

Annex B to Procedural Order No. 6

Infinito Gold Ltd.

Claimant

v.

Republic of Costa Rica

Respondent

ICSID Case No. ARB/14/5

**COSTA RICA'S REPLY TO THE CLAIMANT'S RESPONSES
TO COSTA RICA'S DOCUMENT PRODUCTION REQUESTS**

27 August 2018

1. This Request for Production of Documents is made in the form of a Redfern Schedule in accordance with section 16.1 and Annex B of Procedural Order No. 1 dated 17 February 2015 (“**Procedural Order No. 1**”).
2. To the best of Costa Rica’s knowledge, none of the documents requested are in its possession, custody or control.
3. Costa Rica believes that all the documents requested exist and should be in the possession, custody or control of Infinito Gold Ltd. (the “**Claimant**”) or the Claimant’s Costa Rican subsidiary Industrias Infinito, S.A. (“**Industrias Infinito**”). Documents in the possession, custody or control of the Claimant’s or Industrias Infinito’s board, executives, employees, subsidiaries, advisors or agents, are deemed, for the purposes of these document production requests, to be in the possession, custody or control of the Claimant.
4. Documents which have already been disclosed or are on the record in this arbitration are excluded from these document production requests.
5. Costa Rica adopts the following defined terms for the purposes of these document production requests:

“**Document**” means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means, including e-mails, letters, faxes, instant messages, memoranda, reports, notes, minutes or records of any meetings, audio recordings, presentation slides, books, spreadsheets and financial data. References to documents include copies of any documents.

“**Produced**”, or any variant thereof, shall include “created” and/or “drafted”.

All other terms used in these document production requests have the same meaning as assigned to them in the Respondent’s Counter-Memorial, dated 30 July 2018. *See* Counter-Memorial, Respondent’s Glossary.

6. Costa Rica requests that each Document which is responsive to these document production requests be produced:

- (a) in its entirety and with its attachments or enclosures, if any exist;
 - (b) in its original file type (e.g., .doc, .docx, .ppt, .xlsx), where the document is available in electronic form;
 - (c) in colour, where the original version contains any charts, technical diagrams or graphs shown in colour; and
 - (d) accompanied by an index identifying (i) the date of the document, where available; and (ii) the document production request (or requests) by Costa Rica to which the document being produced is responsive.
7. The fact that a category of Documents requested by Costa Rica in this Application may include Documents that may ultimately not be exhibited due to a “legal impediment, privilege, confidentiality or political sensitivity” (Procedural Order No. 1, paragraph 16.3) does not exempt the Claimant of the obligation to exhibit the individual Documents included within the same category that are not covered by an impediment, privilege, confidentiality or sensitivity. Those Documents requested by Costa Rica that are covered by legal impediment, privilege, confidentiality or political sensitivity must be presented in a “privilege log”, with a general description of the Document and its date.
 8. Costa Rica reserves all of its rights in connection with these document production requests, in particular its right to apply to the Tribunal to seek permission to supplement its document production requests pursuant to the applicable procedural rules, in the appropriate stage of the proceedings.
 9. These document production requests are made without prejudice to the preliminary objections, arguments in the merits and damages sections raised by Costa Rica in previous pleadings or that it may raise in subsequent pleadings.

Annex B to Procedural Order No. 6

REDFERN SCHEDULE FOR COSTA RICA'S DOCUMENT REQUESTS

No.	Document(s) or Category of Documents Requested	Relevance and materiality according to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decision
		Ref. to Submissions	Comments			
1.	Documents produced or received by the Claimant or Industrias Infinito between 29 April 2010 and 31 December 2010 regarding the effects of the Arias Moratorium Decree on: (i) the Claimant's ability to build and operate the Crucitas Mining Project; and (ii) the value of the Crucitas Mining Project.	<p>Claimant's Memorial, paragraphs 245, 262-272, 304-323, 390.</p> <p>Respondent's Memorial, paragraph 196.</p> <p>Claimant's Counter-Memorial, paragraphs 254-255.</p> <p>Respondent's Counter-Memorial, paragraphs 104-105, 201-254, 538-546, 609.</p> <p>Exhibit R-0032.</p> <p>Decision on Jurisdiction paragraphs 332-</p>	<p>The Claimant asserts that the Legislative Moratorium contributed to the direct expropriation of its assets (see Claimant's Memorial, paragraph 267). The Claimant further asserts that the Claimant is entitled to damages that put it in the position it would have been in had the Legislative Moratorium not applied to the project (see Claimant's Memorial, paragraph 390). Costa Rica, on the other hand, argues that the Legislative Moratorium did not cause the Claimant any compensable damage because Industrias Infinito would still have been precluded from acquiring any new mining rights as a result of the Arias Moratorium Decree (and the Chinchilla Moratorium Decree), which the Claimant is not challenging in this arbitration (presumably because it pre-dates the cut-off date of 6 February 2011). Therefore, the adoption of the Legislative Moratorium had no separate effects or impact on Industrias Infinito or</p>	<p>The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.</p>	<p>Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.</p>	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in Procedural Order No. 6 ("PO6").</p>

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		333.	<p>the Claimant.</p> <p>The requested Documents are relevant and material to the outcome of the case because they bear on the effect of the challenged measure on the Claimant's investment. That in turn is relevant and material to the issues of (i) when the alleged breach arose and when the Claimant acquired knowledge of this fact; and (ii) the true cause of the Claimant's loss, two issues which the Tribunal explained are central to the issue of jurisdiction under Article XII(3)(c) of the BIT (Decision on Jurisdiction, paragraphs 332-333).</p>			
2.	<p>Documents produced or received by the Claimant or Industrias Infinito between 29 April 2010 and 31 December 2010 regarding the effects of the Chinchilla Moratorium Decree on: (i) the Claimant's ability to build and operate the Crucitas Mining Project; and (ii) the value of the Crucitas Mining Project.</p>	<p>Claimant's Memorial, paragraphs 245, 262-272, 304-323.</p> <p>Respondent's Memorial, paragraph 196.</p> <p>Claimant's Counter-Memorial on Jurisdiction, paragraphs 254-255.</p>	<p>The Chinchilla Moratorium Decree came into effect on 11 May 2010. The Chinchilla Moratorium Decree (and the Arias Moratorium Decree, jointly the "Executive Moratoria") prevented the Claimant from applying for a new mining concession. Since the Executive Moratoria came into effect before the cut-off date of 6 February 2011, the Claimant is time-barred from raising this claim. Therefore, the requested Documents are relevant and material to the outcome of the case for the reasons set out in relation to Document Production Request No. 1, including that they</p>	<p>The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.</p>	<p>Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.</p>	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.</p>

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		Respondent's Counter-Memorial, paragraphs 106, 201-254, 538-546, 609. Exhibit C-0229. Decision on Jurisdiction, paragraphs 332-333.	bear on the questions of (i) when the alleged breach arose and when the Claimant acquired knowledge of this fact; and (ii) the true cause of the Claimant's loss, in relation to Article XII(3)(c) of the BIT (Decision on Jurisdiction, paragraphs 332-333).			
3.	Documents produced or received by the Claimant or Industrias Infinito between 11 May 2010 and 25 February 2011 regarding the effects of the Legislative Moratorium on: (i) the Claimant's ability to build and operate the Crucitas Mining Project; and (ii) the value of the Crucitas Mining Project.	Claimant's Memorial paragraphs 200, 245, 262-272, 304-323. Respondent's Memorial, paragraph 196. Claimant's Counter-Memorial, paragraphs 254-255. Respondent's Counter-Memorial, paragraphs 163-165, 201-254, 447, 538-546,	The Legislative Moratorium merely replicated the substance of the 2010 Executive Moratoria that had been issued by the executive branch prior to the cut-off date. Therefore, any loss or damages suffered by Industrias Infinito as a result of the recent ban on open-pit mining occurred on 11 May 2010, the date when the Executive Moratoria came into effect. As any alleged loss or damage occurred before the cut-off date of 6 February 2011, the Claimant is time-barred from raising its claims. The requested Documents are therefore relevant and material to the outcome of the case for the reasons set out in relation to Document Production Requests No.	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.

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		609. Exhibit C-0238. Decision on Jurisdiction, paragraphs 332-333.	1 and 2.			
4.	<p>Documents produced or received by the Claimant or Industrias Infinito between 14 December 2010 and February 2011 regarding:</p> <p>(i) the effects of the 2010 TCA Judgment on Industrias Infinito and/or the Claimant;</p> <p>(ii) the measures that Industrias Infinito and/or the Claimant took to mitigate the effects of the 2010 TCA Judgment on Industrias Infinito and/or the Claimant such as contingency plans, scenario analysis and amendments to business plans and forecasts; and</p>	<p>Claimant's Memorial, paragraphs 245, 262-272, 304-323.</p> <p>Respondent's Memorial, paragraphs 187-190.</p> <p>Claimant's Counter-Memorial, paragraphs 116, 146, 262-272.</p> <p>Respondent's Reply, paragraphs 152-162.</p> <p>Exhibit C-0239.</p> <p>Respondent's Counter-Memorial,</p>	<p>The Documents are relevant to the case and material to its outcome as they bear on the dispute between the parties as to the nature and effect of the 2010 TCA Judgment on the Claimant's investment.</p> <p>The Documents requested will shed light on the effect of the 2010 TCA Judgment on the Claimant's investment and the Claimant's knowledge of that effect. They are therefore relevant and material to the issues of (i) when the alleged breach arose and when the Claimant acquired knowledge of this fact; and (ii) the true cause of the Claimant's loss and damage and when the Claimant first acquired knowledge of such loss and damage. As explained by the Tribunal, these two issues are central to the analysis of whether the Tribunal lacks jurisdiction as a result of Article XII(3)(c) of the BIT (Decision on Jurisdiction,</p>	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.</p>

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	(iii) the effects of the 2010 TCA Judgment the value of the Crucitas Mining Project.	Section II.A(xi), paragraphs 201-254, 419, 538-546, 609. Credibility First Report, paragraphs 9 (i), 72, 150 (table 10.1) Decision on Jurisdiction, paragraphs 332-333.	paragraphs 332-333). The above two issues are in dispute between the parties. The Claimant asserts that the loss of its investment was due to the 2011 Administrative Chamber Judgment, the 2013 Constitutional Chamber Judgment, the 2012 MINAE Resolution and the Legislative Moratorium (see, e.g. Claimant's Memorial, paragraph 245). Costa Rica asserts, however, that the Tribunal lacks jurisdiction <i>ratione temporis</i> over the dispute as a result of Article XII(3)(c) of the BIT because the effects on the investment that the Claimant complains of are the result of the 2002 Moratorium, the 2010 TCA Judgment and the 2010 Executive Moratoria, of which the Claimant had knowledge before the cut-off date of 6 February 2011 (see Respondent's Counter-Memorial, paragraphs 201-254).			
5.	Documents produced or received by the Claimant or Industrias Infinito between January 2012 and June 2014 concerning or relating to the effect of the 2012 MINAE Resolution on: (i) the Claimant's ability to	Claimant's Memorial, paragraph 245, 262-272, 304-323. Respondent's Counter-Memorial, paragraphs 201-	The Documents are relevant to the case and material to its outcome as they bear on the dispute between the parties as to the nature and effect of the 2012 MINAE Resolution on the Claimant's investment, for the same reasons as set out in relation to Document Production Request No. 4.	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control. With respect to documents withheld or redacted on

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	build and operate the Crucitas Mining Project; and (ii) the value of the Crucitas Mining Project.	254, 538-546, 609. Decision on Jurisdiction, paragraphs 332-333.			will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.
6.	Documents produced or received by the Claimant or Industrias Infinito between 13 October 2008 and 23 October 2008 regarding the forest-clearing activities in the Crucitas Mining Project area carried out by Industrias Infinito.	Claimant's Memorial, paragraphs 155-156. Claimant's Counter-Memorial, paragraph 340. Respondent's Memorial, paragraphs 86, 92, 144-147, 340, 417, 621. Exhibits C-0197, C-239, R-0254.	The Claimant alleges that the Change of Land Use issued on Friday 17 October 2008 authorising Industrias Infinito to proceed with forest-clearing operations gave rise to an alleged expectation that it would be allowed to build and operate the mine. The forest clearing operations were complex and required careful planning since they involved a significant number of trees in an area that included protected tree species. However, upon receiving the Change of Land Use, Industrias Infinito commenced a massive tree logging operation the same day, which continued through the weekend causing environmental damage. Following an <i>amparo</i> request, the Constitutional Chamber issued a temporary injunction suspending the forest clearing operations on Monday 20 October 2008. This injunction was later reinstated by the TCA on 16 April 2010. The requested Documents are	The Claimant agrees to produce any non-privileged documents within its possession, custody or control from 13 October 2008 to 23 October 2008 regarding the tree cutting activities of Industrias Infinito S.A. Contrary to the Respondent's unsupported assertions, those tree cutting activities were undertaken pursuant to, and in compliance with, the change of land use permit granted by SINAC (C-0197). The Respondent's allegations of tree-clearing activities by Industrias Infinito S.A. that exceeded the scope of the permit granted by SINAC, as articulated in its Counter-Memorial on the Merits and repeated in this documentary request, are without evidentiary foundation. The Respondent is fishing for	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality. Costa Rica objects on procedural grounds to the Claimant's untimely submission concerning the alleged legality of the forest clearing operations that took place between 17 October and 20 October 2008. The Claimant's objection goes beyond what is necessary to respond to Costa Rica's document production request. Costa Rica does not agree	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6. The Tribunal takes note of the Respondent's procedural objection to the Claimant's submission.

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			<p>relevant to the case and material to its outcome as they bear on the issue of the Claimant's alleged legitimate expectations and the legality of its investment.</p> <p>The Claimant asserts that it had a qualifying investment under Article I(g) of the BIT (see Claimant's Memorial, paragraph 220). Costa Rica asserts, however, that the Claimant's investment suffered from a number of irredeemable legal defects, including that the Change of Land Use was invalid because Industrias Infinito incorrectly identified the species of tree in the area of the Crucitas Mining Project and failed to take into account that the area contained protected tree species. The requested Documents will shed light on the Claimant's involvement in the invalid grant of the Change of Land Use. Such Documents are therefore relevant and material to the question of whether the Claimant's investment was illegal such that it is not protected under the BIT and the dispute falls outside the consent to arbitration under the BIT.</p>	<p>evidence on which to base this allegation.</p> <p>The change of land use permit "allows the project to fell and use protected species, cut and harvest trees in areas of protection..." (C-0197). That permit specifically allowed for the felling of yellow almond trees. Executive Decree No. 34801-MINAET (C-0196), declaring the Crucitas Project to be in the public interest and national convenience, also contemplated "the felling of trees" including protected species, for which Infinito would pay compensation in the form of US\$250,000 for the purchase of conservation land, the plant 49.8 trees for each tree felled, and create a conservation and biological corridor.</p> <p>In any event, contrary to the Respondent's allegation, the yellow almond tree is not itself a species at risk. It is protected because it is part of the habitat for the green Macaw.</p> <p>The Constitutional Chamber of the Supreme Court, the highest judicial authority in</p>	<p>with the Claimant's arguments regarding that substantive issue but reserves its rebuttal for its Rejoinder.</p>	

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				<p>Costa Rica tasked with protecting the right of all Costa Ricans to a healthy environment pursuant to Article 50 of the Constitution, in its decision 2010-006922 (C-0225), undertook a detailed analysis of all environmental aspects of the Crucitas project and found that the project would have no significant impact on that particular species because they largely do not inhabit the project area (C-0225, paras. CV-CVI).</p> <p>Accordingly, and contrary to the Respondent's assertion, these activities have no bearing on the nature of the Claimant's investment as a qualifying investment under Article I(g) of the BIT.</p>		
7.	<p>Documents produced or received by the Claimant or Industrias Infinito between 14 December 2010 and 18 January 2011 in order to prepare the press release regarding:</p> <p>(i) the effects of the 2010 TCA Judgment on the Claimant's investment, including</p>	<p>Claimant's Memorial, paragraphs 245, 262-272, 304-323.</p> <p>Respondent's Memorial, paragraphs 187-190.</p> <p>Claimant's Counter-</p>	<p>On 18 January 2011 the Claimant issued a press release stating that the 2010 TCA Judgment had been issued and that by filing a cassation request to the Administrative Chamber of the Supreme Court it sought to overturn the 2010 TCA Judgment "to re-establish the security and value of its considerable and long-term investments in Costa Rica and to reverse the negative impact" of the ruling on the Claimant's share price</p>	<p>The Claimant notes that this request is substantially, if not entirely, subsumed by request #4. Nevertheless, the Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.</p>	<p>Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of</p>	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a</p>

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	<p>but not limited to those mentioned in the press release dated 18 January 2011; and</p> <p>(ii) the measures that the Claimant took to “reverse the negative impact” of the 2010 TCA Judgment on the Claimant’s investment, its share price, and its investors.</p>	<p>Memorial, paragraphs 116, 146, 262-272.</p> <p>Respondent’s Reply, paragraphs 152-162.</p> <p>Claimant’s Rejoinder, paragraphs 130-168.</p> <p>Respondent’s Counter-Memorial, Section II.A(xi), paragraphs 201-254, 419, 538-546, 609.</p> <p>Exhibit C-0246.</p> <p>Credibility First Report, paragraphs 9 (i), 72, 150 (table 10.1).</p> <p>Decision on Jurisdiction, paragraphs 332-333.</p>	<p>and on its investors and employees. The same press release also mentioned that “the cassation may be unsuccessful or that other legal options may be unavailable or unsuccessful at restoring the Company’s rights or value.”</p> <p>The above statements show that, as of 18 January 2011 at the latest, the Claimant knew that it had lost the value of its investment. In fact, the Claimant’s own evidence demonstrates that it believed that the true cause of its loss was the 2010 TCA Judgment, which annulled the 2008 Concession.</p> <p>The requested Documents are therefore relevant and material to the outcome of the case for the reasons set out in relation to Document Production Request No. 4.</p>		<p>alleged privilege or confidentiality.</p>	<p>privilege log as set out in PO6.</p>

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8.	Documents produced or received by the Claimant or Industrias Infinito between 30 November 2011 and 31 January 2012 regarding the effects of the 2011 the Administrative Chamber Judgment on Industrias Infinito and/or the Claimant.	<p>Claimant's Memorial, paragraphs 245, 262-272, 304-323.</p> <p>Respondent's Memorial, paragraphs 187-190.</p> <p>Claimant's Counter-Memorial, paragraphs 116, 146, 262-272.</p> <p>Respondent's Reply, paragraphs 152-162.</p> <p>Claimant's Rejoinder, paragraphs 130-168.</p> <p>Respondent's Counter-Memorial, Section II.A(xi), paragraphs 201-254, 419, 538-546, 609.</p> <p>Credibility First</p>	The requested Documents are relevant and material to the outcome of the case for the reasons set out in relation to Document Production Request No. 4.	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.</p>

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		Report, paragraphs 9(i), 72, 150 (table 10.1). Decision on Jurisdiction, paragraphs 332-333.				
9.	Documents produced or received by the Claimant or Industrias Infinito regarding the donation of USD 200,000 to President Arias's charitable foundation, <i>Fundación Arias Para La Paz</i> , by the Claimant's main shareholder Ronald Mannix or any other person with shares or interests in the Claimant.	<p>Claimant's Memorial, paragraph 220.</p> <p>Respondent's Counter-Memorial, paragraph 363-365.</p> <p>APREFLOFAS First Amicus Brief, paragraph 19.</p> <p>APREFLOFAS Second Amicus Brief, paragraphs 13-15.</p> <p>Exhibit R-0266.</p>	<p>The Costa Rican Prosecutor's Office has recently re-opened its investigation of an alleged USD 200,000 donation by Ronald Mannix, a major investor in the Claimant, to the Arias charitable foundation, <i>Fundación Arias Para La Paz</i>.</p> <p>Mr Arias was summoned to appear to present a preliminary statement to the Prosecutor's Office in relation to the alleged donation.</p> <p>This investigation shows that there are indicia that the Claimant's investment may be tainted by corruption.</p> <p>The requested Documents are therefore relevant and material to the outcome of the case, since they bear on the question of whether the Claimant's investment was illegal and therefore not susceptible to protection under the BIT, as</p>	<p>The Claimant is not aware of any donation to the charitable foundation of Nobel Peace Prize winner and former Costa Rican President Óscar Arias, the <i>Fundación Arias Para La Paz</i>, having been made by Infinito Gold Ltd., Industrias Infinito S.A., Mr. Ronald Mannix, the Norlien Foundation associated with Mr. Mannix, or anyone else affiliated with the Claimant.</p> <p>The Claimant produces together with this response: (i) Exhibit C-0446, a letter from Dr. David Elton, President and CEO of the Norlien Foundation on behalf of Mr. Mannix, to Ernesto Rivers of Grupo Nacion, the publisher of Costa Rican national newspaper <i>La Nación</i>, dated December 2008; and (ii) Exhibit C-0447, a letter from</p>	<p>Costa Rica takes note of the Claimant's response and of Exhibit C-0446 (letter from Dr. David Elton to Ernesto Rivers, dated December 2008) and Exhibit C-0447 (letter from Paula Tyler to John Morgan, dated 13 May 2011 as response to Costa Rica's request). Costa Rica assumes that the Claimant has conducted a good faith and thorough search for the documents requested. If that is not the case, Costa Rica expects that the Claimant will expand its search and produce any responsive documents by the document production deadline established in the procedural calendar.</p>	<p>The Tribunal notes that the Claimant has stated that it has no documents in its possession, power or control related to this topic other than the two letters it has filed as Exhibits C-0446 and C-0447. If the Respondent does not object within three days from this Order, these documents will be deemed to be in the record.</p> <p>The Tribunal further understands that the Claimant has conducted a good faith and thorough search for the documents requested. If this is not the case, the Tribunal invites the Claimant to make a further inquiry.</p>

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			explained in paragraph 365 of Costa Rica's Counter-Memorial.	<p>Paula Tyler, President of the Norlien Foundation to John Morgan, then-President of Infinito Gold Ltd., dated 13 May 2011.</p> <p>The Norlien Foundation's 1 December 2008 letter to the publisher of <i>La Nación</i> newspaper (C-0446) states:</p> <p>"Thank you for your letter and questions about discussions between Norlien Foundation and the Arias Foundation for Peace and Human Progress.</p> <p>The Norlien Foundation, set up by Mr. Mannix, gives and facilitates grants to charitable causes all over the world, in addition to extensive grants in Canada and the USA. The Norlien Foundation is a separate entity from the businesses of Mr. Mannix and Industrias Infinito.</p> <p>Companies related to Mr. Mannix give grants to local causes in the communities where they do business. These donations are allocated with the highest of ethics enabling the company to fulfill its corporate social responsibility.</p>		

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				<p>We understand from Industrias Infinito's management that this is evident in the Crucitas Project area where the company's contribution to the community has been approximately US \$3.8 million over the last 4 years. This has been provided through donations to local organizations including the purchase of computers and sewing machines for use in company sponsored training programs. The company's upgrading of infrastructure in the area, including roads, power lines and school facilities also benefit the local people directly and indirectly.</p> <p>The Norlien Foundation has not given any donation to the Arias Foundation or any other organization or person in Costa Rica. No related company, including Industrias Infinito, has given a donation to the Arias Foundation or any organization or person in Costa Rica except for Industrias Infinito's ongoing support for the local community as mentioned above.</p> <p>The most important work the</p>		

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				<p>Norlien Foundation does is in early childhood development and mental health programming which was explained to President Arias. Enclosed are two DVDs which provide an overview by world experts of this important work.</p> <p>The Norlien Foundation is prepared to work with capable organizations internationally who are genuinely interested in improving people's lives. However, all Norlien agreements are condition upon mutually agreeable program collaboration and are delivered in accordance with all Canadian and local laws in the relevant jurisdiction.</p> <p>We trust this information answers your questions.”</p> <p>The Norlien Foundation's 13 May 2011 letter to Infinito Gold's then-CEO (C-0447) states:</p> <p>“In my conversation with you yesterday you mentioned that public statements have been made in Costa Rica that may have compromised the good name of the Norlien</p>		

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				<p>Foundation by implying that donation(s) have been made from the Norlien Foundation to the Arias Foundation or others in Costa Rica to further the interests of Infinito Gold Ltd.</p> <p>The Norlien Foundation wishes to reconfirm the statement made to Grupo Nacion in a letter dated December 1, 2008 addressed to Ernesto Rivera and signed by the then Norlien Foundation President, David Elton, that no donations were made to the Arias Foundation or any other organization or person in Costa Rica.</p> <p>Most of the work of the Foundation is undertaken in Canada and our gifts to organizations outside of Canada are very limited. Norlien Foundation has made gifts in the United States and several countries in Africa but we have never made a gift to any organization in Costa Rica at any time since our creation in 1997. Nor do we anticipate making any gifts to any organization in Costa Rica in the future.</p>		

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				<p>Please be advised that Norlien Foundation authorizes Ciro Casas to enquire into the nature and origin of public statements that may have been made that either directly or indirectly compromises the good name of the Norlien Foundation. Confirmation regarding all of Norlien Foundation's gifts is on the public record in Canada and can be obtained from Canada Revenue Agency through an access to information request.</p> <p>We encourage you to take whatever action you might feel appropriate to communicate this information to anyone in Costa Rica who may either directly or indirectly be seeking to cast aspersions upon the good name of the Norlien Foundation or your company."</p> <p>The Claimant has no documents in its possession, power or control related to this topic other than the two letters it now files as Exhibits C-0446 and C-0447.</p>		
10.	All Loan Agreements related to the	Respondent's Counter-	Costa Rica argues that the Claimant was heavily indebted and had no	The Claimant agrees to produce any non-privileged	Costa Rica takes note of the Claimant's willingness to produce	The Tribunal notes that the Claimant has agreed to

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	<p>Claimant's Demand Loans that had liabilities outstanding as of 30 September 2010 including:</p> <p>(i) Demand Loan facility entered into 21 December 2009;</p> <p>(ii) Demand Loan received 25 June 2010; and</p> <p>(iii) Demand Loan facility entered into 22 July 2010.</p>	<p>Memorial, paragraph 623.</p> <p>Credibility First Report, paragraphs 14-18, 37-43, 81-82, Appendix E.</p>	<p>financial ability—and indeed no intention—to make the USD 72 million investment required to develop the mining project.</p> <p>As explained in the First Expert Report of Credibility, from 2005 through 2011 (prior to the Claimant's valuation date of 30 November 2011), the Claimant's liabilities were increasing and the Claimant operated at a net loss on a consistent basis, resulting in it never having any significant shareholder equity.</p> <p>As of 30 September 2010, the Claimant's financial statements worsened and the company was in dire financial shape and presented an uncertain financial future. In November 2010 and thereafter, the project had limited, if any, value.</p> <p>The requested Documents are material and relevant to understand the terms, conditions and obligations of CAD 9.3 million book value of the Claimant's Demand Loans debt as at 30 September 2010, which is related to the fair market value valuation approach advanced by Credibility which results in the Claimant's investment having a negative value (see Credibility First Report,</p>	<p>documents responsive to this request within its possession, custody or control.</p>	<p>any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.</p>	<p>produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.</p>

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			paragraphs 14-18, 37-43, 81-82).			
11.	All Agreements associated with each private placement of Secured Convertible Notes (Series III Notes) issued by the Claimant that had liabilities outstanding as of 30 September 2010.	Credibility First Report, paragraphs 37-43.	The requested Documents are relevant and material to the outcome of the case for the reasons set out in relation to Document Production Request No. 10. In particular, to understand the terms, conditions and obligations of CAD 64.9 million book value of the Claimant's Convertible Notes debt as at 30 September 2010.	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in the text of PO6.
12.	All Standstill Agreements (including terms and conditions) entered into between the Claimant and debt holders.	Credibility First Report, paragraph 41 (iii).	As explained in Document Production Request No. 10, prior to the valuation date, the Claimant was in dire financial shape. In particular, on 30 June 2010, the Claimant executed a Standstill Agreement to remedy events of violations of certain default provisions of its loans until April 2011. The requested Documents are relevant and material to the outcome of the case since they are necessary to understand the terms and conditions associated with debt	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control, up to November 30, 2011 (the valuation date). Any standstill agreements postdating November 30, 2011 (the valuation date) are not relevant or material to the issues in this proceeding. Any standstill agreements postdating the valuation date would not be relevant to any	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, and accepts the date range limitation of 30 November 2011. However, Costa Rica reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control, up to November 30, 2011, and that the Respondent has accepted this date range limitation, while reserving its rights. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the

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			holders' agreement to temporarily relieve the Claimant of interest payment obligations and prevent debt covenant violations in return for accrued interest at much higher interest rates.	calculation of damages.	alleged privilege or confidentiality.	Claimant shall produce a privilege log as set out in PO6.
13.	<p>Documents produced or received by the Claimant or Industrias Infinito from May 2008 to 30 November 2011 that reflect the millions of dollars that the Claimant asserts that it continued to spend in developing and building the Crucitas Mining Project. In particular:</p> <p>(i) the supporting data for the claimed site costs (USD 27 million);</p> <p>(ii) supporting documentation regarding the mill/equipment purchased for the plant;</p> <p>(iii) details of the equipment, its capacity</p>	<p>Respondent's Counter-Memorial, paragraph 626.</p> <p>Credibility First Report, paragraphs 8, 9.</p>	<p>As explained in the Credibility Report, the DCF model presented by FTI inflated the Claimant's calculation of damages by more than USD 300 million.</p> <p>The requested Documents are relevant and material to the outcome of the case since they bear on the (in)accuracy of the Claimant's damage calculation submitted in this case.</p>	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of alleged privilege or confidentiality.	<p>The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a privilege log as set out in PO6.</p>

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	and suitability for the planned production requirements; and (iv) supporting documents for the site construction and related site development earth works and infrastructure, including all construction progress reports for all areas of the site, including without limitation (a) the mine; (b) mill; (c) tailings; (d) infrastructure; and (e) all associated supply and construction works.					
14.	Documents produced or received by the Claimant or Industrias Infinito between 31 May 2010 and 30 November 2011 regarding any further extensions of BNP Paribas's mandate with the Claimant.	Claimant's Memorial on the Merits, paragraphs 146, 147.	In September 2008, the Claimant announced that it had signed an engagement letter under which it had given BNP Paribas an exclusive mandate to act as lead arranger of a USD 66 million debt financing facility to complete the construction and start-up of the Crucitas Mining Project, which was subsequently updated in June 2009. BNP Paribas's engagement was extended several times—the latest in 31 May 2010, according to the	The Claimant agrees to produce any non-privileged documents responsive to this request within its possession, custody or control.	Costa Rica takes note of the Claimant's willingness to produce any non-privileged documents responsive to this request within its possession, custody and control, but reserves all rights to make additional requests and applications based on the Claimant's production. Costa Rica expects that the Claimant will produce a privilege log in the event that it redacts or withholds any document on the basis of	The Tribunal notes that the Claimant has agreed to produce any non-privileged documents responsive to this request within its possession, custody or control. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Claimant shall produce a

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			<p>Exhibits provided by the Claimant.</p> <p>The requested Documents, which include the period subsequent to the 2010 TCA Judgment but before the 2011 Administrative Chamber Judgment, are relevant and material to the outcome of the case as they bear on the question of the moment in which the Claimant was aware that it could not continue with its mining project, which is relevant to the issue of the true cause of the Claimant's loss (which the Tribunal explained is central to the issue of jurisdiction under Article XII(3)(c) of the BIT (Decision on Jurisdiction, paragraphs 332-333)), as well as to the expectations that the Claimant could have had following the 2010 TCA Judgment.</p>		alleged privilege or confidentiality.	privilege log as set out in PO6.