

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. 4

— Revised —

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

Date: 9 January 2017

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I. PROCEDURAL BACKGROUND

1. On 29 December 2016, the Tribunal circulated a draft of this procedural order to serve as agenda for the matters to be discussed during the pre-hearing telephone conference scheduled for 6 January 2017. On 4 January 2017, the Parties returned the draft with their comments and advised the Tribunal that they did not intend to call any witness or expert and were willing to dispense with the telephone call on 6 January 2017.
2. On **9 January 2017**, the Tribunal advised the Parties that it did not find it necessary to hear any witness or expert and issued this order, which it had adjusted accordingly.

II. DATE, VENUE AND SCHEDULE OF THE HEARING

3. Pursuant to Sections 11 and 21 of PO1 and Annex A, the Hearing will take place on **19 and 20 January 2017**.
4. As the Hearing dates coincide with Inauguration Day in Washington, D.C., the Tribunal and the Parties agreed to hold the Hearing in New York City.¹ The Hearing will be held at the AAA facilities in New York located at 150 East 42nd St, 17th Floor, New York, NY 10017.
5. ICSID has reserved breakout rooms for the Parties and for the Tribunal. The assignments will be communicated to the Parties by the ICSID Hearing Organization Team in due course.
6. The Hearing will start at 9 a.m. to finish at approximately 6:30 p.m. on Thursday and will start at 1 p.m. to finish not later than 5:30 p.m. on Friday, subject to any adjustment required by the course of the submissions, with a one-hour lunch break on Thursday, and one 15 minute break during each half day.

III. DOCUMENTATION

7. Each Party shall provide to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the Assistant of the Tribunal (1 copy), the court reporters (1 copy), the opposing Party (2 copies), and the relevant witness or expert, if any, (1 copy):
 - a. Core Hearing Bundle. Pursuant to Section 17.6 of PO1, a core bundle of key documents upon which it intends to rely during the Hearing in paper version (double-sided A5 format) and in electronic format (on a USB key with a hyperlinked index) at the beginning of the Hearing. The paper version of the bundle may be limited to relevant exhibit excerpts and/or omit Spanish originals

¹ See Tribunal's letter of 4 August 2016, Respondent's email of 5 August 2016, Claimant's email of 8 August 2016, and the Secretary's email of 9 August 2016.

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to conserve paper. The electronic version shall include the complete version of the documents in the bundle. If feasible, the Parties may submit a joint USB containing complete copies of both Parties' written submissions in lieu of the electronic format versions of their respective core bundles.

- b. Each document including in the Core Hearing Bundle shall be separated with a numbered tab., and the bundle shall be accompanied with an index that cross-references to the corresponding Exhibit (C-or R-) or Legal Authority number (CL- or RL-). During the Hearing, the Parties shall refer to the documents by their corresponding Exhibit (C- or R-) or Legal Authority number (CL- or RL-).
8. The Parties may use demonstrative exhibits, i.e. exhibits that compile information that is in the record but present it in a different manner and PowerPoint presentations or other visual aids, provided that such exhibits (i) identify the source in the record from which they are derived, (ii) do not contain information not in the record, and (iii) are filed in electronic format immediately prior to the commencement of the oral statement. The electronic transmission shall be done both by email and by upload to the case folder in the electronic file sharing system ("BOX"), assigning the demonstrative exhibits a consecutive exhibit number. Hard copies shall be distributed to the persons and in the numbers specified in the preceding paragraph immediately prior to their use. This paragraph replaces Section 17.7 of PO1.
 9. Documents that do not form part of the record may not be presented at the Hearing unless otherwise agreed by the Parties or authorized by the Tribunal.

IV. ORAL ARGUMENTS

10. The first day of the Hearing will start with the Parties' opening arguments, starting with the Respondent and followed by the Claimant. Opening arguments shall not exceed 3 hours per Party, which will be computed against their overall time allocation.
11. The Parties may use PowerPoint presentations or other visual aids during their oral arguments, subject to the rules set out in paragraph 8 above.
12. If the Tribunal finds it useful, it may provide a list of questions it would like the Parties to address in their oral submissions. At the conclusion of the first day of the Hearing, the Tribunal may further provide a list of questions it would like the Parties to address in their reply and rejoinder arguments.
13. The second day of the Hearing will consist of a reply argument from the Respondent and a rejoinder argument from the Claimant, each not in excess of 1.5 hours, including answers to questions posed by the Tribunal.

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V. CLOSED HEARING

14. Pursuant to the Section 21.6 of PO1, “the hearing shall be closed to the public, with the exception of a non-disputing party that may be admitted in accordance with the ICSID Arbitration Rules.” Pursuant to Sections 48 and 49(d) of PO2, the Tribunal dismissed APREFLOFAS’s request to attend the Hearing.

VI. LOGISTICAL MATTERS

A. Attendees

15. The Parties shall provide a list of the persons who will attend for each side (including counsel, party representatives and witnesses/experts) by **Wednesday, 11 January 2017**.

B. Language

16. The Parties have agreed that simultaneous interpretation provided in Section 12.7 of PO1 is not necessary for this Hearing. The Hearing shall be conducted in English. After the conclusion of the Hearing a translation of the Hearing transcript into Spanish shall be prepared.

C. Transcripts and Sound Recordings

17. Pursuant to Section 22 of PO1, the Hearing shall be sound recorded and transcribed verbatim in real time in English using LiveNote or similar software.
18. Pursuant to Section 22.2 of PO 1, electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis. Sound recordings shall be provided within 5 business days from the end of the Hearing.
19. Pursuant to Section 22.3 of PO1, the Parties shall attempt to agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties in the revised transcripts.
20. The ICSID Secretariat has arranged for sound recording and for court reporting services. The details will be communicated to the Parties by the ICSID Hearing Organization Team in due course.

D. Other logistical matters

21. The ICSID Secretariat Hearing Organization Team will liaise with the Parties on other logistical aspects (set up of the hearing room, catering, etc.).

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VII. POST-HEARING PROCEEDINGS

22. The Parties have agreed that there will be no post-hearing submissions unless the Tribunal orders the Parties to address any specific issue(s) in writing. Pursuant to Section 23.1 of PO1, at the conclusion of the Hearing the Tribunal will make such determination. No additional evidence may be produced together with the post-hearing brief, if any, except with leave from or on the request of the Tribunal.
23. At the end of the Hearing, the Tribunal will issue directions on the Parties' statements of costs.

On behalf of the Tribunal,

[Signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal