

Galway Gold Inc. v. Republic of Colombia
(ICSID Case No. ARB/18/13)

**INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES**

GALWAY GOLD INC.

Claimant

V.

REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/18/13

**ANNEX “B”
Procedural Order No. 2
Respondent’s Request for Production of Documents**

RESPONDENT’S STERN SCHEDULE

Document Request No.	1
A. Documents or category of documents requested	<p>Documents from the period 21 September 2017 to 21 September 2018 confirming or reflecting, as of 21 March 2018:</p> <ul style="list-style-type: none"> a) the identity of Galway’s direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i> control over Galway including any persons or entities with an ability to exercise substantial influence over Galway’s management, operation and the selection of members of its board of directors or any other managing body; b) the number of shares of each class or series of shares held directly or indirectly by each of those direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or; c) the nationality of each of those direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i> control over Galway.
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Respondent’s Memorial on Jurisdiction, ¶¶ 79-81; Claimant’s Memorial, ¶¶ 33-38; 278.</p> <p>(2) The documents requested are relevant and material to confirm that Colombia was entitled to deny the benefits of Chapter 8 of the FTA to Galway because Galway was not ultimately owned or controlled by nationals of a Party to the FTA at the time Galway submitted its Request for Arbitration.</p> <p>In order to determine whether Galway was “<i>owned or controlled</i>” by nationals of third States under Article 814(2) of the FTA, the Tribunal must determine the identity and nationality of all indirect and/or ultimate owners of Galway and parties that controlled Galway as of the date Galway submitted its Request for Arbitration.¹ To date, Galway has failed to disclose the identity or nationality of such persons or entities.</p> <p>Documents containing information on Galway’s shareholders must be in Galway’s possession, custody and control. Pursuant to Article 49 of the Business Corporations Act of British Columbia, any company registered in British Columbia must be able to provide a list of shareholders detailing (i) their names and last known addresses, and (ii) the number of shares held by those shareholders.²</p>

¹ See *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005, **Exhibit RL-51**, ¶ 170: “[ownership] includes indirect and beneficial ownership; and control includes control in fact, including an ability to exercise substantial influence over the legal entity’s management, operation and the selection of members of its board of directors or any other managing body”.

² Similar provisions exist in the Business Corporations Act of New Brunswick, where Galway Gold Inc. was incorporated (See **Annex 4**, Section 90), in the Alberta Business Corporations Act (**Annex 2**, Sections 21 and 49) and in the Ontario Business Corporations Act (**Annex 3**, Sections 100 and 146). According to Galway Gold Inc.’s public profile on Sedar, the mandatory document filing and retrieval system for Canadian public companies, Galway Gold Inc.’s Reporting Jurisdictions are British Columbia, Alberta and Ontario. See Business Corporations Act of British Columbia, SBC 2002, Chapter 57, Part 2 – Incorporation, Division 5 – Company Records, List of shareholders, § 49.1,

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	<p>Further, Galway must be in possession or control of documents confirming the identity of the persons or entities with ultimate legal and/or <i>de facto</i> control over Galway in light of those persons’ likely involvement in the governance, funding and/or management of Galway.</p> <p>Colombia has limited its request to documents from the 6 month periods prior to and after the date of submission of Galway’s Request for Arbitration (21 March 2018), which is the relevant date for the Tribunal’s assessment.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
<p>C. Summary of objections by disputing party to production of requested documents</p>	<p>The Claimant objects to the relevance and materiality of the ownership or control of Galway beyond the date the Claimant’s Request for Arbitration was issued (21 March 2018). In 1.B(2) above, Colombia admits the only relevant date is “the date Galway submitted its Request for Arbitration”. No date or time period other than 21 March 2018 is relevant.</p> <p>The Request is overly broad and premised upon a fundamental misunderstanding of:</p> <ol style="list-style-type: none"> a. Canadian law governing shareholdings of public companies; b. How shareholders typically hold shares in Canadian public companies; and c. Canadian law governing shareholder reporting obligations. <p>The provincial statutes governing the Claimant’s obligation to maintain information regarding its shareholders are the Ontario <i>Business Corporations Act</i>, RSO 1990, c B16 (the “OBCA”) and the Ontario <i>Securities Act</i>, RSO 1990, c S5 (the “OSA”).</p> <p>Neither of these statutes require the Claimant to keep a complete list of all legal and beneficial shareholders.</p> <p>The Claimant has complied with all of its legal obligations relating to the maintenance of records of shareholder identity imposed under the governing legislation. Colombia has not made any claim or allegation to the contrary</p> <p>Section 146 of the <i>OBCA</i> requires a company to “furnish a basic list setting out the names of the registered holders of shares of the</p>

Annex 1: “A person may apply to a company, or to the person who has custody or control of its central securities register, for a list setting out the following:

- (a) the names and last known addresses of the shareholders;
- (b) the number of shares of each class or series of shares held by each of those shareholders.”

	<p>corporation, the number of shares of each class and series owned by each registered holder and the address of each of them” (emphasis added).³</p> <p>Accordingly, the Claimant’s obligation to maintain and furnish a list of shareholders under the <i>OBCA</i> applies only to <i>registered</i> shareholders.</p> <p>For most Canadian public companies, the shares of a great proportion of shareholders are registered as the depository, “CDS & Co.” (which enables trading over the Toronto Stock Exchange). Shareholders typically have trading accounts with financial institutions through which they purchase and hold shares. These shareholders instruct their financial institutions either that their personal information may be disclosed to the company (so-called “non-objecting beneficial owners” or “NOBOs”) or that their personal information may not be disclosed to the company (so-called “objecting beneficial owners” or “OBOs”).</p> <p>Under the <i>OSA</i>, it is the obligation of an acquiror, not the reporting issuer (here, the Claimant), to disclose to the market by way of press release when it has obtained 10% of the issued and outstanding shares of a reporting issuer.⁴</p> <p>As such, the Claimant is not obliged to know if a particular OBO has obtained 10% or more of its shares, unless the acquiror issues a press release pursuant to its obligation under the <i>OSA</i>. All such shareholders are also required to disclose their holdings on Canada’s online service for filing and viewing insider reports as required by various provincial securities regulators, the System for Electronic Disclosure by Insiders (“SEDI”).</p> <p>Accordingly, the Claimant is only required to maintain a list of registered shareholders, which would typically consist of depositories primarily. Simply put, the Claimant is not required under Canadian law to maintain a list of beneficial or unregistered shareholders.</p> <p>With that clarification, the Claimant is prepared to produce a list of NOBO’s and the applicable SEDI report as of March 21, 2018.</p> <p>The applicable SEDI report will reflect that no non-Party (or denying Party) holds sufficient shareholdings to control the Claimant for the purposes of Article 814(2) of the <i>FTA</i>.</p> <p>In any event, the requirements of Section 814(2) are conjunctive. In order to deny benefits under Chapter 8 of the <i>FTA</i>, the Respondent must show both that investors of Galway Gold who own or control the enterprise are non-Parties or from Colombia <i>and</i> that the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized. It is not sufficient to simply demonstrate that shareholders of a Canadian enterprise are not Canadian. In this case, the</p>
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³ See Appendix “A”, Ontario *Business Corporations Act*, s. 146

⁴ See Appendix “A”, National Instrument 62-104 - Take-Over Bids and Issuer Bids

	<p>Claimant is a Canadian corporation⁵ with its registered Head Office in Canada. The Claimant has substantial business activities in Canada because it is operated from Canada and its stock trades exclusively in Canada, on the Toronto Stock Exchange.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant's objections to this request are without merit and the Claimant's agreement to produce two self-selected documents is insufficient.</p> <p><u>1. The request is not overly broad</u></p> <p>The Claimant accepts that the documents requested are relevant and material insofar as such documents reflect the position as to ownership or control of the Claimant as of the date of its Request for Arbitration, <i>i.e.</i> 21 March 2018. However, the Claimant contends that the request is overly broad. This is incorrect for the following reasons.</p> <p><i>First</i>, contrary to the Claimant's contention, the request is carefully tailored only to require production of documents that are reflective of the position <u>as of 21 March 2018</u>. Naturally, documents reflecting the position as of that date could reasonably be expected to have been created at an earlier or later date. For example, the Claimant's investor relations team is likely to have kept a list of shareholders or persons with rights of control for the purposes of its corporate communications, and updated such a list periodically, though not necessarily on a daily basis. The Respondent has limited its request to the six-month periods prior to and following 21 March 2018. The Claimant has not suggested that it would be unduly burdensome for it to conduct a search for such documents falling within this narrow, one-year timeframe.</p> <p><i>Second</i>, the Claimant argues that it should not be ordered to produce the documents requested because the Claimant was under no legal obligation to hold documents confirming the identity of its indirect or beneficial shareholders. This argument is without merit. The Claimant has not denied that responsive documents exist. This is unsurprising. Even if the Claimant were not legally required to hold documents reflecting the identity of its indirect or beneficial shareholders, the Claimant would still hold such documents for numerous practical purposes, including investor relations, fundraising, considering strategic business or corporate decisions requiring shareholder approval, etc. The Claimant should be ordered to produce all responsive documents irrespective of whether the Claimant was under a legal obligation to maintain such documents.</p>

⁵ See paragraph 278 of Claimant's Memorial on Jurisdiction and Liability, and paragraph 17 of the Witness Statement of Robert Hinchcliffe.

2. The two documents that Claimant has agreed to produce are insufficient and should not absolve the Claimant from producing all responsive documents

The Respondent notes the Claimant's agreement to produce "a list of NOBO's [sic]" and "the applicable SEDI report as of March 21, 2018." However, the Claimant's self-serving selection of two particular documents to be produced voluntarily should not absolve the Claimant of its obligation to produce other responsive documents. On the Claimant's own admission, neither of the two documents that it has agreed to produce would provide details of the interests of any "objecting beneficial owners", *i.e.* persons with indirect shareholding interests in the Claimant. Nor would such documents include details of the nationality of the parties involved, or parties with ultimate or *de facto* rights of control over Galway. For these reasons, to the extent the Claimant has documents responsive to this request confirming that information – which the Claimant accepts is relevant and material to the Respondent's denial of benefits objection – the Claimant should be ordered to produce them.

3. The Claimant's assertions as to the merits of the Respondent's denial of benefits objection are inapposite and irrelevant to the Tribunal's decision on document production

Finally, the Respondent notes that the Claimant has made unmeritorious, conclusory assertions as to the merits of the Respondent's denial of benefits objection. Such assertions are without merit and do not provide grounds for objection to this document production request. For completeness, the Respondent addresses them briefly as follows:

First, the Claimant asserts that the "applicable SEDI report will reflect that no non-Party (or denying Party) holds sufficient shareholdings to control the Claimant for the purposes of Article 814(2) of the FTA." However, the FTA does not limit "control" to control exercised by a single entity, and the British Columbia Securities Act presumes that a combination of persons holding more than 20% of the voting rights materially affects the company's control.⁶ The evidence on the record established that as of 21 March 2018, the Government of Abu-Dhabi, together with United States institutional shareholders controlled shares well above the 20% threshold.⁷ In Colombia's submission, this means that non-Canadian persons or entities controlled the Claimant as of 21

⁶ British Columbia Securities Act, 1996, **Exhibit RL-22**, Article 1. *See also*, Ontario Securities Act, Article 1, **Annex 5**: "if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer."

⁷ *See*, Memorial on Jurisdiction, para 79, citing to the following documents: Galway Gold, "AAV Limited Acquires Shares of Galway", 17 August 2015, **Exhibit R-14**; Witness Statement of Robert Hinchcliffe, ¶ 20; Galway Gold, "Galway Gold's Vetás Project", 1 March 2016, **Exhibit R-18**, p. 6; Wexford, Website "Overview", 2020, **Exhibit R-124**; Orbis Report on Galway Gold Inc., 25 September 2020, **Exhibit R-108**, p. 1; Excerpt of Front Street Capital Management Website, undated, **Exhibit R-126**; Excerpt of Earth Resource Investment Group Website, undated, **Exhibit R-127**; Orbis Report on Galway Gold Inc., 25 September 2020, **Exhibit R-108**, p. 1; EOP & Associés, Website "Overview", 2020, **Exhibit R-125**; *see also*, Orbis Report on Galway Gold Inc., 25 September 2020, **Exhibit R-108**, p. 1; Galway Gold, "Galway Gold's Vetás Project", 1 March 2016, **Exhibit R-18**, pp. 23-25.

	<p>March 2018. This issue is to be determined by the Tribunal in its assessment of the Respondent's denial of benefits objections. For the reasons set out above and in the justification for this request, the documents requested would assist the Tribunal in its determination of this issue.</p> <p><i>Second</i>, the Claimant asserts that it has substantial business activities in Canada, and that the Respondent's denial of benefits objection should be rejected for this reason. This assertion is irrelevant to this request for document production, which concerns documents that are relevant and material to whether non-Canadian persons or entities owned or controlled the Claimant. The Claimant's lack of substantial business activities is a separate issue, addressed by the Respondent in its Memorial on Jurisdiction.⁸ Contrary to the Claimant's assertions, the Claimant has no "<i>substantial business activities</i>" in Canada. While the Claimant may be incorporated and listed in Canada, this does not mean it has any "<i>substantial business activities</i>" in Canada. To the contrary, as the Claimant itself has explained in its public disclosures, "[t]he <i>Reina de Oro</i> property is Galway's only mining property."⁹ This issue too will be a matter for the Tribunal's determination on the merits. The Claimant's assertions in relation to this issue set out above are irrelevant to the Respondent's request for document production.</p>
<p>E. Decision of the Tribunal</p>	<p>Although the Respondent would have a right to inquire as to the shareholdings to verify whether there is a cause for denying benefits under Article 814(2) of the FTA, the Tribunal notes that the Claimant is not required under the laws of its jurisdiction to maintain the detail of information requested by Respondent. However, the Claimant has not disputed whether it has or not said information.</p> <p>In consideration of the above, the Tribunal:</p> <p>(a) accepts the proposal of the Claimant to produce the list of NOBO's and the applicable SEDI report as of March 21, 2018.</p> <p>(b). To the extent that the Claimant may have in its possession and/or control the documents bearing the information in the production request, orders Claimant to produce the documents requested, as of date of submission of the Request for Arbitration (March 21, 2018).</p> <p>Any petition for production of other documents in this request is rejected.</p>

⁸ See, Memorial on Jurisdiction, paras 82-84.

⁹ Galway Gold Inc. Management's Discussion and Analysis for the Three Months Ended 31 March 2018, 30 May 2018, **Exhibit R-20**, p. 3.

RESPONDENT'S STERN SCHEDULE

<p>Document Request No.</p>	<p>2</p>
<p>A. Documents or category of documents requested</p>	<p>Documents received or created by Galway addressing the effects or potential impact of the following measures on Concession 14833, the Vetás Gold Project or any other project in the area of Concession 14833, whether before or after such measures were enacted:</p> <ul style="list-style-type: none"> a) Law 1382 of 2010, (including all drafts and legislative bills leading to the enactment of Law 1382, including Draft Laws Nos. 010 and 042 of 2007 of the Senate, and Draft Law No. 334 of 2008 of the House); b) Resolution 937 of 2011; c) Law 1450 of 2011; d) Resolution 2090 of 2014.
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Respondent's Memorial on Jurisdiction, Sections V and VI.B.1; Respondent's Counter-Memorial, Sections III.G, I, J, and VI. B; Claimant's Memorial, ¶¶ 9 and 193-4.</p> <p>(2) The documents requested are relevant and material to the assessment of the Tribunal's jurisdiction <i>ratione temporis</i> and whether the claims were brought within the FTA's Limitation Period.</p> <p>The FTA does not apply to any act or fact occurring prior to its entry into force on 15 August 2011.¹⁰ Further, the FTA precludes the submission of a claim if more than 39 months has passed from the date on which a disputing investor knew, or should have known, of the breaches or resulting loss or damage.¹¹</p> <p>In Colombia's submission, Galway's claims fall outside of the Tribunal's temporal jurisdiction and are time-barred because they arise out of Colombia's prohibition on mining in páramo areas enacted through Law 1382 of 2010 prior to the FTA's entry into force on 15 August 2011, and that ban applied to Concession 14833 before the cut-off date for claims under the FTA (21 December 2014).</p> <p>The requested documents are relevant and material to establish Galway's knowledge of the prohibition on mining in páramo areas before the FTA's entry into force and/or cut-off date for claims.</p> <p>In addition, the documents requested are relevant and material to confirm Galway's lack of any legitimate expectation that it would be permitted to conduct a large-scale mining project in the páramo area of Concession 14833. This is relevant to Galway's claims for alleged violations of Articles 805 of the FTA (which Galway asserts protects against the frustration of "<i>legitimate expectations</i>") and Article 811 of the FTA (which requires a factual assessment of "<i>the extent to which the measure</i></p>

¹⁰ Canada-Colombia FTA, Art. 801.2.

¹¹ Canada-Colombia FTA, Art. 821(2)(c)(i).

	<p><i>or series of measures interfere with distinct, reasonable investment-backed expectations”).</i>¹²</p> <p>In Colombia’s submission, Galway could not have had any such expectations because mining was already prohibited in páramo areas and the transitional regime did not “grandfather” any large-scale mining project in the area of Concession 14833. Galway asserts the contrary but has failed to produce any contemporaneous documents confirming its alleged understanding of the legal framework applicable to Concession 14833. Galway should now be ordered to produce all documents confirming any understanding that Galway may have had of the legislative framework that applied prior to and at the time Galway allegedly invested.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
<p>C. Summary of objections by disputing party to production of requested documents</p>	<p>Claimant objects on the basis that all legal opinions and all related documents are confidential and are subject to lawyer-client, litigation and/or legal privilege, which has not been waived.</p> <p>Claimant objects to the relevance and materiality of certain documents. The Respondent requests those documents relating to “Colombia’s prohibition on mining in páramo areas enacted through Law 1382 of 2010 prior to the FTA’s entry into force on 15 August 2011”, on the basis that they “are relevant and material to establish Galway’s knowledge of the prohibition on mining in páramo areas before the FTA’s entry into force and/or cut-off date for claims.” Galway’s knowledge of any limitations on mining in páramo areas at that time is not in dispute nor is it relevant.</p> <p>To the extent the Respondent’s request covers documents reflecting Galway’s understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway’s legitimate expectations, Galway is prepared to produce any responsive documents that are not available in the public domain through Galway’s public disclosure and are in Galway’s exclusive possession, custody and control, and that are not subject to lawyer-client, litigation or other legal privilege.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s agreement to produce a limited range of self-selected documents is insufficient.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant accepts that the documents requested are relevant and material to the assessment of the Claimant’s understanding of the legal framework applicable to Concession 14833. While the relevance and</p>

¹² See Canada-Colombia FTA, Annex 811(a)(ii).

	<p>materiality of the documents to this issue, on its own, fully justifies this request, for completeness, the Respondent addresses the Claimant's contention that the documents requested are not also relevant and material to the Respondent's objection to the Tribunal's jurisdiction <i>ratione temporis</i>. This contention is without merit.</p> <p><i>First</i>, as explained in the Respondent's Memorial on Jurisdiction, the claims fall outside of the Tribunal's temporal jurisdiction and are time-barred because they arise out of Colombia's prohibition on mining in páramo areas enacted through Law 1382 of 2010 prior to the FTA's entry into force on 15 August 2011, and that ban applied to Concession 14833 before the cut-off date for claims under the FTA (21 December 2014). The ban on mining and its application to Concession 14833 was effected, successively and without interruption, through each of Law 1382 of 2010, Resolution 937 of 2011, Law 1450 of 2011 and Resolution 2090 of 2014.</p> <p><i>Second</i>, the Claimant makes the puzzling assertion that its "<i>knowledge of any limitations on mining in páramo areas at that time is not in dispute nor is it relevant.</i>" If that were true, then the Claimant would also have to accept that the Tribunal lacks jurisdiction over the claims. To the extent mining was already prohibited in páramo areas of Concession 14833 before the FTA's entry into force and/or the cut-off date for claims, the Claimant's claims fall foul of the FTA's jurisdictional requirements <i>ratione temporis</i> and/or the FTA's time bar. The documents requested are squarely relevant and material to the Claimant's knowledge and contemporaneous understanding of the measures effecting the ban on páramo areas of Concession 14833.</p> <p><u>2. The limited set of documents that the Claimant has agreed to produce is insufficient and should not absolve the Claimant from producing all responsive documents</u></p> <p>The Claimant has agreed to produce responsive documents only "[t]o the extent the Respondent's request covers documents reflecting Galway's understanding of the legal framework applicable to Concession 14833." This is an unjustified attempt to narrow the scope of the documents to be produced to those which reflect the Claimant's understanding of the legal framework applicable to Concession 14833 in the Claimant's own, self-serving view. It would be inappropriate for the Claimant to be permitted to self-select the documents to be produced based on its own theory of the legal framework applicable to Concession 14833, rather than that framework as described in the Respondent's pleaded case. For these reasons, the Tribunal is respectfully invited to order the Claimant to produce all documents responsive to this request.</p> <p><u>2. The Claimant's alleged privilege over responsive documents should be detailed in an exemption log and does not justify a blanket rejection of the request</u></p> <p>The Claimant has asserted that responsive documents may be subject to privilege, but has provided no list of such responsive documents or specific grounds on which the documents could be privileged. In these circumstances, while the basis on which the Claimant could claim</p>
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	<p>privilege over the documents requested is entirely unclear, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>Similarly, in accordance with IBA Rule 9.2(e), to the extent Claimant alleges that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal accepts the offer from the Claimant to produce the requested documents reflecting Galway’s understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway’s legitimate expectations, that are not available in the public domain through Galway’s public disclosure, and are not subject to lawyer-client, litigation or other legal privilege.</p> <p>Any petition for production of other documents in this request is rejected.</p> <p>If any privileges are invoked, then the Claimant shall present a privilege log as identified in P.O. No. 2</p>

RESPONDENT'S STERN SCHEDULE

<p>Document Request No.</p>	<p>3</p>
<p>A. Documents or category of documents requested</p>	<p>Documents received or created by Galway addressing the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within the area of Concession 14833, including:</p> <ul style="list-style-type: none"> a) The legal opinions referenced in the RPA Report (C-52) including the legal opinions of (i) Nancy Moreno Guerrero dated 18 October 2012, and (ii) Ricardo Convers dated 30 October 2012 and 7 November 2012. b) Any other legal opinions or other Documents prepared in connection with any due diligence conducted by Galway into the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within Concession 14833.
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Respondent's Memorial on Jurisdiction, Sections V and VI.B.1; Respondent's Counter-Memorial, Section III, IV.B-C, and VII.B.3; RPA Report (C-52), pp. 3-1 and 118.</p> <p>(2) The Respondent repeats the rationale set out above with respect to Request No. 2.</p> <p>In addition, the Respondent notes that the report prepared by RPA (C-52), on which Galway relies, contains references to legal opinions interpreting the legal framework applicable to "<i>the gold and silver mining rights of the Colombian branch of Galway Resources Holdco Ltd.</i>" (See RPA Report, C-52, pp. 3-1 and 118). Galway has failed to put any of these opinions in evidence.</p> <p>These opinions, together with any other opinions or documents prepared in connection with any due diligence conducted by Galway into the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within Concession 14833 are relevant and material to Galway's assertions that it held legitimate expectations that it would be permitted to carry out a large-scale mining project in the páramo area of Concession 14833.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
<p>C. Summary of objections by disputing party to production of requested documents</p>	<p>The Claimant repeats and relies upon the objections set out above with respect to Request No. 2. Claimant objects on the basis that all legal opinions and all related documents are confidential and are subject to lawyer-client, litigation and/or legal privilege, which has not been waived.</p> <p>The Claimant specifically objects to Request 3(a) on the basis of legal privilege. The disclosure of the existence of a legal opinion in public disclosure materials does not amount to the disclosure of its contents, nor to the waiver of lawyer-client, litigation or other legal privilege over its contents.</p>

	<p>To the extent the Respondent’s request covers documents reflecting Galway’s understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway’s legitimate expectations, Galway is prepared to produce any responsive documents that are not available in the public domain through Galway’s public disclosure and are in Galway’s exclusive possession, custody and control, and that are not subject to lawyer-client, litigation or other legal privilege.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, which the Claimant accepts are relevant and material. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s agreement to produce a limited range of self-selected documents is insufficient.</p> <p><u>1. The limited set of documents that the Claimant has agreed to produce is insufficient and should not absolve the Claimant from producing all responsive documents</u></p> <p>The Claimant has agreed to produce responsive documents only “[t]o the extent the Respondent’s request covers documents reflecting Galway’s understanding of the legal framework applicable to Concession 14833.” This is an unjustified attempt to narrow the scope of the documents to be produced to those which reflect the Claimant’s understanding of the legal framework applicable to Concession 14833 in the Claimant’s own, self-serving view. It would be inappropriate for the Claimant to be permitted to self-select the documents to be produced based on its own theory of the legal framework applicable to Concession 14833, rather than that framework as described in the Respondent’s pleaded case. For these reasons, the Tribunal is respectfully invited to order the Claimant to produce all documents responsive to this request.</p> <p><u>2. Any alleged privilege over responsive documents should be detailed in an exemption log and does not justify a blanket rejection of the request</u></p> <p>The Claimant has asserted that responsive documents may be subject to privilege, but has provided no list of such responsive documents or specific grounds on which the documents could be privileged. In these circumstances, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>Similarly, in accordance with IBA Rule 9.2(e), to the extent Claimant alleges that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p>

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	<p>For the avoidance of doubt, the legal opinions referenced in the RPA Report (Exhibit C-52) including the legal opinions of (i) Nancy Moreno Guerrero dated 18 October 2012, and (ii) Ricardo Convers dated 30 October 2012 and 7 November 2012, are neither confidential nor privileged. These opinions were voluntarily disclosed to RPA and relied upon in the RPA Report itself.¹³ Any confidentiality or applicable privilege has therefore been waived.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal accepts the offer from the Claimant to produce the requested documents reflecting Galway's understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway's rights, that are not available in the public domain through Galway's public disclosure, and are not subject to lawyer-client, litigation or other legal privilege.</p> <p>The Tribunal believes that the privilege has not been waived for the legal opinions mentioned by the Claimant in the report prepared by RPA. If Claimant invokes any privileges, the Claimant shall present a privilege log as identified in P.O. No. 2.</p>

¹³ RPA Technical Report on the Vetás Gold Project, Department of Santander, Colombia. NI 43-101 Report, 6 November 2013, **Exhibit C-52**, pp. 3-1: "For the purpose of this report, RPA has relied on ownership information provided by Galway. Galway has relied on opinions by Nancy Moreno Guerrero (Guerrero, 2012), a Lawyer in Bucaramanga, Colombia, dated October 18, 2012 and Ricardo Convers (Convers, 2012), a lawyer in Bogotá, Colombia dated October 30 and November 7, 2012. These opinions are relied on in Section 1, Summary and Section 4, Property Description and Location of this report."

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<p>Document Request No.</p>	<p>4</p>
<p>A. Documents or category of documents requested</p>	<p>Documents received or created by Galway addressing the scope of or limitations on its alleged rights under Concession 14833 (and the Mining Code) and/or the Option Agreement, including in relation to:</p> <ul style="list-style-type: none"> a) Article 45 of the Mining Code, which provides that all exploration activities conducted pursuant to a concession contract are conducted at the concession holder’s “expense and risk”; and b) Articles 34 and 36 of the Mining Code, which provide that Colombia’s environmental authorities may create mining exclusion zones within existing mining titles at any time without payment of compensation.
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Counter-Memorial, Section III, IV.B-C, and VII.B.3.</p> <p>(2) The documents requested are relevant and material to confirm Galway’s lack of any legitimate expectations that it would receive compensation for any sums expended towards exploration activities within Concession 14833, even if Galway had secured rights to that concession (which Galway never did).</p> <p>In Colombia’s submission, it ought to have been clear to Galway that neither the Option Agreement nor Concession 14833 entitled Galway to compensation in the event the State exercised its right to designate part or all of Concession 14833 as a mining exclusion zone pursuant to Articles 34 and 36 of the Mining Code. Thus, even if Galway had secured title to Concession 14833 (which Galway never did), the Mining Code was clear that the State could revoke part or all of that Concession in order to protect environmentally sensitive ecosystems such as the páramo without payment of compensation to the concession-holder. Further, Article 45 of the Mining Code expressly confirmed that all exploration activities are to be carried out at the concession-holder’s own “expense and risk”. In these circumstances, Galway could not have held any legitimate expectation that it would be compensated for such expenditure or otherwise in the event that Colombia were to designate part of Concession 14833 as a mining exclusion zone, as the Ministry of Environment did through Resolution 2090.</p> <p>Galway should now be ordered to produce all documents confirming its contemporaneous understanding of the significance of the limited scope of, and inherent limitations on its alleged rights under Concession 14833 and/or the Option Agreement in relation to such concession.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
<p>C. Summary of objections by disputing party to production of</p>	<p>The Claimant repeats and relies upon the objections set out above with respect to Request No. 2 and 3. Claimant objects on the basis that all legal opinions and all related documents are confidential and are subject</p>

<p>requested documents</p>	<p>to lawyer-client, litigation and/or legal privilege, which has not been waived.</p> <p>To the extent the Respondent's request covers documents reflecting Galway's understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway's legitimate expectations, Galway is prepared to produce any responsive documents that are not available in the public domain through Galway's public disclosure and are in Galway's exclusive possession, custody and control, and that are not subject to lawyer-client, litigation or other legal privilege.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, which the Claimant accepts are relevant and material. For the reasons set out below, the Claimant's objections to this request are without merit and the Claimant's agreement to produce a limited range of self-selected documents is insufficient.</p> <p><u>1. The limited set of documents that the Claimant has agreed to produce is insufficient and should not absolve the Claimant from producing all responsive documents</u></p> <p>The Claimant has agreed to produce responsive documents only "[t]o the extent the Respondent's request covers documents reflecting Galway's understanding of the legal framework applicable to Concession 14833." This is an unjustified attempt to narrow the scope of the documents to be produced to those which reflect the Claimant's understanding of the legal framework applicable to Concession 14833 in the Claimant's own, self-serving view. It would be inappropriate for the Claimant to be permitted to self-select the documents to be produced based on its own theory of the legal framework applicable to Concession 14833, rather than that framework as described in the Respondent's pleaded case. For these reasons, the Tribunal is respectfully invited to order the Claimant to produce all documents responsive to this request.</p> <p><u>2. Any alleged privilege over responsive documents should be detailed in an exemption log and does not justify a blanket rejection of the request</u></p> <p>The Claimant has asserted that responsive documents may be subject to privilege, but has provided no list of such responsive documents or specific grounds on which the documents could be privileged. In these circumstances, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>Similarly, in accordance with IBA Rule 9.2(e), to the extent Claimant alleges that there are "<i>compelling</i>" grounds of commercial or technical</p>

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	<p>confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal accepts the offer from the Claimant to produce the requested documents reflecting Galway's understanding of the legal framework applicable to Concession 14833 for their relevance in assessing Galway's rights, that are not available in the public domain through Galway's public disclosure, and are not subject to lawyer-client, litigation or other legal privilege.</p> <p>Any petition for production of other documents in this request is rejected.</p> <p>If any privileges are invoked, then the Claimant shall present a privilege log as identified in P.O. No. 2.</p>

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<p>Document Request No.</p>	<p>5</p>
<p>A. Documents or category of documents requested</p>	<p>Documents concerning the validity of Galway’s alleged acquisition of Concession 14833 without registration of the assignment by the ANM, including (a) any Documents reflecting any due diligence carried out by Galway with respect to the requirements for reliance on “administrative silence” as the means for acquiring legal ownership of Concession 14833 and (b) any legal opinions interpreting Arts. 6, 19 and 22 of the 2001 Mining Code (C-47) or other Documents concerning the validity of Galway’s alleged acquisition.</p>
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Respondent’s Counter-Memorial, ¶¶ 209-218; Memorial on Jurisdiction, ¶¶ 16-20; Claimant’s Memorial, ¶ 345; Law 685 (2001 Mining Code), Exhibit C-47, Arts. 6, 19, 22; Witness Statement of Eduardo Amaya Lacouture, ¶¶ 10, 16; Law No. 1437 (Code of Administrative Procedure and Administrative Disputes), Exhibit R-28, Arts. 84 and 85.</p> <p>(2) The documents requested are relevant and material to an assessment of Galway’s claim that it considered that it owned Concession 14833 notwithstanding Galway’s failure to obtain the ANM’s registration of the transfer of the Concession from Reina de Oro.</p> <p>In this arbitration, Galway claims that it “<i>had the legal right to presume that the [ANM] had no objections to the registration of the Assignment Agreement after 45 days had passed from the date of Reina del Oro’s registration on 24 February 2015</i>” (Claimant’s Memorial, ¶ 345). However, Galway provides no evidence that it actually relied on this presumption, and has never invoked said alleged positive administrative silence vis-à-vis the ANM (See Witness Statement of Eduardo Amaya Lacouture, ¶¶ 10, 16).</p> <p>Further, Galway’s claim that it somehow presumed that the ANM had approved the transfer is unsupported by the Mining Code, which only entitles a party to rely on administrative silence where the application made to the ANM was valid and complete in the first place, and only where the process provided for under Article 85 of Law 1437/2011 is followed. As explained in Colombia’s Counter-Memorial, Reina de Oro delivered an incomplete notice of assignment to the ANM because it was not followed or accompanied by a signed assignment agreement or the required information on GRVC’s legal capacity. (See Counter-Memorial, ¶ 211) Nor did Galway follow the process provided for under Article 85 of Law 1437/2011.</p> <p>Galway should now be ordered to produce any documents confirming its contemporaneous understanding of the legality of the transfer, whether pursuant to the 45-day administrative silence provisions on which it now seeks to rely (arising under Arts. 6, 19 and 22 of the 2001 Mining Code (Exhibit C-47)) or otherwise.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>

<p>C. Summary of objections by disputing party to production of requested documents</p>	<p>The Claimant disputes the relevance and materiality of the requested documents. Further, the Claimant objects on the basis that such documents are subject to legal privilege which has not been waived.</p> <p>The legal opinions requested and any related documents are subject to both solicitor-client privilege and litigation privilege, which has not been waived.</p> <p>Further, with respect to non-privileged documents, there is no dispute between the parties regarding the facts surrounding the assignment of Concession 14833. The dispute lies in the legal effect of such facts, which are questions of law that will be the subject of expert opinion evidence and will be determined by the Tribunal.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant's objections to this request are without merit.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant disputes the relevance and materiality of the requested documents on the sole basis that, in Claimant's view, there is "<i>no dispute between the parties regarding the facts surrounding the assignment of Concession 14833.</i>" This is incorrect. While the Claimant contends that it was entitled to presume that the transfer of Concession 14833 was approved by the ANM, the Claimant provides no evidence that it actually held any such presumption. In the Respondent's submission, this undermines the Claimant's position – adopted for the first time in this arbitration – that it secured legal title to Concession 14833 through the Mining Code's "administrative silence" provisions. The Claimant should now be ordered to produce any documents reflecting its contemporaneous understanding of the requirements for reliance on "administrative silence" as the means for acquiring legal ownership of Concession 14833, including any due diligence carried out or legal opinions obtained.</p> <p><u>2. Any alleged privilege over responsive documents should be detailed in an exemption log and does not justify a blanket rejection of the request</u></p> <p>The Claimant has asserted that responsive documents may be subject to privilege, but has provided no list of such responsive documents or specific grounds on which the documents could be privileged. In these circumstances, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>Similarly, in accordance with IBA Rule 9.2(e), to the extent Claimant alleges that there are "<i>compelling</i>" grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and</p>

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	description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.
E. Decision of the Tribunal	<p>The request is rejected on the basis that (a) any reliance by the Claimant on “administrative silence” is a question of law to be the subject to expert opinion and decision by the Tribunal, and (b) legal opinions are subject to legal privilege.</p> <p>If any privileges are invoked, then the Claimant shall present a privilege log as identified in P.O. No. 2.</p>

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<p>Document Request No.</p>	<p>6</p>
<p>A. Documents or category of documents requested</p>	<p>Documents evidencing the steps taken by GRVC to compel Reina de Oro to comply with the domestic arbitral tribunal’s award (Exhibit C-38), including:</p> <p>(i) the enforcement claim filed against Minera Reina de Oro before the 8th Civil Circuit Court of Bucaramanga;</p> <p>(ii) the request for interim measures filed against Minera Reina de Oro requesting the attachment of the rights of Concession 14833;</p> <p>(iii) the “<i>Liquidación del Crédito</i>” filed in the enforcement proceeding commenced against Minera Reina de Oro in the Colombian courts; and</p> <p>(iv) GRVC’s request to attach all of Minera Reina de Oro’s bank accounts.</p>
<p>B. Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p> <p>(3) statement concerning custody and control</p>	<p>(1) Witness Statement of Robert Hinchcliffe, ¶ 156; Respondent’s Counter-Memorial, ¶¶ 213-218 and General Code of Procedure, Exhibit R-26, Art. 434.</p> <p>(2) The documents requested are relevant and material to the assessment of the steps that Galway took, or failed to take, in order to procure the execution of the assignment agreement for Concession 14833 from Reina de Oro.</p> <p>While Reina de Oro was ordered to execute this agreement, it never did so, and Galway was therefore never in a position to make a valid application for the approval and registration of the transfer of Concession 14833 by the ANM. It is Colombia’s submission that Galway’s failure to compel Reina de Oro to sign the assignment agreement led to Galway’s failure, together with Galway’s decision to take steps that were inconsistent with its objective to secure the transfer of Concession 14833 (e.g., attaching Concession 14833 in order to collect damages owed by Reina de Oro) was the root cause of Galway’s failure to obtain any ownership interest in Concession 14833, rather than any act or omission by Colombia.</p> <p>Galway should now be ordered to produce documents evidencing the steps it took (through GRVC) to compel Reina de Oro to comply with the domestic arbitral tribunal’s order in order for Colombia and the Tribunal to assess Galway’s failure to secure the transfer of Concession 14833 from Reina de Oro despite the availability of effective enforcement options.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
<p>C. Summary of objections by disputing party to production of</p>	<p>With regards to Request 6(i) to (iv), the requested documents were filed with the Court. Therefore, these documents are available in the Court file relating to each specific proceeding in the respective Colombian Courts, and are matters of public disclosure. They are not in the exclusive possession, custody or control of the Claimant.</p>

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<p>requested documents</p>	<p>Further, the request encompasses documents beyond what is specifically enumerated , and those additional documents relate to the steps taken to enforce the arbitral award against Reina de Oro, all of which were taken through the Court. Any documents responsive to this broader request were filed with the respective Colombian Courts and are therefore matter of public disclosure that are not in the exclusive possession, custody or control of the Claimant.</p>
<p>D. Reply</p>	<p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, the materiality and relevance of which is accepted by the Claimant.</p> <p>The Claimant’s sole objection to this request is that the documents requested were filed with the Colombian courts. This objection is without merit. The Claimant has not suggested that it would be at all burdensome for it to produce the documents requested. In contrast, it would be impractical and burdensome for the Respondent’s counsel in this arbitration to obtain the relevant documents. The documents requested are only accessible from the <i>Juzgados de Ejecución Civil del Circuito de Bucaramanga</i> (Civil Enforcement Courts of the Bucaramanga Circuit, the “Enforcement Courts”), which have been closed almost uninterruptedly from the start of the COVID-19 pandemic. The Enforcement Courts generally do not hold electronic copies of case files – such as the file concerning Galway’s enforcement action against Reina de Oro – and have only begun the process of digitizing such files. However, due to the pandemic and its attendant restrictions, this process has been hindered and remains incomplete. Accordingly, it would be extremely difficult, if not impossible for the Respondent’s counsel in this arbitration to retrieve such documents from the Enforcement Courts (which have thousands of enforcement actions on their docket at any given time) in time for their submission in this arbitration.</p> <p>Given that the Claimant is in possession of the documents and can readily produce them promptly and at no material cost, the Tribunal is respectfully requested to order that the Claimant produce all documents responsive to this request.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant indicates that documents have been filed with Courts in Colombia, and these can be subject to public disclosure. Claimant has not denied these are in its possession, However, taking into account the limitations of access due to the COVID-19 pandemic expressed by Respondent, the Tribunal orders Claimant to produce the requested documents.</p>

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Document Request No.	7
A. Documents or category of documents requested	The complete version of the slides produced by the Claimant as Exhibit C-82 (‘Schafer Perkins’, dated 25 February 2010).
B. Relevance and materiality: (1) para ref to submissions (2) comments (3) statement concerning custody and control	<p>(1) Claimant’s Memorial, ¶ 158 and footnote 188; Exhibit C-82, 25 February 2010 - Schafer Perkins.</p> <p>(2) Galway claims that it “<i>prepared a number of technical reports and presentation for investors describing the Vetas Gold Project, GG’s extensive program of exploration work, and the results, analysis, and interpretation of that exploration work</i>”. (Memorial, ¶ 158) One of the documents relied upon in support of this statement is a presentation that appears to have been prepared by or reflecting the analysis of consultant Schafer Perkins, Exhibit C-82. However, Galway has only produced two slides from this presentation. The second slide makes clear that the presentation contains more slides (see the comment in the final bullet point in red stating that “<i>I moved the rest of the text to a new slide so it reads more easily</i>”). Galway should now be ordered to produce the full document in order to allow Colombia a fair opportunity to address it.</p> <p>(3) As stated at ¶ 5 above, Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested are in its possession, custody or control.</p>
C. Summary of objections by disputing party to production of requested documents	The Claimant has determined that the slides produced as Exhibit C-82 were inadvertently included as an exhibit to the Witness Statement of Robert Hinchcliffe. The two pages produced form part of a draft slide presentation. It is clear from the notes to draft in those two pages that they were only in draft, unfinished form, and they were marked as an exhibit only by inadvertent error. These slides are excerpts from a draft report that was never finalized nor released to the public. As a draft that was never finalized and never released to the public or used for any other purpose, it is not relevant or material. The disclosure of this privileged document was inadvertent and therefore does not amount to a waiver of lawyer-client, litigation or other privilege. Any reference to it should be deleted.
D. Reply	<p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce the complete version of the draft slide presentation.</p> <p>The Claimant raises two grounds for objecting to this request for this document, which the Claimant has confirmed is in its possession and can therefore readily be produced. Neither of the Claimants’ grounds has any merit.</p> <p><i>First</i>, the Claimant states that the document was never finalized seeks to refuse to produce the full draft on the basis that the Claimant has unilaterally determined that “<i>the slides produced as Exhibit C-82 were inadvertently included as an exhibit to the Witness Statement of Robert</i></p>

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	<p><i>Hinchcliffe.</i>” However, regardless of whether the document was exhibited in error or intentionally, or whether it was finalized, it reveals the existence of a more complete draft presentation regarding certain exploration results.¹⁴ To the extent the Claimant relies on other such presentations (and therefore, presumably, relies on them in support of its claim), the Claimant should not be entitled to withhold the full version of this draft presentation on the same subject matter, the content of which is relevant and material to the Claimant’s case and the veracity of Mr. Hinchcliffe’s testimony.</p> <p><i>Second</i>, the Claimant has asserted that the document is subject to “lawyer-client, litigation or other privilege”, but has provided no justification for this claim to privilege. Similarly, the Claimant has stated that the claimed privilege was not waived by disclosure of part of the document because the disclosure was inadvertent, yet provides no support for this assertion either. In these circumstances, the claim to privilege provides no basis for the request to be denied. To the extent the Claimant wishes to maintain its claim to privilege over the document, the Respondent requests such claim to privilege over the requested document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p>
<p>E. Decision of the Tribunal</p>	<p>The Claimant has not justified its position that the slides are subject to legal privilege, and therefore the Tribunal orders the Claimant to produce the requested documents.</p>

¹⁴ See, Claimant’s Memorial, ¶ 158 and Witness Statement of Robert Hinchcliffe, ¶ 139, citing **C-081-ENG**, October 2009 - Galway Resources' California Gold Project Santander State, Colombia; **C-082-ENG**, 20 February 2010 - Schafer Perkins; **C-083-ENG**, 29 March 2012 - Northern Securities Analysis Report; **C-084-ENG**, 7 December 2012 - California and Vetas Gold-Silver Project and Victorio Molybdenum - Tungsten Project.