

Gran Colombia Gold Corp. v. Republic of Colombia
(ICSID Case No. ARB/18/23)

Procedural Order No. 6 – Annex B

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

ICSID

GRAN COLOMBIA GOLD CORP.

Claimant

v.

THE REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/18/23

TRIBUNAL'S RULING ON RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS

11 May 2020

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Gran Colombia Gold Corp. (Claimant) v. Republic of Colombia (Respondent)
(ICSID Case No. ARB/18/23)

RESPONDENT’S REQUEST FOR PRODUCTION OF DOCUMENTS

Respondent’s Introduction:

For the purpose of this Request for Production of Documents:

- “**Document**” means a writing, communication, picture, drawing, map, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means of storing or recording information. For the avoidance of doubt, all requested documents include documents internal to Gran Colombia Gold Corp. (“**GCG**” or the “**Claimant**”), as defined below.
- GCG shall be understood as GCG, its subsidiaries, affiliates, branches, or any employee, consultant, agent, director, shareholder or authorised representative of GCG.

Unless indicated otherwise, the defined terms used in the present document have the same meaning as those used in prior submissions made by the Parties in the course of the present arbitration.

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Document Request No.	1	2	3
A. Documents or category of documents requested	The list of shareholders for GCG effective 2 July 2018.	Documents maintained or prepared between January and July 2018 by GCG’s transfer agent, TSX Trust Company, or any other of the service providers listed in GCG’s 2018 Schedule of Shareholder Costs, ¹ detailing GCG’s shareholders (including any indirect and/or beneficiary shareholders) and their nationality.	Documents containing information on the identity and nationality of “CDS Participants” and the indirect and/or beneficial owners of the shares held by the financial intermediary, CDS Clearing and Depository Services Inc.
B. Relevance and materiality: (1) paragraph reference to submissions (2) comments (3) statement concerning custody and control	(1) Memorial on Jurisdiction, ¶ 59; Counter-Memorial on Jurisdiction, ¶¶ 89-94; Second Witness Statement, Michael Davies, ¶ 31. (2) The Respondent maintains that, at the time GCG attempted to invoke the benefits of Chapter Eight of the FTA, Canadian nationals did not own the majority of GCG’s shares. ² As explained by the Respondent, the relevant date to assess whether the requirements of Article 814(2) of the FTA were fulfilled is 2 July 2018, the date on which the Centre considered that GCG’s Request for Arbitration fulfilled the requirements of Article 36 of the ICSID	(1) Memorial on Jurisdiction, ¶ 59; Counter-Memorial on Jurisdiction, ¶¶ 89-94. (2) For the reasons stated with respect to Request No. 1, the Respondent requests the production of documents containing information on GCG’s shareholders and their nationality (other than the list of shareholders requested in the Respondent’s Request No. 1).	(1) Memorial on Jurisdiction, ¶ 59; Counter-Memorial on Jurisdiction, ¶¶ 89-95. (2) For the reasons stated with respect to Request No. 1, the Respondent requests the production of documents containing information on the indirect or beneficial shareholders of GCG’s shares held by the financial intermediary, CDS Clearing and Depository Services Inc. As represented by GCG, CDS Clearing and Depository Services Inc. holds shares on behalf of “CDS Participants” which, in turn, hold these shares on behalf of its indirect and/or

¹ GCG Schedule of Shareholders Costs in 2018, **Exhibit C-338**.

² Respondent’s Memorial on Jurisdiction, ¶ 48.

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	<p>Convention.³ The Claimant in turn, contends that the relevant date should be 31 May 2018, and accordingly produced the list of shareholders effective on said date.⁴</p> <p>The requested document is relevant and material to establish the composition of GCG’s ownership on the Respondent’s relevant date for assessing the requirements for denial of benefits under Article 814(2) of the FTA.</p>		beneficial owners or intermediaries holding the shares of indirect/beneficial owners. ⁵
	<p>(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent. As recognized by the Claimant’s witness, Mr. Davies, GCG’s transfer agent, TSX Trust Company, is able to produce lists of shareholders for GCG as of any specific date.⁶</p>	<p>(3) GCG’s transfer agent and/or other service providers were in a position to maintain or prepare documents containing information on GCG’s indirect or beneficiary shareholders and their nationality. For example, in its website, TSX Trust Company lists a variety of transfer services, other than the maintenance of securityholder lists, in</p>	<p>(3) It is reasonable to assume that the requested documents are already in the Claimant’s possession, custody and control, or could be obtained by GCG from CDS Clearing and Depository Services, who served as one of GCG’s service providers.¹¹ The requested documents have not to date been disclosed to the Respondent.</p>

³ Respondent’s Memorial on Jurisdiction, ¶ 38.

⁴ Claimant’s Counter-Memorial on Jurisdiction, ¶ 29; List of Shareholders for Gran Colombia Gold Corp., Effective: 30 May 2018, **Exhibit C-346**.

⁵ Claimant’s Counter-Memorial on Jurisdiction, ¶ 95.

⁶ Second Witness Statement, Michael Davies, ¶ 31.

¹¹ GCG Schedule of Shareholders Costs in 2018, **Exhibit C-338**.

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	Further, as a company incorporated under the laws of the Province of British Columbia ⁷ , GCG is under the obligation to provide, upon request, a list setting out “(a) the names and last known addresses of the shareholders; (b) the number of shares of each class or series of shares held by each of those shareholders.” ⁸ This obligation to maintain a central securities register is acknowledged in GCG’s articles of incorporation: “As required by and subject to the Business Corporations Act, the Company must maintain in British Columbia a central securities register.” ⁹	which shareholder information may be contained. ¹⁰ It is reasonable to assume that the requested documents are already in the Claimant’s possession, custody and control, or could be obtained by GCG from its transfer agent or other service providers. The requested documents have not to date been disclosed to the Respondent.	
C. Summary of objections by disputing party to	GCG has no objections to this Request assuming its scope relates solely to Gran Colombia Gold Corp.	Claimant objects to this Request on the following grounds:	Claimant objects to this Request on the grounds that Respondent has not shown that such documents are “reasonably believed to exist” (Article 3.3(a)(ii) IBA Rules), let alone likely to be in the Claimant’s

⁷ The Claimant’s Notice of Intent, 10 October 2016, Annex 1 (Certificate of Good Standing dated 26 September 2016).

⁸ Business Corporations Act of British Columbia, SBC 2002, Chapter 57, Part 2 – Incorporation, Division 5 – Company Records, List of shareholders, § 49.1.

⁹ Articles of Incorporation of Gran Colombia Gold Corp., 1 January 2017, **Exhibit C-3**, Art. 4.1.

¹⁰ TSX Trust Company website, “Issuer Services” <https://www.tsxtrust.com/services/issuer-services>: “As an agent, we maintain securityholder lists, control the stated capital and effect transfers. We liaise with CDS Clearing and Depository Services Inc., the broker community and investors to fulfill their requirements. Treasury directions are treated with the urgency demanded for regular issuances, stock option exercises or to complete a transaction at a closing. We administer mandated escrow functions and process releases as dictated by the relevant agreement. We also act as an agent and provide registry services for Special Purpose Acquisition Company (SPAC) shares, warrants and rights offerings”.

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production of requested documents	<p>Claimant objects to Respondent’s definition of “GCG” in the introductory section of this Schedule. At issue is only Gran Colombia Gold Corp., incorporated under the laws of British Columbia, and its activities in Canada. It is not acceptable for Respondent to include GCG’s “subsidiaries, affiliates, branches, and any employee, consultant, agent, director, shareholder and authorised representative of GCG” in this Request. Claimant understands “GCG” in this Request as Gran Colombia Gold Corp. only.</p> <p>Notwithstanding the above, Claimant is providing the list of shareholders for Gran Colombia Gold Corp., effective 2 July 2018.</p>	<p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, the Respondent has not shown that such Documents are “reasonably believed to exist” (Article 3.3(a)(ii) 2010 International Bar Association Rules on the Taking of Evidence in International Arbitration “IBA Rules”), let alone likely to be in the Claimant’s possession, power, control or custody (Article 3.3(c)(ii) IBA Rules).</p> <p>Third, the Respondent’s Request is based on an inaccurate understanding of the relevant securities laws of British Columbia. The British Columbia Business Corporations Act does not contemplate indirect shareholding, and it also does not contemplate beneficiary shareholders as such.</p> <p>In any event, Claimant has no responsive documents to this Request.</p>	<p>possession, power, control or custody (Article 3.3(c)(ii) IBA Rules).</p> <p>In any event, Claimant has no responsive documents to this Request.</p>
D. Reply	<p>The Respondent rejects the Claimant’s contention that the Respondent’s document production requests should be limited to Gran Colombia Gold Corp. only. Article</p>	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt</p>	<p>The Respondent repeats its request in full.</p> <p>The Respondent does not accept the Claimant’s unsubstantiated allegation that</p>

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	<p>3(c)(ii) of the IBA Rules on the Taking of Evidence specifies that a party may request documents in “<i>possession, custody or control of another Party</i>”. It is well-settled that, for the purposes of Article 3(c)(ii), a party to an arbitration is typically in “possession, custody or control” of the documents in possession, custody or control of its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.¹²</p> <p>That said, with respect to this Request No. 1, the Respondent confirms that it only requires the production of the list of shareholders for <u>Gran Colombia Gold Corp.</u> effective 2 July 2018.</p> <p>The Respondent notes that the Claimant has undertaken to produce documents responsive to this request. The Respondent reserves the right to review any documents produced by the Claimant in response to this request and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the</p>	<p>to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>However, the Respondent clarifies that this request is for documents detailing the shareholders of Gran Colombia Gold Corp. (including any indirect and/or beneficiary shareholders) and their nationality.</p> <p>Further, the Respondent does not accept the Claimant’s unsubstantiated allegation that the requested documents are not reasonably believed to exist. The Claimant’s own documents show that TSX Trust Company and other service providers have provided corporate services to Gran Colombia Gold Corp. in relation to the management of and communication with its shareholders, in which shareholder information (including that of indirect or beneficiary shareholders) is likely to have been exchanged.</p>	<p>the requested documents are not reasonably believed to exist. The Claimant’s own documents show that CDS Clearing and Depository Services Inc. served as one of Gran Colombia Gold Corp.’s service providers and therefore is likely to have provided management and communication services in which shareholder information (including that of indirect or beneficiary shareholders) of Gran Colombia Gold Corp. may have been exchanged.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>

¹²

G. BORN, *International Commercial Arbitration*, Alphen aan den Rijn, Kluwer Law International, 2014, Vol. II, p. 2366.

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	<p>extent that the Claimant's production is defective or incomplete.</p>	<p>The Claimant's allegations regarding Canadian securities laws are misplaced. It is irrelevant, for the purposes of the denial of benefits objection under Article 814 of the FTA, whether Canadian law contemplates beneficiary or indirect shareholders. Furthermore, even if indirect or beneficiary shareholding were insufficient to establish ownership under Canadian law, it would still be relevant to prove control. Additionally, information about Gran Colombia Gold Corp.'s indirect and beneficial shareholding is required to paint a full picture of Gran Colombia Gold Corp.'s ownership and control as a question of fact.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant's representation that it has no documents responsive to this request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>	

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E. Decision of the Tribunal	No tribunal ruling requested	The Tribunal notes Claimant's representation that it has no responsive documents. For avoidance of doubt, Claimant is requested to confirm whether it has (or its transfer agent TSX Trust Company can provide to it at its request) records that would demonstrate the ultimate or beneficial owners of GCG shares, or only the direct ownership information provided pursuant to Request No. 1. If and to the extent so, such records should be produced.	The Tribunal notes Claimant's representation that it has no responsive documents. For avoidance of doubt, Claimant is requested to confirm whether it has (or its transfer agent TSX Trust Company can provide to it at its request) records that would demonstrate the ultimate or beneficial owners of shares held as intermediary by CDS Clearing and Depository Services. If and to the extent so, such records should be produced.

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Document Request No.	4	5	6
A. Documents or category of documents requested	Any list of Non-Objecting Beneficial Owners (“NOBOs”) prepared in 2018 after 4 May 2018.	Documents containing information regarding the identity and nationality, as of May-July 2018, of the direct or indirect holders and beneficiaries of any warranties, debentures, and Gold- and Silver-linked Notes issued by GCG.	Documents recording attendees of, the agenda of, discussions at, and the outcomes of: (i) the Special Shareholders’ Meeting of March 2018, (ii) the Annual Shareholders’ Meeting of June 2018, and (iii) any meetings of Gold and Silver Noteholders prior to 2 July 2018 (including the special meetings held on 22 December 2015 (Exhibits C-327 to C-329)).
B. Relevance and materiality: (1) paragraph reference to submissions (2) comments (3) statement concerning custody and control	(1) Memorial on Jurisdiction, ¶ 59; Counter-Memorial on Jurisdiction, ¶¶ 100-102; Second Witness Statement, Michael Davies, ¶ 32. (2) For the reasons stated with respect to Request No. 1, the requested documents are relevant to identify GCG’s beneficial owners and therefore material to the outcome of the dispute as said information will allow the Respondent to determine GCG’s ownership for the purposes of its denial of benefits objection.	(1) Memorial on Jurisdiction, ¶ 54; Counter-Memorial on Jurisdiction, ¶¶ 57-58. (2) As stated by the Claimant, in addition to common shares, GCG also issued Gold- and Silver-linked notes, debentures and warrants. ¹⁴ Publicly available documents, to which the Respondent referred in its Memorial on Jurisdiction, ¹⁵ provide limited information on the identity of the beneficiaries of these instruments. To the extent that these instruments can be converted into shares, the requested	(1) Memorial on Jurisdiction, ¶ 59; Counter-Memorial on Jurisdiction, ¶¶ 89-94; Second Witness Statement, Michael Davies, ¶¶ 16, 27. (2) For the reasons stated with respect to Request No. 1, the requested documents are relevant to identify GCG’s direct and indirect shareholders and beneficiaries and therefore material to the outcome of the dispute, as said information will allow the Respondent to determine GCG’s ownership for the purposes of its denial of benefits objection. Additionally, the requested documents will allow the Respondent to

¹⁴ Claimant’s Counter-Memorial on Jurisdiction, ¶ 58.

¹⁵ SEDI, Insider Information by Issuer for Gran Colombia Gold between 4 May and 3 July 2018, undated, **Exhibit R-43**.

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	GCG has produced a NOBO list prepared on 4 May 2018. ¹³ GCG’s witness, Michael Davies, claims that no other NOBO lists were prepared in May 2018. However, Mr. Davies does not state that no other NOBO lists were prepared at a later date. Any NOBO lists prepared after 4 May 2018 are relevant to assess GCG’s ownership.	documents are relevant to the dispute and material to its outcome because they will provide a complete picture of GCG’s ownership.	assess GCG’s decision making processes (including identifying those shareholders that, in practice, exercise control of the company) and therefore, are relevant to the question of control for the purposes of Article 814(2) of the FTA. Furthermore, the Claimant contends that its alleged expenses for the organization of these meetings demonstrates that GCG had substantial activities in Canada. ¹⁶ The requested documents will allow the Respondent to contextualize and test this assertion.
	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
C. Summary of objections by disputing party to	Claimant objects to this Request on the grounds that Respondent has not shown that such Documents are “reasonably believed to exist” (Article 3.3(a)(ii) IBA Rules). In	Claimant objects to this Request on the following grounds:	Claimant objects in part to this Request on the following grounds:

¹³ Claimant’s Counter-Memorial on Jurisdiction, ¶ 101.

¹⁶ Claimant’s Counter-Memorial on Jurisdiction, ¶ 60; Second Witness Statement of Michael Davies, ¶ 27.

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Document Request No.	4	5	6
production of requested documents	<p>fact, no NOBO list was prepared in 2018 after 4 May 2018.</p> <p>As explained by Mr. May in his Expert Report, NOBO lists are provided upon request. (May Expert Report, ¶ 37) Further, as explained by Mr. Davies, GCG NOBO lists are not available for historic dates but only when requested. (Second Davies Statement, ¶ 32) The 4 May 2018 already existed as it was requested in preparation for the shareholders meeting (<i>id.</i>) and no other list was requested in 2018.</p> <p>In any event, Claimant has no responsive documents to this Request.</p>	<p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, Respondent’s Request is not “relevant to the case and material to its outcome” (Article 3.3(b) of the IBA Rules). Publicly traded instruments like warrants, debentures, and Gold- and Silver-linked Notes do not equate to shareholding. Unless and until such instruments are converted into equity, its holders have no voting rights and no rights to control the associated company. Thus, this Request is not relevant to the case nor material to its outcome. At issue are the actual ownership and control of the company and not the potential rights that holders of instruments may eventually have at an uncertain time in the future.</p> <p>In any event, Claimant has no responsive documents to this Request.</p> <p>For purposes of clarification, Claimant understands that Respondent meant to refer to the “warrants” as the financial instruments issued by GCG, and not to “warranties”.</p>	<p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, Respondent’s Request is not “relevant to the case and material to its outcome” (Article 3.3(b) of the IBA Rules). The identity of the attendees of such meetings and the discussions during the meetings are not relevant or material to the outcome of this dispute. As a common practice, most of the shareholders attend such meetings by proxy and not in person. Further, the identity of the attendees, including the ones attending by proxy or in person, does not correspond to the ownership or control of the company. The list of attendees only reflects that certain shareholders voted on specific issues.</p> <p>In any event, Claimant has no responsive documents with respect to the attendees of or discussions at said meetings indicated in this Request.</p> <p>With respect to the agenda and the outcomes of said meetings, GCG has no objections and is producing responsive documents related to these meetings.</p>

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			Claimant notes that there were no meetings of Gold and Silver Noteholders prior to 2 July 2018 (other than the special meetings held on 22 December 2015).
D. Reply	<p>The Respondent takes note of the Claimant’s confirmation that no NOBO lists for Gran Colombia Gold Corp. were requested in 2018, other than the 4 May 2018 NOBO list.</p> <p>Therefore, the Respondent takes note of the Claimant’s representation that it has no responsive documents to this Request. The Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>The Respondent does not accept the Claimant’s allegation that the requested documents are not relevant to the case or material to its outcome. In fact, as the Claimant concedes, publicly traded instruments like warrants, debentures, and Gold- and Silver-linked Notes may confer voting rights and rights to control the associated company when such instruments are converted into equity. Furthermore, even if not converted into equity, these instruments can be used as a tool to exercise</p>	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>The Respondent does not accept the Claimant’s allegation that the requested documents are not relevant to the case or material to its outcome. The identity of the shareholders and their voting patterns, as reflected in the requested documents, are relevant to understand which shareholders, if any, exercise effective control over the company. Where a shareholder attends by proxy, this request should be read to include the production of documents showing who represented that shareholder at the meeting.</p>

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		<p>indirect control over a company. Accordingly, information regarding the holders of publicly traded instruments like warrants, debentures, and Gold- and Silver-linked Notes—whether converted or not—is relevant and material to the Respondent’s case that GCG is owned and/or controlled by non-Canadian shareholders.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>	<p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request with respect to the attendees of, or discussions at the meetings mentioned in the request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p> <p>As regards the agendas and the outcomes of the meetings, the Respondent takes note that the Claimant has undertaken to produce documents responsive to this request. The Respondent reserves the right to review any documents produced by the Claimant in response to this request and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>
E. Decision of the Tribunal	No tribunal ruling requested.	The Tribunal notes the Claimant’s representation that it has no responsive documents. Accordingly, the request is denied.	The Tribunal notes the Claimant’s agreement to produce the agenda and the outcomes of the referenced meetings, and Claimant’s representation that it has no responsive documents with respect to

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			meeting attendees or discussions. On this basis, no further production is required.

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Document Request No.	7	8	9
A. Documents or category of documents requested	Minutes or any other documents recording discussions at meetings of GCG’s Board of Directors, as well as any Board of Directors resolutions, between 1 January 2018 and 2 July 2018.	Any employment or similar agreement entered into between GCG and Mr. Iacono, Mr. de la Campa, or any other non-Canadian directors, prior to 2 July 2018, including agreements entered into in 2016.	Documents listing the warranties, debentures, and Gold- and Silver-linked Notes held, whether directly or indirectly, by Messrs Iacono and de la Campa, or any other non-Canadian directors or shareholders, prior to 2 July 2018.
B. Relevance and materiality: (1) paragraph reference to submissions	(1) Memorial on Jurisdiction, ¶¶ 60, 74.	(1) Memorial on Jurisdiction, ¶¶ 60, 68.	(1) Memorial on Jurisdiction, ¶¶ 58, 61; Counter-Memorial on Jurisdiction, ¶¶ 57-58.
(2) comments (3) statement concerning custody and control	(2) The Respondent contends that Messrs Iacono and de la Campa control GCG. ¹⁷ In particular, the Respondent has shown that Messrs Iacono and de la Campa exercise substantial influence over the management of GCG in their dual condition as shareholders and members of the Board of	(2) The Respondent contends that Messrs Iacono and de la Campa control GCG. ²⁰ The requested documents are relevant to the dispute and material to its outcome as they will provide insight regarding the scope of Messrs Iacono and de la Campa’s engagement as directors of GCG. In	(2) The Respondent contends that Messrs Iacono and de la Campa control GCG. ²⁵ The Claimant, in turn, alleges that Messrs Iacono and de la Campa did not hold a combination of shares sufficient to affect the control of GCG. ²⁶

¹⁷ Respondent’s Memorial on Jurisdiction, ¶ 60.

²⁰ Respondent’s Memorial on Jurisdiction, ¶ 60.

²⁵ Respondent’s Memorial on Jurisdiction, ¶ 60.

²⁶ Claimant’s Counter-Memorial on Jurisdiction, ¶ 130.

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Document Request No.	7	8	9
	<p>Directors.¹⁸ The requested documents will prove that Messrs Iacono and de la Campa exercise substantial influence over the management of the company. The requested documents will also allow the Respondent to assess the influence of GCG’s other non-Canadian members of the Board of Directors.¹⁹ Accordingly, these documents are relevant and material to show that non-Canadians effectively control GCG for the purposes of Article 814(2) of the FTA.</p>	<p>addition, the requested documents will provide insight on the influence and powers of GCG’s other non-Canadian directors.²¹</p> <p>Furthermore, the Respondent maintains that the change of control provisions contained in the employment agreements demonstrate that Messrs Iacono and de la Campa control GCG.²² The Claimant disputes this.²³</p> <p>However, both Parties have relied solely on references to the employment agreements in GCG’s Management Information Circular dated 4 May 2018, not on the specific wording of the contracts.²⁴ As a result, the requested documents will permit the Respondent to verify that Messrs Iacono and de la Campa’s controlled GCG. This finding</p>	<p>As mentioned with regard to Request No. 5, publicly available documents, to which the Respondent referred in its Memorial on Jurisdiction,²⁷ provide limited information on the direct or indirect holding of these instruments by Messrs Iacono, de la Campa and other non-Canadian directors of GCG. To the extent that these instruments can be converted into shares, the requested documents are relevant to the dispute and material to its outcome because they will provide a complete picture of Messrs Iacono and de la Campa’s, as well as any other non-Canadian director’s shareholding in GCG.</p>

¹⁸ Respondent’s Memorial on Jurisdiction, ¶¶ 58, 74.

¹⁹ Respondent’s Memorial on Jurisdiction, ¶ 58.

²¹ Respondent’s Memorial on Jurisdiction, ¶ 58.

²² Respondent’s Memorial on Jurisdiction, ¶ 68.

²³ Claimant’s Counter-Memorial on Jurisdiction, ¶ 132.

²⁴ GCG, Management Information Circular, 4 May 2018, **Exhibit R-11**, p. 19.

²⁷ SEDI, Insider Information by Issuer for Gran Colombia Gold between 4 May and 3 July 2018, undated, **Exhibit R-43**.

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		is material to a showing that non-Canadians effectively control GCG for the purposes of Article 814(2) of the FTA.	
	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
C. Summary of objections by disputing party to production of requested documents	<p>Claimant objects to this Request on the following grounds:</p> <p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, this Request is overly broad as it does not set forth a “description of each requested Document sufficient to identify it” nor a “narrow and specific” category of documents in accordance with Article 3.3(a) of the IBA Rules. Respondent’s Request does not specify any particular issue or discussion contained in such minutes or documents.</p> <p>Third, Respondent’s Request is not “relevant to the case and material to its outcome” (Article 3.3(b) of the IBA Rules). Respondent’s Request is based on</p>	<p>Claimant objects to this Request on the following grounds:</p> <p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, Respondent’s Request is not “relevant to the case and material to its outcome” (Article 3.3(b) of the IBA Rules). Colombia relies in error on a change-of-control provision in the employment agreements for the directors of the company, including Messrs Iacono and de la Campa (Claimant’s Counter-Memorial on Jurisdiction, ¶ 130). Contrary to Colombia’s reading, the provision evidences that neither controlled the company.</p>	<p>Claimant objects to this Request on the following grounds:</p> <p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, Respondent’s Request is not “relevant to the case and material to its outcome.” (Article 3.3(b) of the IBA Rules). Publicly traded instruments like warrants, debentures, and Gold- and Silver-linked Notes do not equate to shareholding. Unless and until such instruments are converted into equity, its holders have no voting rights and no rights to control the associated company. This was also explained by Mr. May in his Expert Report (¶¶ 11, 51). Thus, this Request is not relevant to the case nor material to its outcome. At issue are the</p>

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	<p>the faulty premise that Messers. Iacono and de la Campa while acting as directors of GCG, are also acting in a controlling capacity at the same time. Like other directors, Messrs Iacono and de la Campa serve at the pleasure of the company’s shareholders, are elected by the shareholders and are required to act in the interest of those shareholders. Service as an officer or director is not service as an investor. (Claimant’s Counter-Memorial ¶¶ 126, 135; May Expert Report, ¶ 27.) Messers. Iacono and de la Campa’s functions as directors of GCG are neither relevant or material to the outcome of the dispute.</p> <p>Fourth, Claimant also objects to this Request, under Article 9.2(b) and 9.2(e) of the IBA Rules, to the extent this Request calls for privileged or confidential documents.</p>	<p>Notwithstanding the above, Claimant is producing responsive documents.</p>	<p>actual ownership and control of the company and not the potential rights that holders of instruments may eventually have at an uncertain time in the future.</p> <p>In any event, all warrants, debentures and notes held by directors are listed in documents that are already in Respondent’s possession. This is the case of Exhibit R-0011 which provides at pages 5 to 7 the specific disclosures of the management insiders as of 4 May 2018. Furthermore, Exhibit NM-12 provides the disclosure of 683 Capital as reporting insider as of 9 March 2018. Claimant confirms that the securities held as of 4 May 2018 for the management insiders and as of 9 March 2018 do not materially differ from the securities held as of 2 July 2018 as requested by Respondent. This can be confirmed at the website of the System for Electronic Disclosure by Insiders: sedi.ca.²⁸</p>

²⁸ The direct link to the website is not available but any person can access the information by following this path at sedi.ca: Main page > choose “English” > choose “Access public filings” (in the main text under title “Reports”) > choose “View summary reports” (on the left column) > choose “Insider information by issuer” and click “Next” > type in “Gran Colombia Gold” in the “Mandatory criteria” column (set the criteria as “Issuer name”), and click “Next” > click “View”.

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			<p>With respect to shareholders, Claimant has no responsive documents.</p> <p>For purposes of clarification, Claimant understands that Respondent meant to refer to the “warrants” as the financial instruments issued by GCG, and not to “warranties”.</p>
D. Reply	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>With regard to the Claimant’s allegation that the request is overly broad and does not sufficiently identify the requested documents, the Respondent accepts, in the spirit of cooperation and pursuant to ¶ 15.7 of Procedural Order No. 1, to narrow its request to (i) minutes of GCG’s Board of Directors meetings between 1 January</p>	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>The Respondent does not accept the Claimant’s allegation that the requested documents are not relevant to the case or material to its outcome. As stated in the Respondent’s Memorial on Jurisdiction, it is the Respondent’s case that the change-of-control provision referenced in GCG’s Management Information Circular dated 4</p>	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>In addition, as explained with respect to Request No. 5, information regarding the warrants, debentures, and Gold- and Silver-linked Notes held, whether directly or indirectly, by Messrs Iacono and de la Campa, or any other non-Canadian directors or shareholders, prior to 2 July 2018, is relevant and material to the</p>

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	<p>2018 and 2 July 2018; (ii) Board of Directors’ Resolutions between 1 January 2018 and 2 July 2018; and (iii) documents recording discussions at these meetings, exchanged between Messrs Iacono and de la Campa between 1 January 2018 and 2 July 2018.</p> <p>The Respondent does not accept the Claimant’s allegation that the requested documents are not relevant to the case or material to its outcome. As stated in the Respondent’s Memorial on Jurisdiction, it is the Respondent’s case that Messrs Iacono and de la Campa exercise <i>de facto</i> control over GCG and that said control is relevant to establish whether the conditions of Article 814(2) of the FTA are fulfilled.</p>	<p>May 2018 demonstrates that Messrs Iacono and de la Campa control GCG.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request.</p> <p>In this regard, the Respondent notes that the Claimant has produced two employment contracts entered into between GCG and Messrs Serafino Iacono and Miguel de la Campa, respectively, both dated 30 May 2011. However, the Claimant does not specify whether these two employment contracts represent the entirety of the responsive documents in its possession. The Respondent requests that the Claimant provide any employment agreements entered into between GCG and any other non-Canadian directors prior to 2 July 2018, as well as any amendments or other employment agreements entered into with Messrs Iacono and de la Campa between 30 May 2011 and 2 July 2018.</p>	<p>Respondent’s case that GCG is owned and/or controlled by non-Canadian shareholders.</p> <p>In this regard, the Respondent notes that the Claimant has produced no responsive documents relating to any shareholders holding these instruments. With regard to the Claimant’s representation concerning the holdings of management insiders, the Respondent explained in its request that information available on the website of the System of Electronic Disclosure by Insiders (SEDI) provides only limited information on the direct or indirect holding of these instruments by Messrs Iacono and de la Campa and other non-Canadian directors of GCG. Notably, this information does not specify the time frame in which the instruments in question were held.²⁹</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no</p>

²⁹

SEDI, Insider Information by Issuer for Gran Colombia Gold between 4 May and 3 July 2018, undated, **Exhibit R-43**.

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			documents responsive to this request with respect to shareholders. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.
E. Decision of the Tribunal	Request granted as narrowed in the Respondent’s reply.	The Tribunal notes the Claimant’s representation that it is producing responsive documents, and the Respondent’s reply that the Claimant has produced two employment contracts between GCG and Messrs. Iacono and de la Campa. On this basis, no further production is required, <i>except</i> that Claimant shall produce any amendments to these employment contracts, and any other employment agreements between GCG and the two individuals, or any other non-Canadian directors (and any amendments to), to the extent such documents exist.	The Tribunal notes the Claimant’s representation that it has no responsive documents with respect to shareholders, and the Claimant’s statement that information regarding directors is already in the record and/or publicly available. On this basis, no further production is required, <i>except</i> that Claimant shall produce documents sufficient to show the <i>dates</i> on which Messrs. Iacono de la Campa or any other non-Canadian directors held the instruments in question.

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Document Request No.	10	11	12
A. Documents or category of documents requested	Documents setting out or establishing the powers granted to Messrs Iacono and de la Campa, as well as to other non-Canadian individuals, in their condition as directors of GCG, including but not limited to any powers of attorney.	GCG’s Schedule of Office Rent Expenses (Exhibit C-277) in native format, together with underlying documents for all entries in May and June 2018.	GCG’s Schedule of Other Office Expenses (Exhibit C-278) in native format, together with underlying documents for all entries in May and June 2018.
B. Relevance and materiality:	(1) Memorial on Jurisdiction, ¶¶ 61, 68, 72-74.	(1) Memorial on Jurisdiction, ¶ 88; Counter-Memorial on Jurisdiction, ¶ 46; Second Witness Statement, Michael Davies, ¶ 25.	(1) Memorial on Jurisdiction, ¶ 88; Counter-Memorial on Jurisdiction, ¶ 46; Second Witness Statement, Michael Davies, ¶ 25.
(1) paragraph reference to submissions			
(2) comments	(2) The Respondent contends that Messrs Iacono and de la Campa control GCG. ³⁰ The requested documents are relevant to the dispute and material to its outcome as they will provide further insight on the ability of Messrs Iacono and de la Campa’s as directors and shareholders of GCG to exercise substantial control over GCG. In addition, the requested documents will	(2) The Claimant relies on a Schedule of Office Rent Expenses in 2018 in order to support its allegation that GCG had substantial activities in Canada. The Claimant’s schedule appears to be an excerpt from an internal accounting system and has been presented solely in PDF format. The Respondent is at present unable to verify the contents of the entries included in the Schedule.	(2) The Claimant relies on a Schedule of Other Office Expenses in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.
(3) statement concerning custody and control		The requested documents are relevant to the dispute and material to its outcome because	

³⁰ Respondent’s Memorial on Jurisdiction, ¶ 60.

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Document Request No.	10	11	12
	provide insight on the influence and powers of GCG’s other non-Canadian directors. ³¹	they will allow the Respondent to verify the Claimant’s allegations with regard to its alleged substantial activities in Canada.	
	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
C. Summary of objections by disputing party to production of requested documents	<p>Claimant objects to this Request on the following grounds:</p> <p>First, Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i>.</p> <p>Second, Respondent’s Request is not “relevant to the case and material to its outcome” (Article 3.3(b) of the IBA Rules). Respondent’s Request is based on the faulty premise that Messers. Iacono and de la Campa while acting as directors of GCG, are also acting in a controlling capacity at the same time. Like other directors, Messrs Iacono and de la Campa serve at the pleasure of the company’s shareholders, are elected by the shareholders and are required</p>	GCG has no objections to this Request and is producing responsive documents.	GCG has no objections to this Request and is producing responsive documents.

³¹ Respondent’s Memorial on Jurisdiction, ¶ 58.

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	<p>to act in the interest of those shareholders. Service as an officer or director is not service as an investor. (Claimant’s Counter-Memorial ¶¶ 126, 135; May Expert Report, ¶ 27.) Messers. Iacono and de la Campa’s functions as directors of GCG are neither relevant or material to the outcome of the dispute.</p> <p>Third, all powers granted to GCG’s directors are established in the publicly available governance documents available here: http://www.grancolombiagold.com/about-us/corporate-governance/default.aspx</p> <p>Fourth, the Respondent has not shown that other Documents are “reasonably believed to exist” (Article 3.3(a)(ii) IBA Rules), let alone likely to be in the Claimant’s possession, power, control or custody (Article 3.3(c)(ii) IBA Rules).</p> <p>In any event, Claimant has no responsive documents to this Request other than the public governance documents referred to above.</p>		

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Document Request No.	10	11	12
D. Reply	<p>The Respondent repeats its request in full.</p> <p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>In addition, as explained with respect to Request No. 7, documents setting out or establishing the powers granted to Messrs Iacono and de la Campa, as well as to other non-Canadian individuals, in their condition as directors of GCG, including but not limited to any powers of attorney, are relevant and material to the Respondent’s case that Messrs Iacono and de la Campa exercise <i>de facto</i> control over GCG. In this regard, the Respondent notes that the Claimant has produced no responsive documents relating to this request.</p> <p>With regard to the Claimant’s objection pursuant to Articles 3.3(a)(ii) and 3.3(c)(ii)</p>	<p>The Respondent notes that GCG’s Schedule of Office Rent Expenses in native format has been stripped of its metadata. Ms. Karen Ogle, Claimant’s counsel’s paralegal, appears as its author, having created the document on 23 April 2020. The document produced by the Claimant cannot possibly be the native file requested by the Respondent because the document was created after the filing of the Claimant’s Counter-Memorial on Jurisdiction, and it was created by a paralegal at Dentons, the Claimant’s counsel in these proceedings, and not GCG itself. Accordingly, the document produced by Claimant in response to this request is not responsive. The Respondent repeats its request in relation to GCG’s Schedule of Office Rent Expenses in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, Respondent notes that the Claimant has undertaken to produce all existing documents responsive to this request. The Respondent reserves the right to review the documents purportedly produced by the Claimant in response to this request and to revert to the Claimant, or if necessary to the</p>	<p>The Respondent notes that GCG has produced two Excel files purporting to be GCG’s Schedule of Other Office Expenses in native format. Both files have been stripped of their metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of Other Office Rent Expenses in native format.</p> <p>With respect to the underlying documents for all entries in May and June 2018, as explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>

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	<p>of the IBA Rules, it is reasonable to assume that GCG would set out in internal documents, other than those appearing in its website, the powers granted to its Executive Chairmen and its Vice-Chairman.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>	<p>Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>	
E. Decision of the Tribunal	<p>The Tribunal notes the Claimant’s identification of certain publicly available information, and its representation that it has no further responsive documents other than such public governance documents.</p> <p>However, the mandates that appear on GCG’s website are described as “<i>last revised and approved</i>” on 14 June 2018, which was after Colombia’s letter denying benefits on 31 May 2018. The website indicates that the first version of the mandates was opted on 27 April 2012.</p>	<p>The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.</p>	<p>The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.</p>

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	<p>Claimant shall produce the original version of the mandates and all intervening versions as these documents may have been revised from time to time up through 14 June 2018. In addition, given the generality of these mandates, Claimant shall also investigate with appropriate due diligence to determine if there are further documents setting out or establishing with more specificity the powers granted to Messrs. Iacomo and de la Campa, as well as other non-Canadian directors, and if so shall produce such additional documents.</p>		

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Document Request No.	13	14	15
A. Documents or category of documents requested	Documents, including photographs and floorplans, reflecting or describing GCG’s Toronto office, including its size, distribution and occupation by employees (including the location of their workspaces within the office), between October 2017 and 2 July 2018.	Documents, including employment agreements, recording the date of start of employment and the number of hours worked per week for each of the individuals listed as employees of GCG in 2018.	GCG’s Schedule of Employee Costs (Exhibit C-281) in native format, together with underlying documents for all entries in May and June 2018.
B. Relevance and materiality: (1) paragraph reference to submissions	(1) Memorial on Jurisdiction, ¶ 88; Counter-Memorial on Jurisdiction, ¶¶ 48-49; Second Witness Statement, Michael Davies, ¶¶ 33-37.	(1) Memorial on Jurisdiction, ¶ 87; Counter-Memorial on Jurisdiction, ¶ 50.	(1) Memorial on Jurisdiction, ¶ 87; Counter-Memorial on Jurisdiction, ¶ 51.
(2) comments (3) statement concerning custody and control	(2) The Claimant relies on photographs of its Toronto office taken on 16 March 2020 and 2 April 2020, and Michael Davies’s Second Witness Statement to assert that GCG had substantial activities in Canada. In particular, the Claimant relies on Mr. Davies’s representation that GCG’s Toronto office “has looked the same since about October 2017 when the construction of our office space was completed.” ³² However, the Claimant has not provided any contemporaneous evidence portraying	(2) The Claimant maintains that it has substantial activities in Canada because, among other things, it had seven or eight employees in Canada at the relevant date of assessment of the denial of benefits objection. To prove this, the Claimant relies on a summary of employment income for 2018, which does not specify the exact dates of employment of each of the employees nor the number of hours worked per week. ³³ As a result, the Respondent is unable to verify the number of GCG’s employees on	(2) The Claimant relies on a Schedule of Employee Costs in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.

³² Second Witness Statement, Michael Davies, ¶ 36.

³³ GCG, 2018 EHT Return and Remuneration Detail and Vouchers, **Exhibit C-280**.

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Document Request No.	13	14	15
	the offices, or documenting their size, distribution, and occupation by employees prior to July 2018. The requested documents are relevant and material to test the accuracy of the Claimant’s allegations.	2 July 2018 or their level of occupation at the company. The requested documents are relevant to the dispute and material to its outcome because they will allow the Respondent to verify the Claimant’s allegation that GCG had eight full-time employees in Canada on 2 July 2018.	
	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
C. Summary of objections by disputing party to production of requested documents	GCG has no objections to this Request and is producing responsive documents.	Claimant objects to this Request on the following grounds: Claimant’s objections to the Respondent’s definition of GCG in Request No. 1 apply <i>mutatis mutandis</i> . Further, GCG does not track the number of hours per week for each of the employees. Accordingly, Claimant has no responsive documents to this part of the Request. Notwithstanding the above, Claimant is producing the employment agreements for each of the individuals listed as employees of GCG in 2018.	GCG has no objections to this Request and is producing responsive documents.

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Document Request No.	13	14	15
D. Reply	<p>The Respondent notes that the Claimant has undertaken to produce all existing documents responsive to this request. However, the Respondent notes that the Claimant has not produced any responsive documents reflecting or describing the distribution and occupation by employees of GCG’s Toronto office between October 2017 and 2 July 2018. The Respondent reserves the right to review the documents purportedly produced by the Claimant in response to this request and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>	<p>For the reasons set out in Request No. 1, the Respondent rejects the Claimant’s attempt to limit the scope of the Respondent’s requests to Gran Colombia Gold Corp. only. The Respondent must produce all documents responsive to this request in possession, custody or control its affiliates, subsidiaries, branches, employees, consultants, agents, directors or shareholders.</p> <p>With regard to the Claimant’s representation that it does not track the number of hours worked per week for each of the employees, the Respondent notes that Michael Davies’s, Andrea Moens’s, John Chou’s and Mike Cashin’s employment agreements include an obligation to “<i>devote substantial time and attention to the business and affairs of the corporation and its subsidiaries</i>”. Furthermore, the offers of employment of Mike Cashin and Sonia Motanez provide for possibility of bonuses on the basis of outstanding individual performance. Similarly, Mauricio Ostos’s and Nancy Rodriguez’s offers mention that GCG will conduct performance reviews as part of their employment at the company. In light of the above, it is reasonable to assume that GCG has sophisticated systems in place</p>	<p>The Respondent notes that GCG has produced two Excel files purporting to be GCG’s Schedule of Employee Costs in native format. Both files have been stripped of their metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of Employee Costs in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, the Respondent notes that the Claimant has produced, among others, several documents appearing to be GCG’s internal accounting documents. Specifically, GCG has produced Journal Entries from May and June 2018 setting out employee costs payments. However, these documents do not specify when and to whom these payments were made. As a result, these documents do not allow the Respondent to verify the contents of the entries included in the schedule. Therefore, the Respondent repeats its request in relation to all</p>

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		<p>to assess the performance of their employees which will likely take into consideration, among other factors, the hours spent working on the business and affairs of the company.</p> <p>Accordingly, the Respondent seeks a ruling that it is entitled to the production of the requested documents, notwithstanding the Claimant’s representation that it has no documents responsive to this request. In this regard, the Respondent reserves all of its rights, including the right to request the drawing of adverse inferences in the event that responsive documents are found to exist.</p>	<p>documents supporting all entries in May and June 2018.</p> <p>As explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>
E. Decision of the Tribunal	No Tribunal ruling requested.	The Tribunal notes the Claimant’s agreement to produce the relevant employment agreements, and its representation that GCG does not track the hours worked. All of the additional requests are denied.	The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata. No further production is required.

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Document Request No.	16	17	18
A. Documents or category of documents requested	GCG’s Schedule of PwC Advisory Fees (Exhibit C-284) in native format, together with underlying documents for all entries in May and June 2018.	GCG’s Schedule of Other Legal Expenses in 2018 (Exhibit C-340) in native format, together with underlying documents for all entries in May and June 2018.	GCG’s Schedule of Shareholder Costs (Exhibit C-338) in native format, together with underlying documents for all entries in May and June 2018.
B. Relevance and materiality:	(1) Counter-Memorial on Jurisdiction, ¶ 53; Second Witness Statement, Michael Davies, ¶ 28.	(1) Counter-Memorial on Jurisdiction, ¶ 54; Second Witness Statement, Michael Davies, ¶ 29.	(1) Counter-Memorial on Jurisdiction, ¶ 61; Second Witness Statement, Michael Davies, ¶ 27.
(1) paragraph reference to submissions	(2) The Claimant relies on a Schedule of PwC Advisory Fees in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.	(2) The Claimant relies on a Schedule of Other Legal Expenses in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.	(2) The Claimant relies on a Schedule of Shareholder Costs in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.
(2) comments	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
(3) statement concerning custody and control	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.	(3) The documents requested are, by definition, in the Claimant’s possession, custody and control and have not to date been disclosed to the Respondent.
C. Summary of objections by disputing party to	Claimant objects to this Request under Articles 9.2(b) and 9.2(e) of the IBA Rules, to the extent this Request calls for	Claimant objects to this Request under Article 9.2(b) of the IBA Rules, to the extent this Request calls for privileged	GCG has no objections to this Request and is producing responsive documents

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Document Request No.	16	17	18
production of requested documents	<p>privileged or confidential underlying documents for PwC Advisory Fees.</p> <p>Notwithstanding the above, GCG is producing the responsive documents, but redacting descriptions concerning the services performed and the advice given.</p>	<p>communications between GCG and its attorneys referenced in entries in Exhibit C-340.</p> <p>Notwithstanding the above, GCG is producing the responsive documents, but redacting descriptions concerning the services performed and the advice given.</p>	<p>(account and other sensitive information redacted).</p>
D. Reply	<p>The Respondent notes that GCG has produced an Excel file purporting to be GCG’s Schedule of PwC Advisory Fees in native format. The file has been stripped of its metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of PwC Advisory Fees in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, as explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the</p>	<p>The Respondent notes that GCG has produced an Excel file purporting to be GCG’s Schedule of Other Legal Expenses in native format. The file has been stripped of its metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of Other Legal Expenses in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, as explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the</p>	<p>The Respondent notes that GCG has produced an Excel file purporting to be GCG’s Schedule of Shareholder Costs in native format. The file has been stripped of its metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of Shareholder Costs in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, as explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the</p>

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Procedural Order No. 6 – Annex B

Document Request No.	16	17	18
	extent that the Claimant's production is defective or incomplete.	extent that the Claimant's production is defective or incomplete.	extent that the Claimant's production is defective or incomplete.
E. Decision of the Tribunal	The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.	The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.	The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.

Procedural Order No. 6 – Annex B

Document Request No.	19
A. Documents or category of documents requested	GCG's Schedule of Investor Relations Expenses (Exhibit C-339) in native format, together with underlying documents for all entries in May and June 2018.
B. Relevance and materiality: (1) paragraph reference to submissions (2) comments (3) statement concerning custody and control	<p>(1) Counter-Memorial on Jurisdiction, ¶ 62; Second Witness Statement, Michael Davies, ¶ 8.</p> <p>(2) The Claimant relies on a Schedule of Investor Relations Expenses in order to support its allegation that GCG had substantial activities in Canada. As mentioned in Document Request No. 11, this Schedule appears to be an excerpt from an internal accounting system. It has been presented solely in PDF format and the Respondent is at present unable to verify the contents of the entries included in it.</p> <p>(3) The documents requested are, by definition, in the Claimant's possession, custody and control and have not to date been disclosed to the Respondent.</p>
C. Summary of objections by disputing party to	GCG has no objections to this Request and is producing responsive documents (account and other sensitive information redacted).

Procedural Order No. 6 – Annex B

Document Request No.	19
production of requested documents	
D. Reply	<p>The Respondent notes that GCG has produced an Excel file purporting to be GCG’s Schedule of Investor Relations Expenses in native format. The file has been stripped of its metadata.</p> <p>For the reasons set out in the Respondent’s response to the Claimant’s objections to Request No. 11, the Respondent repeats its request in relation to GCG’s Schedule of Investor Relations Expenses in native format, including its metadata.</p> <p>With respect to the underlying documents for all entries in May and June 2018, as explained with regard to Request No. 11, the Respondent reserves the right to review the documents purportedly produced by the Claimant and to revert to the Claimant, or if necessary to the Arbitral Tribunal, to the extent that the Claimant’s production is defective or incomplete.</p>
E. Decision of the Tribunal	<p>The Tribunal notes that the Claimant has produced certain responsive documents, but in a form that does not include the</p>

Procedural Order No. 6 – Annex B

Document Request No.	19
	applicable metadata. The Claimant shall produce, to the extent it exists, the applicable native file document(s) in a form that includes the metadata.