

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

---

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

---

GALWAY GOLD INC.

*Claimant*

V.

REPUBLIC OF COLOMBIA

*Respondent*

**ICSID Case No. ARB/18/13**

---

**ANNEX "A"**  
**Procedural Order No. 2**  
**Claimant's Request for Production of Documents**

---

**Claimant’s STERN SCHEDULE**

All defined terms not specifically defined herein shall have the meaning ascribed to them in the Claimant’s List of Defined Terms

<b>Document Request No.</b>	1
<p><b>A. Documents or category of documents requested</b></p>	<p>All records, whether in hardcopy or electronic form, in the files or possession of any of INGEOMINAS, the NMA, the ANLA, the CDMB, the Ministry of Mines and Energy and any other relevant entity of the Colombian State relating to Concession 14833, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) all correspondence, email or other communications, memoranda, reports, opinions, meeting minutes and all other records, to, from or regarding Reina de Oro and its interest in Concession 14833, including but not limited to any impacts on these interests following legislative changes between 2010-2018;</li> <li>b) all correspondence, email or other communications, memoranda, reports, opinions, meeting minutes and all other records, relating to the issuance of any Environmental Management Plan or permits sought by or granted to Reina de Oro for Concession 14833;</li> <li>c) any correspondence, email or other communications, memoranda, reports, opinions, meeting minutes and all other records, relating to Reina de Oro’s assignment application to the NMA.</li> </ul>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>The listed entities and requested documents relate directly to the issues raised and disputed by the parties, namely the specific rights, interest, and limitations associated with and arising from Concession 14833. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 91-95, 99-106, 174-237.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested concern an indeterminate number of government representatives from five government agencies and an undefined group of “<i>any other relevant entity of the Colombian State</i>”, over an unlimited period of time. The Request fails to define the</p>

## Claimant's STERN SCHEDULE

	<p>documents sought with sufficient specificity to identify such documents, and is therefore contrary to IBA Rule 3(3)(a)(i).<sup>1</sup> Galway's failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.<sup>2</sup></p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. The Request is essentially a "fishing expedition" for "[a]ll records" held by any governmental entity "relating to Concession 14833". Remarkably, Galway's only justification for the Request is Galway's broad assertion that the documents relate to "the specific rights, interest, and limitations associated with and arising from Concession 14833". Galway makes no attempt whatsoever to establish that the documents requested are relevant to any specific issue in dispute, still less that such documents are material to the outcome of the case. The Request is not "carefully tailored to produce relevant and material documents",<sup>3</sup> and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of Law 1712 of 2014 (the "<b>Access to Public Information Law</b>") documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be</p>
--	--

---

<sup>1</sup> IBA Rule 3(3)(a)(i) reads: "A Request to Produce shall contain: (a) (i) a description of each requested Document sufficient to identify it [...]."

<sup>2</sup> IBA Rule 9(2)(c) provides: "The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons: [...] unreasonable burden to produce the requested evidence [...]."

<sup>3</sup> 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, "Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration," ("**Commentary on the IBA Rules**"), **Annex 2**, p. 9.

## Claimant's STERN SCHEDULE

	<p>subject to confidentiality protection under the Access to Public Information Law.<sup>4</sup></p> <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p>
<b>D. Reply</b>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 15 August 2001 - March 21, 2018. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol>

---

<sup>4</sup> In any event, for this and Galway's other requests to which the Access to Public Information Law may restrict Colombia's ability to disclose documents, Colombia reserves its right pursuant to Article 9.4 of the IBA Rules to request necessary arrangements to ensure the confidentiality of such documents.

## Claimant's STERN SCHEDULE

	<p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce</li></ol>
--	--

**Claimant’s STERN SCHEDULE**

	<p>relevant documents in international arbitrations to which they are party.<sup>5</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent’s obligation to arbitrate in good faith.<sup>6</sup></p> <p>Regarding the Respondent’s objections on the basis of legal privilege, the Claimant agrees that to the extent that any document contains or refers to legally privileged advice, opinions, or communications that would be protected by a category of legal privilege recognized at international law, then such documents would not be producible or would only be producible in redacted form.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the requested documents are both relevant and material to the dispute, and therefore orders the Respondent to provide documents in possession of INGEOMINAS, the NMA, the ANLA, the CDMB, and the Ministry of Mines and Energy, subject to the date range identified by Claimant, 15 August 2001 - March 21, 2018.</p> <p>Any petition for production of other documents in this request is rejected.</p>

<sup>5</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>6</sup> *Ibid* at paras 1.4-1.8.

Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>2</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and all other records, all whether in hard copy or electronic form, relating to the legislative intent and/or objectives of Law 99 of 1993, and/or the drafting and passing of Law 99 of 1993.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>This legislation is relevant to the issues raised and disputed by the parties, namely the legislative background and investment profile of Colombia’s mining sector. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 42-43, 168, 170, 239, 379, 432.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[t]his legislation [Law 99 of 1993] is relevant to the issues raised and disputed by the parties”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific disputed issue of interpretation concerning Law 99 of 1993, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the preparatory works for laws in Colombia are publicly available at <a href="http://svrpubindc.imprenta.gov.co/senado/">http://svrpubindc.imprenta.gov.co/senado/</a>. In addition, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (<a href="http://leyes.senado.gov.co/proyectos">http://leyes.senado.gov.co/proyectos</a>). To the extent Galway considers the preparatory works of Law 99 of 1993 to be relevant to any specific disputed points of interpretation, it would not be unduly burdensome for Galway or its Colombian legal counsel to access such documents from public sources.</p>

**Claimant’s STERN SCHEDULE**

	<p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “records” held by any governmental entity “relating to the legislative intent and/or objectives of Law 99 of 1993, and/or the drafting and passing of Law 99 of 1993”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"> <li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 1 January 1992 – 31 December 1993. To the extent that the Claimant’s requests are broad, they are necessarily so.</li> <li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this</li> </ol>



## Claimant's STERN SCHEDULE

	<p>time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</p> <p>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</p> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <p>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</p> <p>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right</p>
--	--

## Claimant's STERN SCHEDULE

	<p>of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>7</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>8</sup></p> <p>Regarding the Respondent's objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not need to be produced but maintain their request for any related documents not publicly available.</p>
--	--

<sup>7</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>8</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Besides, the Respondent has identified that the preparatory works for laws in Colombia, as well as the status of the legislative process for draft bills, together with a summary of that process, are publicly available at an identified website, which the Claimant has not challenged.</p> <p>Therefore, the request is rejected.</p>
---	--

Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>3</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of 2001 Mining Code.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>This key overarching legislation is relevant to the issues raised and disputed by the parties, namely the legislative background and investment profile of Colombia’s mining sector. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 38, 49, 82, 115, 116, 138-167.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[t]his key overarching legislation [the 2001 Mining Code] is relevant to the issues raised and disputed by the parties, namely the legislative background and investment profile of Colombia’s mining sector”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific disputed issue of interpretation concerning the 2001 Mining Code, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the preparatory works for laws in Colombia are publicly available at <a href="http://svrpubindc.imprenta.gov.co/senado/">http://svrpubindc.imprenta.gov.co/senado/</a>. In addition, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (<a href="http://leyes.senado.gov.co/proyectos">http://leyes.senado.gov.co/proyectos</a>). To the extent Galway considers the preparatory works of the 2001 Mining Code to be relevant to any specific disputed points of interpretation, it would not be unduly burdensome</p>

## Claimant’s STERN SCHEDULE

	<p>for Galway or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “records” held by any governmental entity “relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of 2001 Mining Code”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<b>D. Reply</b>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 15 August 1999 – 15 August 2001. To the extent that the Claimant’s requests are broad, they are necessarily so.</li></ol>

## Claimant's STERN SCHEDULE

	<ol style="list-style-type: none"><li data-bbox="716 134 1455 499">2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li data-bbox="716 537 1455 827">3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol> <p data-bbox="669 865 1370 974">Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li data-bbox="716 1012 1455 1596">1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li data-bbox="716 1633 1455 1883">2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of</li></ol>
--	--

## Claimant's STERN SCHEDULE

	<p>example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>9</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>10</sup></p> <p>Regarding the Respondent's objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not need to be produced but maintain their request for any related documents not publicly available.</p>
--	---

<sup>9</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>10</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Besides, the Respondent has identified that the preparatory works for laws in Colombia, as well as the status of the legislative process for draft bills, together with a summary of that process, are publicly available at an identified website, which Claimant has not challenged.</p> <p>Therefore, the request is rejected.</p>



Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>4</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, , notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 127 of 2002.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>This legislative instrument is relevant to the issues raised and disputed by the parties, namely the status of environmental approvals and permits for Concession 14833. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 92, 172, 222, 313.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[<i>t</i>his legislative instrument [Resolution 127 of 2002] is relevant to the issues raised and disputed by the parties, namely the status of environmental approvals and permits for Concession 14833”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific disputed issue of interpretation concerning Resolution 127, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “<i>records</i>” held by any governmental entity relating to the “<i>legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 127 of 2002</i>”. The documents requested concern an indeterminate</p>

## Claimant's STERN SCHEDULE

	<p>number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway's failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<b>D. Reply</b>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 18 February 2001 – 18 February 2002. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li></ol>

## Claimant's STERN SCHEDULE

3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.

Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:

1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.
2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic

## Claimant's STERN SCHEDULE

	<p>civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>11</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>12</sup></p>
<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Evidence in the record shows that the Claimant registered Concession 14844 in the National Mining Registry after INGEOMINAS issued Resolution 1414.</p> <p>Therefore, the request is rejected.</p>

<sup>11</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>12</sup> *Ibid* at paras 1.4-1.8.

Claimant’s STERN SCHEDULE

<b>Document Request No.</b>	5
<b>A. Documents or category of documents requested</b>	All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux préparatoires</i> , debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 1414 of 2006.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>This legislative instrument is relevant to the issues raised and disputed by the parties, namely the legislative background and investment profile of Colombia’s mining sector. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 231.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[<i>t</i>]his legislative instrument [Resolution 1414 of 2006] is relevant to the issues raised and disputed by the parties, namely the legislative background and investment profile of Colombia’s mining sector”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific issue of interpretation concerning Resolution 1414 of 2006 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “<i>records</i>” held by any governmental entity relating to the “<i>legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 1414 of 2006</i>”. The documents requested concern an indeterminate number of government representatives from all possible</p>

## Claimant's STERN SCHEDULE

	<p>State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway's failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<b>D. Reply</b>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 14 December 2005 – 14 December 2006. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the</li></ol>

## Claimant's STERN SCHEDULE

	<p>document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</p> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS</li></ol>
--	---

## Claimant's STERN SCHEDULE

	<p>Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>13</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>14</sup></p>
<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the requested documents are excessively broad and unduly burdensome, aside from failing to identify with reasonable particularity the factual allegations that they intend to establish.</p> <p>Therefore, the request is rejected.</p>

<sup>13</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>14</sup> *Ibid* at paras 1.4-1.8.



**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	6
<b>A. Documents or category of documents requested</b>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting and passing of Law 1382 of 2010, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) the draft bill referenced at paras. 83-84 of the Respondent’s Counter-Memorial on Liability;</li> <li>b) the legislative intent referenced at paras. 93 and 95 of the Respondent’s Counter-Memorial on Liability; or ,</li> <li>c) the <i>travaux preparatoires</i> referred to at para. 116 of the Respondent’s Counter-Memorial on Liability.</li> </ul>
<b>B. Relevance and materiality: (1) para ref to submissions (2) comments (3) statement concerning custody and control</b>	<p>This legislation is relevant to the issues raised and disputed by the parties, namely the central “grandfathering provision” and its impact on the Applicant’s asserted rights at this point in time and moving forward. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 81-98.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[t]his legislation [Law 1382 of 2010] is relevant to the issues raised and disputed by the parties, namely the central “grandfathering provision” and its impact on the Applicant’s asserted rights at this point in time and moving forward”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific issue of interpretation concerning Law 1382 of 2010 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant</i></p>

## Claimant's STERN SCHEDULE

	<p><i>and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the draft bill referenced at ¶¶ 83-84 of the Counter-Memorial is already in the record. <i>See Exhibits R-23, R-24 and R-25</i>. More generally, the preparatory works for laws in Colombia are publicly available at <a href="http://svrpubindc.imprenta.gov.co/senado/">http://svrpubindc.imprenta.gov.co/senado/</a>. In addition, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (<a href="http://leyes.senado.gov.co/proyectos">http://leyes.senado.gov.co/proyectos</a>). To the extent Galway considers the preparatory works of Law 1382 of 2010 to be relevant to any specific disputed points of interpretation, it would not be unduly burdensome for Galway or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “<i>records</i>” held by any governmental entity “<i>relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting and passing of Law 1382 of 2010</i>”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
--	---

**Claimant's STERN SCHEDULE**

<p><b>D. Reply</b></p>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 9 February 2008 – 9 February 2010. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the</li></ol>
------------------------	--

## Claimant's STERN SCHEDULE

	<p>Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</p> <p>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>15</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable</p>
--	--

<sup>15</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

**Claimant’s STERN SCHEDULE**

	<p>accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent’s obligation to arbitrate in good faith.<sup>16</sup></p> <p>Regarding the Respondent’s objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not need to be produced but maintain their request for any related documents not publicly available.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal rejects the request. <i>First</i>, insofar as the Respondent has indicated that the documents specifically identified have been submitted as evidence in this arbitration. <i>Second</i>, as regards the rest, the Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Besides, the Respondent has identified that the preparatory works for laws in Colombia, as well as the status of the legislative process for draft bills, together with a summary of that process, are publicly available at an identified website, which the Claimant has not challenged.</p>

---

<sup>16</sup> *Ibid* at paras 1.4-1.8.

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	7
<b>A. Documents or category of documents requested</b>	All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i> , debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Law 1450 of 2011.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>This legislation is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 77-78, 111-117.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[<i>t</i>]his legislation [Law 1450 of 2011] is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights”. Galway makes no attempt to establish that the documents requested are relevant to any specific issue of interpretation concerning Law 1450 of 2011 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “carefully tailored to produce relevant and material documents”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the preparatory works for laws in Colombia are publicly available at <a href="http://svrpubindc.imprenta.gov.co/senado/">http://svrpubindc.imprenta.gov.co/senado/</a>. In addition, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (<a href="http://leyes.senado.gov.co/proyectos">http://leyes.senado.gov.co/proyectos</a>). To the extent Galway considers the preparatory works of Law 1450 of 2011 to be relevant to any specific disputed</p>

## Claimant's STERN SCHEDULE

	<p>points of interpretation, it would not be unduly burdensome for Galway or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “records” held by any governmental entity “relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Law 1450 of 2011”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<b>D. Reply</b>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 16 June 2009 – 16 June 2011. To the extent that the Claimant’s requests are broad, they are necessarily so.</li></ol>

## Claimant's STERN SCHEDULE

2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.
3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.

Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:

1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.
2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist



## Claimant's STERN SCHEDULE

	<p>in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>17</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>18</sup></p> <p>Regarding the Respondent's objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not</p>
--	---

<sup>17</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>18</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

	<p>need to be produced but maintain their request for any related documents not publicly available.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Besides, the Respondent has identified that the preparatory works for laws in Colombia, as well as the status of the legislative process for draft bills, together with a summary of that process, are publicly available at an identified website, which the Claimant has not challenged.</p> <p>Therefore, the request is rejected.</p>

Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>8</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux préparatoires</i>, debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 2090 of 2014.</p> <p>In addition, all documents or other records, whether in hard copy or electronic form, demonstrating the earliest publication of Resolution 2090 of 2014.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>This legislative instrument is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 70, 79, 243-266.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[<i>t</i>]his legislative instrument [Resolution 2090 of 2014] is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights”.</p> <p>Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific issue of interpretation concerning Resolution 2090 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain</p>

**Claimant’s STERN SCHEDULE**

	<p>which specific documents are being sought. It is essentially a “fishing expedition” for any “records” held by any governmental entity “relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 2090 of 2014”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"> <li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 22 December 2012 – 22 December 2014. To the extent that the Claimant’s requests are broad, they are necessarily so.</li> <li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the</li> </ol>

## Claimant's STERN SCHEDULE

	<p>knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</p> <p>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</p> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <p>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</p> <p>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the</p>
--	--

## Claimant's STERN SCHEDULE

	<p>procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>19</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>20</sup></p> <p>Regarding the Respondent's objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not need to be produced but maintain their request for any related documents not publicly available.</p>
--	--

<sup>19</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>20</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

	<p>Regarding the Respondent's objections on the basis of legal privilege, the Claimant agrees that to the extent that any document contains or refers to legally privileged advice, opinions, or communications that would be protected by a category of legal privilege recognized at international law, then such documents would not be producible or would only be producible in redacted form.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the requested documents are excessively broad and unduly burdensome, aside from failing to identify with reasonable particularity the factual allegations that they intend to establish.</p> <p>Therefore, the request is rejected.</p>

Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>9</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Law 1753 of 2015.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>This legislation is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 267-273.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[t]his legislation [Law 1753 of 2015] is relevant to the issues raised and disputed by the parties, namely the ongoing status of the asserted “grandfathering” protections and their impact on the Applicant’s asserted rights”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific issue of interpretation concerning Law 1753 of 2015 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “carefully tailored to produce relevant and material documents”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the preparatory works for laws in Colombia are publicly available at <a href="http://svrpubindc.imprenta.gov.co/senado/">http://svrpubindc.imprenta.gov.co/senado/</a>. In addition, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (<a href="http://leyes.senado.gov.co/proyectos">http://leyes.senado.gov.co/proyectos</a>). To the extent Galway considers the preparatory works of Law 1753 of 2015 to be relevant to any specific disputed points of interpretation, it would not be unduly burdensome</p>



**Claimant’s STERN SCHEDULE**

	<p>for Galway or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “records” held by any governmental entity “relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Law 1753 of 2015”. The documents requested concern an indeterminate number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"> <li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 9 June 2013 – 9 June 2015. To the extent that the Claimant’s requests are broad, they are necessarily so.</li> </ol>

## Claimant's STERN SCHEDULE

	<ol style="list-style-type: none"><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of</li></ol>
--	---

## Claimant's STERN SCHEDULE

	<p>example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>21</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>22</sup></p> <p>Regarding the Respondent's objection on the basis that certain documents within the requested category may be publicly available, the Claimant agrees that these do not need to be produced but maintain their request for any related documents not publicly available.</p>
--	--

<sup>21</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>22</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish. Besides, the Respondent has identified that the preparatory works for laws in Colombia, as well as the status of the legislative process for draft bills, together with a summary of that process, are publicly available at an identified website, which Claimant has not challenged.</p> <p>Therefore, the request is rejected.</p>

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	10
<b>A. Documents or category of documents requested</b>	All correspondence, email or other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i> , debates, previous iterations, and any record of or relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 341 of 2018.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>This legislative instrument is relevant to the issues raised and disputed by the parties, namely the changing status of the asserted protections and their impact on the Applicant’s asserted rights. This legislation is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 300-308.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway’s only justification for the Request is that “[<i>t</i>]his legislative instrument [Resolution 341 of 2018] is relevant to the issues raised and disputed by the parties, namely the changing status of the asserted protections and their impact on the Applicant’s asserted rights”. Galway makes no attempt to establish that <u>the documents</u> requested are relevant to any specific issue of interpretation concerning Resolution 341 of 2018 that is in dispute, still less that such documents are material to the outcome of the case. Thus, the Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Second</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. It is essentially a “fishing expedition” for any “<i>records</i>” held by any governmental entity “<i>relating to legislative intent and/or objectives, all whether in hard copy or electronic form, relating to the drafting or passing of Resolution 341 of 2018</i>”. The documents requested concern an indeterminate</p>

**Claimant's STERN SCHEDULE**

	<p>number of government representatives from all possible State agencies, over an unlimited period of time. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway's failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 24 February 2015 – 8 April 2018. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li></ol>

**Claimant's STERN SCHEDULE**

	<p>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</p> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic</li></ol>
--	---

## Claimant's STERN SCHEDULE

	<p>civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>23</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>24</sup></p>
<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the requested documents are excessively broad and unduly burdensome, aside from failing to identify with reasonable particularity the factual allegations that they intend to establish.</p> <p>Therefore, the request is rejected.</p>

<sup>23</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>24</sup> *Ibid* at paras 1.4-1.8.



Claimant’s STERN SCHEDULE

<p><b>Document Request No.</b></p>	<p>11</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence, email or other communications of or in the files of either the Ministry of Environment or the NMA, all whether in hard copy or electronic form, relating to the requests for clarification submitted by the Ministry of Environment or the NMA seeking clarification of Judgment C-035-16.</p>
<p><b>B. Relevance and materiality:</b>  <b>(1) para ref to submissions</b>  <b>(2) comments</b>  <b>(3) statement concerning custody and control</b></p>	<p>Judgment C-035-16 struck down part of Law 1735 of 2010, including the grandfathering provision, as unconstitutional. Both the Ministry of the Environment and the NMA requested clarification of the decision from the Court. The motives and rationale underlying the decision to request such clarifications is relevant to a central issue in this dispute, namely the balance between the protection of the environment and the protections of investors’ rights and reasonable expectations.</p> <p>This decision, and the governmental clarification requests that followed, are referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 274-295.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the requests for clarification submitted by the Ministry of Environment and the NMA are already on the record. <i>See Exhibits R-65 and R-66</i>. Galway cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)).</p> <p><i>Second</i>, Galway provides no plausible justification as to why any documents beyond the requests themselves could be relevant to any specific issue in dispute with respect to the requests for clarification, still less that such documents would be material to the outcome of the case. Galway claims that the “<i>motives and rationale underlying the decision to request such clarifications is relevant to a central issue in this dispute, namely the balance between the protection of the environment and the protections of investors’ rights and reasonable expectations</i>”. That is not the case. As explained in Colombia’s Counter-Memorial,</p>

**Claimant’s STERN SCHEDULE**

	<p>Judgment C-35 did not impact on Galway’s Project because Concession 14833 did not benefit from the “grandfathering” under Law 1753 of 2015 or otherwise. The requests for clarification sought to understand how the Judgment should be implemented with respect to grandfathered projects. (<i>See e.g. Counter-Memorial, ¶ 279</i>) In any event, the requests for clarification by the Ministry of Environment and NMA did not criticize the Court’s decision for failing to achieve a “<i>balance between the protection of the environment and the protections of investors’ rights and reasonable expectations</i>”, not least because the Court’s decision did not address the issue of whether holders of grandfathered projects should be compensated as a result of the revocation of the grandfathering provision of Law 1753 of 2015. (<i>See e.g. Counter-Memorial, ¶ 290</i>)</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objection on the basis that certain listed or requested documents may already be in the Claimant’s possession, the Claimant recognizes and agrees that these need not be produced again but maintains its request for any related documents are framed by our request.</p> <p>The Respondent’s second objection must be dismissed. It relies on an unproved and unaccepted argument advanced by the Respondent, that is directly contested by the Claimant, on a central issue in dispute, which the Tribunal must determine. The Respondent’s objection is entirely circular, and without any substance or merit. Specifically, whether Concession 14833 did or did not benefit from the “grandfathering” under Law 1753 of 2015 or otherwise is an issue to determine by the Tribunal. The Respondent’s unaccepted and untested position on this issue is not a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise.</p>

## Claimant's STERN SCHEDULE

	<p>The Respondent's objection to relevance is based only on its position the grandfathering provisions did not apply to Galway. The Claimant maintains that the interpretation and applicability of the Respondent's legislative frameworks to Galway and Concession 14833 is a central issue in dispute in this arbitration. The Respondent's assertion of its legal position as a <i>fait accompli</i> is not a valid answer or response to the Claimant's document and provides no valid ground or reason to deny access to relevant and material documents that are relevant to key questions that will be determined by Tribunal and invariably the subject of extensive expert evidence.</p> <p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol>
--	--

## Claimant's STERN SCHEDULE

	<p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li data-bbox="722 283 1459 871">1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li data-bbox="722 903 1459 1774">2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce</li></ol>
--	---

## Claimant's STERN SCHEDULE

	<p>relevant documents in international arbitrations to which they are party.<sup>25</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>26</sup></p> <p>Regarding the Respondent's objections on the basis of legal privilege, the Claimant agrees that to the extent that any document contains or refers to legally privileged advice, opinions, or communications that would be protected by a category of legal privilege recognized at international law, then such documents would not be producible or would only be producible in redacted form.</p>
<b>E. Decision of the Tribunal</b>	<p>The Tribunal rejects the request. <i>First</i>, insofar as the Respondent has informed that the documents specifically identified have been submitted as evidence in this arbitration. <i>Second</i>, as regards the rest, the Tribunal finds that the requested documents fail to identify how they could be relevant to any specific issue in dispute with respect to the requests for clarification.</p>

<sup>25</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>26</sup> *Ibid* at paras 1.4-1.8.

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	12
<b>A. Documents or category of documents requested</b>	All documents or other records, whether in hard copy or electronic form, including but not limited to written <i>submissions</i> , relating to the intervention of the National Planning Department (Departamento Nacional de Planeacion), or the NMA, or any other intervening entities of the Colombian State in the Constitutional Court case C-035-16.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>Judgment C-035-16 struck down part of Law 1735 of 2010, including the grandfathering provision, as unconstitutional. The entities’ intervention, and the rationale for it, is relevant to a central issue in this dispute, namely the balance between the protection of the environment and the protection of investors’ rights and reasonable expectations. This decision and its reasons are relevant to the issues raised and disputed by the parties, namely the changing status of the asserted protections under Law 1735 and the impact of this change on the Applicant’s asserted rights. This decision is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 274-295.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, Galway provides no justification as to why the documents requested are relevant to any specific issue in dispute, still less that such documents would be material to the outcome of the case. Galway claims that the “<i>entities’ intervention, and the rationale for it, is relevant to a central issue in this dispute, namely the balance between the protection of the environment and the protection of investors’ rights and reasonable expectations</i>”. That is not the case. As explained in Colombia’s Counter-Memorial, Judgment C-35 did not impact on Galway’s Project because Concession 14833 did not benefit from the “grandfathering” under Law 1753 of 2015 or otherwise. In any event, the interventions of the Ministry of the Environment and the NMA emphasized that mining projects without an approved PTO and an environmental licence would not be impacted by the challenge against Law 1753, because such projects failed to satisfy the necessary requirements allowing them to progress to the exploitation stage. The National Planning Department, for its part, did not even address the transitional</p>

**Claimant’s STERN SCHEDULE**

	<p>regime, and simply confirmed that the ban on mining in páramo ecosystems dates back to 2010 and that Law 1753 did nothing other than to confirm this prohibition. (<i>See</i> Counter-Memorial, ¶¶ 286-287 and Constitutional Court, Judgment C-35, 8 February 2016, <b>Exhibit C-15</b>, pp. 126-129) Thus, the issues addressed in the submissions do not concern the balance between the protection of the environmental and investors’ rights or expectations.</p> <p><i>Second</i>, even if the submissions of the NMA, Ministry of Environment or National Planning Department were at all relevant, the fact that they made and their content is already set out in Judgment C-35. (<i>See</i> Judgment C-35, 8 February 2016, <b>Exhibit C-15</b>, pp. 126-129) Galway provides no plausible justification as to why the submissions or any of the other documents requested would assist the Tribunal in determining any particular issue, still less be material to the outcome of the case.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p>
<p><b>D. Reply</b></p>	<p>The Respondent’s first objection must be dismissed. It relies on an unproved and unaccepted argument advanced by the Respondent, that is directly contested by the Claimant, on a central issue in dispute, which the Tribunal must determine. The Respondent’s objection is entirely circular, and without any substance or merit. Specifically, whether Concession 14833 did or did not benefit from the “grandfathering” under Law 1753 of 2015 or otherwise is an issue to determine by the Tribunal. The Respondent’s unaccepted and untested position on this issue is not a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise.</p> <p>The Respondent’s objection to relevance is based only on its position the grandfathering provisions did not apply to Galway. The Claimant maintains that the interpretation and</p>

## Claimant's STERN SCHEDULE

	<p>applicability of the Respondent's legislative frameworks to Galway and Concession 14833 is a central issue in dispute in this arbitration. The Respondent's assertion of its legal position as a <i>fait accompli</i> is not a valid answer or response to the Claimant's document and provides no valid ground or reason to deny access to relevant and material documents that are relevant to key questions that will be determined by Tribunal and invariably the subject of extensive expert evidence.</p> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out</li></ol>
--	---



**Claimant’s STERN SCHEDULE**

	<p>the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>27</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent’s obligation to arbitrate in good faith.<sup>28</sup></p> <p>Regarding the Respondent’s objections on the basis of legal privilege, the Claimant agrees that to the extent that any document contains or refers to legally privileged advice, opinions, or communications that would be protected by a category of legal privilege recognized at international law, then such documents would not be producible or would only be producible in redacted form.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal rejects the request, because the requested documents fail to identify how they could be relevant to any specific issue in dispute with respect to the balance between the protection of the environmental and Claimant’s rights or expectations as an investor. Besides, the Respondent has identified that another document already submitted as evidence in this arbitration (submissions of the NMA,</p>

<sup>27</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>28</sup> *Ibid* at paras 1.4-1.8.

**Claimant's STERN SCHEDULE**

	<p>Ministry of Environment and National Planning Department were already set out in Judgment - Exhibit C-15) addresses specific concerns of the Claimant, and this has not been challenged by the Claimant.</p>
--	---

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	13
<b>A. Documents or category of documents requested</b>	All correspondence, emails and other communications, memoranda, reports, opinions, draft opinions, meeting minutes, notes, comments, drafts, <i>travaux préparatoires</i> , debates, previous iterations, and all other records, all whether in hard copy or electronic form, among or passing between any of the Judges of the Court regarding the issues raised in the dissent in Judgment C-035-16 concerning the effect of Resolution 2090 on Colombia’s international law obligations.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>Judgment C-035-16 struck down part of Law 1735 of 2010, including the grandfathering provision, as unconstitutional. The entities’ intervention, and the rationale for it, is relevant to a central issue in this dispute, namely the balance between the protection of the environment and the protection of investors’ rights and reasonable expectations. In the decision, the majority does not address the points raised by the dissenting opinions of Justices Luis Guillermo Guerrero Pérez and Alejandro Linares Castillo, specifically regarding the potential liability of the Colombian State under international and domestic law.</p> <p>This decision and its reasons are relevant to the issues raised and disputed by the parties, namely the changing status of the asserted protections under Law 1735 and the impact of this change on the Applicant’s asserted rights. This decision is referred to and relied on specifically in the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 274-295.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to the remainder of this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. For the reasons set out in Colombia’s Counter-Memorial, the dissent in Judgment C-35 is not relevant to Galway’s case because the opinions expressed by the dissenting judges only applied to the impact of Judgement C-35 on projects that were grandfathered under Law 1753 of 2015, and Galway’s Vetas Gold Project never benefitted from such grandfathering. (See Counter-Memorial, ¶¶ 280-281)</p>

**Claimant’s STERN SCHEDULE**

	<p><i>Second</i>, the justification offered by Galway does not support its request. Other than referring (it seems, in error, as a copy over from the previous request) to the “<i>entities’ intervention</i>”, the only rationale offered by Galway is that the dissenting opinion is not addressed by the majority of the Court and that the decision is “<i>relevant to the issues raised and disputed by the parties, namely the changing status of the asserted protections under Law 1735 and the impact of this change on the Applicant’s asserted rights</i>”. Galway fails to give any reason why the documents requested (<i>i.e.</i>, documents “<i>among or passing between</i>” the Judges of the Constitutional Court) are relevant to any disputed issue of interpretation of the decision or dissent. Nor does Galway explain why the dissent, which concerned the overturning of the grandfathering provision under Law 1753 of 2015, could be relevant to “<i>the effect of Resolution 2090 on Colombia’s international law obligations</i>”.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
<p><b>D. Reply</b></p>	<p>The Respondent’s first objection must be dismissed. It relies on an unproved and unaccepted argument advanced by the Respondent, that is directly contested by the Claimant, on a central issue in dispute, which the Tribunal must determine. The Respondent’s objection is entirely circular, and without any substance or merit. Specifically, whether Concession 14833 did or did not benefit from the “grandfathering” under Law 1753 of 2015 or otherwise is an issue to determine by the Tribunal. The Respondent’s unaccepted position on this issue is not a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise.</p> <p>The Respondent’s objection to relevance is based only on its position the grandfathering provisions did not apply to Galway. The Claimant maintains that the interpretation and applicability of the Respondent’s legislative frameworks to Galway and Concession 14833 is a central issue in dispute in this arbitration, including, once again, the extent to which Galway benefited from the grandfathering regimes. The</p>

## Claimant's STERN SCHEDULE

	<p>Respondent's assertion of its legal position as a <i>fait accompli</i> is not a valid answer or response to the Claimant's document and provides no valid ground or reason to deny access to relevant and material documents that are relevant to key questions that will be determined by Tribunal and invariably the subject of extensive expert evidence.</p> <p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol> <p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the</li></ol>
--	--

## Claimant's STERN SCHEDULE

	<p>IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</p> <p>2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce relevant documents in international arbitrations to which they are party.<sup>29</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested Even if Colombian domestic law could be said to apply here,</p>
--	---

<sup>29</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

**Claimant’s STERN SCHEDULE**

	<p>the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent’s obligation to arbitrate in good faith.<sup>30</sup></p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that it intends to establish. Whether or not Claimant’s Vetas Gold Project benefitted from a grandfathering under Law 1753 of 2015, will not be supported by the requested documents.</p> <p>Further, the judgment and the dissenting opinions are in the record, and the discussions between the judges do not modify the extent of their legal value.</p> <p>Therefore, the request is rejected.</p>

---

<sup>30</sup> *Ibid* at paras 1.4-1.8.

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	14
<b>A. Documents or category of documents requested</b>	All documents and other records, whether in hard copy or electronic form, relating to the development and publication of any materials or campaigns by the Respondent in support of “strategies to raise public awareness of the paramos and to support their protection at the national level” implemented by the Minister of the Environment.
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>Relied on by the Respondent in para. 73 of the Respondent’s Counter-Memorial on Liability to support its position regarding the social and political situation in Colombia around the time of the Claimant’s entry in the Colombian mining industry.</p> <p>The timing and substance of any such programs, their purpose and their intent are relevant to the issues raised and disputed by the parties, namely the extent to which certain levels of protection of <i>paramo</i> areas was sufficiently widespread to impact an investor’s reasonable expectations at any given moment in time. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 57, 64, 73.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons:</p> <p><i>First</i>, the documents on which Respondent relies to demonstrate that Colombia adopted, prior to Galway’s alleged investment, “<i>strategies to raise public awareness of the paramos and to support their protection at the national level</i>” (Counter-Memorial, ¶ 73) are already on the record. For example, as referenced at ¶ 73 of the Counter-Memorial:</p> <ol style="list-style-type: none"> <li>1. The 2007 Páramo Atlas, which the Claimant itself introduced in evidence, is a key document produced by the IAVH upon the instruction of the Ministry of Environment, for the purpose, among others, of raising public awareness of the páramos and to support their protection at the national level.</li> <li>2. The Ministry of Environment’s 2002 Páramo Program, to which the 2007 Atlas (<i>see</i>, footnote 92</li> </ol>



## Claimant's STERN SCHEDULE

	<p>of the Counter-Memorial), confirms that the 2007 Atlas was prepared in pursuance of the Páramo Program's objective of "<i>developing a communication and socialization strategy about the state of knowledge about páramo ecosystems and their conservation</i>".<sup>31</sup></p> <p>In addition, Colombia relies on the legislative framework in place at the time Galway allegedly invested. As explained in the Counter-Memorial, the laws themselves demonstrate Colombia's "<i>continuous and consistent efforts to protect [the páramos] at the time Galway claims to have invested in Colombia</i>".<sup>32</sup> and the steps taken to "<i>strengthen the protection of the páramos over time</i>".<sup>33</sup> All such laws were public and Galway ought to have been aware of them at the time it allegedly invested. For example:</p> <ul style="list-style-type: none"><li>• <b>Section III.A</b> addresses the inclusion of the "<i>special protection</i>" of páramo ecosystems as one of the General Environmental Principles of Colombia's general environmental law, Law 99 of 1993. This law has been produced as <b>Exhibit R-21</b>.</li><li>• At ¶¶ 60-61, the Respondent explained that the Ministry of Environment embarked on an ambitious program for the restoration and sustainable management of high mountain ecosystems, the Páramo Program, in the early 2000s. The Páramo Program sought to provide guidelines for the environmental management of páramos in accordance with the general principles of Law 99 of 1993.<sup>34</sup> The Ministry of Environment's Páramo Program was submitted as <b>Exhibit R-78</b>.</li><li>• At <b>Sections III.D</b> and <b>F</b>, the Respondent addresses the Ministry of Environment's efforts to define páramo ecosystems through the issuance of Resolution No. 769 of 2002, and by supporting the preparation of the 2007 Páramo Atlas by the IAVH. Resolution No. 769 and the 2007 Páramo Atlas were produced by the Claimant itself, as <b>Exhibits C-12</b> and <b>C-106</b>, respectively.</li></ul>
--	---

<sup>31</sup> Biological Resources Research Institute Alexander von Humboldt, Atlas of Colombian Paramos, 2007, **Exhibit C-106**, Presentation.

<sup>32</sup> Respondent's Counter-Memorial, ¶ 39.

<sup>33</sup> Respondent's Counter-Memorial, ¶ 52.

<sup>34</sup> Ministry of Environment, Program for the Restoration and Sustainable Management of High Mountain Ecosystems, February 2002, **Exhibit R-78**, p. 6.

**Claimant’s STERN SCHEDULE**

	<p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought, not already produced by the Parties and relied upon by Colombia in its Counter-Memorial. The Request does not identify with reasonable particularity what factual allegations it is intended to establish and is, therefore, not “<i>carefully tailored to produce relevant and material documents</i>”, as required by Article 3(3)(b) of the IBA Rules.</p> <p><i>Third</i>, the Request is excessively broad and unduly burdensome. The Request is formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought. The Request refers to “<i>any materials or campaigns</i>” generally without specifying the type of documents that are sought or providing any date range. For these reasons, the Request is contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objection on the basis that this request is adequately responded to in documents already produced in this arbitration, the Claimant objects to the Respondent’s suggestion that what they may intend to rely on or view as determinatively responsive to a given question of fact or law at issue in no way delimits the scope of relevant productions. The Claimant maintains their request to all relevant records responsive to this request that could support either party’s position or the Tribunal’s adjudication in any way.</p> <p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"> <li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the applicable dates for documents requested. For this request, the appropriate date range is 9 February 2010 – 21 March 2018. To the extent that the Claimant’s requests are broad, they are necessarily so.</li> </ol>

**Claimant's STERN SCHEDULE**

	<p>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</p> <p>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal finds that the Respondent has identified various documents specifically addressing the request of Claimant that are already in the record, and the Claimant has failed to identify other particular documents that could be relevant to any specific issue in dispute.</p> <p>Therefore, the request is rejected.</p>

**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	15
<b>A. Documents or category of documents requested</b>	<p>All documents and records, including all correspondence, emails and other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, and all other records, whether in hard copy or electronic form, in the files or possession of the Ministry of the Environment or other relevant entities of the Colombian State relating to any planned and implemented delineation of the Santurban Paramo system, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) all technical, economic, social, or environmental studies, including maps, surveys, or coordinate records prepared by or for the Respondent;</li> <li>b) all internal correspondence, emails and other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, work product and all other records, whether in hard copy or electronic form, resulting from or relating to any working groups or round tables that discussed or considered the delineation; and</li> <li>c) all internal correspondence, emails and other communications, memoranda, reports, opinions, meeting minutes, notes, comments, drafts, <i>travaux preparatoires</i>, debates, previous iterations, work product and all other records, whether in hard copy or electronic form, prepared by or for the Respondent addressing the socio-economic criteria and considerations for the delineation.</li> </ul>
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>The delineation of the Santurban Paramo system, its purpose and its intent are relevant to the issues raised and disputed by the parties, namely the legislative context, investment profile, and environmental features of certain areas touching Concession 14833 Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 70-80, 107-110, 117, 243-254.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<b>C. Summary of objections by disputing party to</b>	Colombia objects to this Request for the Production of Documents (“ <b>Request</b> ”), and requests that it be denied by the Tribunal, for the following reasons.

## Claimant's STERN SCHEDULE

<p><b>production of requested documents</b></p>	<p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested concern an indeterminate number of government representatives from the Ministry of Environment and an undefined group of any “<i>other relevant entities of the Colombian State</i>”, over an unlimited period of time. The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). <b>Red Eagle’s</b> [?] failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. It is essentially a “fishing expedition” for any documents relating to the delineation of the Santurban Páramo held by any governmental entity. Galway has failed to put forward any justification for this exceedingly broad Request tied to any particular disputed issues concerning the delimitation. Rather, Galway’s only rationale for the request is that “[t]he delineation of the Santurban Paramo system, its purpose and its intent are relevant to the issues raised and disputed by the parties, namely the legislative context, investment profile, and environmental features of certain areas touching Concession 14833”. This does not justify the relevance of the documents requested to any specific issue in dispute, still less that the documents are material to the outcome of this case. The Request is not “<i>carefully tailored to produce relevant and material documents</i>”, and is therefore contrary to Article 3(3)(b) of the IBA Rules.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (<b>Annex 1</b>). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p>
---	--

## Claimant's STERN SCHEDULE

<p><b>D. Reply</b></p>	<p>Regarding the Respondent's objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 22 December 2009 – 21 March 2018. To the extent that the Claimant's requests are broad, they are necessarily so.</li><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li><li>4. The Respondent's Counter-Memorial at para. 251 states that the letter sent by the CDMB confirming that the concession area did not intersect with the paramo is <i>non sequitur</i> because the delimitation was made clear in other instruments. For the Claimant to be able to provide a full response on this issue, it must have access to all the materials at the relevant time that determined the delineation.</li></ol>
------------------------	---

## Claimant's STERN SCHEDULE

	<p>Regarding the Respondent's objections on the basis of confidentiality under domestic (Colombian) law, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li data-bbox="722 283 1459 871">1. The Respondent's (alleged) domestic law is not a recognized or permitted ground or reason to object to producing documents in the arbitration, under the IBA Rules or otherwise. Pursuant to Article 832 of the Canada-Colombia Free Trade Agreement, the governing law of the arbitration is international law, not Colombian law. It is well-settled law that the Colombia cannot use domestic law, in effect, to supersede, or as a reason for failing to comply with, clearly applicable international law, particularly where Colombia agreed to and consented to the arbitration being governed by international law. Colombia has not asserted, let alone proven, that any domestic confidentiality provisions form accepted principles of international law that would be relevant or appropriate to apply here.</li><li data-bbox="722 903 1459 1774">2. Even if Colombian law was a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise, it is not open to the Respondent to simply assert as a matter of fact, without proof, the applicability of any rules or exclusions that may exist in domestic law before this Tribunal. By way of example, the stated purpose of the cited domestic law is to regulate access to public information and the procedures (and exemptions) for exercising that right of access and publicizing such information generally. The regime does not refer to information disclosed in the context of litigation where Colombia is itself a party to the proceeding (where, in any case for domestic proceedings, the procedure would have to follow the rules under the Colombian General Procedural Code (Law 1564 of 2012) which sets out the relevant rules for evidence within a domestic civil procedure) or where such litigation takes place within a confidential private arbitration. ISDS Tribunals are rightly skeptical of attempts by Respondents to contort domestic statutes governing the production and use of documents in particular, domestic contexts, into bases to refuse to produce</li></ol>
--	---

## Claimant's STERN SCHEDULE

	<p>relevant documents in international arbitrations to which they are party.<sup>35</sup></p> <p>3. The Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in taking evidence, including the production of documents requested. Even if Colombian domestic law could be said to apply here, the Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the documents, in whole or in part. The Claimant is content to consider any reasonable accommodations to promote the confidentiality of any documents outside of the arbitration for which there is a valid claim of confidentiality. The Respondent has not proposed any such terms. The bald assertion that documents are confidential pursuant to domestic law and reliance on domestic law to avoid producing documents – even to the Tribunal to review and confirm the claim for confidentiality – runs contrary to the Respondent's obligation to arbitrate in good faith.<sup>36</sup></p>
<b>E. Decision of the Tribunal</b>	<p>The Tribunal finds that the request, within the limited scope identified below is relevant to the issues raised and disputed by the parties, and therefore orders the Respondent to produce documents in the files or possession of the Ministry of the Environment relating to any planned and implemented delineation of the Santurban Paramo system, within the date range identified.</p> <p>Any petition for production of other documents in this request is rejected.</p>

<sup>35</sup> See, for example, *Pope & Talbot Inc. v Canada*, UNCITRAL Award (September 6, 2000), at paras 1.1-1.4.

<sup>36</sup> *Ibid* at paras 1.4-1.8.



**Claimant’s STERN SCHEDULE**

<b>Document Request No.</b>	16
<b>A. Documents or category of documents requested</b>	<p>All correspondence, emails or other communications, between or among any of INGEOMINAS, the NMA, the ANLA, the CDMB, the Ministry of Mines and Energy and any other relevant entity of the Colombian State, on the one hand, and any of the following entities, on the other hand:</p> <ul style="list-style-type: none"> <li>a) Eco Oro;</li> <li>b) Red Eagle;</li> <li>c) Gran Colombia Gold Corp.; and</li> <li>d) Glencore International A.G. and C.I. Prodeco S.A..</li> </ul> <p>where such communication relates to the impact of any of Resolution 1414 of 2006, Law 1382 of 2010, Law 1450 of 2011, Resolution 2090 of 2014, Law 1753 of 2015, or Judgment C-035-16, or any of their respective impacts on any mining rights or other mining concession interests owned or held by any of Eco Oro, Red Eagle; Gran Colombia Gold Corp.;and Glencore International A.G. and C.I. Prodeco S.A..</p>
<b>B. Relevance and materiality:</b> <b>(1) para ref to submissions</b> <b>(2) comments</b> <b>(3) statement concerning custody and control</b>	<p>The listed entities and requested documents relate directly to the issues raised and disputed by the parties, namely whether the Respondent’s legislative changes during the relevant period were adopted and applied in a non-discriminatory manner as towards the Applicant and other similarly positioned holders of mining concession interests. Reference is made to these issues throughout the Respondent’s Counter-Memorial on Liability, including but not limited to paras. 395-403.</p> <p>These are primary records not in the possession or control of the Applicant.</p>

## Claimant's STERN SCHEDULE

<b>C. Summary of objections by disputing party to production of requested documents</b>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested concern an indeterminate number of government representatives from five government agencies and an undefined group of “<i>any other relevant entity of the Colombian State</i>”, over an unlimited period of time. The Request fails to define the documents sought with sufficient specificity to identify such documents, and is therefore contrary to IBA Rule 3(3)(a)(i). Galway’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. It is essentially a “fishing expedition” for any communications relating to “<i>the impact</i>” of Resolution 1414 of 2006, Law 1382 of 2010, Law 1450 of 2011, Resolution 2090 of 2014, Law 1753 of 2015, or Judgment C-35 on “<i>any mining rights or other mining concession interests</i>” held by Eco Oro, Red Eagle, Gran Colombia Gold Corp. or Glencore International A.G. and C.I. Prodeco S.A, five third parties that are not party to this arbitration. Further, Galway has not alleged (and has no basis to such allege) that Colombia’s treatment of Galway’s alleged investment was less favourable than that accorded to such parties.</p>
<b>D. Reply</b>	<p>Regarding the Respondent’s objections on the basis of relevance, particularity, and overbreadth, the Claimant makes three main submissions in reply:</p> <ol style="list-style-type: none"><li>1. The Claimant’s request has been made with adequate particularity and reference to the relevant factual and legal issues identified in its Request for Arbitration and Memorial on Liability and Jurisdiction. The breadth and relevance of these factual and legal issues is defined and limited by the issues material to the claims (and defenses/objections) being asserted by the parties, including the applicable dates for documents requested. For this request, the appropriate date range is 14 December 2006 – 21</li></ol>

**Claimant's STERN SCHEDULE**

	<p>March 2018. To the extent that the Claimant's requests are broad, they are necessarily so.</p> <ol style="list-style-type: none"><li>2. The Claimant has narrowed and particularized this request to the best of their ability based on the knowledge and information in their possession at this time, and the information in the counter-memorials delivered by the Respondent. Given that the records requested were created by, belong to, and/or are in the exclusive control of the Respondent, the Claimant cannot articulate with more precisions the specific identity or nature of any given document that may be responsive to this request.</li><li>3. The Claimant's request is framed with essentially the same degree of precision and responsiveness as the document production requests put forward by the Respondent. As a result, if the Claimant's request on its face, does not comply with Article 3(3)(b) of the IBA Rules, the Respondent's requests also do not comply with Article 3(3)(b) of the IBA Rules, and should be dismissed.</li></ol> <p>The Respondent's objection that Galway has not claimed less favourable treatment as compared with the identified entities seems to address claims for MFM, which have not been put forward in this proceeding. In any event, this objection is no answer to why the documents captured by this request remain within the scope of relevance to the Claimant's express FET claim.</p>
<p><b>E. Decision of the Tribunal</b></p>	<p>The Tribunal rejects the request, since the Claimant has failed to justify why the documents relating to five entities that are unrelated to the Claimant, and not a party to this dispute, can be relevant to any specific issue in dispute in this arbitration.</p>

**Claimant’s STERN SCHEDULE**

<p><b>Document Request No.</b></p>	<p>17</p>
<p><b>A. Documents or category of documents requested</b></p>	<p>All correspondence or notice sent to either GG or Reina de Oro by the NMA or any related entities regarding the request to provide the Assignment Contract to the NMA, and any confirmation or acknowledgment of receipt of any such correspondence or notice by GG or received from GG.</p>
<p><b>B. Relevance and materiality:</b>  <b>(4) para ref to submissions</b>  <b>(5) comments</b>  <b>(6) statement concerning custody and control</b></p>	<p>The requested documents relate directly to the issues raised and disputed by the parties, namely the Respondent’s argument regarding the assignment of Concession 14833 from Reina de Oro to GG. Reference is made to this issue throughout the Respondent’s Counter-memorial on Liability, including but not limited to paras. 196-218, as well as in the Witness Statement of Eduardo Amaya Lacouture at paras. 15-21.</p> <p>These are primary records not in the possession or control of the Applicant.</p>
<p><b>C. Summary of objections by disputing party to production of requested documents</b></p>	<p>Colombia objects to this Request for the Production of Documents (“<b>Request</b>”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, Galway already has (or ought to have) in its possession any “correspondence or notice” sent to Galway by the NMA. Galway cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)).</p> <p><i>Second</i>, the Request fails to establish the relevance of the documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Galway does not (and cannot) dispute that it failed to provide the Assignment Contract. As Colombia has demonstrated, by failing to provide the Assignment Contract to the NMA, Reina de Oro failed to satisfy one of the mandatory requirements for the assignment of Concession 14833 provided for under the 2001 Mining Code. <i>See</i>, Witness Statement of Eduardo Amaya Lacouture, ¶¶ 6-7. <i>See also</i>, Law 685 (2001 Mining Code), <b>Exhibit C-47</b>, Art. 22. Galway has failed to explain why the documents requested would assist the Tribunal in determining whether</p>

**Claimant’s STERN SCHEDULE**

	<p>the assignment was somehow effective despite not fulfilling the mandatory legal requirements under Colombian law, as Galway alleges.</p>
<p><b>D. Reply</b></p>	<p>Regarding the Respondent’s objections that Galway already has (or ought to have) in its possession any “correspondence or notice” sent to Galway by the NMA, the Witness Statement filed by the Respondents states that Resolution 228 of 2017, by which the NMA requested further documentation within the assignment notice procedure, was also notified to Galway (para. 18 of the Witness Statement of Eduardo Amaya Lacouture). The Claimant has been advised by Galway personnel in Colombia that such document was never received and is not in the possession, custody or control of Galway.</p> <p>The Respondent’s second objection must be dismissed. It relies on an unproved and unaccepted argument advanced by the Respondent, that is directly contested by the Claimant, on a central issue in dispute, which the Tribunal must determine. The Respondent’s objection is entirely circular, and without any substance or merit. Specifically, whether Colombia is factually correct or entitled at law to rely on its position that Galway “cannot dispute” that it failed to provide the Assignment Contract is an issue to determine by the Tribunal. The Respondent’s unaccepted and untested position on this issue is not a recognized or permitted ground or reason to object to producing documents in the arbitration under the IBA Rules or otherwise.</p> <p>The Respondent’s objection to relevance is based only on its position the grandfathering provisions did not apply to Galway. The Claimant maintains that the interpretation and applicability of the Respondent’s legislative frameworks to Galway and Concession 14833 is a central issue in dispute in this arbitration. The Respondent’s assertion of its legal position as a <i>fait accompli</i> is not a valid answer or response to the Claimant’s document and provides no valid ground or reason to deny access to relevant and material documents that are relevant to key questions that will be determined by Tribunal and invariably the subject of extensive expert evidence.</p>

**Claimant's STERN SCHEDULE**

<p><b>E. Decision of the Tribunal</b></p>	<p>Since Claimant has stated that it never received Resolution/Order 228 of October 27, 2017(Exhibit R-46), the Tribunal orders the Respondent to provide evidence of delivery or confirmation of acknowledgement of receipt of said Resolution/Order 228.</p> <p>Any petition for production of other documents in this request is rejected, because the Tribunal finds that the requested documents fail to identify with reasonable particularity the factual allegations that they intend to establish.</p>
---	---