

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Glencore International A.G.

v.

Republic of Colombia

(ICSID Case No. ARB/21/30)

PROCEDURAL ORDER No. 6

Members of the Tribunal

Ms. Sabina Sacco, President of the Tribunal
Prof. Bernard Hanotiau, Arbitrator
Prof. Donald M. McRae, Arbitrator

Secretary of the Tribunal

Ms. Alicia Martín Blanco

Assistant to the Tribunal

Mr. Rahul Donde

31 July 2025

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I. SCOPE OF THIS ORDER

1. This Procedural Order No. 6 (“PO6”) addresses the Claimant’s application (the “Application”) seeking the exclusion of parts of the Rejoinder,¹ the second technical mining expert report prepared by Weir International, Inc (“Weir” and the “Second Weir Report”),² and the second valuation report prepared by the Brattle Group (“Brattle” and the “Second Brattle Report”),³ all relating to the two novel mine plan models included in the Second Weir Report that contain an “assessment of the additional coal volumes that Cerrejón would have extracted from the Cerrejón mine in the absence of the Measures and the sequencing/scheduling of the production of such volumes” (the “Rejoinder Mine Plans”).⁴

II. PROCEDURAL BACKGROUND

2. On 2 June 2025, the Claimant filed the Application, arguing that the Respondent had introduced new evidence that should have been presented with the Counter-Memorial, thus violating Sections 15.1 and 15.2 of Procedural Order No. 1 (“PO1”).
3. On 13 June 2025, the Respondent opposed the Application (the “Response”), arguing that the Rejoinder Mine Plans directly responded to new arguments and evidence raised by the Claimant in its Reply and thus complied with PO1. In addition to opposing the Application, the Respondent submitted that even if the Tribunal found merit in the Application, the appropriate relief would be to allow the Claimant to submit responsive materials before the hearing in November 2025, rather than to strike the Respondent’s evidence.
4. On 18 June 2025, the Claimant opposed the Respondent’s submissions (the “Reply”). Notably, it rejected the alternative relief proposed by the Respondent, explaining that preparing responsive materials would be impractical due to the significant time required, conflicting hearing preparations and other professional commitments. Nonetheless, the Claimant indicated that it would prefer some procedural remedy over none if the Tribunal declined to exclude the Rejoinder Mine Plans. Should the Tribunal grant the alternative relief proposed by the Respondent, the Claimant noted that it would need until 13 October 2025 to submit responsive materials.

¹ The Claimant requested the following redactions “(i) paragraphs 55 and 58.e-f; (ii) paragraphs 1115-1116, 1186-1187; and (iii) Section V.D.” Application, p. 10.

² The Claimant requested the following redactions “(i) paragraphs 6-7, 9-10, 18-24, including footnotes, and Table 2-1; (ii) Sections 4-5; (iii) paragraphs 277-279; (iv) Appendices A-F; (v) Exhibits WEIR-36 and WEIR-40.” Application, p. 9.

³ The Claimant requested the following redactions “(i) paragraphs 14-17; (ii) Section V.C; (iii) paragraph 152; (iv) Section VI.A; (v) paragraph 171, including footnotes; and (vi) Exhibits BR-93 and BR-94.” Application, p. 9.

⁴ Application, p. 2.

5. On 24 June 2025, the Respondent once again disputed the Claimant's position (the "Rejoinder").
6. On 27 June 2025, citing the risk that the Tribunal might grant only the alternative relief, and considering the limited time before the hearing, the Claimant – without prejudice to its primary request for exclusion of the Rejoinder Mine Plans – requested the Respondent to produce, by 7 July 2025, some technical mining documents related to the Rejoinder Mine Plans.
7. On 2 July 2025, the Respondent expressed willingness to produce some responsive materials but said that it would do so only after the Tribunal rejected the Application and confirmed that Rejoinder Mine Plans would remain in the record.
8. On 4 July 2025, the Claimant advised the Tribunal of the inter-Parties correspondence just mentioned, stating further that the Respondent's unwillingness to produce the requested documents further supported the primary relief it sought.
9. On the same day, the Respondent sought leave to comment on the Claimant's communication just mentioned.
10. On 5 July 2025, the Tribunal advised the Parties that it was currently deliberating on the Application and considering the Parties' submissions thereon, and that it would not consider the Claimant's communication of 4 July 2025 in deciding on the Application. In the circumstances, it did not find it necessary to allow the Respondent an opportunity to comment on that communication.
11. On 7 July 2025, the Tribunal advised the Parties that, having carefully considered the Parties' submissions, it had decided to deny the Application. However, it granted the Claimant an opportunity to submit materials responding to the Rejoinder Mine Plans by 13 October 2025. The Tribunal issued its decision without reasons in the interest of time and clarified that its full reasoning would follow in a detailed Order. The Tribunal also invited the Respondent to comment on the Claimant's communication of 4 July 2025, which the Respondent did on 9 July 2025.
12. This Order sets out the Tribunal's reasons for denying the Application.

III. THE APPLICATION

A. The Claimant's Position

13. The Claimant contends that the Rejoinder Mine Plans contained in the Second Weir Report and submitted by the Respondent along with its Rejoinder are not responsive to evidence first alleged by the Claimant with its Reply. It argues that they are "out of time" and violate Sections 15.1 and 15.2 of Procedural Order No. 1 ("PO1"). The Tribunal should thus

exclude them as well as those parts of the Rejoinder and the Second Brattle Report that refer to them.

14. More specifically, the Claimant submits that the Rejoinder Mine Plans are inadmissible under Section 15.2 of PO1 because they do not address new arguments or evidence raised for the first time in the Claimant's Reply. This is clear from the following chronology of events:⁵
- a. Along with its Memorial of 1 March 2024, the Claimant provided a technical mining expert report by SRK Consulting ("SRK" and the "First SRK Report"), which modeled the additional coal volumes that Cerrejón would have produced under a hypothetical scenario without the disputed measures;
 - b. On 3 May 2024, the Respondent requested specific technical files to develop its own mine plan models. The Claimant supplied those documents within two weeks;
 - c. On 17 June 2024, the Respondent cited technical difficulties in accessing the files, to which the Claimant responded within three days. The Respondent did not pursue the issue further, nor did it make any document requests or request an extension for filing its Counter-Memorial;
 - d. In its expert report accompanying the Respondent's Counter-Memorial ("First Weir Report") of 10 July 2024, Weir critiqued the assumptions underlying SRK's mine plan model. It did not, however, provide an alternative mine plan model, instead choosing to reserve the right to submit an alternative mine plan model at a later stage;
 - e. In its Reply of 5 December 2024, the Claimant objected to the Respondent's reservation of rights to submit an alternative mine plan model. It stressed that the Respondent had ample time and access to all necessary documents to submit such evidence with its Counter-Memorial, as explicitly required under PO1. Further, it could have sought an extension of the deadline for filing its Counter-Memorial had it genuinely needed additional time. Instead, it chose to proceed without submitting a complete damages case in its Counter-Memorial. Withholding the mine plan model until the Respondent's final submission was a deliberate tactic that not only breached the Tribunal's procedural framework but also deprived the Claimant of its right to respond in writing;
 - f. On 6 March 2025, the Respondent requested the Claimant to supply certain documents to enable the former to prepare an "alternative damages model" ahead of its Rejoinder. The Claimant supplied the material. It reiterated that submitting such a model at the

⁵ Application, p. 7.; Reply, pp. 3-7.

Rejoinder stage would violate PO1, as it would amount to introducing evidence that should have been filed earlier;

- g. Despite this, on 1 June 2025, the Respondent submitted the Rejoinder Mine Plans with its Rejoinder.
15. For the Claimant, the Rejoinder Mine Plans clearly respond to arguments initially advanced in the Claimant’s Memorial, rendering their late submission untimely and improper. The Tribunal’s procedural rules limit expert evidence in the second round of pleadings to rebutting new points raised in the previous round. By submitting the Rejoinder Mine Plans at the Rejoinder stage, the Respondent has breached this procedural restriction.
16. The Claimant also points out that the Respondent itself acknowledged that the Rejoinder Mine Plans were responsive to the Claimant’s Memorial. Prior to submitting its Counter-Memorial, the Respondent sought documents expressly to develop an alternative mine model. Weir also admitted in the First Weir Report that such models were contemplated. Despite having received the necessary documents and having ample time, the Respondent chose not to submit its mine plans with its Counter-Memorial, invoking time constraints. Moreover, the Second Weir Report confirms that the Rejoinder Mine Plans were produced in response to arguments presented in the Memorial and were developed only after belated instructions from the Respondent. The Claimant insists that this amounts to an intentional circumvention of PO1.
17. The Claimant argues that the Respondent’s procedural strategy constitutes an impermissible “wait and see” approach explicitly barred by PO1. The Respondent was obligated to present its full damages case, including any alternative mine plan models, with its Counter-Memorial. Its failure to do so, followed by the late submission of the Rejoinder Mine Plans, directly violates the Tribunal’s procedural directions.
18. The Claimant notes that Rule 34(1) of the ICSID Arbitration Rules grants the Tribunal the authority to rule on the admissibility of evidence. Prior ICSID tribunals, including the one in *IC Power v. Peru*, have struck out belated expert evidence submitted with a rejoinder that should have been filed with the counter-memorial, highlighting that such breaches disrupt the procedural calendar and deprive the opposing party of the opportunity to rebut.⁶
19. The Claimant rejects the Respondent’s attempt to characterize the requested relief as “extraordinary.” Enforcing PO1’s explicit provisions is neither extraordinary nor unusual; rather, it is necessary to uphold procedural order. Equally, the Claimant rejects the Respondent’s assertion that the Application seeks to “suppress” unfavorable evidence. The Claimant had explicitly warned the Respondent in advance that it would seek to strike any

⁶ Application, p. 8; Reply, p. 11 relying on *IC Power and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB/19/19, Procedural Order No. 3, 25 October 2021, ¶¶ 52, 58-66.

belated expert evidence made in breach of PO1. The Application, made within one business day of receiving the Rejoinder, was thus a principled and timely response.⁷

20. The Claimant also notes that the Respondent's attempt to defend the substantive merits of its expert evidence is irrelevant to this procedural dispute.⁸ The only question before the Tribunal is whether the Rejoinder Mine Plans violate PO1's procedural limitations. On that latter point, the Respondent admitted the challenged evidence forms a core part of its damages case. It should thus have been submitted along with its Counter-Memorial. Admitting it at this belated stage, when the Claimant has no opportunity to counter it, would clearly prejudice the Claimant.⁹
21. The Claimant rejects the Respondent's arguments defending its belated submission of the Rejoinder Mine Plans. It points out that each of the Respondent's defenses – whether related to the complexity of modelling, alternative coal sources, operational constraints, or reliance on new documents – addresses points that were already in dispute in earlier submissions. The Respondent's attempts to frame these issues as new are unconvincing given the record of procedural correspondence and the substance of the Counter-Memorial. In particular:
- a. In response to the Respondent's claims that the Rejoinder Mine Plans were needed to address SRK's assertion in the Reply that a full-field mine plan was too complex and unnecessary, the Claimant notes that this position was first advanced in the First SRK Report. The Respondent had already sought to rebut it in the First Weir Report. Any continued disagreement on this issue merely reinforces the fact that it was part of the initial pleadings and should have been addressed earlier;
 - b. While the Respondent argues that the Rejoinder Mine Plans respond to the Claimant's position on availability of alternative coal sources, here again, these statements were direct responses to arguments in the Respondent's own Counter-Memorial and expert reports. The topic was clearly raised by the Respondent and cannot justify late evidence;
 - c. Along the same lines, while the Respondent suggests that the Rejoinder Mine Plans address the Claimant's allegation in the Reply that Cerrejón would have continued to face real-world constraints, this was a central criticism made by the Respondent in its Counter-Memorial and supporting reports. It is thus not new;
 - d. Finally, while the Respondent argues that the Rejoinder Mine Plans were based on documents received after the Claimant's Reply, these documents were only received

⁷ Reply, p. 2.

⁸ Reply, p. 2.

⁹ Reply, p. 3.

late because the Respondent failed to request them in time. As already mentioned, the Respondent had already obtained some documents before the Counter-Memorial and chose not to use them, nor did it seek further production in time.¹⁰

22. The Claimant highlights that it has suffered clear prejudice from Colombia's procedural breach, having been denied its right to respond in writing to Colombia's primary damages case. It thus opposes the Respondent's proposed alternative remedy, which would allow the Claimant to submit responsive expert evidence before the hearing. Preparing a mine model requires months of work, which it would not be able to complete before the hearing given its other case commitments. Moreover, the Respondent has withheld key documents needed to analyze the Rejoinder Mine Plans. Even if they were disclosed now, there would be insufficient time for a proper response. Still, as the Claimant "would prefer to be left with some procedural remedy as opposed to no remedy", the Claimant indicates that it can respond to the impugned material four weeks prior to the November hearing i.e. by 13 October 2025.¹¹
23. The Claimant concludes that granting the proposed alternative remedy would effectively reward procedural violations and incentivize future breaches of procedural rules. Accordingly, the Claimant urges the Tribunal to grant its primary request: to strike the Rejoinder Mine Plans, all related portions of the Rejoinder and Second Brattle Report, and to order the Respondent to resubmit its Rejoinder in compliance with PO1.¹²

B. The Respondent's position

24. The Respondent opposes the Application, characterizing it as baseless and unreasonable. Granting it would violate due process and cause serious prejudice to the Respondent. It further contends that the Claimant has distorted the procedural history of the case to suit its case. According to the Respondent, an accurate account of the relevant events is as follows:¹³
- a. The Claimant's Memorial was accompanied by expert reports from SRK and Compass Lexecon in support of the Claimant's damages claim. The Claimant's experts assumed that Cerrejón would have mined the La Puente 1A pit in addition to existing production, without conducting a comprehensive analysis of the broader operational impact on the mine. SRK itself admitted its approach was unrealistic yet chose not to conduct the necessary "complex exercise" of preparing a full mine plan;

¹⁰ Reply, pp. 7-9.

¹¹ Reply, pp. 13-14.

¹² Reply, pp. 14-15.

¹³ Response, pp. 1-9; Rejoinder, pp. 1-7.

- b. In their reports submitted along with its Counter-Memorial, the Respondent's experts, Weir and Brattle, identified serious deficiencies in the Claimant's damages analysis, including failure to consider internal documentation and alternative sources of coal. The experts found it impossible to make minor adjustments to the Claimant's model and concluded that only a complete mine plan would allow for a reliable assessment of damages. Accordingly, the Respondent explicitly reserved its right to submit such a mine plan with its Rejoinder if the Claimant failed to provide a complete mine plan in its Reply, provided the Claimant supplied the necessary documents.
 - c. In the Claimant's Reply, the Claimant revised its damages model, reduced its damages claim, and introduced new evidence and arguments. These included reliance on Cerrejón's 2025 Life of Mine Plan, a second witness statement from [REDACTED] addressing alternative coal sources, and new arguments from SRK asserting that preparing an alternative mine plan would be complex and time-consuming. These revisions went beyond mere updates and amounted to fundamental changes to the Claimant's damages case. Given the Claimant's refusal to provide a proper mine plan that corrected the defects in its earlier mine plan, the Respondent was compelled to proceed as it had announced it would in the Counter-Memorial.
25. The Respondent further explains that it was unable to submit the Rejoinder Mine Plans earlier. Before submitting its Counter-Memorial, it had requested critical documents from the Claimant but faced delays and resistance from the Claimant. Eventually, it obtained the necessary documents in March 2025, after the Claimant's Reply had been filed. The Respondent could not develop an alternative mine plan before the Counter-Memorial and could do so only after it obtained the required information after the Claimant's Reply.¹⁴
26. The Respondent notes that the Rejoinder Mine Plans submitted along with its Rejoinder were based on the documents obtained through document production. This evidence was essential to rebut new arguments and evidence in the Claimant's Reply concerning alternative coal sources. Its experts demonstrated the availability of viable alternatives to La Puente 1A and showed that the Claimant's damages were significantly overstated. According to the Respondent, the Rejoinder Mine Plans substantially reduce the damages estimates and explain why the Claimant now seeks to exclude this evidence.¹⁵
27. For the Respondent, the Claimant's position that the impugned submissions and evidence respond to evidence from the Memorial, rather than the arguments and evidence from the Reply is "simply inaccurate". A "cursory review" confirms that the Respondent and its experts responded to the arguments submitted in the Reply.¹⁶

¹⁴ Response, pp. 5-7.

¹⁵ Response, pp. 7-9.

¹⁶ Rejoinder, pp. 6-7.

- a. The Second SRK Report introduced a new argument asserting that developing a full mine plan would not reflect the isolated impacts of the impugned measures. In response, Weir prepared alternative mine plans to disprove this, demonstrating that the impact of the suspension could be isolated through such modeling. Weir also addressed the new claim made in [REDACTED] second witness statement – repeated by the Claimant and SRK in the Reply – that [REDACTED] was not a viable alternative to La Puente 1A;
 - b. The same reasoning applies to the [REDACTED] pit. The Claimant, [REDACTED] and SRK advanced new arguments in the Reply concerning this pit, to which Weir responded by demonstrating that Cerrejón could have increased production from it as part of an alternative mine plan;
 - c. Brattle likewise responded to new arguments made in the Second Compass Lexecon Report, in particular the claim that there was no evidence of meaningful alternatives to the Bruno Stream Project. Brattle rebutted this by citing the evidentiary record and the Second Weir Report.
28. For the Respondent, its submissions and evidence fully comply with PO1 and must remain on record. After all, PO1 permits the Parties to submit arguments and evidence in the Rejoinder that respond to arguments or evidence in the Reply and address documents obtained through document production. The Respondent’s submissions meet both criteria. The Rejoinder Mine Plans refute the Claimant’s assertions in its Reply by showing both the existence of alternative coal sources and the persistence of real-world operational constraints. Additionally, the Rejoinder Mine Plans are based on documents obtained through post-Reply document production. Besides, the Respondent had no practical opportunity to submit the evidence before the Rejoinder.¹⁷
29. The Respondent objects to the Claimant’s reliance on the *IC Power v. Peru* case, arguing that the facts in that case are materially different. There, the relevant data was publicly available, and the respondent had not acted diligently. By contrast, in this case, the data was confidential and exclusively controlled by the Claimant. The Respondent highlights that its experts identified flaws in the Claimant’s case early, reserved their right to respond, and developed the Rejoinder Mine Plans only after receiving the required documents. Further, most ICSID tribunals have allowed respondents to submit evidence with their rejoinders where the evidence responds to new arguments raised in the reply.¹⁸
30. The Respondent also rejects the Claimant’s argument that its prior reservation of rights in the Counter-Memorial makes its submission of the Rejoinder Mine Plans untimely. It explains that it was unable to submit those Plans earlier due to its lack of access to essential

¹⁷ Response, pp. 7, 9-11.

¹⁸ Response, pp. 12-13, Rejoinder, pp. 9-13.

data. Tribunals have accepted submissions under similar circumstances when respondents acted diligently after facing document production delays caused by claimants.¹⁹

31. The Respondent also strongly contests the Claimant's allegations of procedural unfairness. On the contrary, the relief sought by the Claimant is "extraordinary" and would violate the Respondent's due process rights. If the Claimant had a valid concern about due process, the exclusion of the Rejoinder Mine Plans and related evidence would not be the appropriate remedy. After all, the Claimant would have the opportunity to address these issues during the hearing, including through cross-examination. Moreover, the Claimant could have sought leave to respond to the expert evidence but did not do so. This shows that the Claimant's true aim was not to safeguard procedural rights but to suppress damaging evidence.²⁰
32. Furthermore, the Respondent highlights the contradiction in the Claimant's position on timing. It notes that while the Claimant criticizes it for not preparing a mine plan within the four months before the Counter-Memorial, it simultaneously argues that five months before the hearing is insufficient for the Claimant to respond to the Rejoinder Mine Plans. While the Respondent had to pursue document production during the earlier period, the Claimant already holds all necessary data to respond to the Rejoinder Mine Plans. This contradiction undermines the credibility of the Claimant's due process argument and confirms that the Application is a strategic attempt to exclude critical evidence rather than raising a legitimate procedural concern.²¹
33. The Respondent concludes that its submissions were procedurally proper and necessary to rebut the evolving damages case presented by the Claimant. Excluding its evidence would cause serious prejudice, violate its right to be heard, and prevent the Tribunal from considering relevant information.

C. Analysis

34. The Claimant seeks the exclusion of the Rejoinder Mine Plans and related evidence submitted by the Respondent with its Rejoinder, arguing that it violates the procedural rules set out in PO1. The Respondent opposes the request, asserting that the impugned materials are timely, responsive to new arguments, and necessary to rebut the Claimant's evolving damages case.
35. Sections 15.1 and 15.2 of PO1 set out the following rules regarding the content of the first and second round of written submissions:

¹⁹ Rejoinder, pp. 12-13.

²⁰ Response, pp. 13-14; Rejoinder, pp. 13-14.

²¹ Rejoinder, pp. 14-15.

- 15.1 In the first exchange of submissions (i.e., Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they rely. Together with such submissions, each Party shall produce all evidence, including documentary evidence (fact exhibits), witness statements and expert reports, as well as legal authorities, upon which it relies, if any, with the exception of documents to be obtained during the document production phase. Following each fact allegation and, wherever possible, legal argument, the Parties shall make specific reference in their submissions to the supporting evidence and legal authorities (i.e., indicating the document cited, and the relevant pages or paragraph numbers).
- 15.2 In the second exchange of submissions (i.e., Reply and Rejoinder), the Parties shall limit themselves to (i) responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, (ii) addressing evidence obtained through document production (if any); and (iii) addressing new facts that have arisen after the Memorial or Counter-Memorial, respectively. Together with their Reply and Rejoinder, respectively, the Parties may only file (i) additional evidence intended to answer or refute evidence or facts first alleged by the other Party in its previous pleading; (ii) any documents obtained through document production, to the extent that the Party wishes to rely on them; and (iii) documents discovered or obtained by a Party after the filing of its first written submission and not reasonably previously available.
36. Section 15.2 thus permits the Parties in their second round of submissions (i.e., Reply and Rejoinder) to (i) respond to allegations of fact and legal arguments raised in the preceding submission, (ii) submit evidence obtained through document production or discovered or obtained after the first round of submissions; and (iii) answer or refute new facts that have arisen after the Memorial (for the Claimant) or the Counter-Memorial (for the Respondent). The focus is not on when the underlying issues first arose, but whether the contested material directly responds to arguments or evidence presented in the prior pleading.²²
37. The Tribunal finds the Rejoinder Mine Plans to be responsive to points initially raised in the Claimant's Memorial. *Inter-partes* correspondence exchanged between the Parties before the Counter-Memorial suggests that the Respondent was contemplating preparing responsive mine plans alternative to those presented by the Claimant at the time.²³ However, the Respondent did not submit such plans then, instead reserving its rights to

²² The Parties agree. *See* Response, pp. 10-11, Reply, p. 7.

²³ *See*, for e.g., Exh. C-0335, p. 5 and Exh. C-0339.

submit such plans at a later stage once it received (what it considered to be) requisite information.²⁴

38. At the same time, the Tribunal also finds that the Claimant submitted new arguments and evidence in respect of its mine plans in its Reply and expanded on its earlier arguments. This included a revised quantum model,²⁵ reliance on Cerrejón’s 2025 Life of Mine Plan,²⁶ witness testimony addressing alternative coal sources²⁷ and arguments from SRK challenging the necessity of a full mine plan.²⁸ These materials impacted the Claimant’s damages case. The Rejoinder Mine Plans and related evidence address this material. Further, given the complexity of preparing a mine plan – something both Parties’ experts acknowledge – it might well have not been efficient or feasible for the Respondent to submit its mine plan earlier. While the Claimant contests some of the delays in the Respondent obtaining relevant documents, it appears undisputed²⁹ that some of the data used by the Respondent in preparing the Rejoinder Mine Plans became available to the Respondent only after the Reply, following document production requests.³⁰
39. Further, the Tribunal notes that the hearing is still several months away. The Respondent has not contested that the Claimant should have a full opportunity to respond to the Rejoinder Mine Plans and related materials. Quite to the contrary, it was the Respondent who suggested this as an alternative relief. Nor has the Respondent objected to the Claimant’s proposal of 13 October 2025 for submitting its response.
40. In the circumstances, the Tribunal considers that the best approach is one which allows both sides to fully present their damages cases. Accordingly, it denies the Application but allows the Claimant to file responsive materials by the date it proposes, i.e., by **13 October 2025**. The Respondent’s experts will have four weeks thereafter to consider that material before the November 2025 hearing. This approach is aligned with the approaches taken in similar circumstances by other ICSID tribunals.³¹

²⁴ See, for e.g., Counter-Memorial, ¶ 970.

²⁵ See, for e.g., Reply Memorial, ¶ 783.

²⁶ Second SRK Report, ¶ 15; Second Compass Lexecon Report, ¶¶ 13-20. The Claimant concedes that this was “new” evidence, but states that its experts “simply updated their first modeling exercise given the date on which damages are to be calculated”. Reply, p. 6.

²⁷ Second Witness Statement of [REDACTED], ¶¶ 30-41.

²⁸ Second SRK Report, ¶¶ 99-100.

²⁹ Reply, p. 6 (the Claimant only complains about the delay in the Respondent seeking documents).

³⁰ See Rejoinder, p. 5; Reply, fns. 17, 38.

³¹ See, for e.g., Exh. RL-0273, *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Procedural Order No. 9, 22 April 2024; Exh. RL-0275, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 9, 25 November 2019.

IV. ORDER

41. For the reasons set out above, the Tribunal:

- a. Denies the Application;
- b. Invites the Claimant to file a submission and evidence responding to the parts of the Rejoinder, Second Weir Report and Second Brattle Report relating to the Rejoinder Mine Plans by **13 October 2025**;
- c. Reserves all questions of costs for a later decision.

On behalf of the Tribunal,

[Signed]

Sabina Sacco
President of the Tribunal

Date: 31 July 2025