

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

CONTINENTAL GOLD INC.

Claimant

v.

THE REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/24/____

REQUEST FOR ARBITRATION

28 June 2024

WHITE & CASE
Counsel for Claimant

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REQUEST FOR ARBITRATION

1. Continental Gold Inc. (“**Continental Gold**” or “**Claimant**”), a corporation constituted under the laws of the Province of Ontario, Canada, on its own behalf and on behalf of Continental Gold Limited Sucursal Colombia (“**Continental Gold Colombia**”), a branch registered and inscribed in the Mercantile Registry of the Chamber of Commerce of Medellin, hereby requests to arbitrate the claims described herein pursuant to Articles 819 and 820 of Chapter Eight of the Free Trade Agreement (the “**FTA**” or the “**Treaty**”) between Canada and the Republic of Colombia (“**Colombia**” or “**Respondent**”) signed on 21 November 2008 and which entered into force on 15 August 2011.¹
2. Claimant respectfully requests that the Secretary-General of ICSID register this Request for Arbitration in accordance with Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”) and Rules 1, 2, and 6(1) of the ICSID Institution Rules (the “**Institution Rules**”).
3. This Request is accompanied by (i) Exhibits C-01 to C-51; and (ii) Legal Authorities CL-01 to CL-03.

I. INTRODUCTION

4. This investment dispute arises from Colombia’s ongoing failure to protect and ensure the security of Claimant’s substantial investments in Colombia and to honor its other obligations under the Treaty.
5. Through its Colombian branch (Continental Gold Colombia), Claimant owns the Buriticá mine, an underground gold mine located in the Municipality of Buriticá, Department of Antioquia, Colombia (the “**Mine**”). Pursuant to a concession and mining titles regularly issued by Colombia, Claimant and its affiliates have invested in excess of US\$ 1 billion to develop the Mine, which in 2015 Colombia recognized as a “Project of National and

¹ See Canada-Colombia Free Trade Agreement (“**FTA**” or the “**Treaty**”) (CL-01). See Circular No. 024 of the Directorate of Foreign Commerce of the Ministry of Commerce concerning the entry into force of the Treaty dated 3 August 2011 (CL-02).

Strategic Interest.” As a result of Claimant’s efforts and substantial capital investments, the Mine is now one of the largest underground gold mines in the world (and by far the largest in Colombia) and employs directly and indirectly more than 6,000 people. Over its operating life, the Mine is expected to contribute hundreds of millions of dollars in taxes and royalties to the Colombian state.

6. Having received the benefits of Claimant’s investments, Colombia (under a new administration) has now allowed third parties to take over major portions of the underground workings of the Mine. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Continental Gold Colombia has repeatedly alerted Colombia to the safety issues at the Mine and sought the assistance of the local and national authorities (including through direct pleas to the President, Minister of Defense, Minister of the Interior, Minister of Energy and Mines and the President of the National Mining Agency). To no avail. While the investors have been invited to many meetings over many months, Colombia has failed to take any meaningful action to recover control of the Mine and ensure its safety. Illegal miners have continued their activities unmolested. On the contrary, Colombia’s highest officials have expressed both support for what they label “artisanal” miners and disdain for international mining companies such as Claimant.

8. Colombia’s own Inspector General has repeatedly condemned the government’s inaction. In addition to the tragic loss of life, the uncontrolled and illegal underground mining that Colombia has tolerated (including the use of mercury and improvised explosives) has

caused serious environmental degradation and risks a major environmental disaster. Claimant and Continental Gold Colombia have also suffered substantial (and ongoing) economic losses for which they seek compensation in this arbitration.

II. PARTIES TO THE ARBITRATION

A. CLAIMANT

9. Claimant is Continental Gold, a legal entity constituted under the laws of the Canadian Province of Ontario, under Ontario Corporation Number (OCN) No. 5049571, and headquartered in Toronto, Canada.² Continental Gold's address is 375 University Ave, Suite #802, Toronto, ON M5G 2J5.
10. As required by Rule 2(1)(f) of the Institution Rules, Claimant has taken all necessary internal actions to authorize this Request.³
11. Claimant is represented in this matter by White & Case LLP⁴ and requests that correspondence be addressed to:

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
United States of America
Tel.: +1 212 819 8200

Attn.: Damien Nyer
Estefanía San Juan
Cristian Torres

Email: dnyer@whitecase.com
esanjuan@whitecase.com
cristian.torres@whitecase.com

² See Articles of Incorporation of Continental Gold Inc., 27 April 2015, (C-01); Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024 (C-02).

³ See Continental Gold Inc.'s Internal Authorization to Commence Arbitration, dated 15 May 2024 (C-03).

⁴ See Power of Attorney granted by Continental Gold Inc. to White & Case LLP, dated 15 May 2024 (C-04).

12. In accordance with Article 819 of the FTA, Claimant hereby submits claims to arbitration on its own behalf. In accordance with Article 820 of the FTA, Claimant hereby also submits claims on behalf of Continental Gold Colombia.⁵

B. RESPONDENT

13. The Respondent in this arbitration is the Republic of Colombia, a sovereign State.
14. Article 822 of the FTA provides that notices and other documents in disputes shall be served on Colombia by delivery to the following address:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28#13^a-15, Piso 3
Bogotá D.C. — Colombia
Attn: Ms. María Paula Arenas Quijano⁶

III. FACTUAL BACKGROUND

A. COLOMBIA INDUCED AND PROMOTED INVESTMENTS IN ITS MINING SECTOR FOR DECADES

15. From the early 2000s onwards, Colombia actively promoted and induced foreign investment in its mining sector by promising to support and protect foreign investors and their investments. These efforts were successful. Between 2000 and 2005, foreign investment in the mining sector more than quadrupled, surging from US\$ 506 million in 2000 to US\$ 2.15 billion in 2005.⁷ By 2010, the Bank of the Republic of Colombia

⁵ Continental Gold indirectly owns Continental Gold Colombia, a branch registered under the laws of Colombia, through its ownership of 100% of Continental Gold Limited, a company incorporated and existing under the laws of Bermuda. See Certificate of Incumbency of Continental Gold Limited dated 1 April 2024 (C-05) (showing Continental Gold Inc. as the sole shareholder) and Certificate of Continental Gold Limited Sucursal Colombia as Branch of a Foreign Company dated 10 May 2024 (C-06).

⁶ In prior dealings with Claimant, Ms. Arenas Quijano has used the following email address: marenas@mincit.gov.co.

⁷ Actualidad y Desafíos del Derecho Minero Colombiano, *Universidad del Rosario Editorial* (2016) (“Current Issues and Challenges of Colombian Mining Law”) (free translation) (C-07) p. 13.

estimated that the mining sector was one of the biggest contributors to the country's remarkable economic growth, with annual growth of 11.1%.⁸

16. Colombia's advent as an attractive mining jurisdiction was the result of deliberate reforms and policies targeted at attracting investors to the mining sector. Colombia promoted its mining sector by highlighting not only the country's geological potential, but also its improved security and democratic credentials, favorable investment regulation, and attractive mining policy.⁹
17. Colombia specifically targeted Canadian investors such as Claimant. During a presentation at the PDAC Convention in Toronto (the largest mining convention in the Americas) in 2011, the then Minister of Mines and Energy called mining "one of the key driver[s] of economic growth," and encouraged investments in Colombia, including in the Department of Antioquia. Calling the mining sector "a good deal for investors," he specifically highlighted as reasons for investing in Colombia the country's mineral potential, economic, political and legal stability, healthy business environment and improved security.¹⁰
18. Colombia's pro-investment policies were effective. By 2010, Respondent had issued over 7,000 mining titles to private persons or entities, at an average of 984 titles per year.¹¹ Investments in the mining sector accounted for an average of 25.9% of Colombia's capital entry from 2002 to 2010.¹² Colombia was said to be experiencing a "mining boom"¹³ that attracted "record levels of foreign investment."¹⁴

⁸ Bank of the Republic of Colombia, Report from the Board of Directors to Congress, March 2011 (C-08) p. 12.

⁹ Executive Summary of Project "Disclosure and Visualization of Economic and Social Merits of National and International Mining Activity," 2010 (C-09).

¹⁰ See Presentation by Minister of Mines and Energy Carlos Rodado Noriega at the Prospectors & Developers Association of Canada ("PDAC") Convention of 2011 (C-10).

¹¹ Presentation by Beatriz Duque Montoya, Director of Mines at the Ministry of Mines and Energy at the 5th International Mining Fair in Medellin, Colombia on 10 September 2009 (C-11).

¹² "Uribe entregó 7.869 títulos mineros, casi 984 títulos anuales," *Radio Macondo* (2 April 2018) ("Uribe granted 7,869 mining titles, almost 984 titles annually") (free translation) (C-12).

¹³ Astrid Martínez, Extracción de Recursos Naturales, Desarrollo Económico e Inclusión Social ("Natural Resource Extraction, Economic Development and Social Inclusion") (free translation) (C-13) p. 4.

¹⁴ "How President Álvaro Uribe changed Colombia," *BBC News* (4 August 2010), (C-14).

19. This mining boom would last several years. After his election in 2010, President Santos enacted a pro-mining agenda, which prioritized mining and energy investments in the country, as Santos considered that the mining sector was one of the “engines” that would propel the Colombian economy forward. Between 2010 and 2017, more than US\$ 153 billion were injected into the country’s economy, as part of dividends, taxes, and royalties from mining and energy activities.¹⁵

B. CLAIMANT INVESTED IN EXCESS OF US\$ 1 BILLION TO DEVELOP AND OPERATE THE BURITICÁ MINE

20. Claimant responded to Colombia’s efforts to induce mining investments. Through Continental Gold Limited,¹⁶ a wholly-owned subsidiary incorporated in Bermuda, and its Colombian branch, Continental Gold Colombia,¹⁷ Claimant acquired full control and ownership of twelve mining titles in the Municipality of Buriticá in the Department of Antioquia, Colombia.
21. In June 2010, Continental Gold Colombia filed a request before the Secretary of Mines of the Department of Antioquia to combine its several mining rights into a single mining title in the form of a concession agreement.¹⁸ In the spring of 2011, the Department of Antioquia issued Resolution 011498 ordering: (i) the integration of Continental Gold Colombia’s mining rights into one mining title; and (ii) the execution of a concession agreement under number P7495011.¹⁹

¹⁵ See “La locomotora minero-energética aportó durante ocho años a la solidez económica y al progreso social del país,” *Presidencia de la República* (22 June 2018), (“The mining-energy locomotive contributed for eight years to the country’s economic strength and social progress”) (free translation) (C-15).

¹⁶ Certificate of Incumbency of Continental Gold Limited dated 1 April 2024 (C-05) (showing Continental Gold Inc. as the sole shareholder).

¹⁷ Certificate of Continental Gold Limited Sucursal Colombia as Branch of a Foreign Company dated 10 May 2024 (C-06). On 15 July 2013, CG de Colombia changed its name to Continental Gold Limited Sucursal Colombia through Public Deed 1.947 (C-16).

¹⁸ Presentación de integración de áreas, Buriticá, Antioquia, (“Presentation of integration of areas, Buriticá, Antioquia”) (free translation), 10 June 2010 (C-17).

¹⁹ Resolución No. 011498, Departamento de Antioquia Gobernación, (“Resolution No. 011498, Department of Antioquia Government”) (free translation), 7 April 2011, (C-18).

22. On 14 September 2011, Continental Gold Colombia entered into Concession Agreement No. 7495 (“**Concession Agreement**”) with the Secretary of Mines of the Department of Antioquia to develop and operate the Mine.²⁰ On 20 March 2013, Claimant registered the Concession Agreement with the National Mining Register (under code FHFB-01) for a 30-year term.²¹ In November 2015, Colombia also granted the Mine the status of “Project of National and Strategic Interest” (“Proyecto de Interés Nacional y Estratégico” or “PINE”).
23. The Mine received all necessary environmental authorizations, and exploitation started in 2020. Its latest expansion was approved by the Colombian authorities in 2021. The Mine is now among the world’s largest ultra high-grade gold mines (grading on average approximately at 6.9 grams of gold per ton). Its reserves total 3.7 million ounces of gold and 10.7 million ounces of silver. After reaching its designed capacity, the Mine is expected to produce 9.1 tons of gold per year.
24. Claimant and its affiliates made significant investments in Colombia to develop the Mine, totaling cumulatively well in excess of US\$ 1 billion. Now with the support of international mining group Zijin Mining,²² Claimant continues to invest heavily (including over US\$ 250 million in the past three years alone) to operate, develop and expand the Mine and further increase its production and operating life. Continental Gold has also acquired exploration rights over additional acreages in the neighboring Departments of Cauca and Chocó.
25. Although Colombia induced and benefited from these substantial investments, Colombia has subsequently violated the expectations that formed the basis on which Claimant decided to invest in the country, and in particular it has failed to live up to its promises of

²⁰ Concession Contract No. 7495 between Continental Gold Limited Sucursal Colombia (formerly, CG de Colombia) and the Secretary of Mines of the Department of Antioquia (**C-19**).

²¹ See Certificate of Mining Registry of Concession Contract 7495 (**C-20**).

²² Claimant was listed on the Toronto Stock Exchange until March 2020, when Zijin Mining Group Co., Ltd. acquired 100% of the then outstanding Common Shares of Claimant for approximately CA\$ 1.4 billion, securing additional funding for the Mine’s latest expansion. Claimant continues to be headquartered in Toronto and maintains substantial business activities there with several full-time employees covering finance, legal, corporate development, geology and engineering functions and supporting both the Colombian operations and the corporate and business development needs of the Zijin Mining group in Canada and globally.

support and protection. Instead, Colombia has recently demonstrated hostility and prejudice against Claimant through action and inaction that have negatively impacted the Mine, its operations and Claimant's investments in the country.

C. UNDER A NEW ADMINISTRATION, COLOMBIA HAS ALLOWED THOUSANDS OF ILLEGAL MINERS TO TAKE OVER LARGE PARTS OF THE BURITICÁ MINE

26. The support that Colombia had shown for decades for the Mine and the mining industry vanished after the 2022 presidential elections, which ushered in a new administration with a virulently anti-mine agenda.
27. During the presidential campaign, the future president and his supporters embraced a populist rhetoric, labelling Claimant and other large mining companies active in Antioquia as “predatory transnational miners” and signaling support for small “artisanal” and “traditional” miners.²³ That rhetoric became official policy following the elections in May and June 2022. Upon taking office, the new Minister of Mines expressed the view that Colombia had for years wrongly criminalized artisanal and small-scale miners as illegal miners.²⁴ In January 2023, the new administration announced a reform of the Mining Code that had, as its stated objective, to prioritize “small-scale traditional mining” over large international mining companies and which experts warned would only encourage illegal mining.²⁵

²³ See Gustavo Petro's post on Twitter (now X) (6 November 2021), (“We propose to buy the mining concessions in Buriticá and Jericó, so that small and medium mining can be developed for the people of Antioquia and agriculture and water can be privileged. Duque and Uribe handed over Antioquian territory to predatory transnational mining companies”) (free translation) (C-37), available at: <https://x.com/petrogustavo/status/1457047485646622726?lang=en>.

²⁴ See “Ministra de Minas y Energía revivió la polémica de si en Colombia se va acabar con la exploración petrolera, esto fue lo que dijo,” *Revista Semana* (3 November 2022), (“Minister of Mines revisited the controversy on whether Colombia will put an end to oil exploration”) (“The State has been criminalizing artisanal and small-scale miners by categorizing them as illegal, without making any distinction between those who have dedicated themselves to the massive destruction of protected areas and water zones in the country”) (free translation) (C-38) available at: <https://www.semana.com/economia/macroeconomia/articulo/ministra-de-minas-y-energia-revivio-la-polemica-de-si-en-colombia-se-va-acabar-con-la-exploracion-petrolera-esto-fue-lo-que-dijo/202204/>

²⁵ See “Gustavo Petro anunció reforma al Código Minero,” *Reporte Minero & Energético* (17 January 2023), (“Gustavo Petro announced a reform to the Mining Code”) (“The State shall not prioritize foreign mining companies. Rather, the State must prioritize traditional miners and small-scale mining”) (free translation) (C-36) available at: [https://www.reporteminero.cl/noticia/noticias/2023/01/gustavo-petro-anuncio-reforma-codigo-minero](https://www.reporteminero.cl/noticia/noticias/2023/01/gustavo-petro-anuncio-reforma-codigo-minero;);

28. The new administration’s priorities and tone have played out in a dramatic fashion at the Mine. While former President Santos had rightly identified illegal mining as a “cancer”²⁶ and Colombia had taken forceful actions to combat it including a full-scale military operation in the region of Buriticá (known as “Operation Creta”), the new administration has shown no such inclination. Despite multiple requests for assistance from Continental Gold Colombia and others, Colombia has allowed unauthorized third parties to take over forcibly a substantial portion of the Mine and exploit illegally its mineral resources (which, under Colombian law, are subject to Continental Gold Colombia’s exclusive rights).
29. The Mine includes three underground development areas: the Yaraguá tunnel, the Rampa Sur tunnel and the Higabra tunnel (with most of the Mine’s support facilities located in the Higabra tunnel area, including the processing plant, the treatment plant, the administrative offices and the campground). [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
30. [REDACTED]
- [REDACTED]
- [REDACTED] The collected data suggests that around 100 tons of explosive were used by illegal miners over that year to blast rock and free up gold bearing ores in the underground areas of the Mine. The trend has continued in 2024. [REDACTED]
- [REDACTED]
- [REDACTED] Data collected by Claimant

²⁶ “La minería ilegal es ‘un cáncer que debemos extirpar’: Santos,” *El Espectador* (23 February 2012), (“Illegal mining is a ‘cancer that we must eliminate’: Santos”) (free translation), (C-24).

indicates that around 50 tons of explosives were used by illegal miners during the first half of 2024.

31. [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
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 - [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

32. Colombia has also failed to stop other criminal activities associated with illegal mining which flourish with impunity in the vicinity of the Mine, such as, for example, the black market sale of explosives and mercury, the rampant theft of electricity, the illegal operation of heavy machinery, and the smuggling of illegally mined gold. Colombia has also tolerated repeated blockades of the Mine and other areas subject to Continental Gold Colombia's exclusive mining rights by groups of armed illegal miners and other third parties who have blocked access roads and threatened workers and contractors, paralyzing the Mine's operations.
33. In addition to the tragic loss of lives, the widespread illegal mining that Colombia tolerates at and around the Mine has broader and severe environmental, health and social consequences. Illegal miners carry out their activities without regard for environmental, labor and other regulations, creating significant environmental degradation (including through the uncontrolled use of toxic chemicals such as mercury and the resulting poisoning of soils and water sources), endangering the lives of workers and local communities and fostering crime and human rights abuses.
34. Continental Gold Colombia has repeatedly alerted Colombia to the security issues affecting the Mine and sought the assistance of the local and national authorities. It has also made use of all available recourses under Colombian law to protect its property and exclusive mining rights, including by commencing more than 100 administrative eviction proceedings ("*amparos administrativos*") before the Office of the Mayor of Buriticá, the Secretary of Mines of Antioquia and the National Mining Agency, seeking the eviction of

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

illegal miners, and by filing countless petitions, constitutional protection actions and criminal complaints with the Attorney General's Office for illegal mining and other acts of violence (including terrorism). While various judicial and administrative authorities have ordered the eviction of illegal miners, these orders have remained dead letters and Colombia has failed to enforce them.³⁸

35. Continental Gold Colombia and its affiliates have raised the matter directly with the Executive Office of President Gustavo Petro, seeking assistance and effective action from Colombia, including through:

- a) A letter dated 17 August 2022 and labelled "Public order situation in Buriticá and escalation of violations of the rights of Zijin Mining Group, in the Buriticá Mine."³⁹
- b) A letter dated 26 January 2023 and labelled "Urgent Request for Intervention."⁴⁰
- c) A letter dated 28 May 2023 and labelled "Repetition of urgent request for intervention and submission of initial proposal by the company."⁴¹
- d) A letter dated 11 June 2023 and labelled "Consequences of not having immediate and effective intervention against illegal mining in Buriticá."⁴²
- e) A letter dated 5 July 2023 and labelled "Continued illegal mining activities in Buriticá, Antioquia and repeated request for urgent intervention."⁴³
- f) A letter dated 21 June 2024 and labelled "Urgent Request for Intervention."⁴⁴

³⁸ For example, in August 2022 and May 2024, the National Mining Agency issued emergency rulings ("Acta de Emergencia Minera") ordering the immediate suspension of unauthorized mining activities at the Mine. These have not been enforced. See Mining Emergency Ruling dated 29 August 2022 (C-48) and Mining Emergency Ruling dated 31 May 2024 (C-50).

³⁹ Letter to President Gustavo Petro, dated 17 August 2022, (C-25) (free translation from Spanish original).

⁴⁰ Letter to President Gustavo Petro, dated 26 January 2023, (C-26) (free translation from Spanish original).

⁴¹ Letter to President Gustavo Petro, dated 28 May 2023, (C-39) (free translation from Spanish original).

⁴² Letter to President Gustavo Petro, dated 11 June 2023, (C-27) (free translation from Spanish original).

⁴³ Letter to President Gustavo Petro, dated 5 July 2023, (C-49) (free translation from Spanish original).

⁴⁴ Letter to President Gustavo Petro, dated 21 June 2024, (C-28) (free translation from Spanish original). On 27 June 2024, the Office of the President acknowledged receipt of such letter and advised that it had been forwarded to the Ministry of Mines and Energy.

36. These pleas for assistance have been left unanswered. Although Claimant and its affiliates have attended dozens of meetings with Colombian officials,⁴⁵ Colombia has failed to take meaningful and concrete action to recover the Mine from illegal miners and secure Claimant's investments.
37. This shocking dereliction of duty by the Colombian executive branch has attracted severe criticisms from other branches of the Colombian state. For example, Colombia's Inspector General, Margarita Cabello, has repeatedly faulted the Colombian national and local governments for their failure to act and demanded (unsuccessfully) that they take action to protect the Mine and Claimant's investments.⁴⁶ During parliamentary debates in December 2023, Representative Juan Fernando Espinal Rodriguez (elected in the Department of Antioquia) called out the Colombian government for its "total abandonment" of the Mine and the "incredible" situation of lawlessness that had been allowed to flourish at the site.⁴⁷ The Colombian government has ignored these official criticisms just as it has ignored Continental Gold Colombia's pleas for help.

⁴⁵ For example, in the month that followed the bombing on 17 May 2023 (which resulted in two deaths and 14 wounded), representatives of Claimant and Continental Gold Colombia met with the Minister of Defense, the then Minister of the Interior, the then Minister of Energy and Mines, and the Director General of the National Mining Agency (ANM) (on 22 May 2023); the Director General of the General Directorate of the National Mounted Police (Carabineros) and the head of the Police Unit against Illegal Mining (on 24 May 2023); the Minister of Defense, the then Commander-in-Chief of the Army General Command, the then Deputy Minister of the Interior and others (on 25 May 2023); the then Deputy Prosecutor General of the State Prosecutor's Office (on 29 May 2023); the Inspector General of the Inspector General's Office (on 29 May 2023); the then Deputy Minister of Foreign Affairs (on 13 June 2023); and the then Governor of the Department of Antioquia and the then Director of the Antioquia Mining Department (on 21 June 2023).

⁴⁶ See "Procuraduría investigará si hubo omisión a solicitud de protección de empresa minera en Buriticá," *Procuraduría General de la Nación* (19 May 2023), ("The Inspector General's Office will investigate whether there was an omission to request protection for a mining company in Buriticá") (free translation), (C-29) available at: [Procuraduría investigará si hubo omisión a solicitud de protección de empresa minera en Buriticá \(procuraduria.gov.co\)](https://procuraduria.gov.co/); "Minera Zijin Continental Gold había denunciado riesgos y se investigará si hubo omisión: Procuradora," *Blu Radio* (19 May 2023), ("Zijin Continental Gold Mining had denounced risks and will investigate if there was an omission: Colombia's Inspector General") (free translation), (C-30) available at: <https://www.bluradio.com/blu360/antioquia/minera-zijin-continental-gold-habia-denunciado-riesgos-y-se-investigara-si-hubo-omision-procuradora-rg10>; "Procuraduría Margarita Cabello reiteró en Medellín denuncias de inseguridad en Buriticá," *Caracol Radio* (9 June 2023) ("In Medellín, Inspector General Margarita Cabello reiterated reports of insecurity in Buriticá") (free translation) (C-31) available at: <https://caracol.com.co/2023/06/09/procuraduria-margarita-cabello-reitero-en-medellin-denuncias-de-inseguridad-en-buritica/>.

⁴⁷ See Minutes of the Congressional Session of 14 December 2023 (C-51), at p. 28.

IV. COLOMBIA’S TREATY BREACHES

38. Colombia has breached several of its obligations under the Treaty. Given Colombia’s continuing refusal to take effective action to protect the Mine and the ongoing nature of its conduct, Claimant reserves its right to supplement the breaches set out in this Request as required to reflect the full extent of Colombia’s breaches.

A. COLOMBIA BREACHED ITS OBLIGATION TO ACCORD CLAIMANT’S INVESTMENTS THE MINIMUM STANDARD OF TREATMENT, INCLUDING FULL PROTECTION AND SECURITY AND FAIR AND EQUITABLE TREATMENT

39. Article 805(1) of the Treaty requires Colombia to grant Claimant and its investments treatment in accordance with the “customary international law minimum standard of treatment of aliens,” including “fair and equitable treatment” and “full protection and security.” Article 805.1 of the Treaty reads as follows:

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

40. Colombia’s actions and omissions amount to a violation of the full protection and security obligation and fair and equitable treatment standard. In particular, and among other actions and omissions:

- a) Colombia has failed to accord Claimant’s investments full protection and security by allowing thousands of unauthorized third parties to occupy forcibly the Mine and exploit its resources illegally, and by failing to take meaningful action to expulse them, regain control of the Mine and protect Claimant’s substantial investments;
- b) Colombia has failed to provide fair and equitable treatment through its failure to (i) enforce Continental Gold Colombia’s exclusive rights to exploit the Mine under the Concession Agreement and mining titles granted by Colombia; and (ii) remove the

illegal miners and armed groups that currently occupy a significant part of the Mine;
and

- c) Colombia has committed a denial of justice under customary international law (and in further breach of the minimum standard of treatment) insofar as its municipal and national authorities have either refused to enforce relief granted by the Colombian courts and administrative agencies to evict illegal miners from the areas subject to Continental Gold Colombia's exclusive rights or have unreasonably delayed such enforcement.

- 41. For the avoidance of doubt, to the extent that Colombia argues that the protections afforded under Article 805 are narrower than the standalone fair and equitable treatment and full protection and security standards found in other investment treaties that Colombia agreed with third states,⁴⁸ Colombia is also obliged to grant to Claimant and its investments such more favorable treatment pursuant to the Most Favored-Nation clause under Article 804 of the Treaty (and is thus in breach of that provision).⁴⁹

⁴⁸ See, e.g., Agreement between the Republic of Colombia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, signed on 17 May 2006 and in force as of 6 October 2009 (**CL-03**), Art. 4 (requiring Colombia to “ensure fair and equitable treatment within its territory of the investments of investors of” the Swiss Confederation without reference to the customary minimum standard of treatment).

⁴⁹ Article 804 of the Treaty provides as follows:

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. For greater clarity, treatment “with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments” referred to in paragraphs 1 and 2 does not encompass dispute resolution mechanisms, such as those in Section B of this Chapter, that are provided for in international treaties or trade agreements.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

B. COLOMBIA BREACHED THE TREATY BY SUBJECTING CLAIMANT TO DISCRIMINATORY TREATMENT

42. Article 803 of the Treaty provides that Colombia shall not accord Colombian investors and investments more favorable treatment than the treatment accorded to Canadian investors and covered investments in like circumstances.

43. Article 803 of the Treaty provides as follows:

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

44. Colombia has breached Article 803 of the Treaty by according Claimant and its investment in Colombia treatment less favorable than that it accords, in like circumstances, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. In particular, Colombia has breached this obligation by failing to protect Claimant's investments in the same way it has protected local "artisanal" and "traditional" miners and other similarly situated Colombian mining enterprises.

C. COLOMBIA HAS EXPROPRIATED PART OF CLAIMANT'S INVESTMENTS WITHOUT PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION

45. Article 811 of the Treaty provides in its relevant part as follows:

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and

(d) in accordance with due process of law.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. To determine fair market value a Tribunal shall use appropriate valuation criteria, which may include going concern value, asset value including the declared tax value of tangible property, and other criteria.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

[...]

46. Colombia has breached Article 811 of the Treaty by allowing third parties to occupy illegally a substantial part of the Mine and exploit and appropriate the valuable resources over which Continental Gold Colombia has exclusive rights under Colombian law, thus substantially depriving Claimant of the value of its investments, without the payment of prompt, adequate, and effective compensation.
47. To the extent that the Colombia State’s ongoing measures do not yet amount to a complete deprivation of all of Claimant’s investments in Colombia, Claimant reserves all rights to restate, amend, and supplement its claim for expropriation in this proceeding.

V. DAMAGES

48. Under well-established principles of international law, Claimant is entitled to full compensation for the value of its present and future losses stemming from Colombia's conduct in breach of the Treaty.
49. Colombia's conduct in breach of the Treaty has already caused, and continues to cause, significant economic harm to Claimant, Continental Gold Colombia and their investments, including, but not limited to (i) the depletion of the valuable gold reserves and mineral resources over which Continental Gold Colombia has exclusive rights; (ii) damage to the Mine's equipment and infrastructure; (iii) lost revenues from the interference with regular operations; (iv) wasted maintenance costs, taxes and other incidental expenses for assets to which Continental Gold Colombia no longer has access; (v) the cost of additional private security personnel hired to seek to protect the Mine's workers, assets and operations; (vi) the compensation paid to the Mine's workers and contractors who were the victims of armed attacks (and their families) and (vii) the cost of remediating environmental damage caused by illegal mining.
50. In this proceeding, Claimant will present expert evidence valuing its losses. At this stage, and accounting solely for the resources that have been lost and misappropriated by illegal miners, Claimant estimates that it has already suffered approximately [REDACTED] in losses. These losses are ongoing, and could total [REDACTED] should Colombia's conduct result in the total loss of the Mine.
51. Claimant will also seek pre- and post-award interest, all costs and fees associated with the arbitration, and any such further relief the Tribunal may deem appropriate.

VI. JURISDICTION

52. Claimant meets all applicable jurisdictional requirements for bringing its claims to arbitration under the Treaty and the ICSID Convention, and has complied with all applicable notice and timing requirements for the submission of a claim under the Treaty, as shown below.

A. CLAIMANT AND ITS INVESTMENTS ARE PROTECTED UNDER THE TREATY

53. Pursuant to Article 801, Chapter 8 of the Treaty applies to measures adopted or maintained by a Party relating to (a) “investors of the other Party” and (b) “covered investments.” As explained below, Claimant is an “investor” of Canada and its investments in Colombia are “covered investments” for purposes of the Treaty.

1. Claimant is an investor of Canada under the Treaty

54. Article 838 of the Treaty defines an “investor of a Party” as follows:

investor of a Party means a Party or state enterprise thereof, or an enterprise or national of a Party, that seeks to make, is making or has made an investment. A natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of which he or she is a citizen.⁵⁰

55. In turn, the Treaty defines “enterprise of a Party” as:

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.⁵¹

56. Further, Article 838 of the Treaty defines “enterprise” as:

enterprise means an enterprise as defined in Article 105 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity.⁵²

57. While Article 838 references Article 105, the “Definition of General Application” are in fact found in Article 106, which provides:

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-

⁵⁰ Treaty (CL-01), Article 838 (original footnote reference omitted).

⁵¹ Treaty (CL-01), Article 838.

⁵² Treaty (CL-01), Article 838.

owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association.⁵³

58. Claimant is incorporated under the laws of the Province of Ontario, Canada.⁵⁴ Claimant is therefore an “enterprise” of Canada and, to the extent that Claimant has made investments in Colombia (as explained in the next section), an “investor of a Party” under Articles 838 and 106 of the Treaty.

2. Claimant has made qualifying investments in Colombia

59. Claimant has made and holds covered investments for purposes the Treaty. Article 838 of the Treaty defines a “covered investment” as follows:

with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter.⁵⁵

60. Article 838 of the Treaty in turn defines “investment” as:⁵⁶

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise, but does not include a debt instrument of a state enterprise;
- (d) a loan to an enterprise, but does not include a loan to a state enterprise;(e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;
- (g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

⁵³ Treaty (CL-01), Article 106.

⁵⁴ See Articles of Incorporation of Continental Gold Inc., 27 April 2015, (C-01); Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024 (C-02).

⁵⁵ Treaty (CL-01), Article 838.

⁵⁶ Treaty (CL-01), Article 838.

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

(h) intellectual property rights; and

(i) any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes;

61. From 2007 onwards, Claimant (directly and through its affiliates) has invested in excess of US\$ 1 billion to acquire mining rights and develop and operate the Buriticá mine in Antioquia and thus holds significant investments in the territory Colombia, including, without limitation:

a) an enterprise (Continental Gold Colombia);

b) the Concession Agreement and the associated mining titles registered with the National Mining Registry; and

c) the facilities and equipment of the Mine.

62. It follows that Claimant has made and holds covered investments for the purposes of the Treaty.

B. CLAIMANT AND RESPONDENT HAVE CONSENTED TO SUBMIT THIS DISPUTE TO ARBITRATION

63. Pursuant to Article 823 of the Treaty, Respondent “consents to the submission of a claim to arbitration in accordance with the procedure set out in [Section B of Chapter 8 of the Treaty].” This is an unequivocal statement of consent and offer to arbitrate a potential legal dispute with a qualified investor.

64. Pursuant to Articles 819 and 820 of the Treaty, “[a]n investor of a Party” may, on its on behalf of or on behalf of an enterprise that the investor owns or controls directly or indirectly, submit to arbitration under Section B of the Treaty a claim that Respondent has

breached certain obligations under the Treaty and that the investor or the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

65. Article 822 of the Treaty provides that Canadian investors may submit legal disputes concerning their investments in the territory of Colombia to ICSID arbitration, in the following terms:

1. Except as provided in Annex 822, a disputing investor who meets the conditions precedent in Article 821 may submit the claim to arbitration under:

(a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.⁵⁷

66. As noted above, Claimant qualifies as an investor of Canada. By submitting this Request, Claimant accepts Colombia's offer to arbitrate in Article 823 and, pursuant to Article 822, elects to submit its claim to arbitration under the ICSID Convention.

67. With this Request, Claimant is submitting claims both on its own behalf, pursuant to Article 819 of the Treaty, and on behalf of Continental Gold Colombia (the Colombian branch of its wholly-owned subsidiary⁵⁸), pursuant to Article 820 of the Treaty. Claimant and Continental Gold Colombia have both consented in writing to arbitration of this dispute in accordance with the procedures set out in Section B of Chapter Eight of the Treaty.⁵⁹

⁵⁷ Treaty (CL-01), Article 823.

⁵⁸ Certificate of Continental Gold Limited Sucursal Colombia as Branch of a Foreign Company, dated 10 May 2024 (C-06).

⁵⁹ Consents and Waivers of Continental Gold Inc. (dated 29 May 2024) and Continental Gold Limited Sucursal Colombia (dated 31 May 2024) (C-32).

C. CLAIMANT HAS COMPLIED WITH THE CONDITIONS PRECEDENT UNDER THE TREATY

68. Article 821 of the Treaty contains certain conditions precedent to arbitration:

1. The disputing parties shall hold consultations and negotiations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the Notice of Intent to Submit a Claim to Arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. Consultations and negotiations may include the use of non-binding, third-party procedures. The place of consultations shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 819 or Article 820 only if:

(a) the disputing investor and, where a claim is made under Article 820, the enterprise, consent to arbitration in accordance with the procedures set out in this Section;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least six months⁸ prior to submitting the claim. The Notice of Intent shall specify: [...];

(d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;

(e) in the case of a claim submitted under Article 819:

(i) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby, and

(ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving

the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration; and

(f) in the case of a claim submitted under Article 820:

- (i) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and
- (ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

3. A consent and waiver required by this Article shall be in the form provided in Annex 821, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. Where a disputing Party has deprived a disputing investor of control of an enterprise, a waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required.⁶⁰

69. The requirements to submit this dispute to arbitration under the Treaty are met:

- a) Claimant served the Notice of Intent on Colombia on 14 June 2023,⁶¹ and Claimant and Colombia subsequently held consultations, including meetings in Bogotá, Colombia, through 2023, in an attempt to settle the claims amicably.

⁶⁰ Treaty (CL-01), Article 821 (original footnote reference omitted).

⁶¹ Notice of Intent to Submit Claims to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023 (C-33).

- b) Claimant and Continental Gold Colombia have both consented in writing to arbitration of this dispute in accordance with the procedures set out in Section B of Chapter Eight of the Treaty.⁶²
 - c) At least six months have passed since measures giving rise to the present claim.
 - d) More than six months have elapsed since Claimant delivered the Notice of Intent on June 14, 2023.⁶³
 - e) Claimant delivered evidence establishing that it is a Canadian investor with its Notice of Intent.⁶⁴
 - f) The breaches of the Treaty are either of a continuing nature or with respect to standalone measures, for which Claimant seeks damages, and not more than 39 months have elapsed from the date on which Claimant and Continental Gold Colombia, first acquired, or should have first acquired, knowledge of the breaches and of having incurred losses resulting from those breaches.
 - g) Claimant and Continental Gold Colombia have both waived their rights to initiate or continue administrative or court proceedings under Colombian law in accordance with Article 821 of the Treaty.⁶⁵
70. Based on the foregoing, Claimant has met all the conditions precedent to submission of a claim to arbitration under Article 821 of the Treaty.
71. Finally, and for the avoidance of doubt, neither the ICSID Convention nor the Treaty requires exhaustion of domestic administrative or judicial remedies as a condition of consent to arbitration.⁶⁶

⁶² Consents and Waivers of Continental Gold Inc. (dated 29 May 2024) and Continental Gold Limited Sucursal Colombia (dated 31 May 2024) (**C-32**).

⁶³ Notice of Intent to Submit Claims to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023 (**C-33**).

⁶⁴ Notice of Intent to Submit Claims to Arbitration, Appendix A, dated 12 June 2023 and delivered to Colombia on 14 June 2023 (**C-33**).

⁶⁵ Consents and Waivers of Continental Gold Inc. (dated 29 May 2024) and Continental Gold Limited Sucursal Colombia (dated 31 May 2024) (**C-32**).

⁶⁶ Treaty (**CL-01**), Article 821(2)(c), note 8 provides that, “[w]ith a view to encouraging the review, confirmation or modification of administrative acts prior to such acts becoming final, the Parties recognize that disputing investors should make every effort to exhaust administrative recourse under Colombian law. A disputing investor that fails to exhaust administrative recourse, where applicable, shall submit its Notice of Intent nine months prior to submitting a claim to arbitration”. In any event, more than 9 months have elapsed since Claimant served the Notice of Intent on Colombia on 14 June 2023.

D. THE REQUIREMENTS UNDER THE ICSID CONVENTION HAVE BEEN FULFILLED

72. Article 25(1) of the ICSID Convention sets out certain requirements to access ICSID arbitration:

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

73. The preconditions of Article 25(1) for establishing ICSID jurisdiction are accordingly satisfied if: (i) Claimant and Respondent have a legal dispute; (ii) the dispute arises directly out of an investment; (iii) Claimant is a national of Canada; (iv) Colombia and Canada have ratified the ICSID Convention; and (v) the parties to the dispute have consented in writing to submit their dispute to ICSID. As demonstrated below, all these jurisdictional prerequisites are satisfied.

1. There is a legal dispute between the Parties

74. The matters at issue here represent a “legal dispute” for the purposes of Article 25(1) of the ICSID Convention, arising from Colombia’s breaches of the Treaty, as set out in Section IV above.

2. The dispute arises directly out of Claimant’s investment

75. The ICSID Convention provides no definition of the term “investment;” however, the term is widely accepted to have a broad meaning. Claimant has invested (directly and through its affiliates) in excess of US\$ 1 billion in Colombia to develop and operate the Mine, turning the Mine into a major enterprise employing thousands of local workers and contributing to Colombia’s economic development. There can be no doubt that Claimant’s extensive investments in Colombia qualify as “investments” under Article 25 of the ICSID Convention.
76. Further, the dispute between Claimant and Respondent arises directly out of the actions and inactions of Respondent with respect to these investments.

3. The Parties are a Contracting State and a National of Another Contracting State

77. Articles 25(1) and (2) of the ICSID Convention provide for the jurisdiction over a dispute “between a Contracting State (or any constituent subdivision or agency of a Contract State designated to the Centre by that State) and a National of another Contracting State.”
78. Both Colombia and Canada are Contracting States to the ICSID Convention. Colombia signed the ICSID Convention on 18 May 1993 and deposited its instrument of ratification on 15 July 1997. The ICSID Convention entered into force as to Colombia on 14 August 1997.⁶⁷ Canada signed the ICSID Convention on 15 December 2006 and deposited its instrument of ratification on 1 November 2013. The ICSID Convention entered into force as to Canada on 1 December 2013.⁶⁸
79. Article 25(2)(b) of the ICSID Convention defines nationals of a Contracting State to include:
- any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to . . . arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.
80. As noted, Claimant is a company incorporated and constituted under the laws of the Province of Ontario, Canada.⁶⁹
81. Thus, the dispute Claimant hereby submits to ICSID is between a Contracting State (Colombia) and a national of another Contracting State (Canada), in accordance with Article 25(1) of the ICSID Convention.

⁶⁷ ICSID, Database of ICSID Member States, dated 10 June 2024 (C-34).

⁶⁸ ICSID, Database of ICSID Member States, dated 10 June 2024 (C-34).

⁶⁹ Articles of Incorporation of Continental Gold Inc., 27 April 2015, (C-01); Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024 (C-02).

4. The Parties have consented in writing to submit the dispute to ICSID arbitration

82. As discussed in Section VI.B above, Colombia and Claimant have expressed their consent in writing to submit this dispute to ICSID arbitration.

VII. PROCEDURAL MATTERS

A. Constitution of the Arbitral Tribunal

83. Article 824(1) of the Treaty provides:

Except in respect of a Tribunal established under Article 826, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

84. The parties have not otherwise agreed to the number or appointment of arbitrators.
85. Article 822(6) of the Treaty provides that “[t]he disputing investor shall provide with the request for arbitration or the notice of arbitration referred to in paragraph 4: (a) the name of the arbitrator that the disputing investor appoints.” Claimant hereby appoints Elisabeth Eljuri to the Tribunal. All communications to Ms. Eljuri should be addressed to:

Elisabeth Eljuri

8202 Los Pinos Circle
Coral Gables, Florida 33143
United States of America

Tel.: +1 202 251 1023
elisabeth.eljuri@outlook.com

86. Claimant confirms that, to its knowledge and belief, Ms. Eljuri is independent and impartial, and has the necessary availability.
87. Chapter Eight of the Treaty does not provide a timeline for Respondent to appoint an arbitrator to the Tribunal. Claimant proposes the following procedure:

- a) Colombia shall appoint an arbitrator within 30 days of the registration of this Request;
 - b) The two arbitrators so appointed shall, within 30 days of the appointment of Respondent's arbitrator and in consultation with the parties, jointly select a third arbitrator to serve as President of the Tribunal, provided that the Respondent-appointed co-arbitrator accepts his or her appointment within 15 calendar days of being appointed;
 - c) If the Tribunal has not been constituted within 90 days of the submission of the Request, the remaining members of the Tribunal shall be appointed in accordance with Article 824(3) of the Treaty.
88. Claimant invites Colombia to respond to this proposal within 30 days of registration of this Request.

B. Language of Arbitration

89. Rule 7(1) of the ICSID Arbitration Rules provides that “[t]he parties may agree to use one or two procedural languages in the proceeding.” The Parties have not agreed on the procedural language(s) for the arbitration.
90. Rule 3(a)(ii) of the Institution Rules recommends that the request for arbitration “contain any procedural proposals or agreements reached by the parties, including with respect to: ... (ii) the procedural language(s).” Claimant proposes that the languages of the arbitration be English.

C. Place of Arbitration

91. In accordance with Article 63 of the ICSID Convention, Claimant proposes that the arbitration proceeding be held at the seat of the Centre in Washington, D.C.

D. Institutional Requirements and Lodging Fee

92. This Request and all supporting documentation, including proof of payment of the prescribed lodging fee,⁷⁰ have been uploaded to ICSID's sharing platform and transmitted to the ICSID Secretariat by email.

VIII. RELIEF REQUESTED

93. For the foregoing reasons, Claimant respectfully requests at this time that the Tribunal to be constituted in this case:

- a) DECLARE that Colombia has breached Articles 803, 804, 805 and 811 of the Treaty;
- b) ORDER Colombia:
 - i) to compensate Claimant for its losses arising from Colombia's breaches of the Treaty in an amount to be established in the proceedings, but of no less than [REDACTED];
 - ii) to pay pre-award interest on any damages awarded to Claimant in this arbitration at a rate to be established in the course of the arbitration;
 - iii) to pay all costs of this arbitration, including, without limitation, Claimant's legal costs, expert costs, in-house costs, the fees and expenses of the Tribunal, and ICSID's costs;
 - iv) to pay post-award interest on any amounts (damages and costs) awarded; and
- c) AWARD any further or other relief that the Tribunal considers just and appropriate.

⁷⁰ Proof of Lodging Fee Payment, dated 17 June 2024 (C-35).

94. Claimant reserves its rights to amend or modify their claims and requests for relief in this Request to the extent permitted under the applicable procedural rules, and to present further submissions, arguments, and evidence, including in light of further actions and inactions on the part of Colombia in violation of its obligations under the Treaty, and as more information becomes available through the disclosure of documents and other evidence.

Respectfully submitted,



WHITE & CASE LLP
Counsel for Claimant

28 June 2024