

ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES ICSID CASE NO. ARB/20/25

WINSHEAR GOLD CORP. (CANADA)

Claimant

V.

UNITED REPUBLIC OF TANZANIA

Respondent

ANNEX B

RESPONDENT'S REQUEST FOR DOCUMENT PRODUCTION

Served on 13 January, 2022

Arbitrators

Prof. Gabrielle Kaufmann-Kohler (President)

Judge O. Thomas Johnson

Mr. Edward William Fashole Luke I

For the Respondent

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INTRODUCTION

1. This Request to Produce is issued by the Respondent pursuant to paragraph 16.2 of Procedural Order No. 1 (“PO1”) and the Procedural Timetable (as amended) the Parties shall submit their requests for the production of documents to each other in the form of Redfern Schedules.
2. The Respondent adopts the definition of Document and Documents found in the IBA Rules on the Taking of Evidence in International Arbitration (the IBA Rules), namely, “a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”.
3. The documents requested may relate to the Winshear, Helio and BTL together with their affiliated companies, Shareholders, Directors, Employees, business partners, Clients, Customers, etc.
4. Pursuant to Article 3.3(c)(i) of the IBA Rules, the Respondent confirms that none of the Documents requested in this Redfern Schedule are in Respondents’ possession, custody or control.
5. Pursuant to Article 3.3(c)(ii) of the IBA Rules, the Respondent assumes that the Documents requested are in the possession, custody or control of the Claimant or its affiliates, given that the Documents requested are either referred in the claims filed in the Tribunal or are reasonably believed to exist in the Claimant’s custody or its affiliates.
6. The Respondent herein reserves its right to request the production of any Documents in a later stage as per the Document Production Protocol.
7. For ease reference, the Respondent adopt abbreviations used in the Claimant’s Memoria and Respondent’s Memorial and any other parties’ pleadings filed with the Tribunal.

RESPONDENT'S REQUESTS FOR PRODUCTION OF DOCUMENTS (FIRST ROUND)

| Doc Request No. | Description of Request | Reference to Written Submissions or Witness Statements | Relevance and Materiality | Claimant's Objection | Respondent's Response | Tribunal's Decision |
|-----------------|---|--|--|---|---|---|
| 1. | <p>(a) All documents and internal communications in respect to:</p> <p>(i) investment and all records of funds incurred in developing a gold exploration project in Namibia and elsewhere in Africa;</p> <p>(ii) Business plans, approved investment plans for Helio/Winshear, BTL, and affiliates for the years between 2005 to January, 2018;</p> <p>(iii) All Bank Statements for all Accounts held by Helio/Winshear,</p> | <p>Claimant's Memorial at paragraphs 1 to 9, 20-27. see also paras. 16-17, 22-23 of Witness Statement of Richard Williams at page 7 and 10</p> | <p>In the Claimant's memorial, the Claimant has alleged that it spent tens of millions of dollars during the exploration on SMP.</p> <p>i. The requested documents in item (i) and (ii) are relevant to assist to establish that Helio and Winshear were generating tens of millions of dollars in earnings by the time of expropriation and that the Claimant was really affected</p> | <p>Request No. 1(a)(i) The Claimant objects to the Respondent's Request No. 1(a)(i) for the reasons explained below. Without prejudice to those objections, in the spirit of cooperation and in good faith, it agrees to produce Helio's audited financial statements prior to investing in the Project.</p> <p>Overly broad First, the Request is overly broad and does not comply with the IBA Rules' requirement that document</p> | <p>The Respondent does not seek an order with respect to this request on Helio's audited financial statements prior to investing in the Project as the Claimant has agreed to submit. However, the Respondent re states that, the rest of the requested documents in 1 (a)(i) are material to these proceedings in order to distinguish funds spent in developing the gold exploration project in Tanzania and other countries in Africa or elsewhere and therefore not a burden.</p> <p>The Respondent further states that the</p> | <p>IN PART NO DECISION REQUIRED; OTHERWISE, GRANTED IN PART AND AS SPECIFIED</p> <p>At the outset, the Tribunal notes that the Claimant agrees to produce "Helio's audited financial statements prior to investing in the Project", such that no decision is required on this point.</p> <p>With respect to Request No. 1(a)(i), the Respondent has not sufficiently established the <i>prima facie</i> relevance of the documents it requests, and the request is overly broad and unduly burdensome. Accordingly, the request is denied.</p> |

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| | <p>BTL, and affiliates in respect of Mineral operations in Tanzania;</p> <p>(b) Minutes of Board of Directors to approve investments and business plans for Winshear / Helio and BTL and affiliates between 2005-2018;</p> <p>(c) Records of all Financial expenditures, including invoices, contracts and orders</p> | <p>paras. 97, 106, 107,110,</p> | <p>by Government actions as alleged.</p> <p>(ii) The requested Documents are also relevant to the case and material to the determination of the Claimant's claims for compensation on monetary damages in respect of the alleged harm or loss of earning caused by the Government.</p> <p>(iii) The Claimant has alleged to receive funds by way of private placements to fund the Project. The requested documents in items (c) and (d) are relevant</p> | <p>production requests be "narrow and specific" (see Art. 3.3(a)(ii); PO1, paras. 16.1 and 16.2).</p> <p>Indeed, the Request fails to stipulate any time frame and is an excessively broad category of documents. By asking for "[a]ll documents and internal communications in respect to [...] investment and records of funds incurred", the Respondent in essence requests almost all documents produced by Helio/Winshear during the course of its investments in Africa.</p> | <p>requested documents are specific to the records of funds incurred in exploration project in Namibia and elsewhere in Africa hence in compliance with Art. 3.3(a)(ii) PO1, paras. 16.1 and 16.2 of the IBA Rules.</p> | <p>With respect to Request No. 1(a)(ii), the Tribunal notes that the Respondent has narrowed its request to Claimant's affiliates involved in investing in the project in Tanzania. As narrowed down, the requested documents appear to be <i>prima facie</i> relevant, and the request is sufficiently specific and not unduly burdensome. Therefore, the request is granted as narrowed down.</p> <p>With respect to Request No. 1(a)(iii), the Tribunal notes that the Claimant agrees to conduct "a diligent search for bank statements of bank accounts held by Winshear/Helio and BTL and relating to the SMP Gold Project remaining in its possession", such that</p> |

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| | (d) Helio, Winshear and BTL audited financial statements/any loan provided by Helio/Winshear to BTL for the period from 2005 up to January, 2018. | 112, 113, 116, 121, 148, 159 of the Claimant's Memorial. | <p>to assist to establish that Helio/Winshear injected fund to the BTL's Project in Tanzania as alleged</p> <p>(iv) The relevancy of the documents in (c) and (d) is to establish the Claimants' Claim that they borrowed fund from Helio, the fund which was injected to the BTL' project hence to have suffered loss due to cancellation of the</p> | <p>This is neither narrow nor specific.</p> <p>Not material</p> <p>Second, this Request is immaterial to the outcome of this case (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2).</p> <p>The Respondent's justification is ill-founded and misconceived; neither Party claims Helio/Winshear was "generating tens of millions of dollars in earnings by the time of expropriation [...]". This Request is immaterial to the calculation of the Claimant's damages because the Claimant</p> | | <p>no decision is required on this point.</p> <p>The Tribunal also notes that the Respondent has further narrowed its request to bank statements of the Claimant's affiliate, Bafex Holdings Ltd, and the Tribunal deems that the requested documents are <i>prima facie</i> relevant to the extent that they relate to Bafex Holding's participation in the SMP Gold Project, and that such request is sufficiently specific.</p> <p>With respect to Request No. 1(b), to the extent that the request is narrowed down by the Respondent to the SMP Gold Project, the Claimants appear to concede that the requested documents are <i>prima facie</i> relevant and the Tribunal agrees.</p> |

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| | <p>(e) All correspondences between management of Winshear / Helio and BTL on Accounts for the period from 2005 to January, 2018;</p> <p>(f) All management accounts, prepared by or for the Claimant from 1 January 2005 to January, 2020. This request includes final, signed financial statements and (where the financial statements have not been finalised and/or signed) the most recent draft financial statements.</p> | <p>paras. 97, 106, 107, 110, 112, 113, 116, 121, 148, 159 of the Claimant's Memorial.</p> | <p>(v) The requested documents in items (e), (f) and (g) are relevant to assist to establish that Helio and Winshear were generating tens of millions of dollars in earnings by the time of alleged expropriation from the period from 1, January, 2005 to 31st December, 2018. The documents are relevant and material to justify the basis for computations Winshear / Helio and BTL</p> | <p>has already provided evidence of the amounts expended on the Project (see, e.g., Exhibits VW-5.1 – VW-5.60) and will demonstrate this further when voluntarily providing additional evidence during this document production phase and, to the extent it sees fit, with its Reply Memorial.</p> <p>Unreasonably burdensome</p> <p>Third, as the relevant dates, locations and projects the Respondent requests documents for are all undefined, this Request would likely require the Claimant to</p> | | <p>Moreover, the request is sufficiently specific and not overly burdensome. Therefore, the request is granted as narrowed down.</p> <p>With respect to Request No. 1(c), the request is overly broad and unduly burdensome. Moreover, as the Claimant accepts, it is the Claimant's burden to prove the amounts it invested in the SMP Gold Project.</p> <p>With respect to Request No. 1(d), the Tribunal notes that the Claimant agrees to produce BTL's and Helio's audited financial statements and documents evidencing loans from Helio/BHL to BTL, such that no decision is required.</p> <p>With respect to Request No. 1(e), the Respondent has not sufficiently shown</p> |

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| | <p>(g) List of all accounts engaged in financial transactions related to Loan transactions;</p> <p>(h) All BTL's financial statements from any financial institution in Tanzania showing financial transactions of funding SMP in Tanzania</p> <p>(i) List of all signatories of Bank Accounts for Helio/ Winshear and BTL</p> <p>(j) Correspondences between Winshear, Helio and BTL in respect financial transaction for the years of 2005 to 2018.</p> | <p>The Claimant's Memorial at paras 97, 106, 107, 110, 112, 113, 116, 121, 148, 159</p> <p>The Claimant's Memorial at paras 97, 106, 107, 110, 112, 113, 116, 121, 148, 159</p> | <p>calculations for damages entitled if any</p> <p>In the Memorial, the Claimant alleged to have raised funds through borrowing and private placement in order to support exploration activities conducted by BTL in Tanzania.</p> <p>Therefore, the requested documents will prove that</p> <p>i. There were such transactions as alleged by the Claimant</p> <p>ii. Claimants' transfer of fund from abroad complied with</p> | <p>produce all documents from its history since it started investing in Africa. Self-evidently, this would place an unreasonable burden on the Claimant, especially given the lack of relevance or materiality explained above (IBA Rules, Art. 9.2(c)).</p> <p><u>Request No. 1(a)(ii)</u> The Claimant objects to the Respondent's Request No. 1(a)(ii) for the reasons explained below.</p> <p><i>Overly broad</i> First, the Respondent does not qualify who the Claimant's "affiliates" are. As it currently stands, this</p> | <p>The Respondent restates that the requested documents in 1 (a)(ii) are specific by its identification and relevant to the business and approved investment plans belonging to Helio/BTL/Affiliates on the SMP Project from</p> | <p>the <i>prima facie</i> relevance of the requested documents, and the request is overly broad and unduly burdensome. Therefore, the request is denied.</p> <p>With respect to Request No. 1(f), the Tribunal notes that the Claimant agrees to produce its quarterly interim management accounts and annual audited financial statements for the requested period, such that no decision is required on this point. With respect to the request that any other documents responsive to the request be produced, i.e. "the most recent draft financial statements", the Respondent has not sufficiently shown the <i>prima facie</i> relevance of the requested documents, in particular in the light of</p> |

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| | | | the laws of the host state | <p>Request is too broad and not compliant with the IBA Rules (see Art. 3.3(a)(ii); PO1, paras. 16.1 and 16.2). To the extent the Respondent clarifies what it means by "affiliates", the Claimant reserves its right to respond to the clarified Request.</p> <p>Not relevant</p> <p>Second, if as per p. 2, para. 3 of the Introduction to the Respondent's Requests, the Respondent intends to refer to the Claimant's "affiliated companies", the Claimant objects due to irrelevancy. Documents and communications</p> | <p>the years 2005 to January, 2018. This will assist in distinguishing the investment plan vis a vis the alleged investment made by the Claimants in order to establish the incurred costs.</p> <p>The Respondent further clarifies that by mentioning "Claimant's affiliates" she meant any other companies in the Claimant's ownership structure that claim to be involved in one way or another in investing in the project. For instance, Bafex Holdings Ltd (B.V.I). The Respondent has also previously stated that the requested documents will assist to verify the extent of investment made in Tanzania and participation of each</p> | <p>the Claimant's explanation that it "has already submitted interim and audited accounts <i>for the duration of the investment</i> (Exhibits VW-5.1 – VW-5.60) and will produce its earlier audited financial statements" (emphasis added).</p> <p>With respect to Request No. 1(g), the Tribunal notes the Claimant's statement that no lists of accounts engaged in financial transactions related to loan transactions exist. To the extent this request refers to bank account statements, the Tribunal refers back to its decision in relation to Request No. 1(a)(iii).</p> <p>With respect to Request No. 1(h), the Respondent has not rebutted the Claimants' explanation</p> |

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| | | | | <p>relating to business plans or investment plans beyond those of Winshear/Helio, BTL and BHL are entirely irrelevant to the case and immaterial to its outcome (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2). The Respondent has not explained how the business and investment plans of any other company could be relevant for the purpose of ascertaining how much the Claimant invested into the Project.</p> <p>Unreasonably burdensome</p> <p>Third, all documents and internal communications</p> | <p>company in the exploration activities.</p> | <p>that this request is duplicative of Request No. 1(a)(iii) and the Tribunal therefore refers back to its decision in relation to that request.</p> <p>With respect to Request No. 1(i), the Respondent appears to accept the Claimants' confirmation that no responsive documents exist in its possession, custody or control, such that no decision is required from the Tribunal.</p> <p>With respect to Request No. 1(j), the request is overly broad and unduly burdensome, and is therefore denied.</p> |

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| | | | | <p>relating to business and investment plans, including those of Winshear/Helio and BTL's "affiliates" during a 13-year period is too broad and thus unreasonably burdensome for the Claimant to produce, contrary to the IBA Rules (see Arts. 3.3(a)(ii) and 9.2(c)), PO1, paras. 16.1 and 16.2).</p> <p><u>Request No. 1(a)(iii)</u> The Claimant objects to the Respondent's Request No. 1(a)(iii) for the reasons explained below. Without prejudice to those objections, in the spirit of cooperation and in good faith, the</p> | <p>The Respondent appreciates the Claimant's willingness to conduct a diligent</p> | |

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| | | | | <p>Claimant agrees to conduct a diligent search for bank statements of bank accounts held by Winshear/Helio and BTL and relating to the SMP Gold Project remaining in its possession, in light of Winshear and BTL's retention policies, their respective retention obligations under Canadian and Tanzanian law and Winshear and BTL's ability to retrieve documents from Tanzania.</p> <p>Overly broad First, the Respondent's Request for the Claimant to produce "[a]ll Bank Statements</p> | <p>search for bank statements of bank accounts held by Winshear/Helio and BTL and relating to the SMP Gold Project. The Respondent restates that these documents are essential and material to these arbitration proceedings to prove the flow of transactions of money injected by BTL in the SMP Project.</p> <p>The Respondent further insists on the production of bank statements of the Claimant's affiliate, Bafex Holdings Ltd as this will assist to verify the extent of investment made in Tanzania and participation of each company in the exploration activities.</p> | |

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| | | | | <p>for all Accounts held by Helio/Winshear, BTL, and affiliates in respect of Mineral operations in Tanzania” is again, far too broad and contrary to the IBA Rules (Art. 3(3)(a)(ii); PO1, paras. 16.1 and 16.2).</p> <p>Second, the Claimant objects to the Request for any bank statements of its “affiliates” for the same reasons explained under Request No. 1(a)(ii) above, and reserves the right to respond to the Request, if clarified.</p> <p><u>Request No. 1(b)</u> The Claimant objects to the Respondent's</p> | | |

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| | | | | <p>Request No. 1(b) for the reasons explained below.</p> <p>Overly broad First, the Request is too broad (see Art. 3(3)(a)(ii); PO1, paras. 16.1 and 16.2). The Respondent has not limited its scope to the Project, meaning the Request could cover documents completely unrelated to the Claimant's investment in Tanzania.</p> <p>Unreasonably burdensome Second, the Respondent has requested documents across a 13-year period, without</p> | <p>The Respondent's request for documents under 1(b) is not overly broad as it relates to minutes of the board of Directors approving the business and investment plans in relation to the Saza Makongolosi Gold Project in Tanzania.</p> <p>The Respondent states that this request is not burdensome as it specifically relates to minutes on approval of business and investment plans. These documents are material to these arbitral proceedings as they will establish the level of investments and costs</p> | |

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| | | | | <p>explaining why board minutes from such a broad period are all relevant and material. It would be unreasonably burdensome to the Claimant to produce these documents (IBA Rules, Art. 9.2(c)).</p> <p>Again, reference is made to Claimant's undefined "affiliates". The Claimant objects to this for the same reasons set out above, under Request No. 1(a)(ii) and reserves all rights.</p> <p>Not relevant</p> <p>Third, the Respondent has not explained why documents pertaining to any other</p> | <p>incurred in the alleged investment.</p> | |

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| | | | | <p>investment besides the Project are relevant to the case and material to its outcome. This is because they are not (IBA Rules, Art.9.2(a); PO1, paras. 16.1 and 16.2).</p> <p><u>Request No. 1(c)</u> The Claimant objects to the Respondent's Request for the following reasons.</p> <p><i>Overly broad</i> First, "[r]ecords of all Financial expenditures, including invoices, contracts and orders" is extremely broad. There is no specific topic, time frame or investment to narrow the Respondent's Request. This is</p> | <p>The Respondent restates that the requested documents under Request 1(c) are specific to establish financial expenditures in relation to the</p> | |

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| | | | | <p>antithetical to the requirement that documents requested be "narrow and specific" (IBA Rules, Art. 3(3)(a)(ii); PO1, paras. 16.1 and 16.2).</p> <p>Not material</p> <p>Second, the Respondent's explanation as to the alleged materiality of these documents is unpersuasive. The Claimant has already submitted evidence establishing "Helio/Winshear [borrowed or] injected fund [sic] to the BTL's Project in Tanzania [...]". The ICSID Arbitration Rules provide the Tribunal with the authority to</p> | <p>exploration activities in SMP Project from the years 2005 to 2018. The Respondent still insists that evidence on the financial expenditures in the project was not provided by the Claimants in their Memorial.</p> | |

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| | | | | <p>determine the probative value of any evidence adduced (see Rule 34.1). This therefore dispels the Respondent's attempt to justify this Request. It is the Claimant's burden to prove the amounts it invested, which it has done already by submitting voluminous evidence with its Memorial (Wall Report, Section 5; Exhibits VW-5.1 – VW-5.60; WS Richard Williams, Sections 3 and 4; WS Christopher MacKenzie, Sections 3 and 4). If the Claimant wishes to produce further evidence in support of this aspect of its case, it will do so</p> | | |

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| | | | | <p>with its Reply Memorial.</p> <p><i>Disproportionate</i> Third, the Request is disproportionate as the Respondent again ignores the volume of evidence of the facts relating to this Request already on record. Requiring the Claimant to produce the requested documents would be disproportionate in circumstances where the Respondent has refused to engage with the existing evidence addressing the very same issues (IBA Rules, Art. 9.2(g)).</p> | | |

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| | | | | <p><u>Request No. 1(d)</u> The Claimant already agrees to produce its audited financial statements to the extent not already submitted in the arbitration under Request 1(a)(i). The Claimant disagrees that any other documents falling under the Respondent's Request No. 1(d) are relevant or material to the outcome of the dispute. Without prejudice to that objection, in the spirit of cooperation and in good faith, it agrees to produce BTL's and Helio's audited financial statements and documents</p> | <p>The Respondent seeks no order for production of the documents which the Claimants have agreed to produce on voluntarily basis.</p> | |

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| | | | | <p>evidencing loans from Helio/BHL to BTL, to the extent available.</p> <p><u>Request No. 1(e)</u> The Claimant objects to the Respondent's Request for the reasons below.</p> <p><i>Overly broad</i> First, "[a]ll correspondences [...] from 2005 to January, 2018" is not narrow nor specific (see Art. 3(3)(a)(ii); PO1, paras. 16.1 and 16.2). This excessively broad Request fails to specify a topic or project to which such "correspondences between management [...] on Accounts [...]" would refer.</p> | <p>The Respondent states that the requested documents are specific to the correspondences between BTL's management on</p> | |

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| | | | | <p>Unreasonably burdensome Second, in view of the overly broad Request, it would be unreasonably burdensome for the Claimant to produce "correspondences between management [...] on Accounts [...]" across a 13-year period (IBA Rules, Art. 9.2(c)).</p> <p>Not material Third, this Request is not material to the outcome of this case. The Respondent refers to the calculation of damages to justify this Request. The quantification of damages will not turn</p> | <p>accounts in relation to the SMP Project.</p> | |

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| | | | | <p>on the correspondence between management. Rather, audited financial statements demonstrating the investments it made will establish the quantification of the Claimant's loss, which have already and will again be provided to the Respondent. Request No. 1(e) is thus immaterial to the outcome of the case (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2).</p> <p><u>Request No. 1(f)</u> The Claimant objects to the Respondent's Request No. 1(f) for the reason explained below. Without prejudice to that</p> | | |

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| | | | | <p>objection, in the spirit of cooperation and in good faith, it agrees to provide the Claimant's quarterly interim management accounts and annual audited financial statements for the requested period.</p> <p><i>Not relevant or material</i> The Claimant objects to producing draft financial statements as they are not relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2). This is particularly so since the Claimant has already submitted interim and audited accounts for the</p> | <p>The Respondent seeks no order for production of documents on Claimant's quarterly interim management accounts and annual audited financial statements for the requested period as the Claimants have agreed to produce them.</p> <p>The Respondent looks forward to the</p> | |

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| | | | | <p>duration of the investment (Exhibits VW-5.1 – VW-5.60) and will produce its earlier audited financial statements pursuant to Request No. 1(a)(i).</p> <p><u>Request No. 1(g)</u> No such “[l]ist of all accounts engaged in financial transactions related to Loan transactions” exists, to the Claimant’s knowledge. To the extent the Respondent’s Request No. 1(g) refers to bank account statements themselves, this Request is duplicative of Request No. 1(a)(iii); the Claimant refers to its</p> | <p>production of the agreed documents but request that all documents in the request be produced. The Respondent have explained the relevancy of in reply to Request</p> | |

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| | | | | <p>response to that Request.</p> <p><u>Request No. 1(h)</u> This Request is duplicative of Request No. 1(a)(iii); the Claimant refers to its response to that Request.</p> <p><u>Request No. 1(i)</u> The Claimant confirms that no such "[l]ist of all signatories of Bank Accounts for Helio/ Winshear and BTL" exists in its possession, custody or control.</p> <p><u>Request No. 1(j)</u> The Claimant objects to producing "[c]orrespondences between Winshear,</p> | <p>(k) The Requested documents are relevant for the purpose of establishing that the Claimants injected funds through loans to establish that they made investment in Tanzania and that they are entitled to compensation to the extent of their claim.</p> | |

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| | | | | <p>Helio and BTL in respect [of] financial transaction [<i>sic</i>] for the years of 2005 to 2018” for the following reasons.</p> <p>Overly broad First, the Request is too broad. The Respondent has not defined which “financial transaction” it refers to, nor attempted to narrow the Request by reference to certain individuals. Further, the Respondent's Request spans a 13-year period. Therefore, the Request is neither narrow nor specific (IBA Rules, Art. 3(3)(a)(ii); PO1, paras. 16.1 and 16.2).</p> | | |

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|-----------------|------------------------|--|---------------------------|---|--|---------------------|
| | | | | <p>Unreasonably burdensome Given the breadth of the Request, it would be unreasonably burdensome to the Claimant to produce these documents (IBA Rules, Art. 9.2(c)).</p> <p>Not relevant or material The Respondent has failed to substantiate how documents relating to “[c]orrespondences between Winshear, Helio and BTL in respect [of] financial transaction [sic] for the years of 2005 to 2018” are at all relevant to the case or material to its outcome (IBA</p> | <p>The Respondent states that the documents requested in Request 1(j) are specific to the correspondences between Winshear/ Helio and BTL in respect of financial transactions in relation to the SMP Project from the years 2005 to 2018. The Respondent restates that these documents are essential in showing the trail of transactions conducted in relation to the exploration activities in Saza Makongolosi</p> | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2). | | |

| Doc Request No. | Description of Request | Reference to Written Submissions or Witness Statements | Relevance and Materiality | Claimant's Objection | Respondent's Response | Tribunal's Decision |
|------------------------|-------------------------------|---|----------------------------------|-----------------------------|------------------------------|----------------------------|
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| Doc Request No. | Description of Request | Reference to Written Submissions or Witness Statements | Relevance and Materiality | Claimant's Objection | Respondent's Response | Tribunal's Decision |
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| 2. | BTL and Winshear / Helio-geological data relating exploration activities conducted by BTL | Paragraphs 15, 328, 331(c) of the Claimant's Memorial, Vikki Wall's Report, p.25 (para 5.2.4), Witness Statement of Richard Williams, p.47 (Section 12) | In the Witness Statement of Richard Williams, at page 47, the Claimant has admitted to still being in possession of the Project's geological data collected over the years of exploration. The requested documents will establish whether the project was economically viable for starting mining operations or not. | <p>The Claimant objects to the Respondent's Request No. 2 for the following reasons.</p> <p>Unfair and abuse of process</p> <p>The Respondent's Request No. 2 is a patent, illegitimate attempt to obtain the only remaining product of the Claimant's years of investment in Tanzania: its geological data. As explained by Mr Williams in his Witness Statement (WS Richard Williams, paras. 150-151), over the years, Helio collected core and geological data from its exploration works. The core and data</p> | The Respondent restates that these documents are essential and will establish whether the project was economically viable for starting mining operations or not in order to ascertain the extent compensation in relation to the future profits expected by the Claimant. | <p>DENIED</p> <p>The Tribunal notes the Claimants' statement that it already put in the record the technical reports, mineral resource estimates and Preliminary Economic Assessment relating to the SMP Gold Project, which likely suffice to establish whether the project would have been economically viable. On that basis, the Respondent has not sufficiently shown the <i>prima facie</i> relevance of the requested documents to assess the economic viability of the project.</p> <p>In addition, and considering the overall circumstances, the Claimant has provided compelling considerations of fairness in the sense of Article 9(2)(g) of the IBA Rules to exclude</p> |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---|
| | | | | <p>have value to a company with title over the relevant land under appropriate licences, which Winshear no longer has as a result of the Respondent's breaches of the BIT. Further, the Claimant explained in the Memorial that, in breach of Article 6 of the BIT, the Amending Legislation enacted a requirement for mining companies to hand over proprietary geological data to the State (Memorial, para. 328). The Respondent never enforced this requirement <i>vis-à-vis</i> the Claimant, and even relies on that fact to claim the Amending Legislation was</p> | | <p>production of the requested documents.</p> |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>reasonable and complied with Article 6 of the BIT (Counter-Memorial, para. 400). Its Request No. 2 is an <i>ex post facto</i> attempt to acquire the Claimant's geological data by other means, using the present document production process as a pretence. In short, the Respondent, through this request, seeks to exacerbate the dispute and upset the <i>status quo</i>.</p> <p>This amounts to an abuse of process and is plainly unfair (IBA Rules, Art. 9.2(g)). Accordingly, it should be dismissed outright.</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p><i>Not material</i> In any event, the requested documents are not material to the outcome of the dispute. The Claimant has already submitted in evidence the technical reports, mineral resource estimates and Preliminary Economic Assessment which it completed for the Project, all of which were produced by professional mining consultants (see Exhibits C-91, C-99, C-100, C-129, C-133, and C-159). Those reports were all based on iterations of the geological data set the Respondent now requests. The</p> | | |

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|-----------------|--|--|--|--|-----------------------|--|
| | | | | Respondent does not take issue with the methodologies of any of those reports and indeed relies on their conclusions itself in its Counter-Memorial (e.g., paras. 173-174, 446 and 453). | | |
| 3. | Agreement between Helio and private Entities to secure private placements. | The Claimant's Memorial at paras 106, 107, 110, 112, 113, 116, 121, 148, 159 | The Claimant has alleged to have received funds by way of private placements to develop the Project. The Requested document will establish if there was a real private placement as stated by the Claimants and the same were used to fund the SMP in Tanzania | The Claimant objects to the Respondent's Request No. 3 for the reasons explained below. Without prejudice to those objections, in the spirit of cooperation and in good faith, it agrees to conduct a diligent search for documents evidencing the agreements between Helio and private entities to secure private placements. | | <p>NO DECISION REQUIRED</p> <p>The Tribunal notes the Claimant's statement that it will "conduct a diligent search for documents evidencing the agreements between Helio and private entities to secure private placements". In the absence of any further reaction from the Respondent, no further decision is required.</p> |

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| | | | | <p><i>Not material</i> First, the Respondent claims the requested documents are necessary to prove whether there was a "real private placement". To the extent this issue of fact is seriously in dispute, it is not material to the outcome of the arbitration (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2). As the Claimant understands the Respondent's position, it does not contend that Helio <i>never</i> raised any finances, only that the Claimant has (allegedly) not submitted evidence of spending funds on the</p> | | |

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|-----------------|------------------------|--|---------------------------|--|-----------------------|---------------------|
| | | | | <p>Project directly or through BTL (Counter-Memorial, paras. 203, 218-219 and 413). The Claimant denies the substance and legal relevance of those allegations and will address them in its Reply Memorial. Nevertheless, for present purposes it suffices to note that the <i>source</i> of the Claimant's funds is not a material issue in dispute; only how those funds were spent. The requested documents will not assist with the latter issue.</p> <p><i>Disproportionate</i> The Claimant adduced significant witness and</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>documentary evidence with its Memorial explaining the sources of its funds and how they were spent on the Project. For example, the Claimant produced audited and interim financial statements and press releases issued by Helio evidencing the private placements completed with key investors (see Exhibits VW-5.1 – VW-5.60, C-55, C-143, C-144, C-145, C-148, C-149, C-151 and C-152). TSX-listed companies, like the Claimant, have strict obligations to report accurate information to the market (see e.g., Exhibit VW-5.61, para. 6.2). Further, Helio's</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>management had reporting obligations under the NI 43-101 Standards of Disclosure for Mineral Projects (see WS Richard Williams, para. 8 and footnote 2; WS Christopher MacKenzie, para. 8, and footnote 2). Therefore, the contemporaneous press releases and financial statements referred to by the Claimant in support of its claim carry high probative value in terms of evidencing factual events. The Claimant's witnesses, particularly Mr Williams, have also testified to Helio's sources of funds and</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>how they were spent on the Project in detail in their Witness Statements (WS Richard Williams, Section 4.2; WS Christopher MacKenzie, Section 4.3).</p> <p>In its Counter-Memorial, the Respondent does not engage with the vast majority of that evidence. In its Request No. 3, it asserts the requested documents "will establish if there was a real private placement as stated by the Claimants and the same were used to fund the SMP in Tanzania", again</p> | | |

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|-----------------|---|--|--|--|-----------------------|--|
| | | | | ignoring the volume of evidence of those facts already on record. Requiring the Claimant to produce the requested documents would be disproportionate in circumstances where the Respondent has refused to engage with the existing evidence addressing the very same issues (IBA Rules, Art. 9.2(g)). | | |
| 4. | BTL's Quarterly Reports from April, 2006 to January, 2018 | Paras 180, 225, 226 and 459 of the Respondent's Counter Memorial | In the Counter Memorial, the Respondent has stated that, the Claimant did not comply with the requirement of Section 99 read together with Schedule 3, Part 1 Item 1(a) and (b) of the Mining Act in Tanzania that a Retention | The Claimant objects in principle to the Respondent's Request No. 4 for the reasons explained below. Without prejudice to those objections, in the spirit of cooperation and in good faith, the Claimant is willing to | | <p>NO DECISION REQUIRED</p> <p>The Tribunal notes the Claimant's statement that it will "provide the requested documents to the extent they exist and remain in the Claimant's possession, custody or control". In the absence of any further reaction from</p> |

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|-----------------|------------------------|--|--|--|-----------------------|---|
| | | | <p>Licence Holder is required to submit quarterly report to the Mining Commission for the purpose of reporting the progress of the project and costs incurred thereto.</p> <p>Therefore, the Requested documents will establish that the project was in progress and the alleged costs had been injected in the SMP to prove the costs incurred by the Claimants in the course of exploration.</p> | <p>provide the requested documents to the extent they exist and remain in the Claimant's possession, custody or control.</p> <p><i>In the Respondent's possession, custody or control</i></p> <p>The Claimant disputes the Respondent's allegation in the Counter-Memorial that BTL only ever submitted four quarterly reports (Counter-Memorial, paras. 226 and 460). To the contrary, in its Reply Memorial, the Claimant will provide further evidence that BTL complied with its obligations under the Mining Acts 1998 and</p> | | <p>the Respondent, no further decision is required.</p> |

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|-----------------|------------------------|--|---------------------------|--|-----------------------|---------------------|
| | | | | <p>2010 to submit quarterly reports to the Ministry of Minerals. Therefore, the requested quarterly reports are already in the Respondent's possession, custody or control. The Respondent's bald assertion to the contrary does not justify its Request.</p> <p><i>Not material</i> The Claimant also contests that the requested documents (<i>i.e.</i>, quarterly reports) would "prove the costs incurred by the Claimants [<i>sic</i>] in the course of exploration." The quarterly reports would indeed indicate <i>some</i> of the Claimant's</p> | | |

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|-----------------|------------------------|--|---------------------------|--|-----------------------|---------------------|
| | | | | <p>costs of exploration on the Project, but not all such costs. Under the Mining Act 2010, (Second Schedule, para. 1(1)(b)), a prospecting licence holder was only required to submit to the Commissioner for Minerals "copies of records of his prospecting operations together with any records prepared as a result of those records." (Exhibit C-218, p. 88). This requirement, and therefore the quarterly reports BTL submitted under it, did not cover all the costs the Claimant incurred developing the SMP Gold Project. Rather,</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>as confirmed by Ms Wall in the Wall Report, Helio's audited financial statements (Exhibits VW-5.3 <i>et seq.</i>) are the appropriate source for determining the costs the Claimant incurred developing the Project (Wall Report, para. 5.2.2). This is also the position adopted by investment arbitration tribunals applying international law (see Memorial, para. 360). Therefore, the issues to which the Respondent claims the requested documents are relevant are already addressed by evidence on record. The production of the requested documents</p> | | |

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|-----------------|------------------------|--|---------------------------|--|-----------------------|---------------------|
| | | | | <p>will, therefore, make no material difference to the outcome of the arbitration (IBA Rules, Art. 9.2(a); PO1, paras. 16.1 and 16.2).</p> <p><i>Disproportionate</i> The Claimant adduced voluminous witness and documentary evidence with its Memorial explaining the progress of the SMP Gold Project from its inception in December 2005 to its expropriation by Tanzania in December 2019 (see generally the evidence cited in Memorial, Sections 2.2 – 2.9). For example, <i>inter alia</i>, the Claimant produced audited and interim financial</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>statements and press releases issued by Helio evidencing the progress and expenditure incurred on the Project, as well as the technical reports produced by expert consultants examining the Project's progress. The Claimant's witnesses have also testified to the development of the Project in detail in their witness statements.</p> <p>In its Counter-Memorial, the Respondent does not engage with the vast majority of that evidence. In its Request No. 4 it asserts the requested</p> | | |

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|-----------------|--|--|---|---|--|---|
| | | | | documents are necessary to show "that the project was in progress and the alleged costs had been injected in the SMP", again ignoring the volume of evidence of those facts already on record. Requiring the Claimant to produce the requested documents would be disproportionate in circumstances where the Respondent has refused to engage with the existing evidence addressing the very same issues (IBA Rules, Art. 9.2(g)). | | |
| 5. | Documents submitted to BRELA and Mining Commission for Registration of change of name from | Witness Statement of Christopher James | In the Claimant's Memorial, the Claimant has submitted that it changed name from Helio Resource Corp. | The Claimant denies that the requested documents are in any way relevant or | The Respondent reiterates that the requested documents are relevant to establish | DENIED The Tribunal notes the Claimant's statement that |

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|-----------------|--|--|---|---|--|--|
| | Helio Resource Corp. to Winshear Gold Corp. | MacKenzie at para 3 page 4 | to Winshear Gold Corp. the facts which are denied by the Respondent. Therefore, the requested document will establish that Winshear Gold has been registered as a shareholder of BTL in Tanzania. | material to the dispute. Further, if they did exist, they would be in the possession, custody or control of the Respondent. In any event, the Claimant confirms that the requested documents do not exist. | that Winshear is registered shareholder of BTL. It is presumable that if Winshear is shareholders of BTL should have such documents to establish their shareholding. | no responsive documents exist. |
| 6. | <p>Documents Related to:</p> <p>(i) Employment of Richard David Williams; his entry Visas in Tanzania from 2005-2020 and work permits to allow him to work for gain or undertake any business in Tanzania.</p> <p>(ii) Lease Agreement for the hiring of BTL Office in Tanzania or any records regarding payment of utilities including electricity and water bills for the BTL or</p> | Witness Statement of Richard David Williams at para 1-3 page 4 | In the statement, Richard David Williams has stated that he is the Chief Executive Officer of Winshear and Director of its subsidiary company, BAFEX Tanzania Limited ("BTL"). | <p>The Claimant objects to each of the Respondent's Requests under Request No. 6 for the following reasons.</p> <p>Not relevant or material</p> <p>The Respondent has not attempted to explain how any of the requested documents falling under Requests</p> | The Respondent insists on the production of the requested documents under Part 6 in order to prove that BTL really existed and was in operating actively in Tanzania. This will help to prove that BTL was not just a shadow company used by the Claimant to claim exploration costs they did not incur. | <p>DENIED</p> <p>The Respondent has not sufficiently shown the <i>prima facie</i> relevance of the requested documents. In addition, requests (ii)-(iv) are overly broad, and the Respondent has not denied that documents responsive to requests (i), (iv) and (vi) are not in its possession, custody or control.</p> |

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|-----------------|---|--|---------------------------|--|-----------------------|---------------------|
| | <p>Helio office in Tanzania from 2006 to 2020.</p> <p>(iii) Employment contracts between BTL or Helio with all their employees in Canada and Tanzania who were involved in the SMP Gold Project.</p> <p>(iv) All visas and work permits issued to BTL or Helio employees involved in the SMP Gold Project.</p> <p>(v) All social security contributions to Social Security and or pension Funds for BTL and Helio employees in Tanzania.</p> <p>(vi) All records regarding payment of taxes including income taxes involving BTL and Helio employees in Tanzania who were involved in the SMP Gold Project.</p> | | | <p>No. 6(i) to No. 6(vi) are relevant to any issue in dispute in the arbitration, let alone material to its outcome. The only justification the Respondent offers suggests that the requested documents are required to prove that Mr Richard Williams is the CEO of Winshear and Director of BTL. This fact ought to be uncontroversial and is already acknowledged by the Respondent in its own Counter-Memorial (Counter-Memorial, paras. 215 and 326) and proven by evidence already on record, including the Respondent's own</p> | | |

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|-----------------|------------------------|--|---------------------------|--|-----------------------|---------------------|
| | | | | <p>exhibits (e.g., Exhibits R-045 and R-038).</p> <p>Overly broad The Respondent not only requests the (already broad) categories of documents listed under Requests No. 6(i) to No. 6(vi), but also "Documents [r]elated to" those categories. This exponentially increases the scope of the Respondent's Requests and would make them overly burdensome for the Claimant. Further, the categories under Requests No. 6(i) to No. 6(vi) are themselves broad and un-targeted, not</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>"narrow and specific" (IBA Rules, Art. 3.3(a)(ii)).</p> <p><u>Request No. 6(i)</u> In addition to the reasons explained above (not relevant, not material and overly broad), the Claimant objects to Request No. 6(i) on the ground that the Tanzania entry visas and work permits of Mr Williams are in the possession, custody or control of the Respondent.</p> <p><u>Request No. 6(ii)</u> The Claimant objects to the Respondent's Request No. 6(ii) for the reasons explained above (not relevant,</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>not material and overly broad).</p> <p><u>Request No. 6(iii)</u> The Claimant objects to the Respondent's Request No. 6(iii) for the reasons explained above (not relevant, not material and overly broad).</p> <p><u>Request No. 6(iv)</u> In addition to the reasons explained above (not relevant, not material and overly broad), the Claimant objects to Request No. 6(iv) on the ground that any Tanzania visas and work permits issued to employees of Helio or BTL are in the possession, custody or</p> | | |

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|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | <p>control of the Respondent.</p> <p><u>Request No. 6(v)</u> In addition to the reasons explained above (not relevant, not material and overly broad), the Claimant objects to Request No. 6(v) on the ground that "social security contributions to Social Security" or to any public pensions would be in the possession, custody or control of the Respondent.</p> <p><u>Request No. 6(vi)</u> In addition to the reasons explained above (not relevant, not material and overly broad), the Claimant objects to Request</p> | | |

| Doc Request No. | Description of Request | Reference to Written Submissions or Witness Statements | Relevance and Materiality | Claimant's Objection | Respondent's Response | Tribunal's Decision |
|-----------------|------------------------|--|---------------------------|---|-----------------------|---------------------|
| | | | | No. 6(vi) on the ground that records of taxes paid by BTL or Helio employees in Tanzania are in the possession, custody or control of the Respondent. | | |