**.

Mr Shepherd conducted a site visit to the Tankoro Property on 27 June 2011 and 5 July 2011 and is considered an independent “qualified person” as set out in National Instrument 43-101, a Canadian securities regulation that governs how mining companies disclose scientific and technical information about projects to investors and the public. *See* First Cube Report, at p. 189, **Exhibit C-0102-ENG**.

results “warranted follow-up drill testing”.¹⁴⁵ The following figure from Cube’s August 2012 report displays the dispersion of soil anomalism in Au ppb across the Tankoro Property as demonstrated by the 2011 to 2012 soil surveys, with the purple areas showing the highest level of Au soil anomalism and therefore the most promising areas of gold concentration:



*Colour-contoured soil anomalies in Au ppb across the Tankoro Property, 2011-2012.*¹⁴⁶

84. Encouraged by the initial results of the soil surveys, in late 2011 and early 2012, Sarama hired a Ouagadougou-based geophysical surveyor, Sagax Afrique S.A. (“**Sagax**”), to conduct induced polarisation (“**IP**”) surveys of the Tankoro Property.¹⁴⁷ An IP survey uses a generator and other machinery to send energy into the ground and then records the bounce back signal

¹⁴⁵ First Cube Report, at p. 84, **Exhibit C-0102-ENG**.

¹⁴⁶ First Cube Report, at p. 86, fig. 9.4, **Exhibit C-0102-ENG**.

¹⁴⁷ See Hamilton WS1, at para. 46.

to map the ground underneath.¹⁴⁸ As Mr Hamilton explains, different types of rock respond differently to energy input, enabling Sarama to use the IP survey results to identify the locations of host rock potentially carrying gold.¹⁴⁹

85. Concurrently with Sagax's IP surveying work, in mid-2011 Sarama undertook an initial scout drilling programme consisting of 5,000 metres of Reverse Circulation ("RC") drilling.¹⁵⁰ The programme comprised a total of 43 inclined RC holes drilled to an average vertical depth of approximately 75 metres.¹⁵¹ RC drilling rigs are more powerful than reverse air blast ("RAB") and air core ("AC") drilling equipment and can penetrate into the ground up to several hundred meters down, using compressed air to force crushed rock up to the surface through a dual-wall drill rod.¹⁵² Sarama struck gold. It had discovered the Tankoro Deposit with its first drill programme.¹⁵³ It did so by targeting a specific area of soil anomalism that had been identified in its soil geochemistry programme, the "MM Prospect", which forms part of the Tankoro Deposit.¹⁵⁴
86. Throughout early-mid 2012, Sarama conducted follow-up drill programmes on the Tankoro Property consisting of initial RAB and AC drilling, infill and extensional RC drilling at the MM Prospect,¹⁵⁵ and diamond drilling at an average of 100 to 200 metres in depth along a 1.4 km strike length.¹⁵⁶ RAB drilling is a fast, cost-effective technique used primarily in the early stages of mineral exploration. It involves a rotating drill bit that pulverises rock while compressed air blasts the cuttings to the surface for collection.¹⁵⁷ This method is ideal for shallow to medium-depth holes up to 25 to 30 metres, and explorers typically employ it in the early stages of learning about a site's geology or mineralisation.¹⁵⁸ AC drilling is a similar,

¹⁴⁸ See Hamilton WS1, at para. 46.

¹⁴⁹ Hamilton WS1, at para. 46.

¹⁵⁰ Schmiede WS1, at para. 15.

¹⁵¹ Schmiede WS1, at para. 15; First Cube Report, at p. 19, **Exhibit C-0102-ENG**.

¹⁵² See Hamilton WS1, at para. 47.

¹⁵³ Schmiede WS1, at para. 15; Dinning WS1, at para. 43.

¹⁵⁴ Schmiede WS1, at para. 15.

¹⁵⁵ Schmiede WS1, para. 17; First Cube Report, at p. 120.

¹⁵⁶ Schmiede WS1, para. 17; First Cube Report, at p. 19, **Exhibit C-0102-ENG**.

¹⁵⁷ Mydrill.com, *Rotary Air Blast (RAB) Drilling*, dated 7 July 2024, available at <https://mydrill.com.au/rotary-air-blast-rab-drilling>, **Exhibit C-0374-ENG**.

¹⁵⁸ Mydrill.com, *Rotary Air Blast (RAB) Drilling*, dated 7 July 2024, available at <https://mydrill.com.au/rotary-air-blast-rab-drilling>, **Exhibit C-0374-ENG**.

relatively low-cost early exploration technique that Sarama employed once RAB results indicated that a meaningful gold anomalism was present beneath the surface of the Tankoro Property. A major advantage of AC drilling as opposed to RAB drilling is that it reduces contamination by allowing collection of rock samples from within the barrel of the drill rod, as opposed to outside (*i.e.*, directly from the surface) as in RAB drilling.¹⁵⁹

87. Diamond drilling is the highest quality and most expensive drilling technique for gold (and other high-value mineral) exploration.¹⁶⁰ As Mr Hamilton explains, diamond drilling rigs are mounted on trucks above the ground and employ a rotating bit equipped with industrial diamond drill heads to extract cylindrical sticks of rocks cores from hundreds of metres below the surface.¹⁶¹ Diamond drills can penetrate the hardest and densest of rock zones; strike at various angles with precision; and provide undisturbed, clean core samples for geochemical and metallurgical analysis.¹⁶² The cores extracted from this high-precision diamond drilling allowed Sarama to understand and model the ore body contained within the Tankoro Deposit and to further test the geochemical and metallurgical composition of the rock and soil properties around the ore.¹⁶³
88. The drill results at the MM Prospect were significant: they revealed mineralisation extending along strike for approximately 1.4 km, which Mr Schmiede relied on to prepare a preliminary interpretation and a three-dimensional model.¹⁶⁴

¹⁵⁹ As Mr Hamilton explains, AC drilling rigs are also excellent for drilling into oxidized rock near the surface but cannot drill efficiently into fresh, harder rock at hundreds of meters of depth. See Hamilton WS1, at para. 47; NOVO Resources, *Aircore Drilling Explained* (Presentation), available at https://novoresources.com/wp-content/uploads/2023/06/230616_Aircore-Drilling-explained.pdf, **Exhibit C-0360-ENG**.

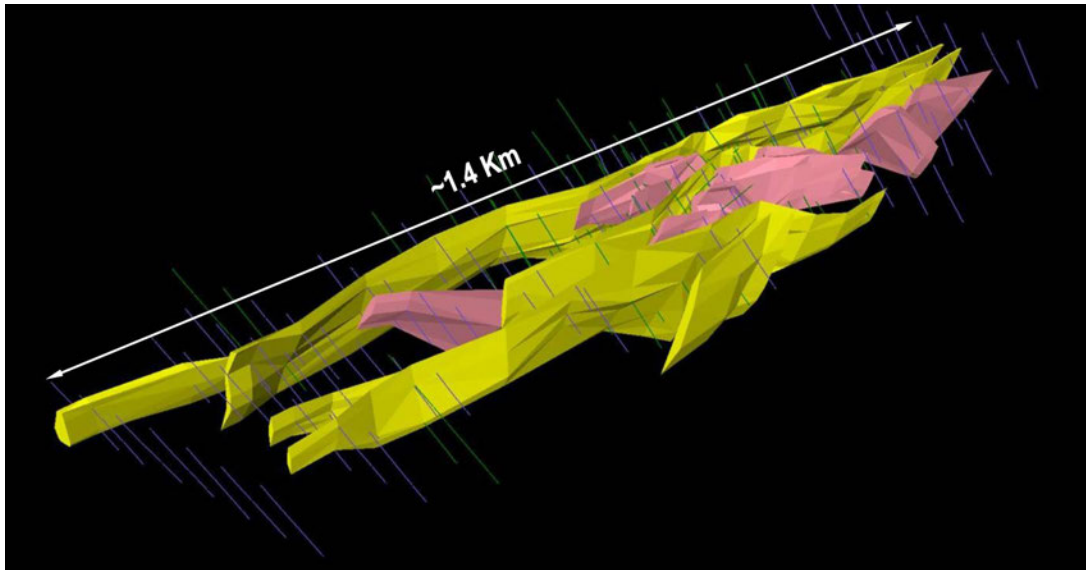
¹⁶⁰ See Hamilton WS1, at para. 47.

¹⁶¹ See Hamilton WS1, at para. 47; AZIDRILL, *What is Diamond Core Drilling?*, available at <https://www.aziwell.com/articles/diamond-core-drilling>, **Exhibit C-0350-ENG**.

¹⁶² See Hamilton WS1, at para. 47; AZIDRILL, *What is Diamond Core Drilling?*, available at <https://www.aziwell.com/articles/diamond-core-drilling>, **Exhibit C-0350-ENG**.

¹⁶³ Hamilton WS1, at para. 47.

¹⁶⁴ Schmiede WS1, at para 19.



*Resource model of the MM Prospect, 2012.*¹⁶⁵

89. To undertake these additional rounds of drilling, Sarama relied on a contractor, PPI Burkina, which conducted the work using its own trucks and drilling rigs.¹⁶⁶ Between January 2011 and November 2012, PPI drilled 645 holes across the Tankoro Property: including at least 330 RAB holes, 257 RC holes, and 58 diamond drilling holes.¹⁶⁷
90. Sarama sent the rock and core samples retained from its extensive drilling for independent verification and testing by ALS, SGS *Bureau de Liaison* (“SGS”) and Activation Laboratories Ltd (“ACTLABS”), all of which are global independent providers of analytical testing services for the mining industry that operate to ISO 17025 or ISO 9001 standards.¹⁶⁸ ALS served as Sarama’s primary assaying facility for soil geochemistry and RC drilling while SGS principally provided independent verification of the testing for Cube.¹⁶⁹ ACTLABS provided primary assaying for additional RAB drilling Sarama performed in 2012.¹⁷⁰

¹⁶⁵ Sarama Resources Ltd, *Investor Presentation* (Presentation), dated September 2012, at slide 13, **Exhibit C-0103-ENG**.

¹⁶⁶ First Cube Report, at pp. 111, 119, **Exhibit C-0102-ENG**.

¹⁶⁷ First Cube Report, at p. 119, **Exhibit C-0102-ENG**.

¹⁶⁸ First Cube Report, at p. 189, **Exhibit C-0102-ENG**.

¹⁶⁹ First Cube Report, at p. 28, **Exhibit C-0102-ENG**.

¹⁷⁰ First Cube Report, at p. 143, **Exhibit C-0102-ENG**.

91. The author of the First Cube Report, geologist Adrian Shepherd, visited ALS's and SGS's facilities in Ouagadougou in June 2011.¹⁷¹ Mr Shepherd confirmed in the First Cube Report that the facilities' quality control procedures aligned with "industry best practice" in the "handling, sampling, transport, analysis, storage and documentation of sample material and analytical results".¹⁷² Mr Shepherd also confirmed that "[s]oil geochemistry, geophysical surveys, [] and drilling programs (RAB, AC, RC and diamond) have been successful in discovering and expanding deposits in similar geological settings to Sarama's".¹⁷³
92. Mr Shepherd confirmed that Sarama's initial exploration works between January 2011 and August 2012 had successfully identified the "presence of sub-surface gold mineralisation" on the Tankoro Property — *i.e.*, the Tankoro Deposit.¹⁷⁴ On that basis, he recommended that "further infill and extensional drilling [was] warranted to adequately define the nature, orientation, continuity and extent of the gold mineralisation" present at the Tankoro Property.¹⁷⁵
93. As Mr Hamilton explains, between 18 January 2011 and November 2012, Sarama spent millions of dollars on exploration works on the Tankoro Property — far more than the 12.15 million CFA francs (approximately US\$ 25,000) required under the Option Agreement.¹⁷⁶ Because the preliminary results from the exploration work exceeded Sarama's expectations and confirmed the discovery of the Tankoro Deposit, Sarama decided to exercise the option to acquire the rights to the Tankoro Permit before the end of the three-year payment period specified in the Option Agreement.¹⁷⁷

¹⁷¹ First Cube Report, at p. 168, **Exhibit C-0102-ENG**. NI 43-101 is a Canadian securities regulation that governs how mining companies disclose scientific and technical information about projects to investors and the public and sets out the definition of independent qualified persons. *See* First Cube Report, at p. 189, **Exhibit C-0102-ENG**. Independent qualified persons are certified experts that verify and approve technical reports from companies in the mining industry and ensure that data meets professional and ethical standards. *See* National Instrument 43-101, Standards of Disclosure for Mineral Projects ("**NI 43-101 2011**"), at part 5, **Exhibit C-0096-ENG**.

¹⁷² First Cube Report, at p. 143, **Exhibit C-0102-ENG**.

¹⁷³ First Cube Report, at p. 92, **Exhibit C-0102-ENG**.

¹⁷⁴ First Cube Report, at p. 19, **Exhibit C-0102-ENG**.

¹⁷⁵ First Cube Report, at p. 181, **Exhibit C-0102-ENG**.

¹⁷⁶ *See* Hamilton WS1, at para. 48; ExchangeRates.org.uk, *US Dollar to West African CFA franc History: 2011*, available at <https://www.exchangerates.org.uk/USD-XOF-spot-exchange-rates-history-2011.html>, **Exhibit C-0373-ENG**.

¹⁷⁷ *See* Hamilton WS1, at para. 50.

2.2.1.4

SMB exercised its option to acquire the Tankoro Permit

94. In the autumn of 2012, SMB exercised its right under the Option Agreement to purchase the rights to the Tankoro Permit from Mr Birba.¹⁷⁸ To memorialise the transaction, on 2 November 2012, SMB and Mr Birba entered into a Cession Agreement under which Mr Birba conveyed to SMB a 100% interest in the Tankoro Permit.¹⁷⁹ On 5 November 2012, Mr Birba requested that the Minister of Mines authorise the transfer of the Tankoro Permit to SMB.¹⁸⁰ On 11 March 2013, the Ministry approved the transfer.¹⁸¹
95. SMB promptly paid the fixed transfer tax of 3 million CFA francs (approximately US\$ 4,800) and on 29 March 2013, the Minister of Mines issued an *arrêté* recording the transfer of the Tankoro Permit, which recorded its then current three-year term from 17 December 2011 until 17 December 2014.¹⁸²

2.2.2

Sarama invested in advanced exploration works to define the size and grade of the Tankoro Deposit

96. From late 2012 through 2020, Sarama progressed its exploration works at the Tankoro Deposit, culminating in a mineral resource estimate for the Tankoro Deposit of approximately 2.5 million ounces of gold,¹⁸³ as set out below. Throughout this period, the Tankoro Deposit formed part of Sarama's "**South Houndé Project**". The South Houndé Project was the predecessor to the Sanutura Project, which Sarama formed in September 2020 and also included the Bondi Deposit.¹⁸⁴

¹⁷⁸ Hamilton WS1, at para. 50.

¹⁷⁹ See Contrat de Cession (Permis de Tankoro) entre Sarama Mining Burkina SARL et Mr Ousmane Birba, dated 2 November 2012, **Exhibit C-0105-FR**.

¹⁸⁰ Letter from Mr Ousmane Birba to the Minister of Mines (requesting approval of Tankoro Permit Transfer), dated 5 November 2012, **Exhibit C-0106-FR**.

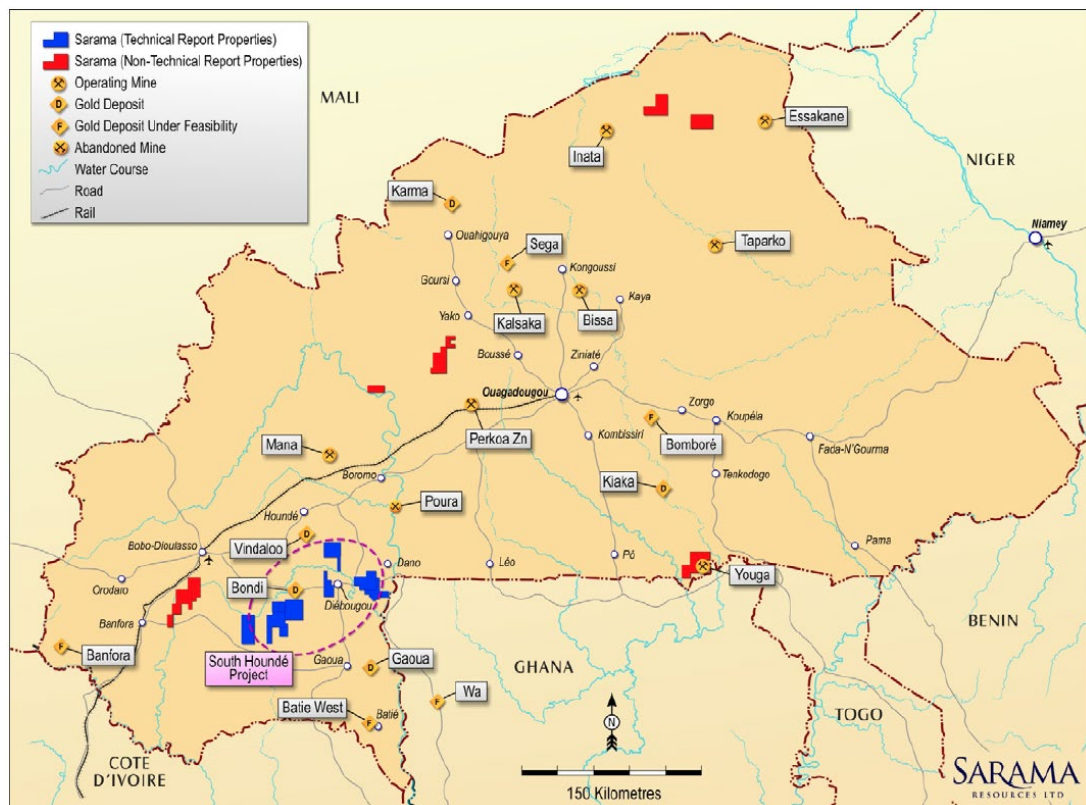
¹⁸¹ Letter from Minister of Mines to Mr Ousmane Birba, dated 11 March 2013, **Exhibit C-0043-FR**; see also RFA, at para. 42.

¹⁸² RFA, at para. 42; see also Arrêté No. 2013 0000 58/MME/SG/DGMG in relation to transfer of the TANKORO permit to SARAMA MINING BURKINA SARL, dated 29 March 2013, **Exhibit C-0044-FR**.

¹⁸³ Indicated 9.4Mt @ 1.9g/t Au for 0.6Moz Au and Inferred 43.6Mt @ 1.4g/t Au for 1.9Moz Au. See, Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 8 September 2020, **Exhibit C-0018-ENG**.

¹⁸⁴ Dinning WS1, at para. 83.

97. By 2012, Sarama's South Houndé Project comprised of the Tankoro Permit and nine other permits within a 60 km radius of the Tankoro Permit. The following map shows Sarama's project areas in Burkina Faso as at August 2012, including the South Houndé Project:¹⁸⁵



Sarama's project areas in Burkina Faso as at August 2012.

98. As its exploration activities intensified, Sarama required a work site directly on the exploration property rather than operating out of its field office in Diébougou.¹⁸⁶ The company therefore established a permanent camp on the Tankoro Property to support its advanced exploration works.¹⁸⁷ The chief elder of the nearby Norkama village helped identify a suitable area and designated an area for Sarama's camp.¹⁸⁸ The camp comprised of living accommodation for Sarama's on-site staff, a kitchen and food storage area, a process sampling area, a core storage area and a core logging area.¹⁸⁹ Between 50 and 115 local day-labourers ("*journaliers*")

¹⁸⁵ Dinning WS1, at para. 49; Image taken from the First Cube Report, dated 23 August 2012, at p. 31, **Exhibit C-0102-ENG**.

¹⁸⁶ See Hamilton WS1, at para. 55.

¹⁸⁷ See Hamilton WS1, at para. 55.

¹⁸⁸ Hamilton WS1, at para. 55; Dinning WS1, at para. 126.

¹⁸⁹ Hamilton WS1, at para. 55.

Mr Hamilton explains that the on-site staff was led by Mr Scherrer and several other technicians. See Hamilton WS1, at para. 55.

assisted Sarama staff with the intense manual labour involved in RAB, RC and diamond drilling, and also looked after the core storage and core logging areas and prepared samples to send back to ALS, SGS and ACTLABS for testing.¹⁹⁰

99. Sarama published its maiden Inferred mineral resource estimate for the Tankoro Deposit of approximately 1.5 million ounces of gold in 2013,¹⁹¹ after completing further infill and extensional RC drilling at the MM Prospect, another prospective section of the Tankoro Deposit known as the “**MC Prospect**” and other target areas.¹⁹² Sarama prepared its mineral resource estimates in accordance with the Canadian National Instrument 43-101 (“**NI 43-101**”) and Australian Joint Ore Reserve Committee (“**JORC**”) codes.¹⁹³ As this was the first time a mineral resource had been declared for the Project, NI 43-101 requires that an independent qualified person (“**QP**”) review and approve the mineral resource estimate.¹⁹⁴ Cube acted as the QP for Sarama’s mineral resource estimates.¹⁹⁵
100. In 2013, Sarama engaged ALS to undertake a metallurgical testwork programme on samples obtained from the MM and MC Prospects.¹⁹⁶ The results of that programme confirmed that the oxide samples demonstrated high gold extractions of 93.2% when subjected to a combination of gravity separation and leaching.¹⁹⁷ Sarama was pleased with the results, which demonstrated that the Tankoro Deposit was technically and commercially viable for extraction.¹⁹⁸

¹⁹⁰ See Hamilton WS1, at paras. 55, 67.

¹⁹¹ Schmiede WS1, at para. 24; Sarama Resources Ltd, Press Release, *Corporate Update*, dated 30 January 2014, **Exhibit C-0116-ENG**.

Mineral resources estimates are classified as Inferred, Indicated or Measured. See National Instrument 43-101, Standards of Disclosure for Mineral Projects, dated 9 May 2016 (“**NI 43-101 2016**”), at Art. 1.2, **Exhibit C-0140-ENG**; Canadian Institute of Mining, Metallurgy and Petroleum, Definition Standards on Mineral Resources and Mineral Reserves, dated 19 May 2024, at pp. 4-5, **Exhibit C-0327-ENG**; see also NI 43-101 2011, at Art. 1.2, **Exhibit C-0096-ENG**; Joint Ore Reserves Committee, Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, dated 20 December 2012 (“**2012 JORC Code**”), at fig. 1, **Exhibit C-0107-ENG**.

¹⁹² Schmiede WS1, at para. 24; Sarama Resources Ltd, Press Release, *Corporate Update*, dated 30 January 2014, **Exhibit C-0116-ENG**.

¹⁹³ See NI-43-101 2011, **Exhibit C-0096-ENG**; 2012 JORC Code, **Exhibit C-0107-ENG**.

¹⁹⁴ Schmiede WS1, at para. 27.

¹⁹⁵ Schmiede WS1, at para. 27.

¹⁹⁶ Schmiede WS1, at para. 20; Cube Consulting, *Sanutura Project NI 43-101 Technical Report*, dated 7 February 2022 (“**Fifth Cube Report**”), at p. 250, **Exhibit C-0029-ENG**.

¹⁹⁷ Schmiede WS1, at para. 21; Fifth Cube Report, at p. 250, **Exhibit C-0029-ENG**.

¹⁹⁸ Schmiede WS1, at para. 21.

101. Mr Shepherd and metallurgist John Fodor, both Qualified Persons under NI 43-101, independently verified the drilling and metallurgical work Sarama undertook between 2011 and mid-2013 in the Second Cube Report dated 28 October 2013. Cube conducted two site visits to the Tankoro Property: the first in June/July 2011 and the second in December 2012.¹⁹⁹ During those visits, Cube inspected the field work at the Tankoro Property and confirmed the exact location of drill holes, geological features, *orpaillage* operations and evidence of mineralisation.²⁰⁰ In its October 2013 report, Cube confirmed that “[r]esults of the independent drilling, soil and rock chip sampling undertaken by Cube have verified the existence and tenor of gold mineralisation” at the Tankoro Property.²⁰¹ It further confirmed that the “quality control samples” it had “reviewed and independently assessed” from Sarama’s exploration works were “unbiased and demonstrate ... analytical accuracy and precision ... at a 95% confidence level”; at this standard, Cube stated, the data was “appropriate for the purpose of mineral resource estimation”.²⁰²
102. In October 2014, President Compaoré dissolved the government and declared a State of Emergency in Burkina Faso.²⁰³ Sarama’s operations remained largely unaffected, although the Cadastre was closed until the introduction of a transitional government in January 2015. Later that month, on 20 January 2015, SMB applied for the second ‘automatic’ renewal of the Tankoro Permit, following the process described in above.²⁰⁴ The closing of the Cadastre delayed consideration of SMB’s application for the second ‘automatic’ renewal of the Tankoro Permit.²⁰⁵ On 13 July 2015, the Minister of Mines granted the second renewal term on the condition precedent that SMB pay the fixed renewal fee within ten working days.²⁰⁶ SMB paid

¹⁹⁹ Cube Consulting, *South Houndé Project NI 43-101 Technical Report*, dated 28 October 2013 (“**Second Cube Report**”), at p. 30, **Exhibit C-0114-ENG**.

²⁰⁰ Second Cube Report, at p. 30, **Exhibit C-0114-ENG**.

²⁰¹ Second Cube Report, at p. 30, **Exhibit C-0114-ENG**.

²⁰² Second Cube Report, at p. 30, **Exhibit C-0114-ENG**.

²⁰³ Dinning WS1, at para. 56; BBC News, *Burkina Faso Army Announces Emergency Measures*, dated 30 October 2014, **Exhibit C-0124-ENG**.

²⁰⁴ Dinning WS1, at para. 56; Sarama Mining Burkina SARL’s Application for Second Renewal of Tankoro permit, dated 20 January 2015, **Exhibit C-0127-FR**.

²⁰⁵ Dinning WS1, at para. 56.

²⁰⁶ Dinning WS1, at para. 56; Letter from the Ministry of Mines to SBM (Invitation to pay for second renewal of Tankoro permit), dated 13 July 2015, **Exhibit C-0131-ENG**.

the requisite fee and presented receipt of payment to the Ministry on 16 July 2015.²⁰⁷ The Ministry issued the *arrêté* on 1 September 2015.²⁰⁸

103. In 2014, the price of gold declined precipitously,²⁰⁹ making it difficult and expensive for Sarama to raise funds to continue its exploration works. Around the same time, Acacia Mining plc (“**Acacia**”), a Tanzania-based gold mining company and former Barrick Mining Corporation subsidiary, needed a headline exploration asset for its portfolio.²¹⁰ The Tankoro Deposit fit the bill. Sarama and Acacia thus began to negotiate the terms of a joint venture partnership in respect of the South Houndé Project.²¹¹
104. In November 2014, as a result of those discussions, Sarama and Acacia signed an Earn-In Agreement relating to the South Houndé Project, including the Tankoro Deposit.²¹² Under that agreement, Acacia obtained an option to earn up to a 75% interest in the South Houndé Project by, *inter alia*, funding US\$ 14 million of exploration works and declaring a minimum mineral reserve of 1.6 million ounces of gold.²¹³
105. Sarama continued to manage the South Houndé Project for the first two years under the Earn-In Agreement, and between 2014 and 2016 conducted further metallurgical testworks, RC and AC drill programmes.²¹⁴ This included a 7,100 metre diamond, RC and AC drill programme

²⁰⁷ Dinning WS1, at para. 56; Bordereau de Paiement par Cheque (Receipt for Payment of Second Renewal of Tankoro permit), dated 16 July 2015, **Exhibit C-0132-ENG**.

²⁰⁸ Dinning WS1, at para. 56; Arrêté N°2015 000283/MME/SG/DGCM in relation to the second renewal of the TANKORO permit of Sarama Mining Burkina SARL, dated 16 September 2015, **Exhibit C-0045-ENG**.

²⁰⁹ Dinning WS1, at para. 58; Forbes, *Reasons for the Recent Decline in Gold Prices*, dated 12 September 2014, **Exhibit C-0123-ENG**.

²¹⁰ Dinning WS1, at para. 58.

²¹¹ Dinning WS1, at para. 58.

²¹² Dinning WS1, at paras. 58-59; Earn-In Agreement as regards to the South Houndé Project between African Barrick Gold Plc and Sarama Resources Ltd, dated 26 November 2014 (“**Earn-in Agreement**”), **Exhibit C-0125-ENG**.

²¹³ Earn-In Agreement, **Exhibit C-0125-ENG**; *see also* Sarama Resources Ltd, Press Release, *Sarama Resources Announces Completion of Earn-In Agreement with Acacia Mining (Formerly African Barrick Gold)*, dated 5 December 2014, **Exhibit C-0126-ENG**.

²¹⁴ Schmiede WS1, at paras. 29-30.

commenced in 2015.²¹⁵ Sarama had achieved very strong results from the first phase of that programme by April 2016,²¹⁶ particularly at the MM and MC Prospects.²¹⁷

106. Because of the drop in gold price, Sarama instructed ALS to conduct a heap leach testwork programme as heap leach processing is well suited to low gold price environments.²¹⁸ Gold-bearing ore is predominantly processed using either heap leaching or tank-based leaching methods.²¹⁹ Heap leaching involves stacking large volumes of ore on a prepared pad and dripping sodium cyanide solution through pipes or sprinklers.²²⁰ The cyanide dissolves the gold into what Mr Schmiede describes as a “pregnant liquor”, which is collected and processed through an electrowinning circuit to extract the gold. This is a low-cost method that suits low gold price environments.²²¹
107. In contrast, the carbon-in-leach (“CIL”) method places crushed and ground ore into aerated and agitated tanks, where controlled chemical reactions extract gold.²²² Although CIL requires higher capital and operating costs, it offers lower technical risk and typically achieves higher gold recovery than heap leaching and, therefore, was Sarama’s preference in a moderate or high gold price environments.²²³
108. The results of the heap leach testwork programme were excellent. ALS confirmed that the Tankoro Deposit is “highly amenable to heap leach processing”, with gold extraction rates of 85.8% discounted to 83% to represent field recovery.²²⁴ As Mr Schmiede explains, this is a

²¹⁵ Schmiede WS1, at para. 30; Dinning WS1, at para. 60; Sarama Resources Ltd, Press Release, *Sarama Resources Announces Recommencement of Drilling at the South Houndé Project in Burkina Faso*, dated 27 April 2015, **Exhibit C-0128-ENG**.

²¹⁶ Schmiede WS1, at para. 30; Sarama Resources Ltd, Press Release *Sarama Resources Completes Q1 2016 Drill Program at the South Houndé Project in Burkina Faso*, dated 12 April 2016, **Exhibit C-0138-ENG**.

²¹⁷ Schmiede WS1, at paras. 30-32; Cube Consulting, *South Houndé Project Update NI 43-101 Technical Report*, dated 31 March 2016 (“**Third Cube Report**”), at pp. 119, 121 and 126, **Exhibit C-0028-ENG**.

²¹⁸ Schmiede WS1, at para. 22; **Third Cube Report**, at pp. 31-32, **Exhibit C-0028-ENG**.

²¹⁹ Schmiede WS1, at para. 22.

²²⁰ Schmiede WS1, at para. 22.

²²¹ Schmiede WS1, at para. 22.

²²² Schmiede WS1, at para. 23.

²²³ Schmiede WS1, at para. 23.

²²⁴ Schmiede WS1, at para. 29; **Third Cube Report**, at p. 32, **Exhibit C-0028-ENG**.

“very high” result for heap leach processing, which ordinarily yields recover rates of 50-70%.²²⁵

109. Acacia took over as manager of the South Houndé Project in 2017, whilst Sarama continued to provide “technical assistance and historical knowledge and context to Acacia”.²²⁶ Acacia met the minimum expenditure requirements to attain a 50% interest in the South Houndé Project on or about 3 February 2017.²²⁷ Acacia advised Sarama at the time that it had approved “an exploration budget of US\$ 4 million for 2017, and intended to undertake 12,000 metres of diamond core, 10,000 metres of reverse circulation and 28,000 metres of air core drilling”.²²⁸
110. By August 2017, Sarama and Acacia’s combined exploration work led to the “delineation of the Tankoro Deposit over a significant strike length, depth and lateral extent”.²²⁹ Mr Schmiede prepared the below image showing the resource model and continued exploration drilling at the MC Prospect of the Tankoro Deposit, with the blue lines representing new drill holes that showed further potential to expand the depth of the mineral resource.²³⁰

²²⁵ Schmiede WS1, at para. 29.

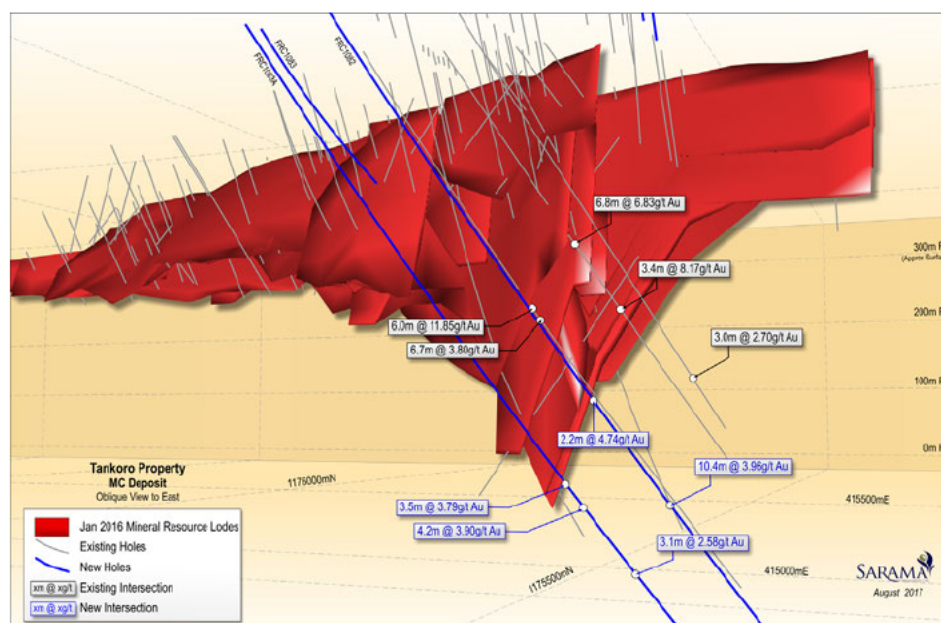
²²⁶ Schmiede WS1, at para. 36

²²⁷ Dinning WS1, at para. 61; Sarama Resources Ltd, Press Release, *Sarama Resources Provides Progress Update for South Houndé Project in Burkina Faso*, dated 3 February 2017, **Exhibit C-0149-ENG**.

²²⁸ Dinning WS1, at para. 61; Sarama Resources Ltd, Press Release, *Sarama Resources Provides Progress Update for South Houndé Project in Burkina Faso*, dated 3 February 2017, **Exhibit C-0149-ENG**.

²²⁹ Schmiede WS1, at para. 35.

²³⁰ Schmiede WS1, at para. 35.



*Resource model of mineralisation at the MC Prospect in the Tankoro Deposit, August 2017.*²³¹

111. On 15 September 2017, SMB applied for an exceptional renewal of the Tankoro Permit in accordance with the process described in above.²³² The Minister granted the exceptional renewal term, subject to the condition that Sarama pay the fixed permit renewal fee within ten working days.²³³ SMB paid the requisite fee and presented receipt of payment to the Ministry on 17 May 2018.²³⁴ Sarama received the *arrêté* two years later, in July 2019.²³⁵ As set out in above, the Minister was required to issue the *arrêté* within 60 days of receiving proof of payment of the permit fee.²³⁶ As Mr Dinning explains, as a matter of practice the Minister of Mines often took more than 60 days to issue the *arrêté*.²³⁷

²³¹ Schmiede WS1, at para. 35; Paul Schmiede, 3D Model of Mineralisation of the MC Prospect in Tankoro Deposit, dated August 2017, **Exhibit C-0156-ENG**.

²³² Dinning WS1, at para. 63; SMB Request for Exceptional Renewal of TANKORO permit, dated 15 September 2017, **Exhibit C-0047-FR**.

²³³ Letter from Minister of Mines to Sarama Mining Burkina SARL, dated 2 May 2018, **Exhibit C-0048-ENG**.

²³⁴ Letter from Minister of Mines to Sarama Mining Burkina SARL, dated 2 May 2018, **Exhibit C-0048-ENG**.

²³⁵ Arrêté No. 2019/150/MMC/SG/DGCM in relation to the exceptional renewal of exploration permit n°284 named TANKORO of SARAMA MINING BURKINA SARL (N°IFU: 00027503X), dated 17 July 2019, **Exhibit C-0046-FR**.

²³⁶ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 32, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Arts. 27, 32, **Exhibit C-0299-FR**.

²³⁷ Dinning WS1, at para. 46(d).

112. By mid-2017, however, Acacia faced difficulties in Tanzania relating to allegations of under-reporting gold exports and evading billions of dollars in taxes and royalties.²³⁸ In connection with those allegations, Tanzanian authorities froze many of Acacia's assets.²³⁹ Acacia suffered severe financial distress and cash flow constraints, leading it effectively to halt exploration works at the South Houndé Project and to breach its obligations under the Earn-In Agreement.²⁴⁰
113. In February 2018, Mr Dinning arranged a meeting with Acacia's interim CEO Peter Geleta and its CFO Jaco Maritz at the Bank of Montreal Global Metals & Mining Conference in Hollywood, Florida to discuss possibilities for progressing the project.²⁴¹ As Mr Dinning explains, Mr Geleta promised to consider Acacia's commitment to the South Houndé Project.²⁴²
114. On 24 September 2018, during the Denver Gold Forum in Colorado Springs, Acacia invited Mr Dinning to a meeting at the Wyndham hotel with Mr Geleta, Mr Maritz, Hannes Henckel (Head of Discovery), and Sally Marshak (General Manager).²⁴³ At that meeting, Mr Geleta told Mr Dinning that the South Houndé Project no longer fit within Acacia's portfolio.²⁴⁴ Mr Dinning and Mr Geleta agreed on the terms of Acacia's exit and, on 26 November 2018, Sarama and Acacia signed a Conditional Heads of Agreement.²⁴⁵
115. Thereafter, Sarama and Acacia began to negotiate the specifics of an agreement by which Sarama would re-acquire the entirety of the South Houndé Project.²⁴⁶ On 14 May 2019, Sarama

²³⁸ Dinning WS1, at para. 62.

²³⁹ Dinning WS1, at para. 62; MiningWatch Canada, *Anger Boils Over at North Mara Mine – Barrick/Acacia Leave Human Rights Abuses Unaddressed*, dated July 2017, **Exhibit C-0154-ENG**.

²⁴⁰ Dinning WS1, at para. 62; Earn-In Agreement, **Exhibit C-0125-ENG**.

²⁴¹ Dinning WS1, at para. 65.

²⁴² Dinning WS1, at para. 65.

²⁴³ Email from S Marshak (Acacia Mining) to A Dinning, dated 21 September 2018, **Exhibit C-0330-ENG**.

²⁴⁴ Dinning WS1, at para. 65.

²⁴⁵ Conditional Heads of Agreement between Acacia Mining plc and Sarama Resources Ltd (Exit of the Earn-In Agreement dated 26 November 2014 in Respect of the South Houndé Project), dated 26 November 2018, **Exhibit C-0169-ENG**.

²⁴⁶ Dinning WS1, at para. 67.

and Acacia entered into a Termination Agreement by which Sarama regained 100% ownership of the South Houndé Project.²⁴⁷ Under the Termination Agreement:

- (a) Sarama paid cash reimbursements totalling US\$ 2 million in a series of scheduled payments;
- (b) Sarama granted Acacia the right to commercial production-based payments comprising:
 - (i) US\$ 1 million on production of 10,000 troy oz Au;
 - (ii) US\$ 1 million on production of a further 15,000 troy oz Au;
 - (iii) royalty payments capped at gold production of 1 Moz Au according to a sliding scale of royalty rates (1% for gold price $\leq$ US\$ 1300/oz, 1.5% for gold prices $>$ US\$ 1300/oz and $\leq$ US\$ 1500/oz, and 2% for gold prices $>$ US\$ 1500/oz); and
- (c) Sarama granted Acacia 5 million warrants over Sarama's shares (2.5 million exercisable at CA\$ 10 cents per share, and 2.5 million exercisable at CA\$ 20 cents per share).²⁴⁸

116. In September 2019, Barrick Mining Corporation reacquired Acacia.²⁴⁹ Sarama entered into a new Termination Agreement with Barrick TZ Limited, which replaced the Termination Agreement with Acacia.²⁵⁰

117. At the end of 2019, Sarama recommenced AC drilling.²⁵¹ By mid-2020, Sarama and Acacia's combined exploration works "had resulted in a further 13,533 metres of AC drilling, 8,864 metres of RC drilling, and 11,620 metres of diamond drilling since the Inferred mineral

²⁴⁷ Termination Agreement between Acacia Mining Plc and Sarama Resources Ltds (regarding the South Houndé Project), dated 14 May 2019, **Exhibit C-0173-ENG**.

²⁴⁸ Termination Agreement between Acacia Mining Plc and Sarama Resources Ltds (regarding the South Houndé Project), dated 14 May 2019, **Exhibit C-0173-ENG**; Sarama Resources Ltd, Press Release, *Sarama Resources Executes Definitive Agreement to Regain 100% Ownership of South Houndé Project in South-West Burkina Faso*, dated 14 May 2019, **Exhibit C-0172-ENG**.

²⁴⁹ Dinning WS1, at para. 69; Mining.com, *Barrick Takes Acacia Mining Back as Buyout Deal Sealed*, dated 17 September 2019, **Exhibit C-0178-ENG**.

²⁵⁰ Termination Agreement between Barrick TZ Limited and Sarama Resources Ltd (regarding the South Houndé Project), dated 2019, **Exhibit C-0179-ENG**.

²⁵¹ Schmiede WS1, at para. 37.

resource estimate published in 2016”.²⁵² Sarama relied on these drill campaigns to publish an updated mineral resource estimate for the Tankoro Deposit in September 2020, as set out in below.

2.2.3 Sarama acquired the rights to the Bondi Deposit to strengthen its position in the Houndé Greenstone Belt

118. Since the outset of Sarama’s investment in the Tankoro Property, Sarama’s leadership also held a keen interest in a neighbouring deposit known as the “**Bondi Deposit**”, over which Orezone held an exploration permit.²⁵³ The Bondi Deposit is located just to the northeast of the Tankoro Deposit, within 35 km trucking distance.²⁵⁴ It is smaller than the Tankoro Deposit, but its mineralisation is both shallow and high-grade.²⁵⁵ By the time Sarama acquired the Tankoro Permit, Orezone had already reported Measured and Indicated resources of 282,000 ounces of gold and an Inferred resource of 150,000 ounces of gold and had announced plans to conduct additional exploration work.²⁵⁶
119. Given its characteristics and proximity, Sarama’s management team knew that the Bondi Deposit would be highly synergistic with the Tankoro Deposit.²⁵⁷ Sarama devised a development plan whereby it would establish a single, central processing facility to which it would feed ore mined from multiple deposits—including the Tankoro and Bondi Deposits.²⁵⁸ As Mr Dinning explains, the incremental feed from the Bondi Deposit would allow Sarama to benefit from economies of scale while avoiding the capital burden of establishing a processing facility for the Bondi Deposit alone.²⁵⁹
120. By contrast, the Bondi Deposit carried limited value for Orezone. As Mr Dinning and Mr Schmiede explain, Orezone did not have rights over any other deposits in the area and, despite its high grade, the Bondi Deposit was too small for Orezone to mine economically on its own.²⁶⁰ It was therefore a “stranded asset” for Orezone and Orezone was “focused on getting

²⁵² Schmiede WS1, at para. 37; Fifth Cube Report, at p. 260, **Exhibit C-0029-ENG**.

²⁵³ Schmiede WS1, at para. 47; Dinning WS1, at paras. 70-71.

²⁵⁴ Schmiede WS1, at para. 46.

²⁵⁵ Dinning WS1, at para. 72.

²⁵⁶ Orezone Gold Corporation, 2009 Annual Report, at p.6, **Exhibit C-0079-ENG**.

²⁵⁷ Dinning WS1, at paras. 70-72.

²⁵⁸ Schmiede WS1, at para. 48; Dinning WS1, at para. 71.

²⁵⁹ Dinning WS1, at paras. 70-71.

²⁶⁰ Dinning WS1, at para. 70; Schmiede WS1, at para 49.

its much larger Bombore’ deposit into production”, Mr Dinning explains.²⁶¹ This placed Sarama in an ideal negotiating position.

121. Thus, in December 2016, Sarama’s subsidiary SWA acquired 100% control of the exploration permit covering the Bondi Deposit (the “**Djarkadougou Permit**”) from Orezone.²⁶² SWA acquired the rights to the Bondi Deposit for:

- (a) 9.6 million common shares in Sarama valued at CA\$ 15 cents per share;
- (b) 3 million warrants over Sarama’s shares exercisable at CA\$ 19.5 cents per share for 2 years;
- (c) 2 million warrants over Sarama’s shares exercisable at CA\$ 24 cents per share for 3 years; and
- (d) a production royalty of US\$ 20 per ounce for the first 200,000 ounces of gold produced from the Bondi Deposit.²⁶³

122. This transaction put Sarama “in a unique position to play a key role in the consolidation of the area ... [the] Bondi [Deposit] is located immediately adjacent to Sarama’s South Houndé Project in south-western Burkina Faso”,²⁶⁴ and it provided Sarama “with various options to pursue the development of a mine in the region”.²⁶⁵ On 22 August 2017, SWA entered into a Gold Sale Royalty Agreement with Orezone to formalise the royalty.²⁶⁶

123. Minister Idani, the Minister of Mines at the time, approved the transfer of the Djarkadougou Permit to SWA in April 2017 and invited SWA to pay the transfer fee, which it did on or about

²⁶¹ Dinning WS1, at para. 72; Schmiede WS1, at para. 49.

²⁶² Sarama Resources Ltd, Press Release, *Sarama Announces Update on Bondi Transaction*, dated 13 December 2016, **Exhibit C-0147-ENG**.

²⁶³ Dinning WS1, at para. 73; Letter from Orezone to Sarama (containing HOTs for Djarkadougou acquisition), dated 23 May 2016, **Exhibit C-0141-ENG**; Sarama Resources, Press Release, *Sarama Resources Acquires the Bondi Gold Deposit in Burkina Faso from Orezone Gold*, dated 24 May 2016, **Exhibit C-0142-ENG**.

²⁶⁴ Dinning WS1, at para. 74; Sarama Resources Ltd, Press Release, *Sarama Announces Update on Bondi Transaction*, dated 13 December 2016, **Exhibit C-0147-ENG**.

²⁶⁵ Schmiede WS1, at para. 50; Sarama Resources Ltd, Press Release, *Sarama Announces Update on Bondi Transaction*, dated 13 December 2016, at p. 1, **Exhibit C-0147-ENG**.

²⁶⁶ Gold Sale Royalty Agreement between Orezone Gold Corporation and SWA SARL, dated 22 August 2017, **Exhibit C-0159-ENG**.

14 July 2017.²⁶⁷ On 16 August 2017, Minister Idani issued the *arrêté* recording the transfer of the Djarkadougou Permit to SWA.²⁶⁸

124. After acquiring the Bondi Deposit, Sarama built directly on Orezone’s prior exploration work to continue advancing the known scope, grade and size of the Bondi Deposit. At that time, the Bondi Deposit was part of Sarama’s “**ThreeBee Project**”, comprising a group of three properties in the Houndé Greenstone Belt that were situated adjacent to the South Houndé Project.²⁶⁹ As set out further in **section 2.2.4** below, the ThreeBee Project was later consolidated with the South Houndé Project to form the Sanutura Project. In 2017, Sarama conducted a comprehensive review of the historical data package provided by Orezone, including drill core, geochemical assays, and structural interpretations, to validate the data for future resource updates and guide additional fieldwork.²⁷⁰ Orezone had conducted “a significant amount of exploration works on the Bondi Deposit”.²⁷¹ Since publishing its 2009 mineral resource estimate of 282,000 ounces of gold (Measured and Indicated) and 150,000 ounces of gold (Inferred),²⁷² Orezone had also completed metallurgical testwork programmes, including a 2013 programme demonstrating that the Bondi Deposit was amenable to cyanide processing.²⁷³ The results of that programme confirmed that Sarama could process the ore extracted from the Bondi Deposit through the same plant as the Tankoro Deposit.²⁷⁴
125. Sarama’s review confirmed that Orezone had completed extensive and dense drilling at the Bondi Deposit, providing a high level of confidence in the spatial characteristics of the mineralised lodes.²⁷⁵ However, during his analysis, Mr Schmiede identified several unmodelled intersections adjacent to the identified mineralised lodes of the Bondi Deposit.²⁷⁶

²⁶⁷ Dinning WS1, at para. 75; Acte de Cession de Permis de Recherche entre Orezone Inc. et SWA SARL (“**Deed of Transfer**”), dated 25 April 2017, **Exhibit C-0152-FR**; Bulletin de Liquidation N°2017/DF-TRANS/P-06/160 Droits de Transfert de Permis de Recherche - Djarkadougou, dated 14 July 2017, **Exhibit C-0155-FR**.

²⁶⁸ Arrêté N°17/118/MMC/SG/DGCM pourtant transfert du permis de recherche "DJARKADOUGOU" à La société SWA SARL, dated 16 August 2017, **Exhibit C-0157-FR**.

²⁶⁹ Dinning WS1, at para. 76; Sarama Resources Ltd, *Press Release, Sarama Resources Announces Assay Results from Bamako 2 Drill Program in South-West Burkina Faso*, dated 30 January 2020, **Exhibit C-0182-ENG**.

²⁷⁰ Schmiede WS1, at para. 53.

²⁷¹ Schmiede WS1, at para. 51.

²⁷² Schmiede WS1, at para. 51; Orezone Gold Corporation, Annual Report 2009, dated 31 March 2010, at p.6, **Exhibit C-0079-ENG**.

²⁷³ Schmiede WS1, at para. 52.

²⁷⁴ Schmiede WS1, at para. 52.

²⁷⁵ Schmiede WS1, at para. 53.

²⁷⁶ Schmiede WS1, at para. 53.

Sarama determined that sufficient drilling data and geological knowledge were available to support a more detailed interpretation and estimation of the Bondi Deposit than that adopted by Orezone.²⁷⁷ As Mr Schmiede explains, there is a degree of subjectivity to resource classifications, and Sarama and its QP, Cube, generally took a more conservative approach.²⁷⁸ On that basis, Sarama elected to disclose the Bondi Deposit mineral resource estimate based on Orezone’s exploration works as an “historic estimate” rather than current mineral resource estimate.²⁷⁹ This provided Sarama with time to “interrogate the drill database properly, re-interpret existing and previously unmodelled mineralisation and generate new exploration targets to publish an updated mineral resource estimate”.²⁸⁰

126. In 2018, Sarama used Orezone’s historical exploration data to conduct targeted field exploration on the Djarkadougou Permit, focusing on areas with near-term potential for mineral resource growth.²⁸¹ Sarama invested in AC and RC drilling at a prospective area in the vicinity of the Bondi Deposit known as the “**Zanawa Prospect**”, where Orezone had previously identified gold-in-soil anomalies and promising reconnaissance drill intersections.²⁸² Sarama’s drilling at the Zanawa Prospect confirmed intervals of shallow gold mineralisation.²⁸³
127. Sarama also conducted approximately 1,300 metres of RC drilling on the southern limits of the Bondi Deposit, extending an area of gold mineralisation known as the SE Splay Prospect to the south-east and identifying several high-grade zones that remained open at depth.²⁸⁴ The results indicated multiple regional shear zones with secondary fault splays and highlighted further exploration targets.²⁸⁵ Sarama’s drill results from the 2018 programme demonstrated

²⁷⁷ Schmiede WS1, at para. 54.

²⁷⁸ Schmiede WS1, at para. 54.

²⁷⁹ Schmiede WS1, at para. 54; Sarama Resources Ltd, Press Release, *Sarama Resources Acquires the Bondi Gold Deposit in Burkina Faso from Orezone Gold*, dated 24 May 2016, at p.1, **Exhibit C-0017-ENG**.

²⁸⁰ Schmiede WS1, para. 56.

²⁸¹ Schmiede WS1, para. 57; Sarama Resources Ltd, Press Release, *Sarama Resources Extends Strike Length of New Discovery on the Djarkadougou Property*, dated 20 September 2018, **Exhibit C-0167-ENG**.

²⁸² Schmiede WS1, para. 57; Sarama Resources Ltd, Press Release, *Sarama Resources Extends Strike Length of New Discovery on the Djarkadougou Property*, dated 20 September 2018, **Exhibit C-0167-ENG**.

²⁸³ Schmiede WS1, para. 57; Sarama Resources Ltd, Press Release, *Sarama Resources Extends Strike Length of New Discovery on the Djarkadougou Property*, dated 20 September 2018, **Exhibit C-0167-ENG**.

²⁸⁴ Schmiede WS1, para. 58; Sarama Resources Ltd, Press Release, *Sarama Resources Extends Strike Length of New Discovery on the Djarkadougou Property*, dated 20 September 2018, **Exhibit C-0167-ENG**.

²⁸⁵ Schmiede WS1, at para. 58.

the potential to expand the historical mineral resource estimate for the Bondi Deposit and strengthened Sarama’s regional development options.²⁸⁶

128. On 18 August 2018, the exceptional renewal term for the Djarkadougou Permit expired.²⁸⁷ Given its development plan, Sarama needed to secure a further exploration permit over the Bondi Deposit to continue its exploration works to advance the Bondi Deposit towards pre-development. On 28 January 2019, SWA SARL submitted an application for a new exploration permit over the Bondi Deposit.²⁸⁸
129. On 30 July 2021, over 2 years later, the Minister of Mines approved the second exploration permit over the Bondi Deposit (the “**Djarkadougou 2 Permit**”) on the condition precedent that SWA pay the fixed permit fee of 2 million CFA francs within 10 working days.²⁸⁹ SWA paid the fee and presented receipt of payment to the Ministry on 2 August 2021, therefore satisfying the condition precedent and becoming the legal owner of the Djarkadougou 2 Permit.²⁹⁰ The Minister issued the *arrêté* to SWA on 6 January 2023.²⁹¹ As Mr Dinning explains, as a matter of practice the Minister of Mines often took more than 60 days to issue the *arrêté*.²⁹²
130. During that time, Sarama conducted drill programmes at the Bondi Deposit that “had yielded impressive results, including high-grade intercepts along strike from the main deposit” and showed that there was scope for the discovery of further gold mineralisation at depth.²⁹³

²⁸⁶ Schmiede WS1, at para. 59.

²⁸⁷ Arrêté No. 2015 000316/MME/SG/DGCM in relation to the exceptional renewal of the DJARKADOUGOU permit of OREZONE INC, dated 5 November 2015, at Art. 3, **Exhibit C-0049-FR**.

²⁸⁸ See Permit Application Form No. 3393 for DJARKADOUGOU II submitted by SWA SARL, dated 28 January 2019, **Exhibit C-0050-FR**.

²⁸⁹ Dinning WS1, at para. 86; Letter from Minister of Energy, Mines and Quarries to SWA SARL, dated 30 July 2021, **Exhibit C-0051-FR**.

²⁹⁰ Dinning WS1, at para. 86; Bordereau de Paiement par Cheque (Receipt for Payment for Djarkadougou 2 Permit), dated 2 August 2021, **Exhibit C-0202-FR**.

²⁹¹ Dinning WS1, at para. 88; Arrêté No. 2023-028/MEMC/SG/DGCM in relation to the grant of permit n°3393 named “DJARKADOUGOU II” to the company SWA SARL (IFU : 00083658Y), dated 6 January 2023, at Art. 1, **Exhibit C-0052-FR**.

²⁹² Dinning WS1, at para. 46(d).

²⁹³ Dinning WS1, at para. 77.

2.2.4 Sarama consolidated the Tankoro and Bondi Deposits to establish the Sanutura Project and secured the Tankoro 2 Permit

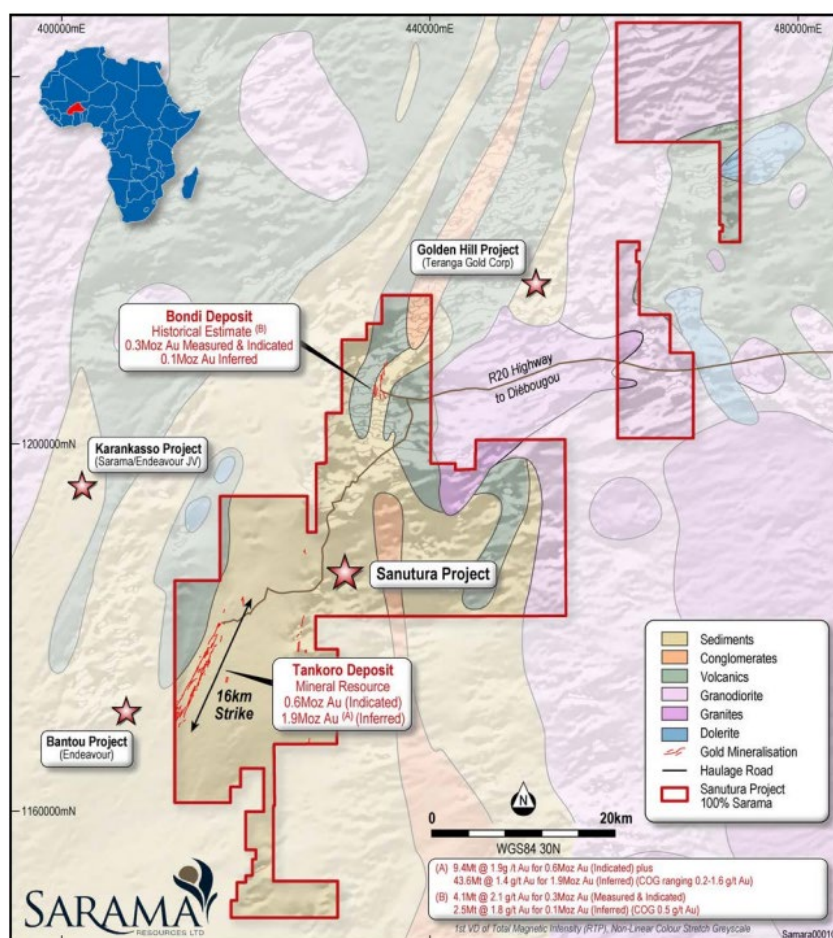
2.2.4.1 Sarama consolidated the South Houndé Project and the ThreeBee Project to establish the Sanutura Project in September 2020

131. By September 2020, Sarama was advancing toward the pre-development phase of the Tankoro and Bondi Deposits and the preparation of a PEA was in the pipeline. It had a clear strategy for the development of a multi-stage tank-based CIL project.²⁹⁴ To bring the Tankoro and Bondi Deposits under one roof and to realise their synergies, Sarama consolidated the South Houndé and ThreeBee Projects into a single project, the “**Sanutura Project**”.²⁹⁵ The Sanutura Project stretched across approximately 1,500 km² and comprised the areas depicted in the map below:²⁹⁶

²⁹⁴ Dinning WS1, at para. 78.

²⁹⁵ Dinning WS1, at paras. 82-83.

²⁹⁶ Dinning WS1, at para. 83; Sarama Resources Ltd, Press Release, *Sarama Resources Files NI 43-101 Technical Report for the Sanutura Gold Project*, dated 20 October 2020, at p. 1, **Exhibit C-0193-ENG**.



Map of Sanutura Project²⁹⁷

132. As set out in **section 2.2.5** below, Sarama intended for the Sanutura Project to be a multi-stage development. Because of this, it needed to grow the shallow, near mine oxide resource at the Tankoro Deposit through analysing the results of recent drill programmes and conducting further exploration works.²⁹⁸ That is, to better understand the percentage of the Tankoro Deposit sitting close to the surface, being the part of the mineral resource that “delivers the lowest cost and highest return due to its proximity to the surface and minimal processing requirements”.²⁹⁹
133. In September 2020, Sarama published an updated mineral resource estimate for the Tankoro Deposit, largely based on the additional drill programmes completed by Acacia and Sarama as set out in above. The new mineral resource estimate reported Indicated resources of 9.4Mt @

²⁹⁷ Taken from Sarama Resources Ltd, Press Release, *Sarama Resources Files NI 43-101 Technical Report for the Sanutura Gold Project*, dated 20 October 2020, at p. 2, **Exhibit C-0193-ENG**.

²⁹⁸ Dinning WS1, at para. 79.

²⁹⁹ Dinning WS1, at para. 79.

1.9g/t Au for 0.6Moz Au and Inferred resources of 43.6Mt @ 1.4g/t Au for 1.9Moz Au, totalling approximately 2.5 million ounces of gold.³⁰⁰

134. The September 2020 mineral resource update confirmed that the Tankoro Deposit contained a substantial portion of high-grade gold,³⁰¹ and upgraded approximately 25% of the resource from an Inferred to Indicated classification.³⁰² The updated estimate also demonstrated a 33% increase in oxide and transition material, which had the potential to provide early feed for a multi-stage mine development.³⁰³ Further, the estimate confirmed that the resource extended roughly 16 km along strike within a lithological and structural corridor approximately 1.4 km wide, confirming the depth and scale of the Tankoro Deposit.³⁰⁴ Finally, because 70% of the Tankoro Deposit's defined ounces sat within 150 meters of the surface, the resource would be cost efficient to extract.³⁰⁵
135. Cube acted as the QP for Sarama's updated mineral resource estimate for the Tankoro Deposit and prepared an NI 43-101 filed in October 2020. Specifically, Cube noted that the Tankoro Deposit was firmly the "economic focus of the [Sanutura] [P]roject which the company intend[ed] to advance towards development".³⁰⁶

**2.2.4.2 *The Ministry issued the First Information Notice for the
"creation of zones reserved for the State", and which listed the
Tankoro Permit***

136. To advance the Sanutura Project towards pre-development, Sarama had to ensure that it had valid permit terms to cover the time that it required to complete its final exploratory works to accompany its PEA (as explained further in below). Sarama had already secured the Djarkadougou 2 Permit, as set out in above, but the exceptional renewal term for the Tankoro

³⁰⁰ Schmiede WS1, at para. 39; Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 8 September 2020, **Exhibit C-0018-ENG**.

³⁰¹ Indicated 6.3Mt @ 2.5g/t Au for 0.5Moz Au plus Inferred 24.7Mt @ 1.8g/t Au for 1.5Moz Au; Schmiede WS1, at para 39(a).

³⁰² Schmiede WS1, at para. 39(c).

³⁰³ Schmiede WS1, at para. 39(b).

³⁰⁴ Schmiede WS1, at para. 39(e).

³⁰⁵ Schmiede WS1, para. 39(d).

³⁰⁶ Sarama Resources Ltd, Press Release, *Sarama Resources Files NI 43-101 Technical Report for the Sanutura Gold Project*, dated 20 October 2020, **Exhibit C-0193-ENG**.

Permit was due to expire on 17 December 2020.³⁰⁷ Prior to its expiry, Sarama intended to apply for a second exploration permit over the Tankoro Property.³⁰⁸

137. In anticipation of the Tankoro Permit’s expiry, in early August 2020, Mr Hamilton [REDACTED], had met with Minister Idani, the Minister of Mines at the time. Mr Hamilton [REDACTED] explained that Sarama’s Tankoro Permit was in the exceptional renewal period but that Sarama would not be able to finish its exploration activities by the end of the exceptional renewal period on 17 December 2020.³⁰⁹ Accordingly, they informed Minister Idani that Sarama intended to apply for a new exploration permit in anticipation of commissioning of a PEA for the Tankoro Property and the Sanutura Project as a whole.³¹⁰ As Mr Hamilton explains, Minister Idani told him “not to worry” and that the Ministry would allow Sarama to continue exploration activities at the Tankoro Property once the exceptional renewal period had expired.³¹¹ Mr Hamilton later memorialised this conversation in a letter to Minister Idani dated 4 August 2020.³¹²
138. On or about 12 October 2020, however, the Ministry unexpectedly posted an “information notice” to a bulletin board at the Ministry’s Cadastre (the “**First Information Notice**”), designating 41 permits for an “in-depth review” by the Ministry.³¹³ The First Information Notice stated that “the creation of zones reserved for the State” was “planned”, and the Ministry had compiled the list as part of the “operationalisation” of those areas.³¹⁴

³⁰⁷ Dinning WS1, at para. 92; Arrêté No. 2015 000283/MME/SG/DGCM in relation to the second renewal of the TANKORO permit of Sarama Mining Burkina SARL, dated 16 September 2015, **Exhibit C-0045-FR**.

³⁰⁸ See Dinning WS1, at para. 92; Hamilton WS1, at paras. 72, 77.

Mr Hamilton explains how he sent a letter to preview Sarama’s application for a second exploration permit over the Tankoro Property to the Minister of Mines on 4 August 2020. See Letter from Sarama to the Minister of Mines, dated 4 August 2020, at p. 2, **Exhibit C-0187-ENG**.

³⁰⁹ Hamilton WS1, at para. 78; Summary of Steps Taken to Resolve Sarama’s Permit Issues, dated 30 November 2022, at, p. 1, **Exhibit C-0234-ENG**; RFA, at para. 46.

³¹⁰ Hamilton WS1, at para. 78; Summary of Steps Taken to Resolve Sarama’s Permit Issues, dated 30 November 2022, at p. 1, **Exhibit C-0234-ENG**.

³¹¹ Hamilton WS1, at para. 78.

³¹² Letter from J Hamilton to the Minister of Mines, dated 4 August 2020, p. 2, **Exhibit C-0187-ENG**.

³¹³ Dinning WS1, at para. 92; Information Notice issued by the Ministry of Energy, Mines and Quarries, dated 12 October 2020 (“**First Information Notice**”), **Exhibit C-0053-ENG**.

³¹⁴ First Information Notice, **Exhibit C-0053-ENG**.

139. Concerningly, the Tankoro Permit was among the permits designated for review.³¹⁵ The First Information Notice informed permit holders that permits listed would be “unavailable” beginning at midnight on the permit expiration date until further notice.³¹⁶ The Ministry cited no legal basis for the assertion that the review was to create “zones reserved for the State”, and it did not explain why it had selected those 41 permits.³¹⁷ Nor did the Ministry contact Sarama to inform it of the Tankoro Permit’s inclusion on the First Information Notice, or the underlying rationale for its selection. Sarama’s employees saw the First Information Notice at the Cadastre on a bulletin board.³¹⁸
140. The First Information Notice caused widespread alarm among mining companies operating in Burkina Faso. As Mr Dinning explains, the First Information Notice was unexpected and confusing. He had no idea what the Ministry’s “in-depth review” would entail, what it meant for the Ministry to “reserve” zones for the State, or what it meant to “operationalise” those zones.³¹⁹ The implication, however, was troubling: in Mr Hamilton’s view, it appeared that Burkina Faso wanted to take over the Tankoro Property for itself and to prohibit Sarama from continuing its exploration and mine development works.³²⁰
141. Mr Dinning instructed Mr Hamilton to speak with Minister Idani in Ouagadougou.³²¹ Shortly afterward, Mr Hamilton, accompanied by a delegation of Sarama employees, explained to Minister Idani how much was at stake for Sarama with the Tankoro Permit, how many metres Sarama had drilled on the site and how Sarama had greatly contributed to Burkina Faso and its economy through these investments.³²² Mr Hamilton further conveyed Sarama’s deep concern that Burkina Faso might “operationalise” the Tankoro Permit for its own use.³²³
142. Echoing the sentiment he had expressed in August 2020,³²⁴ Minister Idani told Mr Hamilton and the other Sarama colleagues present at the meeting “not to worry” and that Sarama’s rights

³¹⁵ Dinning WS1, at para. 92; First Information Notice, **Exhibit C-0053-ENG**.

³¹⁶ Dinning, WS1, at para. 92; First Information Notice, **Exhibit C-0053-ENG**.

³¹⁷ Dinning WS1, at para. 92.

³¹⁸ Dinning WS1, para. 93.

³¹⁹ Dinning WS1, at para. 93.

³²⁰ Hamilton WS1, at para. 79.

³²¹ See Dinning WS1, at para. 94; *see also* Hamilton WS1, at paras. 80-82.

³²² See Hamilton WS1, at paras. 80-81.

³²³ See Hamilton WS1, at para. 80-81.

³²⁴ Hamilton WS1, at para. 78.

were protected by the 2015 Mining Code and other Burkinabe laws and regulations.³²⁵ However, he would not commit to removing the Tankoro Permit from the list of permits designated for “operationalisation”.³²⁶

143. Though not comforted by Minister Idani’s behaviour at this meeting, Mr Dinning and Mr Hamilton decided that the best strategy would be for Sarama to lodge an application at the Cadastre for a second exploration permit over the Tankoro Deposit, the Tankoro 2 Permit.³²⁷ Despite the uncertainty Sarama’s executive team felt over the First Information Notice, Sarama knew that the Ministry ordinarily dealt with applications on a ‘first come, first served’ basis.³²⁸ SMB thus filed an application for a new exploration permit over the Tankoro Deposit at the Cadastre on 18 December 2020 (the “**December Application**”).³²⁹

2.2.4.3 *The Ministry issued the Second Information Notice, indicating that it would give “special consideration” to any application lodged by Sarama for the Tankoro 2 Permit*

144. On 15 January 2021, after elections in Burkina Faso resulted in the dissolution of the legislature and a new government, Bachir Ismael Ouedraogo (“**Minister Ouedraogo**”) replaced Minister Idani as Minister of Mines.³³⁰ Minister Ouedraogo immediately closed the Cadastre, meaning that any decision-making process on SMB’s 18 December 2020 application for the Tankoro 2 Permit was stalled.³³¹
145. After nearly six months of delay, on 1 June 2021, the Minister Delegate to the Minister of Mines, Aristide Aimé Zongo, issued a further Information Notice on behalf of the Ministry (the “**Second Information Notice**”).³³² The Second Information Notice annulled the First Information Notice and invited new permit applications from companies over the properties

³²⁵ See Hamilton WS1, at para. 81; see also Dinning WS1, at para. 94.

³²⁶ See Hamilton WS1, at para. 81.

³²⁷ See Hamilton WS1, at para. 82; see also Dinning WS1, at para. 95.

³²⁸ See Dinning WS1, at para. 95.

³²⁹ Permit Application form No. 4045 for Tankoro 2 permit by Sarama Mining Burkina SARL, dated 18 December 2020, **Exhibit C-0054-ENG**.

³³⁰ RFA, at para. 47; VOA News, *Kabore Dissolves Burkina Faso’s Government*, dated 30 December 2020, **Exhibit C-0055-ENG**; Burkina24, *Ministry of Energy, Mines and Quarries: Bachir Ouédraogo appointed*, dated 15 January 2021, **Exhibit C-0056-ENG**.

³³¹ Dinning WS1, at para. 96; Hamilton WS1, at para. 83.

³³² Information Notice issued by the Ministry of Mines (“**Second Information Notice**”), dated 1 June 2021, **Exhibit C-0057-ENG**; see also Dinning WS1, at para. 96; Hamilton WS1, at para. 85; RFA, at para. 48.

listed for “operationalisation” by the State in the First Information Notice.³³³ The Second Information Notice further stated that the Ministry would give ‘special consideration’ to applications submitted by previous permit holders of those permits.³³⁴

146. [REDACTED]

2.2.4.4 *The Minister of Mines granted the Tankoro 2 Permit to Sarama*

147. Accordingly, the Ministry [REDACTED], invited SMB to submit a new permit application over the Tankoro Deposit on 6 August 2021.³³⁸ [REDACTED]
[REDACTED]
[REDACTED] (the “August Application”).³³⁹

148. On 24 November 2021, the Ministry sent a letter to SMB approving the August Application and granting SMB the Tankoro 2 Permit on the condition precedent that SMB pay the fixed permitting fee of 2 million CFA francs within 10 days.³⁴⁰ SMB paid the requisite fee and presented receipt of payment to the Ministry on 29 November 2021, becoming the legal owner of the Tankoro 2 Permit.³⁴¹ As set out in below, the Ministry did not issue the *arrêté* for the Tankoro 2 Permit.

³³³ Second Information Notice, **Exhibit C-0057-ENG**; see also Dinning WS1, at para. 96; Hamilton WS1, at para. 85; RFA, at para. 48.

³³⁴ Second Information Notice, **Exhibit C-0057-ENG**; see also Dinning WS1, at para. 96; Hamilton WS1, at para. 85.

³³⁵ See Hamilton WS1, at para. 84; see also Dinning WS1, at para. 98.

³³⁶ Dinning WS1, at para. 98.

³³⁷ Dinning WS1, at para. 98.

³³⁸ Dinning WS1, at para. 99.

³³⁹ Permit Application Form No. 4272 for Tankoro 2 Permit by Sarama Mining Burkina SARL, dated 6 August 2021, **Exhibit C-0058-FR**; see also Hamilton WS1, at para. 87; Dinning WS1, at para. 99.

³⁴⁰ Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**; see also Hamilton WS1, at para. 88; Dinning WS1, at para. 99.

³⁴¹ Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**; see also Hamilton WS1, at para. 88; Dinning WS1, at para. 99.

149. On 15 March 2022, the Ministry rejected the December Application for the Tankoro 2 Permit.³⁴² As set out in **section 2.1** above, the Ministry must accept or reject every application it receives as a matter of process. The December Application, therefore, had to be either accepted or rejected, and the Ministry could not accept it since it had already granted the Tankoro 2 Permit in response to the August Application.³⁴³

2.2.4.5 *Sarama continued to progress its exploration works on the Sanutura Project*

150. On or about 16 November 2021, Sarama announced a material increase to the mineral resource estimate for the Sanutura Project, which reflected the integration of an updated resource estimate for the Bondi Deposit.³⁴⁴ Sarama published an updated Inferred and Indicated mineral resource estimate of approximately 3 million ounces of gold, comprising Indicated 9.4Mt @ 1.9g/t Au for 0.6Moz gold and Inferred 52.7Mt @ 1.4g/t Au for 2.3Moz gold.³⁴⁵ This included an updated Inferred mineral resource estimate for the Bondi Deposit of approximately 500,000 ounces of gold, comprising of 9.2Mt @ 1.5g/t Au for 0.5Moz.³⁴⁶ Sarama also confirmed that approximately 70% of the Bondi Deposit (in ounces) was located within 80 metres of surface, this shallow depth making it readily accessible for open-pit mining.³⁴⁷
151. In line with its generally conservative approach to resource classification, Sarama downgraded Orezone's Measured and Indicated resource estimate for the Bondi Deposit, set out in above, to an entirely Inferred resource estimate.³⁴⁸ As Mr Schmiede explains, Sarama downgraded the classification for the following reasons:³⁴⁹

³⁴² See Letter from Ministry of Mines to Sarama (rejecting 18 December 2020 application for Tankoro 2 permit), dated 15 March 2022, **Exhibit C-0213-FR**.

³⁴³ Dinning WS1, at para. 46(b).

³⁴⁴ Schmiede WS1, at para. 60; Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 16 November 2021, **Exhibit C-0205-ENG**.

³⁴⁵ Schmiede WS1, at para. 60; Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 16 November 2021, **Exhibit C-0205-ENG**.

³⁴⁶ Schmiede WS1, at para. 60; Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 16 November 2021, **Exhibit C-0205-ENG**.

³⁴⁷ Schmiede WS1, at para. 60; Sarama Resources Ltd, Press Release, *Sarama Resources Reports Significant Increase in Mineral Resources at the Sanutura Project*, dated 16 November 2021, **Exhibit C-0205-ENG**.

³⁴⁸ Schmiede WS1, at para. 60.

³⁴⁹ Schmiede WS1, at para. 61.

- (a) **First**, the earlier resource estimate did not take into account the impact of artisanal mining, which field surveys and modelling indicated had removed between 50,000 and 60,000 ounces of gold.³⁵⁰ Whilst this depletion was modest in scale, the lack of confirmatory probe drilling and on-site inspection meant that Sarama could not confidently assign a higher category of resource classification.³⁵¹
- (b) **Second**, Sarama determined that Orezone’s use of a cyanide-leach analytical technique may have resulted in systematic under-reporting of actual gold grades. This was a departure from true grade levels and created a reasonable possibility of a material upward variance that would fall outside of the confidence levels of an Indicated classification.³⁵²
152. Despite the downgraded classification, Sarama’s updated estimated mineral resource yielded a robust geological interpretation of the Bondi Deposit. The refined estimate delineated a more coherent understanding of the Bondi Deposit’s geology and revealed several promising targets for further drilling and exploration.³⁵³
153. In May 2022, Sarama confirmed that it had commenced its 50,000 metre AC and RC drill programme at the Sanutura Project, targeting near-surface extensions.³⁵⁴ By July 2022, it had completed more than 20,000 metres of drilling and had sent the samples to laboratories as the wet season approached, marking the end of the drilling window.³⁵⁵
154. Sarama’s exploration works and the quality and value of the mineral resource at the Sanutura Project gained international recognition at the 2022 Mining Indaba Conference in Cape Town, South Africa. There, an independent panel of mine finance professionals awarded Sarama the “Investment Battlefield” award, which aims to recognise the year’s most outstanding junior mining company.³⁵⁶

³⁵⁰ Schmiede WS1, at para. 62(a); Fifth Cube Report, at p. 29, **Exhibit C-0029-ENG**.

³⁵¹ Schmiede WS1, at para. 62(a).

³⁵² Schmiede WS1, at para. 62(b).

³⁵³ Schmiede WS1, at para. 63.

³⁵⁴ Dinning, WS1, at para. 103.

³⁵⁵ Dinning WS1, at para. 104.

³⁵⁶ Dinning WS1, at para. 105.

2.2.5 Sarama advanced the Project to the pre-development stage and began the process of preparing a PEA

155. By 2022, Sarama’s investments in the exploration and advancement of the Sanutura Project had placed it in an “ideal position” to advance the Project through to mine development.³⁵⁷ Thus, after more than ten years of exploration and development activities, Sarama was poised to prepare a PEA for the Sanutura Project as the next step toward mine construction.
156. Sarama had secured the Tankoro 2 Permit and the Djarkadougou 2 Permit, published an Inferred and Indicated mineral resource estimate for the Project of approximately 3 million ounces of gold and established that significant portions of both the Tankoro Deposit and the Bondi Deposit sat near the surface, meaning they could be efficiently and economically extracted.³⁵⁸ Sarama had also identified extensional targets for further exploration, which would likely increase the size of the estimated mineral resource.³⁵⁹ Sarama had reached “critical mass in terms of mineral resource inventory to support the construction of a mine”.³⁶⁰ Sarama’s Board of Directors therefore approved the commissioning of a PEA for the construction of a single, central plant to process ore extracted through both open pit and underground mining at the Sanutura Project.³⁶¹
157. Sarama intended to pursue an accelerated, multi-stage path to development.³⁶² To that end, Sarama intended to prepare the PEA at a higher level of detail than typically required. Sarama would then progress directly to a DFS, thereby avoiding the time and expense required to prepare a Pre-Feasibility Study and expediting the project financing stage.³⁶³
158. Sarama’s project development strategy formed over a number of years and was well developed by the time Sarama commenced work on the PEA. On that basis, Sarama was confident progressing to the PEA stage with an Indicated and Inferred mineral resource estimate for the

³⁵⁷ Schmiede WS1, at para. 65.

³⁵⁸ Schmiede WS1, at para. 65.

³⁵⁹ Schmiede WS1, at para. 66.

³⁶⁰ Schmiede WS1, at para. 67.

³⁶¹ Schmiede WS1, at para. 67.

³⁶² Schmiede WS1, at para. 69.

³⁶³ Schmiede WS1, at para. 69.

Sanutura Project (with a plan to upgrade the Inferred mineral resource portion to Indicated by way of further infill drilling during the DFS stage).³⁶⁴

159. On 2 May 2022, Sarama announced that it had listed on the ASX and raised AU\$ 8 million.³⁶⁵ Mr Dinning explains that Sarama decided to complete a secondary listing on the ASX “to broaden the available capital pool in readiness for moving into development”.³⁶⁶ As a junior explorer, Sarama does not maintain substantial cash reserves and, therefore, had to raise funds at each stage of exploration and development to continue advancing the Sanutura Project and Additional Projects.³⁶⁷ In addition, as Mr Dinning explains, Sarama faced increasing difficulties obtaining sufficient funding through the Canadian market alone due to, among other things, the significant drop in gold price during the 2010s which caused Canadian investors to cool on investing in the mineral resource industry and instead focus on investing in cryptocurrency and cannabis markets.³⁶⁸
160. With new funding from its ASX listing, Sarama intended to further accelerate project development by conducting study work for the PEA in parallel with final exploration work.³⁶⁹ As Mr Schmiede explains, Sarama intended to “commence its 50,000 metre exploration drilling campaign in Q2/Q3 2022 and to progressively update its working geological models and interpretations in parallel with the compilation of the PEA throughout 2023”.³⁷⁰ By Q3 2022, Sarama had completed approximately 20,000 metres of drilling at the Tankoro Deposit alone.³⁷¹ On that basis, had Burkina Faso not destroyed Sarama’s investments, Sarama had planned to complete the PEA by the end of 2023, at which point it intended to advance immediately to preparing the DFS and scheduling the initial stages of mine development.³⁷²

³⁶⁴ Schmiede WS1, at para. 72.

³⁶⁵ Sarama Resources Ltd, Press Release, *West African Gold Explorer & Developer, Sarama Resources, Lists on ASX, Raises AUD 8M*, dated 2 May 2022, **Exhibit C-0216-ENG**.

³⁶⁶ Dinning WS1, at para. 107.

³⁶⁷ Dinning WS1, at para. 29.

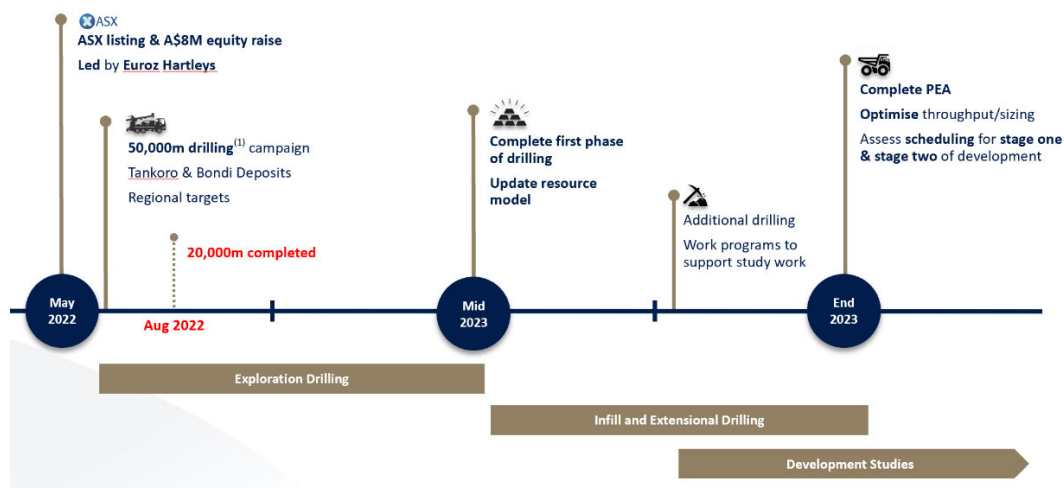
³⁶⁸ Dinning WS1, at para. 30.

³⁶⁹ Schmiede WS1, at para. 74.

³⁷⁰ Schmiede WS1, at para. 74.

³⁷¹ Sarama Resources Ltd, *6ix Exploration Update* (Presentation), dated 19 January 2023, at slide 17, **Exhibit C-0243-ENG**.

³⁷² Sarama Resources Ltd, *6ix Exploration Update* (Presentation), dated 19 January 2023, at slide 17, **Exhibit C-0243-ENG**.



Key milestones and planned approach to development studies, 2023.³⁷³

161. In collaboration with specialised mining consultants,³⁷⁴ Sarama developed a mine plan that “de-risked” the Project by commencing works with low-risk operations first,³⁷⁵ namely shallow open pit mining at the MM Prospect and the MC Prospect of the Tankoro Deposit.³⁷⁶ The purpose of this approach was to generate cash flow early to pay back loans from project financing quickly and reinvest profits back into the Project.
162. Mr Schmiede prepared the following image of the proposed open pits over the central part of the Tankoro Deposit:³⁷⁷

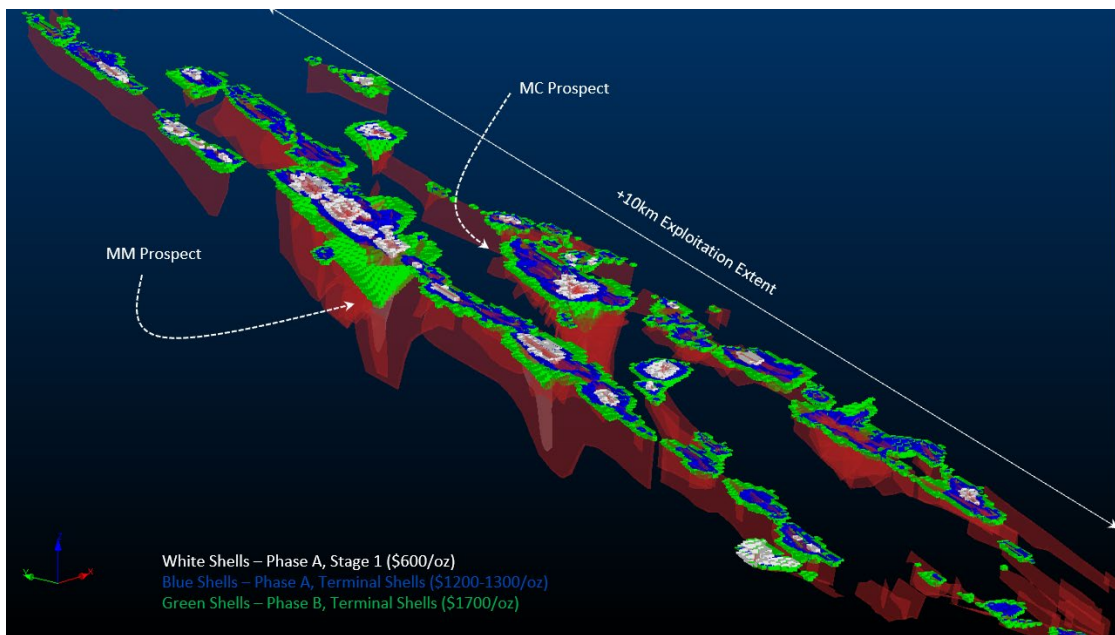
³⁷³ Schmiede WS1, at para. 75; Sarama Resources Ltd, *6ix Exploration Update* (Presentation), dated 19 January 2023, at slide 17, **Exhibit C-0243-ENG**.

³⁷⁴ Schmiede WS1, para. 76; Oreology, Capability Statement, dated July 2025, available at <https://oreology.com/what-we-do/the-usual-stuff/>, **Exhibit C-0342-ENG**; Email chain between P. Schmiede (Sarama) and I. Daggers (Mining One Pty Ltd), dated 15-16 August 2022, **Exhibit C-0223-ENG**.

³⁷⁵ Schmiede WS1, at para. 77.

³⁷⁶ Schmiede WS1, at para. 78.

³⁷⁷ Schmiede WS1, at para. 79.



*Open pit model over the Tankoro Deposit, 2022.*³⁷⁸

163. As Mr Schmiede explains, the red shell shapes in the above pit model represent the defined mineral resource, whilst the white, blue and green shells show the outcome of a pit optimisation algorithm,³⁷⁹ which evaluates the profitability of each section of a deposit under different gold price assumptions.³⁸⁰ The white shells represent the low-risk target areas that Sarama intended to extract first, which would return a profit so long as the prevailing gold price is US\$ 600 per ounce or higher.³⁸¹ The blue shells correspond to a medium gold price environment, Sarama could have economically extract ore from those areas if the gold price was capped at around US\$ 1,200 to US\$ 1,300 per ounce.³⁸² The green shells correspond to a high gold price environment, which would return a profit at US \$1,700 per ounce or higher.³⁸³

164. Sarama intended further to de-risk the Project by targeting multiple sources of production. To that end, the mine plan also targeted shallow, high grade areas of the Bondi Deposit early in

³⁷⁸ Sarama Resources Ltd, *Company Overview & Project Outlook* (Presentation), dated 17 November 2022, at slide 9, **Exhibit C-0229-ENG**.

³⁷⁹ Schmiede WS1, at para. 81.

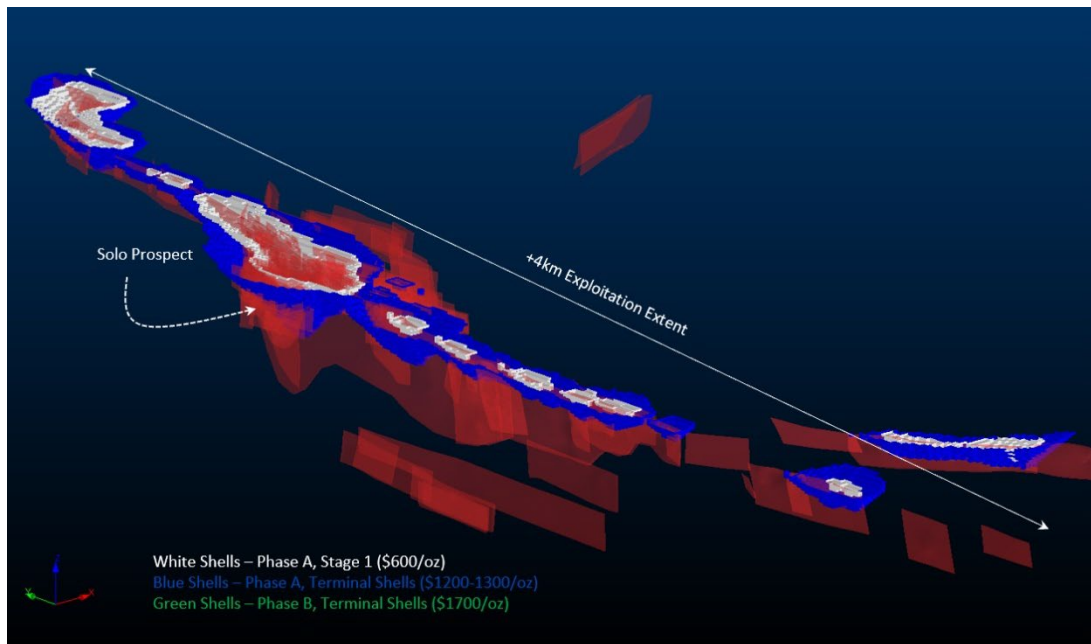
³⁸⁰ Schmiede WS1, at para. 82.

³⁸¹ Schmiede WS1 at para. 83.

³⁸² Schmiede WS1, at para. 84.

³⁸³ Schmiede WS1, at para. 84.

production.³⁸⁴ Mr Schmiede prepared the following image of the proposed open pits over the central part of the Bondi Deposit, using the same pit optimisation algorithm:³⁸⁵



Open pit model over the Bondi Deposit, 2022

165. Sarama’s mine plan proposed a multi-stage development that would use the cash flows generated from the early extraction of near-surface oxide material to finance expansions of the mining operations throughout the mine life.³⁸⁶ With the advice of specialist consultants regarding the proposed process flowsheet, Sarama designed the plant to accommodate future expansion and upgrades.³⁸⁷ As depicted below, Sarama’s process flowsheet provided for the addition of a flotation circuit and BIOX tanks to process sulphide ore as the Project’s processing needs evolved:³⁸⁸

³⁸⁴ Schmiede WS1, at para. 88.

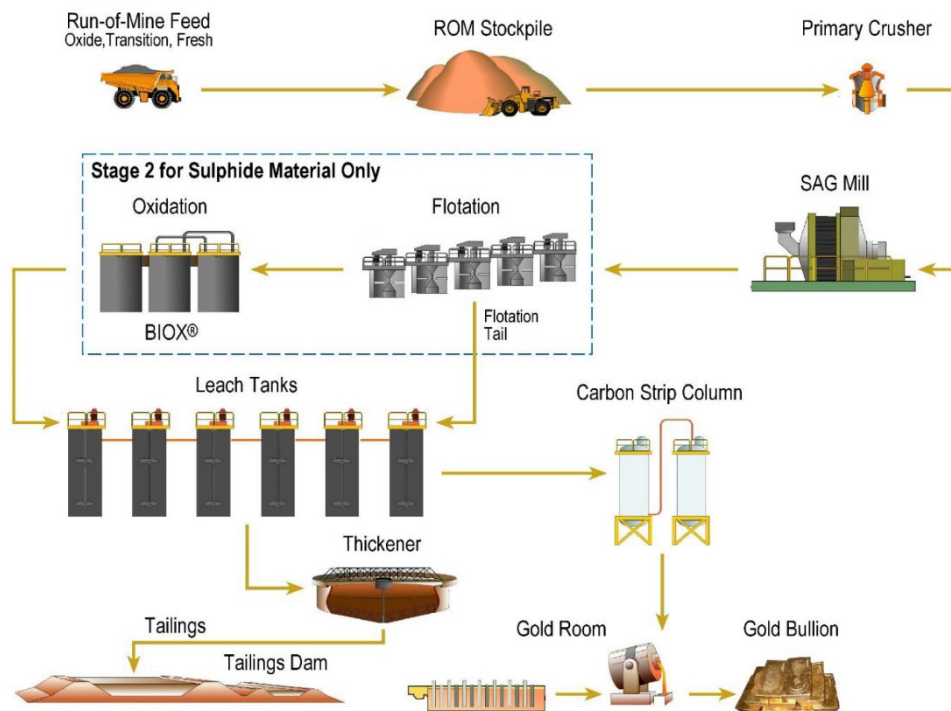
³⁸⁵ Schmiede WS1, at para. 88; Sarama Resources Ltd, *Company Overview & Project Outlook* (Presentation), dated 17 November 2022, at slide 10, **Exhibit C-0229-ENG**.

³⁸⁶ Schmiede WS1, at para. 89.

³⁸⁷ Schmiede WS1, at para. 93.

³⁸⁸ Schmiede WS1, at para. 97; Cube Consulting et al, *Sanutura Project NI 43-101 Technical Report*, dated 20 October 2020 (“**Fourth Cube Report**”), at p. 184, **Exhibit C-0192-ENG**.

Tank Based Flowsheet - Conventional Stage 1 & Stage 2 Expansion



Intended processing flowsheet for multi-stage development at the Sanutura Project.³⁸⁹

166. Sarama selected a modular design for the processing plant, which the executive team had chosen following extensive industry study, site visits, and technical discussions with industry peers and financiers. Those efforts suggested that such a modular design offered the most efficient and cost-effective solution for plant construction.³⁹⁰ Modular construction enables most plant fabrication and assembly to occur off-site, with components transported to the mine for rapid installation.³⁹¹ The Sanutura Project was well suited to a prefabricated plant given its moderate scale and planned throughput of approximately 1.1 million tonnes per annum, with staged expansions to 1.7 million tonnes per annum and then 2 million tonnes per annum.³⁹² This approach would have reduced construction time, cost and overall project risk.
167. By early 2023, Sarama was in advanced discussions with Appropriate Process Technologies (“APT”), a South African modular plant manufacturer with which Mr Schmiede had been

³⁸⁹ Fourth Cube Report, at p. 184, **Exhibit C-0192-ENG**.

³⁹⁰ Schmiede WS1, at para. 100.

³⁹¹ Schmiede WS1, at para. 100-101.

³⁹² Schmiede WS1, at para. 102.

meeting regularly since 2016.³⁹³ APT confirmed the suitability of its products for the Sanutura Project and its capability to prefabricate the plant and organise shipping and delivery to Burkina Faso, as it had done for similar projects.³⁹⁴



*Operational TriTanks prefabricated and installed by APT in North Africa.*³⁹⁵

168. The Sanutura Project was located within 60 km of the N1 highway running from Ouagadougou to Bobo-Dioulasso.³⁹⁶ Sarama intended to construct surface infrastructure, including further roads to connect the Project to the N1 highway, to move the Project into production.
169. Using rainfall patterns, topographical data and open-pit configurations, Sarama selected optimal locations for major facilities, taking advantage of the natural terrain to reduce earthworks, manage surface water and improve site security.³⁹⁷ The planned infrastructure included power generation and transmission facilities, water supply and treatment systems, site access and transport infrastructure, mining and processing workshops, administrative and

³⁹³ Schmiede WS1, at paras. 103-108.

³⁹⁴ Schmiede WS1, at paras. 103-108.

³⁹⁵ APT, *North Africa – TriTank Installation* (Presentation), dated 21 December 2022, at slide 10, **Exhibit C-0236-ENG**.

³⁹⁶ Schmiede WS1, at para. 117; Fifth Cube Report, at p. 78, **Exhibit C-0029-ENG**.

³⁹⁷ Schmiede WS1, at paras. 120.

support buildings, security installations, surface water management systems, tailings storage facilities, accommodation and resettlement villages.³⁹⁸

170. Sarama established cost estimates for earthworks by reference to measured quantities and benchmarked regional rates and applied scale-appropriate unit rates for other infrastructure components.³⁹⁹ Consistent with its multi-stage approach to development, Sarama planned to build only the infrastructure necessary to support initial operations while allowing for future expansion as production increased.⁴⁰⁰ This deliberate approach reduced upfront capital expenditure, accelerated project delivery and provided a clear and practical framework for subsequent site development with minimal interference to ongoing operations.⁴⁰¹
171. Sarama required approximately US\$ 90 million by Q4 2024 to fund working capital and project development after the completion of a DFS.⁴⁰² Sarama planned to raise this funding primarily through debt financing for construction and working capital, supplemented by equity capital for further working capital once project funding was secured, thereby instilling confidence in the market.⁴⁰³
172. With that in mind, by August 2023, Sarama advanced negotiations with Taurus Funds Management (“**Taurus**”) to procure debt financing.⁴⁰⁴ Taurus, a privately-owned mining finance fund, had provided a US\$ 200 million facility to West African Resources Ltd (“**WAF**”) in 2018 for construction of the Sanbrado Gold project in Burkina Faso, thereby demonstrating its capability to support large-scale mining projects in Burkina Faso.⁴⁰⁵ Sarama’s discussions with Taurus were cut short, however, when Burkina Faso expropriated Sarama’s investment as described further in **section 2.3** below.

³⁹⁸ Schmiede WS1, at para. 118.

³⁹⁹ Schmiede WS1, at para. 120.

⁴⁰⁰ Schmiede WS1, para. 120.

⁴⁰¹ Schmiede WS, at para. 120.

⁴⁰² Dinning WS1, at para. 111.

⁴⁰³ Dinning WS1, at para. 111.

⁴⁰⁴ Dinning WS1, at para. 112.

⁴⁰⁵ Dinning WS1, at para. 112.

2.2.6 Sarama acquired and developed the Additional Projects

173. Between 2014 and 2023, Sarama acquired two Additional Projects, the Karankasso and Koumandara Projects, located in the Birimian Greenstone Province.⁴⁰⁶ Sarama acquired the Karankasso and Koumandara Projects in 2014 and 2018, respectively, and performed significant exploration works on both properties before Burkina Faso unlawfully revoked the Tankoro 2 Permit in August 2023 and destroyed Sarama’s ability to raise any further capital to advance the Additional Projects.⁴⁰⁷

2.2.6.1 *The Karankasso Project*

174. Even before its acquisition of the Bondi Deposit in 2016, Sarama had already sought further opportunities in the Houndé Belt that it might consolidate with the Tankoro Deposit. In September 2014, together with Savary Gold Corp. (“**Savary**”), Sarama established a joint venture (the “**Karankasso JV**”).⁴⁰⁸ For this purpose, in October 2014, Sarama and Savary established Joint Venture BF1 Inc.⁴⁰⁹ As of its incorporation, Sarama held a 35% interest in the Karankasso JV, while Savary, as operator of the project, owned the remaining 65%.⁴¹⁰ Sarama’s partners over the Karankasso JV changed over time: it partnered with Savary from 2014 until 2019, then SEMAFO after it acquired Savary in 2019, and finally Endeavour Mining plc (“**Endeavour**”) following its acquisition of SEMAFO in 2020.⁴¹¹
175. The Karankasso Project is located in the Houndé Greenstone Belt close to the city of Bobo-Dioulasso and sits adjacent to both the Tankoro and Bondi Deposits.⁴¹²

⁴⁰⁶ Dinning WS1, sections 8.1 and 8.2.

⁴⁰⁷ Dinning WS1, sections 8.1 and 8.2.

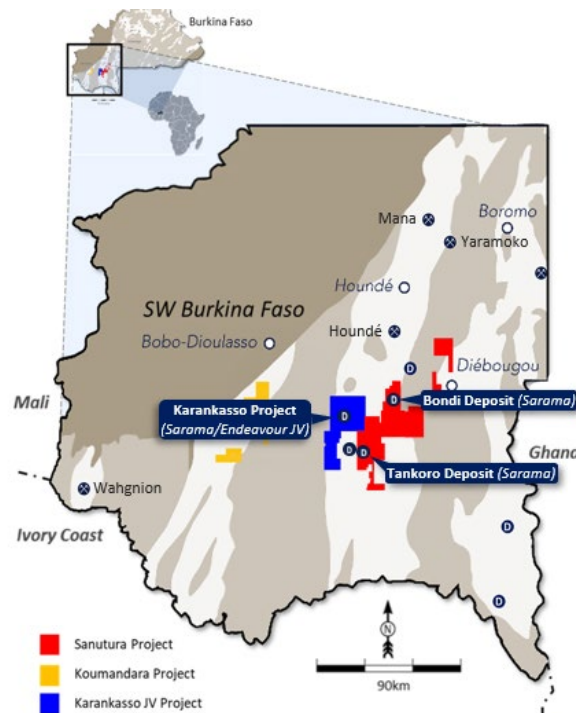
⁴⁰⁸ Dinning WS1, at para. 184.

⁴⁰⁹ Dinning WS1, at paras. 36, 184.

⁴¹⁰ Shareholders’ Agreement (Joint Venture over Houndé South permits and Sérakoro permits), dated 10 September 2014, p. 4, **Exhibit C-0121-ENG**.

⁴¹¹ Dinning WS1, at para. 36, 184.

⁴¹² Dinning WS1, at para. 185.



Map of Karankasso Project ⁴¹³

176. Following execution of the joint venture agreement in 2014, Sarama and Savary committed substantial capital and technical resources in 2015, funding RC and diamond drilling, soil and auger geochemical programs, and geophysical surveys.⁴¹⁴ The work quickly delivered concrete results. In October 2015, they reported a maiden Inferred mineral resource estimate of approximately 671,000 ounces of gold at a grade 2.3 g/t Au, across six mineralised zones.⁴¹⁵
177. Sarama and Savary carried out systematic drill campaigns to expand the known mineralised zones. After operatorship passed to SEMAFO in 2019 and subsequently to Endeavour in 2020, a February 2020 resource update reported 709,000 ounces of gold.⁴¹⁶ By that point, Sarama's ownership had diluted to approximately 18%, yet the resource had grown, the zones had been

⁴¹³ Sarama Resources Ltd, *Capitalising on a World-Class West African Gold Belt*, dated May 2023, at slide 2, **Exhibit C-0021-ENG**.

⁴¹⁴ Sarama Resources Ltd, Press Release, *Sarama Provides Second Update on Karankasso JV Drilling Campaign in Burkina Faso*, dated 21 August 2015, **Exhibit C-0134-ENG**.

⁴¹⁵ Sarama Resources Ltd, Press Release, *Maiden Inferred Mineral Resource of 671,000 Ounces Gold Announced at the Karankasso JV in Burkina Faso*, dated 8 October 2015, **Exhibit C-0135-ENG**.

⁴¹⁶ Sarama Resources Ltd, Press Release, *Sarama Resources Announces Updated Mineral Resource Estimate for the Karankasso Joint Venture Project, South-West Burkina Faso*, dated 26 February 2020, **Exhibit C-0013-ENG**.

extended, and the successive operators maintained the program, showing that the Karankasso JV project delivered sustained technical progress, and continued development.

178. Sarama's minority stake in the Karankasso Project was strategically valuable in light of Sarama's other nearby projects.⁴¹⁷ By virtue of its interest in the Karankasso JV, Sarama gained access to detailed technical data on the project, allowing Sarama to make strategic decisions about investment in the region.⁴¹⁸ Because the Karankasso Project was within trucking distance of the Sanutura Project, Sarama could have processed ore mined from the Karankasso Project through its planned processing facility, giving Sarama substantial leverage in the Karankasso JV.⁴¹⁹

2.2.6.2 *The Koumandara Project*

179. On 2 February 2018, Sarama announced that it had acquired the rights to five additional mineral properties in southwest Burkina Faso to establish a new and significant exploration position.⁴²⁰ The Koumandara Project was located 80 kilometres to the west of the Sanutura Project in the Banfora Greenstone Belt.⁴²¹

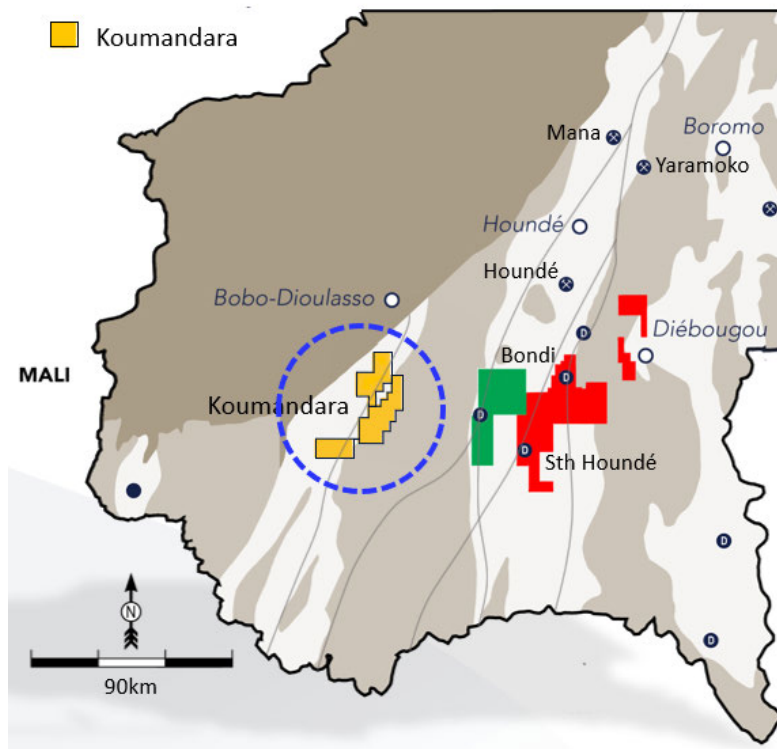
⁴¹⁷ Schmiede WS1, at para. 139.

⁴¹⁸ Schmiede WS1, at para. 139.

⁴¹⁹ Schmiede WS1, at para. 139.

⁴²⁰ Dinning WS1, at para. 180.

⁴²¹ Dinning WS1, at para. 181.



*Map of Koumandara Project*⁴²²

180. In 2019, Sarama considered the Koumandara Project a “growth project” that spanned 600 square kilometres and contained an extensive gold-in-soil trend spanning over 100 kilometres in strike length, with high-grade mineral intercept identified.⁴²³ By 2020, following further exploration work, Sarama determined that the gold mineralised corridor at the Koumandara Project site overlay a 45 kilometre section of a district scale litho-structural break.⁴²⁴ As Mr Dinning explains, this indicates that the Koumandara Project’s gold trend sat along rock formations with structural breaks, an excellent indicator for gold deposits.⁴²⁵ The Koumandara

⁴²² Taken from Sarama Resources Ltd, *Corporate Presentation – February 2020* (Presentation), dated February 2020, at slide 13, **Exhibit C-0183-ENG**.

⁴²³ Dinning WS1, at para. 182; Sarama Resources Ltd, *Corporate Presentation - September 2019* (Presentation), dated September 2019 at slide 13, **Exhibit C-0177-ENG**.

⁴²⁴ Sarama Resources Ltd, *Corporate Presentation - February 2020* (Presentation), dated February 2020, at slide 13, **Exhibit C-0183-ENG**.

⁴²⁵ Dinning WS1, at para. 183; Sarama Resources Ltd, *Corporate Presentation – February 2020* (Presentation), dated February 2020, at slide 13, **Exhibit C-0183-ENG**.

Project also benefited from good access to infrastructure, including an existing power grid within 30 kilometres of the project.⁴²⁶

2.2.7 Sarama made positive social and economic contributions to Burkina Faso throughout the life of the Project

181. Throughout a decade of operations in Burkina Faso, Sarama consistently recognised that proactive community engagement and investment in social and economic development were essential to the success of the Sanutura Project.⁴²⁷ Sarama actively sought to respect local and cultural norms while creating tangible economic and social opportunities for the people of the villages surrounding the Project, in particular the Norkama village.⁴²⁸ For instance, Sarama:

- (a) repaired three existing water wells in 2011, ensuring reliable access to clean water for the local community;⁴²⁹
- (b) constructed three new school classrooms in 2012 and 2013 and assumed responsibility for supplying the school canteen at Norkama Primary School, directly enhancing educational infrastructure and student welfare;⁴³⁰
- (c) built a dedicated kitchen for the school canteen and established a community garden in 2013, providing ongoing employment for three villagers and promoting food security for Sarama's employees working on site, while offering additional food and vegetables to the local community;⁴³¹

⁴²⁶ Sarama Resources Ltd, *Corporate Presentation -February 2020* (Presentation), dated February 2020, at slide 13, **Exhibit C-0183-ENG**.

⁴²⁷ Dinning WS1, at paras. 125 *et seq.*; Schmiede WS1, at para. 120.

⁴²⁸ Dinning WS1, at para. 125; Hamilton WS1, at para. 62.

⁴²⁹ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Presentation), dated 7 July 2023, at slide 5, **Exhibit C-0038-FR**; Dinning WS1, at para. 127; Hamilton WS1, at para. 66.

⁴³⁰ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Presentation), dated 7 July 2023, at slide 5, **Exhibit C-0038-FR**; Dinning WS1, at para. 128; Hamilton WS1, at para. 64.

⁴³¹ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Presentation), dated 7 July 2023, at slide 5, **Exhibit C-0038-FR**; Dinning WS1, at para. 130; Hamilton WS1, at paras. 64-65.

- (d) facilitated training for five local villagers in organic farming improving local skills in agricultural productivity, and developed roads to improve local transportation and access within the village in 2014;⁴³²
- (e) drilled four additional water wells for Norkama village and implemented a continuous water distribution program, supplying approximately 120,000 litres per week to residents near the Norkama village between 2012 and 2023;⁴³³
- (f) introduced electricity via solar power to the maternity ward at the Norkama health centre in 2016;⁴³⁴ and
- (g) donated 90 desks and benches to Norkama Primary School, distributed school supplies and other essential materials in 2016,⁴³⁵ and completed a further distribution of school supplies in 2022.⁴³⁶

⁴³² Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 5, **Exhibit C-0038-FR**; Dinning WS1, at para. 130.

⁴³³ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 5, **Exhibit C-0038-FR**; Hamilton WS1, at para. 66.

⁴³⁴ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 6, **Exhibit C-0038-FR**; Dinning WS1, at para. 131.

⁴³⁵ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 6, **Exhibit C-0038-FR**; Dinning WS1, at para. 131.

⁴³⁶ Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 6, **Exhibit C-0038-FR**; Dinning WS1, at para. 131.



*Water well contracted and paid for by Sarama near Norkama.*⁴³⁷



*Building of a community garden with a drip irrigation system*⁴³⁸

⁴³⁷ Hamilton WS1, at para. 66; Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slides 5 and 19, **Exhibit C-0038-FR**.

⁴³⁸ Dinning WS1, at para. 130; Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 16, dated 7 July 2023, **Exhibit C-0038-FR**.



*Andrew Dinning with the President of the Norkama Women's Association*⁴³⁹



*Sarama provided school and sports equipment to children in Norkama Primary School*⁴⁴⁰

182. Sarama's ongoing and meaningful contributions to the local community fostered a positive relationship between Sarama and the community. In so doing, Sarama built a strong social license for the Project. Sarama also earned the trust and cooperation of local community members by involving the community in certain Project decisions. As Mr Hamilton explains,

⁴³⁹ Dinning WS1, at para. 131; Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 25, **Exhibit C-0038-FR**.

⁴⁴⁰ Dinning WS1, at para. 132; Sarama Resources Ltd, *Présentation de Sarama et Réalisations Sociales* (Corporate Presentation), dated 7 July 2023, at slide 32, **Exhibit C-0038-FR**.

Sarama established a liaison officer position to coordinate communications between Sarama and the Chief of the Norkama village.⁴⁴¹

183. In recognition of Sarama’s extensive social and community contributions in Burkina Faso, the Australia Africa Minerals and Energy Group awarded Sarama its Emerging ESG Leader prize in 2022.⁴⁴²
184. In addition to its community works, Sarama actively promoted economic growth in Norkama. Sarama directly employed locals from Norkama and other nearby villages, paying approximately 35,730,000 CFA francs (approximately US\$ 76,844.67) annually in wages.⁴⁴³ Beyond salaries, Sarama procured goods and services locally to support Project operations, spending around 11,070,000 CFA francs (approximately US\$ 23,808.29) per year in Norkama and another nearby village, Diassara.⁴⁴⁴ Additionally, Sarama purchased supplies from the Diassara market, averaging 1,444,000 CFA francs annually.⁴⁴⁵ Through these initiatives, Sarama consistently contributed to the local economy.

2.3 Burkina Faso’s Hostile Acts Destroyed the Claimant’s Investments in the Project and the Additional Projects

185. Between November 2022 and September 2023, Burkina Faso undertook certain measures that culminated in the complete destruction of the Claimant’s investments in the Sanutura Project and the Additional Projects. As the Claimant explains below, Capitaine Ibrahim Traoré, a fervently anti-Western military dictator, seized power in Burkina Faso in late September 2022. As part of his campaign to purge Burkina Faso of the vestiges of “economic imperialism”, Capitaine Traoré immediately targeted foreign investments in the gold mining sector, including Sarama’s Sanutura Project, as assets for exploitation, revenue generation for the military junta, and ultimately, State seizure (**section 2.3.1**).

⁴⁴¹ Hamilton WS1, at para. 62.

⁴⁴² Dinning WS1, at para. 132.

⁴⁴³ Dinning WS1, at para. 133.

ExchangeRates.org.uk, *US Dollar to West African CFA franc History: 2011*, available at <https://www.exchangerates.org.uk/USD-XOF-spot-exchange-rates-history-2011.html>, **Exhibit C-0323-ENG**. This conversation is according to the average historical exchange rate between U.S. dollars and CFA francs in August 2023.

⁴⁴⁴ Dinning WS1, at para. 13; *see also* ExchangeRates.org.uk, *US Dollar to West African CFA franc History: 2011*, available at <https://www.exchangerates.org.uk/USD-XOF-spot-exchange-rates-history-2011.html>, **Exhibit C-0323-ENG**.

⁴⁴⁵ Dinning WS1, at para. 133.

186. Beginning in November 2022, Minister Simon-Pierre Boussim, Capitaine Traoré’s appointee to the position of Minister of Mines, started to cite “problems” with the Tankoro 2 Permit. By August 2023, Minister Boussim had sought to impose irregular demands for diplomatic assistance and irregular payments from the Claimant as unlawful pretexts to resolve alleged questions over Sarama’s ownership of the Tankoro 2 Permit (**section 2.3.2**). Despite Sarama’s attempts to negotiate a resolution with Minister Boussim, Burkina Faso unlawfully revoked the Tankoro 2 Permit on 25 August 2023 (**section 2.3.3**). In September 2023, Burkina Faso advertised the Tankoro 2 Permit as being open “for sale” at a mining conference in Perth, Australia and later granted rights over the property to a Burkinabe company beneficially owned by an ally of Capitaine Traoré (**section 2.3.4**). Burkina Faso’s unlawful and retroactive revocation of the Tankoro 2 Permit destroyed Sarama’s investments in the Sanutura Project and the Additional Projects (**section 2.3.5**).

2.3.1 Capitaine Traoré’s campaign of resource nationalism

187. Sarama’s difficulties in Burkina Faso did not end with Minister Idani and the First Information Notice. On 30 September 2022, Capitaine Ibrahim Traoré, a 37-year-old Burkinabe military strongman, seized power, ousting President Paul-Henri Sandoago Damiba through a *coup d’état*.⁴⁴⁶ The same day, the Patriotic Movement for Safeguard and Restoration (“PMSR”), a military junta led by Capitaine Traoré, announced live on Burkinabe television that Capitaine Traoré had been “appointed” the new president of Burkina Faso.⁴⁴⁷ Capitaine Traoré immediately suspended Burkina Faso’s Constitution, dismissed the sitting government, dissolved the transitional legislature, and instituted a flight ban and curfew over the country.⁴⁴⁸
188. Since taking power, Capitaine Traoré has sought to make a name for himself across Africa as a leader determined to free Burkina Faso from the vestiges of Western “neo-colonialism” and

⁴⁴⁶ This 30 September 2022 *coup d’état* was the second to take place in nine months in Burkina Faso. See RFA, at para. 54; see also TV5 Monde, *Burkina Faso: Ibrahim Traoré Arrive au Pouvoir Après un Nouveau Coup d’État* (Video), dated 1 October 2022, available at <https://information.tv5monde.com/international/burkina-faso-ibrahim-traore-arrive-au-pouvoir-apres-un-nouveau-coup-detat-1287327>, **Exhibit C-0278-FR**; The Conversation, *Burkina Faso’s Ibrahim Traoré is Making Waves in West Africa. Who Is He?*, dated 20 February 2025, available at <https://theconversation.com/burkina-fasos-ibrahim-traore-is-making-waves-in-west-africa-who-is-he-249875>, **Exhibit C-0279-ENG**.

⁴⁴⁷ See TV5 Monde, *Burkina Faso: Ibrahim Traoré Arrive au Pouvoir Après un Nouveau Coup d’État*, dated 1 October 2022, available at <https://information.tv5monde.com/international/burkina-faso-ibrahim-traore-arrive-au-pouvoir-apres-un-nouveau-coup-detat-1287327>, **Exhibit C-0278-FR**.

⁴⁴⁸ Al Jazeera, *Burkina Faso: Military Officers Remove President Damiba in a Coup*, dated 30 September 2022, **Exhibit C-0298-ENG**.

“economic imperialism”, including by unlawfully seizing foreign mining investments.⁴⁴⁹ Capitaine Traoré relishes media comparisons of himself to Burkina Faso’s former anti-Western and Marxist President Thomas Sankara, sometimes called the “Che Guevara” of Africa.⁴⁵⁰ Following in his idol’s footsteps, Capitaine Traoré has endeavoured to purge the country of Western social, political, military, and commercial influences. In his three years in power, he has ousted French military and diplomatic personnel from the country, withdrawn Burkina Faso from the Economic Community of West African States, and allied himself with Russia and its paramilitary forces (the Africa Corps, previously known as the Wagner Group), who protect Capitaine Traoré and the PMSR in exchange for access to natural resources.⁴⁵¹ Since September 2022, Russia has provided Burkina Faso with services to assist Capitaine Traoré and the junta in monitoring opponents, generating pro-PMSR propaganda, and running intelligence operations.⁴⁵² Burkina Faso and Russia have also established a joint intergovernmental commission to strengthen their strategic partnership, a further sign of the burgeoning commercial and cultural ties between the two countries.⁴⁵³

⁴⁴⁹ BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the World*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**.

⁴⁵⁰ Youtube video, *Capitaine Ibrahim Traoré: "Tout ce qu'on peut faire, c'est de ne pas trahir"*, dated 12 May 2025, available at <https://www.youtube.com/watch?v=puKHfrM-g2g>, **Exhibit C-0375-FR** (see approximately 11 minutes and 30 seconds into this video where the interviewer compares Traoré to Sankara and he does not deny it); See also BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the World*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**; BBC News, *Thomas Sankara Trial in Burkina Faso: Who Killed 'Africa's Che Guevara'?*, dated 11 October 2021, available at <https://www.bbc.co.uk/news/world-africa-58842427>, **Exhibit C-0281-ENG**.

⁴⁵¹ AllAfrica.com, *West Africa: Burkina Faso, Mali, and Niger Reaffirms ECOWAS Withdrawal*, dated 23 December 2024, available at <https://allafrica.com/stories/202412230084.html>, **Exhibit C-0282-ENG**; BBC News, *Wagner in Africa: How the Russian Mercenary Group has Rebranded*, dated 20 February 2024, available at <https://www.bbc.co.uk/news/world-africa-68322230>, **Exhibit C-0283-ENG**; Reuters, *Burkina Faso Marks Official End of French Military Operations on its Soil*, dated 20 February 2023, available at <https://www.reuters.com/world/africa/burkina-faso-marks-official-end-french-military-operations-its-soil-2023-02-19/>, **Exhibit C-0285-ENG**; BBC News, *Burkina Faso's Pro-Russia Junta Expels French Diplomats*, dated 18 April 2024, available at <https://www.bbc.co.uk/news/world-africa-68846771>, **Exhibit C-0286-ENG**; see also C. M. Faulkner and R. Parens, *Russia in Africa: Private Military Proxies in the Sahel*, Georgetown Journal of International Affairs, dated 24 March 2025, available at <https://gjia.georgetown.edu/2025/03/24/russia-in-africa-private-military-proxies-in-the-sahel/>, **Exhibit C-0284-ENG**; Youtube video, *Capitaine Ibrahim Traoré : "Tout ce qu'on peut faire, c'est de ne pas trahir"* (Video), dated 12 May 2025, available at <https://www.youtube.com/watch?v=puKHfrM-g2g>, **Exhibit C-0375-FR**.

⁴⁵² European Council on Foreign Relations, *The Bear and The Bot Farm: Countering Russian Hybrid Warfare in Africa*, dated October 2025, available at <https://ecfr.eu/publication/the-bear-and-the-bot-farm-countering-russian-hybrid-warfare-in-africa/>, **Exhibit C-0276-ENG**.

⁴⁵³ Ecofin Agency, *Burkina Faso and Russia Create Joint Commission to Deepen Strategic Ties*, dated 1 August 2025, available at <https://www.ecofinagency.com/news/0108-47945-burkina-faso-and-russia-create-joint-commission-to-deepen-strategic-ties>, **Exhibit C-0277-ENG**.

189. Though Capitaine Traoré vowed initially to restore civilian rule in Burkina Faso by July 2024, he later stated that elections were not a “priority”.⁴⁵⁴ Instead, Capitaine Traoré and the junta have cracked down on political opposition and suppressed media and civil society groups, including by forced conscription of regime critics to the front-lines of Burkina Faso’s war against Islamic jihadists groups in the northern regions of the country.⁴⁵⁵
190. One of the pillars of Capitaine Traoré’s programme for the country has been the launch of a “revolution” to take back control of Burkina Faso’s mineral wealth, including by unlawful and abrupt seizures of gold mining permits.⁴⁵⁶ A committed anti-Western attitude appears to motivate Capitaine Traoré’s moves against Sarama and other foreign companies. In 2023, speaking at the Russia-Africa Summit, Capitaine Traoré told leaders to “stop behaving like puppets who dance every time the imperialists pull the strings”.⁴⁵⁷ Capitaine Traoré has also denounced Western States and companies as having “stolen” and “pilfered” African States, bringing “all of the riches home [to the West] and ensuring that wealth is conserved [in the West]” at the expense of Burkinabe and other African peoples.⁴⁵⁸ Capitaine Traoré has announced on social media that he intends to create a “new Burkina Faso and a new Africa”, which will “defeat imperialism and neo-colonialism” and prevent Burkina Faso from continuing to “be enslaved” by Western countries.⁴⁵⁹ With respect to Burkina Faso’s mining

Trade between Burkina Faso and Russia in 2024 reached US\$ 753.5 million.

⁴⁵⁴ BBC News, *Burkina Faso Outcry over ‘Conscription Used to Punish Junta Critics’*, dated 7 February 2023, available at <https://www.bbc.co.uk/news/world-africa-68166717>, **Exhibit C-0287-ENG**.

⁴⁵⁵ BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the World*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**.

⁴⁵⁶ BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the World*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**.

⁴⁵⁷ BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the world*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**.

⁴⁵⁸ Bernard Müller, *Burkina Faso: Une Révolution par “Éblouissement”?*, Le Club de Mediapart, dated 13 September 2025, available at <https://blogs.mediapart.fr/bernard-mueller/blog/130925/burkina-faso-une-revolution-de-souverainete-et-d-imaginaire>, **Exhibit C-C-0288-FR** (noting that Capitaine Traoré metaphorically calls the West “*maître*” or “master”).

⁴⁵⁹ BBC News, *Why Burkina Faso's Junta Leader has Captured Hearts and Minds around the world*, dated 12 May 2025, available at <https://www.bbc.co.uk/news/articles/c1egely9v3go>, **Exhibit C-0280-ENG**; Youtube video, *Capitaine Ibrahim Traoré : “Tout ce qu'on peut faire, c'est de ne pas trahir”* (Video), dated 12 May 2025, available at <https://www.youtube.com/watch?v=puKHfrM-g2g>, **Exhibit C-0375-FR** (see approximately 2 minutes, 30 seconds into this interview with Sputnik TV).

industry, he has declared that the “policy of the government is to exploit our own resources ourselves” and to “take control” of resources owned by foreign gold mining companies.⁴⁶⁰

191. Upon coming to power, Capitaine Traore and the PMSR wasted little time putting their policy of anti-Western resource nationalism into practice. On 14 February 2023, less than 5 months after Capitaine Traore’s *coup d’état*, Burkina Faso requisitioned 200 kilograms of gold from UK company Endeavor’s Mana mine, citing “public necessity”.⁴⁶¹ Minister Boussim, on signing the decree authorising the seizure, described the measure as “required by an exceptional context” and done in “conformity with article 16” of Burkina Faso’s Mining Code.⁴⁶² He also promised that Endeavour would later be monetarily compensated for the 200 kilograms of gold and reaffirmed that foreign investors should maintain confidence in Burkina Faso and Capitaine Traoré since this measure was “exceptional” and “temporary”.⁴⁶³ The Claimant has been unable to identify any public sources confirming that Burkina Faso ever compensated Endeavor for its seized gold.
192. As explained below in **sections 2.3.2-2.3.4**, for Endeavour, Sarama, and other foreign mining investors, initially hostile measures such as forced sales of gold to the State foreshadowed Burkina Faso’s demands for increased or controlling equity shares or direct seizure of their investments. It would not be long before Capitaine Traore and Burkina Faso would invoke the need for the State to “operationalise” critical assets and arbitrarily revoke lawfully granted mining licenses such as the Tankoro 2 Permit.
193. In 2024, Burkina Faso revised its Mining Code to increase significantly State control and to mandate local participation and investment in mining operations.⁴⁶⁴ Under the 2024 revisions,

⁴⁶⁰ Agence Ecofin, *Mines d’or - le Burkina Faso veut Poursuivre sa Politique Nationaliste (Ibrahim Traoré)*, dated 29 September 2025, available at <https://www.agenceecofin.com/actualites/2909-131888-mines-d-or-le-burkina-faso-veut-poursuivre-sa-politique-nationaliste-ibrahim-traore>, **Exhibit C-0289-FR**.

⁴⁶¹ Le Monde, *Le Burkina Faso Réquisitionne 200 kg d’or d’une Mine Exploitée par une Entreprise Canadienne*, dated 16 February 2023, available at https://www.lemonde.fr/afrique/article/2023/02/16/le-burkina-faso-requisitionne-200-kg-d-or-d-une-mine-exploitee-par-une-entreprise-canadienne_6162035_3212.html, **Exhibit C-0290-FR**.

⁴⁶² Le Monde, *Le Burkina Faso Réquisitionne 200 kg d’or d’une Mine Exploitée par une Entreprise Canadienne*, dated 16 February 2023, available at https://www.lemonde.fr/afrique/article/2023/02/16/le-burkina-faso-requisitionne-200-kg-d-or-d-une-mine-exploitee-par-une-entreprise-canadienne_6162035_3212.html, **Exhibit C-0290-FR**.

⁴⁶³ Le Monde, *Le Burkina Faso Réquisitionne 200 kg d’or d’une Mine Exploitée par une Entreprise Canadienne*, dated 16 February 2023, available at https://www.lemonde.fr/afrique/article/2023/02/16/le-burkina-faso-requisitionne-200-kg-d-or-d-une-mine-exploitee-par-une-entreprise-canadienne_6162035_3212.html, **Exhibit C-0290-FR**.

⁴⁶⁴ Reuters, *Burkina Faso Completes Nationalisation of Five Gold Mining Assets*, dated 12 June 2025, available at <https://www.reuters.com/world/africa/burkina-faso-completes-nationalisation-five-gold-mining-assets-2025-06-12/>, **Exhibit C-0294-ENG**.

companies must now grant Burkina Faso a free carried equity stake in gold projects of 15%, an increase from the previous code's 10%.⁴⁶⁵ The new code also grants an additional paid interest of at least 30% in strategic mining assets to the State and grants the State rights to enforce non-discretionary dividend distributions.⁴⁶⁶ In addition to these revisions to the mining code, the same year, Capitaine Traoré established a State-owned mining corporation, Société de Participation Minière du Burkina ("SOPAMIB"), to facilitate Burkina Faso's seizure of mining industry rights.⁴⁶⁷

194. In June 2025, Burkina Faso compelled the transfer of permits for two operating gold mines and three exploration permits, previously held by Endeavour and Lilium Mining, a Cayman Islands company, through their Burkinabe subsidiaries, to SOPAMIB.⁴⁶⁸ The decree enforcing the transfer stated that the "acquisition [of the permits] is in line with the State's policy of sovereign ownership of mining resources to optimise exploitation for the benefit of the population".⁴⁶⁹
195. Part of Capitaine Traoré's rush to seize gold mining assets, it would appear, is driven by commercial self-interest, fuelled by the rising price of gold, which has surged by 52% in the past year as of October 2025.⁴⁷⁰ Gold is Burkina Faso's leading and most critical export and

As Burkina Faso promulgated the 2024 Mining Code after its unlawful revocation of the Tankoro 2 Permit on 25 August 2023, the 2024 Mining Code is not relevant to the Claimant's investments at issue in this arbitration.

⁴⁶⁵ Business Insider Africa, *Burkina Faso Secures Bigger Slice of Gold Profits with New Mining Code*, dated 27 August 2025, available at <https://africa.businessinsider.com/local/markets/burkina-faso-secures-bigger-slice-of-gold-profits-with-new-mining-code/k9dgysn>, **Exhibit C-0291-ENG**.

⁴⁶⁶ Discovery Alert, *Burkina Faso Increases Kiaka Gold Mine Stake to 50%*, dated 1 September 2025, available at <https://discoveryalert.com.au/news/burkina-faso-2025-kiaka-gold-mine-stake/>, **Exhibit C-0292-ENG**.

⁴⁶⁷ Mining.com, *Burkina Faso's Nationalisation Rattles West Africa's Gold Sector*, dated 29 August 2025, available at <https://www.mining.com/burkina-fasos-nationalization-rattles-west-africas-gold-sector/>, **Exhibit C-0293-ENG**.

⁴⁶⁸ Reuters, *Burkina Faso Completes Nationalisation of Five Gold Mining Assets*, dated 12 June 2025, available at <https://www.reuters.com/world/africa/burkina-faso-completes-nationalisation-five-gold-mining-assets-2025-06-12/>, **Exhibit C-0294-ENG**.

⁴⁶⁹ Reuters, *Burkina Faso Completes Nationalisation of Five Gold Mining Assets*, dated 12 June 2025, available at <https://www.reuters.com/world/africa/burkina-faso-completes-nationalisation-five-gold-mining-assets-2025-06-12/>, **Exhibit C-0293-ENG**.

⁴⁷⁰ Reuters, *Gold Industry Sees Price Rising to Near \$5,000 an Ounce Over 12 Months*, dated 28 October 2025, available at <https://www.reuters.com/business/gold-industry-sees-price-rising-near-5000-an-ounce-over-12-months-2025-10-28/>, **Exhibit C-0295-ENG**.

source of wealth for Capitaine Traoré and the junta, who use their growing control over this resource to maintain their grip on power.⁴⁷¹

196. High-ranking U.S. military officials have confirmed that Burkina Faso's gold mining industry is the lifeblood of the PMSR. In testimony given to the U.S. Armed Services Committee, U.S. Marine Corps General Michael Langley, then the commander of U.S. Africa Corps, described Capitaine Traoré's unlawful use of Burkina Faso's gold assets to prop up the junta.⁴⁷² Capitaine Traoré took to the airwaves to retaliate against General Langley. In an interview granted to Russia's Sputnik news, Capitaine Traoré branded General Langley a liar, a tool of Western imperialists and, as a Black man, a traitor towards Black Africans.⁴⁷³ Capitaine Traoré also demanded that General Langley publicly admit his "shame" and apologise to Capitaine Traoré and to the Burkinabe people.⁴⁷⁴
197. Capitaine Traoré's hostile campaign against Western mining companies continues unabated. Western mining companies that continue to operate in the country and have not been forced out like the Claimant face increasing demands from the State and threats of revocations of permits. For instance, the Claimant understands that Burkina Faso has compelled WAF, an Australian company, to conform to the 2024 Mining Code and to grant the State a 15% free carried equity interest in three mining projects, Sanbrado, Kiaka and Toega.⁴⁷⁵
198. Burkina Faso's strong-arming of WAF has not stopped at a 15% priority dividend. On 1 September 2025, Burkina Faso sent a letter to WAF demanding an additional 35% stake in the Kiaka mine, which would give the State a controlling stake over the project.⁴⁷⁶ WAF

⁴⁷¹ Business Insider Africa, *Burkina Faso Secures Bigger Slice of Gold Profits with New Mining Code*, dated 27 August 2025, available at <https://africa.businessinsider.com/local/markets/burkina-faso-secures-bigger-slice-of-gold-profits-with-new-mining-code/k9dgysn>, **Exhibit C-0291-ENG**.

⁴⁷² Youtube video, *U.S. Africa Command 2025 Testimony to the Senate Armed Services Committee*, dated 4 April 2025, available at <https://www.youtube.com/watch?v=NYjb6R489tM>, **Exhibit C-0376-ENG** (see remarks from Gen. Langley beginning at 2 hours and 7 minutes into the video) ("All these proceeds [from gold mining] are just in exchange to protect the junta regime").

⁴⁷³ Youtube video, *Capitaine Ibrahim Traoré: "Tout ce qu'on peut faire, c'est de ne pas trahir"*, dated 12 May 2025, available at <https://www.youtube.com/watch?v=puKHfrM-g2g>, **Exhibit C-0375-FR** (see approximately 22 minutes and 30 seconds into the video).

⁴⁷⁴ Youtube video, *Capitaine Ibrahim Traoré: "Tout ce qu'on peut faire, c'est de ne pas trahir"*, dated 12 May 2025, available at <https://www.youtube.com/watch?v=puKHfrM-g2g>, **Exhibit C-0375-FR** (see approximately 25 minutes into the video).

⁴⁷⁵ MiningWeekly.com, *Burkina Faso Clarifies Stance on Increased Stake in West African Resource's Kiaka mine*, dated 5 September 2025, available at <https://www.miningweekly.com/article/burkina-faso-clarifies-stance-on-increased-stake-in-west-african-resources-kiaka-mine-2025-09-05>, **Exhibit C-0296-ENG**.

⁴⁷⁶ Discovery Alert, *Burkina Faso Increases Kiaka Gold Mine Stake to 50%*, dated 1 September 2025, available at <https://discoveryalert.com.au/news/burkina-faso-2025-kiaka-gold-mine-stake/>, **Exhibit C-0292-ENG**.

immediately requested a suspension of trading of the company’s shares on the ASX.⁴⁷⁷ The director-general of Burkina Faso’s Cadastre Minier, Mamadou Sagnon, alleges that this is not, “**for the moment**”, a “mandatory demand” or a “forcing”, but an option the State is triggering to “acquire additional equity” in mining projects on “commercial terms”.⁴⁷⁸

199. Capitaine Traoré has not wielded the power of the State so heavy-handedly against **all** foreign mining companies. In contrast to the measures the State has taken against the Claimant, WAF, Endeavour and other Canadian, Australian and UK companies, Burkina Faso recently granted Nordgold, a Russian-owned mining company, a mining licence for the Niou gold mine.⁴⁷⁹ The Claimant understands that Burkina Faso has also **not** sought to apply the 2024 Mining Code revisions—including the allegedly “mandatory” 15% free carried interest due to the State—to Nordgold’s Bissa and Bouly gold mines, over which Nordgold continues to hold a 90% equity share.⁴⁸⁰

2.3.2 Burkina Faso’s increasingly hostile attitude to the Claimant’s Sanutura Project and demands for irregular payments

200. Sarama did not escape the legal and commercial troubles wrought by Capitaine Traoré’s arbitrary, autocratic and self-serving policies. Shortly after coming into power, Capitaine Traoré appointed Mr Simon-Pierre Boussim (“**Minister Boussim**”) as the new Minister of Mines.⁴⁸¹ As a loyal follower of Capitaine Traoré and the PMSR, Minister Boussim targeted foreign mining companies with valuable assets, including Sarama.
201. Mr Hamilton first met Minister Boussim at the Ministry of Mines in Ouagadougou on 21 November 2022, just over a month after the 30 September 2022 *coup* that brought Capitaine

⁴⁷⁷ Discovery Alert, *Burkina Faso Increases Kiaka Gold Mine Stake to 50%*, dated 1 September 2025, available at <https://discoveryalert.com.au/news/burkina-faso-2025-kiaka-gold-mine-stake/>, **Exhibit C-0292-ENG**.

⁴⁷⁸ MiningWeekly.com, *Burkina Faso Clarifies Stance on Increased Stake in West African Resource’s Kiaka mine*, dated 5 September 2025, available at <https://www.miningweekly.com/article/burkina-faso-clarifies-stance-on-increased-stake-in-west-african-resources-kiaka-mine-2025-09-05>, **Exhibit C-0296-ENG** (emphasis added).

⁴⁷⁹ Reuters, *Burkina Faso Grants Mining Lease to Russia’s Nordgold for Gold Project*, dated 25 April 2025, available at <https://www.reuters.com/world/africa/burkina-faso-grants-mining-lease-russias-nordgold-gold-project-2025-04-25/>, **Exhibit C-0336-ENG**; see also Hamilton WS1, at para. 108.

⁴⁸⁰ Nordgold’s Bissa-Bouly Gold Mine, dated April 2024, at p. 7, **Exhibit C-0326-ENG**.

⁴⁸¹ Ministère de la Transition Énergétique, des Mines et des Carrières, *Ministère De l’Énergie, Des Mines Et Des Carrières: Simon Pierre BOUSSIM Installé Dans Ses Fonctions*, dated 28 October 2022, available at https://www.energiemines.gov.bf/accueil/details?tx_news_pi1%Baction%5D=detail&tx_news_pi1%Bcontroller%5DNews&tx_news_pi1%Bnews%5D=108&cHash=4cb2ca8cfb1fb45a33385705fc73f283, **Exhibit C-0060-FR**.

Traoré to power.⁴⁸² [REDACTED]

[REDACTED] Sarama as well as Mr Saaga Sawadogo, the Director-General of the Cadastre Minier, and Mr Saba, the Director of Mines of the *Direction Générale des Mines et de la Géologie* also attended the meeting.⁴⁸³ Sarama sought this meeting with Minister Boussim to investigate what treatment it might receive under the new regime and to try to persuade Minister Boussim to finally grant the *arrêté* for the Tankoro 2 Permit, which had been delayed for almost a year.⁴⁸⁴

202. At the meeting, Mr Hamilton, [REDACTED] explained to Minister Boussim the difficulties Sarama had encountered since December 2020, emphasizing the urgent need for the Ministry to grant the *arrêté* for the Tankoro 2 Permit.⁴⁸⁵ Without the *arrêté*, Sarama could not obtain VAT exemptions for further drilling on the Tankoro Property, raising its costs by at least 18% (the rate of VAT in Burkina Faso).⁴⁸⁶

203. Minister Boussim initially gave Mr Hamilton, [REDACTED] positive feedback. He stated that he was well-informed about Sarama's situation and would do what he could to "unblock" the Tankoro 2 Permit's *arrêté*.⁴⁸⁷ However, when pressed, Minister Boussim would not commit to granting the *arrêté* as soon as possible, citing a "problem" caused by the "regulation of texts".⁴⁸⁸ As Mr Hamilton explains in his witness statement:

I was not comforted by the mixed messages transmitted to us by Minister Boussim and told Mr Dinning that in my view we were going to have issues with Minister Boussim.⁴⁸⁹

204. In December 2022, Mr Dinning asked Lee-Anne Hermann ("Ambassador Hermann"), Canada's Ambassador to Burkina Faso, to meet with Minister Boussim and urge him to release

⁴⁸² Hamilton WS1, at para. 92.

⁴⁸³ Hamilton WS1, at para. 92.

As Burkinabe and native Francophones, [REDACTED] translated between Minister Boussim and Mr Hamilton.

⁴⁸⁴ Hamilton WS1, at para. 93; Summary of the Meeting with Minister Boussim and Ministry and Technical Advisers, dated 21 November 2022, at p. 1, **Exhibit C-0232-ENG**.

⁴⁸⁵ Hamilton WS1, at para. 93.

⁴⁸⁶ Hamilton WS1, at para. 75.

⁴⁸⁷ Hamilton WS1, at para. 93.

⁴⁸⁸ Hamilton WS1, at para. 94; Summary of the Meeting with Minister Boussim and Ministry and Technical Advisers, dated 21 November 2022, at p. 2, **Exhibit C-0232-ENG**.

⁴⁸⁹ Hamilton WS1, at para. 94.

the *arrêté* for the Tankoro 2 Permit.⁴⁹⁰ At that meeting, according to notes taken by the ambassador's staff, Minister Boussim referred to an "amount" that Sarama would need to pay for the Ministry to "reissue" the Tankoro 2 Permit.⁴⁹¹ Minister Boussim further alleged that the previous permitting fee Sarama had paid to the Ministry on 29 November 2021 did not count.⁴⁹² The ambassador's summary email explained to Sarama that: "For [Minister Boussim], regarding the law, [] your property is back in state assets".⁴⁹³

205. Minister Boussim's request did not conform to the 2015 Mining Code and applicable mining regulations. As explained above, Sarama had already paid the requisite permitting fee of 2 million CFA francs for the Tankoro 2 Permit on 29 November 2021.⁴⁹⁴ The 2015 Mining Code and applicable regulations prescribed no other "fee" or payment in order for the State to issue the *arrêté* for the Tankoro 2 Permit. To the contrary, Article 31 of Decree No. 2017-0036 provides that the payment of the fixed permitting fee to the Ministry and the Ministry's stamp of the receipt for that payment "results in" the issuance of the *arrêté* for an exploration permit as an administrative formality.⁴⁹⁵
206. Sarama received a further troubling report [REDACTED] on 13 January 2023 attended a meeting at the *Chambres des Mines du Burkina Faso*, with Capitaine Traoré and Minister Boussim in attendance.⁴⁹⁶ At that meeting, Minister Boussim mentioned that the Ministry had been approached, presumably by other companies or individuals, with "very good proposals...to obtain" the Tankoro 2 Permit.⁴⁹⁷ For Sarama, Minister Boussim's statement

⁴⁹⁰ Dinning WS1, at para. 140.

⁴⁹¹ Dinning WS1, at para. 140; Email from M Ouattara (Canadian Embassy) to J Hamilton (Sarama), dated 21 December 2022, **Exhibit C-0238-ENG**.

⁴⁹² Email from M Ouattara (Canadian Embassy) to J Hamilton (Sarama), dated 21 December 2022, **Exhibit C-0238-ENG**.

⁴⁹³ Email from M Ouattara (Canadian Embassy) to J Hamilton (Sarama), dated 21 December 2022, **Exhibit C-0238-ENG**.

⁴⁹⁴ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**; Décret n°2005-047/PRES/PM/MCE, dated 03 February 2005, at Arts. 26, 32, **Exhibit C-0299-FR**; Dinning WS1, at paras. 46, 99.

⁴⁹⁵ Décret n°2017-0036/PRES/PM/MEMC/MADTSI/MINEFID/MEEVCC/MCIA, dated 26 January 2017, at Art. 31, **Exhibit C-0275-FR**.

⁴⁹⁶ Dinning WS1, at para. 141; [REDACTED], **Exhibit C-0241-ENG**.

The Chamber of Mines of Burkina Faso is a non-profit association created in July 2011 to represent the private mining industry in Burkina Faso. See *Chambre des Mines Burkina Faso* (Web Page), available at <https://chambredesmines.bf/nvsite/>, **Exhibit C-0297-FR**.

⁴⁹⁷ Dinning WS1, at para. 141; [REDACTED], **Exhibit C-0241-ENG**.

could not be reconciled with its position under Burkinabe law, specifically the 2015 Mining Code and Article 31 of Decree No. 2017-0036 dated 26 January 2017, under which Minister Ouedraogo had lawfully granted Sarama the Tankoro 2 Permit on 24 November 2021.⁴⁹⁸ This was highly irregular from a Burkinabe mining law perspective. Nothing in the relevant Burkinabe law allowed the Ministry to entertain **other** applications from **other** companies for the same permit that Sarama already had obtained in full compliance with the 2015 Mining Code and relevant regulations.

207. On 3 February 2023, Mr Dinning attended an event organised by the Canadian government at the Canada-Africa Chamber of Business in Cape Town, South Africa during the Indaba Mining conference.⁴⁹⁹ Knowing that Minister Boussim would also be in attendance, Mr Dinning worked with Ambassador Hermann to organise a meeting with the ministry on the sidelines of the conference.⁵⁰⁰ At the meeting, Minister Boussim repeated the claim that he had received another application for the Tankoro 2 Permit. Mr Dinning replied that the Ministry had already granted the Tankoro 2 Permit to Sarama in November 2021 and that it was not possible under Burkinabe law for the Ministry to now entertain another application.⁵⁰¹ He also requested, once again, that Minister Boussim issue the *arrêté* for the Tankoro 2 Permit that Sarama was due under the 2015 Mining Code and Burkinabe law.⁵⁰² Minister Boussim did not agree.
208. On 12 April 2023, [REDACTED] Sarama, met with Mr Nicolas Kagambega, Special Advisor to the President for Mining.⁵⁰³ [REDACTED] Mr Kagambega said that he would try to help Sarama since “for him there should not normally be a problem”.⁵⁰⁴ Mr Kagambega also explained that the new “Minister who has just arrived is not in the sector and does not take the advice of the Ministry’s technicians to make decisions”.⁵⁰⁵

⁴⁹⁸ Letter from Ministry of Mines to Sarama (invitation to pay Tankoro 2 permit), dated 24 November 2021, **Exhibit C-0206-FR**.

⁴⁹⁹ Dinning WS1, at para. 142.

⁵⁰⁰ Dinning WS1, at para. 142.

⁵⁰¹ Dinning WS1, at para. 142.

⁵⁰² Dinning WS1, at para. 142.

⁵⁰³ [REDACTED]
Exhibit C-0259-ENG; Dinning WS1, at para. 144.

⁵⁰⁴ [REDACTED]
Exhibit C-0259-ENG; Dinning WS1, at para. 144.

⁵⁰⁵ [REDACTED]
Exhibit C-0259-ENG.

209. Approximately one week later, on 20 April 2023, Mr Dinning flew to Ouagadougou, hoping an in-person meeting in Burkina Faso at the Ministry would change Minister Boussim's position.⁵⁰⁶ Mr Dinning recalls that during this meeting he managed to convince Minister Boussim to concede, at least verbally, that the Ministry had granted the Tankoro 2 Permit to Sarama in November 2021.⁵⁰⁷ However, despite this admission, Minister Boussim insisted once more that the Tankoro 2 Permit was a "State-owned asset".⁵⁰⁸ Further, he instructed Mr Dinning that the Ministry would only issue the *arrêté* for the Tankoro 2 Permit if Sarama:

- (a) Convinced the Government of Canada to agree to licence certain military drone surveillance software to Burkina Faso; and
- (b) Made an additional, unspecified payment to the Ministry outside the bounds of the 2015 Mining Code and applicable Burkinabe regulations.⁵⁰⁹

210. On 23 April 2023, Mr Dinning emailed Ambassador Hermann explaining what had transpired during his meeting with Minister Boussim on 20 April 2023:⁵¹⁰

I met with the Minister of Mines and three of his advisors on Thursday Morning (April 20, 2023) to discuss Sarama's Tankoro 2 permit. The meeting was mixed however we appear to have moved forward since our meeting in Cape Town as I managed to get the Minister to agree that the permit has been granted although he still emphasised that it is a state asset. [REDACTED]

[REDACTED] spoke with Mamadou immediately post the meeting to update him on several important matters coming out of the meeting including the following two conditions that the Minister requires to be met before he will issue the decree/arrete.

1. The Minister will only issue Sarama's arretes when Canada agrees to provide the software requested (and declined) for drones that Burkina is currently acquiring from Turkey; and

⁵⁰⁶ Dinning WS1, at para. 145.

⁵⁰⁷ Dinning WS1, at para. 145.

⁵⁰⁸ Dinning WS1, at para. 145.

⁵⁰⁹ Dinning WS1, at para. 146.

⁵¹⁰ See Dinning WS1, at para. 146.

2. That Sarama must pay money to get the *arrete* issued, however the quantum was unspecified.⁵¹¹
211. Mr Dinning further clarified in his email to Ambassador Hermann that Minister Boussim had asserted that since “Sarama is a Canadian Company and [the] Ambassador of Canada lobbies him with regards to the Tankoro 2 file”, Sarama should “advocate” for Burkina Faso before the Canadian Government on the drone surveillance software demand.⁵¹²
212. Despite the scant possibility that Sarama, as a private, junior mining company could resolve the diplomatic tussle over the military surveillance drone software between Canada and Burkina Faso, Mr Dinning nevertheless raised the issue with the Trade Commissioner from the Canadian Embassy in late April 2023.⁵¹³ The Trade Commissioner told Mr Dinning that NATO, not Canada, had banned the software in response to actions taken by Turkey in Syria in 2018 and thus the issue was beyond the control of Canadian government alone.⁵¹⁴ Mr Dinning also made efforts to contact Australian government officials on the matter, but this too proved a dead end.⁵¹⁵ Evidently, Burkina Faso needed to resolve this matter at a diplomatic level with Canada, but instead choose to weaponise it as a pretext for Minister Boussim’s unlawful withholding of the *arrêté* for the Tankoro 2 Permit.
213. On 3 May 2023, Mr Dinning wrote to Minister Boussim, memorialising what had transpired during their meeting in Ouagadougou on 20 April 2023 and informing Minister Boussim that despite its efforts, Sarama, as a junior Canadian mining company, could not resolve the surveillance software issue for Burkina Faso.⁵¹⁶
214. A week later, on 10 May 2023, Minister Boussim wrote Sarama in response.⁵¹⁷ In this letter, Minister Boussim again conceded that the Ministry had previously granted the Tankoro 2 Permit to Sarama. However, Minister Boussim now proffered a new excuse for why he would not issue the *arrêté*: Minister Ouedraogo apparently had issued the Tankoro 2 Permit to Sarama

⁵¹¹ Email from A Dinning (Sarama) to L Hermann (Canadian Embassy), dated 23 April 2023, **Exhibit C-0301-ENG**.

⁵¹² Email from A Dinning (Sarama) to L Hermann (Canadian Embassy), dated 23 April 2023, **Exhibit C-0301-ENG**.

⁵¹³ Dinning WS1, at para. 150.

⁵¹⁴ Dinning WS1, at para. 150.

⁵¹⁵ Dinning WS1, at para. 151.

⁵¹⁶ Dinning WS1, at para. 151; Letter from Sarama to the Minister of Mines, dated 3 May 2023, **Exhibit C-0062-ENG**.

⁵¹⁷ Letter from Minister of Mines to Sarama, dated 10 May 2023, **Exhibit C-0302-ENG**.

“in error” because Sarama had not submitted an application for an exploitation permit.⁵¹⁸ This was false: the 2015 Mining Code and applicable Burkinabe regulations did not require Sarama to submit an application for an exploitation permit as opposed to a second exploration permit for the Tankoro Property.⁵¹⁹ Minister Boussim further warned Sarama in his letter that the Ministry might tender the Tankoro 2 Permit in an open and competitive bidding process to other companies.⁵²⁰ However, he invited Sarama to reply to his letter and indicate whether Sarama was still interested in continuing its exploration works on the Tankoro Property.⁵²¹

215. Sarama replied to Minister Boussim on 15 May 2023 confirming its continued interest in and commitment to the Tankoro 2 Permit, emphasising, once again, that it had already paid the fixed permit fee to secure the Tankoro 2 Permit after Minister Ouedraogo had accepted Sarama’s application on 24 November 2021.⁵²²

216. On 14 June 2023, [REDACTED] met with Mr Souleymane Kéré (“**Mr Kéré**”), a technical advisor to Minister Boussim.⁵²³ In this meeting, Mr Kéré set out yet another, new demand, and specified what it would take for Minister Boussim to issue the Tankoro 2 Permit’s *arrêté*: an irregular payment from Sarama of 6 billion CFA francs (approximately US\$ 10 million) to the State.⁵²⁴ Mr Kéré provided no legal basis for this payment, which ran afoul of the 2015 Mining Code, applicable Burkinabe regulations, and the reality that Sarama had already paid the only fee required for the Tankoro 2 Permit (approximately 2 million CFA francs or US\$ 3,200) to the Ministry on 29 November 2021.⁵²⁵ He merely stated that the amount had been “calculated” based on the amounts Sarama had originally invested.⁵²⁶

⁵¹⁸ Letter from Minister of Mines to Sarama, dated 10 May 2023, **Exhibit C-0302-ENG**.

⁵¹⁹ Dinning WS1, at para. 152.

⁵²⁰ Dinning WS1, at para. 153; Letter from Minister of Mines to Sarama, dated 10 May 2023, **Exhibit C-0302-ENG**.

⁵²¹ Letter from Minister of Mines to Sarama, dated 10 May 2023, **Exhibit C-0302-ENG**.

⁵²² Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**; Dinning WS1, at para. 155; Letter from Sarama to Minister of Mines, dated 15 May 2023, **Exhibit C-0303-ENG**.

⁵²³ Hamilton WS1, at para. 97.

⁵²⁴ Hamilton WS1, at para. 97.

⁵²⁵ RFA, at para. 49; Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**.

⁵²⁶ Hamilton WS1, at para. 97.

217. Sarama and its executive management team were shocked and alarmed by the Ministry's new request for this large, irregular payment.⁵²⁷ Mr Hamilton immediately sought a meeting with Minister Boussim. On 19 June 2023, Mr Hamilton, [REDACTED], met Minister Boussim at the Ministry of Mines along with Minister Boussim's Director of Cabinet, Mr Sankara, and Mr Kere.⁵²⁸ As Mr Hamilton recalls:

At this meeting, Minister Boussim verbally informed me of the 6 billion CFA francs demand and asked for Sarama's "proposition". Minister Boussim gave no legal justification for this new monetary demand and I understand there was none to be found in the 2015 Mining Code and applicable regulations at the time. Minister Boussim did not share how he or presumably the Ministry's technicians had calculated the 6 billion CFA francs figure and I assumed it was simply made up.⁵²⁹

218. Despite these unreasonable and unjustified demands, Sarama resolved to negotiate with Minister Boussim and to do everything it could to obtain the Tankoro 2 Permit's *arrêté* and therefore progress the Sanutura Project to mine construction and commercial production.

2.3.3 Burkina Faso unlawfully revoked the Tankoro 2 Permit in August 2023

219. Immediately following Minister Boussim's unsubstantiated request for the 6 billion CFA francs payment, Sarama wrote to the Minister on 22 June 2023.⁵³⁰ In the letter, Sarama highlighted the ways in which the Sanutura Project stood to benefit the State as well as Sarama's compliance with the applicable regulations, including that:

- (a) At least 50% of the gold ore from the Tankoro Deposit could be profitably mined, with 10% of those profits going directly to the government through its free carried interest in Sarama's local subsidiary, SMB, and more money paid indirectly to the government corporation, VAT and other taxes;⁵³¹

⁵²⁷ The sum paid for the Tankoro 2 Permit, for example, was only 2 million CFA francs or approximately US\$ 3,200. Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-ENG**.

⁵²⁸ Hamilton WS, at para. 98.

⁵²⁹ Hamilton WS, at para. 98.

⁵³⁰ Hamilton WS1, at para. 100; Dinning WS1, at para. 157.

⁵³¹ Letter from Sarama to Minister of Mines, dated 22 June 2023, at p.1, **Exhibit C-0308-FR**.

- (b) The mine on the Tankoro Property would likely create more than 500 jobs and contribute to the local economy and stability of the region;⁵³²
 - (c) The former Minister of Mines, Minister Ouedraogo, had already approved Sarama's application for the Tankoro 2 Permit on 24 November 2021, and Sarama had paid the requisite fees to the State for this permit on 29 November 2021;⁵³³
 - (d) Sarama had fulfilled all the conditions under Article 31 of Decree No. 2017-0036 dated 26 January 2017 concerning the management of mining rights and authorisations to be issued the *arrêté* for the Tankoro 2 Permit; and, finally,⁵³⁴
 - (e) Sarama remained available to work with the Ministry and the government to quickly find a reasonable solution to the situation concerning the Tankoro 2 Permit that would be favourable both to Sarama and to Burkina Faso.⁵³⁵
220. The next day, Mr Hamilton, [REDACTED] met again with Mr Sankara, Minister Boussim's Director of Cabinet.⁵³⁶ Mr Hamilton explained how Minister Boussim's issuance of the *arrêté* for the Tankoro 2 Permit would enable Sarama to begin accelerated production of gold at the Tankoro Deposit and make royalty and profit-related payments to the government through its 10% free carried interest in SMB.⁵³⁷ Mr Sankara's only response was that he would pass Sarama's message along to Minister Boussim.⁵³⁸
221. On 27 June 2023, Mr Hamilton returned to the Ministry of Mines [REDACTED] to meet with Minister Boussim, Mr Sankara and Mr Kéré.⁵³⁹ As Mr Hamilton recounts in his witness statement:

Minister Boussim told me that the proposal for accelerated production payments was insufficient. However, he said that since he was a "kind person", he would reduce the amount Sarama had to pay to 4.5 billion CFA

⁵³² Letter from Sarama to Minister of Mines, dated 22 June 2023, at p.1, **Exhibit C-0308-FR**.

⁵³³ Letter from Sarama to Minister of Mines, dated 22 June 2023, at p.2, **Exhibit C-0308-FR**.

⁵³⁴ Letter from Sarama to Minister of Mines, dated 22 June 2023, at p.2, **Exhibit C-0308-FR**.

⁵³⁵ Letter from Sarama to Minister of Mines, dated 22 June 2023, at p.2, **Exhibit C-0308-FR**.

⁵³⁶ Hamilton WS1, at para. 101.

⁵³⁷ Hamilton WS1, at para. 101.

⁵³⁸ Hamilton WS1, at para. 101.

⁵³⁹ See also Dinning WS1, at para. 158.

francs instead of 6 billion CFA francs. Minister Boussim stated that this was his “last demand” and that he would not discuss the matter any further with us. He also told me that the instructions were from Capitaine Traoré himself and that if we had “any problems”, we should take them up with Capitaine Traoré.

Again, Minister Boussim gave no legal justification for his demand for 4.5 billion CFA francs nor explained to me how he had come to that figure. I told Minister Boussim that Sarama’s local Ouagadougou office was in no position to negotiate directly with him and that Sarama’s CEO, Mr Dinning, would be coming to Ouagadougou to speak directly with him. Minister Boussim’s moving goal post for the monetary demand also convinced me that the Ministry had done no rigorous calculation based on any Burkinabe law or regulation.⁵⁴⁰

222. On 6 July 2023, Minister Boussim sent a formal reply to Sarama by way of a letter.⁵⁴¹ Minister Boussim alleged that Minister Ouedraogo had granted the Tankoro 2 Permit to Sarama illegally in November 2021 and because the area was reserved for an exploitation permit and reverted to the State, he could not recognise Sarama’s right to the license.⁵⁴² As Mr Dinning explains, Mr Boussim’s excuse for not granting the *arrêté* was nonsensical, lacked any basis in Burkinabe law, and contradicted prior Ministry practice.⁵⁴³ The 2015 Mining Code did not contain any requirement for a company to move to an exploitation permit within a certain period of time.⁵⁴⁴ For instance, one of Sarama’s subsidiaries, SWA, had applied for a new and second exploration permit, the Djarkadougou 2 Permit, over the Bondi Deposit, on 28 January

⁵⁴⁰ Hamilton WS1, at para. 102.

⁵⁴¹ Dinning WS1, at para. 159; Hamilton WS1, at para. 103; Letter from Minister of Mines to Sarama, dated 6 July 2023, **Exhibit C-0063-ENG**.

⁵⁴² Letter from Minister of Mines to Sarama, dated 6 July 2023, **Exhibit C-0063-FR**.

⁵⁴³ Dinning WS1, at para. 159.

⁵⁴⁴ Dinning WS1, at para. 159.

2019.⁵⁴⁵ The Ministry granted this application on 30 July 2021 and issued the *arrêté* for the permit on 6 January 2023.⁵⁴⁶

223. On 7 July 2023, Mr Dinning, Mr Hamilton, [REDACTED] met with Minister Boussim, Mr Sankara and Mr Kéré at the Ministry's offices in Ouagadougou.⁵⁴⁷ As Mr Dinning explains:

At that meeting, I presented a hard copy of the Ministry's letter to Sarama accepting the Tankoro 2 Permit application and inviting Sarama to pay the required fee dated 24 November 2021, and Sarama's receipt of payment presented and stamped by the Ministry on 29 November 2021. Minister Boussim and Mr Kéré smirked at the paperwork and at me. Minister Boussim then proceeded to demand 4.5 billion CFA francs (approximately US\$ 7.5 million) for the Tankoro 2 Permit. The Ministry's message was clear: it was not a payment for the release of the *arrêté*, but to repurchase the Tankoro 2 Permit itself. I left a copy of the paperwork that I had brought with the Minister and left.⁵⁴⁸

224. On 13 July 2023, Mr Dinning responded to Minister Boussim's letter dated 6 July 2023.⁵⁴⁹ In the letter, Mr Dinning reaffirmed the points Sarama had emphasised to Minister Boussim at the meeting at the Ministry a week earlier, including that:

- (a) Sarama's right to the Tankoro 2 Permit did not derive from any renewal of the original Tankoro Permit; rather, Sarama had applied for a new exploration permit and the Ministry had granted that permit;

⁵⁴⁵ Dinning WS1, at paras. 86, 159; Arrêté No. 2019/150/MMC/SG/DGCM in relation to the exceptional renewal of exploration permit n°284 named Tankoro of Sarama Mining Burkina Sarl (N°Ifu : 00027503x), dated 17 July 2019, **Exhibit C-0046-ENG**.

⁵⁴⁶ Dinning WS1, at paras. 86, 159; Letter from Minister of Mines to SWA SARL, dated 30 July 2021, **Exhibit C-0051-ENG**; Arrêté No. 2023-028/MEMC/SG/DGCM in relation to the grant of permit n°3393 named "DJARKADOUGOU II" to the company SWA SARL (IFU : 00083658Y), dated 6 January 2023, **Exhibit C-0052-ENG**.

⁵⁴⁷ Dinning WS1, at para. 160; Hamilton WS1, at para. 104.

⁵⁴⁸ Dinning WS1, at para. 160 (citing Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**); *see also* Hamilton WS1, at para. 104.

⁵⁴⁹ Dinning WS1, at para. 161; Letter from Sarama to Minister of Mines, dated 22 June 2023, **Exhibit C-0308-ENG**.

- (b) The Ministry’s decision in November 2021 to grant the Tankoro 2 Permit to Sarama was, contrary to Minister Boussim’s contention, “in no way illegal” nor had there been any judicial determination to that effect;
 - (c) Following the grant of the Tankoro 2 Permit, Sarama had raised US\$ 7.2 million from financial markets to further its work on the Sanutura Project, meaning that the damage caused by the Ministry’s actions could not “be reduced to the simple reimbursement” of fees paid.⁵⁵⁰
225. Once again, Sarama’s attempt to placate Minister Boussim and rescue the Tankoro 2 Permit was to no avail. Minister Boussim rejected the offer presented [REDACTED], stating that an alleged remark made by Ambassador Hermann at a US embassy function in Ouagadougou that Sarama would delete project data if Burkina Faso continued to claim the Tankoro 2 Permit as a State asset had angered Capitaine Traoré.⁵⁵¹ In fact, according to Minister Boussim, Capitaine Traoré had instructed the minister to re-raise the amount Sarama must pay from 4.5 billion CFA francs back to 6 billion CFA francs to retaliate against Ambassador Hermann’s comment.⁵⁵²
226. On 25 August 2023, Minister Boussim sent Sarama a letting purporting to “reject” – retroactively it would appear – Sarama’s application for the Tankoro 2 Permit.⁵⁵³ In his letter, Minister Boussim omitted any reference to the Articles 112 to 116 of the 2015 Mining Code, which contain the legal grounds and administrative procedure for the State’s revocation of a mining permit.⁵⁵⁴
227. In light of Minister Boussim’s arbitrary conduct and failure to follow the regular and lawful process for revocation of an exploration permit, Sarama considered that it would be all-but futile to file a claim for *recours pour excès de pouvoir* before the Burkinabe administrative tribunal. According to the *Fédération Internationale pour les Droits Humains* (“FIDH”), Capitaine Traoré and the PSMR have trampled upon the separation of powers outlined in

⁵⁵⁰ Letter from Sarama to Minister of Mines, dated 22 June 2023, **Exhibit C-0308-ENG**.

⁵⁵¹ Dinning WS1, at para. 162; Signal Thread (discussing meeting with Chief of Staff for Ministry of Mines), dated 2 to 4 August 2023, **Exhibit C-0313-ENG**.

⁵⁵² Dinning WS1, at para. 162.

⁵⁵³ Letter from the Minister of Mines to Sarama Mining Burkina SARL (Expropriation letter), dated 25 August 2023, **Exhibit C-0064-ENG**.

⁵⁵⁴ 2015 Mining Code, at Arts. 112-116, **Exhibit C-0130-FR**.

Burkina Faso’s Constitution—which the Claimant understands remains suspended.⁵⁵⁵ FIDH reports that under Capitaine Traoré, at least five magistrates, including public prosecutors, have been forcibly questioned and detained by the regime, threatening the “independence of [Burkina Faso’s] judicial system”.⁵⁵⁶ Sarama thus had no expectations of a fair hearing before any Burkinabe administrative tribunal in August 2023.

228. On 6 September 2023, Sarama had no choice but to announce to the market that Burkina Faso had withdrawn its rights to the Tankoro 2 Permit.⁵⁵⁷

2.3.4 Burkina Faso advertised the Tankoro 2 Permit for sale at the ‘Africa Down Under’ Conference in Perth, Australia in September 2023 and sold the permit to a Burkinabe company

229. That same day, 6 September 2023, Minister Boussim gave a presentation at the ‘Africa Down Under’ conference in Perth, Australia, in which he advertised openly the Tankoro 2 Permit as an “advanced” exploration permit available for sale.⁵⁵⁸ A recording of the speech is published on YouTube.⁵⁵⁹

⁵⁵⁵ FIDH, *Burkina Faso : deux ans après le coup d’État, les violations des droits et libertés ont atteint un niveau très inquiétant*, dated 30 September 2024, available at <https://www.fidh.org/fr/regions/afrique/burkina-faso/burkina-faso-deux-ans-apres-le-coup-d-etat-les-violations-des-droits>, **Exhibit C-0378-FR**; Jeune Afrique, *Pour Ibrahim Traoré, la Constitution burkinabè doit être modifiée*, dated 30 September 2023, available at <https://www.jeuneafrique.com/1488134/politique/pour-ibrahim-traore-la-constitution-burkinabe-doit-etre-modifiee/>, **Exhibit C-0377-FR**.

⁵⁵⁶ FIDH, *Burkina Faso : deux ans après le coup d’État, les violations des droits et libertés ont atteint un niveau très inquiétant*, dated 30 September 2024, available at <https://www.fidh.org/fr/regions/afrique/burkina-faso/burkina-faso-deux-ans-apres-le-coup-d-etat-les-violations-des-droits>, **Exhibit C-0378-FR** (translated from French by counsel).

⁵⁵⁷ Dinning WS1, at para. 167; Sarama Resources, Press Release, *Sarama Resources Provides Update on Status of Exploration Permit*, dated 6 September 2023, **Exhibit C-0364-ENG**.

⁵⁵⁸ Dinning WS1, at para. 167.

⁵⁵⁹ Dinning WS1, at para. 167; YouTube video of the Minister’s speech at the “Africa Down Under Mining Conference” in Perth, available at <https://www.youtube.com/watch?v=rIgKBpdggF4>, **Exhibit C-0065-FR**.



230. Subsequently, on 21 May 2024, Burkina Faso issued the Tankoro 2 Permit to a Burkinabe mining company, Soleil Mining S.A. (“Soleil”).⁵⁶⁰ Sarama understands that the beneficial owner of Soleil, Mr Inoussa Kanazoé, is a Burkinabe businessman with close political ties to Capitaine Traoré.⁵⁶¹

2.3.5 Burkina Faso’s unlawful revocation of the Tankoro 2 permit destroyed Sarama’s investments in the Sanutura Project and the Additional Projects

231. Burkina Faso’s revocation of the Tankoro 2 Permit brought the Sanutura Project and Sarama’s Additional Projects to a complete standstill and destroyed Sarama’s ability to continue operating in the country. The Tankoro Deposit was the cornerstone of Sarama’s investments in Burkina Faso.⁵⁶² Once Burkina Faso unlawfully withdrew Sarama’s rights to the Tankoro 2

⁵⁶⁰ eMC+, ‘Tankoro details’ (Web Page), dated 10 December 2024, **Exhibit C-0066-ENG**.

⁵⁶¹ See WakatSéra, *Burkina: Soleil Resources International (SRI) Limited de Inoussa Kanazoé rachète RoxGold SANU SA*, dated 12 April 2025, available at <https://www.wakatsera.com/burkina-soleil-resources-international-sri-limited-de-inoussa-kanazoe-rachete-roxgold-sanu-sa/>, **Exhibit C-0381-FR**; Burkina24, *Initiatives Locales de Développement: L’Impact Significatif des Investissements de Inoussa Kanazoé Magnifié Devant le Capitaine Ibrahim Traoré à Ziniaré*, dated 20 March 2025, available at <https://burkina24.com/2025/03/20/initiatives-locales-de-developpement-limpact-significatif-des-investissements-de-inoussa-kanazoe-magnifie-devant-le-capitaine-ibrahim-traore-a-ziniare/>, **Exhibit C-0380-FR**; Billionaires Africa, *One of Burkina Faso’s Richest Men, Inoussa Kanazoe Donates to Youth Center*, dated 13 August 2023, available at <https://www.billionaires.africa/2023/08/13/one-of-burkina-fasos-richest-men-inoussa-kanazoe-donates-towards-youth-center/>, **Exhibit C-0379-ENG**.

⁵⁶² Hamilton WS1, at para. 60; Dinning WS1, at para. 6.

Permit, the foundation of Sarama's commercial activities in Burkina Faso collapsed, and its market value plunged.⁵⁶³

232. On 7 September 2023, the day after Sarama publicly announced Burkina Faso's revocation of the Tankoro 2 Permit to investors, Sarama's share price on the TSX dropped to 3 cents.⁵⁶⁴ The Sydney Morning Herald noted in October 2023 that "explorer Sarama Resources' share price ... has tumbled more than 60 per cent since early in September after Burkina Faso government unexpectedly withdrew its exploration permit for its flagship gold project".⁵⁶⁵ Investors knew that Burkina Faso's revocation of the permit meant that the value Sarama had cultivated there for over a decade had vanished.
233. Given the centrality of the Tankoro Deposit to Sarama's strategic vision, the impact of Burkina Faso's measures extended beyond the Tankoro 2 Permit. As explained above, the Bondi Deposit is too small to be mined economically on its own. The expected production revenues from only .5 million in Au resources would be insufficient to repay the debt required to construct a processing facility.⁵⁶⁶ Without the Tankoro 2 Permit, and the establishment of a central processing facility on the Tankoro Property, the Bondi Deposit became a non-viable, effectively worthless asset for Sarama.⁵⁶⁷
234. To compound matters, the steep decline in Sarama's share price on the TSX and ASX confirmed that Burkina Faso's breaches of the BIT shattered investors' confidence in Sarama's ability to continue progressing the Sanutura Project and Additional Projects. Thus, Sarama lost the ability to raise the equity capital needed to fund any exploration or development works in Burkina Faso.⁵⁶⁸
235. Mr Dinning went to great lengths to procure alternative sources of funding. In late 2023 and early 2024, he met with a series of brokers and banks to secure a lifeline for Sarama and its remaining assets in Burkina Faso. For instance, he met with:

⁵⁶³ Dinning WS1, at para. 171.

⁵⁶⁴ Dinning WS1, at para. 171; Email from A. Dinning to L. Hermann, dated 7 September 2023, **Exhibit C-0316-ENG**.

⁵⁶⁵ Sydney Morning Herald, 'ASX-listed Mining Companies and Sovereign Risk in Africa', dated 1 October 2023, *available at* <https://www.jeuneafrique.com/1488134/politique/pour-ibrahim-traore-la-constitution-burkinabe-doit-etre-modifiee/>, **Exhibit C-0235-ENG**.

⁵⁶⁶ See Hamilton WS1, at para. 60.

⁵⁶⁷ Dinning WS1, at para. 172.

⁵⁶⁸ Dinning WS1, at para. 173.

- (a) Guy Le Page from RM Capital Group, a corporate finance and investment banking fund focused on natural resources investment, on 13 September 2023 at Sarama’s office in Perth, Australia, and again on 10 October 2023 and 23 October 2023 at RM Capital Group’s offices in Perth, Australia;⁵⁶⁹
 - (b) Juerg Kiener from Swiss Asia Capital, an asset and wealth management investment firm based in Singapore, and John Newman from Euroz Hartleys, a financial services company that specialises in corporate finance and stockbroking, on 10 November 2023 at Euroz Hartleys’ offices in Perth, Australia;⁵⁷⁰
 - (c) John Willett from Raymond James, an investment bank in Canada that specialises in the mining industry, on 5 March 2024 in Toronto, Canada;⁵⁷¹ and
 - (d) Mr Harvey, former director of Sarama and Perseus Mining and present Chair of Orezone, on 5 March 2024.⁵⁷²
236. Each of those contacts delivered the same message: investors had lost their appetite for investing in Burkina Faso.⁵⁷³ Referring to Sarama’s remaining operations in Burkina Faso, Mr Harvey told Mr Dinning that Sarama “won’t get a cent for that place”.⁵⁷⁴
237. Analysts confirmed this grim outlook. On 29 November 2024, as part of a global market update, mining advisory firm SP Angel reported that “military governments in West Africa”, including in Burkina Faso, “have created high risk and uncertainty”, leading to a “drop in investment appetite”.⁵⁷⁵ SP Angel elaborated that Burkina Faso and certain of its neighbours were “isolating themselves and their populations from Development Agencies, Charities and

⁵⁶⁹ Calendar Entry for Meeting between G. Le Page (RM Capital Group) and A. Dinning (Sarama), cc. P. Schmiede, dated 13 September 2023, **Exhibit C-0265-ENG**; Calendar Entry for Meeting between G. Le Page (RM Capital Group) and A. Dinning (Sarama), dated 13 October 2023, **Exhibit C-0266-ENG**; Calendar Entry for Meeting between G. Le Page (RM Capital Group) and A. Dinning (Sarama), dated 23 October 2023, **Exhibit C-0267-ENG**.

⁵⁷⁰ Calendar Entry for Meeting between J. Kiener (Swiss Asia Capital) and A. Dinning (Sarama), dated 10 November 2023, **Exhibit C-0268-ENG**.

⁵⁷¹ Calendar Entry for Meeting between J. Willett (Raymond James) and A. Dinning (Sarama), dated 5 March 2023, **Exhibit C-0269-ENG**.

⁵⁷² Calendar Entry for Meeting between S. Harvey (Perseus Mining) and A. Dinning (Sarama), dated 5 March 2023, **Exhibit C-0269-ENG**.

⁵⁷³ Dinning WS1, at para. 175.

⁵⁷⁴ Dinning WS1, at para. 175.

⁵⁷⁵ Email from SP Angel to P. Schmiede (Sarama) (global mining market update), dated 29 November 2024, **Exhibit C-0290-ENG**.

banking finance while the uncertainty and aggressive approach to industry continues. **Investors will take shorter-term views, and many will avoid the region altogether**".⁵⁷⁶

238. As a result, Sarama had no choice but to abandon the Additional Projects.⁵⁷⁷ In the absence of funding, Sarama's exploration work at the Koumandara Project ground to a halt.⁵⁷⁸ This destroyed the potential value of the Koumandara Project to Sarama, leaving only the possibility of realising the property's residual value through a distressed asset sale.⁵⁷⁹
239. Likewise, without funding Sarama could not continue to meet its expenditure requirements for the Karankasso Project, which Sarama must satisfy to maintain its interest in the joint venture.⁵⁸⁰ Sarama's interest will thus eventually suffer substantial dilution.⁵⁸¹ According to the terms of the joint venture agreement, when Sarama's equity interest falls below 10%, its interest will then automatically convert to a net smelter returns royalty of 1%, and the Karankasso Project will terminate.⁵⁸²
240. To mitigate the severe losses Sarama suffered as a result of Burkina Faso's conduct, Sarama had no choice but to liquidate its assets at distressed prices. In 2024, Sarama sold its subsidiary, Burkina Faso Holdings Ltd., together with its associated rights to the Koumandara Project, to BIC West Africa Limited for only US\$ 160,000.⁵⁸³ The sale price for the Koumandara Project bears no reasonable relationship to the substantial time, expertise, and capital Sarama invested.⁵⁸⁴
241. On 18 August 2025, Sarama entered into a Share Purchase Agreement with Beoogo Investment Limited, a wholly owned subsidiary of Burkina Mining Services BF, for the sale of SWA BF

⁵⁷⁶ Email from SP Angel to P. Schmiede (Sarama) (global mining market update), dated 29 November 2024, **Exhibit C-0290-ENG**. (emphasis added).

⁵⁷⁷ Dinning WS1, at paras. 179, 188-190.

⁵⁷⁸ Schmiede WS1, at para. 133.

⁵⁷⁹ Schmiede WS1, at para. 133.

⁵⁸⁰ Schmiede WS1, at para. 140.

⁵⁸¹ Schmiede WS1, at para. 140.

⁵⁸² Schmiede WS1, at para. 140; Shareholders' Agreement (Joint Venture over South Houndé permits and Sérakoro permits), at cl. 3.12 and Schedule C, dated 10 September 2014, **Exhibit C-0121-ENG**.

⁵⁸³ Accuracy Report, para. 3.39; *see also* Sarama Resources Ltd, Management's Discussion and Analysis of Financial Results (MD&A) 2024, dated 28 March 2025, at pp. 10, 16, **Exhibit C-0333-ENG**.

⁵⁸⁴ *See* Accuracy Report, para. 3.39; Sarama Resources Ltd, Management's Discussion and Analysis of Financial Results (MD&A) 2024, dated 28 March 2025, at p. 13, **Exhibit C-0333-ENG**.

No. 3, including the rights to the Bondi Deposit and Djarkadougou 2 Permit.⁵⁸⁵ The agreement is currently awaiting approval from the Minister of Mines, which is a condition precedent to closing the transaction.⁵⁸⁶ Notwithstanding multiple inquiries from both Sarama and the purchaser, the Minister has to date refused to approve the transaction.⁵⁸⁷

3. THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE AND THE CLAIMANT'S CLAIMS ARE ADMISSIBLE

242. The Claimant brings claims on its own behalf under Article 21(1) of the BIT. Both Parties consented to these proceedings pursuant to Article 26(1) of the BIT. As set out below, the Claimant has met the jurisdictional and admissibility requirements of the BIT and the ICSID Convention. Accordingly, the Tribunal has jurisdiction over the present dispute and the Claimant's claims are admissible.

3.1 The Tribunal has Jurisdiction *Ratione Personae*

3.1.1 The Claimant is a covered investor under the BIT

243. Article 1 of the BIT defines "investor of a Party" as "a Party, or a national or **an enterprise of a Party, that seeks to make, is making or has made an investment**".⁵⁸⁸ Thus, Sarama qualifies as an investor of a Party if (i) it is an enterprise of Canada, which (ii) seeks to make, is making or has made an investment.

244. Article 1 of the BIT contains a broad definition of "enterprise":

‘enterprise’ means an entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity[.]⁵⁸⁹

245. Sarama is a Canadian public company duly incorporated under the laws of British Columbia, with its registered office at Suite 2200, RBC Building, 885 West Georgia Street, Vancouver

⁵⁸⁵ Share Sale and Purchase Agreement (re SWA BF No. 3 Investments Limited), dated 18 August 2025, **Exhibit C-0261-ENG**.

⁵⁸⁶ Dinning WS1, at para. 177.

⁵⁸⁷ Dinning WS1, at para. 177.

⁵⁸⁸ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR** (emphasis added).

⁵⁸⁹ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR**.

BC, Canada V6C 3E8.⁵⁹⁰ Thus, Sarama is an ‘enterprise of a Party’ pursuant to Article 1 of the BIT.

246. Furthermore, as set out in **section 3.2** below, Sarama has made covered investments in the territory of Burkina Faso. Thus, Sarama falls within the definition of the “investor of a Party” under Article 1 of the BIT.

247. Article 1 of the BIT contains a so-called ‘denial of benefits’ clause that excludes from the scope of the covered investors:

an enterprise of a Party if investors of a non-Party or of the other Party own or control that enterprise and the enterprise does not have substantial business activity in the territory of the Party under the domestic law of which it is constituted or organized at the time of the events giving rise to the claim.⁵⁹¹

248. Thus, Article 1 of the BIT allows the Respondent to deny the Claimant BIT protections if two **cumulative** conditions are met.⁵⁹² To exercise its right to deny the Claimant protections under the BIT the Respondent must demonstrate that, at the time of the events giving rise to the claim:

- (a) investors of a non-Party or of Burkina Faso controlled the Claimant; **and**
- (b) The Claimant did not have substantial business activity in the territory of the Party under the domestic law of its incorporation or organization.

249. The Respondent bears the burden of proving both cumulative conditions required to deny benefits to the Claimant. As the tribunal in *Generation Ukraine v. Ukraine* explained, “the burden of proof to establish the factual basis of the ‘third country control’, together with the other conditions, falls upon the State as the party invoking the ‘right to deny [benefits]’”.⁵⁹³

⁵⁹⁰ Incorporation Certificate of Sarama Resources Ltd, 08 April 2010, **Exhibit C-0001-ENG**.

⁵⁹¹ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR**.

⁵⁹² *See Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Interim Award, 28 September 2010, at para. 167, **Exhibit CL-0072-ENG**.

⁵⁹³ *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, dated 16 September 2003, at para. 15.7, **Exhibit CL-0021-ENG**.

250. The denial of benefits clause does not entitle the Respondent to withhold BIT protections in this case. Because Article 1 requires both conditions to be satisfied, the Tribunal only needs to find that the Claimant fails to meet one of them to confirm its entitlement to BIT protections.
251. **First**, the investors of a non-Party or of Burkina Faso did not control Sarama at the time of the events giving rise to the claim. This fact alone confirms that the Claimant falls outside the scope of the denial of benefits clause and therefore enjoys the protections of the BIT.
252. The BIT requires the Tribunal to assess this criterion as of the time of the events giving rise to the claim. In this case, the relevant date is 25 August 2023 — the date of the expropriation of the Claimant’s investments.⁵⁹⁴
253. According to the Claimant’s share register as at 25 August 2023, investors from Burkina Faso held only 2.34% of the shares and therefore did not control the Claimant.⁵⁹⁵ The share register also indicates that 14.15% of the shares belonged to objecting beneficial owners (“**OBOs**”)⁵⁹⁶ who have not disclosed their identity to the Claimant. OBOs are investors who hold shares on the TSX through third-party brokers or financial institutions and do not disclose their identity or contact information to the public companies in which they invest.⁵⁹⁷ Consequently, it is not possible to determine their nationality. However, even if the Tribunal were to assume, *arguendo*, that all 14.15% of these OBOs were investors of Burkina Faso, their combined holdings of 16.49% would still fall far short of the threshold required to establish control.
254. According to the Claimant’s share register as at 25 August 2023, investors from a Non-party also did not control the Claimant. Under Article 31 of the Vienna Convention on the Law of Treaties (the “**VCLT**”), the Tribunal must interpret this term according to its ordinary meaning, in its context, and in light of the treaty’s object and purpose.⁵⁹⁸ The singular wording “**a non-Party**” in its ordinary meaning requires the analysis of control to focus on investors from **the same** non-Party. The Respondent cannot combine the interests of investors from several different non-Parties to establish control. Such an interpretation would distort the ordinary meaning of the text and undermine the provision’s purpose, which addresses control by

⁵⁹⁴ See Letter from the Minister of Mines to Sarama Mining Burkina SARL (Expropriation Letter), dated 25 August 2023, **Exhibit C-0064-ENG**.

⁵⁹⁵ Sarama Resources, Share Register as at 25 August 2023, **Exhibit C-0314-ENG**.

⁵⁹⁶ Sarama Resources, Share Register as at 25 August 2023, **Exhibit C-0314-ENG**.

⁵⁹⁷ Dinning WS1, at para. 32.

⁵⁹⁸ Vienna Convention on the Law of Treaties, dated 23 May 1969, at Art. 31, **Exhibit CL-0007-ENG**.

investors of a specific third State, not a diffuse collection of shareholders from multiple jurisdictions. The largest aggregate shareholding by investors from a single non-Party — Australian investors — amounted to 33.93% of the Claimant’s shares.⁵⁹⁹ Even if the Tribunal assumes that all unidentified OBOs (14.15%) were investors from Australia — which is highly unlikely given those shareholders invested via the TSX — their combined ownership of 48.08% of the Claimant’s shares would still only account for a minority of Sarama’s shares and therefore not confer control over the Claimant.

255. Thus, neither investors from any non-Party nor investors from Burkina Faso controlled Sarama at the time of the events giving rise to the claim. The Claimant therefore falls outside the scope of the denial of benefits clause.
256. **Second**, even if the Tribunal finds that investors from a non-Party or from Burkina Faso controlled Sarama at the relevant time — which the Claimant denies — Sarama, as a company incorporated in Canada and listed on the TSX, maintained substantial business activity in Canada during the events giving rise to the claim.
257. As explained by the tribunal in *NextEra v Spain*, “although there has not been a significant jurisprudence on the question of ‘substantial business activities’, the tribunals that have found such activities to exist have been prepared to do so on the basis of a relatively small number of activities both in terms of quantity and quality”.⁶⁰⁰ For example, in *Amto v. Ukraine*, the tribunal found that the claimant satisfied the requirement of “substantial business activities” because it conducted investment operations from premises in Latvia and employed a small permanent staff.⁶⁰¹
258. In the present case, the Claimant’s business activities in the territory of Canada at the time of events giving rise to its claims met and exceeded this standard. Throughout its existence, Sarama has conducted its essential management and operational functions from Canada. In particular, as of 25 August 2023:⁶⁰²

⁵⁹⁹ Sarama Resources, Share Register as at 25 August 2023, **Exhibit C-0314-ENG**.

⁶⁰⁰ *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Decision on Jurisdiction, Liability and Quantum Principles, dated 12 March 2019, at para. 260, **Exhibit CL-0104-ENG**.

⁶⁰¹ *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award, dated 26 March 2008, at para. 69, **Exhibit CL-0050-ENG**.

⁶⁰² Dinning WS1, at paras. 27-28.

- (a) Sarama has its registered address in Vancouver, Canada;
- (b) Sarama is listed on the TSX in Canada;
- (c) Sarama has raised approximately CA\$ 82.8 million on the TSX to finance the exploration and development of its projects, including the Sanutura Project;
- (d) Mr Hamilton, Sarama's Vice President of Exploration, resided and worked primarily in Canada, except when present at project sites in Burkina Faso or other jurisdictions;
- (e) Sarama had other permanent employees residing in and working out of Canada from time to time, including an Office Manager and small team of geologists;
- (f) Sarama conducted its primary shareholder and investor relations activities in Canada, including the holding of Annual and Special General Meetings in Vancouver;
- (g) Sarama's key professional service providers — including its legal counsel, accountants, brokers and tax advisors — were Canadian firms;
- (h) Sarama has paid approximately CA\$ 14 million to services suppliers in Canada, including its lawyers, accountants, insurers, director fees, broker fees, consultants, TSX listing fees, and so on; and
- (i) the company has regularly obtained and published technical reports in the prescribed Form 43-101F1, as required under Canada's Standards of Disclosure for Mineral Projects for public companies.⁶⁰³

259. These facts demonstrate that Sarama maintained, and continues to maintain, substantial, ongoing business activity in Canada consistent with the jurisprudence on this issue. Accordingly, Sarama satisfies the requirement of having “substantial business activity” in the territory of the Party under whose domestic law it is incorporated, as required by Article 1 of the BIT. The Claimant therefore falls outside the scope of the denial of benefits clause.

260. In light of the above, neither of the two cumulative conditions required to invoke the denial of benefits clause under Article 1 of the BIT are met in the present case. The evidence demonstrates that investors from neither Burkina Faso nor any non-Party controlled the

⁶⁰³ See First Cube Report, **Exhibit C-0102-ENG**; Second Cube Report, **Exhibit C-0114-ENG**; Third Cube Report, **Exhibit C-0028-ENG**; Fourth Cube Report, **Exhibit C-0192-ENG**; Fifth Cube Report, **Exhibit C-0029-ENG**.

Claimant at the time of the events giving rise to the claim, and that Sarama maintained substantial and ongoing business activities in Canada. Thus, the Tribunal should find that the Claimant is entitled to the full protections of the BIT.

3.1.2 The Claimant is also a covered investor under the ICSID Convention

261. Article 25(1) of the ICSID Convention requires that the non-State party to the dispute be “a national of another Contracting State” to the ICSID Convention.⁶⁰⁴ Article 25(2)(b) defines a “national of another Contracting State” to include “any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to . . . arbitration”.⁶⁰⁵

262. This dispute is between Sarama, national of Canada, on the one hand, and Burkina Faso, on the other hand. As Canada and Burkina Faso are both Contracting States to the ICSID Convention, the present dispute is “between a Contracting State and a National of another Contracting State,” as required by Article 25(1) of the ICSID Convention.⁶⁰⁶

3.2 The Tribunal has Jurisdiction *Ratione Materiae*

3.2.1 The Claimant made covered investments under Article 1 of the BIT

263. Article 1 of the BIT defines an “investment” broadly as:

any kind of assets that an investor of a Party owns or controls in the territory of the other Party that involves the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. An investment must be in one of the following forms:

- (a) an enterprise;
- (b) a share, stock or other form of equity participation in an enterprise;
- (c) a bond, debenture or other debt instrument of an enterprise;

⁶⁰⁴ ICSID Convention, at Art. 25(1), **Exhibit CL-0001-ENG**.

⁶⁰⁵ ICSID Convention, at Art. 25(2)(b), **Exhibit CL-0001-ENG**.

⁶⁰⁶ ICSID Convention, Art. 25(1), **Exhibit CL-0001-ENG**; ICSID, *Burkina Faso* (Web page) <https://icsid.worldbank.org/about/member-states/database-of-memberstates/member-state-details?state=ST22>, **Exhibit C-0008-ENG**; ICSID, *Canada* (Web page) <https://icsid.worldbank.org/about/member-states/database-of-member-states/member-state-details?state=ST26>, **Exhibit C-0372-ENG**.

(d) a loan to an enterprise;

(e) notwithstanding subparagraphs (c) and (d) above, a loan to or debt security issued by a financial institution, only where the loan or debt security is treated as regulatory capital by the Party in whose territory the financial institution is located;

(f) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(h) an interest arising from the commitment of capital or other resources in the territory of a Party to economic activity in that territory, such as under:

(i) a contract involving the presence of an investor's property in the territory of the Party, including a turnkey or construction contract, or a concession, or

(ii) a contract where remuneration depends substantially on the production, revenues or profits of an enterprise;

(i) an intellectual property right; and

(j) any other tangible or intangible, moveable or immovable, property and any related property right acquired in the expectation of or used for the purpose of economic benefit or other business purpose[.]⁶⁰⁷

264. The definition of investment is broad and encompasses “any kind of assets”. It also encompasses both direct and indirect investments.

265. The Claimant's investments fall within the above definition. The Claimant invested significant financial and other resources in Burkina Faso for the evaluation, acquisition, exploration, and development of the Sanutura Project and the Additional Projects. Specifically, the Claimant's

⁶⁰⁷

BIT, at Art. 1, **Exhibit CL-0003-ENG-FR** (emphasis added).

investments include (without limitation) the following elements, all of which fall within the scope of “investment” as defined by Article 1 of the BIT:

- (a) the Claimant’s indirect shareholdings in SMB and SWA;⁶⁰⁸
- (b) the Claimant’s indirect shareholding in JV BF1;⁶⁰⁹
- (c) the Claimant’s ownership of the Sanutura Project and Additional Project assets such as:
 - (i) the Tankoro 2 Permit, the Djarkadougou 2 Permit, the Werinkera 2 Permit, Danyimi 2 Permit, the Botoro Permit and all other exploration permits indirectly held by the Claimant in connection with its investments;⁶¹⁰
 - (ii) the Claimant’s attendant equipment and infrastructure including, among other things, moveable and immovable as well as tangible and intangible property;⁶¹¹ and
 - (iii) physical samples from exploration drilling and other exploration activities, which are owned and stored by the Claimant;
- (d) the expenses incurred by the Claimant for the Sanutura Project and Additional Projects in relation to exploration drilling, assaying, metallurgical tests, and mineral resource estimates, as well as engaging third-party consultants for technical and development studies;⁶¹²
- (e) administrative, utility, corporate and other overhead costs incurred in the set-up and day to day running of the Sanutura Project and the Additional Projects, as well as

⁶⁰⁸ Sarama Mining Burkina, Certificate of Incorporation, dated 22 June 2010, **Exhibit C-0080-ENG**; SWA SARL, Declaration de Constitution de Personne Morale, dated 7 June 2016, **Exhibit C-0145-FR**.

⁶⁰⁹ Shareholders’ Agreement (Joint Venture over Houndé South permits and Sérakoro permits), dated 10 September 2014, **Exhibit C-0121-ENG**.

⁶¹⁰ See, e.g., Permit Application Form No. 4272 for Tankoro 2 Permit by Sarama Mining Burkina SARL, dated 6 August 2021, **Exhibit C-0058-FR**; Payment slip for grant of Tankoro 2 Permit issued by Ministry of Energy, Mines and Quarries, dated 24 November 2021, **Exhibit C-0059-FR**; Arrêté No. 2023-028/MEMC/SG/DGCM in relation to the grant of permit n°3393 named “DJARKADOUGOU IF” to the company SWA SARL (IFU : 00083658Y), dated 6 January 2023, **Exhibit C-0052-FR**; Bordereau de Paiement par Cheque (Djarkadougou 2), dated 2 August 2021, **Exhibit C-0202-FR**.

⁶¹¹ See Sarama Resources Ltd, Sunk Costs (Excel), dated 25 October 2025, at lines 10, 19, 27, and 36, **Exhibit C-0351-ENG**.

⁶¹² Sarama Resources Ltd, Sunk Costs (Excel), dated 25 October 2025, at Rows 6, 16 , 24 and 33, **Exhibit C-0351-ENG**; see also Schmiede WS1, at paras. 76, 87, 91, 99, 104.

investor marketing, stock exchange listing, and fundraising costs for the Sanutura Project and the Additional Projects;⁶¹³ and

- (f) electronic databases of survey, assay, geological, metallurgical, and financial results and environmental baseline data stored outside of Burkina Faso and without which the Sanutura Project and Additional Projects could not have been developed.

266. Article 1 of the BIT further defines a “covered investment” as “investment in its territory that is owned or controlled, directly or indirectly, by an investor of the other Party existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter”.⁶¹⁴ Article 1 of the BIT defines the term “existing” to mean “in effect on the date of entry into force of this Agreement”.⁶¹⁵

267. The BIT entered into force on 11 October 2017.⁶¹⁶ As detailed in **section 2.2** above, the Claimant made its qualifying investments in Burkina Faso between 2010 and 2023, *i.e.*, before and after the BIT entered into force. The Claimant, therefore, has made “covered investments” within the meaning of Article 1 of the BIT.

268. Article 1 of the BIT carves out certain claims from protection. Article 1 provides:

‘investment’ does not mean:

(k) a claim to money that arises solely from:

(i) a commercial contract for the sale of a good or service by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) the extension of credit, including bank loans, in connection with a commercial transaction, such as trade financing; or

⁶¹³ See Sarama Resources Ltd, Sunk Costs (Excel), dated 25 October 2025, at Rows 7, 8, 11, 17, 18, 20, 25, 26, 28, 34, 35 and 37, **Exhibit C-0351-ENG**.

⁶¹⁴ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR**.

⁶¹⁵ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR**.

⁶¹⁶ See UNCTAD Investment Policy Hub, International Investment Agreements Navigator, *Burkina Faso-Canada BIT (2015)*, available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3557/burkina-faso---canada-bit-2015->, **Exhibit C-0361-ENG**.

(l) any other claim to money,

that does not involve the kinds of assets set out in subparagraphs (a) to (j).⁶¹⁷

269. None of the Claimant's investments fall within the scope of investments carved out of protection under Article 1 of the BIT. As set out above, the Claimant's investments do not include 'claims to money'. Rather, the Claimant's investments involve interests arising from the commitment of capital or other resources in the territory of Burkina Faso and in any event involve the kinds of assets set out in subparagraphs (a) to (j) of the definition of the "investment" in Article 1 of the BIT. Accordingly, the exclusionary wording of Article 1 of the BIT does not apply to the Claimant's investments.

270. The Claimant, therefore, has made "covered investments" within the meaning of Article 1 of the BIT.

3.2.2 The Claimant also made covered investments under ICSID Convention Article 25(1)

271. Although the ICSID Convention does not define the term 'investment', ICSID tribunals have considered various objective criteria in determining whether a particular investment falls within the meaning of ICSID Convention Article 25(1). Such criteria have included the list of typical characteristics of an investment set out by the tribunal in *Salini v. Morocco*, namely, (a) a contribution of money or assets, (b) a certain duration, (c) an element of risk; and (d) contribution to the economic development of the host State.⁶¹⁸

272. As numerous ICSID tribunals have observed, these criteria are not mandatory jurisdictional requirements, but rather reflect typical elements that a tribunal "could consider in determining whether the subject matter from which the dispute has arisen is an 'investment' contemplated

⁶¹⁷ BIT, at Art. 1, **Exhibit CL-0003-ENG-FR**.

⁶¹⁸ *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco* ("**Salini v. Morocco**"), ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 16 July 2001, at para. 52, **Exhibit CL-0014-ENG**; *See also Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, dated 16 June 2006, at para. 91, **Exhibit CL-0030-ENG** ("The ICSID Convention contains no definition of the term 'investment'. The Tribunal concurs with ICSID precedents which, subject to minor variations, have relied on the so-called '*Salini* test'. Such test identifies the following elements as indicative of an 'investment' for purposes of the ICSID Convention: (i) a contribution, (ii) a certain duration over which the project is implemented, (iii) a sharing of operational risks, and (iv) a contribution to the host State's development, being understood that these elements may be closely interrelated, should be examined in their totality and will normally depend on the circumstances of each case.")

by the ICSID Convention”.⁶¹⁹ The case law and commentary also confirm that, when examining whether a claimant has made an investment for purposes of an investment treaty and the ICSID Convention, a tribunal should analyse the claimant’s operation as a whole, rather than parsing the different constituent elements of the investment to analyse whether such elements individually qualify as investments in their own right.⁶²⁰ In addition, various tribunals have found that where, as here, an investment satisfies the relevant definition under the BIT, a tribunal would require “compelling reasons” to conclude that it was not an investment under Article 25(1) of the ICSID Convention.⁶²¹

273. In this case, the Claimant’s economic activity and contributions to acquire and develop the Sanutura Project and the Additional Projects in Burkina Faso qualify as “investments” under Article 25(1) of the ICSID Convention.
274. **First**, the Claimant’s investments involved a contribution of money and assets. ICSID tribunals have interpreted contribution broadly to encompass not only payments of money but also other kinds of non-pecuniary contributions such as “materials, works, or services”.⁶²² As detailed

⁶¹⁹ *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania II*, ICSID Case No. ARB/15/41, Award, dated 11 October 2019, at para. 200, **Exhibit CL-0108-ENG**; *See also Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka (“Deutsche Bank v Sri Lanka”)*, ICSID Case No. ARB/09/2, Award, dated 31 October 2012, at para. 294, **Exhibit CL-0077-ENG**.

⁶²⁰ Christoph Schreuer, *The Unity of an Investment*, 19 ICSID Reports 3, dated 22 November 2021, **Exhibit CL-0041-ENG**; *ADC Affiliate Ltd. v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, dated 2 October 2006, at para. 331, **Exhibit CL- 0035-ENG**; *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award, dated 8 March 2016, at para. 293, **Exhibit CL-0091-ENG**.

⁶²¹ *See, e.g., Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, dated 8 March 2010, at para. 130, **Exhibit CL-0066-ENG** (“[I]n most cases—including, in the Tribunal’s view, this one—it will be appropriate to defer to the State parties’ articulation in the instrument of consent (e.g. the BIT) of what constitutes an investment. The State parties to a BIT agree to protect certain kinds of economic activity, and when they provide that disputes between investors and States relating to that activity may be resolved through, *inter alia*, ICSID arbitration, that means that they believe that that activity constitutes an ‘investment’ within the meaning of the ICSID Convention as well. That judgment, by States that are both Parties to the BIT and Contracting States to the ICSID Convention, should be given considerable weight and deference. A tribunal would have to have compelling reasons to disregard such a mutually agreed definition of investment.”); *see also Československá Obchodní Banka, A.S. v. The Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction, dated 24 May 1999, at para. 66, **Exhibit CL-0010-ENG** (“[A]n important element in determining whether a dispute qualifies as an investment under the Convention in any given case is the specific consent given by the Parties. The Parties’ acceptance of the Centre’s jurisdiction with respect to the rights and obligations arising out of their agreement therefore creates a strong presumption that they considered their transaction to be an investment within the meaning of the ICSID Convention.”)

⁶²² *LESI, S.p.A. and Astaldi, S.p.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction (unofficial translation), dated 12 July 2006, at para. 73(i), **Exhibit CL-0031-FR**.

above in **section 2.2**, the Claimant invested US\$ millions and other resources to develop the Sanutura Project and the Additional Projects in the territory of Burkina Faso.

275. **Second**, the Claimant's investments in Burkina Faso were long-term, strategic investments. ICSID tribunals have recognised that "[duration] is a very flexible term ... [and] could be anything from a couple of months to many years".⁶²³ Having spent over a decade investing in Burkina Faso to develop the Sanutura Project and the Additional Projects, the Claimant's investments clearly satisfy the duration characteristic identified by the *Salini* tribunal.
276. **Third**, the Claimant's investments involved substantial risk, as evidenced by this dispute. ICSID tribunals have been clear that an element of risk is inherent in any long-term investment,⁶²⁴ such as the Claimant's investments in the present case. The Claimant exposed itself to financial and market risk to acquire and develop the Sanutura Project and the Additional Projects as sustainable, responsible, efficient, and profitable mines in Burkina Faso over the long term.
277. **Fourth**, and finally, the Claimant's investments contributed to Burkina Faso's economic and social development. The Claimant notes that the economic development of the host State should not be considered a necessary element of the definition of investment. As observed by the tribunal in *İçkale v Turkmenistan*, "it cannot be inferred from [the Preamble of the ICSID Convention] that each and every private foreign investment must, on its own, make a significant or even measurable contribution to the economic development of the economy of the host State".⁶²⁵ Furthermore, contribution to the host State's development is implicit in any contribution of value, and therefore in any event need not be established separately.⁶²⁶ Either way, there can be no dispute in this case that the Claimant made substantial contributions to Burkina Faso's economic and social development. In particular, the Claimant worked together with community members in and around the village of Norkama to establish water access, a

⁶²³ *Deutsche Bank v. Sri Lanka*, Award, dated 31 October 2012, at para. 303, **Exhibit CL-0077-ENG**.

⁶²⁴ *See Salini v. Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 16 July 2001, at para. 56, **Exhibit CL-0014-ENG**; *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, dated 14 November 2005, at para. 136, **Exhibit CL-0027-ENG**.

⁶²⁵ *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award, dated 8 March 2016, at para. 291, **Exhibit CL-0091-ENG**.

⁶²⁶ *See, e.g., Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, at para. 85, **Exhibit CL-0055-ENG**.

local school, and organic community gardens.⁶²⁷ Furthermore, between 2012 and 2022, Sarama supported local and national economic development in Burkina Faso by:

- (a) employing 50–110 workers from Norkama and nearby villages during active operations;
- (b) paying about 35.7 million CFA francs in wages each year;
- (c) making local purchases worth roughly 11.1 million CFA francs per year in Norkama and Diassara for project needs; and
- (d) buying goods from the Diassara market averaging 1.44 million CFA francs per year.⁶²⁸

3.3 The Tribunal has Jurisdiction *Ratione Temporis*

278. Article 1 of the BIT provides that a “covered investment” is “with respect to a Party, an investment in its territory that is owned or controlled, directly or indirectly, by an investor of the other Party existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter”.⁶²⁹ Article 1 of the BIT defines the term “existing” to mean “in effect on the date of entry into force of this Agreement”.⁶³⁰
279. The BIT was signed on 20 April 2015 and entered into force on 11 October 2017.⁶³¹ As explained in **section 2.2**, the Claimant made covered investments in Burkina Faso from 2010 until 2023, *i.e.*, before and after the date of entry into force of the BIT. Consequently, the Claimant made covered investments in Burkina Faso. Thus, the Tribunal has jurisdiction *ratione temporis* to hear the Claimant’s claims.

3.4 The Tribunal has Jurisdiction *Ratione Voluntatis*

280. Articles 21(a) of the BIT sets out the scope of the Parties’ consent to arbitration. In the present case, the Claimant’s claim falls within the scope of the Parties’ consent.

⁶²⁷ Sarama Resources Ltd, *Présentation de Sarama et réalisations sociales* (Corporate Presentation), July 2023, at pp. 5-7, **Exhibit C-0038-FR**; Dinning WS1, at paras. 127-133.

⁶²⁸ Dinning WS1, at para. 133.

⁶²⁹ BIT, Art. 1, **Exhibit CL-0003-ENG-FR**.

⁶³⁰ BIT, Art. 1, **Exhibit CL-0003-ENG-FR**.

⁶³¹ See UNCTAD Investment Policy Hub, International Investment Agreements Navigator, *Burkina Faso-Canada BIT (2015)*, available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3557/burkina-faso---canada-bit-2015->, **Exhibit C-0361-ENG**.

281. Article 21(a) of the BIT provides that:

An investor of a Party may submit to arbitration under this Section a claim that:

(a) the respondent Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under:

(i). Article 4 (National Treatment), with respect to the establishment and acquisition of an investment,

(ii) Article 8(3) (Senior Management, Boards of Directors and Entry of Personnel), or

(iii) Article 12 (Transparency) or 15 (Health, Safety and Environmental Measures); and

(b) the investor has incurred loss or damage by reason of, or arising out of, that breach.⁶³²

282. **First**, as required by Article 21(1)(a) of the BIT, the Claimant's claims relate to the Respondent's breaches of its obligations under Section B of the BIT (Substantive Obligations) and do not fall within the scope of the carve-outs listed in Article 21(1)(a)(i) – (iii). While the Claimant is bringing a claim for Burkina Faso's breach of Article 4 of the BIT (National Treatment), its claim is not with respect to the establishment and acquisition of the investment and therefore does not fall within the scope of the carve-out set out in Article 21(1)(a)(i) of the BIT.

283. **Second**, as discussed in further at **section 5** below, Sarama has suffered loss or damage as a result of Burkina Faso's breaches of the BIT, as required by Article 21(1)(b) of the BIT.

284. The Claimant therefore has met the requirements for bringing a claim on its behalf under Article 21(1) of the BIT.

285. Furthermore, both Parties consented to these proceedings pursuant to Article 26(1) of the BIT which provides that "[e]ach Party consents to the submission of a claim to arbitration in

⁶³² BIT, at Art. 21(1), **Exhibit CL-0003-ENG-FR**.

accordance with the procedures set out in this Agreement”.⁶³³ As provided in Article 26(2) of the BIT, such consent “satisfies the requirement of: Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the disputing parties”.⁶³⁴

286. Thus, the Tribunal has jurisdiction *ratione voluntatis* to hear the Claimant’s claims.

3.5 The Claimant Satisfied all Requirements Set Out in Article 22 of the BIT

3.5.1 Sarama satisfied the requirement to attempt to settle the claim amicably

287. Article 22(1) of the BIT requires the Parties to attempt to settle a claim amicably prior its submission to arbitration:

The disputing parties shall hold consultations and attempt to settle a claim amicably before any investor may submit a claim to arbitration. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the notice of intent to submit a claim to arbitration[.]⁶³⁵

288. As noted, the Claimant submitted its Notice of Intent to Burkina Faso on 29 November 2023.⁶³⁶ In accordance with Article 22(1) of the BIT, the Claimant proposed in its Notice of Intent to hold consultations with authorised representatives of Burkina Faso.

289. On 17 January 2024, Sarama received a letter from the Minister of Mines, Mr Yacouba Zabré Gouba, dated 12 January 2024.⁶³⁷ Minister Gouba’s letter acknowledged receipt of the Notice of Intent and stated that pursuant to the domestic laws and regulations of Burkina Faso, correspondence to the Ministry, including the Notice of Intent, allegedly must be sent in French. Burkina Faso did not respond to Sarama’s proposal to hold consultations.

⁶³³ BIT, at Art. 26(1), **Exhibit CL-0003-ENG-FR**.

⁶³⁴ BIT, at Art. 26(2), **Exhibit CL-0003-ENG-FR**.

⁶³⁵ BIT, at Art. 22(1), **Exhibit CL-0003-ENG-FR**.

⁶³⁶ Letter from Sarama Resources Ltd to Minister of Mines, dated 29 November 2023, **Exhibit C-0067-ENG**.

⁶³⁷ Letter from the Minister of Energy, Mines and Quarries to Sarama Resources Ltd, dated 12 January 2024, **Exhibit C-0068-ENG**.

290. By letter dated 25 January 2024, Sarama responded to Minister Gouba, explaining that the BIT does not require correspondence to be in French, but that, for convenience, it was providing a French translation.⁶³⁸ Burkina Faso did not respond to this letter.

291. On 10 December 2024, more than a year since the Claimant delivered the Notice of Intent to Burkina Faso, the Claimant submitted its Request for Arbitration.⁶³⁹ Thus, the Claimant satisfied the requirement to settle the dispute amicably under Article 22(1) of the BIT.

3.5.2 Sarama provided the requisite consents and waiver required by the BIT

292. Article 22(2)(a) of the BIT requires that “the investor and, where a claim is made under Article 21(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement”.⁶⁴⁰

293. By virtue of submitting its Request for Arbitration on 10 December 2024, the Claimant made its claims on its own behalf under Article 21(1) of the BIT and therefore provided its consent to arbitration in accordance with Article 26(1) of the BIT. The Claimant has taken all necessary internal actions to authorise the commencement of this arbitration.⁶⁴¹

294. Articles 22(2)(e)(ii) – (iii) of the BIT provide as follows:

(e) in the case of a claim submitted under Article 21(1) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

...

(ii) the investor clearly and unambiguously waives its right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21 (Claim by an

⁶³⁸ Letter from Sarama Resources Ltd to the Minister of Energy, Mines and Quarries, dated 25 January 2024, **Exhibit C-0069-ENG**.

⁶³⁹ RFA, at para. 82.

⁶⁴⁰ BIT, at Art. 22(2)(a), **Exhibit CL-0003-ENG-FR**.

⁶⁴¹ Resolutions of the Directors of Sarama Resources Ltd, dated 18 November 2024, **Exhibit C-0006-ENG**.

Investor of a Party on its Own Behalf or on Behalf of an Enterprise),
and

(iii) if the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waives the right referred to under subparagraph (ii).⁶⁴²

295. Sarama, SMB, and SWA clearly and unambiguously waived their rights to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21 (“Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise”), except as permitted under Article 22(3) of the BIT.
296. The Claimant attached copies of each waiver to its Request for Arbitration and, in accordance with Article 22(4) of the BIT, the Claimant delivered a copy of each waiver to Burkina Faso and exhibited them to its Request for Arbitration.⁶⁴³

3.5.3 Sarama satisfied the cooling-off period requirement

297. Article 22(2)(b) of the BIT provides that an investor may submit a claim to arbitration only if at least six months have elapsed since the events giving rise to the claim. As described in **section 2.3** above, the acts and omissions of Burkina Faso giving rise to the present claim occurred on 25 August 2023, when the Minister unlawfully and retroactively cancelled the Tankoro 2 Permit.⁶⁴⁴
298. The Claimant submitted its claim to arbitration on 10 December 2024, *i.e.* more than 15 months since the events giving rise to its claim. The Claimant therefore satisfied the applicable cooling-off period under Article 22(2)(b) of the BIT.

⁶⁴² BIT, at Art. 22(2)(e)(ii) – (iii), **Exhibit CL-0003-ENG-FR**.

⁶⁴³ Letter from Sarama Resources Ltd to the Ministry of Energy, Mines and Quarries, dated 22 November 2024, **Exhibit C-0070-ENG** (attaching Consent and Waiver letter by Sarama Resources Ltd, dated 22 November 2024; Waiver letter by Sarama Mining Burkina SARL, dated 22 November 2024; and Waiver letter by SWA SARL, dated 22 November 2024); Letter from Sarama Resources Ltd to the Ministry of Economy, Finance and Development, dated 22 November 2024, **Exhibit C-0071-ENG** (attaching Consent and Waiver letter by Sarama Resources Ltd, dated 22 November 2024; Waiver letter by Sarama Mining Burkina SARL, dated 22 November 2024; and Waiver letter by SWA SARL, dated 22 November 2024).

⁶⁴⁴ Letter from the Minister of Energy, Mines and Quarries to Sarama Mining Burkina SARL, dated 25 August 2023, **Exhibit C-0064-ENG**.

3.5.4 Sarama satisfied the requirement to deliver a written notice of intent

299. Article 22(2)(c) of the BIT requires the investor to deliver a written notice of its intent to submit a claim to arbitration at least 180 days prior to submitting the claim. Such notice of intent to submit a claim to arbitration must specify the following:
- (i) the name and address of the investor and, where a claim is made under Article 21(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,
 - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,
 - (iii) the legal and the factual basis for the claim, including the measures at issue, and
 - (iv) the relief sought and the approximate amount of damages claimed.⁶⁴⁵
300. Article 22(2)(d) of the BIT also requires that “the investor has delivered evidence establishing it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c)”.⁶⁴⁶
301. The Claimant submitted its notice of intent to submit a claim to arbitration under the BIT, containing the information required in Articles 22(2)(c)(i) to (iv) and 22(2)(d) of the BIT, by courier and hand delivery, which was stamped as received by the Minister of Mines of Burkina Faso on 29 November 2023 (the “**Notice of Intent**”).⁶⁴⁷
302. The Claimant submitted its Request for Arbitration on 10 December 2024, *i.e.* more than 180 days since the Claimant delivered its Notice of Intent. Thus, the Claimant satisfied the requirement of Article 22(2)(c) of the BIT.

⁶⁴⁵ BIT, at Art. 22(2)(c), **Exhibit CL-0003-ENG-FR**.

⁶⁴⁶ BIT, at Art. 22(2)(d), **Exhibit CL-0003-ENG-FR**.

⁶⁴⁷ Letter from Sarama Resources Ltd to Minister of Energy, Mines and Quarries, dated 29 November 2023, **Exhibit C-0067-ENG**.

3.5.5 Sarama satisfied the requirement that not more than three years have elapsed from the date of the investor’s knowledge of the breach and resulting losses

303. Article 22(2)(e)(i) of the BIT requires that in the case of a claim submitted under Article 21(1) of the BIT, not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.⁶⁴⁸
304. The Claimant filed its Request for Arbitration on 10 December 2024. Thus, the cut-off date for the three-year limitation period is 10 December 2021.
305. As detailed in **section 2.3** above, the acts and omissions of Burkina Faso giving rise to the present dispute commenced in November 2022, when Minister Boussim first suggested that the Tankoro 2 Permit was available to other bidders and then asserted it was a “state-owned asset”. Minister Boussim eventually conditioned issuance of the Tankoro 2 Permit’s *arrêté*—normally an administrative formality under Burkinabe mining regulations—on Sarama facilitating Canada’s licence of NATO-banned drone surveillance software to Burkina Faso and making large, irregular payments to the State of as much as 6 billion CFA francs (approximately US\$ 10 million).
306. Burkina Faso’s hostile actions culminated in the Minister’s unlawful and retroactive revocation of the Tankoro 2 Permit on 25 August 2023, resulting in the loss of the Claimant’s protected investments in their entirety. Thus, there can be no dispute that the Claimant obtained knowledge of Burkina Faso’s breaches and its resulting losses well after the cut-off date of 10 December 2021.

3.6 The Claimant has Satisfied all Jurisdictional Requirements under the ICSID Convention

307. Article 25(1) of the ICSID Convention sets forth the jurisdictional requirements for an investment dispute to be submitted to ICSID as follows:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that

⁶⁴⁸ BIT, at Art. 22(2)(e)(i), **Exhibit CL-0003-ENG-FR**.

State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.⁶⁴⁹

308. Thus, an investment dispute may be submitted to an arbitral tribunal under the ICSID Convention if: (a) it is a legal dispute arising directly out of an investment; (b) it is between a national of a Contracting State and another Contracting State; and (c) both Parties to the dispute have consented in writing to submit the dispute to ICSID. The present dispute meets all of the jurisdictional requirements set out in Article 25(1).
309. **First**, there is a legal dispute between the Claimant and Burkina Faso with respect to Burkina Faso's breaches of its obligations under the BIT and international law, and the compensation owed to the Claimant as a result of such breaches. This legal dispute arises directly out of the Claimant's protected investments in Burkina Faso, as detailed in **section 2.3** above.
310. **Second**, this dispute has arisen between the Claimant, a national of Canada, and Burkina Faso. Given that both Canada and Burkina Faso are Contracting States to the ICSID Convention, the present dispute is "between a Contracting State ... and a National of another Contracting State", as required by Article 25(1) of the ICSID Convention.⁶⁵⁰
311. **Third**, the Claimant consented to the submission of this dispute to the jurisdiction of the Centre by filing its Request for Arbitration on 10 December 2024.⁶⁵¹ Burkina Faso also consented to ICSID arbitration pursuant to Article 26(1) of the BIT, which provides that "[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement".⁶⁵²

4. BURKINA FASO BREACHED ITS OBLIGATIONS UNDER THE BIT

312. Burkina Faso breached its obligations under the BIT in relation to the Claimant's covered investments. Specifically, as elaborated below, Burkina Faso unlawfully expropriated the Claimant's investments (**section 4.1**); failed to accord the Claimant's investments fair and

⁶⁴⁹ ICSID Convention, at Art. 25(1), **Exhibit CL-0001-ENG**.

⁶⁵⁰ ICSID Convention, at Art. 25(1), **Exhibit CL-0001-ENG**.

⁶⁵¹ Request for Arbitration, dated 10 December 2024.

⁶⁵² BIT, at Art. 26(1), **Exhibit CL-0003-ENG-FR**.

equitable treatment (**section 4.2**); and unlawfully discriminated against the Claimant and its investments (**section 4.3**).

4.1 Burkina Faso Unlawfully Expropriated the Claimant's Protected Investments

313. Article 10 of the BIT provides as follows:

1. A Party may not nationalize or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalization or expropriation ("expropriation"), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).⁶⁵³

314. Article 10 therefore addresses both direct and indirect expropriation, and sets out four cumulative requirements for the legality of any expropriation, namely that the expropriation be (i) for a public purpose; (ii) in accordance with due process; (iii) carried out in a non-discriminatory manner; and (iv) accompanied by compensation. Annex I (Expropriation) then provides further guidance in interpreting the concept of indirect expropriation under Article 10, as discussed further below.⁶⁵⁴

315. Importantly, the failure to comply with any of the four cumulative criteria set out above renders Burkina Faso's expropriatory measures unlawful under the BIT. In the present case, none of these requirements were met, and therefore Burkina Faso unlawfully expropriated the Claimant's investments in breach of Article 10 of the BIT.

316. Specifically, as elaborated below, Burkina Faso arbitrarily and retroactively revoked the Claimant's Tankoro 2 Permit, thereby depriving the Claimant of the use, enjoyment, and economic benefit of its protected investments in the Sanutura Project and, consequently, the Additional Projects. These actions constituted (i) a direct expropriation of the Claimant's rights in relation to the Tankoro Deposit; and (ii) an indirect expropriation of the Claimant's investments in the Sanutura Project as a whole, as well as the Additional Projects. Burkina Faso's expropriation satisfied none of the four cumulative criteria set forth above: it did not advance any public purpose; it discriminated against the Claimant; it was not accompanied by

⁶⁵³ BIT, at Art. 10(1), **Exhibit CL-0003-ENG-FR**.

⁶⁵⁴ BIT, at Annex I, **Exhibit CL-0003-ENG-FR**.

prompt, adequate, and effective compensation; and it did not comply with due process of law, as required under Article 10 of the BIT.

4.1.1 Burkina Faso directly expropriated the Claimant's protected investments in the Tankoro Deposit

317. Direct expropriation comprises the taking of an investor's property rights by the State. As the tribunal in *LG&E v Argentina* observed, expropriation involves "the forcible appropriation by the State of the tangible or intangible property of individuals by means of administrative or legislative action".⁶⁵⁵ The tribunal in *Siag v Egypt* further observed that "[d]irect expropriation occurs when the title of the owner is affected by the measure in question".⁶⁵⁶
318. In the present case, Burkina Faso revoked the Claimant's Tankoro 2 Permit, thereby directly expropriating its rights in relation to the Tankoro Deposit. It is well-established that the revocation of mining rights gives rise to a direct expropriation. In *Quiborax v. Bolivia*, for example, the tribunal found that a "Revocation Decree" issued by the President of Bolivia "had the effect of transferring the title of [the claimants'] mining concessions to the State".⁶⁵⁷ In assessing whether the "Revocation Decree" in that case constituted a direct expropriation, the *Quiborax* tribunal adopted the legal standard set out in *Burlington v. Ecuador*, namely, whether "(i) the measure deprives the investor of his investment; (ii) the deprivation is permanent; and (iii) the deprivation finds no justification under the police powers doctrine".⁶⁵⁸ Applying that legal standard, the *Quiborax* tribunal found that "the concessions were annulled and the writs of annulment were definitive" and that "the Revocation Decree was not a legitimate exercise of Bolivia's police powers", including because the revocation of the concessions "did not comply with due process" and "the revocation lacked valid reasons".⁶⁵⁹ The tribunal held, therefore, that the Revocation Decree constituted a direct expropriation.⁶⁶⁰

⁶⁵⁵ *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, dated 3 October 2006, at para. 187, **Exhibit CL-0036-ENG**.

⁶⁵⁶ *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15 ("*Siag v Egypt*"), Award, dated 1 June 2009, at para. 427, **Exhibit CL-0057-ENG**.

⁶⁵⁷ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2 ("*Quiborax v Bolivia*"), Award, dated 16 September 2015, at paras. 229, 233, **Exhibit CL-0089-ENG**.

⁶⁵⁸ *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5 ("*Burlington v Ecuador*"), Decision on Liability, dated 14 December 2012, at para. 506, **Exhibit CL-0078-ENG**.

⁶⁵⁹ *Quiborax v Bolivia*, Award, dated 16 September 2015, at paras. 226-227, 229, 233, **Exhibit CL-0089-ENG**.

⁶⁶⁰ *Quiborax v Bolivia*, Award, dated 16 September 2015, at para. 256, **Exhibit CL-0089-ENG**.

319. The facts of *Quiborax* parallel those of this case. As explained in **section 2.2.4.4** above, the Claimant's title to the Tankoro 2 Permit perfected on 29 November 2021, following the Minister of Mines' approval of the Claimant's application for the Tankoro 2 Permit and the Claimant's subsequent payment and submission of proof of payment. By letter dated 25 August 2023, however, nearly two years after the Claimant's title to the Tankoro 2 Permit had perfected, the Minister revoked retroactively the Claimant's Tankoro 2 Permit without any valid legal reason. Less than a year later, on 21 May 2024, Burkina Faso granted the Claimant's Tankoro 2 Permit to a Burkinabe mining company, Soleil.⁶⁶¹
320. Applying the relevant legal test from *Quiborax*, these actions constituted a direct expropriation of the Claimant's protected investments in the Tankoro Deposit.
321. **First**, Burkina Faso's retroactive revocation of the Tankoro 2 Permit deprived the Claimant of its rights with respect to the Tankoro Deposit, as it definitively revoked the Claimant's title to that permit.
322. **Second**, Burkina Faso's deprivation of the Claimant's rights in the Tankoro Deposit was irreversible and permanent. Burkina Faso's retroactive revocation of the Tankoro 2 Permit extinguished the Claimant's rights under that permit. Burkina Faso then cemented the taking of those rights by granting them to a Burkinabe competitor.
323. **Third**, Burkina Faso's actions were not a legitimate exercise of the State's police powers. The police powers doctrine applies only to *bona fide*, proportionate, non-discriminatory regulatory measures taken in the public interest.⁶⁶² As elaborated above, however, Burkina Faso retroactively revoked the Claimant's Tankoro 2 Permit as a direct response to the Claimant's refusal to submit to Burkina Faso's irregular and extortionate payment demands.⁶⁶³ Such a measure does not constitute a legitimate exercise of police powers.
324. For all of these reasons, Burkina Faso's retroactive revocation of the Claimant's Tankoro 2 Permit constituted a direct expropriation of the Claimant's protected investments in the

⁶⁶¹ Dinning WS1, at para. 169; Hamilton WS1, at para. 110.

⁶⁶² See e.g. *Mohamed Abdel Raouf Bahgat v. Egypt (I)*, PCA Case No. 2012-07, Final Award, dated 23 December 2019, at para. 230, **Exhibit CL-0110-ENG** ("[T]he police power defence is not *carte blanche*; a State's actions must be justified, meet the international standards of due process, and *inter alia* be proportional to the threat to public order to which it purports to respond."); see also *JSC DTEK Krymenergo v. Russian Federation*, PCA Case No. 2018-41, Award, dated 1 November 2023, at para. 803, **Exhibit CL-0127-ENG** (affirming that police powers doctrine only applies when the state "enacts *bona fide*, non-discriminatory and proportionate regulations in accordance with due process.")

⁶⁶³ See *supra*, section 2.3.

Tankoro Deposit. That direct expropriation, moreover, was unlawful because it was not taken for a public purpose, failed to afford due process of law, was discriminatory in nature, and was not accompanied by any compensation, as detailed in **section 4.1.3** below.

4.1.2 Burkina Faso also indirectly expropriated the Claimant's investments in the Sanutura Project and the Additional Projects

325. In addition to constituting a direct expropriation, Burkina Faso's revocation of the Tankoro 2 Permit constituted an indirect expropriation of the Claimant's investments in the Sanutura Project as well as the Additional Projects.

326. Annex I of the BIT clarifies the meaning of an indirect expropriation as follows:

(a) indirect expropriation results from a measure or a series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) the determination of whether a measure or a series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or the series of measures;

(c) a non-discriminatory measure or series of measures of a Party designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation, except in rare circumstances, such as when a measure or a series of measures is so

severe in the light of its purpose that it cannot be reasonably considered as having been adopted and applied in good faith.⁶⁶⁴

327. The language above thus confirms that an expropriation may occur even without formal transfer of title and requires a case-by-case analysis of certain factors. Applying the similarly worded provision of the Canada-Peru Free Trade Agreement (“**Canada-Peru FTA**”) in *Bear Creek v Peru*, the tribunal observed that its examination of Peru’s measures in that case “must focus on these specific provisions [of the Canada-Peru FTA]”.⁶⁶⁵ Thus, the Tribunal in the present case should likewise focus on the specific provisions of Annex I of the BIT when assessing Burkina Faso’s measures.
328. In the present case, Burkina Faso’s unlawful measures not only deprived the Claimant of its rights to the Tankoro Deposit, they also destroyed the value that the Claimant had cultivated in the entire Sanutura Project, including the Tankoro and Bondi Deposits, as well as the Additional Projects, the funding and development of which was only possible in conjunction with the Sanutura Project. As explained below, all specific criteria of Annex I of the BIT are satisfied in the present dispute.
329. **First**, Annex I of the BIT requires the Tribunal to consider the “the economic impact of the measure or series of measures”.⁶⁶⁶ When assessing the economic impact of the State’s measures in the context of expropriation, the tribunal in *Czescik and Aleksandrowicz v. Cyprus* held that, “[f]or an expropriation to exist, a **very substantial interference** must take place”.⁶⁶⁷ The tribunal in *Hydro Energy I and Hydroxana v. Spain* similarly observed that indirect expropriation occurs “where the negative economic impact of such actions on the financial position of the investor is sufficient **to neutralize in full the value, or economic or commercial use of its investment** without the receipt of any compensation”.⁶⁶⁸

⁶⁶⁴ BIT, at Annex I, **Exhibit CL-0003-ENG-FR**.

⁶⁶⁵ *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, dated 30 November 2017, at para. 372, **Exhibit CL-0098-ENG**.

⁶⁶⁶ BIT, at Annex I, **Exhibit CL-0003-ENG-FR**.

⁶⁶⁷ *Tomasz Częścik and Robert Aleksandrowicz v. Cyprus*, SCC Case No. V 2014/169, Award, dated 11 February 2017, at para. 212, **Exhibit CL-0097-ENG** (emphasis added).

⁶⁶⁸ *Hydro Energy I S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 March 2020, at para. 533, **Exhibit CL-0113-ENG** (emphasis added).

330. In the present case, Burkina Faso's retroactive revocation of the Tankoro 2 Permit neutralised the entire value and use of the Claimant's investments. Specifically:

- (a) The Claimant lost the full value and use of its investment in the Tankoro Deposit, as the revocation of the Tankoro 2 Permit permanently extinguished its rights with respect to that deposit, rendering the Claimant's investment therein valueless.
- (b) The Claimant lost the full economic and commercial use of its investment in the Bondi Deposit. This is because the Bondi Deposit was too small to be economically viable on its own, as its revenues would not cover the cost of building a processing facility.⁶⁶⁹ As explained above, the Claimant acquired the Bondi Deposit to combine it with the Tankoro Deposit into a single, integrated mine development project with one processing plant.⁶⁷⁰ Without the Tankoro Deposit, the Bondi Deposit became a stranded asset for the Claimant, it could not mine the Bondi Deposit in isolation.⁶⁷¹ Thus, the Bondi Deposit lost substantially all of its value to the Claimant, which cannot make economic or commercial use of the Bondi Deposit without a processing facility.⁶⁷²
- (c) The Claimant lost the full economic and commercial use of its investment in the Additional Projects. Sarama intended to use funds generated from production at the Sanutura Project to fund further exploration works at the Koumandara Project.⁶⁷³ The Karankasso Project potentially could have been processed through the Sanutura Project processing plant given its close geographical proximity to the Sanutura Project.⁶⁷⁴ As a result of the Respondent's retroactive revocation of the Tankoro 2 Permit, the Claimant's shareholders and Board of Directors lost all confidence in the Claimant's ability to operate in Burkina Faso other than by disposing of its remaining assets.⁶⁷⁵ In addition, despite its best efforts, the Claimant can no longer raise the equity capital necessary to sustain its operations in the country,⁶⁷⁶ forcing it to halt work on its 100%-

⁶⁶⁹ Dinning WS1, at paras. 72.

⁶⁷⁰ Dinning WS1, at para. 82.

⁶⁷¹ Dinning WS1, at para. 172.

⁶⁷² Dinning WS1, at para. 172.

⁶⁷³ Schmiede WS1, at para. 132.

⁶⁷⁴ Schmiede WS1, at para. 138.

⁶⁷⁵ Dinning WS1, at paras. 188-189.

⁶⁷⁶ Dinning WS1, at para. 173-175.

owned Koumandara Project and its interest in the Karankasso Project.⁶⁷⁷ Moreover, Sarama has had to sell assets at distressed values in an effort to mitigate its losses. In 2024, it sold Burkina Faso Holdings Ltd — including the rights to the Koumandara Project permits — to BIC West Africa Limited for the *de minimis* sum of US\$ 153,000.⁶⁷⁸ Thus, the Respondent’s actions neutralised in full the Claimant’s ability to economically and commercially use its investments in the Additional Projects.

331. **Second**, Annex I of the BIT requires the Tribunal to consider “the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations”.⁶⁷⁹ In assessing a similarly worded factor in the Canada-Colombia FTA in the context of expropriation, the tribunal in *Eco Oro v Colombia* used the test “applied by the tribunals in *Methanex* and *Oxus*: did the State give specific commitments that it would refrain from the acts complained of”.⁶⁸⁰ In the present case, it is beyond peradventure that Burkina Faso’s issuance of the Tankoro 2 Permit to the Claimant constituted a specific commitment to refrain from revoking the same permit without legitimate grounds and transferring it to a Burkinabe company.
332. **Third**, Annex I of the BIT requires the Tribunal to consider “the character of the measure or the series of measures”.⁶⁸¹ The tribunal in *Bear Creek v Peru* observed that, when assessing this factor, it should consider “the wording and reasoning provided in [the Decree] and the circumstances under which it was decided and issued”.⁶⁸²
333. In the present case, Burkina Faso’s conduct bears all the hallmarks of a retaliatory and politically motivated sovereign act. As noted above, the revocation of the Tankoro 2 Permit was a direct response to the Claimant’s refusal to yield to the Ministry’s military demands (*i.e.* the reversal of Canada’s ban on exporting drone technology to Turkey) as well as its extortionate

⁶⁷⁷ Dinning WS1, at paras. 179, 188-190.

⁶⁷⁸ Dinning WS1, at para. 189.

⁶⁷⁹ BIT, Annex I, **Exhibit CL-0003-ENG-FR**.

⁶⁸⁰ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 681, **Exhibit CL-0120-ENG**.

⁶⁸¹ BIT, Annex I, **Exhibit CL-0003-ENG-FR**.

⁶⁸² *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, dated 30 November 2027, at para. 377, **Exhibit CL-0098-ENG**.

and arbitrary payment demands.⁶⁸³ Burkina Faso did not attempt to hide the arbitrary purpose of its actions. Specifically, in 2023, Minister Boussim informed the Claimant that the Tankoro Deposit had allegedly become a “State-owned asset”, despite the Permit having been already validly granted to the Claimant’s subsidiary, SMB in November 2021.⁶⁸⁴ At a subsequent meeting in Ouagadougou, the Minister reiterated this position and conditioned the reissuance of the *arrêté* — *i.e.*, the administrative record of the Tankoro 2 Permit — on the satisfaction of two unrelated and illegitimate demands: (i) the reversal of Canada’s ban on licensing certain drone surveillance software to Burkina Faso, and (ii) an arbitrary 6 billion CFA francs payment that had no legal basis.⁶⁸⁵

334. When the Claimant refused to accede to these improper demands, the Ministry issued a letter dated 25 August 2023, retroactively revoking the Tankoro 2 Permit. The letter contained no reasoning explaining the measure.⁶⁸⁶ Indeed, the Ministry’s sole justification was the Claimant’s “inability to pay” the arbitrary and excessive sum that the Ministry had demanded.⁶⁸⁷ In taking these actions, Burkina Faso plainly acted in its sovereign, rather than commercial, capacity, namely through the purported exercise of its regulatory functions to grant and revoke mining permits. Thus, the character of the Burkina Faso’s measures in the present case aligns with the notion of indirect expropriation.
335. In sum, the Respondent’s retroactive revocation of the Claimant’s Tankoro 2 Permit falls squarely within the definition of indirect expropriation set out in Annex I of the BIT. That indirect expropriation was unlawful because it was not taken for a public purpose, was discriminatory in nature, was not accompanied by any compensation, and failed to afford due process of law, as detailed in **section 4.1.3** below.

4.1.3 Burkina Faso’s expropriation of the Claimant’s investments was unlawful

⁶⁸³ See *supra*, section 2.3.

⁶⁸⁴ See *supra*, section 2.3.

⁶⁸⁵ See *supra*, section 2.3.

⁶⁸⁶ Letter from the Minister of Energy, Mines and Quarries to Sarama Mining Burkina SARL (Expropriation letter), dated 25 August 2023, **Exhibit C-0064-ENG**.

⁶⁸⁷ Letter from the Minister of Energy, Mines and Quarries to Sarama Mining Burkina SARL (Expropriation letter), dated 25 August 2023, **Exhibit C-0064-ENG**.

336. As noted above, a failure to comply with any one of the four cumulative requirements under Article 10 of the BIT renders Burkina Faso's expropriation unlawful. In the present case, Burkina Faso's expropriation of the Claimant's investments met none of those requirements.

**4.1.3.1 *Burkina Faso's expropriation of the Claimant's investments
served no public purpose***

337. The first requirement under Article 10 of the BIT is that the expropriation be for a public purpose. The public purpose must be the actual "reason the investment was expropriated",⁶⁸⁸ and it must be based on a "legitimate concern".⁶⁸⁹ As a number of investment treaty tribunals have affirmed, a mere assertion of a public purpose is not dispositive.⁶⁹⁰

338. In *ADC v. Hungary*, for example, the tribunal underscored that "a treaty requirement for 'public interest' requires some genuine interest of the public".⁶⁹¹ As the tribunal remarked, "[i]f mere reference to 'public interest' can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless".⁶⁹² In *ADC*, Hungary had asserted that the expropriation of the claimants' investment to renovate, construct, and operate two airport terminals furthered "important elements of the harmonization of the Government's transport strategy, laws and regulations with EU law".⁶⁹³ The tribunal found, however, that Hungary's real motivation was to secure a more lucrative deal for the State, and therefore that the expropriation lacked any genuine public purpose.⁶⁹⁴

339. As the tribunal in *British Caribbean Bank v. Belize* observed, public purpose requires an explanation of how the expropriation is "reasonably related to the fulfilment of that

⁶⁸⁸ *Siag v. Egypt*, ICSID Case No. ARB/05/15, Award, dated 1 June 2009, at para. 431, **Exhibit CL-0057-ENG**.

⁶⁸⁹ *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated 6 February 2007, at para. 273, **Exhibit CL-0038-ENG**.

⁶⁹⁰ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16 ("*ADC v. Hungary*"), Award, dated 2 October 2006, at para. 432, **Exhibit CL-0035-ENG**; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award II, dated 20 August 2007, at para. 7.5.21, **Exhibit CL-0042-ENG** ("If public purpose automatically immunises the measure from being found to be expropriatory, then there would never be a compensable taking for a public purpose.")

⁶⁹¹ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 432, **Exhibit CL-0035-ENG**.

⁶⁹² *ADC v. Hungary*, Award, dated 2 October 2006, at para. 432, **Exhibit CL-0035-ENG**.

⁶⁹³ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 392, **Exhibit CL-0035-ENG**.

⁶⁹⁴ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 433, **Exhibit CL-0035-ENG** ("With the claimed 'public interest' unproved and the Tribunal's curiosity thereon unsatisfied, the Tribunal must reject the arguments made by the Respondent in this regard. In any event, as the Tribunal has already remarked, the subsequent privatization and the agreement with BAA renders this whole debate somewhat unnecessary.")

purpose”.⁶⁹⁵ In that case, the tribunal found insufficient evidence of a genuine public interest underlying the nationalisation of the claimant’s investments in a telecommunications company.⁶⁹⁶ The tribunal instead found that, like in *ADC*, the real motivation for the expropriation was political and commercial, and therefore the expropriation did not serve any legitimate public purpose.⁶⁹⁷

340. *ADC* and *British Caribbean Bank* provide a direct analogue to the present case. Like in both those cases, Burkina Faso retroactively revoked the Claimant’s Tankoro 2 Permit for political and commercial reasons rather than for any public purpose or interest. As set forth above, Burkina Faso’s actions were taken in retaliation for the Claimant’s refusal to accede to Burkina Faso’s arbitrary and extortionate demands for a baseless multi-million dollar payment and the reversal of Canada’s drone surveillance software export ban.⁶⁹⁸ These demands were wholly unrelated to any lawful public interest and demonstrate that Burkina Faso’s revocation of the Tankoro 2 Permit was not motivated by any *bona fide* public purpose, but rather by extraneous and improper considerations.

4.1.3.2 *Burkina Faso’s expropriation of the Claimant’s investments did not accord with due process of law*

341. To qualify as lawful under Article 10 of the BIT, an expropriation must be in accordance with due process of law. Due process requires, at a minimum, that the expropriation accords with a “lawful procedure”,⁶⁹⁹ including “basic legal mechanisms”⁷⁰⁰ which enable an investor to have its claims heard, including notice, a fair hearing, and an unbiased and impartial adjudicator to assess the actions in dispute. Absent such legal procedure, “the argument that ‘the actions are taken under due process of law’ rings hollow”.⁷⁰¹ Due process also requires

⁶⁹⁵ *British Caribbean Bank Limited v. Government of Belize (I)*, PCA Case No. 2010-18 (“*British Caribbean Bank v Belize*”), Award, dated 19 December 2014, at para. 241, **Exhibit CL-0087-ENG**; see also *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated 15 April 2016, at para. 296, **Exhibit CL-0093-ENG** (affirming that the tribunal “must also assess whether the impugned expropriatory measure was “for” the public purpose.”)

⁶⁹⁶ *British Caribbean Bank v Belize*, Award, dated 19 December 2014, at paras. 241, **Exhibit CL-0087-ENG**.

⁶⁹⁷ *British Caribbean Bank v Belize*, Award, dated 19 December 2014, at paras. 236, **Exhibit CL-0087-ENG**.

⁶⁹⁸ See *supra*, section 2.3.

⁶⁹⁹ *Antoine Goetz and others v. Republic of Burundi (I)*, ICSID Case No. ARB/95/3, Award (Embodying the Parties’ Settlement Agreement) (unofficial translation), dated 10 February 1999, at para. 127, **Exhibit CL-0130-FR**.

⁷⁰⁰ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 435, **Exhibit CL-0035-ENG**.

⁷⁰¹ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 435, **Exhibit CL-0035-ENG**.

that the host State act transparently and that it not take decisions with the intent of causing damage to the investment.⁷⁰²

342. Article 10(4) of the BIT further requires that:

The affected investor shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.⁷⁰³

343. In this case, Burkina Faso did not follow due process of law, whether under international law or its own domestic law. **First**, Burkina Faso’s retroactive revocation of the Tankoro 2 Permit did not accord with any “lawful procedure” under the 2015 Mining Code and applicable Burkinabe regulations. Further, the Ministry revoked the Tankoro 2 Permit as a form of retaliation for the Claimant’s refusal to give in to its extortionate payment demands and, seemingly for Canada’s refusal to rescind an export ban on the military surveillance software. In its revocation, the Ministry cited no relevant statute nor provision of Burkinabe law to justify its payment demands, including Articles 112 through 114 of the 2015 Mining Code which, as explained above, include the lawful grounds for revocation of a mining licence by the State.⁷⁰⁴

344. **Second**, the Claimant did not have any rights under Burkinabe law to the fair review of its case. Burkina Faso’s revocation of the Tankoro 2 Permit did not accord with any established statute or regulation pursuant to which the Claimant could have sought redress and, given Minister Boussim and Capitaine Traore’s prior conduct, Sarama considered it all-but futile to bring a claim before Burkinabe administrative tribunal for *recours pour excès de pouvoir*.⁷⁰⁵

345. In such circumstances, Burkina Faso’s retroactive revocation of the Tankoro 2 Permit did not comply with minimum standards of due process. It therefore constituted an unlawful expropriation of the Claimant’s protected investments, in breach of Article 10 of the BIT.

⁷⁰² *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, dated 3 March 2010, at paras. 438, 441, **Exhibit CL-0065-ENG** (reiterating that the State’s conduct must not “manifestly violate basic requirements of [...] transparency.”)

⁷⁰³ BIT, at Art. 10, **Exhibit CL-0003-ENG-FR**.

⁷⁰⁴ *See supra*, section 2.1.

⁷⁰⁵ *See supra*, section 2.1.3.

4.1.3.3 *Burkina Faso expropriated the Claimant's investments in a discriminatory manner*

346. To qualify as lawful under Article 10 of the BIT, an expropriation must not be discriminatory. This means that the State cannot accord more favourable treatment to similarly situated entities without reasonable justification.⁷⁰⁶
347. Finding discrimination is an effects-based analysis and is not based on subjective intent.⁷⁰⁷ Thus, if the effect of a State's action is to treat the investor differently from similarly situated comparators without reasonable justification, then the State's actions are discriminatory, whether or not the State intended to discriminate. At the same time, if the State intended to act in a discriminatory fashion, this is sufficient to evidence a breach. As the tribunal in *Corn Products v. Mexico* observed, "[w]hile the existence of an intention to discriminate is not a requirement for a breach . . . where such an intention is shown, that is sufficient".⁷⁰⁸
348. In *Nachingwea v. Tanzania*, Tanzania cancelled the claimants' retention licenses for the Ntaka Hill Nickel Project without compensation in the context of broader legislative changes in Tanzania's mining sector.⁷⁰⁹ The claimants argued that the measures were discriminatory and formed part of Tanzania's "economic war" against foreign mining companies.⁷¹⁰ The tribunal noted that Tanzania had made various statements demonstrating hostility toward foreign investors, which were cited as part of the context for introducing the new legislation.⁷¹¹ Further, Tanzania had variously described foreign mining companies as "looters" and "thieves".⁷¹²

⁷⁰⁶ *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 715, **Exhibit CL-0092-ENG** (observing that if the claimant proves that "it was subjected to different treatment in similar circumstances without reasonable justification" it would constitute an unlawful expropriation).

⁷⁰⁷ *Siag v. Egypt*, Award, dated 1 June 2009, at para. 439, **Exhibit CL-0057-ENG** (noting that "there is some difference of opinion as to whether such intent is necessary to show discrimination, or whether a discriminatory effect will suffice" and ultimately concluding that "it is clear that a discriminatory effect must be shown.")

⁷⁰⁸ *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB (AF)/04/1 ("*Corn Products v Mexico*"), Decision on Responsibility, dated 15 January 2008, at para. 138, **Exhibit CL-0048-ENG**.

⁷⁰⁹ *Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. Tanzania*, ICSID Case No. ARB/20/38 ("*Nachingwea and others v. Tanzania*"), Award, dated 14 July 2023, at para. 84, **Exhibit CL-0125-ENG**.

⁷¹⁰ *Nachingwea and others v. Tanzania*, Award, dated 14 July 2023, at para. 281, **Exhibit CL-0125-ENG**.

⁷¹¹ *Nachingwea and others v. Tanzania*, Award, dated 14 July 2023, at para. 287, **Exhibit CL-0125-ENG**.

⁷¹² *Nachingwea and others v. Tanzania*, Award, dated 14 July 2023, at para. 287, **Exhibit CL-0125-ENG**.

Based on these statements, the tribunal concluded that “[t]he purpose of the Amending Legislation was to target foreign mining companies and was discriminatory”.⁷¹³

349. The same conclusion applies here. Burkina Faso’s expropriation of the Claimant’s rights in the Sanutura Project and the Additional Projects was plainly discriminatory. As explained in more detail in **section 4.3** below, Burkina Faso has implemented a *de facto* policy of anti-Western resource nationalism designed to reassert State control over the country’s mining sector and to eliminate Western commercial participation in favour of Burkinabe and strategically aligned non-Western interests. In direct furtherance of this policy, the Respondent revoked arbitrarily the Claimant’s Tankoro 2 Permit and transferred it to Soleil, a Burkinabe company with close political ties to the Traoré administration.⁷¹⁴
350. At the same time, the Respondent has afforded preferential treatment to Russian investors: it granted the Nordgold S.E., a Russian-owned mining company, an 85% stake in the Niou mine. The Claimant also understands that Nordgold continues to operate the Bissa and Bouly mines with 90% equity, unencumbered by the restrictions or confiscatory measures imposed on other Western companies.⁷¹⁵ By contrast, Burkina Faso compelled an Australian mining company, WAF, to grant Burkina Faso a 15% free carried equity interest in its Sanbrado, Kiaka, and Toega projects, and to pay a “priority dividend” of US\$8.35 million to the State — payments that the company described as “non-discretionary” due to pressure from the authorities.
351. Burkina Faso’s measures were therefore discriminatory as they singled out the Claimant for expropriation precisely because of its Western ownership, whilst at the same time rewarding domestic and Russian investors by granting them the very mining rights and opportunities of which it unlawfully deprived the Claimant.

⁷¹³ *Nachingwea and others v. Tanzania*, Award, dated 14 July 2023, at para. 288, **Exhibit CL-0125-ENG**.

⁷¹⁴ See Burkina24, *Initiatives locales de développement: L’impact significatif des investissements de Inoussa Kanazoé magnifié devant le Capitaine Ibrahim Traoré à Ziniaré*, dated 20 March 2025, available at <https://burkina24.com/2025/03/20/initiatives-locales-de-developpement-limpact-significatif-des-investissements-de-inoussa-kanazoe-magnifie-devant-le-capitaine-ibrahim-traore-a-ziniare/>, **Exhibit C-0380-FR**; Billionaires Africa, *One of Burkina Faso’s richest men, Inoussa Kanazoe donates to Youth Center*, dated 13 August 2023, available at <https://www.billionaires.africa/2023/08/13/one-of-burkina-fasos-richest-men-inoussa-kanazoe-donates-towards-youth-center/>, **Exhibit C-0379-ENG**; WakatSéra, *Burkina: Soleil Resources International (SRI) Limited de Inoussa Kanazoé rachète RoxGold SANU SA*, dated 12 April 2025, available at <https://www.wakatsera.com/burkina-soleil-resources-international-sri-limited-de-inoussa-kanazoe-rachete-roxgold-sanu-sa/>, **Exhibit C-0381-FR**.

⁷¹⁵ Hamilton WS1, at para. 108; Reuters, *Burkina Faso grants mining lease to Russia’s Nordgold for gold project*, dated 25 April 2025, available at <https://www.reuters.com/world/africa/burkina-faso-grants-mining-lease-russias-nordgold-gold-project-2025-04-25/>, **Exhibit C-0336-ENG**; Nordgold’s Bissa-Bouly Gold Mine, dated April 2024, at p. 7, **Exhibit C-0326-ENG**.

4.1.3.4

Burkina Faso expropriated the Claimant's investments without any compensation

352. To qualify as lawful under Article 10 of the BIT, an expropriation must be accompanied by the payment of prompt, adequate, and effective compensation.⁷¹⁶ A failure to provide compensation will in and of itself renders the expropriation unlawful, even if the expropriation satisfies the other elements for a lawful expropriation under the BIT.⁷¹⁷
353. Article 10 of the BIT specifies the compensation requirements for expropriation and provides that:
2. The compensation referred to in paragraph 1 must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and must not reflect a change in value occurring because the intended expropriation had become known earlier. Valuation criteria must include going concern value, asset value including the declared tax value of tangible property, and other criteria, including non-economic criteria, to determine fair market value.
 3. Compensation shall be paid expeditiously and shall be fully realizable and freely transferable. Compensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.⁷¹⁸
354. In the present case, Burkina Faso did not provide any compensation to the Claimant for the loss of its investments in the Sanutura Project and the Additional Projects — let alone prompt, adequate, and effective compensation equivalent to the fair market value of the Claimant’s protected investments immediately before they were expropriated, *i.e.*, on 24 August 2023. For

⁷¹⁶ BIT, Art. 10, **Exhibit CL-0003-ENG-FR**.

⁷¹⁷ *Burlington v. Ecuador*, Decision on Liability, dated 14 December 2012, at paras. 543-544, **Exhibit C-0078-ENG** (“The lack of payment is sufficient for the expropriation to be deemed unlawful.”); *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, dated 11 October 2002, at para. 71, **Exhibit C-0016-ENG** (“A ‘taking’ of property, not acknowledged as such by the government concerned and not accompanied by any offer of compensation, is not rendered conditionally lawful by the contingency that the aggrieved party may sue in the local courts for conversion or for breach of contract.”).

⁷¹⁸ BIT, Art. 10, **Exhibit CL-0003-ENG-FR**.

this reason alone, Burkina Faso's expropriation of the Claimant's investments is unlawful under Article 10 of the BIT.

4.2 Burkina Faso Failed to Accord the Claimant's Protected Investments Fair and Equitable Treatment

355. Article 6 of the BIT requires Burkina Faso to accord the Claimant's protected investments fair and equitable treatment ("**FET**") in accordance with the customary international law minimum standard of treatment ("**MST**"). It provides that:

1. Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.⁷¹⁹

356. As explained below, Burkina Faso breached its obligation to provide FET first by imposing irregular, additional conditions for the "unblocking" of the Tankoro 2 Permit, and then by arbitrarily rescinding the Tankoro 2 Permit without justification. In particular, in the sections that follow, the Claimant will demonstrate that:

- (a) The scope of Burkina Faso's obligation to accord FET under Article 6 of the BIT is not materially different from an autonomous FET standard (**section 4.2.1**);
- (b) In any event, by virtue of the most favoured nation ("**MFN**") under Article 5 of the BIT, the Tribunal should apply the autonomous FET standard from Article 2(2) of the Korea – Burkina Faso BIT (**section 4.2.2**); and
- (c) Burkina Faso breached multiple components of FET standard (**section 4.2.3**).

⁷¹⁹ Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments, signed on 20 April 2015 (entered into force on 11 October 2017), Art. 6, **Exhibit CL-0003-ENG-FR**.

4.2.1 The FET as set out in Article 6 of the BIT and an autonomous FET standard are not materially different

357. The tribunal in *Waste Management (II)* aptly summarized the scope of FET under the MST in the following terms:

[T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the state and harmful to the claimant if the conduct is **arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety** – as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.⁷²⁰

358. A number of investment treaty tribunals applying FET under the MST have since affirmed the *Waste Management (II)* tribunal’s formulation of the standard.⁷²¹ The tribunal in *Merrill & Ring v. Canada* further elaborated on the scope of FET under the MST, observing that it:

⁷²⁰ *Waste Management, Inc. v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3 (“*Waste Management v. Mexico (II)*”), Award, 30 April 2004, at para. 98 (emphasis added), **Exhibit CL-0022-ENG**.

⁷²¹ *Odyssey v Mexico*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 323, **Exhibit CL-0129-ENG** (affirming the decisions of the tribunals in *Waste Management v. Mexico (II)* and *Cargill v. Mexico* “that the infringement of the FET standard “must be ‘gross,’ ‘manifest,’ ‘complete,’ or such as to ‘offend judicial propriety,’” “as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process”); *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 442, 443, **Exhibit CL-0088-ENG** (“[...] the Tribunal finds this quote from *Waste Management* to be a particularly apt one.”); *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 455, **Exhibit CL-0081-ENG** (“The Arbitral Tribunal agrees with the many arbitral tribunals [including *Waste Management*] and authorities that have confirmed that such is the content of the minimum standard of treatment in customary international law.”); *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at para. 219, **Exhibit CL-0076-ENG** (“[...] *Waste Management II* persuasively integrates the accumulated analysis of prior NAFTA Tribunals and reflects a balanced description of the minimum standard of treatment.”); *Chemtura Corporation v. Government of Canada*, UNCITRAL, PCA Case No. 2008-01, Award, dated 2 August 2010, at paras. 122, 215, **Exhibit CL-0070-ENG** (agreeing with the *Waste Management II*, *Mondev*, and *ADF* tribunals that a violation need not be outrageous to breach Art. 1105); *Vento Motorcycles, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/17/3, Award, dated 6 July 2020, at paras. 283-284, **Exhibit CL-0115-ENG**; *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at paras. 568-573, **Exhibit CL-0084-ENG**; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at paras. 597-600, **Exhibit CL-0051-**

[...] protects against all such acts and behavior that might infringe a sense of fairness, equity or reasonableness. Of course, the concepts of fairness, equitableness and reasonableness cannot be defined precisely: they require to be applied to the facts of each case. In fact, the concept of fair and equitable treatment has emerged to make possible the consideration of inappropriate behavior of a sort, which while difficult to define, may still be regarded as unfair, inequitable or unreasonable.⁷²²

359. There is a growing consensus among investment treaty tribunals that there is no material difference between FET under the MST and an autonomous FET standard (*i.e.*, one that, unlike Article 6 of the BIT, is not expressly tethered to the MST). For example, the tribunal in *Rusoro v. Venezuela* observed that “there is no substantive difference in the level of protection afforded by [those] standards”.⁷²³ Similarly, *Rumeli v. Kazakhstan*, the tribunal endorsed “the view of several ICSID tribunals that the treaty standard of fair and equitable treatment is not materially different from the minimum standard of treatment in customary international law”.⁷²⁴ The tribunal further noted that both standards encompass four “concrete principles” – first, “the State must act in a transparent manner;” second, “the State is obliged to act in good faith;” third, “the State’s conduct cannot be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, or lacking in due process;” and fourth, “the State must respect procedural propriety and due process”.⁷²⁵
360. Accordingly, the Tribunal should adopt the reasoning of the abovementioned tribunals and conclude that there is no substantial difference between the FET standard under Article 6 of the BIT and an autonomous standard.

4.2.2 In any event, the Claimant may invoke the autonomous FET standard under the Burkina Faso - Korea BIT by virtue of the MFN clause of the BIT

361. If the Tribunal finds that the FET standard under Article 6 of the BIT provides a lower level of obligation towards the Claimant’s investments than an autonomous FET standard (which it

ENG; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 216, **Exhibit CL-0063-ENG**.

⁷²² *Merrill & Ring v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, para. 210, **Exhibit CL-0067-ENG**.

⁷²³ *Rusoro v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, dated 22 August 2016, at para. 520, **Exhibit CL-0094-ENG**.

⁷²⁴ *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 611, **Exhibit CL-0052-ENG**.

⁷²⁵ *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 583, **Exhibit CL-0052-ENG**.

does not), the Claimant may invoke the FET standard from Article 2(2) of the Burkina Faso - Korea BIT by virtue of the MFN clause set out in Article 5 of the BIT.

362. Article 5 of the BIT provides that Burkina Faso is obliged to provide “treatment no less favourable than that it accords, in like circumstances” to other foreign investors and their investments. This obligation entitles the Claimant to rely on more favourable treaty standards from Burkina Faso’s other investment treaties that address the same subject matter. As explained by the tribunal in *Bayindir v Pakistan (I)*, the purpose of the MFN clause is to “provide a level playing field between [...] between foreign investors from different countries”.⁷²⁶ The tribunal in *Telenor Mobile v. Hungary* further confirmed that:

[...] the ordinary meaning of ‘investments shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State’ is that the investor’s substantive rights in respect of the investments are to be treated no less favourably than under a BIT between the host State and a third State.⁷²⁷

363. In line with this logic, other tribunals have imported through an MFN provision either more favourable FET regimes,⁷²⁸ or, where an FET provision was not contained in the applicable treaty, an entire FET provision.⁷²⁹
364. In this case, the Tribunal should follow the same approach and assess the Respondent’s conduct on the basis of more favourable standards under Burkina Faso’s other investment treaties.

⁷²⁶ *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, dated 27 August 2009, at para. 387, **Exhibit CL-0060-ENG**.

⁷²⁷ *Telenor Mobile Communications A.S. v. The Republic of Hungary*, ICSID Case No. ARB/04/15, Award, dated 13 September 2006, at para. 92, **Exhibit CL-0033-ENG**.

⁷²⁸ See e.g., *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, dated 25 May 2004, at para. 104, **Exhibit CL-0023-ENG**; *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 575, **Exhibit CL-0052-ENG**; *Sergei Paushok et al. v Mongolia*, Award on Jurisdiction and Liability, dated 28 April 2011, at para. 254, **Exhibit CL-0131-ENG**.

⁷²⁹ See e.g., *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, dated 27 August 2009, at paras. 148, 150, 153-160, **Exhibit CL-0060-ENG**; *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Award, dated 18 May 2010, at paras. 73, 125 fn. 16, **Exhibit CL-0068-ENG** (where Turkey-Jordan BIT did not contain an obligation to accord FET, interpreting a similarly worded MFN provision to permit claimant to invoke such provision from another BIT); *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 575, **Exhibit CL-0052-ENG**; *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, Final Award, dated 15 December 2014, at para. 555, **Exhibit CL-0086-ENG**.

Specifically, it should apply Article 2(2) of the Burkina Faso - Korea BIT, which provides for an autonomous standard of FET as follows:

Investments made by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.⁷³⁰

365. In sum, to the extent that the Tribunal considers that the FET standard under Article 6 of the BIT provides for a less stringent obligation than the autonomous FET standard under Article 2(2) of the Korea-Burkina Faso BIT, it should apply the latter standard by virtue of the MFN clause in Article 5 of the BIT.

4.2.3 Burkina Faso failed to accord the Claimant's protected investments FET

366. Burkina Faso's conduct in the present case breached multiple elements of the FET standard under both Article 6 of the BIT and Article 2(2) of the Korea – Burkina Faso BIT. In particular, Burkina Faso's irregular demands for additional payments and diplomatic assistance to reverse a NATO ban on drone surveillance software, and its subsequent unlawful revocation of the Tankoro 2 Permit were arbitrary (**section 4.2.3.1**), inconsistent (**section 4.2.3.2**), lacking in transparency and due process (**section 4.2.3.3**), and discriminatory against the Claimant as a Canadian company (**section 4.2.3.4**).

4.2.3.1 Burkina Faso's conduct in relation to the Claimant's investments was arbitrary

367. It is indisputable that a State breaches FET under the MST when it exercises its regulatory powers in an arbitrary or abusive manner.⁷³¹ To cite just one example, the tribunal in *Eco Oro v Colombia* confirmed that "FET encompassing concepts of non-arbitrariness, transparency

⁷³⁰ Agreement Between the Government of the Republic of Korea and the Government of Burkina Faso for the Promotion and Protection of Investments (2004), Art. 2(2), **Exhibit CL-0071-ENG**.

⁷³¹ *Cargill v. Mexico*, ICSID Case No. ARB(AF)/05/2 ("Cargill v. Mexico"), Award, dated 18 September 2009, at para. 291, **Exhibit CL-0062-ENG**; *Gemplus v. Mexico*, ICSID Case No. ARB(AF)/04/3, Award, dated 16 June 2010, at paras. 7.72, 7.76, **Exhibit CL-0069-ENG**; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 465, **Exhibit CL-0081-ENG**.

and fairness are recognised elements of customary international law within the confines of reasonableness”.⁷³²

368. Similarly, in *Cargill v. Mexico*, for example, the tribunal observed that a State breaches the FET under the MST if its regulatory authority takes arbitrary or abusive actions against the investment. The tribunal agreed with the International Court of Justice (“ICJ”) in the *ELSI (United States v. Italy)* case that “[a]rbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law . . . [i]t is a wilful [sic] disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety”.⁷³³ The *Cargill* tribunal held that a State violates the minimum standard of FET if its conduct “constitutes an unexpected and shocking repudiation of a policy’s very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive”.⁷³⁴
369. The tribunal in *TECO* likewise found that there was “no doubt” that the minimum standard of FET is violated when a State acts “arbitrarily” or “show[s] a complete lack of candor or good faith in the regulatory process”.⁷³⁵ The *TECO* tribunal further observed that “deference to the State’s regulatory powers cannot amount to condoning behaviors that are manifestly arbitrary, idiosyncratic, or that show a complete lack of candor in the conduction of the regulatory process”.⁷³⁶
370. As such, tribunals have held that where, as here, a State arbitrarily revokes or denies a permit or authorisation on a pretextual basis, this will violate the FET under the MST. NAFTA jurisprudence interpreting and applying the FET under the MST is instructive. In *Odyssey v. Mexico*, for example, the tribunal found that Mexico’s Ministry of Environment, at the request of its Secretary, “denied a permit that otherwise would have been granted” and that there was “evidence of arbitrariness, lack of transparency, and violation of administrative due process of such seriousness that the conduct meets the threshold required to establish the alleged breach” of the minimum standard of FET.⁷³⁷ Observing that “the rejection of the Project was not driven

⁷³² *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 752, **Exhibit CL-0120-ENG**.

⁷³³ *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 291, **Exhibit CL-0062-ENG**.

⁷³⁴ *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 293, **Exhibit CL-0062-ENG**.

⁷³⁵ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 465, **Exhibit CL-0081-ENG**.

⁷³⁶ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 492, **Exhibit CL-0081-ENG**.

⁷³⁷ *Odyssey v Mexico*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 333, **Exhibit CL-0129-ENG**.

by objective environmental considerations that Mexico sought to enforce, but rather by personal reasons related to the Secretary's own interests," the tribunal held that "Mexico's arbitrary and idiosyncratic conduct" breached the minimum standard of FET under the NAFTA.⁷³⁸

371. The tribunal in *B-Mex v. Mexico* reached a similar conclusion in relation to Mexico's revocation of the claimant's gaming permits and licenses, finding that such revocation was not based on genuine regulatory considerations, but on political reasons.⁷³⁹ The tribunal noted that Mexico's Ministry of the Interior had multiple opportunities to preserve the claimants' business but instead chose to terminate it.⁷⁴⁰ The tribunal ultimately concluded that the Ministry's "decision to bring about the termination of the Claimants' business, driven as it was found to be by political predisposition rather than considerations of public or regulatory policy," was "grossly unfair" and "arbitrary beyond a merely inconsistent or questionable application of administrative or legal policy or procedure" and thus breached the FET under the MST.⁷⁴¹
372. In addressing arbitrary or abusive State conduct, tribunals have also referred to the principle good faith under public international law. In *Merrill & Ring*, for example, the tribunal observed that, even if there were no "stand-alone obligations" under the NAFTA regarding good faith and the prohibition of arbitrariness, "these concepts are to a large extent the expression of general principles of law and hence also a part of international law".⁷⁴² The tribunal further noted the "close connection" between these general principles and the "availability of a secure legal environment".⁷⁴³
373. Similarly, the *TECO* tribunal found that "the minimum standard of treatment is part and parcel of the international principle of good faith".⁷⁴⁴ As the tribunal remarked, "[t]here is no doubt

⁷³⁸ *Odyssey v Mexico*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at paras. 441, **Exhibit CL-0129-ENG**.

⁷³⁹ *B-Mex v. Mexico*, ICSID Case No. ARB(AF)/16/3, Final Award, dated 21 June 2014, at para. 118, **Exhibit CL-0082-ENG**.

⁷⁴⁰ *B-Mex v. Mexico*, ICSID Case No. ARB(AF)/16/3, Final Award, dated 21 June 2014, at para. 103, **Exhibit CL-0082-ENG**.

⁷⁴¹ *B-Mex v. Mexico*, ICSID Case No. ARB(AF)/16/3, Final Award, dated 21 June 2014, at para. 119, **Exhibit CL-0082-ENG**; see also *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at paras. 232-235, **Exhibit CL-0076-ENG** (finding that Guatemala's declaration of the claimant's investment as "lesivo" or "injurious to the interest of the State" breached the FET standard by being "arbitrary, grossly unfair, [and] unjust" as it "has been used under a cloak of formal correctness allegedly in defence of the rule of law, in fact for exacting concessions unrelated to the finding of lesivo.").

⁷⁴² *Merrill & Ring v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 187, **Exhibit CL-0067-ENG**.

⁷⁴³ *Merrill & Ring v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 187, **Exhibit CL-0067-ENG**.

⁷⁴⁴ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 456, **Exhibit CL-0081-ENG**.

in the eyes of the Arbitral Tribunal that the principle of good faith is part of customary international law as established by Article 38.1(b) of the Statute of the International Court of Justice,” observing that “a lack of good faith on the part of the State or of one of its organs should be taken into account in order to assess whether the minimum standard was breached”.⁷⁴⁵

374. Likewise, tribunals applying an autonomous FET standard have held that arbitrary measures constitute a breach of the State’s FET obligations.⁷⁴⁶ For example, the tribunal in *South32 v Colombia (I)* confirmed that an “arbitrary action undoubtedly constitutes a violation of FET”⁷⁴⁷ and set out the following definition, based on the relevant case law:

manifestly arbitrary measures are those that deviate from the applicable law and are abusive, discretionary and lack motivation or legal motivation in such a way as to be capricious, are grossly unfair, openly inconsistent or contradictory with previous conduct and all this in a manner that defies the very notion of legal correctness.⁷⁴⁸

375. The tribunal in *EDF v. Romania*, applying an autonomous FET standard, identified several types of measures that will constitute arbitrary treatment under international law, based on a legal expert report submitted in that case by Professor Christoph Schreuer:

- (a) a measure that inflicts damage on the investor without serving any apparent legitimate purpose;

⁷⁴⁵ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 456, **Exhibit CL-0081-ENG**; see also F.A. Mann, *British Treaties for the Promotion and Protection of Investments*, 52 BYIL 241 (1981), p. 249, **Exhibit CL-0008-ENG** (underscoring that “the paramount duty of States imposed by international law is to observe and act in accordance with the requirements of good faith.”); B. Cheng, *General Principles of Law as Applied by International Court and Tribunals* (2006), p. 113, **Exhibit CL-0028-ENG** (emphasizing that good faith is “an indisputable rule of international law,” and observing that, without it, “international law as well as civil law would be a mere mockery.”).

⁷⁴⁶ *EcoDevelopment in Europe AB and EcoEnergy Africa AB v. United Republic of Tanzania*, ICSID Case No. ARB/17/33, Award, dated 13 April 2022, at para. 368, **Exhibit CL-0121-ENG**; *Deutsche Telekom AG v. Republic of India*, PCA Case No. 2014-10, Interim Award, dated 13 December 2017, at para. 363, **Exhibit CL-0099-ENG**.

⁷⁴⁷ *South32 SA Investments Limited v. Republic of Colombia*, ICSID Case No. ARB/20/9, Award, dated 21 June 2024, at para. 708, **Exhibit CL-0128-ENG**.

⁷⁴⁸ *South32 SA Investments Limited v. Republic of Colombia*, ICSID Case No. ARB/20/9, Award, dated 21 June 2024, at para. 706, **Exhibit CL-0128-ENG**; see also *ELA U.S.A., Inc. v. The Republic of Estonia*, PCA Case No. 2018-42, Award, dated 21 February 2025, at para. 840, **Exhibit CL-0029-ENG** (“Consistently with investment case law, to qualify as arbitrary, a measure must depart from either reason, law or fact, as articulated by the tribunals in *Genin v. Estonia* and *Lauder v. Czech Republic*”).

- (b) a measure that is not based on legal standards but on discretion, prejudice or personal preference;
- (c) a measure taken for reasons that are different from those put forward by the decisionmaker;
- (d) a measure taken in wilful disregard of due process and proper procedure.⁷⁴⁹

376. These examples of arbitrary treatment, while not exhaustive, provide useful guidance for the Tribunal’s assessment of Burkina Faso’s conduct in this case.

377. In the present case, Burkina Faso treated the Claimant’s investments in an arbitrary manner and therefore breached the FET standard, whether analysed in accordance with the MST under Article 6 of the BIT, or as an autonomous standard under Article 2(2) of the Korea-Burkina Faso BIT.

378. As detailed above in **section 2.3**, Burkina Faso began its pattern of conduct in breach of FET with the imposition of two arbitrary demands on the Claimant: (i) that the Claimant, as a Canadian company, should convince the Government of Canada to reverse a NATO ban on the sale of drone surveillance software to Burkina Faso; and (ii) that the Claimant make an arbitrary payment unanchored to any rule in the 2015 Mining Code or applicable regulations in return for Burkina Faso’s release of the Tankoro 2 Permit’s *arrêté*. Regardless of whether the Tribunal interprets Article 6 of the BIT according to the MST or the autonomous FET standard, Burkina Faso’s “arbitrary and idiosyncratic conduct” with respect to the Tankoro 2 Permit and its *arrêté* breached the prohibition on non-arbitrary treatment under the FET standard.⁷⁵⁰

379. As Mr Dinning and Mr Hamilton evidence in their witness statements, not only did Burkina Faso have no basis to demand any sum from the Claimant in return for releasing the *arrêté*, but it repeatedly moved the goal posts by changing the sum demanded — from an original amount of 6 billion CFA francs down to 4.5 billion CFA francs and then back up to 6 billion CFA francs. The reasons for the demands were also varied and continuously evolving. These

⁷⁴⁹ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 303, **Exhibit CL-0063-ENG**.

⁷⁵⁰ *See supra*, section 2.3.

inconsistencies establish that the sum was based on the “personal preference[s]”⁷⁵¹ and whims of Minister Boussim and Capitaine Traoré, rather than any legal requirement, and were therefore arbitrary.⁷⁵² Indeed, Minister Boussim first reduced the amount demanded from the Claimant from 6 billion CFA francs to 4.5 billion CFA francs on account of his allegedly being a “kind person”.⁷⁵³ The audacity of characterising the reduction of an arbitrary payment with no local basis as an act of kindness should not be lost on the Tribunal, and demonstrates the arbitrary and capricious nature of Burkina Faso’s actions. Minister Boussim then increased the demand back to 6 billion CFA francs on instruction from Capitaine Traoré, alleging that Capitaine Traoré had been offended by comments made by the Canadian ambassador that Sarama would destroy project data if the Ministry continued to claim that the Tankoro 2 Permit was a State asset.⁷⁵⁴

380. Further, as the Claimant explained above and discussed in more detail in **section 4.3**, Burkina Faso’s actions discriminated against the Claimant in favour of a domestic gold mining company, Soleil, and a Russian gold mining company, Nordgold, based on “political predisposition rather than considerations of public or regulatory policy”.⁷⁵⁵ Specifically, the publicly available evidence indicates that Burkina Faso favoured Soleil by granting it the Tankoro 2 Permit it had revoked from the Claimant because Soleil is beneficially owned by a political ally of Capitaine Traoré and the junta, Mr Inoussa Kanazoé.⁷⁵⁶
381. Similarly, Burkina Faso has allowed Nordgold to continue to operate its Burkinabe gold mines without forced grants of larger equity shares or free carried interest to the State, requisition of assets, and permit revocations faced by the Claimant and other Western gold mining companies in order to curry favour with Russian interests.⁷⁵⁷
382. Burkina Faso’s actions also fail to comport with the requirement of good faith that the *TECO v. Guatemala* tribunal confirmed is a component of non-arbitrariness. Burkina Faso’s demand

⁷⁵¹ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 303, **Exhibit CL-0063-ENG**.

⁷⁵² *See supra*, at section 2.3; *see also* Hamilton WS1, at paras. 98, 102, 103.

⁷⁵³ *See supra*, at section 2.3; Hamilton WS1, at para. 102.

⁷⁵⁴ *See supra*, at section 2.3.

⁷⁵⁵ *See supra*, at para. 199; *B-Mex v. Mexico*, ICSID Case No. ARB(AF)/16/3, Final Award, dated 21 June 2014, at para. 119, **Exhibit CL-0082-ENG**.

⁷⁵⁶ *See supra*, at section 2.3.4.

⁷⁵⁷ *See supra*, at para. 199.

for payment of an irregular sum that had no basis in the applicable legal framework, and its subsequent arbitrary changes to the demanded amount, demonstrate Burkina Faso's lack of good faith.

383. Finally, Minister Boussim's retroactive revocation of the Tankoro 2 Permit on 25 August 2023 was "not based on legal standards but on discretion, prejudice or personal preference",³¹ and was therefore arbitrary. Notably, the revocation decision did not refer to any of the applicable provisions of the 2015 Mining Code regarding withdrawal of mining permits, thus demonstrating its lack of legal basis. The only plausible explanation for the revocation of the permit was that it was taken in retaliation for the Claimant's refusal to comply with the arbitrary and irregular conditions that Burkina Faso had sought to impose as a condition of releasing the *arrêté*. This flawed process breached the prohibition on arbitrary treatment under the FET standard. Minister Boussim's action was not only grossly unfair to the Claimant, but constituted a wilful disregard of due process usurping any sense of judiciary propriety or the rule of law. Specifically, and as explained in more detail below, Burkina Faso revoked the Tankoro 2 Permit without following the administrative procedures required under Articles 112–115 of the 2015 Mining Code, which mandate specific grounds and due process for such action. Burkina Faso's actions were therefore arbitrary and breached the FET standard, whether analysed by reference to the MST or as an autonomous standard.

4.2.3.2 *Burkina Faso failed to act in a transparent manner and with due process*

384. The FET standard under MST requires a host State to act in a transparent manner and with due process of law.⁷⁵⁸ As the tribunal in *Metalclad v. Mexico* observed, transparency requires not only that the State make known to the potential investor the relevant legal requirements that apply to its investment, but also that it resolves any misunderstanding or scope for confusion:

The Tribunal understands [the requirement for transparency] to include the idea that all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be

⁷⁵⁸ *Cargill, Incorporated v. Republic of Poland*, ICSID Case No. ARB(AF)/04/2 ("Cargill v Poland"), Final Award, 29 February 2008, at para. 511, **CL-0049-ENG** ("[i]t is, however, generally accepted that [transparency] forms part of fair and equitable treatment."); *Tecmed v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 154, **Exhibit CL-0019-ENG** ("[t]he foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor"); *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 609, **Exhibit CL-0052-ENG** ("The parties rightly agree that the fair and equitable treatment standard encompasses inter alia the following concrete principles: [...] the State must respect procedural propriety and due process.").

made, under the Agreement should be capable of being readily known to all affected investors of another Party. There should be no room for doubt or uncertainty on such matters.

Once the authorities of the central government of any Party (whose international responsibility in such matters has been identified in the preceding section) become aware of any scope for misunderstanding or confusion in this connection, it is their duty to ensure that the correct position is promptly determined and clearly stated so that investors can proceed with all appropriate expedition in the confident belief that they are acting in accordance with all relevant laws.⁷⁵⁹

385. In that case, the tribunal concluded that Mexico's lack of an established practice or procedure for handling municipal construction permit applications constituted a failure to comply with the transparency obligation under FET under the MST pursuant to Article 1105 of the NAFTA.⁷⁶⁰
386. Transparency is closely associated with the principle of due process, which requires that the State provide the investor with notice and the ability to be heard.⁷⁶¹ In *Metalclad v. Mexico*, the tribunal observed that Metalclad's construction permit "was denied at a meeting of the Municipal Town Council of which Metalclad received no notice, to which it received no invitation, and at which it was given no opportunity to appear".⁷⁶² This, along with other "procedural and substantive deficiencies"⁷⁶³ of the revocation process demonstrated "a lack of orderly process and timely disposition in relation to an investor of a Party acting in the expectation that it would be treated fairly and justly in accordance with the NAFTA".⁷⁶⁴

⁷⁵⁹ *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1 ("*Metalclad v. Mexico*"), Award, dated 30 August 2000, at para. 76, **Exhibit CL-0011-ENG**.

⁷⁶⁰ *Metalclad v. Mexico*, Award, dated 30 August 2000, at para. 88, **Exhibit CL-0011-ENG**.

⁷⁶¹ See e.g., *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia (I)*, ICSID Case No. ARB/16/6, Award, dated 27 August 2019, at para. 1318, **Exhibit CL-0107-ENG** (observing that the obligation to accord due process means that the relevant authority must provide certain procedural guarantees to the investor, and in particular "must give each party a fair opportunity to present its case and to marshal appropriate evidence, and then must assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision.").

⁷⁶² *Metalclad v. Mexico*, Award, dated 30 August 2000, at para. 93, **Exhibit CL-0011-ENG**.

⁷⁶³ *Metalclad v. Mexico*, Award, dated 30 August 2000, at para. 97, **Exhibit CL-0011-ENG**.

⁷⁶⁴ *Metalclad v. Mexico*, Award, dated 30 August 2000, at para. 99, **Exhibit CL-0011-ENG**.

387. Likewise, the tribunal in *Odyssey* remarked that “due process is a central element of the FET standard” and that “it applies not only to acts of the judiciary but also to acts of other branches of the government, including administrative decisions”.⁷⁶⁵ In that case, the tribunal made clear that “a violation of administrative due process may occur not only when there is complete lack of transparency and candour,” but also specifically when “an investor is denied a permit based on reasons that are unrelated to specific existing requirements for issuing that permit”.⁷⁶⁶
388. Tribunals applying an autonomous standard of FET have reached similar conclusions. For example, the tribunal in *Urbaser v Argentina* emphasised that the autonomous FET standard in the Argentina-Spain BIT entailed a requirement for “a transparent treatment that could reasonably be expected from the host State in its relation to foreign investors”.⁷⁶⁷
389. Transparency also requires that a State provide reasons for decisions affecting the investor’s investment. In *Nordzucker v. Poland*, for example, the tribunal found that the State’s lack of communications with a prospective investor regarding the privatization of two sugar plants and the State’s failure to provide reasons for its refusal of consent to sell the plants constituted a violation of the FET standard.⁷⁶⁸
390. Taken together, the above cases confirm that FET, whether under the MST or an autonomous standard, encompasses the principles of transparency and due process, requiring the State to act openly, predictably, and in accordance with a fair process. Conversely, a lack of communication, a failure to provide reasons, or a disregard for established procedures will constitutes a breach of FET.
391. In the present case, Burkina Faso failed to treat the Claimant’s investments with due process of law and transparency and thereby breached FET. As explained above in **section 2.3**, Burkina Faso repeatedly requested the Claimant to make an additional payment to the Ministry which lacked any basis in the 2015 Mining Code and applicable Burkinabe regulations. Despite the Claimant’s repeated reminders to the Ministry that it had already paid the required permitting fee of 2 million CFA francs for the Tankoro 2 Permit on 29 November 2021, Burkina Faso

⁷⁶⁵ *Odyssey v Mexico*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 309, **Exhibit CL-0129-ENG**; see also *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 587, **Exhibit CL-0081-ENG**.

⁷⁶⁶ *Odyssey v Mexico*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 310, **Exhibit CL-0129-ENG**.

⁷⁶⁷ *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award, dated 8 December 2016, at para. 845, **Exhibit CL-0095-ENG**.

⁷⁶⁸ *Nordzucker v. Poland*, Second Partial Award (Merits), dated 28 January 2009, at para. 84, **Exhibit CL-0059-ENG**.

insisted that the Claimant pay an additional 6 billion CFA francs for the Ministry to release the Tankoro 2 Permit's *arrêté*.⁷⁶⁹ When the Claimant and its executive team asked for a justification for this sum, Ministry officials merely responded that the amount had been “calculated” based on amounts Sarama had originally invested.⁷⁷⁰ As Mr Hamilton explains, however, Minister Boussim “gave no legal justification” for this monetary demand and “did not share how he or presumably the Ministry’s technicians had calculated the 6 billion CFA francs figure”, leading Mr Hamilton to conclude that it was “simply made up”.⁷⁷¹

392. To make matters worse, Minister Boussim abruptly reduced the sum demanded from the Claimant from 6 billion CFA francs to 4.5 billion CFA francs on 27 June 2023, but then changed tack and raised the demanded amount back up to 6 billion CFA francs just a month later, in August 2023. Again, Minister Boussim provided no legal justification for these changes. Rather, as noted above, he justified the short-lived reduction of the demand on the fact that he was a “kind person”.⁷⁷² Then, rather than providing any legal explanation for the amount demanded, he instead told the Claimant’s representatives that if they had any issue they should take it up with Capitaine Traoré, Burkina Faso’s president.⁷⁷³ But when the Claimant requested a meeting with Capitaine Traoré to obtain more information and discuss the State’s latest unexplained request, Minister Boussim rebuffed the Claimant.⁷⁷⁴

393. Regarding the subsequent increase of the demanded amount to 6 billion CFA francs, Minister Boussim’s only explanation was that Capitaine Traoré had decided that this was a proper response to Canadian Ambassador Hermann’s remark at a US embassy function in Ouagadougou that Sarama would delete project data if Burkina Faso continued to withhold the *arrêté* for the Tankoro 2 Permit.⁷⁷⁵ These actions are the antithesis of due process and transparency required under international law. Indeed, Burkina Faso ignored Sarama’s payment of the required permitting fee of 2 million CFA francs (approximately US\$ 3,200) to

⁷⁶⁹ See *supra*, at section 2.3.

⁷⁷⁰ See *supra*, at section 2.3.

⁷⁷¹ See Hamilton WS1, at paras. 98, 102.

⁷⁷² Hamilton WS1, at para. 102.

⁷⁷³ Hamilton WS1, at para. 102.

⁷⁷⁴ Hamilton WS1, at para. 104.

⁷⁷⁵ See *supra*, at section 2.3.

the Ministry on 29 November 2021, and Minister Ouedraogo's acceptance of Sarama's application for the Tankoro 2 Permit on 24 November 2021.⁷⁷⁶

394. Burkina Faso's subsequent revocation of the Tankoro 2 Permit was similarly devoid of transparency and due process. As explained above in **section 2.1.3**, Articles 112, 113, 114 and 115 of the 2015 Mining Code provide a regular administrative process for the revocation of a mining permit by the State. These provisions set out a list of circumstances in which a mining permit may be revoked, including if a licence holder suspends exploration work without reasonable justification for more than six months, fails to pay applicable taxes, fails to spend the minimum annual amounts on exploration works, or commits grave violations of rules relating to public welfare, health and security.⁷⁷⁷
395. Burkina Faso failed to reference **any** of these provisions during its negotiations with the Claimant leading up to Minister Boussim's revocation of the Tankoro 2 Permit, or in the revocation itself.⁷⁷⁸ In fact, the only provision of Burkinabe mining law referenced in Minister Boussim's letter dated 25 August 2023 revoking the permit is an invitation to the Claimant to transfer all the data and mining information related to the Tankoro Permit to the Ministry, based on Article 185 of the 2015 Mining Code.⁷⁷⁹ But that provision bears no relation to the grounds for revocation of permits, which as noted above are set out in other provisions of the 2015 Mining Code.
396. In sum, Burkina Faso's repeated, unpredictable and unreasoned demands for irregular payments outside the boundaries of the 2015 Mining Code and relevant Burkinabe regulations, and its subsequent revocation of the Tankoro 2 Permit without providing any legal basis, breached the requirements for due process of law and transparency under the FET standard.

⁷⁷⁶ See *supra*, at section 2.3.

⁷⁷⁷ See e.g. 2015 Mining Code, Arts. 112, 113 and 115, **Exhibit C-0130-FR**.

⁷⁷⁸ Letter from the Minister of Energy, Mines and Quarries to Sarama Mining Burkina SARL, **Exhibit C-0064-FR**.

⁷⁷⁹ Letter from the Minister of Energy, Mines and Quarries to Sarama Mining Burkina SARL, **Exhibit C-0064-FR**; see 2015 Mining Code, Art. 185, **Exhibit C-0130-FR** ("*Après analyse et lorsqu'ils n'en n'ont plus besoin pour leurs propres fins, les titulaires des titres miniers et les bénéficiaires d'autorisation d'exploitation industrielle de carrière remettent les carottes de sondage orientées avec toutes les données, les données numériques relatives aux travaux géologiques, régolithiques, géophysiques et géochimiques, les résultats des analyses chimiques, analyses métallurgiques, les différents modèles réalisés sur leur permis à l'Administration des mines pour conservation. Le transfert se fait sous le contrôle de l'Administration des mines*").

4.2.3.3

Burkina Faso acted in a discriminatory manner

397. The FET standard also requires a host State to act in a non-discriminatory manner. As the *Waste Management (II)* tribunal held, FET under the MST is “infringed by conduct attributable to the State and harmful to the claimant if the conduct [...] is discriminatory”.⁷⁸⁰ The tribunal in *Quiborax v Bolivia* similarly confirmed that FET under the MST encompasses prohibition of discrimination. It found a violation of this standard on the basis that Bolivia had acted discriminatorily:

In the context of its analysis of the Claimants’ expropriation claim, the Tribunal has already held that the revocation of the concessions was discriminatory and unjustified under Bolivian law. By the same token, it also violates the fair and equitable treatment standard, even if it were to be equated with the customary international law minimum standard of treatment.⁷⁸¹

398. The tribunal in *Orazul v. Argentina*, applying an autonomous FET standard, similarly confirmed that “the FET standard also protects investors from discrimination by host States”⁷⁸² and that “discrimination entails like persons being treated in a different manner in similar circumstances without reasonable or justifiable grounds”.⁷⁸³ The tribunal in *Invesmart v. Czech Republic* ruled that to analyse whether conduct is discriminatory in the context of FET, the tribunal should examine the following three elements: “whether the [investors] were (i) similarly situated to [a national company], yet (ii) treated differently (iii) without reasonable justification”.⁷⁸⁴

399. Notably, discriminatory conduct can arise from political instructions that have discriminatory intent, such as in the present case. In *Lemire v. Ukraine (II)*, the claimant sought to obtain radio frequencies for broadcasting purposes.⁷⁸⁵ However, the president of Ukraine intervened in the process and instructed the relevant agency to allocate the relevant frequencies to the claimant’s

⁷⁸⁰ *Waste Management v. Mexico (II)*, Award, dated 30 April 2004, at para. 98, **Exhibit CL-0022-ENG**.

⁷⁸¹ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, dated 16 September 2015, at para. 292, **Exhibit CL-0089-ENG**.

⁷⁸² *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25 (“*Orazul v Argentina*”), Award, dated 14 December 2023, at para. 772, **Exhibit CL-0126-ENG**.

⁷⁸³ *Orazul v. Argentina*, Award, dated 14 December 2023, at para. 773, **Exhibit CL-0126-ENG**.

⁷⁸⁴ *Invesmart v. Czech Republic*, UNCITRAL, Award, dated 26 June 2009, at para. 403, **Exhibit CL-0058-ENG**.

⁷⁸⁵ *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18 (“*Lemire v Ukraine*”), Decision on Jurisdiction and Liability, dated 14 January 2010, at para. 142, **Exhibit CL-0064-ENG**.

competitors.⁷⁸⁶ The tribunal found that the president’s political instruction amounted to unlawful interference with the independent and impartial decision-making process of Ukraine’s National Council and was discriminatory.⁷⁸⁷ The tribunal observed that “the apparently politically motivated preference for one competitor represents a discrimination against Claimant”⁷⁸⁸ and therefore breached FET.⁷⁸⁹

400. In order to establish discriminatory intent, it is not necessary to show that the State intended to discriminate against an individual investor. Rather, it is sufficient to establish that the State intended to favour one particular group of investors over others. As the tribunal in *Eastern Sugar v Czech Republic* noted, “even if the intent was not to punish [the claimant] specifically but more generally to favor newcomers [...], the result is still that a violation of the BIT occurred”.⁷⁹⁰
401. Nor does proof of discrimination require a broad pattern of conduct; even a single discriminatory measure can breach the FET standard. For example, the tribunal in *Cyprus Popular Bank v. Greece* found that Greece violated FET by granting certain benefits to comparator banks while denying those benefits to the claimant in “one isolated instance”.⁷⁹¹ The tribunal also found that the same measure also breached the NT and MFN provisions of the applicable treaty.⁷⁹²
402. In this case, Burkina Faso discriminated against the Claimant’s investments in several respects. **First**, Burkina Faso imposed an irregular and unjustified condition targeting the Claimant based on its Canadian nationality, namely that the Claimant somehow convince the Government of Canada to reverse NATO’s ban on sale of certain drone surveillance software to Burkina Faso.⁷⁹³ As explained above in **section 2.3**, Minister Boussim threatened that if the Claimant did not fulfil this condition, Burkina Faso would refuse to issue the Claimant’s *arrêté*

⁷⁸⁶ *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, dated 14 January 2010, at para. 356, **Exhibit CL-0064-ENG**.

⁷⁸⁷ *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, dated 14 January 2010, at para. 356, **Exhibit CL-0064-ENG**.

⁷⁸⁸ *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, dated 14 January 2010, at para. 356, **Exhibit CL-0064-ENG**.

⁷⁸⁹ *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, dated 14 January 2010, at para. 357, **Exhibit CL-0064-ENG**.

⁷⁹⁰ *Eastern Sugar B.V. (Netherlands) v. The Czech Republic*, SCC Case No. 088/2004, Partial Award, dated 27 March 2007, at para. 338, **Exhibit CL-0039-ENG**.

⁷⁹¹ *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic*, ICSID Case No. ARB/14/16, Award, dated 15 April 2021, at para. 1533, **Exhibit CL-0119-ENG**.

⁷⁹² *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic*, ICSID Case No. ARB/14/16, Decision on Jurisdiction and Liability, dated 8 January 2019, at paras. 1387, 1533, **Exhibit CL-0119-ENG**.

⁷⁹³ *See supra*, section 2.3.

for the Tankoro 2 Permit. To Sarama’s knowledge, no other similarly situated investor, domestic or foreign, in Burkina Faso’s gold mining industry faced such a demand. Burkina Faso therefore evidently singled out the Claimant with this arbitrary demand on account of its status as a Canadian company. Burkina Faso provided no justification at all for its differential treatment of the Claimant, let alone a reasonable justification. Burkina Faso therefore treated the Claimant differently on account of its nationality, “without reasonable justification”, and therefore violated the non-discrimination element of the FET.⁷⁹⁴

403. **Second**, after revoking the Claimant’s Tankoro 2 Permit in violation of the BIT and its own mining law, Burkina Faso granted a licence over the Tankoro Property to Soleil, a similarly situated Burkinabe company beneficially owned by a political ally of Capitaine Traoré and the PMSR.⁷⁹⁵ Capitaine Traoré has avowed that it is the policy of his administration to “exploit our own resources ourselves” and to “take control” of foreign mining investments.⁷⁹⁶ Thus, like in *Lemire v. Ukraine (II)* Burkina Faso demonstrated a “politically motivated preference” for one of the Claimant’s competitors in breach of the applicable FET standard.⁷⁹⁷ It provided no reasonable justification for this differential treatment. Indeed, Mr Hamilton testifies that he understands that the reason Burkina Faso granted Soleil the permit was that it had “paid the approximately 6 billion CFA francs or approximately US\$ 10 million that Minister Boussim had tried unsuccessfully to extract from Sarama”.⁷⁹⁸

404. **Third**, Burkina Faso treated the investments of Nordgold, a similarly situated gold mining company beneficially owned by Russian nationals, more favourably than the Claimant’s investments. As explained above in **section 2.3.1**, Burkina Faso recently granted Nordgold a mining licence over the Niou gold mine. Burkina Faso also continues to allow Nordgold to operate the Bissa and Bouly gold mines without undue interference. By contrast, Burkina Faso retroactively revoked the Tankoro 2 Permit and rendered Claimant’s investments in the Sanutura Project and Additional Projects essentially worthless. As noted above, Burkina Faso has provided no valid justification for its actions. It has therefore discriminated against the Claimant through its more favourable treatment of Nordgold due to its close connection Russia and breached FET.

⁷⁹⁴ See *supra*, section 2.3.

⁷⁹⁵ See *supra*, section 2.3.

⁷⁹⁶ See *supra*, section 2.3.

⁷⁹⁷ See *supra*, section 2.3.

⁷⁹⁸ See Hamilton WS1, para. 110.

4.3 Burkina Faso Failed to Accord the Claimant and Its Protected Investments National and Most Favoured Nation Treatment

405. As set forth in **section 2.3** above, beginning in October 2022, Burkina Faso has pursued a policy of discriminatory, anti-Western resource nationalism aimed at asserting greater State control over the country’s mining sector. This policy, driven by Capitaine Traoré and the PMSR, has systematically targeted Western-owned mining companies, including the Claimant, while favouring Burkinabe entities and investors from strategically aligned non-Western States. In implementing this policy, Burkina Faso has sought both to consolidate political and economic power within the State and to transfer valuable mining assets from Western investors to State-controlled or politically connected companies.
406. With specific regards to the Claimant, Burkina Faso’s pursuit of the above policy breached its obligations under Articles 4 and 5 of the BIT by according the Claimant, a Canadian company, and its protected investments treatment less favourable than that accorded in like circumstances to Burkinabe nationals and to certain non-Western foreign investors.
407. The Claimant sets out below the relevant legal standard applicable to national treatment and most favoured nation (“MFN”) treatment under Article 4 of the BIT (**section 4.3.1**); and the ways in which Burkina Faso breached those standards through its conduct in this case (**section 4.3.2**).

4.3.1 The Applicable Legal Standard In Relation To National Treatment And MFN

408. Article 4 of the BIT sets out Burkina Faso’s national treatment obligation, which provides that Burkina Faso must treat foreign investors and investments no less favourably than its own national investors and investments:
1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.
 2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion,

management, conduct, operation and sale or other disposition of an investment in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.⁷⁹⁹

409. The purpose of national treatment obligation is “to protect investors as compared to local producers”.⁸⁰⁰ National treatment obligations, such as Article 4 of the BIT, protect covered investors and their investments against both *de jure* and *de facto* discrimination with respect to the host State’s investors and their investments.⁸⁰¹ As Professor Bjorklund explains:

The national treatment obligation protects against discrimination, whether *de jure* or *de facto*, on the basis of nationality. In practice there are few cases of *de jure* discrimination; most of the cases centre on the differential effect of a facially neutral measure.⁸⁰²

410. Article 5 of the BIT sets out Burkina Faso’s MFN obligation, which provides that Burkina Faso must treat foreign investors and investments no less favourably than other foreign investors and their investments:

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of

⁷⁹⁹ BIT, at Art. 4, **Exhibit CL-0003-ENG-FR**.

⁸⁰⁰ *Occidental Exploration and Production Company v. The Republic of Ecuador*, LCIA Case No. UN3467, Final Award, dated 1 July 2004, at para. 173, **Exhibit CL-0024-ENG**.

⁸⁰¹ *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States*, ICSID Case No. ARB (AF)/04/5 (“*ADM v Mexico*”), Award, dated 21 November 2007, at para. 193, **Exhibit CL-0045-ENG**; *Corn Products v Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 115, **Exhibit CL-0048-ENG**.

⁸⁰² Andrea K. Bjorklund, National Treatment, in Reinisch, A. (ed.), *Standards of Investment Protection*, 2008, at p. 30, **Exhibit CL-0047-ENG**.

investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.⁸⁰³

411. MFN clauses such as Article 5 of the BIT enshrine the basic principle that a host State should treat covered investors and their investments no less favourably than investors and investments of other foreign States. As the tribunal in *UP and CD Holding v. Hungary* observed, “[t]he purpose of [an MFN] clause is to ensure that there will be no discrimination between foreign investors”.⁸⁰⁴ Dolzer and Schreuer also observe that “[t]he simple goal of MFN clauses in treaties is to ensure that the relevant parties treat each other in a manner at least as favourable as they treat third parties”.⁸⁰⁵ The tribunal in *Vercara v Colombia* confirmed that, similar to national treatment obligations, MFN obligations, such as Article 5 of the BIT, also protect covered investors and their investments against both *de jure* and *de facto* discrimination.⁸⁰⁶
412. Given that national treatment and MFN clauses pursue the same goal, namely prohibiting discriminatory treatment of investments, the legal standard for breaches of national and MFN treatment is similar. Both standards require a three-stage analysis, assessing: (i) whether the State accorded “treatment” to the investor or its investment; (ii) whether the State accorded such treatment in “like circumstances” to other investors or investments; and (iii) whether the treatment was less favourable than that afforded to the other investors or investments.

⁸⁰³ BIT, at Art. 5, **Exhibit CL-0003-ENG-FR**.

⁸⁰⁴ *UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Decision on Preliminary Issues of Jurisdiction, dated 3 March 2016, at para. 162, **Exhibit CL-0090-ENG**.

⁸⁰⁵ R. Dolzer and C. Schreuer (eds.), *Principles of International Investment Law*, 2nd ed., 2012, at p. 206, **Exhibit CL-0074-ENG**.

⁸⁰⁶ *Vercara, LLC (formerly Security Services, LLC d/b/a Neustar Security Services (formerly Neustar, Inc.) v. Republic of Colombia*, ICSID Case No. ARB/20/7, Award, dated 20 September 2024, at para. 690, **Exhibit CL-0034-ENG**.

413. In line with this logic, the tribunal in *Apotex v USA* observed that its legal analysis in relation to the national treatment obligation in that case applied “*mutatis mutandis*” to the MFN obligation.⁸⁰⁷ The tribunal in *Parkerings v. Lithuania* similarly confirmed that:

Most-favoured-nation (MFN) clauses are by essence very similar to ‘*National Treatment*’ clauses. They have similar conditions of application and basically afford indirect advantages to their beneficiaries, namely a treatment no less favourable than the one granted to third parties. Tribunals’ analyses of the *National Treatment* standard will therefore also be useful to discuss the alleged violation of the *MFN* standard.⁸⁰⁸

414. Accordingly, to analyse whether Burkina Faso breached its national treatment and MFN obligations, it must follow the same three-stage test.

415. **First**, the Tribunal must determine whether Burkina Faso accorded to the Claimant and/or their investments treatment “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments”.⁸⁰⁹ This is a broad and undemanding requirement, as it encompasses all conceivable measures taken by the State with respect to the investor’s investment. As the *Merrill & Ring* tribunal observed:

This [i.e., treatment] is a broad definition indeed, as it includes almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor’s business activity.⁸¹⁰

⁸⁰⁷ *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1 (“*Apotex v USA*”), Award, dated 25 August 2014, at para. 8.60, **Exhibit CL-0083-ENG**.

⁸⁰⁸ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8 (“*Parkerings v Lithuania*”), Award, dated 11 September 2007, at para. 366, **Exhibit CL-0043-ENG**; see also *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at para. 228, **Exhibit CL-0062-ENG** (“[T]he requirement for MFN treatment tracks that of the national treatment requirement. Accordingly, it must be demonstrated first that the Claimant, as an investor, is in ‘like circumstances’ with the investor of another Party or of a non-Party, or that the Claimant’s investment is in ‘like circumstances’ with the investment of an investor of another Party or of a non-Party. And second, it must be shown that the treatment received by Claimant was less favourable than the treatment received by the comparable investor or investment.”); *Apotex v. USA*, Award, dated 25 August 2024, at para. 8.60, **Exhibit CL-0083-ENG** (noting that its legal analysis in relation to the national treatment applies “*mutatis mutandis*” to the most-favoured nation treatment).

⁸⁰⁹ BIT, at Arts. 4 and 5, **Exhibit CL-0003-ENG-FR**.

⁸¹⁰ *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1 (“*Merrill & Ring v Canada*”), Award, dated 31 March 2010, at para. 79, **Exhibit CL-0067-ENG**.

416. The tribunal in *Bayindir v Pakistan I* further confirmed that the scope of the national treatment is not limited to regulatory treatment but “may also apply to the manner in which a State ... exercises its rights”.⁸¹¹ Accordingly, investment treaty tribunals have held that all that is required to satisfy this prong of the test is that the State’s conduct has had a “practical impact” on the investor’s investment.⁸¹²
417. **Second**, the Tribunal must analyse whether Burkina Faso accorded the Claimant and its investment treatment no less favourable than that which, “in like circumstances”, it grants to comparators.⁸¹³ For purposes of the national treatment analysis, the relevant comparators will be “local investors or investments”, whereas with respect to MFN treatment, the relevant comparators will be investors of a third State or their investments.⁸¹⁴
418. Prior arbitral awards have confirmed that the determination of “like circumstances” is a fact-driven enquiry. As the *Pope & Talbot v. Canada* tribunal explained:

The Tribunal must resolve this dispute by defining the meaning of ‘like circumstances.’ It goes without saying that the meaning of the term will vary according to the facts of a given case. By their very nature, ‘circumstances’ are context dependent and have no unalterable meaning across the spectrum of fact situations.⁸¹⁵

⁸¹¹ *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009, para. 388, **Exhibit CL-0060-ENG**.

⁸¹² *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, dated 30 November 2000, at para. 254, **Exhibit CL-0012-ENG**; *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1 (“*UPS v Canada*”), Award on the Merits, dated 11 June 2007, at para. 86, **Exhibit CL-0040-ENG**.

⁸¹³ *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, dated 22 August 2016, at para. 563, **Exhibit CL-0094-ENG**.

⁸¹⁴ *UPS v Canada*, Award on the Merits, dated 11 June 2007, at para. 83(b), **Exhibit CL-0040-ENG**; *Corn Products v. Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 117, **Exhibit CL-0048-ENG**; *William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04 (“*Bilcon v Canada*”), Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **Exhibit CL-0088-ENG**.

⁸¹⁵ *Pope & Talbot Inc. v. Government of Canada*, UNCITRAL (“**Pope & Talbot**”), Award on the Merits of Phase 2, dated 10 April 2001, at para. 75, **Exhibit CL-0013-ENG**; see also *Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC v. United Mexican States*, ICSID Case No. ARB/21/25, Decision on Jurisdiction and Liability, dated 4 November 2024, at para. 541, **Exhibit CL-0020-ENG** (“[D]etermining whether a domestic investor or investment identified by a claimant is in ‘like circumstances’ with a claimant or its investment(s) is a fact-specific inquiry.”)

419. Importantly, investment treaty tribunals have also found that the concept of “like circumstances” as referred to in Articles 4 and 5 of the BIT is flexible and does not require the comparator investors or investments to be in **identical** circumstances.⁸¹⁶
420. Thus, when there are no identical comparators, the tribunal can still identify comparators which, based on the similarity of their circumstances, are in “like circumstances” with that investor. The tribunal in *ADM v. Mexico* applied this approach when comparing fructose and cane sugar producers, which were similar but not identical. The tribunal held that “[w]hen no identical comparators exist, the foreign investor may be compared with less like comparators, if the overall circumstances of the case suggest that they are in like circumstances”.⁸¹⁷
421. While the range of characteristics that a tribunal may take into account to identify a similarly situated comparator is not fixed, as a practical matter, tribunals have considered the following three factors: (a) whether the entities operate under the same legal regime; (b) whether the entities operate in the same business or economic sector; and (c) whether the entities provide the same or competing products or services.⁸¹⁸ In principle, a claimant need only identify one comparator which is granted more favourable treatment in order to satisfy this prong of the test.⁸¹⁹
422. **Third**, the Tribunal must determine whether Burkina Faso treated the Claimant or its investments “less favourably” than the relevant comparator(s), *viz.*, the local or foreign investors or investments.⁸²⁰ The tribunal in *Bayindir v Pakistan I* stressed that “[t]he mere fact

⁸¹⁶ *Corn Products v. Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 129, **Exhibit CL-0048-ENG**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at para. 692, **Exhibit CL-0088-ENG**.

⁸¹⁷ *ADM v. Mexico*, Award, dated 21 November 2007, at para. 202, **Exhibit CL-0045-ENG**.

⁸¹⁸ *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Award, dated 12 January 2011, at paras. 165-167, **Exhibit CL-0073-ENG**; *Merrill & Ring v. Canada*, Award, dated 31 March 2010, at para. 89, **Exhibit CL-0067-ENG**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 692, 693, **Exhibit CL-0088-ENG**; *S.D. Myers v. Canada*, Partial Award, dated 30 November 2000, at para. 250, **Exhibit CL-0012-ENG**; *UPS v Canada*, Award on the Merits, dated 11 June 2007, at paras. 101-104, **Exhibit CL-0040-ENG**; *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at paras. 76, 88, **Exhibit CL-0013-ENG**; *Corn Products v. Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 120, **Exhibit CL-0048-ENG**; *Cargill v. Mexico*, Award, dated 18 September 2009, at paras. 205-207 **Exhibit CL-0062-ENG**.

⁸¹⁹ Andrea, B.K., National Treatment, in Reinisch, A. (ed.), *Standards of Investment Protection*, 2008, at p. 38, **Exhibit CL-0047-ENG**.

⁸²⁰ *UPS v Canada*, Award on the Merits, dated 11 June 2007, at para. 83(c), **Exhibit CL-0040-ENG**; *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 193, **Exhibit CL-0062-ENG**; *Corn Products v. Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 117, **Exhibit CL-0048-ENG**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **Exhibit CL-0088-ENG**.

that Bayındır had always been subject to exactly the same legal and regulatory framework as everybody else in Pakistan does not necessarily mean that it was actually treated in the same way as local (or third countries) investors”.⁸²¹ The term “no less favourable” means “equivalent to, not better or worse than, the best treatment accorded to the comparator”.⁸²² In determining whether the treatment of the claimant or its investments was “less favourable” than the treatment of the comparator, tribunals have assessed the adverse effects of measures imposed on foreign investors and their investments.⁸²³

423. However, the claimant need not have suffered some “disproportionate disadvantage” as a result of the State’s treatment;⁸²⁴ rather, “a determination of a breach of the national treatment guarantee relies exclusively upon the showing of a difference of treatment irrespective of the magnitude of such difference”.⁸²⁵
424. As noted above in relation to expropriation, discrimination is primarily an effects-based test. It is therefore not necessary to demonstrate discriminatory intent.⁸²⁶ Indeed, tribunals have observed that “in some cases, short of a smoking-gun, such proof of discriminatory intent may be impossible to provide”.⁸²⁷
425. Importantly, however, as also noted above, where discriminatory intent is proven, there is no need to demonstrate that the measures had a discriminatory effect. The *Corn Products* tribunal confirmed this, noting that “[w]hile the existence of an intention to discriminate is not a requirement for a breach . . . where such an intention is shown, that is sufficient”.⁸²⁸

⁸²¹ *Bayındır İnşaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 206, **Exhibit CL-0027-ENG**.

⁸²² *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at paras. 42, 118, **Exhibit CL-0013-ENG**; *ADM v. Mexico*, Award, dated 21 November 2007, at para. 205, **Exhibit CL-0045-ENG**.

⁸²³ *ADM v. Mexico*, Award, dated 21 November 2007, at para. 209, **Exhibit CL-0045-ENG**; *S.D. Myers v. Canada*, Partial Award, dated 30 November 2000, at para. 254, **Exhibit CL-0012-ENG**.

⁸²⁴ *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at paras. 71-72 and 118, **Exhibit CL-0013-ENG**.

⁸²⁵ *Cargill v. Poland*, Award, dated 29 February 2008, at para. 410, **Exhibit CL-0049-ENG**.

⁸²⁶ *Resolute Forest Products Inc. v Government of Canada*, PCA Case No. 2016-13, (“*Resolute v Canada*”), Award, dated 25 July 2022, at para. 546, **Exhibit CL-0122-ENG**; *Bayındır İnşaat v Pakistan*, Award, dated 27 August 2009, at para. 390, **Exhibit CL-0060-ENG**; *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39 (“*Gavrilovic v Croatia*”), Award, dated 26 July 2018, at para. 1206, **Exhibit CL-0102-ENG**.

⁸²⁷ *Resolute v Canada*, Award, dated 25 July 2022, at para. 546, **Exhibit CL-0122-ENG**; see also *Marvin Roy Feldman Karpa v. The United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated 16 December 2002, at paras. 181-183, **Exhibit CL-0017-ENG**; *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at para. 79, **Exhibit CL-0013-ENG**.

⁸²⁸ *Corn Products v. Mexico*, Decision on Responsibility, dated 15 January 2008, at para. 138, **Exhibit CL-0048-ENG**.

426. Once a *prima facie* case is made regarding a breach of national or MFN treatment, the burden shifts to the respondent to demonstrate that the “State’s legitimate objective justifies such different treatment in relation to the specificity of the investment”.⁸²⁹ As the tribunal in *Bilcon v. Canada* explained in relation to the national treatment obligation under the NAFTA, which is materially similarly worded to Article 4 of the BIT:

[O]nce a *prima facie* case is made out under [Article 1102 of the NAFTA], the onus is on the host state to show that a measure is still sustainable within the terms of Article 1102. It is the host state that is in a position to identify and substantiate the case, in terms of its own laws, policies and circumstances, that an apparently discriminatory measure is in fact compliant with the ‘national treatment’ norm set out in Article 1102.⁸³⁰

427. As the tribunal in *Pope & Talbot* observed, to demonstrate that the differential treatment was nonetheless compliant with the national treatment standard, the State must demonstrate that such measure has:

[A] reasonable nexus to rational government policies that (1) do not distinguish, on their face or de facto, between foreign-owned and domestic companies, and (2) do not otherwise unduly undermine the investment liberalizing objectives of NAFTA.⁸³¹

428. The same tribunal explained further that the national treatment standard requires that “any difference in treatment . . . be justified by showing that it bears a reasonable relationship to rational policies not motivated by preference of domestic over foreign owned investments”.⁸³² Several other investment treaty tribunals have reached the same conclusion.⁸³³

⁸²⁹ *Parkerings v. Lithuania*, Award, dated 11 September 2007, at para. 371(iii), **Exhibit CL-0043-ENG**; *Apotex v. USA*, Award, dated 25 August 2024, at para. 8.65, **Exhibit CL-0083-ENG**; *Gavrilovic v. Croatia*, Award, dated 26 July 2018, at para. 1193, **Exhibit CL-0102-ENG** (citing *Apotex v USA* with approval).

⁸³⁰ *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at para. 723, **Exhibit CL-0088-ENG**; see also *Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, dated 6 March 2018, at para. 7.16, **Exhibit CL-0100-ENG**.

⁸³¹ *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at para. 78, **Exhibit CL-0013-ENG**; *ADM v. Mexico*, Award, dated 21 November 2007, at para. 205, **Exhibit CL-0045-ENG**.

⁸³² *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, dated 10 April 2001, at para. 79, **Exhibit CL-0013-ENG**.

⁸³³ See e.g., *Resolute v Canada*, Final Award, dated 25 July 2022, at para. 575, **Exhibit CL-0122-ENG**; *S.D. Myers v. Canada*, Partial Award, dated 30 November 2000, at para. 246, **Exhibit CL-0012-ENG**; *Marvin Roy Feldman Karpa v. The United Mexican States*, Award, dated 16 December 2002, at paras. 170, 182, **Exhibit CL-0017-ENG**; *GAMI v. Mexico*, Final Award, dated 15

429. In sum, to prove that its discriminatory measures were justified, Burkina Faso must demonstrate that its actions were reasonably related to a legitimate, non-discriminatory public policy goal. As set forth below, Burkina Faso cannot do so in this case.

**4.3.2 Burkina Faso discriminated against the Claimant and its investments
in breach of Articles 4 And 5 of the BIT**

430. In the present case, Burkina Faso has discriminated against the Claimant and its protected investments, in breach of Articles 4 and 5 of the BIT. Specifically, Burkina Faso arbitrarily and retroactively revoked the Claimant's Tankoro 2 Permit and granted it to a Burkinabe competitor, in furtherance of the State's *de facto* policy of anti-Western resource nationalism spearheaded by Capitaine Traoré.⁸³⁴ In doing so, it treated the Claimant and its investments less favourably than domestic and foreign investors and thereby breached its national treatment and MFN obligations.

431. As noted above, where a State has acted with discriminatory intent, this fact in and of itself is sufficient to demonstrate a breach of the national treatment and MFN standards. Burkina Faso's discriminatory intent in this case is amply demonstrated. Burkina Faso's measures against the Claimant were not isolated administrative decisions, but rather were part of a systemic policy to reassert State dominance over mineral resources, favour domestic and non-Western enterprises, and marginalise Western mining companies.

432. Since seizing power through a *coup d'état* in September 2022, Capitaine Traoré and the PMSR have pursued an aggressive campaign aimed at consolidating political control and eliminating Western influence from Burkina Faso's economy, particularly in the mining sector.⁸³⁵ This campaign has included:

- (a) the requisitioning of 200 kilograms of gold from Endeavour's Mana mine under false pretences of "public necessity";⁸³⁶

November 2004, at para. 114, **Exhibit CL-0025-ENG**; *Cargill v. Mexico*, Award, dated 18 September 2009, at paras. 206, 209, **Exhibit CL-0062-ENG**.

⁸³⁴ See *supra*, section 2.3.

⁸³⁵ See *supra*, section 2.3.1.

⁸³⁶ See *supra*, section 2.3.1.

- (b) the 2024 amendments to the Mining Code mandating increased State equity participation and dividend rights;⁸³⁷
 - (c) the forced transfer of mining permits from foreign companies — including Endeavour and Lilium Mining — to the State-owned enterprise SOPAMIB in June 2025;⁸³⁸ and
 - (d) the coercion of WAF to grant Burkina Faso a 15% free carried equity interest in its Sanbrado, Kiaka, and Toega projects, and to pay a “priority dividend” of US\$8.35 million to the State — payments that the company has described as “non-discretionary” under pressure from the authorities.⁸³⁹
433. Burkina Faso’s treatment of foreign investors such as the Claimant stands in sharp contrast to that of domestic mining companies, none of whom, to the Claimant’s knowledge, have been subjected to the above measures.⁸⁴⁰
434. Further, Burkina Faso appears to have favoured an investor from politically aligned or strategically favoured State in at least one case. Specifically, Burkina Faso has recently issued Nordgold, a Russian mining company, a new mining licence for the Niou mine and has allowed Nordgold to retain 90% ownership of its Bissa and Bouly mines — without applying the 2024 Mining Code’s “mandatory” requirement for a 15% State free carried interest.⁸⁴¹ In other words, while Burkina Faso compelled Western investors such as Sarama, Endeavour, and WAF to surrender equity and face arbitrary expropriations, it has expressly exempted domestic and at least one Russian investor from such measures.
435. The arbitrary revocation of the Claimant’s Tankoro 2 Permit forms part of this broader campaign and constitutes a deliberate act of discrimination against Western investors such as the Claimant. Minister Boussim explicitly conditioned the issuance of the Tankoro 2 Permit’s *arrêté* on two improper demands: (1) that the Canadian government provide military drone software to Burkina Faso for drones Burkina Faso sought to purchase from Turkey, and (2)

⁸³⁷ See *supra*, section 2.3.

⁸³⁸ See *supra*, section 2.3; Reuters, *Burkina Faso Completes Nationalisation of Five Gold Mining Assets*, dated 12 June 2025, available at <https://www.reuters.com/world/africa/burkina-faso-completes-nationalisation-five-gold-mining-assets-2025-06-12/>, **Exhibit C-0294-ENG**.

⁸³⁹ See *supra*, section 2.3.

⁸⁴⁰ See *supra*, section 2.3.

⁸⁴¹ See *supra*, section 2.3.

that Sarama make an irregular payment.⁸⁴² Bizarrely, he stated that because Sarama was a Canadian company, it should lobby to persuade Canada to lift its export ban, promising to sign the permit within three days if Canada complied.⁸⁴³ When Sarama explained that it could not meet this political demand, Minister Boussim refused to issue the permit and later offered a false pretext — claiming Minister Ouedrago’s prior approval of the Tankoro 2 Permit was made “in error”.⁸⁴⁴ This inconsistent and unjustified reversal shows that Burkina Faso targeted Sarama due to its nationality, using the permit as leverage in its diplomatic dispute with Canada.

436. This discriminatory intent in and of itself is sufficient (but not necessary) to establish a breach of Burkina Faso’s national treatment and MFN obligations. In any event, all of the elements of the test for discrimination in breach of national treatment and MFN are met in this case.
437. **First**, Burkina Faso’s measures plainly constitute “treatment” within the meaning of Articles 4 and 5 of the BIT, as they directly concern the management, conduct, operation, and disposition of the Claimant’s protected investments. The revocation of the Tankoro 2 Permit — the very legal instrument conferring the Claimant’s right and ability to explore and develop its projects — had an immediate and severe negative effect on the Claimant’s investments, extinguishing their value and preventing their commercial and economic use.
438. **Second**, Burkina Faso accorded the Claimant and its investments less favourable treatment than that it accorded in “like circumstances” to domestic investors and other foreign investors engaged in gold exploration and production in Burkina Faso. As regards domestic investors, Soleil, a Burkinabe mining company, operated under the same regulatory framework, in the same industry, and subject to the same laws and regulations as the Claimant. However, while Burkina Faso sought to subject the Claimant’s Tankoro 2 Permit to arbitrary and unwarranted conditions and then baselessly revoked it without explanation, it then proceeded to grant that same permit to Soleil without imposing all of the conditions it had imposed on the Claimant. It therefore manifestly treated Soleil and its investments more favourably than the Claimant and its investments. As regards other foreign investors and their investments, Burkina Faso has

⁸⁴² Dinning WS1, at para. 145.

⁸⁴³ Dinning WS1, at para. 145.

⁸⁴⁴ Dinning WS1, at para. 151.

permitted at least one company (Nordgold) from politically favoured nations such as Russia, to continue its gold mining operations undisturbed and on preferential terms.⁸⁴⁵

439. **Third**, Burkina Faso’s differential treatment is not justified by any legitimate public policy objective. The revocation of the Claimant’s Tankoro 2 Permit bore no relation to any rational government policy. It was not grounded in any failure by the Claimant to comply with its obligations under the Mining Code or relevant regulations; nor was it taken in furtherance of any legitimate public purpose. Rather, it appears to have been politically motivated and economically self-serving, designed to consolidate the junta’s control over gold production and to reward the entities aligned with the regime’s anti-Western orientation.
440. For all of these reasons, Burkina Faso breached its obligation under Article 4 of the BIT to accord national treatment, as well as its obligation under Article 5 of the BIT to accord MFN to the Claimant’s investments.

5. SUMMARY OF SARAMA’S DAMAGES

441. The Respondent’s breaches of the BIT deprived Sarama of the full value of its investment in the Sanutura Project and the Additional Projects. Sarama is entitled to full reparation for the losses suffered as a result of these violations of the BIT under international law.
442. As explained below, the appropriate measure of damages is the “fair market value” of Sarama’s investments in Burkina Faso (**Section 5.1**). Accordingly, Sarama has retained independent valuation experts, Mr Edmond Richards and Mr Simon Procopiou, respectively a partner and a director at Accuracy, to quantify the total loss sustained by Sarama as a result of Burkina Faso’s breaches of the BIT. On this basis, Sarama sets out below its entitlement to compensation for the Sanutura Project and the Additional Projects (**Section 5.2**). Further, Sarama is entitled to interest for its losses at a commercial rate (**Section 5.3**) and its full costs arising from the arbitration (**Section 5.4**).

5.1 Fair Market Value Is the Appropriate Standard of Compensation under the BIT

443. While the BIT defines the standard of compensation for lawful expropriation, it does not set out the applicable form or standard of reparation in the case of unlawful expropriation or other

⁸⁴⁵ See *supra*, section 2.3.1.

losses suffered due to breaches of the BIT by the host State.⁸⁴⁶ As recognised by many investment treaty tribunals, in absence of *lex specialis*, customary international law on State responsibility applies and provides the applicable remedies for the Respondent's breaches.⁸⁴⁷

444. The relevant standard under customary international law is well established: the State must provide full reparation for the injury caused by its breach of its international law obligations. Article 31(1) of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (the “**ILC Articles**”) provides that “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act”.⁸⁴⁸ As the Permanent Court of International Justice (“**PCIJ**”) stated in *Chorzów Factory*, full reparation in an award of monetary damages should “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed”.⁸⁴⁹ The ILC Articles confirm the approach of the PCIJ in *Chorzów* that compensation should cover all “financially assessable damages including loss of profits insofar as it is established”.⁸⁵⁰
445. Compensation should be determined on the basis of the Claimant's established loss so as to “wipe out” the harm inflicted by Burkina Faso's breaches of the BIT. Such compensation “should be commensurate with the loss, so that the injured party may be made whole”.⁸⁵¹
446. With respect to lawful expropriation, Article 10(2) of the BIT provides that:

[C]ompensation ... must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place

⁸⁴⁶ BIT, at Art. 10(2)-(3), **Exhibit CL-0003-ENG-FR**.

⁸⁴⁷ *ADC v. Hungary*, Award, dated 2 October 2006, at para. 483, **Exhibit CL-0035-ENG**; *Siag v. Egypt*, Award, dated 1 June 2009, paras. 535, 540, **Exhibit CL-0057-ENG**; *Bear Creek Mining v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, dated 30 November 2017, at para. 595, **Exhibit CL-0098-ENG**; *ESPF Beteiligungs GmbH et al. v. Italian Republic*, Award, ICSID Case No. ARB/16/5, Award, dated 14 September 2020, at para. 836, **Exhibit CL-0116-ENG**.

⁸⁴⁸ ILC Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Art.31(1), **Exhibit CL-0015-ENG**.

⁸⁴⁹ *Case Concerning the Factory at Chorzow (Germany v. Poland)*, PCIJ Series A, No. 17, Judgment No. 13 (Merits), dated 13 September 1928, p. 47, **Exhibit CL-0006-ENG**; see also *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at paras. 792-793, **Exhibit CL-0052-ENG**.

⁸⁵⁰ ILC Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Art. 36(2), **Exhibit CL-0015-ENG**.

⁸⁵¹ *Opinion in the Lusitania Cases*, German-U.S. Mixed Claims Commission, *Reports of International Arbitral Awards*, 1 November 1923, p. 39, **Exhibit CL-0005-ENG**.

(“date of expropriation”), and must not reflect a change in value occurring because the intended expropriation had become known earlier. Valuation criteria must include going concern value, asset value including the declared tax value of tangible property, and other criteria, including non-economic criteria, to determine fair market value.⁸⁵²

447. Article 10(3) of the BIT clarifies that the host State should pay compensation “expeditiously” and in a “fully realizable and freely transferable” manner.⁸⁵³ Further, Article 10(3) specifies that the compensation must be provided in a “freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment”.⁸⁵⁴ For avoidance of doubt, and in the absence of contrary instruction in the BIT, customary international law provides that, for cases of unlawful expropriation, compensation should be no less than the compensation prescribed for lawful expropriation.⁸⁵⁵
448. The jurisprudence of investment treaty tribunals confirms the approach to the calculation of damages taken in the BIT and under customary international law, which is that the Tribunal should assess Sarama’s losses resulting from Burkina Faso’s breaches of the BIT on the basis of fair market value (“FMV”). The tribunal in *Funnekotter v. Zimbabwe* confirmed that the “[g]enuine value must be determined on the basis of the market value of the investment at the time of the expropriation”.⁸⁵⁶ Likewise, the tribunal in *CME v. Czech Republic* similarly concluded that “‘fair market value’ equates with ‘just compensation’ that represents the ‘genuine value’ of the property affected”.⁸⁵⁷

⁸⁵² BIT, Art. 10(2), **Exhibit CLA-0003-ENG-FR**.

⁸⁵³ BIT, Art. 10(3), **Exhibit CLA-0003-ENG-FR**.

⁸⁵⁴ BIT, Art. 10(3), **Exhibit CLA-0003-ENG-FR**.

⁸⁵⁵ S. Ripinsky and K. Williams, *Damages in International Investment Law*, British Institute of International and Comparative Law (2008), Ch. 6.3, p. 8, at para. 6.3.2(b)), **Exhibit CL-0046-ENG** (“[...] logically, compensation for unlawful expropriation cannot be lower than that for a lawful one.”).

⁸⁵⁶ *Bernardus Henricus Funnekotter et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award, dated 22 April 2009, at para. 130, **Exhibit CL-0056-ENG**; see also *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, dated 22 August 2016, at para. 751, **Exhibit CL-0094-ENG**; *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 845 **Exhibit CL-0092-ENG**; *EDF International S.A., SAUR International S.A. and Leon Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award, dated 11 June 2012, at paras. 1231-1232, **Exhibit CL-0075-ENG**.

⁸⁵⁷ *CME Czech Republic B.V. v. The Czech Republic*, UNCITRAL, Final Award, dated 14 March 2003, at para. 493, **Exhibit CL-0018-ENG**.

449. Accuracy thus assesses Sarama’s damages “by reference to the fair market value (‘FMV’) of Sarama’s Investment immediately before the alleged expropriation date of 25 August 2023”, the date on which Minister Boussim informed Sarama by way of a letter that he had retroactively “rejected” Sarama’s application for the Tankoro 2 Permit.⁸⁵⁸ Thus, in accordance with Article 10(2) of the BIT, which provides that the FMV of an investment should be considered at the time “immediately before the expropriation took place”, Accuracy adopts 24 August 2023 as the Valuation Date for its assessment of damages.⁸⁵⁹
450. The concept of FMV is one of the most widely used bases of value in business valuation and international investment law. Accuracy defines FMV as:
- the price, expressed in cash or equivalents, at which an asset would change hands between a hypothetical buyer and seller, acting at arm’s length in an open market, where the parties are knowledgeable, informed, prudent and under no compulsion to transact.⁸⁶⁰
451. This definition of FMV is consistent with the guidance of international valuation councils and industry-specific valuation committees, including the Canadian Institute of Mining, Metallurgy and Petroleum (“CIMVAL”) and the Australian Institute of Mining and Metallurgy and the Australian Institute of Geoscientists (“VALMIN”).⁸⁶¹ This definition of FMV also accords with that of the International Glossary of Business Valuation Terms published by the American Society of Appraisers,⁸⁶² which investment treaty tribunals have regularly referenced and adopted.⁸⁶³ Similarly, the Iran-U.S. Claims Tribunal in *Starrett Housing Corporation* described the market price as “the price a willing buyer would pay to a willing seller in circumstances in

⁸⁵⁸ Accuracy Report, at para. 1.16; RFA, at para. 62.

⁸⁵⁹ Accuracy Report, at para. 1.16.

⁸⁶⁰ Accuracy Report, at para. 4.9.

⁸⁶¹ Accuracy Report, at para. 4.9, fn. 96.

⁸⁶² AICPA, “Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset” (2007), p. 44, **Exhibit CL-0037-ENG** (FMV is “the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms’ length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts”).

⁸⁶³ *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, dated 28 September 2007, at para. 405, **Exhibit CL-0044-ENG**; *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award, dated 14 July 2006, at para. 424, **Exhibit CL-0032-ENG**; *CMS v. Argentina*, Case No. ARB/01/8, Award, dated 12 May 2005, at para. 402, **Exhibit CL-0026-ENG**.

which each had good information, each desired to maximise his financial gain, and neither was under duress or threat”.⁸⁶⁴

452. In cases where various breaches of the BIT caused the same loss, the same standard of compensation applies to all breaches.⁸⁶⁵ As explained above in **Section 4**, the Respondent expropriated Sarama’s investments and breached the BIT’s FET, national treatment, and MFN standards with respect to Sarama’s investments. These breaches, individually and together, resulted in the complete destruction of the value of Sarama’s investments. The FMV standard applies as the proper valuation approach to compensate Sarama for all the Respondent’s breaches of the BIT at the 24 August 2023 Valuation Date.

5.1.1 The proper valuation approaches to assess the FMV of the Claimant’s investments are the cost and market approaches

453. Accuracy explains that the Claimant’s loss should be assessed as the difference between the FMV of Sarama’s investments but for Burkina Faso’s breaches of the BIT on the Valuation Date (the “**But For Situation**”) and the actual value of the investment following such breaches, which is nil save for *de minimis* sums received by Sarama following these breaches.⁸⁶⁶ As such, the Claimant’s loss is equal to the FMV of its investments under the But For Situation at the Valuation Date.⁸⁶⁷
454. As Accuracy explains, the appropriate valuation method for a mining project depends on the classification of the mineral property.⁸⁶⁸ CIMVAL defines four categories of mineral properties:

⁸⁶⁴ *Starett Housing Corporation, Starrett Systems, Inc. et al v. Republic of Iran, Bank Markazi Iran et al*, Iran-U.S.C.T.R., Case No. 24, Final Award (Award No. 314-24-1), dated 14 August 1987, at para. 277, **Exhibit CL-0009-ENG**.

⁸⁶⁵ *See, e.g., Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award II, dated 20 August 2007, at para. 8.2.8, **Exhibit CL-0042-ENG**; *Stati v. Kazakhstan*, SCC Case No. 116/2010, Award, dated 19 December 2013, paras. 1205-1207, **Exhibit CL-0080-ENG**; *Metaclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated 30 August 2000, at para. 113, **Exhibit CL-0011-ENG**.

⁸⁶⁶ Accuracy Report, at paras. 4.2-4.3.

In this respect, Accuracy notes that Sarama sold the Koumandara Project for US\$ 160,000 to mitigate its losses in Burkina Faso and therefore has deducted this US\$ 160,000 from its assessment of FMV in the But for Situation. Accuracy Report, at para. 4.6.

⁸⁶⁷ Accuracy Report, at paras. 4.2-4.3.

⁸⁶⁸ Accuracy Report, at para. 4.15.

- (a) **Exploration Property** means a Mineral Property that does not contain Mineral Reserves or Mineral Resources and for which economic viability has not been demonstrated.
 - (b) **Mineral Resource Property** means a Mineral Property that contains a Mineral Resource as defined in the CIM Definition Standards on Mineral Resources and Reserves adopted (“**CIM Definition Standards**”), as defined in National Reporting Standards, or other estimates of quantity and grade of mineralisation that are reconciled with the CIM Definition Standards.
 - (c) **Development Property** means a Mineral Property that contains Mineral Reserves and/or Mineral Resources and for which economic viability has been demonstrated by a Feasibility Study or Pre-Feasibility Study and includes a Mineral Property that has a current positive Feasibility Study or Pre-Feasibility Study but that is not yet in production; and
 - (d) **Production Property** means a Mineral Property with an operating mine, with or without a processing plant, which has been fully commissioned and is in production.⁸⁶⁹
455. Accuracy further explains that under CIMVAL, a “**Mineral Resource**” is “a concentration or occurrence” of minerals with “reasonable prospects for eventual economic extraction”,⁸⁷⁰ whereas a “**Mineral Reserve**” is “the economically mineable part of a measured and/or indicated Mineral Resource ... and is defined by studies at a pre-feasibility or feasibility level”.⁸⁷¹
456. Accuracy concludes that, as at the Valuation Date, the Sanutura Project and the Karankasso Project qualified as Mineral Resource Properties (“**MRP**”) because, in each case, (i) there existed a mineral resource statement prepared in accordance with NI 43-101 and the JORC Code, and (ii) “no (pre-)feasibility study had yet been released”.⁸⁷² By contrast, Accuracy

⁸⁶⁹ Accuracy Report, at para. 4.16.

⁸⁷⁰ Accuracy Report, at para. 4.17(a).

⁸⁷¹ Accuracy Report, at para. 4.17(b).

⁸⁷² Accuracy Report, at paras. 4.19, 4.21.

concludes that the Koumandara Project qualified as an Exploration Property (“EP”) because it did not have defined mineral resources.⁸⁷³

457. In light of those classifications, Accuracy considers that the two most appropriate methods to determine the FMV of the Claimant’s investments in Burkina Faso are: (i) the cost approach; and (ii) the market approach.⁸⁷⁴
458. As Accuracy explains, the cost approach “is based on the economic principle that a hypothetical buyer would not pay more for an asset than it would cost them to obtain an asset of equal utility, whether by purchase or by construction”.⁸⁷⁵ However, as Accuracy explains, one of the limitations of the cost approach is that it does not account for future income generation and the growth of an investment beyond its valuation date.⁸⁷⁶ As a result, the cost approach is generally used to provide a minimum or floor-level value for a business or, alternatively, in specific situations such as insolvency, where a company is no longer a going concern.⁸⁷⁷
459. The market approach is a comparative valuation method based on comparable transactions and publicly quoted share prices.⁸⁷⁸ Under CIMVAL, there are two “primary” market-based valuations: (a) transaction multiples of comparable companies, which is “*widely used with variations*”; and (b) option agreement terms, which is also “*widely used*” but “*commonly not discounted as it should be*”.⁸⁷⁹
460. Valuation guides for mining projects from major mining jurisdictions such as CIMVAL in Canada and VALMIN in Australia indicate that the cost and market approaches are appropriate to value an MRP such as the Sanutura Project and the Karankasso Project.⁸⁸⁰ Accuracy explains that it does not consider the use of an income method, such as a discounted cash flow analysis, appropriate to value the FMV of the Claimant’s investments in Burkina Faso.⁸⁸¹ CIMVAL and

⁸⁷³ Accuracy Report, at para. 4.20.

⁸⁷⁴ Accuracy Report, at Sections 5, 6.

⁸⁷⁵ Accuracy Report, at para. 4.10(c).

⁸⁷⁶ Accuracy Report, at para. 4.10(c).

⁸⁷⁷ Accuracy Report, at para. 4.10(c).

⁸⁷⁸ Accuracy Report, at para. 4.10(b).

⁸⁷⁹ Accuracy Report, at para. 6.4.

⁸⁸⁰ Accuracy Report, at paras. 4.22, 4.24.

⁸⁸¹ Accuracy Report, at paras. 4.30-4.32.

VALMIN caution against the use of the income method where, as here, “inferred resources account for a large proportion of total resources”.⁸⁸² Accordingly, Accuracy relies on both the cost and market approaches to assess the FMV of the Claimant’s investments.⁸⁸³

5.1.2 The Multiple of Exploration Expenditures method is an appropriate valuation method in the present case

461. Accuracy determines the FMV of the Sanutura Project under the cost approach according to the Multiple of Exploration Expenditure (“MEE”) method, a cost-based valuation method specific to mining development projects.⁸⁸⁴ CIMVAL recognises the MEE method as a “primary” valuation method under the cost approach.⁸⁸⁵ Accuracy explains that it prefers the MEE method to alternative methods of valuation under the cost approach, such as appraised value, because the MEE method is “(i) less subjective than appraised value and (ii) appraised value would require information that is not available” to Accuracy, such as estimations of future warranted costs.⁸⁸⁶
462. The MEE method involves a two-step process.⁸⁸⁷ **First**, a cost base of relevant and reasonable past expenditures for the mineral property being valued is established, including directly attributable exploration and evaluation expenditures and reasonable administrative costs.⁸⁸⁸ **Second**, a Prospectivity Enhancement Multiplier (“PEM”) or adjustment factor is applied to reflect the extent to which these expenditures have enhanced the project’s perceived potential.⁸⁸⁹
463. Investment treaty tribunals have endorsed the MEE method in cases involving exploration stage mining projects. For example, the tribunal in *Nachingwea et al. v. Tanzania* adopted the

⁸⁸² Accuracy Report, at para. 4.30.

⁸⁸³ Accuracy uses both the cost approach and the market approach to value the Sanutura Project and the Karankasso Project given their status as MRPs. Accuracy Report, at para. 4.32(a). Accuracy relies only on the cost approach to value the Koumandara Project as an EP without defined mineral resources, since “identifying and adjusting transactions in comparable mineral properties without mineral resources sits outside of our expertise”. Accuracy Report, at para. 4.32(b) fn.121. They consider however that “the risk in using a single valuation method for Koumandara is mitigated by its relatively small share of our overall valuation of Sarama’s Investments”. Accuracy Report, at para. 4.32(b) fn.121.

⁸⁸⁴ Accuracy Report, at Section 5.

⁸⁸⁵ Accuracy Report, at para. 5.2.

⁸⁸⁶ Accuracy Report, at para. 5.3.

⁸⁸⁷ Accuracy Report, at para. 5.4.

⁸⁸⁸ Accuracy Report, at para. 5.4.

⁸⁸⁹ Accuracy Report, at para. 5.4.

MEE methodology in its decision to award the claimants approximately US\$ 76.7 million for Tanzania’s breaches of the Tanzania-UK BIT with respect to the claimants’ investments in a nickel sulphide mining project, noting that the MEE method is “consistent with valuation guidance and ... recommended as a primary valuation approach by [CIMVAL].”⁸⁹⁰

5.2 **Burkina Faso Owes Sarama Substantial Damages for Its Breaches of the BIT Under Both the MEE and Market Approaches**

5.2.1 **The FMV of Sarama’s investments in Burkina Faso under the MEE method totals US\$ 290.0 million**

464. To assess Sarama’s damages under the MEE method, Accuracy first identifies the total costs incurred by Sarama with respect to the Sanutura Project and the Additional Projects between 8 April 2010, the date of Sarama’s first financial statement, and the Valuation Date, factoring in inflation.⁸⁹¹ Accuracy then applies a suitable PEM to Sarama’s costs to reflect how those costs increased the potential value of those projects.⁸⁹²
465. During the course of its commercial activities in Burkina Faso, Sarama and its subsidiaries recorded their exploration costs in their audited financial statements (“**AFS**”) and accompanying management discussion & analysis (“**MD&A**”) papers.⁸⁹³ Sarama’s management also provided Accuracy with Excel spreadsheet data showing Sarama’s total expenditure on the Sanutura Project and the Additional Projects between April 2010 and the Valuation Date.⁸⁹⁴
466. As explained above in **sections 2.2** and **2.3**, Sarama’s Burkinabe affiliates commenced exploration work in 2010, which they continued under various permits from 2010 up until the Valuation Date. Accuracy thus factors in two distinct types of costs incurred by Sarama and its subsidiaries in relation to the Sanutura Project and the Additional Projects in its MEE calculation: (a) exploration costs; and (b) other costs. Accuracy explains that:

⁸⁹⁰ *Nachingwea U.K. Ltd, Ntaka Nickel Holdings Ltd & Nachingwea Nickel Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award, dated 14 July 2023, paras. 352-367, **Exhibit CL-0125-ENG**.

⁸⁹¹ Accuracy Report, at para. 5.5(a).

⁸⁹² Accuracy Report, at para. 5.5(b).

⁸⁹³ Accuracy Report, at para. 5.5(a).

⁸⁹⁴ Accuracy Report, at para. 5.5(a) Accuracy tested the spreadsheet data provided by Sarama’s management against Sarama’s AFS and MD&A papers.

- (a) Exploration costs include costs incurred for drilling, metallurgical test-work and on-site labour, as well as net proceeds of sale from exploration properties and investments in the Karankasso JV;⁸⁹⁵ while
 - (b) Other costs include direct corporate costs incurred in relation to the function of certain key management personnel and indirect corporate costs such as rent, utilities and compliance costs as well as payments to and from suppliers and employees, share issue costs, and purchase of plant and equipment incurred to maintain the Claimant's business operations in Burkina Faso.⁸⁹⁶
467. Accuracy also includes Orezone's historical expenditures to enhance the prospectivity of the Bondi Deposit in Sarama's cost base under the MEE method.⁸⁹⁷ To this end, Accuracy first assesses the monetary value of the non-cash (share) consideration paid by Sarama to acquire the Bondi Deposit from Orezone in 2016 as US\$ 1.5 million according to Sarama's financial statements.⁸⁹⁸ It then consults mining industry guidance recommending inclusion of historical expenditures of a previous owner of a mineral property under the MEE method if those expenditures were "deemed to have a material effect on the perceived prospectivity of the asset".⁸⁹⁹ In this respect, Accuracy notes that Mr Schmiede considered that Orezone's "significant ... exploration works on the Bondi Deposit", including drilling programmes, geochemical essays, and structural interpretations, "prior to its sale to Sarama in 2016" were "critical to the discovery and development of the deposit".⁹⁰⁰ After factoring in the post-inflation adjusted value of Orezone's historic exploration works on the Bondi Deposit (US\$ 16.4 million), Accuracy calculates Sarama's total cost base in relation to its investments in the Sanutura Project and Additional Projects in Burkina Faso.⁹⁰¹ This results in an inflation-adjusted cost base as at the Valuation Date of US\$ 98.2 million.⁹⁰²
468. The second step of the MEE method is the selection of an appropriate PEM. For this step, Accuracy relies on a presentation prepared by the Australian Institute of Mineral Valuers and

⁸⁹⁵ Accuracy Report, at para. 5.8(a).

⁸⁹⁶ Accuracy Report, at para. 5.8(b).

⁸⁹⁷ Accuracy Report, at paras. 5.20-5.29.

⁸⁹⁸ Accuracy Report, at para. 5.21(a).

⁸⁹⁹ Accuracy Report, at para. 5.21(b).

⁹⁰⁰ Accuracy Report, at paras. 5.26-5.27 (quoting Schmiede WS1, paras. 52-55).

⁹⁰¹ Accuracy Report, at para. 5.29.

⁹⁰² Accuracy Report, at para. 5.29.

Appraisers (“AIMVA”), which sets out a range of multipliers based on the state of advancement of a mineral property.⁹⁰³ Table 5.2 below displays the applicable PEM range recommended by AIMVA and adopted by Accuracy to assess the appropriate multiple for the Sanutura Project and the Additional Projects:⁹⁰⁴

Table 5.2. Recommended range of multipliers by AIMVA

Category	Technical appraisal	Applicable PEM range
1	Limited potential for mineralisation of economic significance and/or prospectivity has been downgraded by exploration carried out prior to valuation date.	0.5 - 0.9
2	Exploration data (historical and/or current) consists of pre-drilling surveys with results sufficiently encouraging to warrant further exploration.	1.0 - 1.4
3	One or more prospects defined by geology, geochemistry and/or geophysics to the extent they present drill targets having likely economic potential.	1.5 - 1.9
4	One or more targets with significantly mineralised drill hole intersections within a clearly prospective geological context.	2.0 - 2.4
5	Exploration well advanced and infill drilling warranted in order to define or upgrade to the stage that mineral resources can be estimated.	2.5 - 2.9
6	Indicated resources have been defined but a pre-feasibility study has not recently been completed.	3.0

Source: AC-0049 AIMVA, Valuation and Appraisal of Mineral Projects 2014, page 9

469. Accuracy thus applies separate multiples to the Sanutura Project and the Additional Projects according to their respective stages of exploration advancement:

- (a) 3.0x (category 6 of AIMVA’s recommended range) to the cost base for the Sanutura Project (US\$ 89.5 million) on the basis that the 2022 Technical Report had defined Indicated Resources, but Sarama had not yet completed a pre-feasibility study;⁹⁰⁵
- (b) 2.7x (category 5 of AIMVA’s recommended range) to the cost base for the Karankasso Project (US\$ 4.9 million) as Sarama had defined Inferred Resources since 2015 and performed further exploration work between 2015 and 2023;⁹⁰⁶

⁹⁰³ Accuracy Report, at para. 5.30.

⁹⁰⁴ Accuracy Report, at para. 5.30, Table 5.2.

⁹⁰⁵ Accuracy Report, at paras. 5.32-5.33.

⁹⁰⁶ Accuracy Report, at para. 5.40.

- (c) 2.2x (category 4 of AIMVA's recommended range) to the cost base for the Koumandara Project (US\$ 3.8 million) as Sarama had yet to define any mineral resources.⁹⁰⁷

470. After applying the relevant multipliers to Sarama's cost bases for the Sanutura Project and the Additional Projects, Accuracy assesses the FMV of Sarama's investments in Burkina Faso as of the Valuation Date to be US\$ 290.0 million.⁹⁰⁸ Accuracy then subtracts from this total to account for Burkina Faso's free carried interest of 10%.⁹⁰⁹ Accordingly, it estimates the FMV of Sarama's investment under the MEE cost approach to be US\$ 260.8 million, as reflected in the following table:⁹¹⁰

Table 5.3. FMV of Sarama's Investment as at the Valuation Date using the MEE method

in USDm	Sanutura	Koumandara	Karankasso	Total
Relevant costs as at the Valuation date	89.5	3.8	4.9	98.2
PEM	3.0 x	2.2 x	2.7 x	3.0 x
Value before adj. for free-carried interest	268.5	8.4	13.1	290.0
Adjustment for free-carried interest	90.0 %	90.0 %	90.0 %	90.0 %
Total adjusted value	241.6	7.6	11.8	261.0
Less Proceeds recorded in Actual situation				(0.2)
FMV as at Valuation Date				260.8

Source: Appendix 5, sheet "Table 5.3"

5.2.2 The FMV of Sarama's investments under the market approach exceeds US\$ 215 million

471. Accuracy also calculates the FMV of Sarama's investments in the But For Situation under the market approach, using the comparable transactions method.⁹¹¹ To assess the FMV of Sarama's investments under the market approach, Accuracy explains that it (a) identifies transactions in gold projects with sufficient publicly available information and calculated the Enterprise Value

⁹⁰⁷ Accuracy Report, at para. 5.37.

⁹⁰⁸ Accuracy Report, at para. 5.41, Table 5.3.

⁹⁰⁹ Accuracy Report, at para. 5.41, Table 5.3.

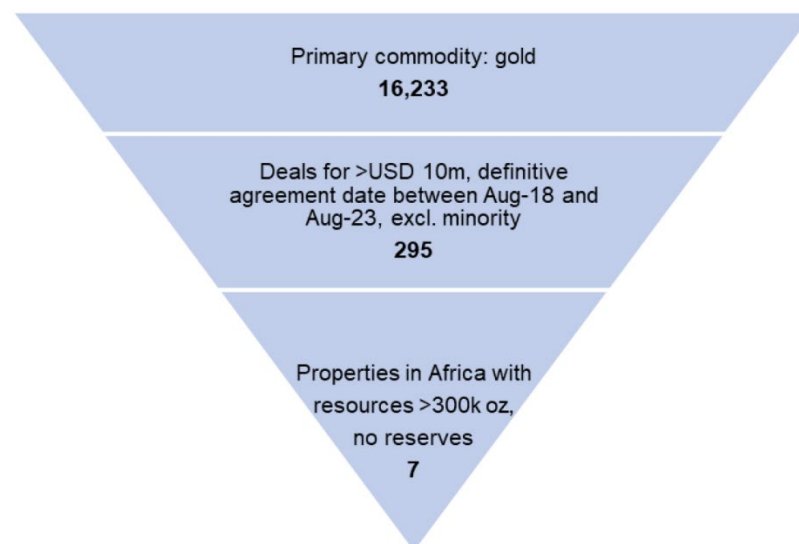
⁹¹⁰ Accuracy Report, at para. 5.41, Table 5.3.

⁹¹¹ Accuracy Report, at para. 6.5.

(“EV”) of those projects; and (b) applies the resultant multiple to Sarama’s mineral resources at the Valuation Date.⁹¹²

472. Accuracy selects relevant gold industry transactions using data from Capital IQ, a leading global financial intelligence database, and first applies filters to select mergers and acquisitions with a transaction value over US\$ 10 million in the gold industry within a 5 year period prior to the Valuation Date (between 24 August 2018 and 24 August 2023).⁹¹³ To ensure compatibility with the Sanutura Project and the Additional Projects, Accuracy then filters for transactions in which the target company’s mineral projects were all located in Africa; only had reported resources (i.e., no reserves); and comprised more than 300,000 ounces of resources.⁹¹⁴ Seven transactions satisfy these criteria.⁹¹⁵

Figure 6.1. Number of transactions corresponding to applied filters



Source: Capital IQ; Appendix 6, sheet “Figure 6.1”

473. For each transaction, Accuracy computes a US\$/oz Au resource multiple using Capital IQ data on the EV, acquired stake and gold resources of the target company.⁹¹⁶ It then “indexes the multiple for each transaction against movements in the gold price” compared to the Valuation

⁹¹² Accuracy Report, at para. 6.11. Accuracy further notes that it indexed the transaction multiples according to the movement in gold spot prices between the completion date of each transaction and the Valuation Date. Accuracy Report, at para. 6.11.

⁹¹³ Accuracy Report, at para. 6.12(a).

⁹¹⁴ Accuracy Report, at para. 6.12(b).

⁹¹⁵ Accuracy Report, at para. 6.13, Figure 6.1.

⁹¹⁶ Accuracy Report, at para. 6.14.

Date.⁹¹⁷ Accuracy notes that its “indexation of multiples may understate the impact of increased prices on cashflows and, by extension, valuation outcomes” as, in a high gold price environment such as the environment prevailing as at the date of the present Memorial, operating margins increase exponentially.⁹¹⁸

474. Based on its study of these transactions, Accuracy observes that the indexed EV-to-resources multiples vary significantly from US\$ 17.5/oz to US\$ 102.3/oz and do “not display any clear trends either by grade or by the proportion [of the targeted resource]”.⁹¹⁹ Considering the inconsistency of this data, Accuracy zeroes in on the Savary transaction dated 11 March 2019. Accuracy concludes that this transaction provides a reliable and relevant reference point for at least two reasons.⁹²⁰ **First**, the Savary transaction related to the purchase of a controlling stake in the Karankasso Project, one of the Additional Projects, and **second**, it involved a mineral property in the Houndé Greenstone Belt adjacent to the Sanutura Project.⁹²¹ For these reasons, Accuracy considers the implied multiple for the Savary transaction to be the “best available market transaction evidence to determine the FMV of Sarama’s investments”.⁹²² Table 6.1 below displays the retained gold industry transactions from Capital IQ and resulting multiples, with the Savary transaction highted in green:⁹²³

⁹¹⁷ Accuracy Report, at para. 6.15.

⁹¹⁸ Accuracy Report, at para. 6.16.

⁹¹⁹ Accuracy Report, at para. 6.18.

⁹²⁰ Accuracy Report, at paras. 6.17-6.19; *see also* Table 6.1.

⁹²¹ Accuracy Report, at para. 6.19.

⁹²² Accuracy Report, at para. 6.20.

⁹²³ Accuracy Report, at para. 6.17, Table 6.1.

Table 6.1. Retained gold industry transactions and resulting multiples

Target Company	Buyer	Date ^[1]	Resources Acq. (oz)	Transaction Value (USDm)	Transaction Multiple (USD/oz) ^[2]	Gold price (USD/oz) ^[3]	Indexed Multiple (USD/oz)
Chesser Resources Limited	Fortuna Mining Corp	08/05/2023	860,000	57.0	66.3 x	2,021.5	62.8 x
Oklo Resources Ltd.	B2Gold Corp.	26/05/2022	684,700	59.8	87.4 x	1,850.7	90.5 x
Kiaka project	West African Resources Ltd.	25/10/2021	5,487,750	90.5	16.5 x	1,807.4	17.5 x
Bogoso-Prestea mine	Future Global Resources Ltd.	26/07/2020	1,894,500	95.0	50.1 x	1,900.9	50.6 x
Kouroussa project	Hummingbird Resources Plc.	26/06/2020	892,000	20.1	22.6 x	1,769.8	24.4 x
Savary Gold Corp.	SEMAFO Inc.	11/03/2019	512,071	20.6	40.2 x	1,293.2	59.6 x
11 exploration permits (Seller: New crest Mining)	Roxgold Inc	11/02/2019	430,000	30.0	69.8 x	1,307.9	102.3 x
Analysis KPIs							
Min					16.5 x		17.5 x
Median					50.1 x		59.6 x
Mean					50.4 x		58.2 x
Max					87.4 x		102.3 x

Source: Appendix 6, sheet "Table 6.1"

475. Because the mineral resource estimate announced by Savary at the time of the transaction (805koz) was not supported by a technical report compliant with Canadian NI 43-101, Accuracy therefore relies "instead on the initial MRE (of 671koz) announced by Sarama and Savary in 2015" which was supported by a NI 43-101 technical report.⁹²⁴ Using this updated resource figure, Accuracy calculates a revised multiple of US\$ 71.4/oz.⁹²⁵ Noting that this multiple of US\$ 71.4/oz assumes acquisition of a controlling stake in the target project and that Sarama only held a minority stake of 18% in the Karankasso Project, Accuracy adjusts this multiple 35% downwards to US\$ 53.0/oz for that project.⁹²⁶
476. Accuracy then computes the FMV of Sarama's investments in Burkina Faso by applying, respectively, the US\$ 71.4/oz and US\$ 53.0/oz multiples to Sarama's mineral resources in the Sanutura Project (2.9 million ounces) and Karankasso Project (.1 million ounces).⁹²⁷ This results in a value of US\$ 215.9 million as at the Valuation Date.⁹²⁸ From that figure, Accuracy subtracts the proceeds Sarama earned from the sale of the Koumandara Project, resulting in an FMV for Sarama's Investments under the market approach of US\$ 215.7 million.⁹²⁹ Accuracy

⁹²⁴ Accuracy Report, at para. 6.21.

⁹²⁵ Accuracy Report, at para. 6.22.

⁹²⁶ Accuracy Report, at para. 6.23.

⁹²⁷ Accuracy Report, at paras. 6.23-6.25.

⁹²⁸ Accuracy Report, at para. 6.24.

⁹²⁹ Accuracy Report, at para. 6.25; see also Table 6.2.

does not apply this multiple to the Koumandara Project, for which it relies solely on the MEE method.⁹³⁰ Adding the MEE valuation of the Koumandara Project increases the total FMV for Sarama’s investments in Burkina Faso to US\$ 223.1 million, as shown in Accuracy’s Figure 7.1, excerpted in the following **section 5.2.3**.⁹³¹

5.2.3 Burkina Faso owes the Claimant US\$ 242 million in damages, excluding interest

477. Accuracy gives equal weight to the values computed under both the cost and market approaches. It therefore calculates the average of the two figures as at the Valuation Date, which results in a valuation of **US\$ 242 million**.⁹³²
478. Accuracy notes that this figure is broadly consistent with the valuation it obtained for Sarama’s investments in the But For Situation using the rule-of-thumb method, a benchmark recommended by the Society for Mining, Metallurgy and Exploration and commonly used as a “sense-check”.⁹³³ Specifically, CIMVAL endorses the rule-of-thumb method and observes that it is commonly employed as a valuation benchmark when a mining project lacks a PEA or feasibility study.⁹³⁴ The rule-of-thumb method bases its valuation of a project on a percentage of the relevant commodity’s price, which increases according to the advancement stage of a mineral property.⁹³⁵ Using the rule-of-thumb method, Accuracy estimates an average FMV for Sarama’s investments in the But For Situation of US\$ 229.9 million.⁹³⁶
479. The following figure depicts the FMVs computed by Accuracy under the cost and market approaches (in blue), compared to the results of the rule-of-thumb benchmark (in grey):⁹³⁷

⁹³⁰ Accuracy Report, at para. 4.32(b) fn.121. As observed above, Accuracy relies only on the cost approach to value the Koumandara Project as an EP without defined mineral resources, since “identifying and adjusting transactions in comparable mineral properties without mineral resources sits outside of our expertise”. Accuracy Report, at para. 4.32(b) fn.121.

⁹³¹ Accuracy Report, at fig. 7.1 and para. 2.8.

⁹³² Accuracy Report, at para. 7.2.

⁹³³ Accuracy Report, Appendix 4, paras. A4.1-A4.5.

⁹³⁴ Accuracy Report, Appendix 4, paras. A4.1-A4.2.

⁹³⁵ Accuracy Report, Appendix 4, paras. A4.1-A4.3.

⁹³⁶ Accuracy Report, at para. 7.4.

⁹³⁷ Accuracy Report, at para. 7.4, Figure 7.1.

Figure 7.1. Comparison of damages assessment as at the Valuation Date



Source: Appendix 5, sheet "Figure 2.1"

Note: For the Koumandara Project, the value shown under the comparable transactions and rule-of-thumb methods (indicated by the lighter shading) pertains to that obtained from the MEE method.

480. Additionally, Accuracy notes in its rule-of-thumb sense check that gold prices have risen significantly since the Valuation Date, and as of the date of Accuracy's report, sit at US\$ 4,025/oz.⁹³⁸ Factoring in the current gold price as of the date of Accuracy's report in the rule-of-thumb method yields an FMV for Sarama's investments in the But For Situation of US\$ 482.6 million.⁹³⁹

Figure 7.2. Gold prices from January 2010 to October 2025 (in USD/oz.)



Source: Capital IQ; Appendix 5, sheet "Figure 7.2"

⁹³⁸ Accuracy Report, at para. 7.11, Figure 7.2.

⁹³⁹ Accuracy Report, at para. 7.13.

481. In light of the “more than doubled” price of gold since the Valuation Date, Accuracy observes that its “assessment of FMV therefore understates the benefits that Sarama would have received through continued ownership of its Investment after 24 August 2023”.⁹⁴⁰ This sense check using *ex post* data on gold prices underscores the conservative nature of Accuracy’s US\$ 242 million valuation of the FMV of Sarama’s investments under the cost and market approaches. As explained below, the Claimant is entitled to pre- and post-Award interest on this amount.

5.3 Sarama Is Entitled to Compound Pre- and Post-Award Interest on Amounts Awarded

482. The Claimant is entitled to pre- and post- Award interest on any amounts awarded by the Tribunal. Interest is a standard feature in in money judgments and awards rendered under public international law, as confirmed by Article 38 of the ILC Articles.⁹⁴¹

483. Article 36(2) of the BIT of the BIT further confirms that upon award of the Tribunal “against the respondent Party”, the Tribunal “may award ... monetary damages and any applicable interest”.⁹⁴² Interest will accrue from the date upon which a breach has occurred until the date when payment is made. This means that the Tribunal should grant both pre-and post-Award interest, which is the approach typically taken by investment treaty tribunals.⁹⁴³ In this respect, Article 10(3) of the BIT instructs that “[c]ompensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment”.⁹⁴⁴

484. Accuracy calculates pre-Award interest on a compound basis as at the Valuation Date up until the date of its report, 31 October 2025, using a rate of 12-month SOFR +6%.⁹⁴⁵ Accuracy

⁹⁴⁰ Accuracy Report, at para. 7.11.

⁹⁴¹ C. Schreuer *et al.*, *The ICSID Convention: A Commentary* (Cambridge, 2009), 2nd edition (extracts), p. 742, at para. 43, **Exhibit CL-0054-ENG**; ILC Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Art. 38, **Exhibit CL-0015-ENG**.

⁹⁴² BIT, Art. 36(2), **Exhibit CL-0003-ENG-FR**.

⁹⁴³ *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated 6 February 2007, paras. 397-398, **Exhibit CL-0038-ENG**; *Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Award, dated 3 March 2010, paras. 668, 678, **Exhibit CL-0065-ENG**; *Mobil Cerro et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Award, dated 9 October 2014, at para. 397, **Exhibit CL-0085-ENG**; *Watkins Holding S.a.r.l. et al. v. Kingdom of Spain*, ICSID Case No. ARB/15/44, Award, dated 21 January 2020, paras. 746-750, **Exhibit CL-0111-ENG**.

⁹⁴⁴ BIT, Art. 10(3), **Exhibit CL-003**.

⁹⁴⁵ Accuracy Report, at para. 7.6.

SOFR, or the Secured Overnight Funding Rate, replaced the London Interbank Offered Rate (LIBOR), for U.S. dollar-denominated contracts in 2023. On account of the phasing out of LIBOR, investment treaty tribunals have based decisions of pre-

considers this rate of pre-Award interest as appropriate based on “typical terms for debt placements by gold-mining companies in Africa”.⁹⁴⁶ It notes that its calculations will need to be updated as of the date of the Tribunal’s Award.⁹⁴⁷

485. Accuracy’s approach in these respects reflects standard practice in investment treaty arbitration. Compound interest is indeed the norm in commercial practice and has been widely adopted by investment treaty tribunals with respect to damages for the last two decades.⁹⁴⁸ In the mining sector and otherwise, treaty tribunals have considered annually compounded rates such as US\$ LIBOR +4% as commercially reasonable and appropriate.⁹⁴⁹
486. According to Accuracy, as at 31 October 2025, the date of its report, Sarama’s damages, including pre-Award interest at SOFR +6%%, total **US\$ 301 million**.⁹⁵⁰

5.4 Sarama Is Also Entitled to Its Costs and Fees Incurred in Connection with the Arbitration

487. As outlined above, Burkina Faso’s conduct caused the Claimant significant losses. In order to recoup those losses, the Claimant was compelled to initiate this arbitration. Based on Article 61(2) of the ICSID Convention and ICSID Arbitration Rule 28, the Claimant submits respectfully that it is entitled to recover its costs related to the pursuit of these proceedings, including its legal fees and reasonable funding costs.⁹⁵¹ The Claimant will provide its statement of costs at a future date upon suitable direction from the Tribunal.

and post-award interest on SOFR rates. *See e.g., Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, dated 19 May 2023, paras. 142-143, 152(c), **Exhibit CL-0124-ENG**; *CC/Devas Ltd et al. v. India (I)*, PCA Case No. 2013-09, Award on Quantum, dated 13 October 2020, at para. 626, **Exhibit CL-0117-ENG**.

⁹⁴⁶ Accuracy Report, at para. 7.6.

Accuracy provides two further options on the rate of pre-Award interest to assist the Tribunal: (i) 12-month SOFR +2.7% and; (ii) 12-month SOFR +11.38%, the latter of which is a “proxy for Burkina Faso’s cost of borrowing”. Accuracy Report, at para. 7.8.

⁹⁴⁷ Accuracy Report, at para. 7.10.

⁹⁴⁸ See I. Marboe, *Calculation of Compensation and Damages in International Investment Law*, (Oxford, 2017), 2nd Edition (extracts), pp. 383 *et seq.*, paras. 6.221-6.258, **Exhibit CL-0096-ENG**.

⁹⁴⁹ *Rusoro Mining v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, dated 22 August 2016, paras. 836-838, **Exhibit CL-0094-ENG** (applying a rate of LIBOR +4% compounded annually); *Venezuela US, S.R.L. v. Bolivarian Republic of Venezuela*, PCA Case No. 2013-34, Final Award (Quantum), dated 4 November 2022, para. 85, **Exhibit CL-0123-ENG** (same); *Tethyan Copper Company Pty Ltd v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 1858(IV) (applying US Prime Rate plus 1%, which, as of the date of the award, equated to LIBOR +3.5%).

⁹⁵⁰ Accuracy Report, at para. 7.9, Table 7.1.

⁹⁵¹ Article 61(2) of the ICSID Convention provides that “[i]n the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and

6. REQUEST FOR RELIEF

488. For the reasons set forth in this Memorial, the Claimant respectfully requests the Tribunal to:

- (a) **DECLARE** that Burkina Faso has breached its obligation not to expropriate the Claimant's investments under Article 10 of the BIT;
- (b) **DECLARE** that Burkina Faso has breached its obligation to accord the Claimant's investments fair and equitable treatment under Article 6 of the BIT;
- (c) **DECLARE** that Burkina Faso has breached its obligations to accord the Claimant's investments national treatment and most favoured nation treatment under Articles 4 and 5 of the BIT;
- (d) **ORDER** Burkina Faso to pay compensation for the loss and damage sustained by the Claimant as a result of Burkina Faso's breaches of its obligations under the BIT, in the amount of US\$ 242 million, to be updated to include any further losses the Claimant may incur;
- (e) **ORDER** Burkina Faso to bear the costs of the arbitration and compensate the Claimant for all its costs and expenses incurred in relation to the present arbitration, including the fees and expenses of its counsel, witnesses and experts, reasonable funding fees, the fees and expenses of the Tribunal, and ICSID's other costs and fees;
- (f) **ORDER** Burkina Faso to pay pre- and post-Award interest on all sums awarded at a rate of SOFR +6%, compounded annually;
- (g) **DECLARE** that the Award is net of all Burkinabe taxes; and
- (h) **AWARD** such other and further relief as the Tribunal deems appropriate.

489. The Claimant reserves its rights to further amend, develop, and quantify its claims and to present further arguments and evidence in the course of the arbitration, in accordance with the ICSID Convention and the ICSID Arbitration Rules.

by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award".

Likewise, ICSID Arbitration Rule 50 (Cost of the Proceeding) confirms the authority and discretion of the Tribunal to, at any stage of the proceeding, request a party provide a statement on costs and/or order a party to bear its own costs, those of the opposing party, or of the Secretariat or members of the Tribunal.

Respectfully submitted,

31 October 2025

For and on behalf of the Claimant

SARAMA RESOURCES LTD

[signature]

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