

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Galway Gold Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/18/13)

PROCEDURAL ORDER NO. 2

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

12 February 2021

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I. INTRODUCTION

1. In accordance with Section 15 of Procedural Order No. 1 of 10 December 2019, the Parties exchanged document production requests on 31 December 2020. The Claimant filed 17 requests for production, and the Respondent filed 7 requests for production.
2. On 20 January 2021, the Parties exchanged objections to the document production requests.
3. On 30 January 2021, the Parties completed their Stern Schedules with their replies related to their respective document requests and submitted these for the Tribunal's decision.

II. APPLICABLE RULES

4. This proceeding is conducted under the ICSID Convention and Arbitration Rules, 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 ("FTA"), and any applicable procedural orders issued by the Tribunal in the present case.
5. In accordance with the ICSID Convention and Arbitration Rules, the Parties and the Tribunal have a broad discretion to decide on the applicable procedure with respect to document production.
6. The applicable procedure was agreed by the Parties and reflected in section 15 of Procedural Order No. 1.
7. The applicable rules with respect to evidence are contained in ICSID Arbitration Rule 34 provides:

(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

(2) The Tribunal may, if it deems it necessary at any stage of the proceeding:

*(a) call upon the parties to produce documents, witnesses and experts;
and*

(b) visit any place connected with the dispute or conduct inquiries there.

(3) The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.

(4) Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties within the meaning of Article 61(2) of the Convention.

8. Section 15.2 of Procedural Order No. 1 provides further as follows:

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.

III. ORDER

9. In accordance with the applicable rules and guidance, the Tribunal has deliberated and decided on each request as stated in the Stern schedules attached as **Annex A** (the Claimant's Request for Documents) and **Annex B** (the Respondent's Request for Documents).
10. Pursuant to section 15.7 and Annex B of Procedural Order No. 1, a Party shall produce documents as contained in this Procedural Order on the first Business Day following 30 days from the Ruling on Parties' Requests for Production of Documents, *i.e.* 15 March 2021.
11. In respect to the documents requested by the Respondent under numbers 2, 3, 4, and 5 of their Stern Schedule Request, the Claimant is instructed to submit by 26 February 2021 to the Respondent, copying the Arbitral Tribunal, a "privilege log" relating to such documents that are in its possession, custody or control that are responsive to the document request of the Respondent, but are being withheld from disclosure by the Claimant based on its assertion of a legal privilege (such as attorney-client privilege). In the event that the Respondent disputes a claim of privilege identified in the privilege log, it may submit the objections by 5 March 2021. The Tribunal will then decide on whether the requested production is justified. The "privilege log" should take the form of a table, where each row corresponds to a document that has been withheld on the basis of legal privilege. In the various columns, each row should contain, at a minimum, the following information about the document: the author or sender, the addressee or recipient, the date of creation or transmission, the nature of the legal privilege and a description sufficient to identify the document. The information in the privilege log should be adequate for the Tribunal to evaluate for each withheld document the validity of the legal privilege that the Claimant has asserted, without compromising the information that is claimed to be subject to the relevant privilege.

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12. As provided in section 15.8 of Procedural Order No. 1, 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 Section 16 of Procedural Order No. 1.

On behalf of the Tribunal,

[Signed]

Mr. Eduardo Siqueiros
President of the Tribunal
Date: 12 February 2021