

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Galway Gold Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/18/13)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Mr. Eduardo Siqueiros T., President of the Tribunal
Mr. Alfredo Bullard, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

10 December 2019

Contents

1. Applicable Arbitration Rules.....	4
2. Constitution of the Tribunal and Tribunal Members’ Declarations	4
3. Fees and Expenses of Tribunal Members.....	4
4. Presence and Quorum.....	5
5. Rulings of the Tribunal.....	5
6. Power to Fix Time Limits.....	6
7. Secretary of the Tribunal	6
8. Representation of the Parties	7
9. Apportionment of Costs and Advance Payments to ICSID	8
10. Place of Proceeding	8
11. Procedural Languages, Translation and Interpretation.....	9
12. Routing of Communications.....	10
13. Number of Copies and Method of Filing of Parties’ Pleadings	10
14. Number and Sequence of Pleadings	12
15. Production of Documents	12
16. Submission of Documents	13
17. Witness Statements and Expert Reports.....	15
18. Examination of Witnesses and Experts	16
19. Pre-Hearing Organizational Meetings	17
20. Hearings.....	17
21. Records of Hearings and Sessions.....	18
22. Post-Hearing Memorials and Statements of Costs	19
23. Public Access to Documents	19
24. Submissions by a Non-Disputing Party.....	19
ANNEX A	21
ANNEX B	23
ANNEX C	25

Introduction

The first session of the Tribunal was held on November 26, 2019, at 10:00 a.m., by telephone conference. The session was adjourned at 12:12 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Mr. Eduardo Siqueiros T., President of the Tribunal

Mr. Alfredo Bullard, Arbitrator

Professor Brigitte Stern, Arbitrator

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Lawrence Thacker, Lenczner Slaght LLP

Mr. Mitch Brown, Lenczner Slaght LLP

Ms. Isabel Pereira, Lenczner Slaght LLP

Participating on behalf of the Respondent:

Mr. Fernando Mantilla-Serrano, Latham & Watkins LLP

Mr. John Adam, Latham & Watkins LLP

Mr. Diego Romero, Latham & Watkins LLP

Ms. Paloma García Guerra, Latham & Watkins LLP

Ms. Ana María Ordóñez Puentes, Director of International Legal Defense, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia

Mr. Juan Sebastián Torres Oliver, Defense Attorney, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia

The Tribunal and the parties considered the following:

- The draft agenda circulated by the Secretary of the Tribunal on October 14, 2019.
- The draft procedural order circulated by the Secretary of the Tribunal on October 14, 2019; and
- The parties' comments on the draft agenda and the draft procedural order received on November 19, 2019, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree. On November 11, 2019, the parties also provided a proposed procedural calendar (**Annex B**).

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the procedural rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent modified by Section B of Chapter Eight (Investment) of the Free Trade Agreement between Canada and the Republic of Colombia signed on November 21, 2008 and which entered into force on August 15, 2011 (the “Treaty” or the “FTA”), and supplemented by any rules adopted by the Joint Commission under Articles 822(2), 832, and 2001(3)(a) of the FTA.

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on September 25, 2019 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). The ICSID Secretariat provided copies of the declarations of Mr. Alfredo Bullard, Prof. Brigitte Stern and Mr. Eduardo Siqueiros on May 9, 2018, August 16, 2018, and September 25, 2019, respectively.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the period set out in **Annex B** to dedicate to this case.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

- 3.2.1. US\$3,000 (three thousand United States dollars) for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit her/his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling, other than an award, has not been issued within one month after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month. If an award has not been issued within six months after the final submission, the Tribunal will provide the parties with status updates every three months.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Secretary of the Tribunal in the form of a letter or email.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Secretary of the Tribunal is Ms. Catherine Kettlewell, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Catherine Kettlewell
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7231
Fax: + 1 (202) 522-2615
Email: ckettlewell@worldbank.org
Paralegal email: jargueta@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:

Ms. Catherine Kettlewell
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

- 8.1. Each party shall be represented by its respective counsel as listed below and may designate additional agents, counsel, or advocates, including external counsel or counsel not appearing before the Arbitral Tribunal, by notifying the Secretary of the Tribunal promptly of such designation.

For Claimant

Galway Gold Inc.
c/o Mr. Lawrence E. Thacker
Lenczner Slaght
130 Adelaide St W, Suite 2600
Toronto, ON
Canada M5H 3P5
and
c/o Mr. Joseph B. Cartafalsa
Ogletree Deakins, Nash, Smoak
& Stewart, P.C.
599 Lexington Avenue, FL 17
New York, NY 10022
United States of America
Tel. 416-865-3097
Email:
lthacker@litigate.com
joseph.cartafalsa@ogletree.com

For Respondent

Republic of Colombia
Mr. Camilo Gómez Alzate
Ms. Ana María Ordóñez Puentes
Mr. Juan Sebastián Torres Oliver
Agencia Nacional de Defensa Jurídica del
Estado
Carrera 7 No. 75-66 – 2do y 3er piso
Bogotá, Colombia
and
Mr. Fernando Mantilla-Serrano
Mr. John Adam
Mr. Diego Romero
Ms. Paloma García Guerra
Latham & Watkins
45, rue Saint-Dominique
Paris 75007, France
and
Mr. Charles Claypoole
Mr. Samuel Pape
Latham & Watkins LLP
99 Bishopsgate
London, EC2M 3XF
United Kingdom
and
Ms. Claudia T. Salomon
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
United States of America
Tel. +33 1 40 62 20 00;
+33 1 40 62 29 10;
+33 1 40 62 20 63;
+33 1 40 62 20 72;
Email:
camilo.gomez@defensajuridica.gov.co

ana.ordonez@defensajuridica.gov.co;
juans.torres@defensajuridica.gov.co;
arbitrajesdeinversion@defensajuridica.gov.co;
Fernando.Mantilla@lw.com;
John.Adam@lw.com;
Diego.Romero@lw.com;
Paloma.Garcia-Guerra@lw.com;
Charles.Claypoole@lw.com;
Samuel.Pape@lw.com;
Claudia.Salomon@lw.com

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of September 26, 2019, ICSID requested that each party pay US\$200,000 (two hundred thousand United States dollars) to cover the initial costs of the proceeding. ICSID received Claimant's payment on October 7, 2019. Respondent's portion of its advance payment had not been received up to the date that the First Session was held (*i.e.* November 26, 2019).
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington, D.C., United States, shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The parties also agree that the Tribunal may hold hearings, other than the hearing on jurisdiction and liability and the hearing on the damages and quantum, by telephone or video conference upon consultation with the parties.
- 10.4. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Languages, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

[For Parties' Pleadings]

- 11.3. Any written requests, applications, pleadings, expert opinions or witness statements may be submitted in either procedural language. If submitted in Spanish, the parties shall submit translations of any such documents into English, in accordance with § 13.1.3 below.
- 11.4. English- and Spanish-language exhibits and legal authorities will be filed in their original language only, and need not be translated into the other procedural language, unless the Tribunal requests translations of any Spanish-language exhibits and legal authorities into English.
- 11.5. Documents filed in any language other than English or Spanish must be accompanied by a translation into English.
- 11.6. If the document is relevant only in part, it is sufficient to translate only the relevant part, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.7. Translations need not be certified. If a party wishes to challenge the translation of a document, it may submit a new translation that clearly identifies the differences.
- 11.8. Documents exchanged between the parties under §15 below (Production of Documents) shall be produced in the original language and need not be translated.

[For Hearing]

- 11.9. Either procedural language, English or Spanish, may be used during hearings. The parties and the Tribunal reserve any matter related to simultaneous interpretation for discussion at the prehearing organizational meeting. Transcripts shall be taken in English or in Spanish, as appropriate.
- 11.10. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.11. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall

ultimately bear those costs. However, the costs of interpretation for non-English or non-Spanish speaking witnesses or experts shall be borne by the party presenting such witnesses or experts.

[For Tribunal's Documents Except the Award]

11.12. The Tribunal shall make any order or decision in English and shortly thereafter in Spanish. Both language versions shall be equally authentic.

[For Tribunal's Award]

11.13. The Tribunal shall render the Award in English and Spanish simultaneously. For the avoidance of doubt, both the English and the Spanish versions shall be equally authentic, in accordance with ICSID Arbitration Rule 22(2).

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Secretary of the Tribunal, and the Tribunal.

12.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing party and the Tribunal.

12.3. The Secretary of the Tribunal shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

12.4. The email addresses of the Members of the Tribunal are:

Lic. Eduardo Siqueiros
esiqueiros@arbinter.mx

Dr. Alfredo Bullard
abullard@bullardabogados.pe

Prof. Brigitte Stern
brigitte.stern@jstern.org

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. On the relevant filing date, the relevant party shall:

13.1.1. submit by email to the Tribunal, the Secretary of the Tribunal and the opposing party an electronic version of the pleading, along with electronic copies of the witness statements, expert reports and an index of all the exhibits and legal authorities supporting the pleading (the "Electronic Email Filing");¹ and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

13.1.2. within three (3) business days² after the Electronic Email Filing, the parties shall upload the entire pleading, including electronic copies of the witness statements, expert reports, the index of all the exhibits and legal authorities, exhibits and legal authorities, to the file sharing platform that will be created by ICSID for purposes of this case (the “Electronic Platform Filing”).

13.1.3. Any translations of submissions and evidence are to be uploaded to the World Bank’s electronic file sharing platform within 21 days of the Electronic Platform Filing. In the case of the request for bifurcation mentioned in **Annex B**, the relevant translations shall be submitted within 5 business days.

13.1.4. To the extent necessary to comply with the Centre’s archiving obligations, at any time (including after conclusion of the proceeding) the ICSID Secretariat may: (i) request any Party to produce hardcopies of the entire parties’ submissions, who shall provide them within five (5) business days from the Centre’s request; or (ii) produce such copies and charge any cost associated with this service to the Parties’ advance payments referred to in §9 above.

13.2. The addresses of the Tribunal Members are as follows:

Eduardo Siqueiros T.	Alfredo Bullard González	Prof. Brigitte Stern
Paseo de los Tamarindos 150-PB	Las Palmeras 310, San Isidro	7, rue Pierre Nicole Code A1672
Bosques de las Lomas 05120, Ciudad de México	Lima, Perú 15073	Paris, France 75005 Tel. +33 1 40 46 93 79
Tel. +52 55 2582-9208	Tel. +511 621-1515	

13.3. All documents shall be submitted in electronic format only. The President of the Tribunal will require a printed copy of each pleading (without exhibits) and the corresponding expert reports (without exhibits) and Professor Stern will only require a printed copy of each pleading (without exhibits) to be sent within seven (7) business days after the Electronic Email Filing to the address indicated in § 13.2.

13.4. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

13.5. All pleadings shall be accompanied by a consolidated index listing all the supporting documentation that the party has submitted up to the date of the pleading. The consolidated index shall indicate the document number, its title, and the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex A**).

² “Business days” shall be understood as those in the place where the international counsel filing the relevant pleading is located.

- 13.6. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated index of all documents.
- 13.7. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal by email.
- 13.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 14.1. The proceedings shall be bifurcated into a first stage of jurisdiction and liability to be followed, if necessary, by a second stage on damages and quantum.
- 14.2. With regard to the first stage on jurisdiction and liability, the procedural calendar established in **Annex B** shall apply.
- 14.3. In the event that the Tribunal's Decision on Jurisdiction and Liability is not dispositive of the entirety of the arbitration, the Tribunal shall establish, after consultation with the parties, a procedural calendar for the remaining procedural steps with regard to the damages and quantum stage.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. Should document production be necessary, it shall take place on the dates established in **Annex B**.
- 15.2. The Tribunal may be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) in relation to document production.
- 15.3. On the date provided in **Annex B**, each party may submit a request for production of documents to the other party. The request shall be made in the form of a Stern Schedule as attached in **Annex C** hereto, in both Word and PDF format, and shall not be copied to the Tribunal. The parties shall send their request for production of documents to the Tribunal Secretary, who will circulate the parties' objections to the parties once both Stern Schedules have been received, in accordance with § 12.2.

Procedural Order No. 1

- 15.4. On the date provided in **Annex B** the other party shall, using the Stern Schedule provided by the first party, provide the requesting party with its reasons and/or objections for its failure or refusal to produce responsive documents. The parties shall send their objections to the Tribunal Secretary, who will circulate the parties' objections to the parties once both Stern Schedules have been received, in accordance with § 12.2.
- 15.5. On the date provided in **Annex B** the other party shall produce the requested documents to which it has not filed any objection.
- 15.6. On the date provided in **Annex B**, the requesting party shall reply to the other party's objections in that same Stern Schedule and shall submit such Stern Schedule to the Tribunal and the Tribunal Secretary. In accordance with § 12.2 **Error! Reference source not found.**, the Tribunal Secretary will circulate the parties' objections to the parties once both Stern Schedules have been received (in both Word and PDF formats).
- 15.7. The Tribunal will make its best efforts to rule on the objections within four weeks of receiving the Stern Schedule. Provided that the Tribunal rules within four weeks of receiving the Stern Schedule, a party shall produce documents ordered by the Tribunal by the date provided in **Annex B**.
- 15.8. Documents shall be communicated directly to the requesting party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a party subsequently files them as exhibits in accordance with § 16 below.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in § 13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

- 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 16.5.3. Each Exhibit shall be submitted as a separate electronic document clearly identified with the corresponding Exhibit number.
- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish.
- 16.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each

demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Secretary of the Tribunal, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Any person may present evidence as a witness, including a party or its officials, officers, employees or other representatives. Witness statements shall include:
 - 17.2.1. the full name of the witness, a statement regarding his or her present and past relationship (if any) with any of the parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement; and
 - 17.2.2. an affirmation of the truth of the Witness Statement.
- 17.3. Expert reports shall include:
 - 17.3.1. the full name of the expert, a statement regarding his or her present and past relationship (if any) with any of the parties, and a description of his or her background, qualifications, training and experience;
 - 17.3.2. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - 17.3.3. a statement of his or her independence from the parties, their legal advisors and the Arbitral Tribunal;
 - 17.3.4. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the expert relies that have not already been submitted shall be provided;
 - 17.3.5. an affirmation of his or her genuine belief in the opinions expressed in the Expert Report; and
 - 17.3.6. if the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.

17.4. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).

17.5. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

18.1. Unless otherwise stated, the rules below apply to the examination of fact and expert witnesses.

18.2. In advance of any hearing, by the deadline provided in **Annex B**, each party shall provide to the opposing party, with a copy to the Tribunal: the names of the witnesses whose statement or report has been submitted by the other party with the request that they be available for cross-examination at the hearing.

18.3. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.

18.4. If a witness is unable to appear personally at a hearing for valid cause, the Tribunal may permit alternative arrangements (such as videoconference facilities), upon consultation with the parties.

18.5. During the pre-hearing conference, the Tribunal shall hear the arguments of the parties on the consequences of the failure of a witness whose appearance has been requested pursuant to § 18.1 to appear without a valid reason for testimony at a hearing.

18.6. Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. The Tribunal may examine the witness at any time, either before, during or after examination by one of the parties.

18.7. Witnesses giving oral evidence shall, before giving evidence, make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3). The witnesses will be asked to confirm their statement or report and may then be briefly examined by counsel for the party that is presenting the witness for “direct examination” which may not introduce new matters not already covered by the written statement or report. During the brief direct examination, the party who has presented the witness may ask the witness introductory questions, including about any corrections to be made to the written statements, and to address new matters raised in the Rejoinder. Experts may give a presentation before the start of their cross-examination. The witness may then be

examined by counsel for the opposing party (“cross-examination”), and subsequently by counsel for the party offering the witness, limited to matters that arose during cross-examination (“re-direct examination”).

- 18.8. Each party shall be responsible for the practical arrangements, cost and availability of any witness it offers, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 18.9. A fact witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness who has already testified prior to giving his/her testimony, or read any transcript of any oral testimony, prior to his or her examination, except with the express permission of the Tribunal upon request from a party. This condition does not apply to experts.
- 18.10. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion refuse to hear a witness when it appears that the facts on which he or she is to testify are already proven by other evidence or are irrelevant. It may also order that a witness be recalled for further examination at any time. Any witness may only be recalled by the Tribunal (of its own motion or on request) if such intention is announced in time to assure the availability of the witness during the hearing.
- 18.11. Counsel may meet witnesses and potential witnesses to establish the facts, assist with the preparation of witness statements and oral examinations.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held at a date determined in accordance with **Annex B** by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with § 10 above.
- 20.3. The hearing on Jurisdiction and Liability, at which the parties will present their experts and witnesses, and make oral submissions, shall take place, subject to the availability of the Tribunal and the parties, within 120 days (but not before 60 days) following the last submission exchanged between the parties.

- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. Prior to the hearing, the parties shall use their best efforts to agree and prepare a single USB drive (PC and Mac compatible) including all pleadings, witness statements, expert reports, exhibits, legal authorities, decisions and orders in the arbitration file, with a unified hyper-linked index. As soon as possible, but no later than three (3) weeks before the hearing, the parties shall courier two (2) copies of the USB drive to the Secretary of the Tribunal and one (1) copy of the USB drive (PC and Mac compatible) to each Member of the Tribunal.
- 20.6. The Tribunal shall inform the parties at least one month before the hearing whether each party shall provide one additional hard copy in A4, letter or other format of its entire set of pleadings, including supporting documents (excluding legal authorities), in their original language and translated into the other procedural language, for use by the Tribunal during the hearing.
- 20.7. In accordance with Article 830(2) of the FTA, hearings shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the parties.
- 20.8. Pursuant to Article 827(2) of the FTA, Canada, as the other Contracting Party to the Treaty, shall have the right to attend any hearings. Upon written notice to the disputing parties, the Government of Canada may make oral and written submissions to the Tribunal on a question of interpretation of the Treaty.
- 20.9. All matters concerning the allocation of time for the hearing shall be discussed at the pre-hearing organizational meeting.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members. The parties shall discuss the provision of recordings of simultaneous interpretations at the pre-hearing conference.
- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

21.3. The parties shall agree on any corrections to the transcripts within 28 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing.

23. Public Access to Documents

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), Treaty Article 830

23.1. In accordance with Article 830(1) of the Treaty, the award shall be publicly available, subject to the deletion of confidential information.

23.2. The Tribunal’s procedural orders, the Notice of Intent, and the Request for Arbitration shall also be publicly available, subject to the deletion of confidential information.

23.3. Unless the parties otherwise agree, and always subject to the deletion of confidential information, no other documents submitted to, or issued by, the Tribunal shall be publicly available.

23.4. A party providing information that it claims is confidential has the burden of designating it as confidential.

23.5. Pursuant to Article 830(3) of the Treaty, a party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

23.6. In accordance with Article 830(5) of the Treaty, to the extent that a Tribunal’s confidentiality order designates information as confidential and a law on access to information of either Contracting Party to the Treaty requires public access to that information, such domestic law shall prevail. However, a Contracting Party to the Treaty should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

24. Submissions by a Non-Disputing Party

Arbitration Rule 37(2), Treaty Article 831 and Annex 831

Procedural Order No. 1

- 24.1. In accordance with **Annex B**: (i) an application to the Tribunal for leave to file a non-disputing party submission may be submitted no later than one month after the first exchange of pleadings on jurisdiction or liability, as applicable, between the parties has taken place; and (ii) any non-disputing party submission must be filed no later than one month before the second exchange of pleadings on jurisdiction or liability, as applicable, begins.
- 24.2. The parties will be granted an opportunity to submit observations in relation to any non-disputing party application for leave to file a non-disputing party submission, and to any non-disputing party submissions, as provided in **Annex B**.
- 24.3. In accordance with ICSID Arbitration Rule 37(2) and Article 831 of the Treaty, the Tribunal shall ensure that any non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party.
- 24.4. In the event that a non-disputing party is granted leave to make a submission, the non-disputing party shall present its submission within the deadline set in **Annex B**.
- 24.5. The Tribunal shall likewise decide whether and to what degree a non-disputing party granted leave to make a submission shall be granted access to the pleadings submitted by the parties, subject to the deletion of confidential information and excluding their supporting documentation (including exhibits, witness statements, and expert reports). Access to the pleadings shall be granted upon the execution of a non-disclosure agreement by the non-disputing party.
- 24.6. Non-disputing parties that demonstrate the same significant interest in the arbitration shall submit a joint submission.
- 24.7. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with ICSID Arbitration Rule 37(2), and Article 831 and Annex 831 of the Treaty.

[Signed]

Mr. Eduardo Siqueiros
President of the Tribunal
Date: 10 December 2019

ANNEX AELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission–LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>

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

Procedural Order No. 1 – Annex A

Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
<i>Costs Submissions-[Respondent]-ENG</i>	
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

ANNEX B

[Date / [Period of Time]	Party / Tribunal	Description
25 October 2019	Respondent	Preliminary Objection
5 November 2019	Claimant	Claimant's Response on the Preliminary Objection
11 November 2019	Respondent	Respondent's Reply on Preliminary Objection
21 November 2019	Claimant	Claimant's Rejoinder on Preliminary Objection
26 November 2019	All	First Session
Within 21 days of the First Session	Tribunal	Decision on the Preliminary Objection
Assuming that the Decision on the Respondent's Preliminary Objection is not dispositive of the entirety of the arbitration		
+120 days from decision on preliminary objection	Claimant	Memorial on Liability
+120 days from translation of the Memorial on Liability	Respondent	Counter-Memorial on Liability and Memorial on Jurisdiction
+5 days from the translation of the Counter-Memorial on Liability and Memorial on Jurisdiction	Non-Disputing Parties	Cut-off date to apply for leave to file a non-disputing party submission
+10 days from the translation of the Counter-Memorial on Liability and Memorial on Jurisdiction	Parties	Requests for Production of Documents
+14 days from the cut-off date for applications for leave to file a non-disputing party submission from Non-Disputing Parties	Parties	Comments on the applications from Non-Disputing Parties seeking leave to file submissions on liability
+20 days from the Requests for Production of Documents	Parties	Objections to Production Requests

[Date / [Period of Time]	Party / Tribunal	Description
+10 days from the Objections to Production Requests	Parties	Responses to Objections to Production Requests
+14 days from the Parties' Comments on the applications from Non-Disputing Parties seeking leave to file submissions	Tribunal	Decision concerning applications from Non-Disputing Parties for leave to file a submission on liability
+14 days from Responses to Objections to Productions Requests	Tribunal	Ruling on Parties' Requests for Production of Documents
+14 days from the Tribunal's Decision concerning applications from Non-Disputing Parties	Non-Disputing Parties	Cut-off date to file non-disputing party submission
+30 days from the Ruling on Parties' Requests for Production of Documents	Parties	Document Production in accordance with the Tribunal's Rulings (including production of uncontested documents)
+120 days from the translation of the Respondent's Counter-Memorial on Liability and Memorial on Jurisdiction	Claimant	Reply Memorial on Liability and Counter-Memorial on Jurisdiction
+120 days from the translation of the Reply Memorial on Liability and Counter-Memorial on Jurisdiction	Respondent	Rejoinder Memorial on Liability and Reply on Jurisdiction
+45 days before the Hearing	Parties	Witness notification
+30 days before the Hearing	All	Pre-Hearing Organizational Meeting
within 60 to 120 days from the translation of the Rejoinder Memorial on Liability and Reply on Jurisdiction	All	Hearing on Jurisdiction and Liability
+120 days from Hearing on Jurisdiction and Liability	Tribunal	Decision on Jurisdiction and Liability
<p>In the case the Decision on Jurisdiction and Liability is not dispositive of the entirety of the arbitration, the Tribunal shall establish, after consultation with the Parties, a procedural calendar for the remaining procedural steps, in accordance with ¶ 14 of Procedural Order No. 1.</p>		

ANNEX C

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

ICSID

GALWAY GOLD INC.

Claimant

v.

REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/18/13

**CLAIMANT'S/RESPONDENT'S REQUEST FOR PRODUCTION OF
DOCUMENTS
(STERN SCHEDULE)**

XX MONTH YYYY

Document Request No	
A. Documents or category of documents requested	
B. Relevance and materiality: (1) para ref to submissions (2) comments (3) statement concerning custody and control	
C. Summary of objections by disputing party to production of requested documents	
D. Reply	
E. Decision of the Tribunal	