

**ARBITRATION UNDER THE RULES OF THE  
INTERNATIONAL CENTRE FOR SETTLEMENT OF  
INVESTMENT DISPUTES**

**ICSID CASE NO. ARB/20/46**

**LUPAKA GOLD CORP.**

Claimant

**VS.**

**REPUBLIC OF PERU**

Respondent

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**CLAIMANT'S SUBMISSION ON COSTS**

17 October 2023

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**LALIVE**

**BSF**

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## 1 INTRODUCTION

- 1 Pursuant to paragraph 23.2 of Procedural Order No. 1 and the Tribunal's email of 11 July 2023, the Claimant submits its Schedule of Costs (**Section 2**) together with some brief comments on the costs incurred and the principles to be applied on this matter (**Section 3**). All amounts in other currencies have been converted to USD at the exchange rate prevailing at the time of payment.<sup>1</sup>

## 2 SCHEDULE OF INCURRED COSTS

- 2 The Parties agreed to keep the Schedules of Costs simple and focused on reporting the costs incurred by each Party. The Claimant therefore does not provide supporting documentation for the costs below, which can be made available to the Tribunal on request.
- 3 The Claimant sets out below its Schedule of Incurred Costs:

Head of cost	Amount (USD)
<b><u>Legal representation and assistance</u></b>	
<b>LALIVE</b>	
Legal fees (based on hourly rates)	2,402,374.12
Translation expenses	81,135.15
Accommodation	33,221.27
Photocopying, printing, scanning	15,863.92
Travel	15,724.14
IT (Luminance and USB keys)	12,874.15
Postage/courier	1,111.26
Other expenses	780.93
<b>Boies Schiller Flexner</b>	
Legal fees (based on hourly rates)	155,266.40
Travel expenses	8,905.06
Other expenses	28.49

<sup>1</sup> Capitalized terms not defined in this letter shall have the meaning ascribed to them in the Claimant's submissions in these proceedings.

<b>Local legal counsel<sup>2</sup></b>	
Miranda & Amado	43,164.30
<b>Lupaka Gold Corp.</b>	
Darryl Jones <sup>3</sup>	30,000
<b><u>Subtotal</u></b>	<b><u>2,800,449.19</u></b>
<b><u>Witnesses</u></b>	
Time costs (Gordon Ellis) <sup>4</sup>	50,000
Time costs (Luis Felipe Bravo) <sup>5</sup>	37,995
Time costs (Eric Edwards – payable from the proceeds of the Award) <sup>6</sup>	26,675
Time costs (Julio Castañeda) <sup>7</sup>	20,425.50
Time costs (██████████) <sup>8</sup>	2,800

<sup>2</sup> Local counsel fees relate to input on Peruvian law from Miranda & Amado Abogados.

<sup>3</sup> Mr Jones has been compensated for the time spent searching for and aggregating company documents for the arbitration, reviewing technical documents such as the Preliminary Economic Assessment (PEA) and other technical reports to provide background for the arbitration and expert analysis, and reviewing the experts' mining and economic reports for accuracy. Mr Jones spent a total of 240 hours on the case, which at his usual consultancy rate of USD 125 per hour, totals USD 30,000.

<sup>4</sup> Mr Ellis has been compensated for the time spent during the arbitration preparing his evidence, travelling and attending the hearing at his usual consultancy rate of USD 200 per hour. Mr Ellis spent a total of 250 hours on the case, which at his hourly rate totals USD 50,000.

<sup>5</sup> Mr Bravo has been compensated for the time spent during the arbitration preparing his evidence, travelling and attending the hearing at his usual consultancy rate of USD 150 per hour. Mr Bravo spent a total of 253.30 hours on the case, which at his hourly rate totals USD 37,995.

<sup>6</sup> Lupaka agreed with Mr Edwards that he would assist the company as much as needed during the arbitration, including by appearing as a witness, for a lump sum of USD 26,675, payment of which is conditional on Lupaka receiving payment under the award to be rendered in the arbitration.

<sup>7</sup> Mr Castañeda has been compensated for the time spent during the arbitration preparing his evidence, travelling and attending the hearing at his usual consultancy rate of USD 150 per hour. Mr Castañeda spent a total of 136.17 hours on the case, which at his hourly rate totals USD 20,425.50.

<sup>8</sup> ██████████ has been compensated for the time spent during the arbitration preparing his evidence, travelling and attending the hearing at his usual consultancy rate of USD 25 per hour. ██████████ spent a total of 112 hours on the case, which at his hourly rate totals USD 2,800.

Travel, accommodation and meals of Messrs Ellis, Bravo, Castañeda and [REDACTED]	15,887.90	
<b><u>Subtotal</u></b>		<b><u>153,783.40</u></b>
<b><u>Experts</u></b>		
Christopher Jacobs (Micon)	65,045.46	
Erik van Duijvenvoorde and Edmond Richards (Accuracy)	560,000	
<b><u>Subtotal</u></b>		<b><u>625,045.46</u></b>
<b><u>Tribunal and ICSID</u></b>		
Filing fee (October 2020)	25,000	
First advance payment (March 2021)	200,000	
Second advance payment (February 2023)	250,000	
<b><u>Subtotal</u></b>		<b><u>475,000</u></b>
<b><u>Total</u></b>		<b><u>4,054,278.05</u></b>

### **3 COMMENTS ON APPLICABLE PRINCIPLES FOR ALLOCATION OF COSTS**

- 4 The Tribunal has broad discretion to decide on the allocation of costs incurred by the Parties in these proceedings. This discretion is vested in Article 61(2) of the ICSID Convention, which states that the Tribunal “shall decide how and by whom [the Parties’] expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid.”
- 5 The most-commonly applied rule in international arbitration (including in ICSID arbitration) is that the prevailing party should be reimbursed its

reasonable costs, *i.e.*, the principle that costs follow the event.<sup>9</sup> As held by the *Kardassopoulos v. Georgia* tribunal:

“ICSID arbitration tribunals have exercised their discretion to award costs which follow the event in a number of cases, demonstrating that there is no reason in principle why a successful claimant in an investment treaty arbitration should not be paid its costs.”<sup>10</sup>

6 As to reasonability, over the past 10 years, investors’ arbitration costs on average ranged between USD 6 and 7.4 million. The Claimant’s costs, as set out in Section 2 above, are certainly reasonable in light of this, as this is a case of average complexity. The Claimant has conducted these proceedings in a cost-efficient manner, acting cooperatively and in good faith.

7 The Claimant respectfully requests that the Tribunal apply the costs follow the event approach, which would entitle the Claimant to reimbursement of all its costs incurred during these proceedings, as above. Doing so would be consistent with the full reparation principle, which requires awarding the Claimant a sum which would “wipe out all the consequences of the [Respondent’s] illegal act and re-establish the situation which would, in all probability, have existed if that act [by the Respondent] had not been committed”.<sup>11</sup>

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8 For the foregoing reasons, the Claimant respectfully requests the Tribunal to order the Respondent to bear the costs of the proceedings as set out in the Schedule of Costs in Section 2 above.

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<sup>9</sup> **CLA-0039**, p. 150 (paras. 777-779); **CLA-0094**, p. 614 (paras. 1836-1845).

<sup>10</sup> **CLA-0081**, p. 215 (para. 689).

<sup>11</sup> **CLA-0088**, p. 47.

Respectfully submitted,

17 October 2023

For and on behalf of the Claimant,

**Lupaka Gold Corp.**

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