

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

INFINITO GOLD LTD.

CLAIMANT

v.

REPUBLIC OF COSTA RICA

RESPONDENT

ICSID Case No. ARB/14/5

PROCEDURAL ORDER No. 6

Members of the Tribunal:

Prof. Gabrielle Kaufmann-Kohler, President

Prof. Bernard Hanotiau, Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal:

Ms. Luisa Fernanda Torres

Assistant to the Tribunal:

Ms. Sabina Sacco

Date: 17 September 2018

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I. PROCEDURAL BACKGROUND

1. On 13 August 2018, in accordance with the calendar set out in Annex A of Procedural Order No. 1 (“PO1”), as revised on 30 July 2018, the Parties exchanged their requests for production of documents.
2. On 20 August 2018, the Parties exchanged their responses to their requests for document production. The Claimant also produced two documents in response to the Respondent’s Request No. 9, and filed them as Exhibits C-0446 and C-0447.
3. On 27 August 2018, each Party submitted its replies to the other’s responses.
4. This Order addresses the Parties’ requests for the production of documents insofar as they have not been resolved between the Parties.

II. APPLICABLE STANDARDS

5. The applicable standards for the production of documents in this arbitration were set out in Procedural Order No. 3 of 10 June 2016 (“PO3”), which is deemed to form an integral part of the present Order. The same standards have guided the Tribunal’s decisions with respect to the Parties’ outstanding document requests.

III. DECISION ON THE REQUESTS FOR PRODUCTION

6. The Tribunal’s decision with respect to the Claimant’s request for production of documents is reflected in the completed version of the Redfern Schedule submitted by the Claimant that is attached as Annex A hereto.
7. The Tribunal’s decision with respect to the Respondent’s request for production of documents is reflected in the completed version of the Redfern Schedule submitted by the Respondent that is attached as Annex B hereto.
8. Both Annexes A and B hereto form an integral part of this Procedural Order.

IV. ORDER

9. With respect to the Claimant’s request for production of documents, in application of the standards set out in PO3 and for the reasons set forth in Annex A to this Procedural Order, the Tribunal:
 - a. Takes note that the Respondent has agreed to conduct a reasonable search of documents responsive to Requests 11, 12, and 15, and to produce non-privileged documents in its possession, custody or control responsive to these requests. To

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the extent that the Respondent's agreement does not cover the Claimant's full request, these requests are granted in the terms set out in Annex A.

- b. Takes note that the Respondent has agreed to produce documents responsive to Requests 20, 22, and 25, as well as certain categories of documents responsive to Requests 18, 23 and 24, to the extent that they exist, are not privileged and are in its possession, custody or control. To the extent that the Respondent's agreement does not cover the Claimant's full request, requests 20, 23, and 24 are granted in full.
 - c. The Tribunal grants Requests 13, 14, 16, 17, 19, and 28, in the terms set out in Annex A.
 - d. All remaining requests are denied.
10. With respect to the Respondent's request for production of documents, in application of the standards set out in PO3 and for the reasons set forth in Annex B to this Procedural Order, the Tribunal:
 - a. Takes note that, with respect to all of the Respondent's document requests save for Request 9, the Claimant has agreed to produce non-privileged documents within its possession, custody or control.
 - b. With respect to Request 9, takes note that the Claimant has indicated that it has no documents in its possession, power or control related to this topic other than the two documents it has produced and filed as Exhibits C-0446 and C-0447. Unless the Respondent objects to the filing of these two documents within three days of this Order, they shall be deemed to be in the record. The Tribunal further understands that the Claimant has conducted a good faith and thorough search for the documents requested. If this is not the case, the Tribunal invites the Claimant to make a further inquiry.
11. In accordance with the calendar set out in revised Annex A to PO1, the Parties shall produce the documents for which the Tribunal has ordered production at the latest by **15 October 2018**, as directed below:
 - a. Documents shall be produced directly to the requesting Party without copying the Tribunal.
 - b. Documents so produced shall not be considered to be on record unless and until the Parties subsequently file them as exhibits in accordance with Section 17 of PO1.
12. If any of the Parties wishes to withhold or redact a document responsive to a request on grounds of privilege or confidentiality, that Party shall separately record each document in a privilege/confidentiality log, which shall identify the relevant document

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(including date, subject, author, and addressees), the specific basis on which privilege or confidentiality is asserted (including the applicable law and the reasons why that law should govern questions of privilege for that particular document), and a brief explanation as to why privilege or confidentiality have not been waived. Privilege logs shall be submitted to the other Party, with a copy to the Tribunal, by **15 October 2018**. The other Party may comment on the privilege log by **22 October 2018**.

13. The Parties' attention is drawn to the confidential treatment that Article 3(13) of the IBA Rules provides for documents produced in an arbitration proceeding.

On behalf of the Tribunal,

[Signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal