

International Centre for Settlement of Investment Disputes - ICSID

ICSID No. ARB/20/46

LUPAKA GOLD CORP.
Claimant

v.

REPUBLIC OF PERU
Respondent

Mining Law Legal Expert Report
of
Miyanou Dufour von Gordon

January 24, 2023

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Table of Definitions

ANA	National Water Authority
Buenaventura	Compañía de Minas Buenaventura S.A.A.
Parán RC	Parán rural community
CIRA	Certificate of Non-Existence of Archaeological Remains
Claimant	Lupaka Gold Corp.
Claimant's Memorial	Claimant's Memorial submitted on October 1, 2021.
Claimant's Reply	Claimant's Reply submitted on September 23, 2022.
CQA	Certificate of quality assurance
CSJE	Consorcio Metalúrgico San Juan Evangelista S.A.C.
DEAR	Directorate of Environmental Assessment for Natural and Productive Resources Projects
DFAI	Directorate of Enforcement and Incentive Application
DGAAM	General Directorate for Mining Environmental Affairs
DGM	General Directorate of Mining
EIAd	Detailed Environmental Impact Assessment
Environmental Certification	Approving resolution issued as a result of the environmental impact assessment procedure. It contains the Peruvian State's declaration on the environmental viability of a project in its entirety.
Environmental Regulation	Environmental Protection and Management Regulations for Mining, Beneficiation, General Labor, Transportation and Storage Activities, approved by Supreme Decree 40-2014-EM.
IGAFOM	Environmental Management Instrument for the Formalization of Small-scale and Artisanal Mining Activities
IMC	Invicta Mining Corp. S.A.C.
INGEMMET	Geological, Mining and Metallurgical Institute
Invicta Project	Mining project owned by IMC, located in the districts of Leoncio Prado and Paccho, province of Huaura, region of Lima.
ITM	Mining Technical Report
ITS	Technical Supporting Report
LMP	Maximum Permissible Limits
Lupaka	Lupaka Gold Corp.

Mallay Draft	Draft of the Mallay Mining Unit Transfer Agreement between Compañía de Minas Buenaventura S.A.A. and Invicta Mining Corp. S.A.C. This document appears as Exhibit C-238 of the current arbitration file.
MEM	Ministry of Energy and Mines
Mining Regulations	Mining Procedures Regulations, approved by Supreme Decree 18-92-EM.
MTD	Detailed Technical Report
OEFA	Environmental Assessment and Control Agency
OSINERGMIN	Energy and Mining Investment Supervisory Agency
PAD	Environmental Adjustment Plan
Parties	Lupaka Gold Corp. and the Republic of Peru
PAS	Administrative sanctioning procedure
Permit	Permit, license, authorization, registration, certificate, concession or in general any administrative act issued by a governmental entity for the purpose of allowing the execution of regulated activities.
REINFOR	Mining Formalization Integral Registry
RUC	Single Taxpayer Registry
SENACE	National Environmental Certification Service for Sustainable Investments
SIDEMCAT	Mining Law and Cadaster System of the Geological, Mining and Metallurgical Institute
SUCAMEC	National Superintendence for the Control of Security Services, Arms, Ammunition and Explosives for Civilian Use.
SUNARP	National Superintendency of Public Registries
TMD	Metric tons per day
TMH	Wet metric tons
TUPA	Single Text of Administrative Procedures

Mining Law Legal Expert Report

I. Introduction

1. The Republic of Peru, through its legal advisors, Arnold & Porter, has requested my legal opinion as an expert in Peruvian mining law on certain mining aspects related to ICSID Case No. ARB/20/46 initiated by Lupaka against the Republic of Peru.

A. Scope of the Legal Report

2. This legal report is divided in two sections. The first section analyses the regulatory aspects of the Permits required by Invicta Mining Corp. S.A.C. (IMC) for the execution of mining (exploitation) and processing (beneficiation) activities (directly or indirectly). This analysis will include the main requirements of these Permits, as well as the timeframes for their approval.
3. The second section will present the analysis of the social license during the execution of the Invicta Project. This analysis will include the definition of the scope of the social license and its application to the specific case.

B. Expert qualifications and statements

4. I am a registered attorney, partner at Hernández & Cía. law firm. I have more than 16 years of experience in regulatory, social and environmental legal matters in the mining sector, among others.
5. I have participated in the preparation of strategies for obtaining Permits for the development of various mining projects in Peru, as well as in processing and obtaining of these Permits.
6. Likewise, I have been recognized in the "Mining" and "Environment" categories in important ranking agencies such as Chambers & Partners and Legal 500. As Exhibit MD-0001, I attach my *curriculum vitae* in which you will find more details about my professional experience relevant to this report.

C. Main conclusions of the expert report

7. Based on the documentation reviewed and the analysis of the regulatory aspects, my conclusion as an independent expert is that the mining activities of the Invicta Project could not have started before **December 2019**. Even from a conservative point of view, I consider it most likely that such activities could not have started before **July 2020**. This conclusion is based on the following:
- IMC was required to modify its **Environmental Certification** to include an alternative management system for the water from the mine interior (with the corresponding reuse of groundwater), as well as new surface water catchment points.¹
 - IMC had to obtain the **exploitation Permit**, for which it previously had to obtain the Environmental Certification (mentioned in the previous point), satisfactorily pass the inspection of its facilities by the General Directorate of Mining (DGM), and provide the financial guarantee of the mine closure plan.²
 - IMC had to obtain **water use Permits** to be able to use (reuse) water coming from the mine interior, as well as from new surface water catchment points.³
 - IMC was required to obtain the applicable **Permits** for its **hydrocarbon storage** facilities.⁴
8. To start the mining (exploitation) activities at the Invicta Project, IMC had to comply with all of the above conditions. This involved the preparation of the technical dossiers for each case, the construction of facilities (in the case of the alternative management system for the water from the mine interior, its prior dismantling) and the processing of administrative procedures before various regulatory authorities. Apart from the complexity of these procedures, the execution of these tasks would have required time and economic resources, as explained in this report.

¹ Paragraphs 104, and 158 (and following, respectively) of this report.

² Paragraphs 126 and 158 (and following, respectively) of this report.

³ Paragraph 138 and 158 (and following, respectively) of this report.

⁴ Paragraphs 143 and 158 (and following, respectively) of this report.

9. On the other hand, as is evident from the documents reviewed, IMC would have planned to *beneficiate* (i.e., process) its ore through two main alternatives: (a) through the Mally processing plant (owned by Buenaventura), or (b) through third party processing plants. In relation to these alternatives my conclusion as an independent expert is as follows:

a. In case of executing the first alternative (i.e., Mally processing plant), in an optimistic scenario the processing of ore from the Invicta Project could not have started before **January 2020**. I even consider that a more likely scenario would be that the processing activities under this alternative with ore from the Invicta Project would start in **July 2020**. This conclusion is based on the following⁵ :

- IMC had to conclude obtaining the Permits required for the mining (exploitation) of the Invicta Project.
- IMC and Buenaventura were required to execute the Mally Draft and comply with the closing date conditions set forth therein.
- IMC was required to modify the Invicta Project Environmental Certification to include the access road from the Invicta Project to the Mally processing plant.
- IMC or Buenaventura (whichever was the holder at the time) was required to modify the Environmental Certification for the Mally project to include the modifications to the processing system.
- IMC or Buenaventura (whichever was the holder at the time) was required to modify the operating Permit of the Mally processing plant of the Mally project to include modifications to the processing system and, depending on the case, to include the processing of third-party ore.
- IMC had to manage the transfer of the Mally project Permits (change of ownership of Permits), as well as manage the pending Permits (non-transferable Permits).

b. In case of executing the second alternative (i.e., use of third party processing plants other than Buenaventura), the essential tasks that IMC

⁵ Paragraphs 215 and subsequent paragraphs of this report.

should have executed to be able to process its ore in these third party processing plants would be: (i) to obtain the Permits required for the mining (exploitation) of the Invicta Project; and (ii) to enter into a service contract (ore processing)⁶ with titleholder of a processing plant that is legally authorized to carry out processing (beneficiation) activities. In this regard, I must point out that in 2018 the San Juan Evangelista and Altagracia processing plants (plants considered by IMC) had limitations in terms of compliance with this last requirement, because they did not have the Permits to carry out processing activities.⁷ Regarding Huancapeti II, it is not clear if this last requirement was met since it is verified that it had a beneficiation concession granted in 2012 but at the same time they belong to the mining formalization regime with a suspended status.

10. On the other hand, from the review of the documents of this arbitration, I can assert that IMC had several actions that negatively impacted the relationship with the rural communities in the area of direct influence of the Invicta Project, affecting the obtainment and preservation of the social license to operate the project.
11. The social license to operate is a widely recognized concept in the extractive industries and especially in the mining sector, as it is one of the main risks that mining companies must evaluate and consider when planning their projects and operations. As I explain in more detail in this report, the social license in the mining sector is an intangible (unwritten) agreement between the mining company and stakeholders, which allows the initiation and continuation of mining activities.
12. While it is true that the concept of social license is not expressly regulated in Peruvian regulation, it can be noted that its nature is integrated and reflected (directly and indirectly) in tangible legal obligations, such as the citizen participation activities, the signing of surface land access agreements, and compliance with the community relations plan (or social management plan). Social license is a broader concept and addresses acceptance, legitimacy and trust among the stakeholders involved in a project.

⁶ Other than contracts entered into for metallurgical testing.

⁷ Paragraphs 246 and subsequent paragraphs of this report.

13. From the review of the facts of this case, my conclusion as an independent expert is that IMC held several attitudes that the doctrine defines as common errors that impact the social license.⁸ Among them are:
- Selective engagement, as IMC favored communities that had favorable attitudes towards the Invicta Project.
 - Affectation of its credibility, since IMC did not comply with i) social commitments assumed (for example, the payment of amounts of money owed on the agreed dates), and ii) legal environmental and social obligations, as verified by the competent authorities (OEFA and ANA).
 - Amplification of the rivalry between the communities in the area of influence of the Invicta Project, since it had a differentiated treatment based on the circumstances and moments of the Invicta Project.
 - Legalistic position, ignoring the concept of social license, limiting its actions to the signing of agreements with communities to access to surface property.
14. In addition, it can be verified that IMC ignored the importance of the territorial conflict of delimitation of communal lands that existed between the three communities in the area of direct influence of the Invicta Project. It should be noted that the boundaries dispute was identified by the company since the EIAd approval in 2009. This caused the situation to deteriorate and worsen over time.
15. Regarding the above (discussion of territorial limits), I must comment that it is a common practice in the mining industry for the mining company to reach agreements with all parties involved (i.e., the different communities) when it finds itself in this type of situation. This is sometimes done for legal reasons (for example, because it is not certain who has the property rights), but in most cases with the purpose of avoiding future contingencies to the project.
16. Finally, it should be noted that the information reviewed shows that the Parán RC had expectations related to the execution of the Invicta Project, based on IMC's own actions and statements. These expectations were based on i) the original design of the Invicta Project; ii) the location of the access road to the Invicta Project

⁸ Paragraphs 257 and subsequent paragraphs of this report.

approved in the Environmental Certification that passed through the Parán RC property; iii) the discussion that existed about the limits of the communal territories, which in turn generated the discussion about the location of the mining components of the Invicta Project; iv) the fact that the Parán RC was part of the area of direct social influence; and v) that part of the Parán RC overlapped with the area of environmental influence⁹, i.e. the area where direct and/or indirect environmental impacts were expected as a consequence of the Invicta Project.

17. As I explain in this report, the management of community expectations is a relevant element for the concept of the social license. Therefore, not addressing this issue in an adequate manner directly impacts the execution of a project, as in the present case.
18. In my opinion as an independent expert, the actions that impacted the management of expectations of the Parán RC are related to i) non-compliance with social commitments; ii) non-compliance with legal obligations identified by various authorities; iii) modification of the access road to the Invicta Project, without apparent participation of the communities (and apparently without having been subject to an environmental impact assessment); and iv) failure to determine the surface rights of the communities jointly with them, through a field study and/or failure to reach an agreement with all the communities that were located in the area of direct influence and that had an apparent right over the land required by IMC.

II. Regulatory analysis of the Invicta Project

19. In order to carry out mining (exploitation) and processing (beneficiation) activities in Peru, it is necessary to comply with various regulatory requirements. Some of these requirements are in the form of permits, licenses, authorizations, registrations, certificates or concessions that mining companies must obtain, generally in advance, in order to carry out their activities. In this report, all of these requirements will be referred to as Permits, or individually as Permit.
20. This section (II) is divided into two parts. The first part (II.A) contains a description of the main Permits required by Peruvian regulation in order

⁹ Exhibit MD-0004, article 4 of Supreme Decree 40-2014-EM.

to execute the mining activities described in the previous paragraph.¹⁰ In the second part (II.B), I analyze whether the Invicta Project met all the Permits as of October 2018.¹¹ As part of this, I will identify which Permits IMC needed to obtain or modify in order to be able to start mining (exploitation) and processing (beneficiation) activities, and I will estimate the times required to do so.

A. Main Permits for the execution of mining (exploitation) and processing (beneficiation) activities in Peru

21. The description of Permits I present below is based on the regulations that were in effect as of October 2018. Considering such regulation will allow the analysis in section II.B to properly reflect the status of the Invicta Project Permits and the tasks that were pending in order to be able to start mining (exploitation) and processing (beneficiation) activities (i.e., the Permits pending obtaining/modification).
22. In this description I have included the legal timeframe and the real timeframe required to obtain or modify the Permits relevant to this report. The legal timeframe is the term that the regulation establishes for the procedure of the Permit (i.e., from the application to the approval). The real timeframe refers to the term that in practice (i.e., on average in reality) it takes to carry out this type of procedure.
23. In the analysis presented in the second part of this section, I will use only the real timeframe. This is a common practice in the mining industry, as it is a standard for both mining companies (and their investors) and the legal and technical consultants involved in permitting planning. In fact, mining companies prepare their project schedules based on real timeframes. The use of these timeframes, which is common practice, allows the estimation of key dates (milestones) of the project to be more accurate and provides predictability. The real timeframes for obtaining the Permits relevant to this report have been calculated based on the review of administrative procedures for similar Permits obtained by various companies between 2017 and 2019.¹² The result of this review is detailed in the Exhibit MD-0002.

¹⁰ This description is based on the regulations that were in effect in October 2018.

¹¹ Date of the blockage of the access road to the project according to the Claimant's Reply, paragraph 289.

¹² Exceptionally, in the case of the water availability Permit I have considered the period 2017 - 2021. This is since in the analyzed period I only identified a few Permits with a fairly extended term.

24. Additionally, in each case I have specified whether the procedure for obtaining the Permit is subject to positive or negative administrative silence. In the first case (i.e. positive administrative silence) the regulation permits a determination that the request has been approved after the corresponding legal timeframe has elapsed.¹³ However, it should be noted that this approval does not affect the obligation of the governmental entities to carry out a subsequent audit of the documents submitted within the framework of the procedure.¹⁴ In the second case (i.e., negative administrative silence), once the legal timeframe has elapsed, the applicant may determine that the procedure has concluded in a negative manner and is therefore entitled to file the administrative remedies it deems appropriate.¹⁵ It is important to point out that the filing of these administrative appeals and the evaluation and resolution of these are subject to time limits.
25. The foregoing, which is a power and right of the applicant, does not imply that the evaluation of the procedure by the authority stops. The work of said authority will continue until the issuance of a pronouncement, unless the procedure is challenged through the application of the negative administrative silence.

1. *Environmental Certification*

26. According to current regulation, in order to carry out mining (exploitation) and processing (beneficiation) activities, it is necessary to obtain prior approval of a Detailed Environmental Impact Assessment (EIAd).¹⁶ This approval, which implies a pronouncement by the Peruvian State on the environmental viability of the proposed project, constitutes the Environmental Certification.¹⁷
27. The EIAd must be prepared at the feasibility level¹⁸ and must comply with the requirements of the Environmental Regulation, as well as the terms of reference approved by the authority for such purposes.¹⁹ Thus, the EIAd must include the

¹³ Exhibit MD-0003, article 34.1 of Supreme Decree 6-2017-JUS.

¹⁴ Exhibit MD-0003, article 35.2 of Supreme Decree 6-2017-JUS.

¹⁵ Exhibit MD-0003, article 197 of Supreme Decree 6-2017-JUS.

¹⁶ Exhibit MD-0004, article 24 of Supreme Decree 40-2014-EM.

¹⁷ Exhibit MD-0005, articles 15 and 16 of Supreme Decree 19-2009-MINAM.

¹⁸ Exhibit MD-0004, article 30 of Supreme Decree 40-2014-EM.

¹⁹ Exhibit MD-0004, article 27 of Supreme Decree 40-2014-EM and Exhibit MD-0006, Ministerial Resolution 116-2015-MEM/DM by which the Ministry of Energy and Mines approved Common Terms of Reference for the preparation of Detailed and Semi-Detailed Environmental Impact Assessments for Exploitation, Beneficiation, General Labor, Mineral Transportation and Storage Activities and others, in compliance with D.S. 040-2014-EM. Additionally, (Exhibit MD-0004) article 28 of Supreme Decree 40-2014-EM provides for certain cases in which, due to the location or characteristics of the project, it may be necessary to approve specific terms of reference. For example, when the project is located in a natural protected area or its buffer zone, in areas declared in environmental emergency, in primary forests, glaciers, areas with presence of thermal waters, among others; or when it involves the draining of lakes or lagoons, exploitation of radioactive minerals, resettlement, displacement or involuntary relocation of a population, among others.

baseline characteristics;²⁰ the project description;²¹ the identification, characterization and evaluation of the possible environmental and socioeconomic impacts;²² and an environmental management strategy,²³ among others.

28. Likewise, the Environmental Regulation requires the implementation of mechanisms for citizen participation before and during the preparation of the dossier of the EIAd, and during its evaluation by the authority.²⁴ It is for these purposes that the regulation requires that the applicant present a citizen participation plan, which must be approved by the environmental authority.²⁵
29. Depending on the location and characteristics of the project, the EIAd evaluation procedure requires the favorable opinion of other entities in addition to the environmental authority.²⁶ For example, the opinion of the National Water Authority (ANA) will be required when the project contemplates impacts related to water resources. Likewise, the opinion of the National Service of Natural Protected Areas (SERNANP) will be required when the proposed project is located within an area of this kind or its buffer zones.²⁷
30. The legal timeframe for the approval of an EIAd is one hundred and fifty-six (156) working days. This procedure is subject to negative administrative silence.²⁸
31. Once the EIAd has been approved, the project owner is obliged to comply with all the commitments assumed in this instrument.²⁹ If it becomes necessary to modify the characteristics of the project (i.e., its description, environmental management measures, social commitments, among others) it will be necessary to modify the EIAd (i.e., modify the Environmental Certification).³⁰

²⁰ Exhibit MD-0004, article 40 of Supreme Decree 40-2014-EM.

²¹ Exhibit MD-0004, article 41 of Supreme Decree 40-2014-EM.

²² Exhibit MD-0004, article 42 of Supreme Decree 40-2014-EM.

²³ Exhibit MD-0004, article 46 of Supreme Decree 40-2014-EM. It should be noted that this strategy is made up of a series of plans related to environmental management, environmental surveillance and monitoring, contingency actions, compensation, closure (at a conceptual level) and social management, among other plans that, due to the nature or location of the project, may be required.

²⁴ The procedure for citizen participation in the mining subsector must comply with the provisions of Exhibit MD-0007, Supreme Decree 028-2008-EM; Exhibit MD-0008, Ministerial Resolution 304-2008-MEM-DM and Exhibit MD-0009, Supreme Decree 2-2009-MINAM.

²⁵ Exhibit MD-0004, articles 29, 59, 60, 106, 117, 119 and others of Supreme Decree 40-2014-EM.

²⁶ Exhibit MD-0004, article 121 of Supreme Decree 40-2014-EM.

²⁷ Exhibit MD-0004, article 121 of Supreme Decree 40-2014-EM.

²⁸ Exhibit MD-0010, procedure 5 of the SENACE's TUPA approved by Ministerial Resolution 154-2017-MINAM. It should be noted that no EIAd (new) that have been approved between 2017 and 2019 have been identified, which is why it has not been possible to estimate the real timeframe of this procedure. However, I consider that this does not represent a limitation for the objectives of this report. As I explain below, the Invicta Project did have an approved EIAd. In that case it was not necessary to obtain a new EIAd but to modify the approved EIAd. I have identified EIAd modification procedures in the period 2017-2019. It is on this basis that I have calculated the real timeframe of the modification procedures.

²⁹ Exhibit MD-0004, article 18 of Supreme Decree 40-2014-EM.

³⁰ Exhibit MD-0004, article 130 and following of Supreme Decree 40-2014-EM.

32. The regulation establishes different procedural avenues, with differing levels of requirements and complexity, as well as timeframes, to achieve the modification of the EIAd. To determine the avenue to follow, the nature and magnitude of the proposed modification must be considered. Thus, the project owner may resort to the following procedures:³¹

(i) Technical Supporting Report (ITS): Exceptionally applicable when the proposed modifications or expansions are within the limits of the project area established in the Environmental Certification and generate a non-significant negative environmental impact or risk. The Environmental Regulation³² provides an enunciative list of cases in which it is possible to resort to this procedure. The legal timeframe contemplated for this procedure is fifteen (15) working days.³³ However, in practice (i.e., real timeframe) the evaluation may take an average of thirty-seven (37) working days.³⁴

(ii) Ordinary modification of the EIAd: Applicable to modifications that contemplate the generation of new or greater significant negative environmental or social impacts. This mechanism is used when the scope of the modification exceeds the limits regulated for the ITS (e.g., modification of areas of influence, impact to new water sources, among others).³⁵ The legal timeframe for the procedure is one hundred and forty-three (143) working days.³⁶ However, in practice (i.e., real timeframe) the evaluation can take an average of 7 months.³⁷

33. The Environmental Regulation is clear in stating that the Environmental Certification (i.e. the EIAd or its modifications) must be obtained prior to the start of the proposed activity (original or modification).³⁸ The Peruvian regulatory framework does not allow the possibility of "building (or operating) first, and obtaining the Environmental Certification later". The environmental authority is obliged to reject the request for Environmental Certification in those cases in which it is verified that the realization of

³¹ Article 133-A of the Environmental Regulation (Exhibit MD-0004), incorporated in March 2020 by Supreme Decree 5-2020-EM (reflected in Exhibit MD-0004), approved a series of cases in which it was sufficient to submit a prior communication in order to proceed with its execution. This third way of modification (i.e. the prior communication) has not been included in this report because it was created at a later time, not relevant for the analysis of the Invicta Project.

³² Exhibit MD-0004, articles 131 and 132 of Supreme Decree 40-2014-EM and Exhibit MD-0011, Ministerial Resolution 120-2014-MEM-DM, respectively.

³³ Exhibit MD-0012, article 4 of Supreme Decree 54-2013-PCM.

³⁴ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

³⁵ Exhibit MD-0004, articles 131 and 132 of Supreme Decree 40-2014-EM and Exhibit MD-0011, Ministerial Resolution 120-2014-MEM-DM, respectively.

³⁶ Exhibit MD-0010, procedure 6 of the SENACE's TUPA approved by Ministerial Resolution 154-2017-MINAM.

³⁷ Exhibit MD-0002, This timeframe does not include the time required for the preparation of the dossier or for the execution of the mechanisms for citizen participation.

³⁸ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

the activity or the partial or total construction of any component described in the EIAd or modification proposed for evaluation was carried out.³⁹ In such cases, the environmental authority must also communicate this situation to the enforcement entities so that they proceed in accordance with their authority.⁴⁰

34. In 2014 and 2019, the Peruvian State created two exceptional and temporary instruments so that mining projects can adapt the components that had been implemented without previously having an Environmental Certification. Thus, the Detailed Technical Report (MTD)⁴¹ and the Environmental Adjustment Plan (PAD) were created.⁴² Only mining companies with a valid Environmental Certification could use these adaptation instruments.
35. To do so, such companies had to declare which components had been constructed without the Environmental Certification and then submit a request for approval (of the MTD or the PAD respectively). In the case of the MTD, such declaration had to be made within 60 working days after the entry into force of the Environmental Regulation (i.e. from 12 November 2014.). In the case of the PAD, such declaration had to be made within 30 working days from the entry into force of the regulation creating this instrument (i.e., from 29 May 2019).
36. Except for these two temporary exceptions, the Environmental Regulation does not allow the construction or operation of components of mining projects prior to obtaining the Environmental Certification (i.e., the EIAd or its modification through the ordinary way or the ITS).

2. *Mine closure plan*

37. The mine closure plan is the instrument that contemplates the measures to be applied by the project owner to rehabilitate the areas used in the mining activity.⁴³ This plan must be submitted to the authority for approval

³⁹ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

⁴⁰ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

⁴¹ Exhibit MD-0004, fourth Final Complementary Provision (a) of Supreme Decree 40-2014-EM.

⁴² Exhibit MD-0013, article 71 and subsequent articles of Supreme Decree 33-2005-EM, incorporated by Supreme Decree 13-2019-EM.

⁴³ Exhibit MD-0013, article 7.12 of Supreme Decree 33-2005-EM.

within one year from the date of the approval of the EIAd.⁴⁴ The legal timeframe for approval of this instrument is 160 working days.⁴⁵

38. The mine closure plan must include a plan for the constitution of financial guarantees. These guarantees must be constituted in favor of the mining authority and may be executed by the latter in case the project owner fails to comply with the obligations derived from this instrument.⁴⁶
39. The approval of the mine closure plan and the constitution of the guarantee are requirements to obtain the Permits for mining (exploitation) and processing (beneficiation) activities.⁴⁷ Both Permits will be explained in more detail below.
40. The mine closure plan must be reviewed and updated periodically by the project owner. The first update must be done three (03) years after its approval. Subsequent updates must be made every five (05) years.⁴⁸
41. The mine closure plan must be modified when there is a substantive change in the production process (or when the environmental authority so requires).⁴⁹ The legal timeframe for the process of modifying the mine closure plan is forty (40) working days.⁵⁰

3. *Authorization for the start/restart of development, preparation and mining (exploitation) activities*

42. The description I present below on the scope and procedure of this Permit is based on the regulation applicable before November 2017.⁵¹ This is because, in December 2014 IMC had already obtained the Permit corresponding to this first stage (with Resolution 566-2014-MEM-DGM).⁵² Therefore,

⁴⁴ Exhibit MD-0014, article 7 of Law 28090 and Exhibit MD-0013, article 8 of Supreme Decree 8-2003-EM.

⁴⁵ Exhibit MD-0015, procedure 73 of the MEM's TUPA, approved by Ministerial Resolution 522-2016-MEM-DM. It should be noted that no (new) mine closure plans have been identified that have been approved between 2017 and 2019, which is why it has not been possible to estimate the real timeframe of this procedure. However, I consider that this does not represent a limitation for the objectives of this report.

⁴⁶ Exhibit MD-0014, articles 5, 6 and 11 of Law 28090.

⁴⁷ Exhibit MD-0013, article 12 of Supreme Decree 33-2003-EM.

⁴⁸ Exhibit MD-0013, article 20.1 of Supreme Decree 33-2005-EM.

⁴⁹ Exhibit MD-0014, article 9 of Law 28090.

⁵⁰ Exhibit MD-0015, procedure 74 of the MEM's TUPA, approved by Ministerial Resolution 522-2016-MEM-DM.

⁵¹ With the issuance of Supreme Decree 37-2017-EM (Exhibit MD-0016) (in force since November 30, 2017), the procedure became a single stage called "authorization of exploration activities".

⁵² Exhibit C-0009, Report 127-2014-MEM-DGM-DTM-DTM/PM, p.10.

IMC was required to complete the second stage of this Permit in order to start mining activities.

43. Prior to November 2017, this Permit contemplated 2 stages:⁵³ i) approval of the mining plan and authorization of construction (development and preparation) activities⁵⁴; and ii) authorization to start mining (exploitation) activities.⁵⁵ Each stage has requirements established in the law.
44. The first stage approved the mining plan, as well as the start of construction of the facilities required for mining. The dossier to request the approval of this first stage had to be accompanied by (i) the Environmental Certification; (ii) technical information of the project; (iii) documents proving that the project owner has surface rights in the area of interest; and (iv) the applicable archaeological Permits (i.e. the Certificate of Non-existence of Archaeological Remains (CIRA) or the archaeological monitoring plan).⁵⁶
45. Pursuant to regulations, the process of the second stage began after the conclusion of the construction (development and preparation) activities of the mine. At that time, the project owner had to request the mining authority to inspect the activities and works executed in order to verify that they complied with the parameters considered in the approval granted in the first stage.
46. The dossier for this request had to be accompanied by (i) an environmental monitoring, (ii) the final compliance report of mining works, facilities and project components, and (iii) the mine closure plan and the guarantee, or failing that, the document evidencing the initiation of the procedure for the approval of the mine closure plan and a provisional guarantee; and (iv) any other information required by the General Directorate of Mining (DGM).⁵⁷
47. This inspection was to be scheduled within 15 working days following the filing of the request (i.e., legal deadline), provided that complete documentation was attached. However, in practice, this type of inspection was

⁵³ Exhibit MD-0017, article 75 of Supreme Decree 18-92-EM, prior to the modification of this regulation produced by Supreme Decree 37-2017-EM.

⁵⁴ According to Article 8 of Supreme Decree 14-92-EM (Exhibit MD-0018), "development" is the operation carried out to make possible the mining (exploitation) of the mineral contained in a deposit.

⁵⁵ According to Article 8 of Supreme Decree 14-92-EM (Exhibit MD-0018), "exploitation" (mining) is the activity of extracting the minerals contained in a deposit.

⁵⁶ Exhibit MD-0017, article 75 of Supreme Decree 18-92-EM, prior to the modification of this regulation produced by Supreme Decree 37-2017-EM.

⁵⁷ Exhibit MD-0019, article 6 of Supreme Decree 1-2015-EM and Exhibit MD-013, article 12 of Supreme Decree 33-2003-EM.

programmed within approximately 24 calendar days (i.e., real timeframe) following the request with complete documentation.⁵⁸ If the inspection was concluded satisfactorily, the authority had a legal timeframe of 10 working days to authorize the start of mining (exploitation) activities. However, in practice this authorization could be issued within 40 calendar days following the inspection.⁵⁹

48. In case of variations to the project approved in the authorization of mining (exploitation) activities, depending on the nature and scope of such modifications, the project owner must modify its Permit through one of the following ways:

- (i) Ordinary modification: This modification, which involves an administrative procedure, is necessary when there are changes in the mining method (from surface to underground and vice versa); when the pit limits are extended, or for the construction of new deposits (of waste rock, unsuitable material, etc.) or their expansion. For the processing of this modification, requirements very similar to those of the original authorization must be presented.⁶⁰ The legal timeframe for this procedure is thirty (30) working days subject to negative administrative silence.⁶¹
- (ii) Mining Technical Report (ITM): The project owner may only apply this option in cases where the proposed modifications have been environmentally approved by means of an ITS and only in the case of (i) modifications outside the area of the approved mining plan; and (ii) modifications of the height and/or extension not greater than or equal to 20% of the waste dump and/or pit. This procedure is simpler and faster than an ordinary modification. In fact, the regulations provide a legal timeframe of fifteen (15) working days for this procedure, which is subject to positive administrative silence.⁶²
- (iii) Communication: Exceptionally, this process is applicable when the variations of the approved project qualify in any of the scenarios provided in Ministerial Resolution 501-2017-MEM-DM.⁶³ In order to apply this process, the variations must be approved in the Environmental Certification (through an ITS or modification of EIAd, among others), and must have the

⁵⁸ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

⁵⁹ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

⁶⁰ Exhibit MD-0017, article 76.2 of Supreme Decree 18-92-EM.

⁶¹ Exhibit MD-0020, Ministerial Resolution 514-2017-MEM/DM.

⁶² Exhibit MD-0016, first complementary provision amending Supreme Decree 003-2016-EM.

⁶³ Exhibit MD-0021, Ministerial Resolution 501-2017-MEM-DM.

approval of the general management of the mining company. For this procedure, it is sufficient that the above circumstances are communicated to the mining authority.⁶⁴

49. In this way, the mining regulations have established different ways, with different degrees of complexity and timeframes, for modifications to the initial project to be authorized or brought to the attention of the authority.⁶⁵

4. Processing (beneficiation) activities

50. Processing (i.e., beneficiation) activities comprise "*(...) the set of physical, chemical and/or physical-chemical processes carried out to extract or concentrate the valuable parts of an aggregate of minerals and/or to purify, smelt or refine metals (...)*". This process includes mechanical preparation, metallurgy and refining activities.⁶⁶ In order to carry out these activities, mining owners must apply for and obtain a beneficiation concession (i.e., the processing Permit).
51. The procedure for this Permit involves two stages. In the first stage, the mining authority authorizes the construction of the necessary facilities for the beneficiation process. In the second stage, after a verification inspection, the mining authority authorizes the operation of such facilities.⁶⁷
52. The application for the first stage must be accompanied by technical information on the processing (beneficiation) facilities and documents proving that the applicant has surface rights of the required areas. The construction authorization (first stage) will only be issued after the mining owner proves that it also has (i) the applicable archaeological Permits (i.e., the CIRA or the archaeological monitoring plan); and (ii) the Environmental Certification.⁶⁸
53. The legal timeframe for the first stage of this permit is twenty (20) working days subject to negative administrative silence.⁶⁹
54. The second stage will start after completion of the construction of the processing (beneficiation) facilities as approved—including the recommendations made by

⁶⁴ Exhibit MD-0017, article 76.3 of Supreme Decree 18-92-EM.

⁶⁵ As a condition for this, the proposed variations must also be supported by an Environmental Certification.

⁶⁶ Exhibit MD-0018, article 17 of Supreme Decree 14-92-EM.

⁶⁷ Exhibit MD-0017, Article 35 of Supreme Decree 18-92-EM. It should be noted that currently the procedure is similar. Today there is also a stage in which construction is authorized and another stage in which operation is authorized.

⁶⁸ Exhibit MD-0017, article 37.1 of Supreme Decree 18-92-EM.

⁶⁹ Exhibit MD-0017, article 37.1 of Supreme Decree 18-92-EM.

the authority in the construction Permit.⁷⁰ To initiate the second stage the project owner must request the authority to carry out an inspection of the facilities. This request must be accompanied by: (i) the Certificate of quality assurance (CQA) of the facilities; (ii) the final construction report and *as-built* drawings; as well as (iii) any other information requested by the authority during the inspection.

55. The inspection is carried out in order to verify that the works have been executed as approved, according to the terms of reference and within a legal timeframe of fifteen (15) working days from the date it was requested.⁷¹
56. In case the inspection is satisfactory, the authority will approve the verification report and authorize the operation of the facilities (i.e., the beneficiation concession). For the issuance of this authorization, the authority will previously verify that the applicant has presented (i) the resolution granting the water use license; and (ii) the discharge authorization (when applicable).⁷²
57. Legally, within fifteen (15) working days following the conclusion of the inspection, the authority grants the beneficiation concession title and the authorization to operate (i.e., the processing Permit).⁷³
58. In the event that the scope of the authorized and executed works needs to be changed, the project owner must previously modify the authorization obtained. The procedure to be followed will depend on the characteristics of the modifications to be executed and the stage of the Permit. Thus, the mining regulation establishes the following ways to carry out these modifications:
 - (i) Ordinary modification: Applicable in those cases in which the modification involves (i) the expansion of the installed capacity and the approved area; or (ii) the expansion of the installed capacity but not the approved area; or (iii) modifications without expansion of the installed capacity or the approved area.⁷⁴ The legal timeframe for this procedure is 77 working days.⁷⁵
 - (ii) Mining Technical Report (ITM): Applicable only in those cases in which the variations have been approved through an ITS and include (i) the

⁷⁰ Exhibit MD-0017, article 38.6 of Supreme Decree 18-92-EM.

⁷¹ Exhibit MD-0017, article 38.1 of Supreme Decree 18-92-EM.

⁷² Exhibit MD-0017, article 38.7 of Supreme Decree 18-92-EM.

⁷³ Exhibit MD-0017, article 38.7 of Supreme Decree 18-92-EM.

⁷⁴ Exhibit MD-0017, article 35.4 of Supreme Decree 18-92-EM.

⁷⁵ Exhibit MD-0020, Ministerial Resolution 514-2017-MEM-DM.

variation of the installed capacity and/or technological improvements; or (ii) the implementation of additional facilities without modifying the installed capacity or the approved area.⁷⁶ The legal timeframe to resolve this procedure is fifteen (15) business days subject to positive administrative silence.⁷⁷ However, in practice (i.e. real timeframe) this procedure may take 1 month.⁷⁸

- (iii) Communication: Exceptionally, if variations to the project qualify under the scenarios approved in Ministerial Resolution 501-2017-MEM-DM (i.e. minor modifications), the same may be communicated to the authority instead of initiating an ordinary modification procedure or an ITM.⁷⁹

59. Thus, mining regulations have established different ways, with different degrees of complexity, for variations to the initial project to be authorized or brought to the attention of the authority.

5. *Water resources*

(1) Water use license

60. The water use license entitles its holder to use water for a permanent activity for a specific purpose and in a specific place.⁸⁰ In order to obtain this Permit, the applicant must previously fulfill other stages, which in turn require obtaining other Permits. These stages/Permits are presented below:⁸¹

- (i) Authorization for the execution of water availability studies: This Permit is optional for the execution of surface or groundwater studies without drilling.⁸² The legal timeframe of the procedure to obtain this Permit is fifteen (15) working days subject to positive administrative silence.⁸³ For the case of execution of water availability studies with drilling, the

⁷⁶ Exhibit MD-0019, article 4 of Supreme Decree 1-2015-EM.

⁷⁷ Exhibit MD-0020, Ministerial Resolution 514-2017-MEM-DM.

⁷⁸ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

⁷⁹ Exhibit MD-0017, article 35.5 of Supreme Decree 18-92-EM.

⁸⁰ Exhibit MD-0022, article 47 of Law 29338 and Exhibit MD-0023, article 70 of its regulations approved by Supreme Decree 1-2010-AG.

⁸¹ Exhibit MD-0023, article 79 of Supreme Decree 1-2010-AG.

⁸² Exhibit MD-0024, procedure 11 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI and Exhibit MD-0023, article 80.1 of Supreme Decree 1-2010-AG.

⁸³ Exhibit MD-0024, procedure 11 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI and Exhibit MD-0023, article 80.1 of Supreme Decree 1-2010-AG.

evaluation timeframe is thirty (30) working days and is also subject to positive administrative silence.⁸⁴

- (ii) Approval of water availability: After the execution of the studies mentioned in the previous point, the applicant must accredit the availability of the water resource. This can be done (i) through an independent procedure or (ii) as part of the approval of the Environmental Certification.⁸⁵ The legal timeframe established for the independent procedure is thirty (30) working days and is subject to negative administrative silence.⁸⁶ However, in practice (i.e., real timeframe) this procedure may take one hundred and thirty-three (133) business days.⁸⁷ If water availability is chosen to be accredited as part of the Environmental Certification, the procedure will be subject to the timeframe of such certification.
- (iii) Authorization for the execution of water catchment works:⁸⁸ The request for this Permit must be accompanied by (i) the Environmental Certification of the works, (ii) the surface rights of the area where the catchment works will be carried out and (iii) the authorization or concession for the development of the activity to which the water use will be destined, among others.⁸⁹ The legal timeframe for this stage is twenty (20) working days subject to positive administrative silence.⁹⁰ However, the real timeframe is 2 months.⁹¹
- (iv) Water use license: After having executed the water catchment works as authorized, the applicant may request the license for the use of water, for which the authority will previously carry out a technical verification in the field.⁹² The legal timeframe is fifteen (15) working days subject to negative administrative silence,⁹³ however, the real timeframe of this last stage is sixty seven (67) working days (3 months).⁹⁴

61. In case the Permit holder requires a modification to the conditions of its license (regarding water sources or authorized volume, for example), it must initiate the corresponding administrative procedures to accredit availability, modify the catchment works and the

⁸⁴ Exhibit MD-0024, procedure 12 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI and Exhibit MD-0023, article 80.2 of Supreme Decree 1-2010-AG.

⁸⁵ Exhibit MD-0023, article 81 of Supreme Decree 1-2010-AG.

⁸⁶ Exhibit MD-0024, procedure 13 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI and Exhibit MD-0023, article 80 of Supreme Decree 1-2010-AG.

⁸⁷ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

⁸⁸ Exhibit MD-0023, article 84.1 of Supreme Decree 1-2010-AG.

⁸⁹ Exhibit MD-0023, According to article 79.2 of Supreme Decree 1-2010-AG, the administrative procedures for accreditation of water availability and authorization for the execution of water development works can be accumulated.

⁹⁰ Exhibit MD-0024, procedures 14 and 15 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI and Exhibit MD-0023, article 84.1 of Supreme Decree 1-2010-AG.

⁹¹ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

⁹² Exhibit MD-0023, article 85.1 of Supreme Decree 1-2010-AG.

⁹³ Exhibit MD-0024, procedure 16 of ANA's TUPA, approved by Ministerial Resolution 620-2016-MINAGRI.

⁹⁴ Exhibit MD-0002, Permits timeframe review result - Common Permit planning timeframes.

water use license, as applicable to the specific case. For these purposes, it must follow procedures similar to those followed to obtain the initial authorization and license.

62. Additionally, applicants of water use rights are legally entitled to reuse the wastewater they generate as long as it is for the same purposes for which the water use right was granted.⁹⁵ Thus, being the holder of a water use license allows the reuse of water in other main and complementary activities for the same purpose (i.e., mining purposes) as long as the volume and flow granted is respected.

(2) Discharge authorization

63. Any discharge of wastewater into marine or inland waters requires prior authorization from ANA.⁹⁶ In order to obtain this Permit, an Environmental Certification is required.⁹⁷ This Environmental Certification must have the favorable opinion of ANA, which must include the technical and environmental evaluation of the effect of the discharge.⁹⁸ The legal timeframe for this procedure is thirty (30) working days subject to negative administrative silence.

6. *Hydrocarbons*

64. Everyone who purchase liquid fuels for their own use and who have storage facilities with a minimum capacity of 1 m³ (264,170 gallons) are qualified by Peruvian regulation as "direct consumers".⁹⁹ In order to carry out their activities, direct consumers must first register in OSINERGMIN's hydrocarbons registry.¹⁰⁰
65. To obtain this Permit (i.e., registration in the hydrocarbons registry as a direct consumer with fixed facilities¹⁰¹), the following steps are required, which are related to obtaining previous Permits:

- (i) Favorable Technical Report: This Permit is the OSINERGMIN's favorable opinion on the compliance of the proposed facilities (or their modifications) with the current hydrocarbon regulations.¹⁰² This Permit is a prerequisite to be able to construct

⁹⁵ Exhibit MD-0023, article 149.1 of Supreme Decree 1-2010-AG.

⁹⁶ Exhibit MD-0023, article 135 of Supreme Decree 1-2010-AG.

⁹⁷ Exhibit MD-0023, article 137.2 of Supreme Decree 1-2010-AG.

⁹⁸ Exhibit MD-0023, article 139.2 of Supreme Decree 1-2010-AG.

⁹⁹ Exhibit MD-0025, article 4 of Supreme Decree 45-2001-EM.

¹⁰⁰ Exhibit MD-0026, article 1 and 2 of Annex 1 of Resolution 191-2011-OS-CD.

¹⁰¹ The regulation on hydrocarbons (Exhibit MD-0026) also provides for the figure of the direct consumer with mobile facilities. This last modality is applicable when it is foreseen that the storage of hydrocarbons will be carried out temporarily during the execution of a work. Article 69a of Supreme Decree 45-2001-EM (Exhibit MD-0025) establishes that the maximum term for this Permit (for fixed installations) will be one year. This figure is not appropriate (nor common) in mining projects that are in the operation stage (i.e., exploitation and beneficiation). This is due to the fact that the hydrocarbon requirements in this type of projects are of a permanent nature.

¹⁰² Exhibit MD-0026, numeral 3.4 of article 3 of annex 1 of Resolution 191-2011-OS-CD.

such facilities.¹⁰³ The dossier to request this Permit must contain technical information on the proposed facilities.¹⁰⁴ Likewise, it will be required to have an Environmental Certification that contemplates such facilities.¹⁰⁵ The legal timeframe to process this Permit is thirty (30) working days and is subject to negative administrative silence.

- (ii) Test and compliance verification certificates: Upon completion of the construction of the hydrocarbon storage facilities, the applicant must request OSINERGMIN to carry out a verification inspection. In this inspection the tanks, piping and other equipment will be tested and it will be verified that they comply with the applicable safety regulations. The results of the inspection will be recorded in the corresponding minutes.¹⁰⁶ This request must be submitted at least ten (10) working days before the tests are to be performed.¹⁰⁷
- (iii) Registration in the hydrocarbons registry: After obtaining the certificates mentioned in the previous point, the applicant will request registration in the hydrocarbons registry as a direct consumer. The legal timeframe for the processing of this procedure is thirty (30) working days and in practice it takes a similar timeframe. Registration in the registry will allow the applicant to

¹⁰³ Exhibit MD-0026, article 3 of Annex 2 of Resolution 191-2011-OS-CD.

¹⁰⁴ Exhibit MD-0026, article 5 of Annex 2 of Resolution 191-2011-OS-CD.

¹⁰⁵ Exhibit MD-0026, annex 2.1, item D, of Resolution 191-2011-OS-CD.

¹⁰⁶ Exhibit MD-0025, article 65 of Supreme Decree 45-2001-EM.

¹⁰⁷ Exhibit MD-0027, annex 2.2.B of Resolution 245-2013-OS/CD

acquire liquid fuels and store them in its authorized facilities.

66. In case it is required to modify the characteristics of the registered facilities, the applicant must previously modify its registration. Depending on the scope of the modification, a data modification procedure or a procedure with the same steps described above must be followed.

7. *Explosives*

67. The Permit for the use of explosives will determine the quantity and type of explosives that may be acquired and used by its holder. The holder of this permit may only purchase the explosives detailed in the Permit (in the authorized quantities) within the national territory and from manufacturers with the required authorizations.¹⁰⁸
68. The validity of this Permit is determined according to the demand and need of the applicant, which must be duly supported. It is valid for a maximum of one year, and may be renewed if the need to acquire and use explosives is proven to continue.¹⁰⁹ The legal timeframe for the processing of this procedure is 7 working days and is subject to the positive administrative silence.
69. Previously, in order to prove the need for explosives it was necessary to present a mining operation certificate. This Permit had to be obtained through an administrative procedure with a legal term of 15 working days and was subject to negative administrative silence.¹¹⁰ It should be noted that today this requirement is no longer enforceable.
70. However, it will also be necessary to obtain a specific Permit to authorize the operation of the facilities for the storage of explosives (i.e., explosives magazines)¹¹¹. The legal timeframe for this Permit is 16 working days,¹¹² and in practice it is a similar term.

¹⁰⁸ Exhibit MD-0028, article 47 of Law 30299 and Exhibit MD-0029, article 205 of its regulations approved by Supreme Decree 10-2017-IN.

¹⁰⁹ Exhibit MD-0029, article 205 of Supreme Decree 10-2017-IN.

¹¹⁰ Exhibit MD-0015, procedure 50 of the MEM's TUPA approved by Ministerial Resolution 522-2016-MEM-DM.

¹¹¹ Exhibit MD-0029, articles 212, 213 and 221 of Supreme Decree 10-2017-IN.

¹¹² Exhibit MD-0030, procedure 20 of SUCAMEC's TUPA Supreme Decree 9-2018-IN. I have taken into account this rule because the IMC Permits on explosives were in force until December 2018 (or later), date when this rule was issued.

71. Finally, it should be noted that in the event that the type or quantity of explosives or the conditions of the storage facilities need to be modified, it would be necessary to modify the Permits described above.¹¹³

8. *Archaeology*

72. In terms of archaeology¹¹⁴ there are two Permits that are required, as a minimum, to the owners of investment projects. These are: (i) the CIRA, and (ii) the archaeological monitoring plan.

73. The CIRA is the document by which the Ministry of Culture certifies that there are no archaeological remains on the surface in a given area.¹¹⁵ The legal term for the issuance of the CIRA is twenty (20) working days and is subject to positive administrative silence.
¹¹⁶

74. Once the CIRA has been issued, the project owner shall execute the corresponding archaeological monitoring plan. The plan in question must be authorized by the cultural authority prior to the start of such works. The legal deadline to approve the monitoring plan is ten (10) working days subject to positive administrative silence.¹¹⁷

9. *Sequence of Permits*

75. As it has been verified, the Permits required to start mining (exploitation) and processing (beneficiation) activities interact with each other, and in some cases, obtaining a Permit may be a prerequisite for the processing/obtainment of a subsequent Permit. The following are some of the main interactions that exist between the Permits of a mining (exploitation) and processing (beneficiation) project:

- As a general rule, the Environmental Certification is required prior to the issuance of most Permits.

¹¹³ Exhibit MD-0029, article 210 of Supreme Decree 10-2017-IN.

¹¹⁴ Exhibit MD-0031, Supreme Decree 3-2014-MC.

¹¹⁵ It should be noted that, as I mentioned above, the CIRA is one of the requirements to obtain the exploitation authorization and the concession of benefit.

¹¹⁶ Exhibit MD-0012, article 2.1 of Supreme Decree 54-2013-PCM.

¹¹⁷ Exhibit MD-0012, article 2.2 of Supreme Decree 54-2013-PCM.

- Archaeological Permits are required for obtaining mining (exploitation) and processing (beneficiation) operating Permits, not for the Environmental Certification.
- The water use license and the hydrocarbon registration are issued, as a general rule, through four (04) and (03) stages respectively.

76. As Exhibit MD-0032 you will find a schedule of Permits to start mining operations (mining and processing) based on what has been explained in this section, my experience in preparing the strategy and obtaining Permits and in common practice (real timeframes).¹¹⁸

B. Inadequacy of Invicta Project Permits

1. About the Invicta Project

77. The documents submitted by Lupaka and the Republic of Peru (hereinafter the Parties) in the context of this arbitration provide insight into the scope of the Invicta Project. These documents consist mainly of (i) the Permits obtained for the execution of the Invicta Project; (ii) the contracts entered into for its financing; (iii) the draft of the contract for the acquisition or services contracts of the processing plants; and (iv) other technical documents or communications contained in the exhibits submitted by the Parties or in publicly available sources of information.

78. According to these documents, IMC had planned to start mining activities by the end of 2018, and subsequently start processing (beneficiation) activities, directly or indirectly. The mining would have a capacity of 400 TMD and would be carried out subway directly by IMC. For the processing (beneficiation) activities, two alternatives were considered: (i) the acquisition of the Mallay mining unit, which had a processing (beneficiation) plant with an installed capacity of 600 TMD; and/or (ii) the processing (beneficiation) that would be executed in processing (beneficiation) plants owned by third parties, through contracts for the provision of processing (beneficiation) services.

79. Logically, for each of these activities (mining and processing, executed by IMC or third parties), the execution of complementary activities

¹¹⁸ The timeline has been prepared based on the legislation applicable in 2018, except for the operating authorization which is using the legislation applicable to the specific case (2 stages).

related to the use of water; acquisition, use and storage of explosives; storage of fuels; use of accesses, among others, is also foreseen.

80. In the following sections I analyze the sufficiency of Permits for mining activities and the alternatives for processing (beneficiation) through the Mallay mill or through third party mills.

2. *Insufficiency of Permits for mining activities*

81. In the following, I present my analysis of the scope and status of the Permits obtained by IMC, as of October 2018,¹¹⁹ for the mining (i.e., exploitation) activities of the Invicta Project. As part of the foregoing, I will assess (i) which critical Permits IMC had obtained; (ii) which activities IMC could perform under such Permits; and (iii) which Permits IMC was required to obtain or modify in order to develop the mining operations of the Invicta Project in compliance with Peruvian regulation.
82. As part of this assessment, I will detail the sequence of tasks that IMC would have had to execute in order to meet the Invicta Project's mining objectives. In doing this exercise, I will assume as a premise a scenario in which there would have been no blockage of the mine access roads starting in October 2018. In other words, in this section I will answer the following question: when could IMC have started mining activities, assuming that the blockage of the access roads would not have occurred starting in October 2018?

a) *Environmental Certification*

(1) *The scope of Invicta Project Environmental Certification*

83. The EIAd for the Invicta Project was approved by Directorial Resolution 427-2009-MEM-AAM on 28 December 2009 (i.e., the Environmental Certification).¹²⁰ The project design originally approved in this instrument, included the execution of underground and superficial (open pit) mining activities, as well as the operation of a

¹¹⁹ We are considering this date given that it was at this time that the blockade of the access roads to the Invicta Project occurred.

¹²⁰ Exhibit C-0007, Directorial Resolution 427-2009-MEM-AAM.

processing plant and the implementation of a groundwater supply project (Huambo well), among other components.¹²¹

84. This Environmental Certification was modified by two ITS in 2015 and 2016.¹²² The first ITS, approved by Directorial Resolution 162-2015-MEM-DGAAM,¹²³ reduced the original project design, eliminating the open pit, processing plant, tailings management facilities, industrial wastewater management system from the processing plant, and other components.¹²⁴ According to this ITS, the new configuration of the Invicta Project would involve underground mining activities with a production capacity of 400 TMD, which was in line with the mining plan approved in 2014.¹²⁵
85. The second ITS, approved by Directorial Resolution 050-2016-MEM-DGAAM,¹²⁶ considered measures to improve the ventilation system inside the mine at the mining unit. This ITS also included a list of the (updated) components of the Invicta Project, i.e., the components that remained as part of the design of the mining unit, following the modifications made to the 2009 Environmental Certification.¹²⁷
86. The list referred to in the preceding paragraph is presented below:

Mine		Housing and services for workers	
1	Pithead level 3400 (Atenea vein)	15	Workers' Camp
2	Pithead level 3550	16	New Camp (Approved)
3	Explosives magazine	17	Current camp (staff)
Processing facilities		18	Recreational facilities (soccer field)
4	Septic tank 1	19	Health facilities (Topical)
5	Septic tank 2	Other infrastructure	
Waste management facilities		20	Workshop I (Maintenance and storage workshops)
6	Deposit for land clearing No. 1	21	Workshop II
7	Organic soil tank No. 1	22	Warehouse I
8	Deposit of non-hazardous waste	23	Warehouse II

¹²¹ Exhibit R-0047, EIA, page 29.

¹²² It should be noted that previously, in 2014 and 2015, IMC attempted to modify its EIA through ITS. However, on both occasions, the ITS submitted by IMC were not approved. The first disapproval occurred through Directorial Resolution 486-2014-MEM-AAM, supported by Report 998-2014-MEM-DGAAM/DNAM/DGAM/C (Exhibit MD-0033); while the second disapproval occurred through Directorial Resolution 033-2015-MEM-DGAAM, supported by Report 053-2015-MEM-DAAM/DNAM/DGAM/DGAM/C (Exhibit MD-0034).

¹²³ The resolution approving the first ITS, dated April 2015, is supported by Report 304-2015-MEM-DGAAM/DNAM/DGAM/DGAM/C. Both documents (Report and resolution) are contained in Exhibit C-0040.

¹²⁴ Exhibit C-0040, Report 304-2015-MEM-DGAAM/DNAM/DGAM/C, pages 22 and 26.

¹²⁵ The approval of the mining plan, which will be discussed in more detail below, was approved by Resolution 566-2014-MEM-DGM-DGM/V, which is supported by Report 127-2014-MEM-DGM-DGM-DTM-PM. Both documents (Report and Resolution) are contained in Exhibit C-0009.

¹²⁶ The resolution approving the second ITS, dated February 2016, is supported by Report 140-2016-MEM-DGAAM/DNAM/DGAM/DGAM/C. Both documents (report and resolution) are contained in Exhibit MD-0035 of this document.

¹²⁷ Exhibit MD-0035, Directorial Resolution 050-2016-MEM-DGAAM, page 4.

9	Solid waste landfill
Water management facilities	
10	Water supply system
11	Huambo well
12	Huambo Reservoir
13	Pumphouse
14	Mine fresh water reservoir

24	Fuel tank (fuel station)
25	Laboratory

Source: Table No. 1 of Report 140-2016-MEM-DGAAM/DNAM/DGAM/C.

87. This list is relevant as it summarizes the components of the Invicta Project that were within the scope of the Environmental Certification obtained by IMC as of that date. In case IMC wanted (or needed) to add an additional component or modify an approved component, it would have to be previously approved by the environmental authority. In order to do so, depending on the scope and magnitude of such changes, IMC would have to resort to the modification pathways explained in paragraph 32 of this report.

(2) About the third ITS - Attempted modification of Environmental Certification

88. In August 2018, IMC submitted an application to amend its Environmental Certification through a third ITS, which was rejected (not approved).¹²⁸ As part of that instrument, IMC proposed, among others, the implementation of an alternative management system for the water from the mine interior.¹²⁹ As indicated in the evaluation report of the third ITS,¹³⁰ the inclusion of this system responded to a requirement made by the DGM in Resolution 384-2015-MEM-DGM/V.^{131 132}

¹²⁸ Resolution 36-2018-SENACE-PE-DEAR, attached to this report as Exhibit MD-0036, declared the "Non Conformity" (i.e. disapproval) of the third ITS of the Invicta mining unit. This resolution is supported by Report 214-2018-SENACE-PE-DEAR, attached hereto as Exhibit C-0226.

¹²⁹ The MEM calls it an "alternative" system for managing water from the mine interior because the 2009 EIAd originally contemplated the implementation of an acid water treatment system, which was later eliminated in the first ITS by IMC (Exhibit R-0168, Report 099-2015-MEM-DGM-DTM-DTM/PM, page 3 and 4). It should be noted that the above designation was not accurate because the water treatment plant originally contemplated in the 2009 EIAd was referring to effluent from processing (beneficiation), so the water treatment plant was not intended to treat water from the mine interior. The original EIAd required IMC to submit additional hydrogeological studies. In this regard, the Invicta Project did not have an approved water treatment system for water coming from the mine interior from the beginning. Notwithstanding the above, this report refers to the system as "alternative" because this is the name given by the MEM.

¹³⁰ Exhibit C-0226, Report 00214-2018-SENACE-PE/DEAR.

¹³¹ Exhibit R-0168, Report 099-2015-MEM-DGM-DTM/PM.

¹³² It should be noted that, in addition to the mining Permit, in Report 1473-2009/MEM-AAM/JCV/PRR/WAL/CMC/VRC that supports the Directorial Resolution 427-2009-MEM-AAM that approved the Environmental Certification in 2009 (i.e. the 2009 EIAd) (Exhibit MD-0037, page 59), it was established as a commitment of IMC the following: to present an estimate of drainage through the pithead based on estimated hydrogeological parameters estimated in the field and using the numerical model that it proposes to implement in the hydrogeological study (see terms of reference of the complementary information); as well as the installation of a treatment plant and the location of the monitoring of said effluent before evacuating it to the receiving body. As it can be verified, since 2009 it was already recognized that IMC had to implement additional actions regarding the effluent from the pitheads, which was public knowledge.

89. As I detail below when analyzing the authorization for development, preparation and mining (exploitation) activities (from paragraph 116 lines below), in Resolution 384-2015-MEM-DGM/V, the DGM stipulated that, prior to the start of the mining (exploitation) activities, IMC must implement the referred system, having the corresponding Environmental Certification for this purpose.¹³³
90. During the evaluation of the third ITS, the authority¹³⁴ noted that this component had already been implemented.¹³⁵ For this reason, the authority pointed out that it was not appropriate to evaluate this component as part of the third ITS since "(...) *the ITS is not a management tool to certify constructed mining components*".¹³⁶
91. This conclusion is consistent with Article 17 of the Environmental Regulation. As indicated in paragraph 33 above, the environmental authority¹³⁷ is obliged to declare the inappropriateness of environmental assessments (or modifications) (i.e. EIAd or modifications) that include components that have already been executed (unless the owner withdraws the component, thus not forming part of the ITS).¹³⁸ Note that this rule is not exclusive to the ITS process, but applies to "environmental assessments or their modifications" in general.
92. As we have pointed out, as a general rule, the Peruvian environmental regulatory framework does not admit the possibility of "building (or operating) first and obtaining the Environmental Certification later". This is so because the Environmental Certification evaluates the environmental feasibility of the project design or modification, and determines the environmental management measures to be applied during construction (and operation), which could not be executed "retroactively" when the components have already been built.¹³⁹
93. The article under review establishes that, in addition to the declaration of inappropriateness, the environmental authority must inform the inspection authorities

¹³³ Exhibit R-0168, Report 099-2015-MEM-DGM-DTM-DTM/PM, page 4.

¹³⁴ The Directorate of Environmental Assessment for Natural and Productive Resources Projects (DEAR) of the National Environmental Certification Service for Sustainable Investments (SENACE).

¹³⁵ This anticipated implementation is also apparent from the document entitled "Mine Water Treatment System" dated June 2018 (Exhibit C-0406) despite the fact that in the submission made to SENACE prior to the ITS referral (August 2018) IMC states that the current status of this facility was "not executed".

¹³⁶ Exhibit C-0226, Observation 16 of Report 214-2018-SENACE-PE-DEAR.

¹³⁷ In this case, the DEAR of SENACE

¹³⁸ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

¹³⁹ Pursuant to paragraphs 34 to 36 of this report, the only exceptions are the MTD and the PAD. However, these figures are not being considered in this analysis because (i) in the first case there is no evidence that IMC has declared components to be regularized and presented a MTD; and (ii) in the second case, as of October 2018, the PAD figure had not yet been created. Even if IMC had subsequently applied to such figure, the evaluation procedure could have taken the same or even a longer period of time than the approval of an EIAd.

(i.e., OEFA and OSINERGMIN) so that they can take the pertinent actions within the framework of their competencies.¹⁴⁰

94. Regarding the evaluation of the third ITS, on 12 November 2018 through Directorial Resolution 36-2018-SENACE-PE/DEAR the DEAR declared "Non-Compliance".¹⁴¹ The decision to disapprove the third ITS of IMC is supported by the conclusions of Report 214-2018-SENACE-PE-DEAR, which states that IMC "(...) *has not complied with carrying out the proper lifting of the observations made (...)*".¹⁴² Note that among the components and aspects of the ITS that were observed was the aforementioned alternative water management system (not being the only thing observed).¹⁴³

(3) Corrective measures imposed by OEFA

95. In this context it is also relevant to refer to the Directorial Resolution 2203-2018-OEFA/DFAI of 27 September 2018 (date after the presentation of the third ITS).¹⁴⁴ This resolution, contains the first instance pronouncement of the administrative sanctioning procedure (PAS) initiated by the OEFA based on the non-compliances to the Environmental Regulation identified by said authority in the inspection from 10 to 12 June 2018.
96. In this PAS, OEFA declared the administrative responsibility of IMC for having exceeded the Maximum Permissible Limits (LMP)¹⁴⁵ for mining-metallurgical effluents for certain parameters in the control point MEF-01 (industrial water coming from the mine interior). Given this infraction and given that in another OEFA inspection (year 2018) the same authority had verified an exceedance of LMP at the same point,¹⁴⁶ OEFA ordered IMC to comply with a corrective measure whose main purpose was to correct the treatment of the detected effluent,

¹⁴⁰ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

¹⁴¹ Exhibit MD-0036, Directorial Resolution 36-2018-SENACE-PE-DEAR. We are assuming that this resolution has not been challenged by IMC.

¹⁴² Paragraph 3.1 of Report 214-2018-SENACE-PE-DEAR (Exhibit C-0226). Annex 01 of said report contains the table of "Observations to the *Third Sustaining Technical Report for the Invista Mining Unit*". Observations 16 and 18 of said table were related to the alternative water system discussed in this section.

¹⁴³ Exhibit 01 of Report 214-2018-SENACE-PE-DEAR contains the table of "Observations to the *Third Substantive Technical Report for the Invista Mining Unit*". The table contains a total of 49 observations, of which 23 were totally absolved, 4 were partially absolved and 22 were not totally absolved. Observations number 16 (Not absolved) and number 18 (Partially absolved) of the table were related to the alternative water system discussed in this section.

¹⁴⁴ Exhibit C-0399, Directorial Resolution 2203-2018-OEFA/DFAI and Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI.

¹⁴⁵ According to Article 3.4 of Supreme Decree 010-2010-MINAM (Exhibit MD-0038), the MPL is the measure of the concentration or degree of elements, substances or physical, chemical and biological parameters that characterize the liquid effluent from mining activities and that when exceeded cause or may cause damage to health, human welfare and the environment. It is mandatory.

¹⁴⁶ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, paragraph 43.

so that it complies with the values required in the regulation, or to present an alternative to manage the effluent .¹⁴⁷

97. The corrective measure ordered consisted of the following:

Corrective Action		
Obligation	Compliance deadline	Form of proof of compliance
<p>Accredit the treatment of mine water, in order to comply with the LMPs established for the parameters total cadmium, total copper, total zinc in the effluent with control point MEF-01, as well as monitoring these parameters daily for a period of 3 continuous days and reporting the results to OEFA, to demonstrate the efficiency of the treatment.</p> <p>Also, if applicable, it must submit the approval of the competent authority of the treatment and/or recirculation system of the water from the Level 3400 intake, as well as evidence of its implementation and correct operation, in order to prove that no effluents are generated from the Level 3400 intake or, failing that, if effluent MEF-01 is generated, prove the approval and adequate treatment of the same.</p>	<p>Within a term not to exceed forty-five (45) working days, counted from the day following the notification of this resolution.</p>	<p>Within five (5) working days from the day after the deadline to comply with the corrective measure, the owner shall submit a detailed report to the OEFA's Directorate of Enforcement and Incentives Application, detailing the actions taken to treat the effluent called MEF-01, as well as the results of the monitoring carried out, attaching visible photographs, with UTM WGS 84 coordinates, videos and others considered appropriate.</p> <p>Likewise, it must submit the entry record of the evaluation file of the treatment and/or recirculation system of the water from the 3400 level pithead, from where the FEM effluent is generated.</p>
<p>Source: Section of "Table No. 1: Corrective Measures" of Directorial Resolution 2203-2018-OEFA/DFAI.</p>		

98. As can be seen in the table above, as part of this corrective measure, OEFA required IMC to have a mine water treatment and/or recirculation system that is duly approved (i.e., with Environmental Certification). To prove compliance with this end of the measure (second paragraph of the right column of the above table), OEFA required IMC to submit the registration of the dossier for evaluation before the competent authority.

99. Requiring the registration of dossier entry to accredit compliance with corrective measures of this type (i.e., involving evaluation and approval by an administrative entity) is the common practice of the OEFA. Since corrective measures are subject to a deadline, it is reasonable that the OEFA only focuses the scope of the accreditation of compliance on those actions on which the applicant can act (i.e., the submission of the Environmental Certification dossier) and not on actions that are beyond its control (i.e. the evaluation performed by the Environmental Certification authority on the submitted file).

¹⁴⁷ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, paragraph 51.

100. The above is based on the premise that the dossier to be submitted by the applicant will be appropriate for approval by the competent environmental authority (in this case SENACE). Strictly speaking, in order to comply with this measure, it is not necessary to prove the subsequent approval of the environmental instrument submitted. However, it is clear that not achieving such approval (i.e., that the dossier is disapproved) could result in contingencies for the applicant in future inspections, besides distorting the purpose of the measure imposed, which is that the supervised components finally have an Environmental Certification.
101. In relation to this PAS, in letter 261-2022-OEFA-DFAI,¹⁴⁸ the OEFA informed that the Directorial Resolution 2203-2018-OEFA-DFAI was not challenged by IMC. In this letter the authority adds that the corrective measure ordered was declared non-compliant by the Directorial Resolution 529-2022-OEFA-DFAI, and that to date it is in the process of a new inspection by OEFA.
102. Finally, we must emphasize that, as is evident from this proceeding, IMC stated that the alternative management system for water from the mine interior had been implemented prior to the imposition of the corrective measure.¹⁴⁹

(4) On water supply for mining operations

103. As we will see in more detail when analyzing the Invicta Project's water use rights (starting with paragraph 130 below), in the file of this arbitration there are documents in which (either by IMC's statement¹⁵⁰ or by statement of any authority of the Peruvian State¹⁵¹) it is evidenced that IMC had been collecting water from the Ruraycocha stream and planned to collect water from the Tunanhuaylaba stream. These correspond to two water catchment points other than the one approved in its Environmental Certification (tubular well located in Huambo). It is also evident that it had been collecting and using water from the mine interior (water recirculation/reuse). This is relevant because this addition of water

¹⁴⁸ Exhibit MD-0039, Letter 261-2022-OEFA-DFAI.

¹⁴⁹ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, section IV.2.

¹⁵⁰ Exhibit C-0406, which contains the defense made by IMC against Resolution 1452-2018-OEFA-DFAI-SFEM that ordered the initiation of the administrative sanctioning procedure contained in file 1629-2018-OEFA-DFAI-PAS. As part of its defense, IMC attached a report dated June 2018 called "Mine Water Treatment System", in which reference is made to two industrial water catchment points for the project called Ruraycocha and Tunanhuaylaba.

¹⁵¹ Exhibit R-0093, referring to Directorial Resolution 1502-2018-ANA-AAA-CAÑETE-FORTALEZA that sanctioned IMC for using water from the Ruraycocha stream without having the corresponding water use right.

catchment and use points should have been subject to prior approval of the Environmental Certification, in addition to the sectorial Permits from ANA.

(5) Pending tasks regarding the Environmental Certification

104. Based on the information detailed above, as of October 2018 IMC was required to make a modification to its Environmental Certification to incorporate at least two components or activities not previously foreseen. These incorporations presented the following challenges:

- Alternative management system for water from the mine interior (including reuse/recirculation in operations).

In this regard, it should be recalled that IMC had already attempted to obtain the Environmental Certification of the alternative water management system through the third ITS. In said attempt, by November 2018 the DEAR of SENACE indicated, in accordance with the environmental legal framework, that it was not possible to apply the ITS figure to obtain the Environmental Certification of a component that had already been built.

In such a scenario, IMC would have to: i) dismantle the implemented system, ii) prepare a new Environmental Certification modification dossier, iii) obtain the corresponding approval¹⁵² and iv) finally carry out the implementation of the water management system in question.

In addition, considering that water was going to be reused in the mining activities, it was necessary that after obtaining the Environmental Certification, IMC also obtain the corresponding water use Permit.

- New surface water catchment points (and related facilities).

¹⁵² It should be recalled that as of November 2018, there was no exceptional alternative to regularize executed components.

As in the previous scenario, IMC would have had to follow an EIAd modification procedure in order to obtain the corresponding water use license.

105. In both cases, to include these two components/activities in the Environmental Certification, it would have been conservative for IMC to submit an EIAd modification request through the ordinary process. As indicated in paragraph 32 of this report, the evaluation of this dossier alone could take approximately 7 months.
106. It is important to remember that modification through ITS is not possible if the activity or component to be modified is located over or impacts water sources, specifically when these sources have not been considered in the EIAd.¹⁵³ This position is supported by legislation and recently in the Report 1022-2022-MINAM/VMGA/DGPIGA/DGEIA.¹⁵⁴
107. In the first case (reuse/recirculation of water from the mine interior), it should be noted that the EIAd did not contemplate the use of water from the mine interior (groundwater) for use in the mining operations (it did consider the collection of water), but rather considered its treatment and discharge to the environment. For this reason, I consider that resorting to an ITS for this case would be arguable since we are dealing with a new use of a contemplated water source. However, I consider that we are in a gray area, since the collection and discharge to the environment was considered in the Environmental Certification. For this reason, in the analysis I will consider both alternatives (i.e., ordinary modification of EIAd and ITS).
108. Regarding the second component (2 new water catchment points), to the extent that this activity involves the collection and use of water from new natural sources, the existence of an impact on the water body (or its users) is not debatable. In this sense, as mentioned above, it would not be possible to resort to an ITS to request the inclusion of such points. As we have pointed out, this position is supported in the legislation and recently in Report 1022-2022-MINAM/VMGA/DGPIGA/DGEIA.¹⁵⁵

¹⁵³ Exhibit MD-0011 According to section B. of the technical criteria for the presentation of ITS, approved by Ministerial Resolution 120-2014-MEM-DM.

¹⁵⁴ Exhibit MD-0040, Report 1022-2022-MINAM/VMGA/DGPIGA/DGEIA.

¹⁵⁵ Exhibit MD-0040, Report 1022-2022-MINAM/VMGA/DGPIGA/DGEIA.

109. The ordinary EIAd modification period referred to in paragraph 105 of this document does not consider the time that IMC would require to decommission the facilities built without Environmental Certification, and to prepare the corresponding dossier (including the execution of the previous citizen participation mechanisms).¹⁵⁶ In my experience, the preparation of a file of this nature (i.e. ordinary modification of EIAd) could add between 6 and 9 months, especially because the modification file could require baseline information of dry and wet seasons in case such data is not available or is outdated.¹⁵⁷ In the case of modification by means of ITS, this period for the preparation of the dossier could be reduced to approximately 2 to 3 months. In any of these cases, I consider that, due to the type of infrastructure, the dismantling could be carried out in parallel to the preparation of the file (either an ordinary modification of the EIAd or an ITS).
110. In a hypothetical scenario in which the blockage of the access roads to the Invicta Project had not occurred and in which IMC had initiated the preparation of the Environmental Permit dossier immediately after the disapproval of the third ITS (on 12 November 2018), we estimate that the approval of an EIAd modification through the ordinary process could reasonably have been obtained between December 2019 and March 2020.¹⁵⁸ However, this timeframe would be extended if, once again, there was insufficient technical information to correct observations. Additionally, this timeframe does not consider the additional time that would be required to obtain the necessary water use Permits, which will be analyzed below (starting in paragraph 138).
111. If the first component (reuse/recirculation of water from the mine interior) had been managed as an ITS (and not an ordinary modification of the EIAd) and SENACE had accepted this process (case by case analysis), the timeframe for approval of the Environmental Certification for this change would be reduced to 37 working days, counted from the presentation of the ITS dossier after dismantling the system implemented without Environmental Certification and preparation of the dossier. As in the previous case, this term would be extended if, once again, there is not enough

¹⁵⁶ Exhibit MD-0007, Supreme Decree 28-2008-EM and Exhibit MD-0008, Ministerial Resolution 304-2008-MEM/DM.

¹⁵⁷ Exhibit MD-0006, Ministerial Resolution 116-2015-MEM/DM. As established in Ministerial Resolution 116-2015-MEM/DM.

¹⁵⁸ This date is obtained after adding the time required for the preparation of the dossier by IMC (between 6 and 9 months) and the evaluation of the dossier by the authority (7.3 months) to the date on which the third ITS was disapproved.

technical information to correct observations (as was the case with the third ITS).

112. In the latter scenario, the timeframe considered for approval of an ITS would end between March and April 2019.¹⁵⁹ IMC would also have to: i) obtain additional Permits before being able to proceed with the use of such water (water availability, construction of infrastructure and water use license); and ii) obtain an ordinary modification of the EIAd after the approval of the ITS¹⁶⁰, in order to include the 2 new surface water catchment and use points.

b) Mine closure plan

113. On 17 February 2012, the General Directorate of Mining Environmental Affairs (DGAAM) issued Directorial Resolution 44-2012-MEM-AAM, based on Report 154-2012-MEM-DGAAM/LCD/MMPC/RPP, approving the mine closure plan for the Invicta Project.¹⁶¹
114. Subsequently, on 3 December 2015, through Directorial Resolution 467-2015-MEM-DGAAM¹⁶² supported by Report 1005-2015-MEM-DGAAM/DNAM/DGAM/DGAM/PC,¹⁶³ IMC obtained approval of the update of its mine closure plan. According to what was verified in the previously referred report which is part of the approval resolution, this update included the modifications made in the ITS approved in 2015.¹⁶⁴
115. Considering the date of approval of this last update and the provisions of the regulations for mine closure,¹⁶⁵ the next update of this Permit would have had to have occurred on 03 December 2020 (unless previously required by the authority). For this reason, we consider that, as of October 2018, it was not yet necessary to update said plan. We also considered that the update should have included

¹⁵⁹ This date is obtained after adding the time required for the preparation of the dossier by IMC (between 2 and 3 months) and the evaluation of the dossier by the authority (37 working days) to the date on which the third ITS was disapproved.

¹⁶⁰ According to the principle of indivisibility, as stated in Article 3.a of Supreme Decree 19-2009-MINAM (MD-0005), the environmental impact assessment must be carried out in an integral manner. This prevents a mining owner from submitting several environmental instruments for evaluation by the authority at the same time.

¹⁶¹ Exhibit C-0417, Report 154-2012-MEM-DGAAM/LCD/MPC/RPP.

¹⁶² Exhibit C-0418, Directorial Resolution 467-2015/MEM-DGAAM.

¹⁶³ Exhibit C-0490, Directorial Resolution 467-2015/MEM-DGAAM and Report 1005-2015-MEM-DGAAM/DNAM/DGAM/PC.

¹⁶⁴ Exhibit C-0418, Directorial Resolution 467-2015/MEM-DGAAM and Exhibit C-0490, Directorial Resolution 467-2015-MEM and Report 1005-2015-MEM-DGAAM/DNAM/DGAM/PC.

¹⁶⁵ Exhibit MD-0013. Regulation approved by Supreme Decree 33-2005-EM. Article 20.1 of this regulation provides that the first update of the mine closure plan will be made after three (3) years from its approval and subsequently after every five (5) years from the last modification and update.

the modifications approved in the 2016 ITS and any other modifications to the EIAd.

c) Authorization for development, preparation and mining (exploitation) activities

(1) On the procedure followed by IMC before the DGM

116. By Resolution 566-2014-MEM-DGM-V of 11 December 2014, supported by Report 127-2014-MEM-DGM-DGM-DTM/PM, the DGM approved the mining plan for the Invicta Project to carry out mining activities with a capacity of 400 TMD. Likewise, said resolution authorized IMC to start construction (development and preparation) activities.¹⁶⁶
117. As indicated in paragraph 43 above (and following), the approval described above corresponds to the first of two stages necessary to be able to carry out mining (exploitation) activities (according to the legislation applicable to the present case). In order to achieve the latter, IMC had to successfully complete a verification inspection carried out by the DGM and obtain from such entity the authorization to start mining (exploitation) activities.
118. In the framework of the above, on 26 August 2015 the DGM issued Resolution 384-2015-MEM-DGM/V, supported by Report 99-2015-MEM-DGM-DTM-DTM/PM.¹⁶⁷ This report evaluated the information submitted by IMC for the purpose of absolving the recommendations made in the report mentioned in paragraph 116 above.
119. Based on this assessment, the DGM determined that, prior to the start of mining (exploitation) activities, IMC must implement an alternative management system for the water from the mine interior in accordance with the recommendations of Report 127-2014-MEM-DGM-DTM-DTM/PM. The DGM further stated that such system must "(...) *have the corresponding Environmental Certification.*"¹⁶⁸
120. On 7 September 2018, IMC communicated to the DGM the completion of the development and preparation activities.¹⁶⁹ In such communication, IMC requested the DGM to perform the

¹⁶⁶ Exhibit C-0009, Report 127-2014-MEM-DGM-DTM/DTM/PM.

¹⁶⁷ Exhibit R-0168, Report 099-2015-MEM-DGM-DTM/PM.

¹⁶⁸ Exhibit R-0168, Report 099-2015-MEM-DGM-DTM-DTM/PM, page 4.

¹⁶⁹ Exhibit C-0081, Letter from Invicta to MINEM.

corresponding inspection and authorize the start of mining (exploitation) activities. However, before receiving a response from the authority, IMC submitted a second communication on 17 October 2018, requesting the suspension of the inspection due to the blockage that occurred 3 days earlier, on 14 October 2018.¹⁷⁰

121. The request for suspension of the verification inspection was answered through Directorial Order 543-2018-MEM-DGM-DGM/DTM, dated 23 October 2018, which is supported by Report 092-2018-MEM-DGM-DGM-DTM/PM.¹⁷¹ In said report, the DGM, in addition to answering the request for suspension of the inspection, stated that, prior to the inspection (and attached to the request for said inspection) IMC had to submit "(...) *the certificate of quality assurance of the construction and/or facilities, signed by the supervisor or whoever acting in his stead (...), as well as the Final Work Report, map of the completed works and/or facilities (as built)*".¹⁷²
122. On 14 December 2018 IMC again requested the DGM to execute the verification inspection to verify that the preparation works had been executed in accordance with the approved mining plan.¹⁷³ However, it was not until 21 December 2018 that IMC submitted a second letter attaching the requirements demanded by the DGM, mentioned in the previous paragraph.¹⁷⁴
123. On 17 January 2019, by means of Directorial Order 038-2009-MEM-DGM-DGM, supported by Report 11-2019-MEM-DGM-DTM-DTM/PM, the DGM ordered to carry out the inspection to verify the completion of the development and preparation activities executed by IMC.¹⁷⁵ For this purpose, it appointed personnel from its office to carry out the inspection and set the inspection date for 23 to 25 January 2019.
124. Annex 4 of the Directorial Order mentioned in the previous paragraph included the terms of reference for the inspection. In its content, the terms of reference established, among others, the information to be submitted by IMC during the inspection.¹⁷⁶ Among this information we find documents such as the resolution approving the EIA of the project, the resolution approving the

¹⁷⁰ Exhibit C-0011, Letter from Invicta to MINEM.

¹⁷¹ Exhibit C-0082, Report 092-2018-MEM-DGM-DTM/PM.

¹⁷² Exhibit C-0082, Report 092-2018-MEM-DGM-DTM-DTM/PM, page 4.

¹⁷³ Exhibit C-0230, Letter from Invicta to MINEM.

¹⁷⁴ Exhibit C-0492, Letter from Invicta to MINEM.

¹⁷⁵ Exhibit C-0231, Report 011-2019-MEM-DGM-DTM/PM.

¹⁷⁶ Exhibit C-0231, Report 011-2019-MEM-DGM-DTM/PM.

mine closure plan with the report that supports it and a copy of the guarantees constituted in relation to said plan, among others.

125. On 22 January 2019, IMC filed a brief requesting the suspension of the inspection until further notice.¹⁷⁷

(2) Pending tasks to obtain the mining (Exploitation) Permit

126. Based on the resolutions, letters, reports and directorial orders described above, it is verified that, as of October 2018, it was pending for IMC to complete certain requirements in order to carry out the verification inspection and, upon satisfactory completion, obtain the authorization for operating (mining/exploitation) activities and effectively operate.

127. Below is an estimate of the time it would have taken IMC to comply with these requirements:

- Alternative management system for the water from the mine interior (with water reuse) with Environmental Certification.

Pursuant to the provisions of paragraph 110 above, assuming an ordinary modification of the EIAd, the modification of the IMC Environmental Certification to incorporate the components and activities required by the Invicta Project (which included the alternative system under comment) could reasonably have been approved between December 2019 and March 2020.¹⁷⁸

In case the modification could have been submitted through an ITS the timeframe for such approval would have been between March and April 2019.¹⁷⁹

¹⁷⁷ Exhibit C-0232, Letter from Invicta to MINEM.

¹⁷⁸ This date is obtained after adding the time required for the preparation of the dossier by IMC (between 6 and 9 months) and the evaluation of the dossier by the authority (7.3 months) to the date on which the third ITS was disapproved.

¹⁷⁹ This date is obtained after adding the time required for the preparation of the dossier by IMC (between 2 and 3 months) and the evaluation of the dossier by the authority (37 working days) to the date on which the third ITS was disapproved.

- Certificate of quality assurance (CQA), final construction report and *as-built* maps.

These documents were submitted by IMC to the DGM by the letter dated 21 December 2018.¹⁸⁰ Thus, without prejudice to the need to comply with the other requirements analyzed in this section, the verification inspection could not have been carried out before that date.

- Guarantee of the mine closure plan.

This requirement is mentioned in the terms of reference attached to the Directorial Order 038-2009-MEM-DGM, together with other documents. I have not seen any document that proves that IMC constituted the guarantee of the mine closure plan.

128. Based on these requirements and the facts of the case, my independent expert opinion is that in a hypothetical scenario in which the October 2018 blockage had not occurred, the inspection could not have occurred before 21 December 2018, since it is only on that date that IMC submitted the CQA, the final work report and the *as-built* maps. Likewise, after such inspection¹⁸¹, IMC could not have obtained the authorization of mining (exploitation) activities and effectively operate without first obtaining the Environmental Certification of the alternative management system for the water from the mine interior, which, as indicated in paragraph 110 assuming an ordinary modification of the EIAd, would only have occurred between December 2019 and March 2020. This means that the DGM could not have authorized or permitted the start of mining activities before these dates.¹⁸²

129. Finally, it should be noted that the alternative management system for water from the mine interior should also have been included in the operating Permit. For this purpose, from a theoretical legal point of view, one of the mechanisms referred to in paragraph 48 (insofar as they were applicable, taking into account that it was still in the first stage of the Permit, which is the

¹⁸⁰ Exhibit C-0492, Letter from Invicta to MINEM, page 3.

¹⁸¹ It would have been logical for the DGM to inspect the mine after having implemented the alternative system, however, I am considering that the inspection could be done earlier. In case of the contrary, the schedule would be extended.

¹⁸² Under an assumption of approval through ITS, such approval could reasonably have been obtained between March and April 2019.

construction stage). However, taking into account that the implementation of this alternative system was an order of the mining authority itself and had to be implemented before the issuance of the mining Permit, it is possible to consider that the way to incorporate the component would be through the mining Permit itself, not being necessary to follow another additional procedure that would add additional time. For this reason, I have not considered an additional term or procedure for this from the point of view of the mining operating Permit.

d) Water Resources - License to use water for mining activities

(1) IMC water use right

130. As confirmed by ANA through Technical Report 101-2022-ANA-DARH¹⁸³ the only water use right granted in favor of IMC is the license to use groundwater for industrial mining purposes from a tubular well located in the Huamboya area. This license was granted on 27 October 2009, by Administrative Resolution 194-2009-ANA-ALA-Huaura.¹⁸⁴
131. In the fourth paragraph of the consideration section of this resolution, the authority¹⁸⁵ referred to the 2009 EIAd of the Invicta Project. It should be noted that the water catchment sources approved in said instrument (i.e., from the Huamboya Grande and Huamboya Chico sectors) were not modified (or expanded) in the two (2) ITS approved for the Invicta Project (which is consistent with the legislation applicable to the ITS) and, therefore, they were the only water sources for which IMC had an Environmental Certification in 2018.¹⁸⁶
132. Notwithstanding, there is evidence that IMC had been using water from other sources not authorized in the Environmental Certification and without having a water use Permit for such purposes (surface and groundwater).
133. On the one hand, as I mentioned in paragraph 103 of this document, it can be inferred from the defense presented by IMC in the framework of a PAS followed before the OEFA that the document called "Mine Water Treatment System" of the Invicta Project,

¹⁸³ Exhibit MD-0042, Technical Report 101-2022-ANA-DARH, page 2.

¹⁸⁴ Exhibit MD-0043, Directorial Resolution 194-2009-ANA-ALA Huaura. It should be noted that, in order to modify the location of the groundwater source, it would be necessary to follow a water use license modification procedure.

¹⁸⁵ Huaura Local Water Administration.

¹⁸⁶ The description of the Invicta Project's water supply system can be found in section 3.5 (page 136) of the EIAd approved in 2009 (Exhibit R-0047) through Directorial Resolution 427-2009-MEM-AAM (Exhibit C-0007).

considered two surface water catchment points called Ruraycocha and Tunanhuaylaba (i.e. points not contemplated in the Environmental Certification).^{187 188}

134. The above is also consistent with another PAS followed against IMC by the Cañete Fortaleza Water Administrative Authority. Directorial Resolution 1502-2018-ANA-AAA-Cañete Fortaleza, which resolves this procedure in the first instance, sanctioned IMC for using water from the Ruraycocha stream without having the corresponding water use Permit. Note that this resolution also ordered IMC to "(...) *immediately suspend the use of water from the Ruraycocha stream, (...)*".¹⁸⁹
135. As can be seen from the text of the referred resolution, IMC's defense did not question the fact that it had been using water from the stream in question without the required Permit to do so. Instead, the defense focused on pointing out (i) that the proposed fine (i.e. the sanction) was excessive and disproportionate, (ii) that in July 2015 IMC had obtained an authorization to carry out water availability studies; (iii) that there was a commitment signed with the Lacsanga rural community; (iv) that IMC's activities were paralyzed from June 2015 to February 2018; and (v) that eventually the approval of the water availability accreditation would be processed.¹⁹⁰
136. It should be noted that, according to Memorandum 63-2022-ANA-OA-UEC,¹⁹¹ IMC made the payment of the fine imposed under this PAS. Thus, we can infer that the Directorial Resolution 1502-2018-ANA-AAA-Cañete Fortaleza became final and was not challenged before (or reversed by) a second administrative instance.
137. However, the alternative system of mine water use is based on a criterion of water reuse for use in the mining operation (recirculation). In this sense, from a legal point of view, there is an exploitation of groundwater (i.e. use not contemplated in the Environmental Certification), which is not supported by an ANA Permit (i.e. groundwater use license).

¹⁸⁷ Exhibit C-0406. In the defense to Resolution 1452-2018-OEFA-DFAI-SFEM IMC attached the June 2018 report named "Mine Water Supply System", which identifies two water sources named Ruraycocha and Tunanhuaylaba.

¹⁸⁸ Based on this IMC statement, I have assumed that water from the Permit approved by Administrative Resolution 194-2009-ANA-ALA-Huaura (MD-0043) would not be used.

¹⁸⁹ Exhibit R-0093, Directorial Resolution 1502-2018-ANA-AAA-CAÑETE-FORTALEZA, page 6.

¹⁹⁰ Exhibit R-0093, Directorial Resolution 1502-2018-ANA-AAA-CAÑETE-FORTALEZA, page 3.

¹⁹¹ Exhibit MD-0044, Memorandum 63-2022-ANA-OA-UEC.

(2) Pending tasks regarding the water use rights

138. In order to use water from the Ruraycocha stream (or other surface sources), as well as water from the mine interior, IMC would have to include such activities in its Environmental Certification and obtain the corresponding water use license. For these purposes, IMC would have to follow the following steps:

- Request the modification of the Environmental Certification and obtain its approval. As mentioned in paragraph 110 assuming an ordinary modification of the EIAd, this could be achieved in December 2019 or March 2020.
- Should it be assumed that IMC would obtain water availability accreditation as part of its Environmental Certification¹⁹², it would no longer be necessary to execute that stage of the respective water use licenses independently.¹⁹³ It should be noted that, unlike an ordinary EIAd modification, an ITS cannot include approval of water availability. Thus, if this second alternative (i.e., ITS) is chosen and accepted by SENACE, it would be necessary to additionally manage this last approval (i.e., accreditation of water availability). Likewise, in this case, it would also be necessary for IMC to subsequently manage an ordinary modification of the EIAd to include the new surface water sources (2 catchments points).
- After the above, IMC should have requested an authorization for the execution of water catchment works, in each case. As indicated in paragraph 60 of this document, this procedure can take 53 working days (approximately 2.4 months). Considering that the Environmental Certification is a requirement of this authorization, based on the premise of an ordinary modification of the EIAd, the process could only have started after December 2019 / March 2020 (estimated date of approval of the modification of the Environmental Certification). This is without prejudice to the fact that the

¹⁹² Not necessary for the Ruraycocha source because it has such authorization.

¹⁹³ In the event that the ITS is used for the inclusion of the alternative management system for water from the mine interior (which we consider to be a grey area) IMC would have to arrange a separate water availability approval. This would add approximately 133 days to the schedule according to the precedents reviewed (Exhibit MD-0002).

procedure also requires the presentation of the surface rights and the authorization or concession for the development of the activity to which the water use will be destined. With these dates and premises, my opinion as an independent expert is that the referred authorization could reasonably have been obtained between February and May 2020.¹⁹⁴

- After obtaining this authorization, IMC could have executed the water development works. The time for the construction of such works would depend on the complexity and magnitude of each case (surface source and groundwater source). For this reason, I have assumed that this activity would have required a period of approximately 1 month, both in the case of the groundwater source and in the case of the surface water source, after obtaining the authorization.
- After the previous point, IMC would have to apply for the water use license for each source. This procedure, as indicated in paragraph 60 of this report, required the execution of a field inspection by the authority and could take approximately 67 working days (approximately 3 months).

139. Considering the above, my independent expert opinion is that IMC would not have been able to obtain the required water use licenses for the execution of the Invicta Project's mining activities before June 2020 or even July 2020 (assuming the need for an ordinary modification of the EIAd).¹⁹⁵

¹⁹⁴ This will depend on whether the environmental certification approval is obtained in December 2019 or March 2020. The difference between both timeframes is due to the fact that we are considering that the preparation of the dossier could take between 6 and 9 months.

¹⁹⁵ In the event that the ITS is used for the inclusion of the alternative management system for the water from inside the mine, IMC would have to arrange a separate water availability approval. This represents a procedure of approximately 133 days. This would result in the water use license for such a system being obtained no earlier than December 2019.

e) Water resources - Discharge authorization

140. I have not seen any discharge authorization for the Invicta Project, despite the fact that the EIAd and the 2015 ITS explain that the water from the mine interior would be treated and discharged into the Parán creek (water body).¹⁹⁶
141. In case IMC would have required a discharge Permit, the legal term to process it would be 30 working days. However, in practice this Permit can take approximately 4 months. Therefore, if it had been required, the Permit in question would only have been obtained between March and April 2019. For this purpose, I have considered that the preparation of the file starts in October 2018 and takes 1 month.¹⁹⁷
142. Notwithstanding the foregoing, we consider that, for the specific case, this Permit is not so relevant, since, as explained above in paragraphs 88 y 103 it is clear from the record of this arbitration that IMC wanted to modify its Environmental Certification (EIAd) to replace the water discharge with a recirculation and use of groundwater from the mine interior for the mining operation (exploitation). Therefore, upon approval of the change, the discharge authorization for the water coming from the mine interior was no longer required.

f) Hydrocarbons

143. The Environmental Certification of the Invicta Project considered, among the infrastructure works, the implementation of a fuel tank (fuel station).¹⁹⁸ According to what OSINERGMIN indicated in Report 35-2023-OS/DSR,¹⁹⁹ *"[n]o registration has been located in the Hydrocarbons Registry in the name of the company INVICTA MINING CORP S.A.C., which is in force, or has been in force in 2018, to carry out activities with hydrocarbons in the national territory"*.
144. The most recent IMC statement that I have identified in the arbitration documents regarding this component is that contained in Schedule H of the draft

¹⁹⁶ Exhibit C-0040, Report 304-2015-MEM-DGAAM/DNAM/DGAM/C, Table 12, page 15.

¹⁹⁷ It should be noted that this is an estimated timeframe and is considered beneficial for IMC; however, in practice this process may take longer, depending on the level of information available to the mine owner.

¹⁹⁸ Exhibit MD-0035, Directorial Resolution 050-2016-MEM-DGAAM, Table No. 1 *Current and approved components of the Invicta Project* of Report 140-2016-MEM-DGAAM/DNAM/DGAM/C that supports Resolution 50-2016- MEM-DGAAM that approved the second Substantive Technical Report of the Invicta Project.

¹⁹⁹ Exhibit MD-0045, Report 35-2023-OS/DSR.

"Amendment and Waiver No. 3 to the Second Amended and Restated Pre-Paid Forward Gold Purchase Agreement," dated 5 October 2018.²⁰⁰

145. Schedule H of said draft details the Permits obtained and to be obtained for the Invicta Project. Among the Permits pending to be obtained, said document refers to an authorization to store fuels, which, in my understanding, would be the registration in the OSINERGMIN's hydrocarbons registry as a direct consumer.
146. The aforementioned Schedule H states that this authorization (i.e., registration in the hydrocarbons registry) would be obtained immediately after the construction of the hydrocarbon storage facilities, after the inspection by OSINERGMIN.
147. As noted in paragraph 65 and following, to obtain the registration in the hydrocarbon registry it is necessary to follow a procedure that involves three stages:
- The approval of a Favorable Technical Report, which can take approximately 1 to 2 months and has as a requirement the presentation of the Environmental Certification. According to OSINERGMIN, this first stage had already been obtained, however, I have not seen this Permit.²⁰¹
 - Obtaining the verification certificates, which occurs once the construction of the hydrocarbon storage facility is completed and requires the execution of a verification inspection with the participation of OSINERGMIN. It should be noted that this inspection must be requested 10 working days in advance.
 - The application for registration in OSINERGMIN's hydrocarbons registry as a direct consumer, which may take 30 working days.
148. To the extent that the fuel station was contemplated in the Environmental Certification (assuming that IMC would not change its design or location), the first stage mentioned in the previous paragraph could have been processed in parallel

²⁰⁰ Exhibit C-0285, Amendment and Waiver No. 3 to the Second Amended and Restated Pre-Paid Forward Gold Purchase Agreement,

²⁰¹ Exhibit MD-0045, Report 35-2013-OS/DSR.

to the construction (development and preparation) of the Invicta Project. Regarding the second stage, it could only be initiated if the hydrocarbon storage facilities were completed.²⁰²

149. Similarly, the third stage could have been initiated as soon as the stages mentioned in the previous paragraph were completed.
150. Based on the above, assuming that in October 2018 the works related to hydrocarbon storage were completed (following the design approved in the Environmental Certification), the direct consumer registration could be obtained between November and December 2018.

g) Explosives

151. For the preparation of this report I have only had the following Permits related to the use and storage of explosives:
- Management Resolution 621-2015-SUCAMEC-GEPP, dated 16 March 2015.²⁰³ Resolution contains the global authorization for the acquisition and use of explosives, supplies and related materials in the Invicta Project. This authorization was granted for a period of 6 months from its notification.
 - Management Resolution 988-2016-SUCAMEC/GEPP dated 6 May 2016. This resolution contains the modification of Resolution 3281-2014-SUCAMEC-GEPP, dated October 2014, by which IMC obtained operating license for two explosives magazines for a period of 5 years.²⁰⁴

²⁰² I have not had sight of the Favorable Technical Report from OSINERGMIN for the construction. However, according to Exhibit MD-0045 (i.e., Report 35-2013-OS/DSR), OSINERGMIN indicated that IMC had obtained the Favorable Technical Report 268045-051-2016 for direct consumer installations of liquid fuels at the facility located at the Invicta mining camp. Also, from Exhibit C-0285 (i.e., *Amendment and Waiver No. 3 to the Second Amended and Restated Pre-Paid Forward Gold Purchase Agreement*), it appears that IMC had anticipated that the procedure for registration would be initiated as soon as construction is completed. In that sense, it is understood that the construction had not been completed at that time. In that line, under the most favorable scenario for IMC, I am assuming that the construction would be completed approximately in the first half of October 2018 (date of Exhibit C-0285) and that it would be covered by the Favorable Technical Report mentioned by OSINERGMIN in Exhibit MD-0045.

²⁰³ Exhibit C-0039, Management Resolution 621-2015-SUCAMEC-GEPP.

²⁰⁴ Exhibit C-0080, Management Resolution 00988-2016-SUCAMEC/GEPP.

- Mining operation certificate 072-2018-C dated 30 November 2017. Such certificate covered the development and preparation activities executed at the Invicta Project.
- Management Resolution 164-2018-SUCAMEC-GEPP, dated 12 January 2018.²⁰⁵ By means of this resolution, the authorization for the acquisition and use of explosives and related materials from IMC was renewed for the period from 12 January to 31 December 2018.

152. Of these four, the only approval that could potentially have served for mining (exploitation) activities would be the license to operate the explosives magazines. Those licenses were valid for 5 years counted from October 2014, i.e., until October 2019. However, since it has been estimated that the start date of the mining activities exceeds this date, IMC would have had to renew these licenses in a timely manner.
153. For its part, the mining operation certificate should have been renewed and modified to include exploitation activities (and no longer development and preparation activities).
154. Finally, the authorization for the acquisition and use of explosives would have served for the use and acquisition of explosives in the indicated period (until December 2018), having to be renewed in a timely manner in order to have explosives for the mining stage.
155. Thus, in order to obtain (or renew) Permits related to the use and acquisition of explosives, IMC would have had to have followed the corresponding procedures in a timely manner in 2018.

h) Archaeology

156. As indicated by IMC, the Invicta Project has the following CIRAs:²⁰⁶

²⁰⁵ Exhibit MD-0046, Management Resolution 164-2018-SUCAMEC-GEPP.

²⁰⁶ Exhibit C-0059, CIRA No. 2009-0854.

- CIRA No. 2009-0854 covering the area called "Invicta Project Water Supply Project: Water Line-40 L/S Segment A".
- CIRA No. 2010-227 covering the area called "Archaeological Evaluation Project for the Electrical Supply and Industrial Plant of the Minera Invicta Project".
- CIRA No. 2010-257 that covers the area called "Variant of the 66Kv Transmission Line S.E. Andahuasi - S.E. Planta Invicta and Access Roads: Access 1, Access 5 and Access 8".
- CIRA No. 2010-253 covering the area called "10 Kv Transmission Line and Access Roads 10 - Section 01".

157. Assuming that these certificates covered the entire area of interest of the Invicta Project, it remained for IMC to manage the archaeological monitoring plan. This document has not been identified in the documents reviewed; however, it should have been obtained prior to the start of mine construction as it is a legal obligation.

i) *When could IMC have started mining activities, had the October 2018 blockade not occurred?*

158. Based on the analysis in the preceding paragraphs, as of October 2018, certain key Permits were pending for IMC to obtain in order to commence mining (exploitation) activities.²⁰⁷ Below, I summarize what these Permits were, why they were necessary, what prerequisites needed to be met in order to obtain them, and when, reasonably, their approval could have been obtained.²⁰⁸

- Approval of the modification of the Environmental Certification

Objective: Incorporate the alternative management system for the water from the mine interior (with groundwater reuse) and new water catchment

²⁰⁷ We have assumed that mining activities will not require any discharge of water to the environment (i.e., dumping).

²⁰⁸ The dates shown in this section have been calculated without considering the effects of Covid-19. Considering such effects, which involve the suspension of administrative deadlines, would result in longer lead times, moving the estimated project start date into the future.

points into the Invicta Project Environmental Certification (as well as any other required changes).

Prerequisite: Dismantle of the alternative water management system built without Environmental Certification and prepare the dossier.²⁰⁹

Estimated date: Between December 2019 or March 2020 (ordinary modification)^{210 211}

- Execution of the verification inspection of development and preparation activities and approval of the authorization to start mining (exploitation) activities.

Objective: Initiate mining activities of 400 TMD at the Invicta Project.

Prerequisite: IMC was required to obtain the approval of the Environmental Certification (mentioned in the point above) that contemplates the alternative management system for the water from the mine interior. Such pre-requisite was expressly requested by the DGM in the framework of this procedure, through Resolution 384-2015-MEM-DGMV.²¹² Additionally, as of October 2018, it was pending for IMC to submit the CQA, the final work report and the *as-built* maps;²¹³ as well as the guarantee of the mine closure plan that I have not had in sight. I have not considered these last items as part of the analysis as the certificates, reports and plans were submitted in December 2018 and because I have assumed that the guarantee would have been constituted in a timely manner.

²⁰⁹ It is being considered that this modification would be made through an ordinary EIA modification process.

²¹⁰ Assuming that the alternative system can be submitted and approved through an ITS, this modification would be approved approximately between March and April 2019. However, for the additional surface points, an ordinary modification will still have to be followed with the deadlines indicated.

²¹¹ This date assumes that the preparation of the file would have started immediately after the non-compliance of the Third ITS and that it was carried out in parallel to the dismantling of the alternative in-mine water managementsystem.

²¹² Exhibit R-0168, Report 099-2015-MEM-DGM-DTM/PM, page 3.

²¹³ It is also being assumed that IMC would have performed the development and preparation activities as approved.

Estimated date: Would have been obtained after December 2019 to March 2020.²¹⁴ This timeframe could be impacted, extending the Permit timeline if the DGM had conditioned the inspection on the completion of the implementation of the alternative management system for the water from the mine interior and/or obtaining water use rights.

- Obtaining licenses for the use of water from new sources²¹⁵

Objective: To have the water use Permit required for project activities.

Prerequisite: IMC should have obtained the approval of the Environmental Certification (mentioned above) that contemplates the approval of water availability for the new water catchment points (surface and groundwater). Additionally, IMC should have obtained the authorization(s) for the execution of water development works and executed such works.²¹⁶ Finally, IMC should have applied for the water use licenses, which, as part of the procedure, contemplates the need to carry out a verification inspection with the participation of the water authority.

²¹⁴ Considering that the modification of the Environmental Certification would be done through an ordinary EIAd modification process. In case it is given through an ITS for the alternative system, the exploitation authorization could have been obtained after March or April 2019 (without prejudice to other necessary Permits that extend the deadline for the execution of activities, including the use of water from the mine interior and the use of surface water from the streams).

²¹⁵ Considering that IMC would not use the water use license approved by Administrative Resolution 194-2009-ANA-ALA-Huaura (MD-0043).

²¹⁶ I have assumed that the construction of the water development works (surface and groundwater) would be completed within 1 month. This is despite the fact that, in my experience, these processes usually take longer.

Estimated date: June to July 2020.²¹⁷

- Registration in the hydrocarbons registry as a direct consumer.

Objective: To have the necessary Permits for the construction and operation of the fuel station.

Prerequisite: IMC should have culminated/carried out the construction of the hydrocarbon storage facilities as approved in OSINERGMIN's Favorable Technical Report²¹⁸ and subsequently obtained the corresponding verification certificates. After that, IMC should have requested the registration of its facilities in the hydrocarbons registry.

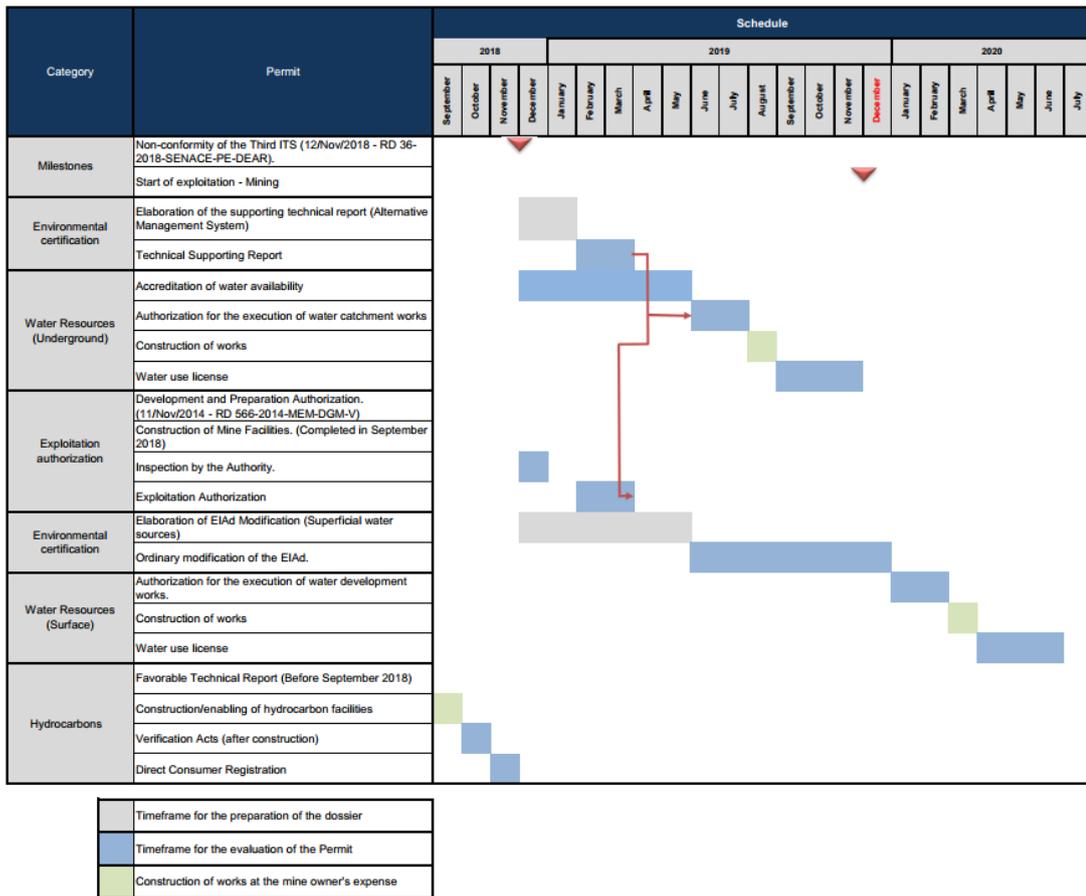
Estimated date: Between November and December 2018.

159. Taking into account the above, based on the Permits (or stages of Permits) that were pending of execution as of October 2018, starting from a premise of ordinary modification of the EIAd to include the alternative management system for the water from the mine interior and the surface water use catchment points, my independent expert conclusion is that in a scenario in which the Invicta Project access roads had not been blocked in October 2018, mining (exploitation) activities (which include the use of groundwater from the mine interior) could not have started before July 2020. Only at that date could IMC reasonably be expected to complete all outstanding tasks summarized above. That is, IMC would not have the new Environmental Certification, the authorization for mining (exploitation) activities, the water use licenses and the registration in the hydrocarbon registry until that date.

160. The following schedule shows the interaction of the above Permits. This schedule is part of this report as Exhibit MD-0047.

²¹⁷ Considering that the modification of the Environmental Certification would be done through an ordinary EIAd modification process for the use of water from the alternative management system for the water from the mine interior and the surface water catchment points. In case it is given through an ITS for the alternative system, the groundwater license would be obtained by the end of November 2019, however, the license for the use of surface water remains in June 2020.

²¹⁸ It has been assumed that the hydrocarbon storage facilities would respect the configuration approved in the original Environmental Certification. Also, taking the best-case scenario for IMC, I have assumed that the enabling/construction of the hydrocarbon storage facilities would be completed in the first half of October 2018, which is a few days after the date of Exhibit C-0285 in which it is implied that the required hydrocarbon storage facilities had not yet been completed.



162. Although mining (exploitation) activities (including the use of water) could not have started before that date, the report of Micon International Limited dated 21 September 2022, indicates that as part of the development and preparation activities IMC had extracted a total of 8,000 tons of ore. It should be noted that while such ore could be used for testing at the processing plants that IMC planned to use (which we will discuss below), legally²¹⁹ such material could not have been used to start commercial production. Even if IMC started production with such ore (which should not be commercialized without all the necessary Permits), it would only have been used to feed the processing plant for less than 14 days (in the case of the Mallay processing plant with a processing capacity of 600 MTD) or less than 23 days (in the case of the third party processing plants with an average capacity of 350 MTD).

163. Thus, even if production had started in October 2018 with the material mined during development and preparation (which should not happen because such

²¹⁹ Exhibit MD-0017, article 23 and numeral 2.2 of article 75 of Supreme Decree 18-92-EM.

ore should only be used for metallurgical testing), such material would not have been sufficient to supply the processing plants for more than 1 month.

3. *Insufficient Permits for processing/beneficiation activities - Alternative: Acquisition of Mally processing plant*

164. In the 2015 ITS, IMC reduced the scope of the Invicta Project. This reduction involved the elimination of the Invicta Project processing plant and its associated components. In view of this, in order to process the ore extracted from the Invicta Project, IMC had managed to agree, as declared by Lupaka, with Compañía de Minas Buenaventura S.A.A. (Buenaventura), the terms to acquire the "Mally" mining unit. This included the Mally processing plant and its complementary facilities.²²⁰
165. The Mally processing plant is located 63 km away from the Invicta Project.²²¹ According to the Claimant, this agreement is materialized in the draft contract for the transfer of the Mally mining unit (Mally Draft), which was pending signature.²²²
166. Also, according to the Claimant's statement, in order to conclude the signing of this agreement, it was required that the Mally rural community previously approved the transfer of the easement agreement between said community and Buenaventura in favor of IMC.²²³ The approval by the Mally community took place in March 2019.²²⁴
167. The Mally Draft considered two complementary alternatives to process ore from the Invicta Project, conditioned to the execution of the transfer: (i) Operation of the Mally processing plant under Buenaventura's ownership while the conditions to finalize the transfer were being perfected (for which the contract with Buenaventura and a separate service contract had to be signed),²²⁵ and (ii) Operation of the Mally processing plant under IMC's ownership (after the

²²⁰ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta.

²²¹ Exhibit C-0038, Public Mining Record, page 6. It should be noted that the analysis in this section is based on a total transfer of the "Mally" mining unit considering the wording of the Mally Draft. This is despite the fact that, in the Claimant's Memorial (pages 29-30), Lupaka indicated that only the transfer of the Processing Plant would take place and not the entire mining unit.

²²² Reply, page 27, paragraph 61.

²²³ Claimant's Memorial, page 30, paragraph 93.

²²⁴ Claimant's Reply, page 377, paragraph 1026.

²²⁵ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, page 20.

transfer of the Mallay mining unit and the ownership of the Permits and obtaining the non-transferable Permits).²²⁶

168. It should be noted that alternative (i) of the previous paragraph would be a temporary alternative that would be executed from the date of signature of the transfer agreement, until the completion date, after which alternative (ii) would be executed.²²⁷ As I will explain below, the completion date is the date on which the transfer of the Permits in favor of IMC is concluded, among other conditions regulated in the Mallay Draft.²²⁸
169. The Mallay Draft contemplated conditions precedent for: i) closing and ii) completion.²²⁹ The following are general comments regarding the fulfillment of these conditions precedent.

a) *Analysis of compliance with closing conditions*

170. According to the Mallay Draft, the closing date determines the moment when the transfer of ownership of the Mallay mining unit in favor of IMC is perfected.²³⁰ Once this milestone is met, IMC would make the first payment in favor of Buenaventura, and could initiate the processing of the Permits (i.e., the transfer of transferable Permits and the obtaining of non-transferable Permits).
171. According to the Mallay Draft, the closing date could be different from the signing date.²³¹ However, as a matter of practicality, in this section, I have assumed that both milestones will occur at the same time (i.e., March 2019). Note that, if the closing date were later than the signing date, the timeline for this activity would be extended to the detriment of IMC, since the transfer of Permits in favor of IMC (and the obtaining of non-transferable Permits) could only begin at that time (closing and not signing).
172. The Mallay Draft stipulates conditions precedent for the closing to be executed by Buenaventura and others by IMC. As part of the former, Buenaventura had to deliver the following documents to IMC:²³²

²²⁶ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 3.

²²⁷ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 20.

²²⁸ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 22.

²²⁹ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, pages 20-21.

²³⁰ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 1.18.

²³¹ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 3.

²³² Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 11.1.1.

- (i) Public deed of the agreement of assignment of contractual position whereby the "Electric Power Supply Contract" and the "Operation and Maintenance Contract" are assigned in favor of IMC, including the Environmental Impact Assessment for the transmission line.
 - (ii) Public deed containing the written consent to the assignment of all key contracts and agreements in favor of IMC described in the Mallay Draft (this condition includes the easement agreement between the Mallay community and Buenaventura).
 - (iii) Public Deed containing the written consent of Compañía Minera Raura of the terms and conditions for the connection of the Transmission Line to the Cashaucro substation, and the public deed of assignment of the contractual position in said agreement in favor of IMC for a term of no less than 20 years.
 - (iv) Evidence of completion of the tailings dam elevation program to a height of 4,564.2 meters above sea level, according to design plans prepared by Buenaventura.
 - (v) Proof of having completed the final closure of the Mining Production Unit component called "Cx-1336 crossing at Nv. 4470", according to the design plans prepared by Buenaventura.
 - (vi) Copy of the blocking entry of the mining concessions.
 - (vii) Proof of filing of the preventive annotation record of the "Tres Cerros 2017 Petition".
173. For its part, as conditions precedent for closing, IMC was required to deliver to Buenaventura:²³³
- (i) The share certificate representing common shares of Lupaka in the name of Buenaventura.
 - (ii) Proof that the Escrow agreement is still in force.

²³³ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 11.1.2.

(iii) A testimony of the public deed containing the guarantee contract with the proof of registration in the registry of contracts.

174. The closing date would only be reached upon the fulfillment of the conditions described above. Although I have not had access to the information on the status of the progress of these conditions (as they have not been addressed in Claimant's Memorial or in Claimant's Reply), I provide below two general comments on them:

- Regarding the entry of the registry block, I must point out that this is a regulated procedure of 2 weeks.²³⁴
- Regarding the proof of registration of the guarantee contract, I must point out that this is a registration procedure whose legal timeframe is fifteen (15) business days and can be extended for 3 additional business days.²³⁵ In practice, this registration procedure may vary between 2 and 3 weeks.

175. In view of the above, I can verify that the approval of the assignment of the easement contract with the Mallay community was not the only condition for the transfer of the Mallay mining unit in favor of IMC to materialize (closing date). To that end, all the previously described conditions had to be fulfilled and I have not seen evidence of their fulfillment/execution.

176. Notwithstanding the above, for practical purposes, I am considering that the conditions were to be fulfilled before March 2019,²³⁶ marking the closing date of the contract. Note that considering a later date would impact the schedule of beneficiation Permits, extending it (it could not be prior because the easement contract of the Mallay rural community is only obtained on that date).

b) On the conditions for completion

177. The completion date is the date on which, upon fulfillment of the relevant conditions, IMC was to make payment of the balance of the price established in the

²³⁴ I have seen the registry entries of the mining concessions in the Public Registries and I have not identified the registry of any mining concession blockage.

²³⁵ Exhibit MD-0049, articles 87 and 88 of Resolution 142-2006-SUNARP-SN.

²³⁶ As I have previously indicated, this date has been assumed to be the most generous for IMC even though by that date it would not have, at least, complied with the blocking of the registration of the mining concessions, which could have taken a few additional weeks.

Mallay Draft (however, the transfer of the Mallay mining production unit was already executed).²³⁷ These conditions included:²³⁸

- (i) Registration of transfer of mining concessions in favor of IMC.
- (ii) Registration of the transfer of the beneficiation concession in favor of IMC.
- (iii) Transfer of registrable assets in favor of IMC.
- (iv) Conclusion of transfer of transferable Permits.

178. Although I have not had any information on the fulfillment of these conditions, here are some comments:

- The registration of the transfer of mining concessions in favor of IMC is a process followed before the National Superintendence of Public Registries (SUNARP) that takes approximately 2 to 3 weeks.
- The registration of the transfer of the concession of benefit in favor of IMC is another process followed before SUNARP that takes approximately 3 weeks.
- The transfer of registrable assets is a process followed before SUNARP that has a legal term of 60 business days.²³⁹ However, in practice, this is a procedure whose qualification term may vary between 7 to 20 business days depending on the complexity of the assets to be transferred.

179. The analysis of the transfer of the Permits will be made in subsection d) of this section.

²³⁷ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 1.19.

²³⁸ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 11.2.

²³⁹ Exhibit MD-0050, articles 25 and 27 of the Single Ordered Text of the General Regulations of Public Registries approved by Resolution 126-2012-SUNARP-SN.

c) Operation of the Mally processing plant under Buenaventura's ownership

180. In this section I present the analysis of the Permits required for the execution of the temporary ore processing alternative through the operation of the Mally processing plant under Buenaventura's ownership.
181. To execute this option, IMC and Buenaventura had to sign the Mally Draft and additionally a mineral processing services contract.²⁴⁰ Also, from a Permitting standpoint, the following requirements had to be met:
- (i) IMC was required to complete obtaining the Permits necessary to commence mining (exploitation) activities for the Invicta Project as discussed in paragraph 158 (et seq.) as this would be the source of the ore.
 - (ii) IMC had to modify its Environmental Certification in order to include the ore transportation route from the Invicta Project to the Mally project, considering the respective impacts and environmental management measures.
 - (iii) Buenaventura had to modify its Environmental Certification and operating Permit of the processing plant to be able to process ore from third parties (and make some improvements).²⁴¹
182. On condition (i), as I have indicated in para. 158 (and following), this in turn required a series of requirements and preconditions (i.e., Permits) by IMC, which could only be completed by the end of June 2020.²⁴²
183. Regarding the previous point, it is important to note that the mining (exploitation) Permit *per se* is not a requirement of the processing (beneficiation) Permit, however, it is being considered since the ore from the Invicta Project was the one that would be processed at the Mally processing plant.
184. Regarding condition (ii), IMC required to transport the ore from the Invicta Project to the Mally processing plant located 63 km away. In order to do so, IMC had to manage a modification of its EIAd in order to include the activities of transporting ore from the Invicta Project to the Mally processing plant and

²⁴⁰ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, Tenth.

²⁴¹ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, Sixteenth.

²⁴² This date refers to the ordinary modification scenario of the EIAd. Should it be possible to obtain approval of the alternative management system for the water from the mine interior through an ITS (which in our opinion is in a gray zone) mining could not have started before December 2019.

then transporting the processed ore to its final destination (which I understand would be a commercial export port).

185. From a legal point of view, the inclusion of this access for ore transport should be managed through an ordinary modification of the Invicta Project EIAd. On a strategic basis, I consider that the evaluation of this activity and the accesses could be included in the EIAd modification that IMC would have to make to include the mining components (explained in para. 110). In that scenario, this procedure in question would have been completed between December 2019 and March 2020.²⁴³
186. An ITS would not be the appropriate mechanism for the inclusion of transportation activities and new routes. It should be remembered that this mechanism (i.e., ITS) has an express legal limitation of not including and/or modifying components that are outside the area of direct environmental influence and/or effective area of the EIAd.²⁴⁴ There are some regulated exceptions to the rule, which are not applicable to this case. In that sense, if IMC had submitted an ITS to include these modifications, legally it would have been appropriate to deny the request. This would have had an adverse effect by generating even a longer delay in the schedule (having to submit the correct mechanism after the denial of the ITS).
187. Finally, regarding condition (iii), Buenaventura had to manage an ITS in order to allow the processing of ore coming from the Invicta Project, as well as to include a circuit for copper concentration in the Mally processing plant (improvement of processing).²⁴⁵ As indicated, this procedure has a real timeframe of 37 working days. In that sense, if I assume that the preparation of the file would require 1 month after signing the agreement (March 2019), this approval would have been obtained by June 2019. It should be noted that here it is assumed that Buenaventura's processing activity

²⁴³ This range considers that the preparation of the file for the modification of the EIAd could take between 6 and 9 months.

²⁴⁴ Exhibit MD-0011, Ministerial Resolution 120-2014-MEM-DM. According to section B. of the technical criteria for the submission of ITS, approved by Ministerial Resolution 120-2014-MEM-DM. Notwithstanding the above, I have identified a case of approval of an access outside the area of influence through an ITS (Directorial Resolution 0056-2019-SENACE-PE/DEAR). However, such case had the particularity of having a previous opinion from the Ministry of Energy and Mines regarding that such change did not represent additional impacts. In that sense, if IMC had obtained a similar favorable opinion from the Ministry of Energy and Mines until January 2019, it could have sought to incorporate the access in the ITS that would incorporate the mining components. Under this unlikely scenario, it would obtain Environmental Certification approval in March 2019. However, recall that this timeframe does not take into account other requirements.

²⁴⁵ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, Item 8.1.17.

would take place in a transition period between the signing of the document and the completion date, according to what is regulated in the Mallay Draft itself.

188. Subsequent to the ITS approval, Buenaventura had to manage an ITM for the inclusion of the changes in the operating Permit.²⁴⁶ The timeframe for this modification is 1 month, so it would have been possible to obtain approval in July 2019.
189. Considering the real status of IMC's mining Permits, condition (i) (i.e., mining Permits) would have been fulfilled only between December 2019²⁴⁷ and June 2020²⁴⁸; condition (ii) (i.e., environmental certification of the transport route) would have been fulfilled in December 2019; and condition (iii) (i.e., environmental certification and Mallay operating Permit) would have been fulfilled in August 2019. In that sense, in this scenario, the mineral beneficiation of the Invicta Project could only have started in July 2020, in a conservative scenario²⁴⁹ ; or January 2020, in an optimistic scenario.²⁵⁰

d) Operation of the Mallay processing plant under IMC's ownership

190. In this section I present the analysis of the Permits required for the execution of the mineral processing alternative through the operation of the Mallay processing plant under IMC ownership.
191. For this option, it was required to execute the closing of the contract with Buenaventura, as well as to transfer the transferable Permits and obtain the non-transferable Permits. Exhibit 12.a and 12.b of the Mallay Draft includes a list of the Permits of the Mallay mining unit. Based on this list, the following is an analysis of the most important steps to achieve processing under this assumption:²⁵¹

²⁴⁶ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, Item 8.1.17.

²⁴⁷ In the event IMC is successful in obtaining ITS approval for the alternative management system of water from the mine interior, which, as noted above, is a gray area.

²⁴⁸ In case IMC manages an ordinary modification of the EIA to include the changes required by the project, especially the alternative management system for water from the mine interior.

²⁴⁹ In this scenario IMC would obtain Environmental Certification of the alternative management system for the water from the mine interior and ore transport to the Mallay processing plant through an ordinary EIA modification.

²⁵⁰ In this scenario IMC would obtain Environmental Certification of the alternative management system for the water from the mine interior through an ITS. The environmental certification of the ore transportation, on the other hand, would have to be handled in an ordinary EIA modification.

²⁵¹ It is being assumed that the transfer of transferable Permits and the obtaining of non-transferable Permits will begin as of March 2019, the date that has been assumed as the "closing date" according to the draft contract.

(1) Transfer of mining concessions and beneficiation concession

192. According to the Mallay Draft, the Mallay mining unit had twenty-two (22) mining concessions and one (01) beneficiation concession.²⁵²
193. The transfer of the mining concessions and the beneficiation concession had to be registered in the Public Mining Registry in order to be effective against third parties and the Peruvian State.²⁵³ This procedure could take between 2 and 3 weeks. In that sense, this procedure could be completed by April 2019.

(2) Transfer of Environmental Certification.

194. Based on the Mallay Draft, the Mallay mining unit had an EIAd approved by Resolution 383-2009-MEM-AAM,²⁵⁴ two ordinary modifications and two ITS.²⁵⁵
195. According to the Environmental Regulation, upon registration of the transfer of the mining rights (i.e., the mining concessions mentioned above) in the public registries, IMC would be obliged to comply with the environmental obligations and commitments contemplated in the Environmental Certification. In this case, in order to formalize the ownership, IMC had to send a communication to the environmental authority.²⁵⁶
196. Notwithstanding this, it should be noted that, based on the principle of indivisibility,²⁵⁷ the authority could require the unification of the EIAd of both the Mallay mining unit and the Invicta Project, which could have implied a requirement for an ordinary modification of the EIAd or an ITS. For the purposes of this report, based on an optimistic assumption, it has been assumed that this will not be required by the authority, otherwise this would have impacted the schedule to the detriment of IMC.

²⁵² Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 34.

²⁵³ Exhibit MD-0018, article 106 of the Single Ordered Text of the General Mining Law approved by Supreme Decree 14-92-EM.

²⁵⁴ Exhibit MD-0051-, Directorial Resolution 383-2009-MEM-AAM.

²⁵⁵ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, pages 42 and 43.

²⁵⁶ Exhibit MD-0004, Supreme Decree 40-2014-EM, Article 22.

²⁵⁷ Exhibit MD-0005, Supreme Decree 19-2009-MINAM. Article 3 paragraph a regulates that the environmental impact assessment must be carried out in a comprehensive and integrated manner.

(3) Transfer of mine and mill operating Permits.

197. According to the Mally Draft, the Mally mining unit had the following operating Permits:

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Aprobación del Plan de Minado; Autorización de Inicio de Actividades de Explotación; y Autorización de Operación del botadero de desmonte en la UEA "Mally"	Resolución N° 008-2011-MEM/DGM
Autorización de funcionamiento del depósito "Sansón" en la UEA "Mally"	Resolución N° 0560-2015-MEM-DGM/V
Autorización de Construcción y Funcionamiento de las obras civiles e instalación de nuevos equipos y servicios auxiliares	Resolución N° 0310-2016-MEM-DGM/V

198. The regulations did not regulate a change of ownership procedure for the operating Permits; therefore, it is appropriate to submit a communication to the DGM similar to the one referred to in the previous point based on the right of petition.²⁵⁹

(4) Modification of discharge authorization (domestic and industrial).

199. According to the Mally Draft, the Mally mining unit had two (02) discharge authorizations, as follows:²⁶⁰

Vertimiento	Estación	Autorización	Fecha Inicio	Fecha Fin
Descarga de la poza de sedimentación del Nv 4060, proveniente de las bocaminas, desmontera y presa de relave 1A	EM-04	R.D. 109-2015-ANA-DGCRH (12.05.15), modificada por R.D. 252-2015-ANA-DGCRH (20.10.15)	25.05.15	24.05.21
Descarga de la PTARD (Vertimiento Doméstico)	EM-05	R.D. N° 030-2016-ANA-DGCRH (17.02.2016)	20.11.17	19.11.19

²⁵⁸ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, page 46.

²⁵⁹ Exhibit MD-0003, Supreme Decree 6-2017-JUS, Article 115.

²⁶⁰ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, page 35.

200. The regulation foresees that the discharge authorization may be modified in two cases, one of them being the change of ownership of the treatment system operator. For this procedure, the documents proving the new ownership must be submitted to the authority.²⁶¹ The legal timeframe for this procedure is thirty (30) working days.²⁶² However, in practice this procedure could take seventy-nine (79) working days. Therefore, it could reasonably be obtained in August 2019.
201. At least the industrial wastewater discharge authorization was required to continue with the processing operation, since it treats water from the tailings deposit, which receives the waste generated at the processing plant.

(5) Extinction and granting of the water use license.

202. As stated in the Mallay Draft, the unit had a surface water use license for mining purposes approved by Resolution 312-2011-ANA-ALA.²⁶³
203. The water resources regulations establish that in the event that the ownership of the property, establishment or activity for which the water use is intended is transferred, the new owner will have a preferential right to obtain the water use right (i.e., the water use license) under the same conditions. This involves the termination of the original license (of the previous holder) and the granting of a new license (to the new holder). Said regulation provides that the procedure for this has a timeframe of ten (10) working days.²⁶⁴ In practice this may take 2 months. Therefore, it could reasonably be obtained in June 2019.

²⁶¹ Exhibit MD-0052, article 26.1 of Resolution 224-2013-ANA.

²⁶² Exhibit MD-0003, Supreme Decree 6-2017-JUS, article 38.

²⁶³ Exhibit C-0287, Mallay Purchase Agreement between Buenaventura and Invicta, page 47.

²⁶⁴ Exhibit MD-0023, Supreme Decree 1-2010-AG, Article 65.3. This procedure is subject to positive administrative silence.

(6) Obtaining Explosives Permits

204. According to the Mally Draft, the Mally mining unit had an authorization for the acquisition of explosives and related materials to the explosives magazine approved by Resolution 163-2018-SUCAMEC/GEPP.²⁶⁵
205. Explosives regulations only regulate a procedure for the modification of the authorization in the event of a change in the type and quantity of explosives or materials acquired.²⁶⁶ In this sense, it was IMC's responsibility to manage a new authorization for the acquisition of explosives and materials.²⁶⁷
206. Additionally, although it is true that there is no reference to an authorization for explosives storage, the EIAd of the Mally mining unit does include an explosives magazine. In that sense, it was up to IMC to manage a new authorization for the storage of explosives.²⁶⁸

(7) Modification of hydrocarbon registry data

207. The Mally mining unit had a hydrocarbon registry for four (04) tanks (above ground) of 10,000 gallons each to store fuel. According to the Mally Draft, these tanks were registered with OSINERGMIN under Registration 98808-051-291112.²⁶⁹
208. In order to carry out the transfer, IMC had to request the modification of the data of the registry mentioned in the previous item due to a change of ownership. This request had to be attended by the authority within a maximum legal term of thirty (30) business days.²⁷⁰ In practice, OSINERGMIN complies with the issuance of a pronouncement within the indicated term.

²⁶⁵ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, page 47.

²⁶⁶ Exhibit MD-0029, Supreme Decree 10-2017-IN, article 210.

²⁶⁷ I have assumed that the prerequisites will be in place to manage this Permit.

²⁶⁸ Exhibit MD-0051, paragraph 2.37 of Report 1366-2009-MEM-AAM/MAA/WAL/JIV that supports Directorial Resolution 383-2009-MEM/AAM that approved the EIAd of the Mally project.

²⁶⁹ Exhibit C-0287, Mally Purchase Agreement between Buenaventura and Invicta, pages 46 and 47.

²⁷⁰ Exhibit MD-026, Resolution 191-2011-OS-CD, annex 1.1.

(8) General conclusions on the transfer/obtaining of Permits for the execution of processing activities in Mallay processing plant under IMC ownership

209. If IMC proceeded immediately with arranging for the transfer of the transferable Permits and/or obtaining the non-transferable Permits as of the closing date of the contract with Buenaventura (assumed to be March 2019, as indicated in paragraph 176), this process would have been concluded between August and September 2019.
210. This is without prejudice to the need to additionally meet three conditions: (i) completion of the Permits to start mining as explained in paragraph 158 and (ii) to manage a modification of the Environmental Certification to include the transport route from Invicta to Mallay, as explained in paragraph 184 and following; and (iii) make the changes to Mallay's Environmental Certification and operating Permit as explained in paragraphs 188 and following.
211. Regarding condition (i), this could only have been fulfilled in December 2019 to June 2020. On the other hand, regarding condition (ii), due to an efficiency issue (reduction of timeframes), this activity should have been incorporated in the modification of the EIAd required for the alternative management system for water from the mine interior and/or surface water use capture, whose approval was estimated between December 2019 and March 2020.
212. Regarding condition (iii), it would be advisable that the Environmental Certification, including the required change of the processing plant (to beneficiate Invicta's ore), be submitted after the communication of the transfer of the EIAd in favor of IMC. Under this assumption, ITS and subsequent ITM approval would not have been obtained before July 2019.
213. Based on the above, in this scenario (processing in the Mallay processing plant under IMC ownership), the processing could not have started before July 2020, in a conservative scenario²⁷¹ ; or January 2020, in an optimistic scenario.²⁷²

²⁷¹ In this scenario IMC would obtain Environmental Certification of the alternative water management system for the mine's in-mine water and ore transport to the Mallay processing plant by means of an ordinary EIAd modification.

²⁷² In this scenario IMC would obtain Environmental Certification of the alternative in-mine water management system through an ITS. Environmental Certification of the ore haulage, on the other hand, would have to be handled in an ordinary EIAd modification.

e) Counterfactual analysis - Processing with Mallay Alternative

214. The following is a summary of the requirements to proceed with the processing at the Mallay processing plant according to the Mallay Draft, which considers a main alternative (transfer of the processing plant in favor of IMC) and an optional complementary alternative to the transfer (temporary and transitory processing by Buenaventura through a service contract).

215. According to the analysis made in the previous paragraphs, as of October 2018 (date of the blockade of the access roads to the Invicta Project) it was pending that IMC and Buenaventura obtain (or conclude the stages of) certain Permits in order to be able to start the processing activities. The following is a summary of the activities that IMC and Buenaventura were required to undertake in connection with such Permits, as well as the estimated dates of approval of such Permits. This analysis is made apart from the Permits required for the mining (exploitation) activities, which, as we have pointed out, are necessary since the ore was to come from such mine.²⁷³

- Closing Date Conditions regulated in the Contract (IMC and Buenaventura)²⁷⁴

Objective: To perfect the transfer of the Mallay mining unit in favor of IMC.

Prerequisite: IMC had to previously comply with the closing conditions regulated in the Mallay Draft.

Estimated date: It has been assumed that this would have been culminated in March 2019, despite the fact that IMC has not commented on any of these conditions, except for the assignment of the easement contract with the Mallay community.

- Ordinary modification of the EIAd of the Invicta Project (IMC)²⁷⁵

²⁷³ In brackets I have indicated the person responsible for managing the Permit or complying with the condition.

²⁷⁴ Applicable to both alternatives.

²⁷⁵ Applicable to both alternatives.

Objective: To have the Environmental Certification of the access to the Mallay processing plant for ore transportation.²⁷⁶

Prerequisite: IMC had to prepare the dossier and comply with the mechanisms of citizen participation regulated by law.

Estimated date: December 2019 to March 2020.²⁷⁷

- ITS of the EIAd of the Mallay mining unit (IMC or Buenaventura)²⁷⁸

Objective: To include the modifications to the processing plant that will allow the processing of the ore coming from the Invicta Project and that includes the improvements.²⁷⁹

Prerequisite: Execution of closing of the Mallay unit transfer contract (not required, but recommended, if the environmental Permit holder were Buenaventura).

Estimated date: June 2019.

- Modification of the Operating Permit of the Mallay processing plant (IMC or Buenaventura)

Objective: To have the operating Permit to execute the necessary changes for the processing of the ore coming from the Invicta Project and including the improvements.

²⁷⁶ This requirement is necessary for processing as a plant owner, as well as if such processing is carried out by Buenaventura.

²⁷⁷ Assuming that the appropriate process is the ordinary modification based on the legislation, since the route would be out of the influence area. Also, due to strategic issues (reduction of timeframes) it is being considered that this modification will be the same that regulates the alternative management system for water from the mine interior.

²⁷⁸ According to the Mallay Draft, this requirement is necessary for the optimization of the Mallay Plant and to achieve the processing of the Invicta Project ore in any scenario.

²⁷⁹ Assuming that the modifications required at the Mallay Plant for the processing coming from the Invicta Project will have non-significant environmental impacts, it can be managed through an ITS.

Prerequisite: IMC or Buenaventura had to obtain prior approval of the modification of the Mally unit EIAd (ITS).

Estimated date: July 2019.

- Transferring transferable Permits and obtaining non-transferable Permits²⁸⁰

Objective: To carry out the processing of ore at the Mally processing plant under IMC ownership. This task involves the transfer of the mining concessions and the beneficiation concession, environmental certification, operating Permits, as well as the modification of the discharge authorization, obtaining a water use license, and obtaining Permits for the acquisition, use and storage of explosives.

Prerequisite: IMC had to comply with the conditions by the closing date and execute all actions described in paras. 172 y 173.

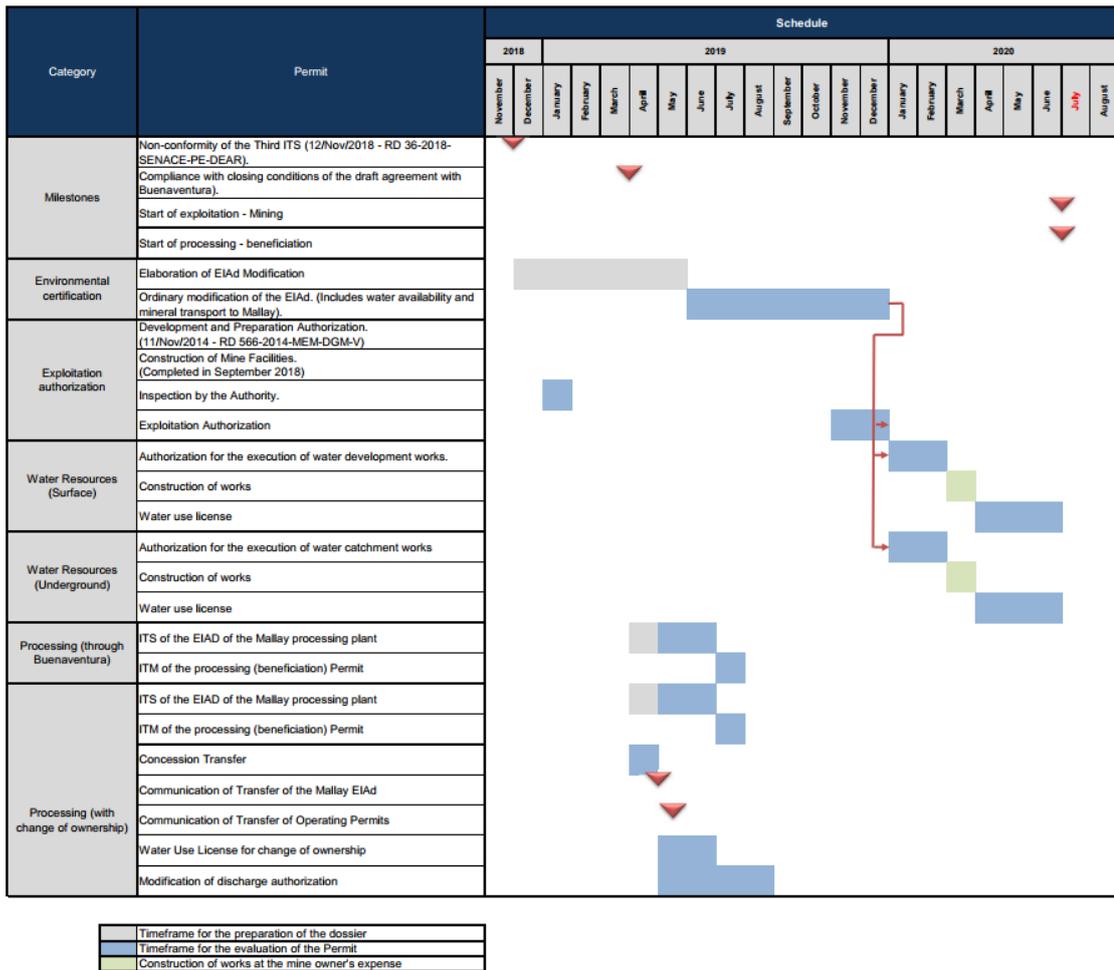
Estimated date: August 2019.²⁸¹

216. The above analysis reflects the tasks pending as of October 2018 in order to be able to start processing (beneficiation) activities. To facilitate the understanding of the scenarios analyzed below I present two timelines showing the scenarios considered in this report.
217. Based on the assumption of an ordinary modification of the EIAd for the Invicta Project to include the alternative management system for water from the mine interior (which would also include the transport of ore from the Invicta Project to the Mally processing plant), it can be concluded that in a conservative scenario in which the October 2018 blockage would not have occurred, the processing activities with ore from the Invicta Project could not have started before July

²⁸⁰ This requirement is only applicable for the main scenario referring to the operation of the Mally plant under IMC ownership.

²⁸¹ I have considered only the main Permits for processing at the Mally plant under IMC ownership and that no additional Permit modifications (other than ITS and ITM) were required to be managed.

2020. The above is shown in the following timeline, which we also attach as Exhibit MD-0053.



218. It is only at that date (i.e., July 2020) that in this conservative scenario IMC could reasonably be expected to commence mining activities (including the use of mine groundwater) and it would be expected that in parallel they (IMC and/or Buenaventura) would have managed all pending approvals for the processing.

219. On the other hand, assuming an optimistic regulatory scenario regarding compliance with the conditions for the start of mining (possibility of approving the alternative water management system through an ITS), the Invicta Project's mineral processing activities (and related activities) could not have started before January 2020 (this does not consider the Permits required for the use of surface water from the 2 new sources considered by IMC). The above is shown in the following timeline, which is also attached as Exhibit MD-0054.

processing plants.²⁸² According to the documents in the arbitration file,²⁸³ the main processing plants considered by IMC were: (i) San Juan Evangelista; (ii) Huancapeti II; and (iii) Altagracia.

222. The following is a description of each of these alternatives. This description will later serve to analyze the feasibility of resorting to such processing plants to process the Invicta Project's ore and, if so, the steps that IMC had to comply with to make it possible. It should be noted that this analysis will be restricted purely to the legal regulatory (i.e., Permitting) aspect. In that sense, our analysis will exclude any assessment of the technical adequacy of such plants.

a) San Juan Evangelista processing plant

223. The owner of this processing plant is Consorcio Metalúrgico San Juan Evangelista S.A.C. (CSJE).²⁸⁴ The plant is located in the Junín Region, province of Huari, approximately 325 km from the Invicta Project.²⁸⁵

224. In June 2018, IMC and this company entered into an ore processing service agreement to process 1,500 MTH of ore from the Invicta Project. The processing would be carried out in the second half of July 2018 and until the conclusion of the remitted volume.²⁸⁶

225. Regarding Permits, the contract stated in its first clause that the plant was "(...) *Documented with permits from ANA, ALA, Approved Environmental Impact.*"²⁸⁷ Note that said document does not contemplate any annex with greater detail on these Permits nor does it make specific reference to the mining Permits required for the operation of the processing plant (i.e., the beneficiation concession).²⁸⁸

²⁸² In paragraph 87 of the Claimant's Memorial states that the experience with these third party plants was "not optimal". However, in paragraph 114 of the Claimant's Reply they point out that any problems with these plants were easily solvable.

²⁸³ Among these documents I refer mainly to the Claimant's Memorial; the Claimant's Reply; the Witness Statement of Julio Félix Castañeda Mondragón dated October 1, 2021; Witness Statement of Gordon Ellis dated October 1, 2021; and Witness Statement of Gordon Lloyd Ellis dated September 23, 2022; as well as Exhibits C-0144, C-0146, C-0141, C-0042 and C-0043.

²⁸⁴ Exhibit MD-0055, Mining Right Summary - San Juan Evangelista and Exhibit C-0144, Mineral Processing Service Contract 01.07/SJE-2018.

²⁸⁵ Witness Statement of Julio Félix Castañeda Mondragón of October 1, 2021, paragraph 85.

²⁸⁶ Exhibit C-0144, Ore Processing Service Contract 01.07/SJE-2018, page 1. It is assumed that the version contained in this Exhibit corresponds to the final version executed by the parties. Also, due to the volume of ore considered in the Contract the purpose of the Contract is to be able to execute tests and not for commercial level processing, which legally could not yet be performed due to insufficient IMC Permits.

²⁸⁷ Exhibit C-0144, Ore Processing Service Agreement 01.07/SJE-2018, page 1.

²⁸⁸ Exhibit C-0144, Ore Processing Service Agreement 01.07/SJE-2018.

226. According to the Mining Law and Cadastre System (SIDEMCAT)²⁸⁹ of the Geological Mining and Metallurgical Institute (INGEMMET) the title of the beneficiation concession of the CSJE processing plant was granted through Directorial Resolution 225-2019-GRJ/GRDE/D notified on 9 October 2019.²⁹⁰ It should be specified that I have not had access to said resolution. However, in SIDEMCAT it can be seen that said plant, with the beneficiation concession issued in October 2019, had a capacity of 350 TMD.²⁹¹
227. Similarly, the corresponding search in the Mining Formalization Integral Registry (REINFO) does not yield results with the name of this company or its Mining Formalization Integral Registry (RUC).²⁹² However, we cannot confirm if it was previously listed in this registry.
228. According to Julio Castañeda, this plant "(...) also did not have a cyanidation treatment system and had piles of accumulated ore due to processing commitments with other mining companies (...)".²⁹³ Gordon Lloyd Ellis, and Claimant, considered that the difficulties faced by processing plants (in general) could be remedied without representing significant costs; however, they do not make a reference to regulatory needs.²⁹⁴

b) Altagracia processing plant

229. According to the ore processing contract signed between IMC and Minera Coriland S.A.C., this company carries out its processing activities in a plant called Altagracia.²⁹⁵
230. According to the information reviewed, the Altagracia processing plant (also called Coriland in this arbitration) is located in the Lima region, in the province of Huaura, approximately 113 km from the Invicta Project.²⁹⁶ The

²⁸⁹ This system can be accessed through the following link: <https://portal.ingemmet.gob.pe/web/quest/sidemcat#>

²⁹⁰ Exhibit MD-0055, Mining Right Summary - San Juan Evangelista.

²⁹¹ Exhibit MD-0056, Payment of good standing fee - San Juan Evangelista. The good standing fee table of said exhibit records the payments made for the right of validity of the beneficiation concession. In said table, the column "HECTARES" refers to the installed capacity of the plant. The use of the word "HECTARES" in this column corresponds to an inaccuracy in the system, since the system uses the same template used for mining concessions for beneficiation concessions. In the former, the good standing fee is calculated according to the area (in hectares) of the mining concession. On the other hand, in the case of the latter, the good standing fee is calculated based on the production capacity.

²⁹² Exhibit C-0144, Mineral Treatment Service Contract 01.07/SJE-2018. As stated in the mineral treatment service contract the RUC of the company is 20514357022.

²⁹³ Witness Statement of Julio Castañeda of October 1, 2021, paragraph 88.

²⁹⁴ Second Witness Statement of Gordon Lloyd Ellis of September 23, 2022, paragraph 32; and Reply, paragraphs 114 to 116.

²⁹⁵ Exhibit C-0141, Mineral processing services contract with Minera Coriland S.A.C, page 1.

²⁹⁶ Witness Statement of Julio Félix Castañeda Mondragón of October 1, 2021, paragraph 85.

documents in the file and the public information to which I have had access have not allowed me to identify a single owner of this plant. Said documents mention different owners with certain variations. Thus, we have that:

- (i) In May 2018, IMC entered into an ore processing services contract with Minera Coriland S.A.C., who, according to the contract, is a company engaged "*(...) in the activity of Mineral Concentration at its ALTAGRACIA Concentrator Plant*".²⁹⁷
- (ii) Julio Castañeda's testimonial statement indicates that this plant was owned by Andes Mineral S.A.C.²⁹⁸
- (iii) Directorial Resolution 171-2019-GRL-GRDE-DREM, dated June 2019, approved the Environmental Management Instrument for the Formalization of Small Mining and Artisanal Mining Activities (IGAFOM) of the "ALTAGRACIA" mining project for the execution of processing activities.²⁹⁹ The request for approval of this instrument was submitted by Minera Altagracia E.I.R.L., represented by Javier Yep Galleres. On the other hand, by means of Directorial Resolution 178-2019-GRL-GRDE-DREM, Minera Altagracia E.I.R.L, obtained the title of the beneficiation concession "Minera Altagracia", and the corresponding operating authorization.³⁰⁰ It should be noted, however, that both resolutions (i.e. IGAFOM approval and beneficiation concession title with operating authorization) were subsequently declared null and void by Resolution 11-2020-GRL/GRDE, dated March 2020.³⁰¹

231. According to the service contract mentioned in point (i) of the previous paragraph, the plant would process a batch of between 2,000 MTH and 4,000 MTH +/- 10%, coming from the Invicta Project. Regarding the plant's Permits, the first clause (Numeral 1.1) of this contract states that "*(...) THE PLANT has the authorizations and permits to process minerals, in addition to complying with environmental, safety and occupational mining health regulations in the performance of its*

²⁹⁷ Exhibit C-0141, Mineral processing services agreement with Minera Coriland S.A.C.

²⁹⁸ Witness Statement of Julio Félix Castañeda Mondragón of October 1, 2021, paragraph 85.

²⁹⁹ Exhibit MD-0057, Directorial Resolution 171-2019-GRL-GRDE-DREM.

³⁰⁰ Exhibit MD-0139, Directorial Resolution 178-2019-GRL-GRDE-DREM.

³⁰¹ Exhibit MD-0058, Regional Economic Development Management Resolution 11-2020-GRL/GRDE.

beneficiation work. The relevant permits mentioned are attached in Annex 4."³⁰²

232. It should be noted that the version of the contract contained in Exhibit C-0141 is not accompanied by any Permit.³⁰³ The page corresponding to Annex 4 of said document only mentions the following:

"Annex 4

Coriland Information

Current Accounts Minera Coriland S.A.C.

Current account Inter-American Bank of Finance (...)

Interbank Account Code (...)"³⁰⁴

233. INGEMMET's SIDEMCAT does not show any results of processing plants under the name of Minera Coriland S.A.C. (with whom IMC signed the processing contract)³⁰⁵ or under the name Andes Mineral S.A.C.
234. A search on behalf of Minera Altagracia E.I.R.L. (with whom IMC had not signed any contract for ore processing) in INGEMMET's SIDEMCAT identified a result for a beneficiation concession called "Minera Altagracia", located in the Lima region, in the province of Huaura in the district of Ambar. Also, according to SIDEMCAT, it is verified that this facility would have a capacity of 250 TMD.³⁰⁶ However, the results of this search do not reflect a number of a resolution approving the beneficiation concession title, so there is no certainty that it was finally issued.³⁰⁷ It should be noted that the result of said search indicates that the date of formulation of the beneficiation concession was only 22 May 2019, which would be an indication that this SIDEMCAT result would reflect the beneficiation concession that was

³⁰² Exhibit C-0141, Mineral processing services contract with Minera Coriland S.A.C, page 1.

³⁰³ Exhibit MD-0092, Report 014-2019-GRL-GRDE-DREM/RVE where the Regional Government of Lima states that: "*MINERA CORILAND S.A.C., is the holder of the Altagracia 2008 mining concession, however, it does not have any authorization approved or under evaluation to carry out exploration, extraction and/or mineral beneficiation activities within the Lima region, in the Altagracia 2008 mining concession*".

³⁰⁴ Exhibit C-0141, Mineral processing services contract with Minera Coriland S.A.C, page 10.

³⁰⁵ Exhibit C-0141, Mineral processing services contract with Minera Coriland S.A.C.

³⁰⁶ Exhibit MD-0060, Payment of good standing fee - Minera Altagracia. The good standing fee table of said exhibit records the payments made for the right of validity of the beneficiation concession. In said table, the column "HECTARES" refers to the installed capacity of the plant. The use of the word "HECTARES" in this column corresponds to an inaccuracy in the system, since the system uses the same template used for mining concessions for beneficiation concessions. In the former, the good standing fee is calculated according to the area (in hectares) of the mining concession. On the other hand, in the case of the latter, the good standing fee is calculated based on the production capacity.

³⁰⁷ Exhibit MD-0059, Mining Right Summary - Minera Altagracia.

granted by Directorial Resolution 178-2019-GRL-DREM,³⁰⁸ which, as I indicated above, was declared null and void by 11-2020-GRL/GRDE, dated March 2020.³⁰⁹

235. On the other hand, in the review of REINFO with the RUC numbers of the companies indicated in the documents reviewed, the following is verified:

- The search had no results with the RUC of the company Minera Coriland S.A.C.³¹⁰
- The search yields the following results with the RUC of the Andes Mineral S.A.C. company.³¹¹ It should be noted that this list does not refer to the Altagracia beneficiation concession or any other mining rights in the province of Huaura.

Resultado de la Búsqueda - página 1 de 1 Total 12 Registros.

#	DATOS DEL DECLARANTE		DERECHO MINERO		UBICACIÓN GEOGRÁFICA			Estado
	RUC	Minero en vías de formalización	Código Único	Nombre	Departamento	Provincia	Distrito	
1	20508552107	ANDES MINERAL S.A.C.	650010209	TAMBO DE VISO Nº 34	LIMA	HUAROCHIRI	SAN MATEO	VIGENTE
2	20508552107	ANDES MINERAL S.A.C.	010184303	SEGUNDA	LIMA	HUAROCHIRI	SAN MATEO	VIGENTE
3	20508552107	ANDES MINERAL S.A.C.	11003213X01	SARITA	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
4	20508552107	ANDES MINERAL S.A.C.	650015511	TAMBO DE VISO 53	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
5	20508552107	ANDES MINERAL S.A.C.	11001183Y01	CARLOS V	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
6	20508552107	ANDES MINERAL S.A.C.	11001706X01	JORGE CHAVEZ	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
7	20508552107	ANDES MINERAL S.A.C.	11000851Y01	LA POSITIVA	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
8	20508552107	ANDES MINERAL S.A.C.	010029702	NUEVO TAMBORAQUE 3	LIMA	HUAROCHIRI	SAN MATEO	VIGENTE
9	20508552107	ANDES MINERAL SOCIEDAD ANONIMA CERRADA	010013017	PAUGAR-UNO	HUANUCO	HUAMALIES	LLATA	VIGENTE
10	20508552107	ANDES MINERAL S.A.C.	11002695X01	PIGRISIA	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO
11	20508552107	ANDES MINERAL S.A.C.	650015611	TAMBO DE VISO 52	LIMA	HUAROCHIRI	SAN MATEO	VIGENTE
12	20508552107	ANDES MINERAL S.A.C.	650010309	ESPERADA Nº 15	LIMA	HUAROCHIRI	SAN MATEO	SUSPENDIDO

- The search yields the following results with the RUC of Minera Altagracia E.I.R.L.³¹²

Resultado de la Búsqueda - página 1 de 1 Total 9 Registros.

#	DATOS DEL DECLARANTE		DERECHO MINERO		UBICACIÓN GEOGRÁFICA			Estado
	RUC	Minero en vías de formalización	Código Único	Nombre	Departamento	Provincia	Distrito	
1	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	650017810	ALTAGRACIA 2010	LIMA	HUAURA	AMBAR	SUSPENDIDO
2	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	010399206	FARALLON A1	LIMA	HUAURA	AMBAR	VIGENTE
3	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	010098207	ALTAGRACIA NORTE	LIMA	HUAURA	AMBAR	SUSPENDIDO
4	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	650005908	ALTAGRACIA 2008	LIMA	HUAURA	AMBAR	VIGENTE
5	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	010098307	ALTAGRACIA SUR	LIMA	HUAURA	AMBAR	VIGENTE
6	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA	8022935-15-06	(ACTIVIDAD DE BENEFICIO)	LIMA	HUAURA	AMBAR	VIGENTE
7	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA - MINERA ALTAGRACIA E.I.R.L.	650000615	CORICARAL 2	LIMA	HUAURA	AMBAR	VIGENTE
8	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA - MINERA ALTAGRACIA E.I.R.L.	650000414	CORICARAL I	LIMA	HUAURA	AMBAR	VIGENTE
9	20603349696	MINERA ALTAGRACIA EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA - MINERA ALTAGRACIA E.I.R.L.	010194614	TRES DE MARZO	LIMA	CAJATAMBO	CAJATAMBO	SUSPENDIDO

³⁰⁸ Exhibit MD-0139, Directorial Resolution 178-2019-GRL-GRE-DREM.

³⁰⁹ Exhibit MD-0058, Regional Economic Development Management Resolution 11-2020-GRL/GRDE.

³¹⁰ Exhibit C-0141, Mineral processing services contract with Minera Coriland S.A.C., page 1. According to the mineral processing service contract, the company's RUC is 20556619795.

³¹¹ According to the consultation made on the website of the National Superintendence of Customs and Tax Administration (<https://e-consultaruc.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>), the RUC of this company is 20508552107.

³¹² According to the consultation made on the website of the National Superintendence of Customs and Tax Administration (<https://e-consultaruc.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>), the RUC of this company is 20603349696.

236. This last search allows us to identify a registration for “Actividad de Beneficio” (“Beneficiation Activities”). It should be noted that the previous search does not allow us to verify if we are in front of the same processing plant regulated in the contract signed between IMC and Minera Coriland S.A.C.

237. In relation to this plant, Julio Castañeda pointed out that although “(...) it *was the closest to the Site (after Mallay), it lacked a cyanidation treatment system in its tailings facilities, which implied a potential loss of recoverable gold*”.³¹³ As noted above, both Gordon Lloyd Ellis, as well as Claimant, considered that the difficulties faced by the processing plants could be remedied without representing significant costs.³¹⁴ However, it makes no reference to the regulatory requirements related to such variations.

c) Huancapeti II

238. The owner of this processing plant is Minera Venard S.A.C.³¹⁵ The plant is located in the Ancash region, province of Recuay, approximately 325 km from the Invicta Project.³¹⁶

239. In August 2018, IMC and this company entered into an ore treatment service contract to first process 7,000 MTH in September and 10,000

³¹³ Witness Statement of Julio Castañeda of October 1, 2021, paragraph 88.

³¹⁴ Second Witness Statement of Gordon Lloyd Ellis of September 23, 2022, paragraph 32; and Reply, paragraphs 114 to 116.

³¹⁵ Exhibit MD-0061, Summary of mining right - Huancapeti II and Exhibit C-0146, Mineral Processing Service Contract.

³¹⁶ Witness Statement of Julio Félix Castañeda Mondragón of October 1, 2021, paragraph 85.

TMH from October 2018 to May 2019, monthly of polymetallic ores to obtain concentrate of different metals.³¹⁷

240. Regarding Permits, the contract stated that "THE PLANT has the authorizations and Permits to be able to process minerals, in addition to complying with environmental, safety and occupational mining health regulations in the performance of its beneficiation work. The relevant Permits mentioned are attached in Annex 3".³¹⁸

241. It should be noted that the version of the contract contained in Exhibit C-0146 is not accompanied by any Permit. The page corresponding to Annex 3 of said document only contains the following text:

"Annex 3
Venard Information
Current Accounts Minera Venard S.A.C.
Plant Permits
*Balance Calibration Certificates".*³¹⁹

242. A review of INGEMMET's SIDEMCAT³²⁰ verifies that the title of the beneficiation concession for the Minera Venard S.A.C. plant was granted through Directorial Resolution 7-2012-GRA/DREM/D, dated 30 January 2012.³²¹ In both sources it can be verified that the plant had a capacity of 350 MTD.³²²

243. Notwithstanding the foregoing, upon searching the RUC³²³ of this company in REINFO, it has been verified that currently (as of 18 December 2022) said company is registered in said registry appearing with "SUSPENDED" status as follows:

³¹⁷ Exhibit C-0146, Mineral Processing Service Contract.

³¹⁸ Exhibit C-0146, Mineral Processing Service Contract, paragraph 1.1.

³¹⁹ Exhibit C-0146, Mineral Processing Service Contract, page 18.

³²⁰ Exhibit MD-0061.

³²¹ Exhibit MD-0062, Directorial Resolution 7-2012-GRA/DREM/D.

³²² Exhibit MD-0063, Payment of good standing fee - Huancapeti II. The good standing fee table of said exhibit records the payments made for the right of validity of the beneficiation concession. In said table, the column "HECTARES" refers to the installed capacity of the plant. The use of the word "HECTARES" in this column corresponds to an inaccuracy in the system, since the system uses the same template used for mining concessions for beneficiation concessions. In the former, the good standing fee is calculated according to the area (in hectares) of the mining concession. On the other hand, in the case of the latter, the good standing fee is calculated based on the production capacity.

³²³ Exhibit C-0146, Mineral Processing Service Contract. According to the mineral processing service contract, the company's RUC is 20503474787.

#	DATOS DEL DECLARANTE		DERECHO MINERO		UBICACIÓN GEOGRÁFICA			Estado
	RUC	Minero en vías de formalización	Código Único	Nombre	Departamento	Provincia	Distrito	
1	20503474787	MINERA VENARD S.A.C.	B083877-02-01	(ACTIVIDAD DE BENEFICIO)	ANCASH	RECUAY	RECUAY	SUSPENDIDO
2	20503474787	MINERA VENARD S.A.C.	010057904	SAN RAYMUNDO II	ANCASH	HUARAZ	PAMPAS GRANDE	SUSPENDIDO

244. It should be noted that the above search does not allow us to verify whether we are dealing with the same processing plant and/or to know the registration status of this activity at the time when it entered into the previously mentioned contract with IMC. Since it is the same owner and geographic location, I consider that it is apparent that it corresponds to the same activity in the process of formalization. This contradiction between belonging to the formal regime (having a beneficiation concession granted in 2012) and at the same time being part of the mining formalization regime for the same component (whose objective in this case is to obtain the beneficiation concession) does not allow us to be certain about the sufficiency of the operating Permit of this plant. This is reinforced by the fact that the REINFO is subsequent to the granting of the concession. Finally, I must point out that, if we are facing a "SUSPENDED" status, the applicant in the process of formalization cannot carry out the activity (in this case beneficiation).³²⁴
245. In relation to this processing plant, Julio Castañeda stated that it "(...) *had to suspend work due to unexpected mechanical failures*".³²⁵ As we have already pointed out, both Gordon Lloyd Ellis, as well as the Claimant, considered that the difficulties faced by the processing plants could be remedied without representing significant costs.³²⁶ As in the previous cases, no reference is made to regulatory requirements.

d) *Counterfactual and (regulatory) feasibility analysis of processing at third-party mills*

246. Processing ore at third party facilities is feasible, provided that the ore owner and the processing plant have the necessary environmental, operational and additional Permits. In the present case, based on the information reviewed, in my expert opinion I consider that the

³²⁴ Exhibit MD-0064, article 7 of Supreme Decree 18-2017-EM. Exhibit MD-0091. It should be noted that from the information attached to the Regional Directorial Resolution 031-2019-GRA-DREM it appears that the Regional Government of Ancash initiated a PAS against Minera Venard S.A.C. for the alleged infraction of obstructing the entry of state officials in April 2019 to verify the alleged breach of the tailings dam of the Huancapeti II mining unit.

³²⁵ Witness Statement of Julio Castañeda of October 1, 2021, paragraph 88.

³²⁶ Second Witness Statement of Gordon Lloyd Ellis of September 23, 2022, paragraph 32; and Reply, paragraphs 114 to 116.

status of the Permits of the plants and IMC was not sufficient (yet) to be able to execute such processing activity in October 2018. In order to be able to do so, the tasks (Permits) detailed below had to be previously completed.

247. First, IMC would have had to complete the Permits in order to commence mining (exploitation) activities at the Invicta Project. As seen above, in order to do so IMC had to modify its Environmental Certification, obtain the mining authorization and the corresponding water use rights, among other Permits.
248. It should be noted that the fact that the ore shipped up to October 2018 and subsequent months until having the Operational Permit for exploitation corresponded to the development and preparation stage, and was sent for testing in said plants.³²⁷ If IMC intended to carry out processing at a commercial stage (with a view to commercialize the processed ore) it would have been necessary that it could legally exploit the Invicta Project.
249. Secondly, IMC could only have entered into the contract with a plant that was legally authorized to carry out processing activities. In this case we have seen that:³²⁸
- San Juan Evangelista (owned by CSJE) only obtained its beneficiation concession in October 2019.
 - Altagracia (owned by Minera Coriland S.A.C.) did not have a beneficiation concession. Also, the company that signed the processing services contract (i.e., Minera Coriland S.A.C.) was not registered in REINFO.
 - Finally, Huancapeti II (owned by Minera Venard S.A.C.) had a beneficiation concession from 2012. However, I have also verified that it was registered in the REINFO, i.e., it is an informal miner in the process of regularization. As of today, the registration of this company is suspended.

³²⁷ As pointed out by Gordon Lloyd Ellis in his second witness statement of September 23, 2022 (Paragraphs 80 and 81), IMC's relationship with these plants corresponded to that of a pre-production testing stage.

³²⁸ It should be noted that this service contract is different from the contracts that IMC had signed with the three plants (i.e., San Juan Evangelista, Coriland and Huancapeti II) which were for the execution of tests.

250. Paying attention to the last two points (dashes) is relevant. As noted in the description of the Huancapeti II and Altagracia plants, the contracts with Minera Venard S.A.C. and Minera Coriland S.A.C. respectively stated that these plants had "*the authorizations and permits to process minerals*".³²⁹ However, upon reviewing the REINFO information it is apparent that these companies, with their processing activities, were companies in the process of formalization. While, depending on the status of their registration, this may allow them to carry out certain processing activities (if they have considered this in their declarations), it is important to reflect this fact (i.e. being miners in the process of formalization) as the applicable legislation is different and specific.³³⁰
251. Third, IMC would have to modify its Environmental Certification to include: (i) the ore transportation activities from the mine to the plant; and (ii) the transportation of processed ore from the chosen processing plant to its final destination. As Julio Castañeda pointed out in his witness statement the distance between the plants and the Invicta Project was a relevant factor "*(...) since it would be necessary to move 400 tons of ore per day, which would require multiple trips by a large fleet of dump trucks dedicated to the task.*"³³¹
252. This is not only relevant from a logistical, operational and cost point of view, but also from an environmental and regulatory point of view. The activity of transporting processed ore, through the use of a fleet dedicated to making multiple trips to move 400 tons of ore per day, is an activity likely to generate environmental and social impacts that must be evaluated and for which management measures must be established. Therefore, had IMC opted for processing at third-party processing plants, it would have had to modify its Environmental Certification to include this activity.
253. As indicated above, when analyzing the Mallay plant alternative, I have considered that the correct way to include this activity in the certification would be through an ordinary EIAd modification. In my opinion, trying to include this modification in an ITS could be difficult to sustain, considering that the

³²⁹ Exhibit C-0146, Mineral Processing Service Agreement (paragraph 1.1 of Clause One) and Exhibit C-0141, Mineral Processing Service Agreement with Minera Coriland S.A.C. (paragraph 1.1 of Clause One).

³³⁰ It should be noted that the formalization process is only applicable to small-scale and artisanal mining (article 3.1 of Exhibit MD-0064). Pursuant to article 91 of the Single Ordered Text of the General Mining Law (Exhibit MD-0018) in the case of processing activities, there is a daily limit of installed capacity in order to be considered a small mining producer or artisanal mining producer. In the case of the former (small mining producers) this limit is 350 MTD. For the latter (artisanal miners), the limit is 25 MTD.

³³¹ Witness Statement of Julio Castañeda of October 1, 2021, paragraph 81.

activities would be carried out outside the approved area of influence (an assumption that excludes the possibility of processing an ITS, according to what is regulated in the legislation).

254. In any case, in terms of timing, either by an ITS or by an ordinary EIAd modification, IMC could have attempted to include this activity in the modifications it was required to make to initiate mining activities, which have been developed above.
255. Likewise, in case it would have been necessary to make modifications to the third party processing plants to process the ore coming from Invicta Project, it would have been necessary to evaluate whether such modifications would have had to be included in an Environmental Certification and whether they would have required a modification of the operating Permit respectively, if applicable, or to make modifications to the dossiers submitted as part of the mining formalization process.
256. Finally, I must emphasize that the tasks described above arise outside of the existence of the October 2018 blockade and should be read in conjunction with the requirements of paragraph 158 necessary to commence operating activities.

III. The social license to operate and the Invicta Project

257. Section (II.) developed the main regulatory requirements that must be met in order to carry out mining (exploitation) and processing (beneficiation) activities in Peru. As explained in that section, these requirements include obtaining environmental Permits (i.e., Environmental Certification and mine closure plan); operational Permits (i.e., authorization of mining (exploitation) activities and the beneficiation concession); and other Permits for related activities related to the use of water, explosives, hydrocarbons, and archaeological protection.
258. There is no dispute that, from a legal/regulatory and formal point of view, in order to carry out mining activities it is indispensable to comply with such requirements. However, in current practice, restricting the planning of a mining project only to compliance with legal requirements and Permits is not enough.³³²

³³² Exhibit MD-0065. In *"The paths to a social licence to operate: An integrative model explaining community acceptance of mining"* (page 61) Kieren Moffat and Airong Zang note that, *"For mining companies, it is increasingly evident that obtaining a formal licence to operate from governments and meeting regulatory requirements is no longer enough. Instances of mining developments being delayed, interrupted, and even shut down due to public opposition have been extensively documented (Browne et al., 2011; Davis and Franks, 2011; Pmo and Slocombe, 2012; Thomson and Boutilier, 2011)."*

In addition, it is necessary to obtain consent from the surrounding population. This consent is called the social license to operate (or simply social license), and allows the project to be developed avoiding or mitigating potential conflicts and exposure to social risk.^{333 334}

259. This section (III.) is divided into four parts. The first part develops the origin and scope of the social license to operate, from a doctrinal and conceptual point of view. This will allow to know its different elements and levels, as well as the most common success factors and errors at the time of obtaining and maintaining it.
260. Although the social license to operate is an extra-legal concept, the Peruvian regulatory framework contemplates tools and principles that aim to reach the same objectives as this those represented by this concept. The second part of this section develops these tools and principles, which are reflected both in the general legal framework, as well as in the regulation that specifically applies to mining projects that carry out mining (exploitation) and processing (beneficiation) activities.
261. The third part of this section analyzes some facts of the case that explain the connection between Parán rural community (the Parán RC) and the Invicta Project. This analysis is based on information from the project's Environmental Certification, information from public records, some of the oversight procedures to which IMC was subject by OEFA and ANA, as well as information regarding interactions with the Parán RC.
262. Finally, based on the scope and conceptual content of the social license, the Peruvian regulatory framework and the facts of the case, the fourth part of this section analyzes the relationship between the Parán RC and IMC and whether it reflects a scenario in which the latter obtained/maintained a social license from the Parán RC. This part will also make

³³³ Exhibit MD-0066. In *"Exploring the origins of "social licence to operate" in the mining sector: Perspectives from governance and sustainability theories"* (page 346) Jason Pmo and D. Scott Solocombe note that *"Full legal compliance with state environmental regulations has thus become an increasingly insufficient means of satisfying society's expectations with regards to mining issues. There is now a need for mineral developers to gain an additional 'social license to operate' (SLO) in order to avoid potentially costly conflict and exposure to social risks (Bridge, 2004)."*

³³⁴ Exhibit MD-0067. In *"The Emergence of the "social licence to operate" in the extractive industries?"* (page 3) Raphael J Heffron and other authors point out that *"(...) a legal licence is not enough to guarantee the conduct of operations – a social licence, granted by the community, is now also required."*

reference to common mining industry practices that would have supported IMC in that objective.

A. Origin and scope of the social license to operate.

263. The term "social license to operate" emerged in the mid-1990s as a mining industry response to social risk. Since then, the term has been adopted by various players in the extractive industries.³³⁵ Some authors attribute the origin of this term to Jim Conney, a former Placer Dome executive, who in 1997 proposed the term as a tool to improve the reputation of the mining industry.³³⁶
264. The social license is the intangible, unwritten and tacit agreement between a mining company and society (or social group) that allows the initiation and/or continuation of legally authorized activities.³³⁷ The social license can be conceptualized as a goal in itself and, at the same time, as a set of (non

³³⁵ Exhibit MD-0065. In *"The paths to a social licence to operate: An integrative model explaining community acceptance of mining"* (page 61) Kieren Moffat and Airong Zang note that *"The term social licence to operate emerged in the mid-1990s from within the mining industry as a response to social risk Boutilier and Thomson, 2011). Since then, the term has been adopted by a wide range of actors in the resources sector, including mining companies (BHPB, 2011; Kurlander, 2001), civil society and non-governmental organisations (Slack, 2009), research institutions (CSIRO, 2013; McNab et al., 2013), governments (Australian Government, 2006), and consultants (Black, 2013)."*

³³⁶ Exhibit MD-0068. In *"Social License to Operate"* (page 1779) Ian Thomson and Robert Boutilier note that *"At a meeting with World Bank personnel in Washington in early 1997, Jim Cooney, then director of international and public affairs with Placer Dome, proposed that the industry had to act positively to recover its reputation and gain a "social license to operate" in a process that, beginning at the level of individual mines and projects, would, over time, create a new culture and public profile for the mining industry."* Exhibit MD-0067. In *"The Emergence of the "social licence to operate" in the extractive industries?"* (page 2) Raphael J Heffron (et.al.) notes that *"One scholar has attributed the term 'SLO' to Jim Cooney, a Canadian mining company executive, who first used it in 1997 (Nwapi, 2016; Pmo, 2013). Although the initial use of the phrase was metaphorical, it was subsequently adopted by the mining industry (Boutilier, 2014). And now while it has been in use over the past 20 years, a standardised definition of SLO has yet to emerge (Nwapi, 2016)."*

³³⁷ Exhibit MD-0068. In *"Social License to operate in the mining Industry: the case of Peru"*, (p. 480) Cláudia Sicoli Pósleman and Jose M Sallan point out that *"Social License to Operate (SLO) 'refers to the intangible and unwritten, tacit, social contract with society, or a social group, which enables an extraction or processing operation to enter a community, start, and continue operations' (Franks and Cohen 2012, p 1231)."*

legal) rules that companies should comply with to avoid or mitigate the generation of social conflicts around (or as a product of) their operations.³³⁸

265. Social license can also be understood as the relationship between the company and the social environment of the project, which should be based on mutual trust. This relationship determines society's expectations of how the company will conduct its operations.³³⁹ This also includes expectations regarding activities that society (or the social group) considers unacceptable, whether or not these expectations are supported by the legal framework.

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266. The social license is obtained (and maintained) when the company has the broad and continuous acceptance and approval of society (or social groups) to develop its operations.³⁴¹ In industries such as mining (i.e., extractive), having this social consent is particularly relevant, as the success (and even the possibility) of executing the project is necessarily tied to the specific location of the mineral.

267. In the context of the above, some authors point out that social license is made up of three central components: legitimacy, credibility and trust.³⁴²

³³⁸ Exhibit MD-0066. In "Exploring the origins of "social licence to operate" in the mining sector: Perspectives from governance and sustainability theories" (page 348) Jason Pmo and D. Scott Solocombe note that "(...) it is evident the SLO can usefully be conceptualized as both a goal and a set of rules (i.e., an 'institution') that must be followed. For mining companies, a SLO reduces social risk and helps allow operations to continue without community conflict."

³³⁹ Exhibit MD-0065. In "The paths to a social licence to operate: An integrative model explaining community acceptance of mining" (page 62) Kieren Moffat and Airon Zang note that "Social licence to operate has also been represented as a set of meaningful relationships between operating stakeholders based on mutual trust (Warhurst, 2001), and as a set of demands and expectations about how a firm will operate by local stakeholders and civil society at large (Gunningham et al., 2004)."

³⁴⁰ Exhibit MD-0069. In "Social License and Environmental Protection: Why Business Go Beyond Compliance" (page 310) Neil Gunningham, Robert A. Kagan and Dorothy Thornton point out that "(...) [social licence] governs the extent to which a corporation is constrain to meet societal expectations and avoid activities that societies (or influential elements within them) deem unacceptable, whether or not those expectations are embodied in law."

³⁴¹ Exhibit MD-0066. In "Exploring the origins of "social licence to operate" in the mining sector: Perspectives from governance and sustainability theories" (page 346) Jason Pmo and D. Scott Solocombe point out that "A social licence exists when a mining project is seen as having the broad, ongoing approval and acceptance of society to conduct its activities (Joyce and Thomson, 2000; Thomson and Boutilier, 2011)."

³⁴² Exhibit MD-0069. In "Social License to Operate" (page 1781) Ian Thomson and Robert Boutilier note that "Accumulated experience supports the proposition made by Thomson and Joyce (2008) that the normative components of the social licence comprise the community/stakeholder perceptions of the legitimacy and credibility of the mine or project and the presence or absence of true trust. These elements are acquired sequentially and are cumulative in building toward the social licence. The mine or project must be seen as legitimate before credibility is of value in the relationship, and both must be in place before meaningful trust can develop."

The materialization and progress in each of these components allows the company to move up through the different levels of social license. These levels, organized from the worst to the best scenario, are: (i) retention or withdrawal of the social license; (ii) acceptance; (iii) approval; and finally (iv) psychological identification.³⁴³ To the extent that the license is between levels (ii) to (iv), the company can be expected to operate in a scenario with a low probability of social conflicts.

268. Other authors consider that a social license model should be centered on the element of trust, which will be a central factor in determining community acceptance of operations. In such a model, trust may be impacted by how the mining company communicates, manages and mitigates the impacts of its operation. In particular, trust may be impacted (positively or negatively) by how the company relates to the communities and social environment (in terms of the quantity and quality of interactions between the company and the community) and "procedural justice" (which refers to the communities' perception of the fairness and justice involved in the company's decision-making processes).³⁴⁴
269. The model referred to in the previous paragraph gives special importance to the last factor (i.e., "procedural justice"). Proponents of this model point out that when communities are and feel listened to and perceive that companies act taking into account their concerns, it is possible to increase the level of trust, which has an impact on the level of acceptance of the community with respect to the operation.³⁴⁵

³⁴³ Exhibit MD-0068. "Social License to Operate" (page 1784) Ian Thomson and Robert Boutilier.

³⁴⁴ Exhibit MD-0065. In "*The paths to a social licence to operate: An integrative model explaining community acceptance of mining*" (page 62) Kieren Moffat and Airong Zang note that, "Specifically, we propose that community trust in a mining company will be central in this model of social licence and a strong predictor of community acceptance of its operation. We suggest that the extent to which a mining company manages and mitigates operational impacts (e.g., impacts on social infrastructure) will affect trust in the company. In particular, the way companies engage with communities (i.e., the quantity and quality of contact) and treat community members (i.e., procedural fairness in this relationship) will shape community members' trust in a mining company, and thus their acceptance of its mining operation."

³⁴⁵ Exhibit MD-0065. In "*The paths to a social licence to operate: An integrative model explaining community acceptance of mining*" (page 68) Kieren Moffat and Airong Zang note that "(...) the results from both studies suggest that procedural fairness is not only a significant positive predictor of trust, but also the strongest predictor of trust in our proposed model. When community members reported feeling heard, listened to, and that the company would act on their concerns, their trust in the company was enhanced. Consequently, acceptance of the mining operation is increased. The important role of procedural fairness observed here is consistent with a growing research into the effect of procedural fairness on acceptance of decisions and outcomes. In the literature, it has been suggested that when decision making processes are perceived as being fair, people are more accepting of decisions even when the eventual decisions are not in their favour (e.g., Besley, 2010)."

270. Also, based on practical experience, some authors have identified situations, created by the mining owners themselves, that hinder obtaining and maintaining the social license. Some of these obstacles include:³⁴⁶

- Selective *engagement*, which occurs when only those who are perceived to be positively inclined towards the project are engaged in dialogue, creating a group marginalized from information and participation that is likely to respond by rejecting the project and becoming the vocal opposition.
- Undermine the company's credibility by failing to deliver on promises already made or by providing false or incomplete information.
- Failing to understand the internal structure of the community and the relationships between stakeholders, and inadvertently creating or amplifying rivalries or divisions that will lead to conflict.
- Not respecting or listening to the community, assuming the form of the relationship and relying on legal positions and Permits to operate.
- Failure to maintain close contact with the community when there is a change in management or ownership of the project, thus weakening the continuity necessary to maintain the social license.

271. Failure to obtain (or maintain) the social license to operate can have detrimental consequences for the project. These consequences can range from delays in its execution to even, in more extreme cases, its cancellation.³⁴⁷ The magnitude of the consequences of not obtaining/maintaining the social license has led this component to be considered as one of the key risks in the mining

³⁴⁶ Exhibit MD-0068. "*Social License to Operate*" (page 1788) Ian Thomson and Robert Boutlier.

³⁴⁷ Exhibit MD-0067. In "*The Emergence of the "social licence to operate" in the extractive industries?"*" (page 1) Raphael J Heffron et al. note that "Failure to obtain the SLO can present operational risks that are detrimental to the success of energy projects. Public opposition to resources projects has been linked to project cancellations (Financial Post Staff, 2016; ABC News, 2016; Terwel and Mors, 2012), resulting in significant financial consequences (as will be highlighted in the case study of Columbia later)."

sector.³⁴⁸ In recent years, Ernst & Young (EY) has considered the social license to operate among the main (top 10) risks faced by the mining industry, reaching the first place among these risks during the years 2019, 2020, 2021, without considering that in the years 2022 and 2023, the first place has also involved risks of a social nature.³⁴⁹

272. Along the same lines, we have the results of the global survey on mining risks, prepared by KPMG. As can be seen, among the conclusions it is noted that *"Finally, it is important to note that risks associated with compliance with environmental, social and corporate governance (ESG) criteria **continue to be important for mining, especially those related to community and social license to operate, or regulatory and environmental, which were the most prominent among South American mining companies.**"*³⁵⁰ (emphasis added)
273. The social license constitutes an intangible, unwritten and dynamic agreement. It should be clear that the use of the word "license" in this concept corresponds to a metaphorical sense, and does not involve the formal obtaining of a Permit in the strict sense or from the point of view of administrative law (as it does in the obtaining of the Permits mentioned in section (II.) above). The social license also does not necessarily involve the subscription of a formal agreement with the parties involved, although this may serve as a tool to materialize (and measure) the license in question. This metaphorical license, as we have said, is in principle the consent that the company tacitly receives when there is trust and when the expectations of the community are properly managed, so that the latter accepts or approves the execution of the project. Unlike other more objective technical or regulatory requirements, by its very nature, the State cannot certify that a company has obtained or is in a social license scenario.

³⁴⁸ Exhibit MD-0067. In *"The Emergence of the "social licence to operate" in the extractive industries?"* (page 1) Raphael J Heffron et al. note that *"Failure to obtain the SLO can present operational risks that are detrimental to the success of energy projects. Public opposition to resources projects has been linked to project cancellations (Financial Post Staff, 2016; ABC News, 2016; Terwel and Mors, 2012), resulting in significant financial consequences (as will be highlighted in the case study of Columbia later)."*

³⁴⁹ According to EY's rating, among the risks faced by the mining industry, social license ranked fourth in 2016-2017 (Exhibit MD-0071); seventh in 2017-2018 (Exhibit MD-0072); first in 2019, 2020 and 2021 (Exhibits MD-0073, MD-0074 and MD-0075); third in 2022 (Exhibit MD-0076); and fourth by 2023 (Exhibit MD-0077).

³⁵⁰ Exhibit MD-0078. KPMG Global Mining Survey 2021 - Key findings for South America, KPMG.

274. There is no doubt that social license is a complex concept. Commonly this concept can be associated with other mechanisms of the extractive industries that are focused on the social aspect, such as corporate social responsibility; social impact assessments; citizen participation and community engagement plans; free, prior and informed consultation; community benefit agreements; land access agreements, among others. Although these concepts may influence how the company obtains and maintains its social license, the execution of these mechanisms or the signing of agreements does not automatically guarantee that the company has such a license, although it may help to make it happen.
275. In this scenario, given its complexity and dynamism, it would not be possible to regulate the social license from a legal administrative point of view. However, given its relevance for the mining industry, Peruvian regulation contemplates tools and principles that, even though they do not guarantee success, support the procurement and maintenance of the social license. These tools and principles are developed in the next part of this section.

B. Social license in the Peruvian regulatory framework

276. The Peruvian regulatory framework does not expressly regulate the concept of social license. However, Peruvian regulations do include tools and principles aimed at regulating the relationship between the mining company and the populations that could be impacted by its operations. These provisions constitute minimum legal requirements for mining companies. Below, I explain how these tools and principles are reflected in the general legal framework and in the specific regulation of the mining sector.

1. General legal framework

277. The General Environmental Law, Law 28611, establishes the rights, obligations and guiding principles of environmental management in Peru.³⁵¹ One of these rights is the right to participate in environmental management, which implies that everyone can participate responsibly in decision-making processes, as well as

³⁵¹ Exhibit MD-0079, article 1 of Law 28611.

in the definition and application of policies and measures related to the environment and its components.³⁵²

278. This law also contemplates the principle of sustainability, according to which environmental management, as well as the exercise and protection of the rights regulated by the aforementioned law, are based on the balanced integration of the social, environmental and economic aspects of national development.³⁵³ In this way, the State seeks to establish a balance between these three components.
279. On the other hand, the Law of the National System of Environmental Impact Assessment, Law 27446, regulates a system aimed at the identification, prevention, monitoring, control and early correction of the negative environmental impacts of investment projects.³⁵⁴ Among its objectives is the establishment of mechanisms to ensure citizen participation in the environmental impact assessment process.³⁵⁵
280. The regulation of this law establishes that the citizen participation process is applicable to all stages of the environmental impact assessment process, and includes all environmental management instruments applicable to the different phases of an investment project.³⁵⁶ This regulation establishes that citizen participation is a dynamic, flexible and inclusive process,³⁵⁷ which, logically, responds to the particularities of each investment project and the stakeholders involved.
281. The aforementioned regulation specifies that citizen participation is a process oriented towards dialogue and consensus building to contribute to the responsible and sustainable development of investment projects.³⁵⁸
282. Finally, as part of the general legal framework, there are also the rights of native and indigenous peoples recognized in Convention 169 of the International Labor Organization. In Peru, such rights, specifically the right to prior consultation, has been regulated in Law 29785,³⁵⁹ and its regulations.³⁶⁰

³⁵² Exhibit MD-0079, article II of the Preliminary Title of Law 28611.

³⁵³ Exhibit MD-0079, article V of the Preliminary Title of Law 28611.

³⁵⁴ Exhibit MD-0093, literal a of article 1 of Law 27446.

³⁵⁵ Exhibit MD-0093, literal c of article 1 of Law 27446.

³⁵⁶ Exhibit MD-0005, article 68 of Supreme Decree 19-2009-MINAM.

³⁵⁷ Exhibit MD-0005, article 68 of Supreme Decree 19-2009-MINAM.

³⁵⁸ Exhibit MD-0005, article 68 of Supreme Decree 19-2009-MINAM.

³⁵⁹ Exhibit MD-0080, Law 29785, Law on the right to prior consultation with indigenous or native peoples, recognized in Convention 169 of the International Labor Organization (ILO).

³⁶⁰ Exhibit MD-0081, Supreme Decree 1-2012-MC.

2. *Special legal framework*

283. The specific regulations applicable to the mining sector also provide for tools and principles focused on the social aspect of mining projects and operations.
284. As indicated in paragraphs 26 and following, because they are likely to generate significant negative environmental impacts, mining projects must first obtain approval of their environmental viability, which is obtained through the approval of the Environmental Certification. Pursuant to the Environmental Regulation applicable to the mining sector³⁶¹ the Environmental Certification of mining projects that develop mining (exploitation) and processing (beneficiation) activities is obtained by approving an EIAd.³⁶²
285. The EIAd is a complex management instrument and can cover several aspects. As for the social part, this instrument must contain: (i) the delimitation of the area of social influence of the project; (ii) a social baseline; (iii) the identification and evaluation of possible social impacts; and (iv) a social management plan (formerly called a community relations plan).³⁶³
286. Within the framework of the above, mining projects and operations have an area of direct social influence and an area of indirect social influence. The determination and scope of these areas is made in the EIAd and will depend on the magnitude of the impacts of the mining activity on the communities surrounding the project. The delimitation of these areas must include information on the dynamics of the relationships between stakeholders and social interaction, the identification of the main economic, social, political, demographic and cultural variables of the population, and their perceptions, needs and expectations of development.³⁶⁴
287. The social baseline includes a description of the socioeconomic conditions of the study area prior to project implementation, as well as other aspects related to people's health, cultural and anthropological aspects, and any other relevant element that may derive from the particularities of the area.

³⁶¹ Exhibit MD-0004. Supreme Decree 40-2014-EM.

³⁶² Exhibit MD-0004, article 4.9 of Supreme Decree 40-2014-EM.

³⁶³ Exhibit MD-0004, article 56 of Supreme Decree 40-2014-EM. In this section we are using Supreme Decree 40-2014-EM as it was the environmental standard for the mining sector in effect in 2018. This is independent of the fact that the original EIAd for the Invidia Project was approved under Supreme Decree 16-93-EM.

³⁶⁴ Exhibit MD-0004, article 58.2 of Supreme Decree 40-2014-EM.

The company in charge of preparing the EIAd³⁶⁵ will promote community participation in the preparation of the social baseline.³⁶⁶

288. Considering the social baseline, the area of social influence and the activities proposed by the project owner, the assessment of potential social impacts will be carried out.³⁶⁷ The management of these social impacts is done through a Social Management Plan (formerly called community relations plan).

289. The Social Management Plan, which as mentioned above is part of the EIAd, contemplates the tools proposed by the project owner to prevent and mitigate negative social impacts and enhance the positive social impacts of the project in the area of social influence.³⁶⁸ According to mining Environmental Regulation this plan must contain the following:³⁶⁹

- (i) The Community Relations Plan, which aims to achieve a harmonious relationship with local populations and their way of life. This plan includes the implementation of the communications plan, the relationship protocol, the code of conduct for workers and other relevant tools.
- (ii) The Citizen Participation Plan, which seeks to involve the populations of the area of influence from the earliest stage of the project. In mining projects, citizen participation activities are carried out before and during the EIAd preparation phase, during the EIAd evaluation process, and continue after approval of the study and during project implementation.
- (iii) The Social Concentration Plan, which contains measures to prevent and mitigate social risks and impacts, as well as mechanisms to bring together and concentrate the diverse interests of local populations.
- (iv) The Community Development Plan, which includes local promotion and social inclusion programs. This program aims to improve the

³⁶⁵ It is common practice for the Environmental Study to be prepared by a third party company, other than the mining owner. This is because Supreme Decree 40-2014-EM regulates that the study must be prepared by a consulting firm registered and authorized by the environmental authority (a company specialized in such services).

³⁶⁶ Exhibit MD-0004, article 40 of Supreme Decree 40-2014-EM.

³⁶⁷ Exhibit MD-0004, article 66 of Supreme Decree 40-2014-EM.

³⁶⁸ Exhibit MD-0004, article 60 of Supreme Decree 40-2014-EM.

³⁶⁹ Exhibit MD-0004, article 60 of Supreme Decree 40-2014-EM.

socioeconomic conditions of the local population by improving productive capacity, employment generation, health, nutrition and education.

- (v) The Social Investment Program, which includes the annual programming of investments planned for the execution of the Social Management Plan. This plan also consists of the company's social investment programs and projects that will be carried out to improve positive social impacts. According to the regulation, these investments should preferably be oriented towards public policy objectives, prioritizing the improvement of the population's living conditions. To this end, the measures to be implemented must be coordinated with the competent authorities.
 - (vi) The Social Impact Monitoring Program, which is essential to measure the evolution of the indicators established in the baseline and the evaluation of impacts.
 - (vii) The Resettlement Program, which is only applicable when the mining project contemplates this possibility.
290. As part of the EIAd, the commitments assumed in the Social Management Plan (formerly the community relations plan) are mandatory for the company. Their compliance is supervised by the competent authorities, who are legally empowered to impose fines and other types of sanctions and complementary measures in the event that they verify non-compliance.³⁷⁰
291. It should also be noted that mining companies must submit annually to the mining authority an environmental sustainability report that includes information on the social and environmental performance of their activity.³⁷¹
292. The EIAd is the main instrument that, as can be verified, considers a broad development of the social component that must be complied with by the mining companies. However, it should be noted that the limit established by the legal framework is a minimum limit, since, in practice, in order to obtain and maintain the social license, it is recommended that the mining company implement any other measure it considers relevant within the legal framework.

³⁷⁰ Exhibit MD-0004, article 61.1 of Supreme Decree 40-2014-EM.

³⁷¹ Exhibit MD-0004, article 148 of Supreme Decree 40-2014-EM.

293. In addition to the requirements described in the preceding paragraphs, Environmental Regulation also establish principles that guide the social management of mining projects. Among these principles are the following: ³⁷²
- (i) The principle of sustainable development, which seeks to ensure that mining activities contribute to the sustainable development of the population's capacities, strengthening the development and strengthening of local institutions, as well as the compatibility of mining activities with local economic activities, aiming to achieve economic diversification and local sustainability beyond the useful life of mining activities.
 - (ii) The principle of compliance with agreements, which seeks to reinforce the binding nature of agreements voluntarily entered into by the mining company with local populations through minutes, agreements, contracts or similar documents.
 - (iii) The principle of responsible relations, which seeks to guarantee respect for people, groups, institutions, authorities and local ways of life, while promoting trust with these stakeholders.
 - (iv) The principle of economic development, which seeks to promote local development through the preferential purchase of local goods and services.
 - (v) The principle of continuous dialogue, which seeks to maintain a fluid communication channel between the company and its stakeholders.
294. These principles, together with others (such as the principles of interculturalism, participation, local employment, right to consultation, among others), regulate the relationship between the mining company and the populations that could be impacted by the execution of the project, as well as the development of the activities foreseen in the aforementioned Social Management Plan. The plans and principles described above are not limited to the area where the components of the mining operation are located, but extend to the area of influence of the project (measured on the basis of the impacts it may generate).
295. In addition to the plans and principles developed, reference should also be made to the "prior commitment" that mining companies are obliged to assume by virtue of the provisions of Supreme Decree 42-2003-EM. According to

³⁷² Exhibit MD-0004, article 57 of Supreme Decree 40-2014-EM.

this commitment, mining companies are obliged to:³⁷³ (i) carry out activities that seek environmental excellence; (ii) act with respect towards institutions and authorities maintaining a favorable relationship with the population; (iii) maintain a continuous and timely dialogue; (iv) achieve with the populations of the area of influence an institutional framework for local development; (v) promote local employment, and (vi) preferably purchase local goods and services. Additionally, in the modification of said regulation approved by Supreme Decree 52-2010-EM, a greater development of these commitments was made.

296. Thus, as part of the development of commitment (ii), now called the principle of responsible relationship, mining companies, in addition to respecting people and institutions, are required to promote actions that strengthen trust among the stakeholders involved in the mining activity (i.e., the communities in the area of influence). This should be done through participatory processes and favoring conflict prevention and management, as well as the use of alternative conflict resolution mechanisms.³⁷⁴ This principle is aligned with IMC's commitment in the EIAd approved in 2009, where it states that the objective of its Information and Consultation Program is to "*avoid conflicts by generating confidence in the population of the communities (...)*".³⁷⁵
297. These commitments are materialized in the EIAd, becoming enforceable obligations for the mining companies. The regulation is broad and flexible because it is intended that these conditions and requirements respond to the particularities of each project and stakeholders. It is precisely the mining owner (together with the consultant in charge of preparing the EIAd) who must implement the social strategy during the execution of the project, so that it is developed in an economically, environmentally and socially sustainable manner.
298. The aforementioned regulations guide the relationship between the mining company and the communities that could be impacted by the project. As we have seen, its objective is that there is a continuous dialogue between the parties involved (i.e., the company and the communities) and that the social impacts are timely identified, communicated and managed by the mining company, so that the operations

³⁷³ Exhibit MD-0082, article 1 of Supreme Decree 42-2003-EM.

³⁷⁴ Exhibit MD-0082, article 1 of Supreme Decree 42-2003-EM.

³⁷⁵ Exhibit R-0047, Invicta Project EIAd. 8. Community Relations Plan, page 506.

can be executed in a sustainable manner and foster trust between the parties involved.

299. As we indicated at the beginning of this section, it is precisely this relationship of trust and the rapprochement between the company and the communities, and the management of social expectations and impacts, that makes it possible to obtain and maintain a social license.

C. The connection of Parán rural community (the Parán RC) and the Invicta Project

300. This third part focuses on describing the connection between the Parán RC and the Invicta Project, based on the content of the Environmental Certification, some of the oversight proceedings to which IMC was a party, information obtained from public records, as well as information regarding various interactions between the Parán RC and IMC to which we have had access in the context of this arbitration.

1. The Parán RC under the Invicta Project Environmental Certification

301. The Invicta Project's Environmental Certification was approved by Directorial Resolution 427-2009-MEM-AAM,³⁷⁶ in December 2009. This certification was modified twice through two ITS: the first, approved by Directorial Resolution 162-2015-MEM-DGAAM,³⁷⁷ and the second, by Directorial Resolution 050-2016-MEM-DGAAM.³⁷⁸
302. The following is a summary of the sections of the Environmental Certification (i.e., the EIAd and the two ITS) that show the connection between the Parán RC and the Invicta Project, and some of the commitments assumed by IMC in said Permit. Note that, being part of the Environmental Certification, these commitments constitute legally enforceable obligations to IMC and are subject to the control of the competent authority.

³⁷⁶ Exhibit C-0007, Directorial Resolution 427-2009-MEM-AAM.

³⁷⁷ Exhibit C-0040, Report 304-2015-MEM-DGAAM/DNAM/DGAM/C.

³⁷⁸ Exhibit MD-0035, Directorial Resolution 050-2016-MEM-DGAAM and Report 140-2016-MEM-DGAAM/DNAM/DGAM/C.

a) EIAd approved by Directorial Resolution 427-2009-MEM-AAM

303. Below, I describe the sections of the EIAd that refer to the location and area of social influence of the project, as well as the social commitments assumed by IMC in said instrument.

(1) On the location and the area of social influence according to the EIAd

304. According to the EIAd, the Invicta Project is located in the districts of Leoncio Prado and Paccho, in the province of Huaura, in the region of Lima, in the upper part of the Parán ravine, on the slopes of the Pirahuay hill.³⁷⁹ This instrument states that the project (according to its original design) "(...) covers the lands of the Parán and Lacsanga communities (...)".³⁸⁰

305. In describing the socioeconomic environment of the Invicta Project, the EIAd details the criteria used to delimit the area of indirect and direct social influence, as well as its scope. Accordingly, the area of indirect social influence would consist of the districts of Leoncio Prado and Paccho, while the area of direct social influence would include three rural communities: Parán, Lacsanga and Santo Domingo de Apache.³⁸¹ It should be added that these three communities are also considered in the EIAd as part of the project's *stakeholders*.³⁸²

306. On the other hand, the EIAd indicates that the land occupied by the Parán RC previously belonged to the Santo Domingo de Apache rural community, although initially, the former was founded as an annex of the latter in November 1914. The EIAd also adds that "[d]ecades later the inhabitants [of the Parán RC] requested their independence and constitution as an autonomous community

³⁷⁹ Exhibit R-0047. Invicta Project EIAd. Introduction, page 67.

³⁸⁰ Exhibit R-0047. Invicta Project EIAd. Executive Summary - 1. Introduction, page 26.

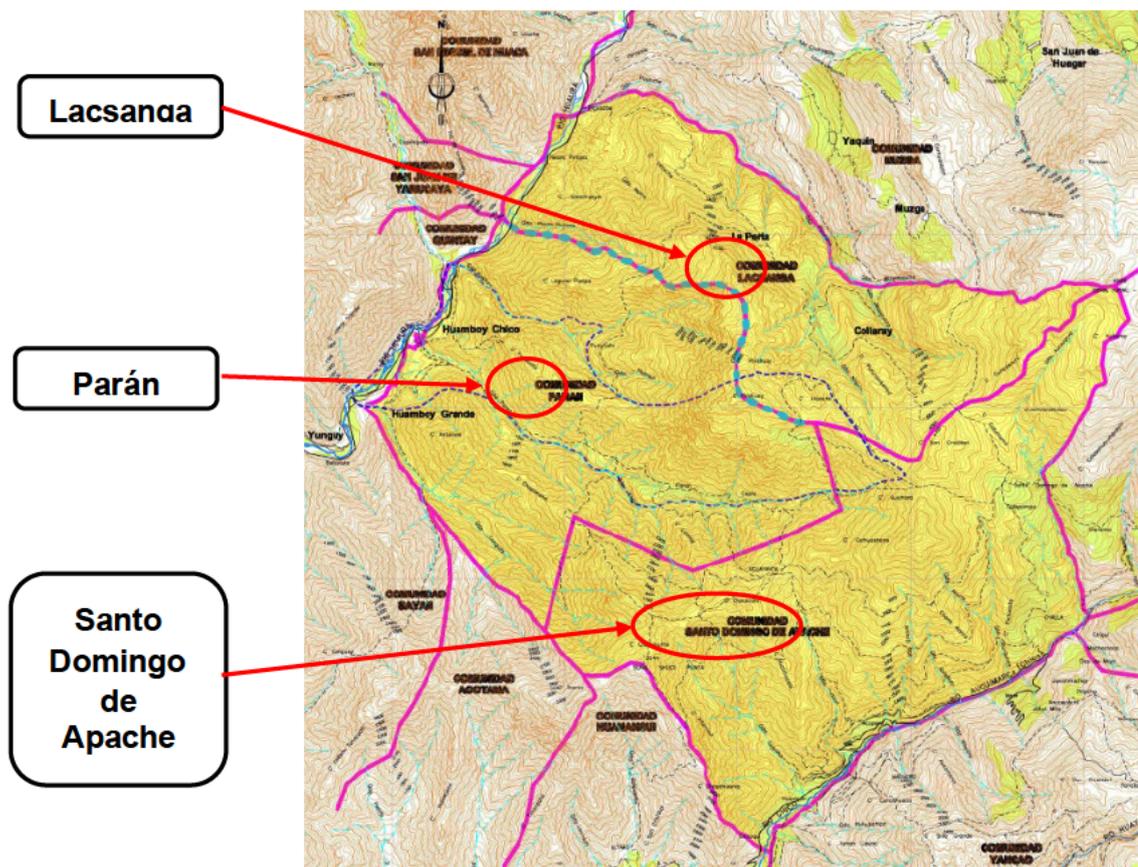
³⁸¹ Exhibit R-0047. Invicta Project EIAd. 4.3 Socioeconomic Environment, page 297.

"The social area of influence is considered to be the physical, geographic, socioeconomic and cultural space where the project may generate direct and indirect impacts, which by their nature may be positive or negative. The main criterion that supports the determination and delimitation of the area of influence is the connectivity with the political, social and economic spaces at the district and interdistrict levels. The areas of indirect influence of the project have been defined as the socioeconomic and cultural areas of the Leoncio Prado and Paccho districts. The communities of Lacsanga, Parán and Santo Domingo de Apache have been identified as areas of direct influence. Plan CSL-068400-GN-03 shows the delimitation of the Area of Direct Influence."

³⁸² Exhibit R-0047, Invicta Project EIAd. According to Chapter 4.3.6 Stakeholders are considered as Stakeholders, "(...) all those communities, institutions and individuals who are likely to be impacted negatively or positively by a project, in this sense have been considered as stakeholders the District Municipalities of Paccho and Leoncio Prado, Peasant Communities of Lacsanga; Parán and Santo Domingo de Apache, Educational Institutions, social organizations (functional and territorial), classified according to according to the following categories: Political, Economic, Public Administration, Health and Social Organizations (...)".

due to their distance from the central headquarters and in order to solve their problems quickly and efficiently, and they achieved this goal on 10 December 2000."³⁸³ The above is important because it allows us to situate ourselves in time with respect to the origin and creation of the Parán RC.

307. The EIAd also included a map with the delimitation of the area of direct social influence, which in turn shows the delimitation of the three communities that comprise it. Below is a section of this map (i.e., map CSL-068400-GN-03), which is also being attached to this report as an exhibit³⁸⁴ for better visualization. The boxes and arrows shown in this image have been added for better understanding and interpretation:



308. In this image, the area of direct social influence is in yellow. According to the map legend, the pink lines correspond to the

³⁸³ Exhibit R-0047. Invicta Project EIAd. According to chapter 4.3.3 Parán Community, page 328.

³⁸⁴ Exhibit MD-0083, EIAd Plan - Area of Social Influence. This same plan, although in a different resolution, can be found on page 772 of Exhibit R-0047.

"COMMUNITY DELIMITATION" while the dotted light blue line corresponds to a "DELIMITATION IN LITIGATION".

309. The aforementioned plan identifies that the territorial boundary between the Lacsanga community and the Parán RC was in dispute. The EIAd noted that this boundary disagreement could be a potential generator of conflict between stakeholders, a circumstance that could be impacted by the intervention of the Invicta Project.³⁸⁵
310. The above situation was also reflected in the EIAd stakeholder analysis matrix, in which the description of the boundary disagreement is expanded to indicate that it would involve the Pampa Pariacoto sector and the project's mining camp and work area.³⁸⁶
311. During the EIAd evaluation process, the DGAAM also noted the existence of the territorial disagreement. In relation to this, in the report that supports the resolution that approved the EIAd (Environmental Certification), the authority pointed out:³⁸⁷

³⁸⁵ Exhibit R-0047. Invicta Project EIAd. a.5 Social Relationships of paragraph a. Stakeholder Analysis Matrix of section 4.3.6 Stakeholders, page 367.

"There are no serious social conflicts in the organizations and authorities of the localities within the Project's area of influence. However, a recurring issue to date that could lead to greater disagreements and conflicts is the boundary problem between the communities of Parán, Lacsanga and Santo Domingo de Apache. This circumstance may be exacerbated by the intervention of the project as a source of benefits and job opportunities."

³⁸⁶ Exhibit R-0047. Table prepared by the authors based on the information in Table 4.3.6-3 of the Invicta Project EIAd, page 369.

Stakeholder group	Conflicts
President of the Parán rural community	Interference of the local government in the possible compensation and benefits of the mining company to the community. Border problems with the (SIC) communities of Parán and Santo Domingo in the Pampa Pariacoto sector and in the area of the project's mining camp and workings.
President of the Lacsanga rural community	Border problems with the communities of Parán and Santo Domingo in the Pampa Pariacoto sector and in the area of the project's mining camp and workings.
President of the Santo Domingo de Apache rural community	Border problems with the communities of Parán and Lacsanga in the Pampa Pariacoto sector and in the area of the project's mining camp and workings.

³⁸⁷ Exhibit MD-0037. On page 6 of 55 of Report 1473-2019-MEM-AAM/JCV/PRR/WAL/CMC/VRC that supports Resolution 427-2009-MEM-AAM, (by which the EIAd is approved, it states the following:

"The right of ownership of the surface land that overlaps the area of the mining concessions that make up the mining project. (...)

2.7 The DGAAM is aware that there is a conflict of interest between the communities of Lacsanga, Parán and Santo Domingo de Apache, in relation to the ownership of the surface land that overlaps the mining concessions involved in the mining project. In this regard, and reiterating what was stated in the participatory workshops held in the aforementioned rural communities on January 15 and 16, 2019, as well as in the Public Hearing held in the community of Lacsanga on April 94, 2009, it is specified that the competence of the DGAAM, technical regulatory body of the Ministry of Energy and Mines, is limited to evaluating Environmental Studies submitted by mining owners, subject to the large and medium mining regime, who plan to develop mining activities as established in Article 107 g) of Supreme Decree 031-2007-EM - Regulation of Organization and Functions of the Ministry of Energy and Mines. The DGAAM does not decide or define aspects related to the ownership of the surface land; this is not its competence.

2.8 On the other hand, and in relation to the obligation to have the surface land use permit, the DGAAM, within the administrative procedure for the evaluation of the Environmental Studies, informs the Mining Holders of their responsibility to have the authorization of the owner of the surface land before starting their mining activities. It is also their responsibility to ensure that such authorization has been obtained in compliance with the corresponding formalities, as established in Law 26505 (Law on private investment in the development of economic activities on the lands of the national territory and of the peasant and native communities) and its regulations. This authorization is not a condition for the approval of the Environmental Impact Study, the purpose of which is to determine the viability of the project from an environmental and social point of view.

2.9 Therefore, it is concluded that INVICTA MINING CORP S.A.C. must have before the start of operations of the projected mining activities, the agreement, agreements, or others signed with the person (natural or legal) that proves the ownership of the surface land that overlaps the mining concessions involved in this mining project, according to the rules that regulate the use of land for the exercise of mining activities").

- That the authority was aware of the conflict of interest between the three communities over the overlapping surface rights in the area of the Invicta Project's mining concessions.
- That its competencies as an authority were limited to the evaluation of the environmental study submitted by the mining owner.
- That said authority does not decide or define aspects related to the ownership of the surface property, as this is not part of its competencies.
- That the approval of the EIAd (i.e., the Environmental Certification) was not conditioned to obtaining the surface right required for the execution of the project.
- And that IMC had to have the surface right before starting the projected mining operations.

312. In accordance with the above:

- (i) the EIAd identified the Parán RC as a community in the area of direct social influence, along with the Lacsanga and Santo Domingo de Apache communities;
- (ii) the three communities are stakeholders for the project; and
- (iii) there is a disagreement or conflict regarding the delimitation of the surface land of the Invicta Project communities.

313. It should be noted that the DGAAM's statement on the scope of its competences and on the conditions of the EIAd evaluation procedure is correct. This authority (and in general the Ministry of Energy and Mines) does not decide on issues of surface rights and, in fact, obtaining a surface right is not a

requirement to obtain approval of an EIAd (it is a requirement for mining operating Permits).

(2) *On the social commitments assumed in the Invicta Project EIAd*

314. The EIAd includes in its eighth chapter a Community Relations Plan (an instrument that today the Environmental Regulation calls "Social Management Plan"), whose objective is:

*"Prevent or minimize the risks and negative social impacts and maximize the positive social impacts associated with the development of the mining activity, focused on environmental and economic sustainability, in pursuit of the development of society within a framework of duties and rights, respecting the Law, the Communities, individuals and the environment."*³⁸⁸

315. The aforementioned plan has, in turn, specific programs to meet these objectives.³⁸⁹ Some relevant programs for the purposes of this report are:

- The information and consultation program, which as part of its objectives seeks to "[a]void conflicts by generating confidence in the population of the Communities through a policy of openness and access to timely and transparent information"³⁹⁰ as well as "[t]o achieve the commitment of the actors involved (institutions, authorities, leaders and population) in favor of sustainable development and preservation of the environment";³⁹¹ and
- The citizen consultation program, which, among others, aimed to "[e]xpose periodically the scope of the project operations to the community, authorities and institutions, social and political organizations involved, in a framework of continuous dialogue and

³⁸⁸ Exhibit R-0047, Invicta Project EIAd. 8.1 General Objective of the Community Relations Plan. page 505.

³⁸⁹ Exhibit R-0047, Invicta Project EIAd. The Community Relations Plan of the Invicta Project EIAd contemplated the following Programs:

- Inconsistent information program
- Citizen consultation program
- Program for temporary hiring of local personnel
- Program for the purchase of local products
- Participatory socio-environmental monitoring program
- Local development program.

³⁹⁰ Exhibit R-0047, Invicta Project EIAd. 8.2 Information and Consultation Program. page 506.

³⁹¹ Exhibit R-0047, Invicta Project EIAd. 8.2 Information and Consultation Program. page 506.

transparency"³⁹² as well as "[d]isminish fears and balance the expectations of the population generated by the lack of knowledge regarding the project operations".³⁹³

316. In a complementary manner, the tenth chapter of the EIAd addresses the process of public consultation and citizen participation, which would be carried out from "(...) *the first contacts between the community and the company, and would be sustained over time during the useful life of the project*".³⁹⁴
317. According to the EIAd, this process was important because it would build trust between the community and the company, and would establish a channel to gather the expectations and opinions of the communities in the direct area of influence, so that they could be incorporated into the design of the study and work plans.³⁹⁵
318. Thus, the plans and programs included in the EIAd aimed at a relationship of trust, continuous dialogue and transparency between IMC and the communities in the area of social influence of the Invicta Project (which includes the Parán RC). These plans and programs would be implemented from the earliest stage of the project (i.e. the first contacts between the company and the communities) and would seek, among other things, to gather the perceptions and manage the expectations of these communities and stakeholders.

b) First ITS - Directorial Resolution 162-2015-MEM-DGAAM

319. In April 2015 IMC obtained approval of the first ITS.³⁹⁶ The ITS does not replace the EIAd (in its entirety) but only in the sections that are part of its objectives. Both documents, i.e., the ITS and the EIAd in the aspects that have not

³⁹² Exhibit R-0047, Invicta Project EIAd. 8.2.2 Citizen Consultation Activities. page 508.

³⁹³ Exhibit R-0047, Invicta Project EIAd. 8.2.2 Citizen Consultation Activities. page 508.

³⁹⁴ Exhibit R-0047. Invicta Project EIAd. Citizen participation process, page 541.

³⁹⁵ Exhibit R-0047. Invicta Project EIAd. 10.1 Introduction to Chapter 10 Citizen Participation Process, page 541.

"The Public Consultation and Citizen Participation process starts from the first contacts between the community and the company, and will be sustained over time during the life of the project. It is important because it favors trust (Community/Company), creates new spaces for dialogue and mutual understanding and strengthens existing ones, building an effective engagement mechanism where the positions of all interest groups or stakeholders are exposed, providing a platform for learning, innovation and improvement in economic, social and environmental terms.

The purpose of the Citizen Participation Process is to present the scope and development of the Environmental Impact Study and to establish an adequate channel of dialogue between the company and the communities and thus gather opinions, expectations and aspirations of the population in the area of direct influence and stakeholders with respect to the project, which are incorporated both in the design of the study and its corresponding work plans, as well as in the execution of the research activities and the evaluation and interpretation of the results.

³⁹⁶ Exhibit C-0040. Directorial Resolution 162-2015-MEM-DGAAM-DGAAM dated April 14, 2015, which is supported by Report 304-2015-MEM-DGAAM/DNAM/DGAM/DGAM/C approves the First ITS of the Invicta Project.

been modified, together constitute the Environmental Certification of the project.

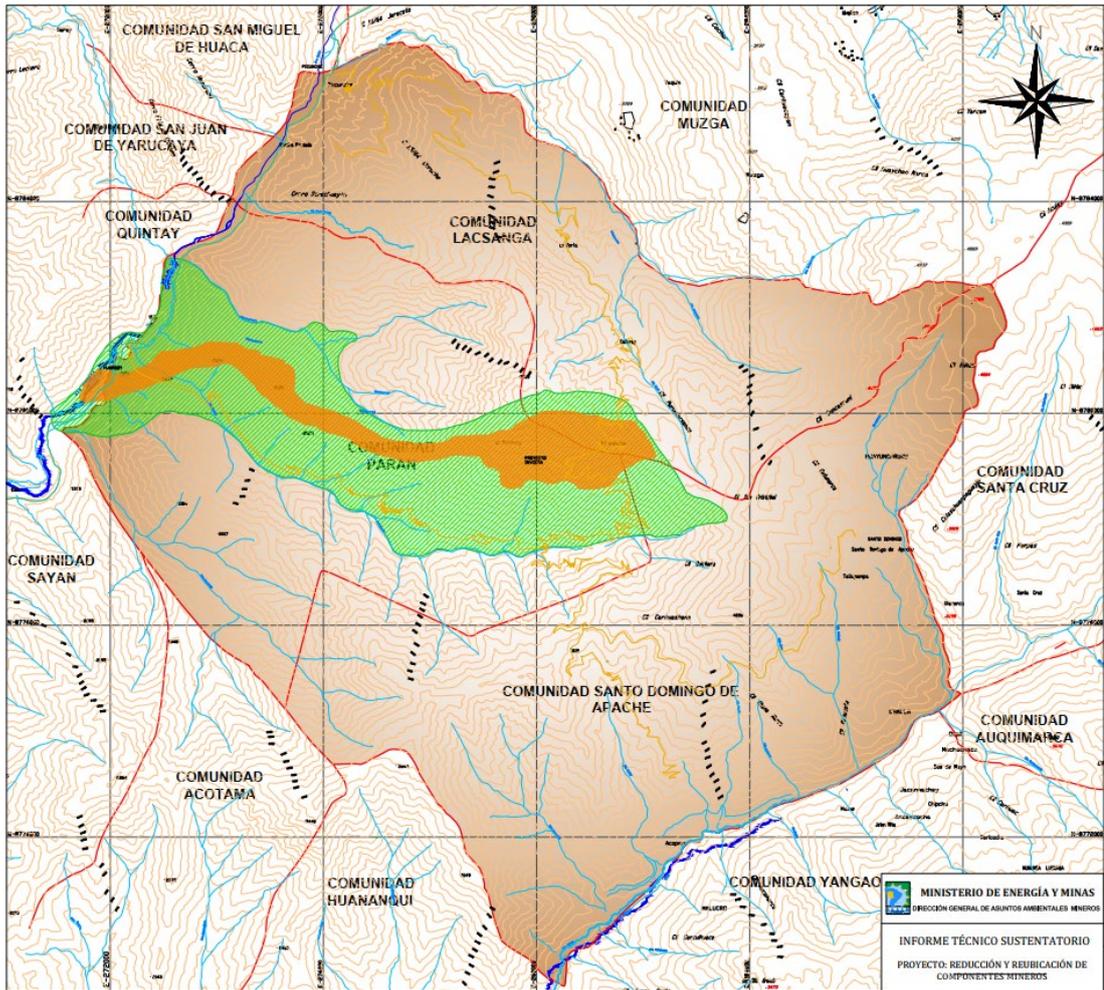
320. The first ITS reduced the scope of the Invicta Project from 40 components to 25. Some of the components that remained (i.e., the landfill, the organic soil deposit and the sanitary landfill) were modified or relocated.³⁹⁷
321. The ITS does not modify the area of influence (environmental or social) of the Invicta Project. According to the report on which the resolution approving the ITS is based, (...) *the mining components will be located within the area of direct and indirect environmental influence approved, without any modification (...)*.³⁹⁸ Along the same lines, the referred report stated that "(...) *the area of indirect influence of the project has been determined as the area of socioeconomic and cultural space of the districts of Leoncio Prado and Paccho. The communities of Lacsanga, Parán and Santo Domingo de Apache were determined as the Area of Direct Social Influence.*"³⁹⁹
322. As part of the ITS, IMC included several maps, including the "AREA OF SOCIAL INFLUENCE" map. A section of this map is shown below and is being attached to this report as an exhibit⁴⁰⁰ for better visualization:

³⁹⁷ Exhibit C-0040, Report 304-2015-MEM-DGAAM/DNAM/DGAM/C, Item 3.9.5. Table N° 1: Approved Project Components, contained in Numeral 3.9.5 of Report 304-2015-MEM-DGAAM/DNAM/DNAM/DGAM/C (Exhibit C-0040) contemplates a total of 40 components. Table N° 2 of said report indicates that 15 components would be eliminated. Tables N° 3, 4 and 5 describe the components to be modified and relocated.

³⁹⁸ Exhibit C-0040. Report 304-2015-MEM-DGAAM/DNAM/DGAM/C. Numerals 3.9.3.

³⁹⁹ Exhibit C-0040. Report 304-2015-MEM-DGAAM/DNAM/DGAM/C. Numerals 3.9.3 and 3.8.

⁴⁰⁰ Exhibit MD-0084, First ITS Plan - Area of Social Influence.



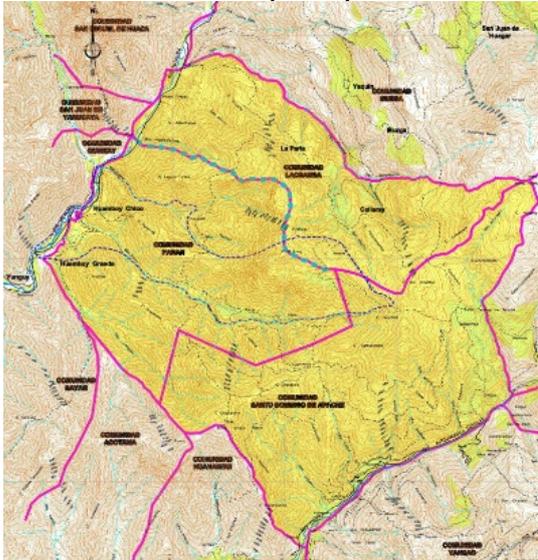
323. The legend of this map does not designate an indicative symbol (or color) for the area of direct social influence. It also does not indicate what the lines that appear in red would correspond to. Considering that the area of social influence of the Invicta Project was not modified in the ITS, if this map is compared to the EIAd map (i.e. Map CSL-068400-GN-03 discussed above) it can be noted that the area of social influence would be marked by the brown area that encompasses the communities of Parán, Lacsanga and Santo Domingo de Apache.

324. Similarly, it can be noted that the red lines on the ITS map have the same outline as the lines that appeared in pink on the EIAd map, which indicated the territorial limits of the communities. This, together with the location of the names of the three communities, allows us to reasonably infer that the red lines on this map serve the same function. Note that the ITS map does not include any reference to the disputed delimitation between the Parán RC and the Lacsanga rural community. There is also no reference to the fact that the dispute originally referred to regarding the community boundaries has been resolved. For

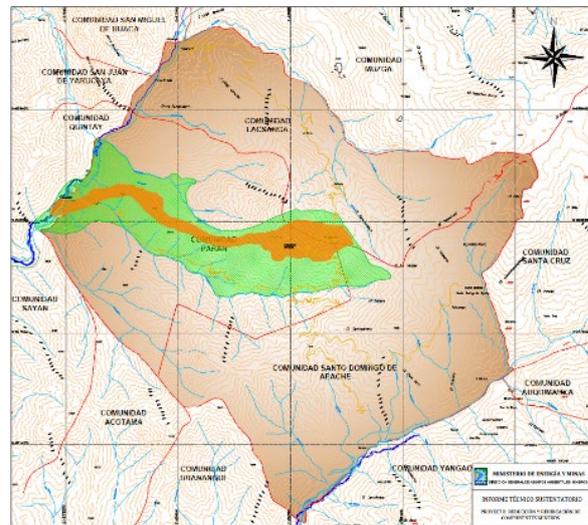
this reason, it is not known why the boundary was not marked as being in dispute.

325. Below are the images of both plans to facilitate a review and comparison:

**Plan of the Area of Social Influence
EIAd (2009)**

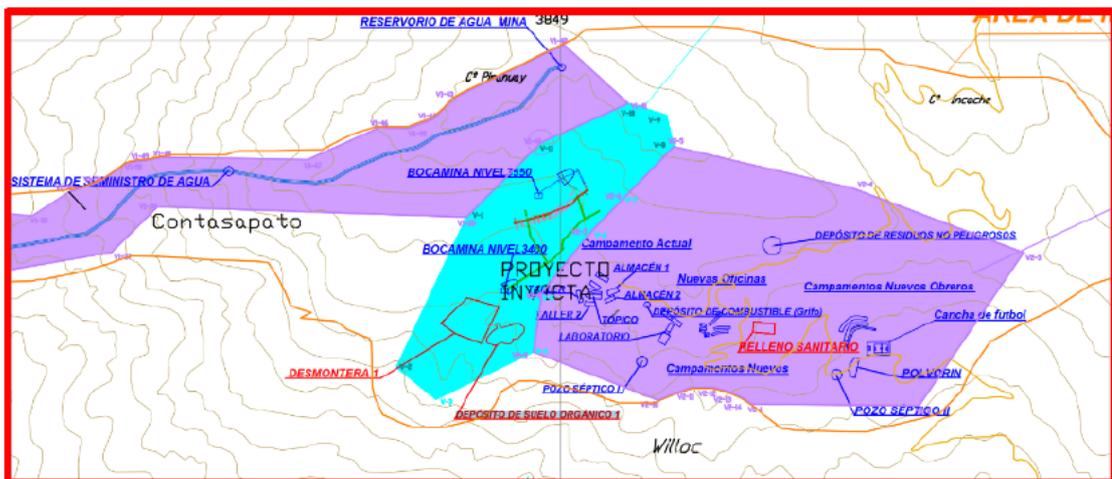
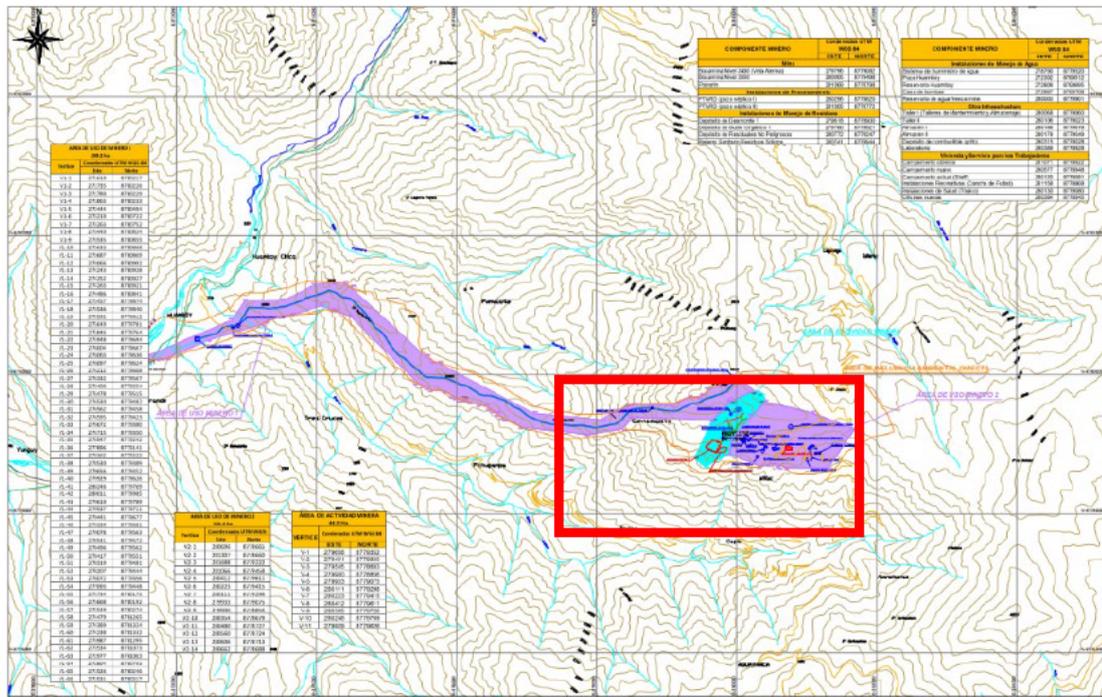


**Plan of the Area of Social Influence
ITS (2015)**



326. The first ITS also has a map (i.e., map 9.13) of the effective area of the Invicta Project, which reflects the "Mining Use Area" in purple and the "Mining Activity Area" in light blue. The following is a section of this map (and an enlargement), which is being attached to this report as an exhibit⁴⁰¹ for better visualization by the reader:

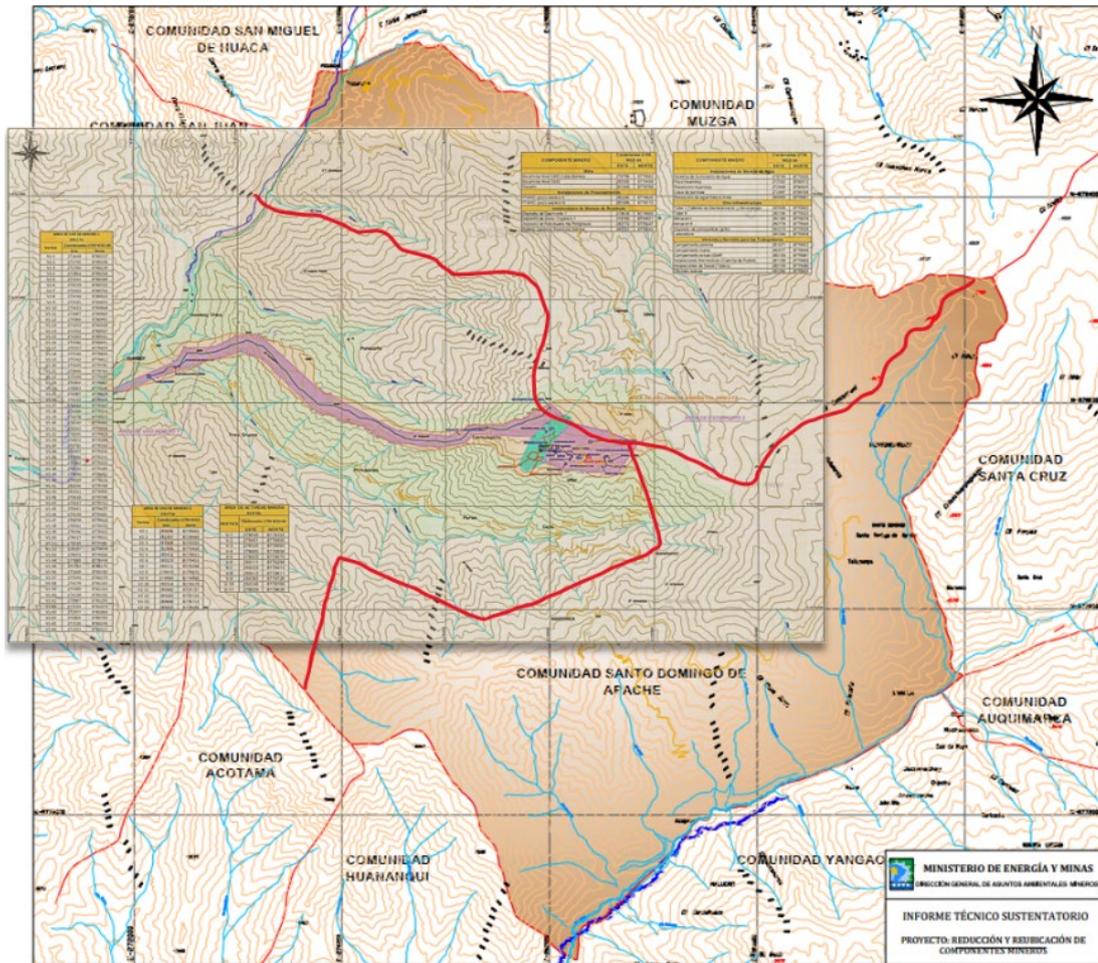
⁴⁰¹ Exhibit MD-0085, First ITS Plan - Effective Area.



327. This map shows the location of the different components of the Invicta Project according to the first ITS, i.e., after the reduction of the Invicta Project description.

328. It has not been possible to identify in the first ITS a map that, jointly, shows information on (i) the location of the components and (ii) the boundaries of the communities. Therefore, I have carried out an overlay by using conventional (non-specialized) means of the map of the area of social influence (first ITS) and the map of the effective area (first ITS). Below is the result of the superimposition of such maps in an image that, as I have pointed out, is of my own elaboration. To make this image I superimposed the lines (vertical and horizontal) that serve to indicate the coordinates on the maps. I also paid

attention to the area of environmental influence and the mining use area which, logically, follow a similar line.



329. Based on the information in both drawings of the Environmental Certification, it can reasonably be inferred that a significant portion of the Invicta Project components (including almost the entire mining activity area) were located within the territorial boundary of the Parán RC. Note that this conclusion is derived solely from an analysis of the information contained in the files of the EIAd and the first ITS, which are Environmental Permits that, as part of their scope, seek to identify and manage the social impacts of the project and is information provided by IMC. Likewise, in the specific case of the EIAd, for the approval of this instrument it is necessary to go through a citizen participation process in which the stakeholders are informed about the activities that will be part of the project.

330. It is important to note that it is not an objective of this report to determine who is the owner of the land where the Invicta Project components are located, however, this situation of conflict at the boundary of the communities and their surface properties is a fact that reflects the expectation that the Parán RC would have had based on the plans presented by the company itself.
331. Finally, I consider that the referred expectation was not only generated with the Parán RC, but also with the other communities. Note that when IMC corrected the observations of the operating Permit for the construction of the mine, in order to comply with the requirement regarding surface rights, it attached a contract with the Santo Domingo de Apache rural community, as well as a map, suggesting that all the components of the Invicta Project were located within the land of this community.⁴⁰² However, in a subsequent communication addressed by IMC to MEM in 2019, the general manager of IMC stated that the components are located on surface property of the Lacsanga rural community.⁴⁰³ In this regard we must remember that since the first ITS was approved (2015) to that date (2018) there were no significant variations approved to the design of the Invicta Project.

c) Second ITS - Directorial Resolution 050-2016-MEM-DGAAM

332. The second ITS was approved in February 2016.⁴⁰⁴ The objective of this ITS was to improve the ventilation systems in the mining process of the Invicta mining unit. According to the report supporting the resolution approving the second ITS, the area of social influence (direct and indirect) remains unchanged.

2. *Public Records Information*

333. In order to have a better understanding of the territorial limits of the communities that are part of the area of direct social influence, I conducted a search for registry entries in the National Superintendence of Public Registries (SUNARP). The results of this search are shown below.

⁴⁰² Exhibit MD-0086, Observation Lifting Report. See Response to the observation derived from *Requirement c)* on pages 5 and 6; and Annex 2.

⁴⁰³ Exhibit C-0209, Letter from Invicta to MINEM.

⁴⁰⁴ Exhibit MD-0035, Directorial Resolution 050-2016-MEM-DGAAM supported by Report 140-2016-MEM-DGAAM-DNAM-DGAM-DGAM-C.

a) About the Parán RC and the Santo Domingo de Apache rural community

334. The index search in the real estate property registry with the name of these communities did not yield any results. This means that in SUNARP there are no properties registered in the name of these communities. Attached to this report as an exhibit are the documents with the results of these searches.⁴⁰⁵

b) About the Lacsanga rural community

335. When searching under the name of the Lacsanga rural community I identified one main registry entry (i.e., registry entry 50000848) and three derived registry entries.

336. Registry entry 50000848 contains the following entries that are relevant to this report:⁴⁰⁶

- (i) Entry D 00002: This entry refers to a conciliation agreement between the Lacsanga rural community and the Santo Domingo de Apache rural community dated 21 December 2001. According to the referred entry, said act contemplates, among others, the following agreements:

"First: That the Lacsanga rural community recognizes that its boundaries with the co-defendant Santo Domingo de Apache rural community are the following: [description of the boundaries based on landmarks].

Second: That the co-defendant Santo Domingo de Apache rural community recognizes that its boundaries with the plaintiff community are those indicated in the first point (...)

That the co-defendant Lacsanga rural community recognizes that its boundaries with the main excluding third parties Mr. LUCAS MASIAS CLAROS FLORES, APOLINARIO CLAROS ROLENTINO and

⁴⁰⁵ Exhibit MD-0087, Index Search - the Parán RC; Exhibit MD-0088, Index Search - the Parán RC; Exhibit MD-0089, Index Search - Santo Domingo de Apache Rural Community.

⁴⁰⁶ Exhibit MD-0090, Registry entry 50000848 of the Lima and Callao Registry Office - Huacho Office, pages 2 and 3. Includes the entries of entry 50000848 mentioned in this paragraph, along with others.

*MAURA FLORES CLAROS VDA. DE CLAROS are as follows: [description of boundaries based on landmarks]."*⁴⁰⁷

The title giving rise to this entry was filed on 23 August 2006.

- (ii) Entry D 0003: This corresponds to an extension of the previous entry in which the fourth and fifth agreements of the aforementioned settlement agreement are included, as follows:

"Fourth; that the main excluding third parties Lucas Masías Claros Flores, Apolinario Claros Tolentino and Maura Flores Claros recognize the right of use of the Lacsanga rural community that their cattle have access to the place called Huirishin where there is a water spring that is used by said community, also the place called Pashur where there is a water spring, also granting the pastures of that area for the cattle of the said community, both parties being in agreement and continuing with the customs of free use.

*Fifth: That the litisconsorte Parán rural community recognizes that they do not have title to the property, likewise, their boundaries with the property of the main excluding third parties are not yet defined, and that they will assert their rights in accordance with the Law (...)"*⁴⁰⁸

The title giving rise to this entry was filed on 13 May 2008.

337. At the same time, the item under comment also makes reference to the surface right of 245 hectares (Assignment D00008), 45 hectares (Assignment D0009), and 2 hectares (Assignment D00010) granted in favor of IMC, as well as other easement rights and provisional annotations of independence.

3. Oversight procedures followed against IMCs

338. This section describes some of the oversight procedures followed against IMC for alleged non-compliance with environmental and water resources regulations. While I have identified

⁴⁰⁷ Exhibit MD-0090, Registry entry 50000848 of the Registry Office of Lima and Callao - Huacho Office, page 2.

⁴⁰⁸ Exhibit MD-0090, Registry entry 50000848 of the Registry Office of Lima and Callao - Huacho Office, page 3.

additional proceedings as part of my review, I will focus below on those that are relevant to this section of the Report.

a) *Exceedances of Maximum Permissible Limits (LMP) File 1629-2018-OEFA-DFAI-PAS*

339. On 27 September 2018, the DFAI of OEFA issued Directorial Resolution 2203-2018-OEFA-DFAI by which it resolved to declare IMC's responsibility for violating Supreme Decree 10-2010-MINAN,⁴⁰⁹ by having exceeded the LMPs.⁴¹⁰ Specifically, the charge in this procedure referred to the excess of the parameters for Total Cadmium, Total Copper and Total Zinc at the MEF-01 control point, where an effluent from the 3400 level mine was identified.⁴¹¹
340. In its resolution, the DFAI of the OEFA also ordered IMC to comply with a corrective measure that consisted of accrediting the treatment of mine water in order to comply with the LMP and, if applicable, to present the approval of the competent authority regarding the treatment and/or recirculation system of water from the 3400 level pithead (water from the mine interior), as well as evidence of its implementation and correct operation.⁴¹²
341. This procedure derived from a regular inspection carried out by the DFAI between 10 and 12 June 2017. During the administrative sanctioning procedure, as part of its defense arguments (i.e., disclaimers) IMC pointed out that the development and preparation works of the project were paralyzed from June 2015 to February 2018.
342. In response, DFAI stated that, according to Article 7 of Supreme Decree 33-2005-EM, suspension is defined as a temporary interruption of the activities of a mining unit or part thereof with the express authorization of the competent authority. In this line, it also cites Article 33 of the same regulation, which states that even in the case of suspension or stoppage of operations, the company must have implemented the Environmental Management Plan. Based on this,

⁴⁰⁹ Exhibit MD-0038, Supreme Decree 10-2010-MINAM.

⁴¹⁰ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI. According to Article 32 of the General Environmental Law (Exhibit MD-079-SPA, Law 28611), the Maximum Permissible Limit (MPL) is the measure of the concentration or degree of elements, substances or physical, chemical and biological parameters, which characterize an effluent or an emission, which when exceeded causes or may cause damage to health, human welfare and the environment. Their compliance is legally enforceable. Depending on the particular parameter to which it refers, the concentration or degree may be expressed in maximums, minimums or ranges.

⁴¹¹ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, page 4 and page 18.

⁴¹² Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, page 18.

the DFAI considered that the argument presented by IMC did not exempt it from liability.⁴¹³

343. It should be noted that, according to Letter 261-2022-OEFA/DFAI,⁴¹⁴ the OEFA confirmed that IMC did not file any appeal against the resolution that declared its responsibility, therefore, the administrative act became final. It should also be noted that the corrective measure imposed was declared non-compliant by Directorial Resolution 529-2022-OEFA/DFAI.⁴¹⁵
344. In summary, by means of the above pronouncement, it is confirmed in administrative proceedings that IMC failed to comply with environmental legislation and the environmental management plan included in the EIAd, since it exceeded the control parameters of an effluent (wastewater). It is also confirmed that IMC failed to comply with an enforcement order (corrective measure) from OEFA. It should be recalled that OEFA imposed this measure when it considered that the infringing conduct could generate harmful effects on the environment.⁴¹⁶

b) *Non-compliance with the Community Relations Plan (File 2602-2018-OEFA/DFAI/PAS)*

345. From 27 March to 4 March 2018, the OEFA conducted a regular inspection of the Invicta Project during which alleged non-compliance with its auditable obligations was detected.⁴¹⁷
346. Subsequently, through Subdirectorial Resolution 1118-2019-OEFA/DFAI-SFEM of 17 September 2019, the administrative sanctioning procedure was initiated against IMC.⁴¹⁸ After analyzing the discharges, through Directorial Resolution 2050-2019-OEFA-DFAI, the authority declared the existence of administrative responsibility of IMC in five infractions.⁴¹⁹
347. However, IMC filed an appeal against Directorial Resolution 2050-2019-OEFA-DFAI, which was resolved through Resolution 158-2021-OEFA/TFA-SE. This resolution resolved: i) to declare the nullity of three extremes of

⁴¹³ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, page 11.

⁴¹⁴ Exhibit MD-0039, Letter 261-2022-OEFA-DFAI.

⁴¹⁵ As stated in Letter 261-2022-OEFA/DFAI (Exhibit MD-0039).

⁴¹⁶ Exhibit R-0074, Directorial Resolution 2203-2018-OEFA/DFAI, page 17, paragraph 49.

⁴¹⁷ Exhibit R-0069, Directorial Resolution 158-2021-OEFA/TFA-SE, page 2, paragraph 3.

⁴¹⁸ Exhibit R-0069, Directorial Resolution 158-2021-OEFA/TFA-SE, page 2, paragraph 4.

⁴¹⁹ Exhibit R-0069, Directorial Resolution 158-2021-OEFA/TFA-SE, page 3-6, paragraph 6.

Directorial Resolution 2050-2019-OEFA-DFAI, ii) to revoke one extreme and iii) to confirm an infringing conduct:⁴²⁰

348. On the last point, it was confirmed that IMC had not implemented certain sections of the 2016 Community Relations Plan with respect to the following commitments:

- (i) Temporary hiring program for local personnel;
- (ii) Health support and training activities;
- (iii) Educational support activities; and,
- (iv) Participatory workshops on development, not complying with the provisions of its environmental management instrument.

349. As stated in paragraphs 289 and 290 the EIAd's Community Relations Plan is one of the key components that helps mining companies to have an adequate relationship with the population and, through compliance with the plan, generate a relationship of trust.

350. Based on the above, according to the control authority's assessment, IMC has failed to comply with both environmental and social obligations. This, as indicated, has an effect on the reputation of the company and the trust of the population that the company can operate in compliance with the law. This is in addition to the initial concerns of the communities - specifically the Parán RC - regarding the environmental impact that the Project would have on the water and their community, a fact that was expressed by them on several occasions.⁴²¹

c) *Use of water without the corresponding right (Permit)*

351. In April 2018 the Parán RC communicated to the water authority that IMC would be mining ore and using water from existing water filtrations from which contaminated water would run and requested a field verification.⁴²²

⁴²⁰ Exhibit R-0069, Directorial Resolution 158-2021-OEFA/TFA-SE, page 49-50.

⁴²¹ Exhibit R-0109, Reference Summary of Social Conflicts Report No. 177, Exhibit C-0158, Minutes of Meeting between the Parán RC and Invicta and Exhibit R-0077, Letter from the Parán RC to ALA Huaura.

⁴²² Exhibit R-0077, Letter from the Parán Community to ALA Huaura.

352. According to what was indicated by the Huaura Local Water Authority (ALA Huaura) in July 2018, it was verified that waters from the Ruraycocha stream were being captured by gravity to then be used in the mining activity with a flow of 0.5 l/s. It also indicated that *"according to the manifestation of the representative of the aforementioned company indicates that they use a volume of 15m³ and 4m³ per day, the same that does not have the right to use water"*.⁴²³
353. Based on the above, by Notification 012-2018-ANA-AAA CF-ALA.H/KHR⁴²⁴ the ALA Huaura communicated the initiation of the administrative sanctioning procedure against IMC for using the water resource of the Ruraycocha stream without having the corresponding right. This infraction is typified in article 120.1 of the Water Resources Law and article 277 of the Regulations of the aforementioned Law.⁴²⁵
354. As part of its defense arguments, IMC indicated that it had processed an authorization for the execution of water availability studies of the Ruraycocha stream, it also indicated that they were paralyzed from June 2015 to February 2018 for not having an agreement with the Lacsanga rural community.⁴²⁶ Based on the above, the authority indicated that IMC had acknowledged its responsibility for having made use of a source without the corresponding license. In this way, an infraction to the water regulation is configured.⁴²⁷
355. In addition, as indicated in paragraphs 103 and 132, the use of the stream also did not have the Environmental Certification (prior legal requirement). Therefore, there was no validation by the authority that the water catchment had the necessary measures to not generate negative impacts to the water resource.

4. *Interactions between the Parán RC and IMC*

356. This section presents the analysis of three (03) recurring points in the negotiations/coordinations/interactions between the Parán RC and IMC relevant to the evaluation of this case.

⁴²³ Exhibit R-0093, Directorial Resolution 502-2018-ANA-AAA-CAÑETE-FORTALEZA, page 2.

⁴²⁴ Exhibit R-0092, Notification 012-2018-ANA-AAA.CF.-ALA-H/KHR.

⁴²⁵ Exhibit R-0092, Notification 012-2018-ANA-AAA.CF.-ALA-H/KHR.

⁴²⁶ Exhibit R-0093, Directorial Resolution 502-2018-ANA-AAA-CAÑETE-FORTALEZA, page 3.

⁴²⁷ Exhibit R-0093, Directorial Resolution 502-2018-ANA-AAA-CAÑETE-FORTALEZA, page 5.

a) *Territorial boundaries of rural communities*

357. As I noted in paragraphs 307 y 308 of this report, an image detailing the area of social influence and the "DELIMITATION OF COMMUNITIES" including a "DELIMITATION IN DISPUTE" between communities is attached to the EIAd.
358. In line with this, and as I indicated in para. 309 of this report, the Environmental Certification also identified that the territorial boundary between the Lacsanga and Parán communities was in dispute. The EIAd also noted that this boundary disagreement could be a potential generator of conflict between stakeholders, a circumstance that could be impacted by the project intervention.
359. Indeed, the issue of territorial delimitation between the communities in the area of social influence of the Invicta Project has been a recurring issue that has generated various social frictions, not only between the communities, but also between the communities and IMC.
360. The foregoing is evidenced, among others, by the following documents contained in the record of this arbitration: (i) Social Management Report - Invicta Project (week 09 to 14-10-2017)⁴²⁸; (ii) Monthly Report Invicta Project (November 2017)⁴²⁹; (iii) Monthly Report Invicta Project (December 2017)⁴³⁰; (iv) Summary report of the meeting held with the Parán RC - formal implementation of the dialogue table - guidelines to follow (October 2018)⁴³¹; (v) Minutes of the work meeting between the Parán RC, Minera Invicta Mining Corp S.A.C. and the General Office of Social Management of the Ministry of Energy and Mines (January 2019)⁴³²; (vi) Minutes of work meeting and installation of dialogue table between the Parán RC and the company Minera Invicta Mining Corp. S.A.C. with intervention of the General Office of Social Management of the Ministry of Energy and Mines (February 2019)⁴³³.
361. The content of these documents shows uncertainty about the property boundaries of the communities, a dispute over the possession of certain parts of the land by the various stakeholders, the hiring of lawyers for the legal defense of the land, among others.

⁴²⁸ Exhibit C-0456, Weekly Report.

⁴²⁹ Exhibit C-0521, Monthly Report.

⁴³⁰ Exhibit C-0391, Monthly Report.

⁴³¹ Exhibit C-0173, Report, Meeting between Invicta Mining Corp. S.A.C., the Parán Community, the MEM and the Mayor of the District of Leoncio Prado.

⁴³² Exhibit C-0344, Agreement between Parán, MEM and IMC.

⁴³³ Exhibit C-0200, Minutes of Meeting between the Parán Community, Invicta and MINEM.

362. Thus, it can be seen that from the beginning of the Invicta Project until at least 2019, the contingency due to the uncertainty of the boundaries of the communities and their lands has existed without having a definitive solution that has the acceptance of the parties involved.

b) Payment by IMC in favor of the Parán RC of S/ 300,000.00

363. On 21 January 2017 an extraordinary meeting of the Parán RC was held in which IMC participated. One of the items discussed at said meeting was the request for payment of the penalty agreed by IMC in the addendum to the Agreement signed between the Parán RC and IMC⁴³⁴ in the amount of S/ 300,000.00 for the non-compliance of the construction of two (02) classrooms in an educational center in the Parán RC.⁴³⁵

364. In this regard, in that meeting, among others, IMC committed to pay the S/ 300,000.00 within a maximum period of 45 days.⁴³⁶ Additionally, some members of the Parán RC voted on the application of a penalty in case IMC delays the payment of the 45 days.⁴³⁷

365. After this, as evidenced by various documents,⁴³⁸ IMC did not comply with the payment within 45 days, the same which generated friction between the Parán RC and IMC in the following months, as evidenced by the same documents referred to previously. It is only on 19 December 2017 that IMC made a first payment of S/ 100,000.00.⁴³⁹ The second payment was made on 31 January 2018.⁴⁴⁰

366. Based on the above, it can be verified that between assuming the commitment to pay the S/ 300,000.00 in 45 days, until the total effective payment, approximately 355 days passed. Additionally, it should be noted that IMC did not make any penalty payment for the delay in the payment of the S/ 300,000.00.

⁴³⁴ Exhibit C-0062, Addendum to the Agreement between the Parán Community and Invicta.

⁴³⁵ Exhibit C-0429, Monthly Report, page 3

⁴³⁶ Exhibit C-0429, Monthly Report, page 4

⁴³⁷ Exhibit C-0062, Addendum to the Agreement between the Parán Community and Invicta.

⁴³⁸ Exhibit C-0446, Weekly Report; Exhibit C-0480, Weekly Report; Exhibit C-0425, Weekly Report; Exhibit C-0521, Monthly Report; Exhibit C-0426, Weekly Report.

⁴³⁹ Exhibit C-0391, Monthly Report.

⁴⁴⁰ Exhibit C-0392, Monthly Report.

c) Signing of agreement with the Parán RC

367. As can be seen from the EIAd, since the original design of the Invicta Project, IMC had a planned and approved access to the Invicta Project that crossed the Parán RC.⁴⁴¹ It should be noted that there is no evidence that the Environmental Certification of the access has changed or that any other access has been subject to environmental impact assessment.
368. Based on this, IMC had the legal obligation to reach an agreement with the Parán RC to access their surface land and build the approved access (regardless of other components that may have been on the Parán RC property). The above, without prejudice to the importance of having an adequate relationship with the community (being part of its direct social influence area according to the EIAd). The purpose of this is not only to comply with the obligations assumed in the EIAd in the community relations plan, but also to obtain the social license and thus be able to operate avoiding further social conflicts.
369. In line with the above, during 2016 IMC and the Parán RC were negotiating the possibility of the signature of an agreement that, among other matters, included the constitution of an easement right for the construction of the access in question.⁴⁴² From the documents on file it does not appear that this document (proposed by IMC) was accepted and signed by the Parán RC.
370. Subsequently, in 2017, during the extraordinary meeting referred to in paragraph 363, the Parán RC agreed that it would only initiate a dialogue to reach an agreement, after IMC pays the outstanding debt of S/ 300,000.00.⁴⁴³
371. A few months later (July 2017) IMC signed a usufruct, surface and easement agreement with the Lacsanga rural community. This agreement supposedly included the granting of all rights necessary to access the Invicta Project.⁴⁴⁴ Based on this agreement, IMC decided shortly thereafter to start the construction of the access in that area to reach the project.⁴⁴⁵

⁴⁴¹ Exhibit R-0047, Environmental Impact Assessment: Invicta Mining Corp. S.A.C., 3 October 2008 ("2009 EIA"), Section 3.9.

⁴⁴² Exhibit C-0464, Agreement between Lupaka and the Parán Community and Exhibit C-0102, Counterproposal of the Parán Community.

⁴⁴³ Exhibit C-0062, Addendum to the Agreement between the Parán Community and Invicta.

⁴⁴⁴ Exhibit C-0043, Minutes of the Usufruct, Surface and Land Easement Contract between Invicta and the Lacsanga community. It should be noted that I have not been able to identify the express approval of such access as an objective of some of the ITS, I have only been able to see it on a plan (without having a related modification).

⁴⁴⁵ Exhibit C-0521, Monthly Report.

372. After this, and based on statements gathered by IMC's community relations team⁴⁴⁶, the Parán RC began to feel that it was being left out.
373. Regarding the previous point, the lawyers of the Republic of Peru have informed me that there is testimonial evidence from Mr. Soymán Román Retuerto (former president of the Santo Domingo de Apache rural community and former sub-prefect of the district of Leoncio Prado) that shows that he himself had the perception that IMC, after signing the agreement with the Lacsanga rural community, began to ignore the Parán RC, despite having been the closest community to the Invicta Project.

D. Analysis of the relationship between the Parán RC and IMC

374. Based on the information presented so far, I will answer a series of questions that will allow us to better understand the relationship that IMC had with the Parán RC. Also, based on the answers, it will be possible to verify if IMC had a social license from the community.

1. Why was the Parán RC participation in the Invicta Project necessary?

375. When analyzing the relationship between the Parán RC and the Invicta Project, above, it is verified that this community was part of the area of direct social influence of the project, along with the rural communities of Lacsanga and Santo Domingo de Apache. The scope of said area of influence remained the same throughout the life of the project, including the modifications made with the 2015 and 2016 ITS. Likewise, it was verified that part of the location of the Parán RC overlapped with the environmental area of influence. With respect to both areas (social and environmental) the reduction of the project design, in terms of mining capacity and the elimination and relocation of components, also did not imply a modification of the areas in question, as can be seen from the Environmental Certification.
376. In accordance with paragraph 305 the Parán RC was qualified by IMC in the Environmental Certification as part of the project *stakeholders* or interest groups, together with the other two communities mentioned above and other stakeholders.

⁴⁴⁶ Exhibit C-0459, Monthly Report.

377. In addition, as mentioned in paragraph 307 and following, it has been verified from the review of the maps of the area of social influence and the effective area of the project contained in the Environmental Certification (especially the first ITS) that it could reasonably be inferred that a portion of the Invicta Project components would appear to be within the territorial boundary of the Parán RC.
378. The above is in line with the claims made by the Parán RC regarding the location of the components under the new configuration and are detailed in paragraph 357 and following.
379. Finally, the fact that the Parán RC can be positively or negatively impacted by the Invicta Project, and therefore it is part of the social environment, makes it, in my opinion as an independent expert, a relevant actor in the determination of the social license of IMC. Precisely the actors such as the Parán RC, due to their link with the Invicta Project, are the ones with whom a relationship of trust must be generated, having sufficient and quality interactions, managing the expectations around the project and working so that the decisions adopted are perceived (and accepted) as fair and reasonable.

2. *How would IMC have influenced the Parán RC expectations of the project?*

380. From the information reviewed I notice that IMC would have influenced the Parán RC expectations, at least in the following aspects: the delimitation of the surface lands and the obtaining of social benefits derived from the execution of the Invicta Project.
381. With respect to the first aspect (land delimitation), as explained in paragraphs 307 and following, the maps and information in the Invicta Project's Environmental Certification (information submitted by the mining title holder (i.e., IMC)), give some semblance of the Parán RC right over the surface lands required for the execution of certain components of the project and at the same time acknowledge the existence of a disagreement between the communities on the boundary delimitation.
382. As referred to in paragraph 336 the controversy over the surface lands is also apparent from the registry record of one of these communities (i.e. Lacsanga), which includes a conciliation deed from which it is clear that there was no agreement between the communities regarding the property boundaries with the Parán RC. It is in this document that the

Parán RC states that it will assert its right according to law, regarding its surface property.

383. Certainly, the Environmental Certification does not determine aspects related to the surface rights required for the execution of a mining project (as stated by the MEM's own DGAAM). However, this Permit does regulate aspects of a social nature and the procedure for its approval also involves elements of citizen consultation.

384. Therefore, even though there may be different opinions about the territorial delimitation,⁴⁴⁷ the fact that this Permit contains such information is sufficient to infer that the Parán RC could have had a reasonable expectation about its relevance to the Invicta Project. This is in addition to two facts:

- The initial access to the Invicta Project was through the Parán RC land⁴⁴⁸ ;
and
- Due to its proximity and because it is part of the area of direct social influence, this community was likely to be impacted (positively and negatively) by the activities of the Invicta Project.

385. At this point I should add that, in my experience, in Peru, when there are disagreements over territorial limits, it is common for mining companies to negotiate and reach agreements together with the parties that claim to have or have the appearance of rights over the same area. That is to say, in cases where two people (or communities) claim to have a property right over the area required for the execution of the project (provided they have elements that make this right apparent) it is common for mining companies to reach parallel agreements with both parties. This avoids future social and legal problems.

386. Otherwise, the alternative would be to activate the legal mechanisms required to clarify the dispute. This may involve having to resort to the courts, which could affect the schedule of a project by 5 or

⁴⁴⁷ The purpose of this report is not to determine the delimitation of the surface properties of the rural communities.

⁴⁴⁸ The use of the access through the Parán Community was a request/claim of the community, prior agreement, up to and including 2019. This is verified in the minutes of February 2019 (Exhibit C-0200, Minutes of Meeting between the Parán Community, Invicta and MINEM) where it is agreed to contract a topographic study to determine the identification and location of the affected surface lands of the Parán Community by the Invicta Project. Regarding the latter, I consider reasonable to understand that it refers to the lands where there were already or were going to be components of the Invicta Project.

10 years, without guaranteeing that the losing party in the process will accept the outcome of the process. For this reason, it is usually most efficient to negotiate and reach agreements with the parties involved.

387. The second aspect (expectations of benefits derived from the execution of the project) is relevant for the analysis of the case, since the approach or departure of a project to a social license scenario, that is, when the social environment accepts and "approves" the project, is partly related to the management of the expectations generated by the project. Similarly, the perception of stakeholders regarding the fairness of the decision-making processes of the company in charge of the project also has an influence.
388. For this reason, the negotiations and the management of the communities' expectations is a relevant element in this case. Not having finalized the agreements that were being negotiated with the Parán RC or having delayed the payments offered for a year are situations that could have undermined IMC's credibility with the Parán RC, affecting the relationship between the two and consequently the possibility of reaching a scenario of acceptance, i.e., social license.
389. This also adds to the credibility impact that IMC may have suffered due to the sanctions imposed by OEFA for non-compliance with environmental and social obligations.

3. *Was it necessary to enter into any kind of agreement with the Parán RC?*

390. The answer to this question includes two issues: i) surface land; and ii) social license.

a) Surface land

391. First of all, it must be specified that the mining concession is a different and separate property from the land where it is located.⁴⁴⁹ Along these lines, the Mining Regulations provide that, in order to carry out exploitation activities, the holder must, among other things, obtain prior permission for the use of land by means of a prior agreement with the owner of the surface land.⁴⁵⁰

⁴⁴⁹ Exhibit MD-0018, article 9 of Supreme Decree 14-92-EM.

⁴⁵⁰ Exhibit MD-0017 article 23 of Supreme Decree 18-92-EM (In effect during the period under analysis).

392. In this sense, the mining company must obtain the corresponding approval from all surface rights holders before carrying out any activity. In the present case, IMC was able to obtain an agreement with the communities of Lacsanga and Santo Domingo de Apache⁴⁵¹, but there is no evidence that it has signed one with the Parán RC.⁴⁵²
393. However, there were disputed boundaries between the communities of Lacsanga, Santo Domingo and the Parán RC. For example, from the information reviewed, there is prima facie evidence (paras. 328 and following) to infer that certain components are located on the Parán RC property. Likewise, there were allegations of legal actions that the Parán RC would take against the Santo Domingo rural community to carry out the demarcation of the communal territories.⁴⁵³ Additionally, the above controversy is also apparent from the registry entry of one of these communities (i.e. Lacsanga), which includes a conciliation act from which it is clear that there was no agreement between the communities regarding the boundaries of the Parán RC lands. It is in this document that the Parán RC states that it will assert its right over its surface lands, according to law.⁴⁵⁴
394. Under the previous scenario, for the execution of these components on the Parán RC land, the prior agreement with the Parán RC was required. It should be clarified that this agreement is not a "Permit to exploit" by the community; it corresponds to a legal requirement that is additionally required to obtain various operating Permits necessary to initiate exploration, mining development and exploitation activities, as expressly indicated in the legislation.⁴⁵⁵
395. On the other hand, and without prejudice to the importance of having the legal requirements in place (including the surface property access agreement), it is important to note that relying solely on compliance with such legal requirements is not a

⁴⁵¹ The agreement signed with the Santo Domingo rural community was presented by IMC to obtain the Operating Permit for the construction of the mine (2014). However, in 2018 IMC refers that all the components are on Lacsanga's surface property, for this reason it signed an agreement with them. It is not clear why there is this difference in criteria in the declaration of location of the components, considering that no additional modification of components was approved in the Environmental Certification between both moments (2014 and 2018).

⁴⁵² Exhibit C-0089, Constitution of Usufruct, Surface and Mining Easement Rights between Invicta and the Lacsanga community; Exhibit C-0043, Minutes of the Usufruct, Surface and Land Easement Contract between Invicta and the Lacsanga community and Exhibit C-0063, Mining Easement Constitution Contract between Invicta and the Santo Domingo de Apache community.

⁴⁵³ Exhibit C-0426, Weekly Report.

⁴⁵⁴ Exhibit MD-0090, Includes the line item 50000848 entries mentioned in this paragraph, along with others.

⁴⁵⁵ Exhibit MD-0004, article 17 of Supreme Decree 40-2014-EM.

reason to discredit the legitimate expectations of other stakeholders. This in turn impacts the social license.

b) Social license

396. Social license is not equated with or limited to the surface rights access agreement (described above). Social license occurs when there is trust and when, inter alia, community expectations are adequately managed, as explained in paras. 274.
397. In this case, the EIAd established the minimum commitments to be fulfilled by IMC with respect to the three communities in its area of social influence (including the Parán RC). As part of these commitments, IMC was required to cover several items such as health support and training activities and education support activities.
398. Along these lines, as previously mentioned, a widely recognized practice in the mining sector is the signing of (tangible) agreements to establish the clear terms of these activities and support, which also allow the owners to demonstrate compliance with these social commitments. In addition, these agreements allow to have proof that both parties (mining owner and community) are satisfied with the scope and conditions of the support and thus measure the level of compliance.
399. However, limiting the scope of the social license to the subscription of a land access agreement⁴⁵⁶ is not correct since it covers different situations. The latter can definitely support the former, but under no circumstances does it cover it completely.
400. The social license has several factors and requires an adequate relationship with the communities (beyond the location of its components), including the management of their expectations, requiring that they be listened to. The materialization of the commitments of the Community Relations Plan is part of this necessary listening to the communities. According to the supervisory authority, IMC did not comply with this plan, causing its relationship with the Parán RC to be impacted.

⁴⁵⁶ In this case, there is only one land access agreement with one of the two communities in conflict.

4. *Did IMC comply with the social obligations derived from its Community Relations Plan or other commitments assumed?*

401. As verified in the previous section (paras. 285 and following), the EIAd is one of the most important environmental and social management tools in Peruvian law. This instrument contemplates the environmental and social obligations proposed by the mining owner (and the consultant in charge) based on the scope of the project, its impacts and its surroundings.
402. As explained in paragraphs 345 and following, the OEFA detected that IMC would not have fully implemented the Community Relations Plan approved in the EIAd during the 2017 period. According to the legislation, this is a punishable infraction. This non-compliance is in line with the Parán RC complaints regarding the non-compliance of social obligations by IMC over time (e.g. late payment of the S/ 300,000.00).
403. As indicated in paragraphs 352 and following, in an inspection in July 2018, ALA Huaura detected that IMC would have been capturing water from the Ruraycocha stream without having the corresponding water use license. This is a crucial obligation, especially if we consider the Parán RC concern about the water resource.⁴⁵⁷ According to the legislation, this is an infraction, even more so considering that this withdrawal also did not have the approval of the Environmental Certification (another previous legal requirement).
404. It should be considered that these situations not only generate economic damage to the company due to fines, but also have an impact on the company's reputation. This effect on reputation may be reflected in the public's questioning of the company's ability to operate in compliance with the applicable legal framework.
405. It should be recalled that even the previous commitment assumed by IMC requires it to act under a standard of environmental excellence and respect for institutions.⁴⁵⁸ The fulfillment of this commitment may be questioned by the communities considering the events indicated above.

⁴⁵⁷ Exhibit C-0393, Monthly Report.

⁴⁵⁸ Exhibit MD-0082, article 1 of Supreme Decree 42-2003-EM.

406. In my opinion as an independent expert, these situations generated by the mining company itself have a reasonable impact on the trust between stakeholders and the company, affecting the level of acceptance and approval of the project. All of this has repercussions on the social license because the company affects its credibility by failing to comply with its legal obligations and social commitments.

5. *What was the relationship of the Parán RC with the other communities in the area of social influence and why was this important for IMC?*

407. The area of direct social influence of the Invicta Project EIAd was made up of the 3 communities: Lacsanga, Santo Domingo de Apache and the Parán RC. According to the EIAd presented by IMC, one of the risks identified in the EIAd analysis matrix is the boundary disagreement involving the Pampa Pariacoto sector and the mining camp and work area of the project⁴⁵⁹.

408. In that sense, it was clearly known by IMC that between the Parán RC and the Lacsanga rural community (at least) there was a relationship of conflict over boundary issues. This risk had been registered in the EIAd as it was a risk for the Invicta Project.

409. This situation of conflict over territorial delimitation continued until 2019. In the summary report of the formal implementation of the Dialogue Table of November 7, 2018, it was still identified as part of the “Social Roadmap”, the compilation of a *map where the territorial boundaries are clearly observed and recorded*.⁴⁶⁰ In this sense, even in 2018 (and later in 2019 with a Dialogue Table), IMC did not have a clear plan that establishes the limits of the communities and it appears from the documents reviewed, that it no longer had as a priority to sign an agreement with the Parán RC (because it already had one signed with the Lacsanga community, where it was building a new access). This is consistent with the testimonial statement of Mr. Soymán Román Retuerto that we have been informed by the lawyers of the Republic of Peru.

410. Likewise, according to the information reviewed, I verify that the Lacsanga rural community would have initiated legal actions for the eviction of their land against the Parán RC.⁴⁶¹ And for its part I also identified a request from

⁴⁵⁹ Exhibit R-0047. Table 4.3.6-3 of the Invicta Project EIAd page 369.

⁴⁶⁰ Exhibit C-0182, Minutes of Meeting between Invicta and the Parán Community, page 6.

⁴⁶¹ Exhibit C-0182, Minutes of Meeting between Invicta and the Parán Community, page 6.

the Parán RC of June 2018 requiring IMC to withdraw, since it pointed out that the activities would be on the surface property of the Parán RC.⁴⁶²

411. As can be seen, the relationship of the Parán RC with the other communities in the Invicta Project's area of social influence was complicated at times, thus generating a risk for the Invicta Project. However, this risk was known since 2009 (before the acquisition of the Invicta Project by Lupaka) and based on the information reviewed, it was not resolved, but rather worsened over the years.
412. Based on the above, it appears that IMC did not take into account the existing relationships between the communities and the importance to them of defining the boundaries of their surface properties. As warned in the EIAd, the disagreement between the communities over the territorial limits constituted a conflict that could worsen with the development of the Invicta Project, unless management measures were taken, which are not evident from the documents reviewed. In my opinion as an independent expert, ignoring this aspect, or not assigning it due importance, generated over time that the crisis between communities and IMC worsened, affecting the relationship of trust, negatively impacting the obtaining/preservation of the social license.
413. I point out the above because in the file it has not been possible to verify that the company has executed a topographic survey of the scope of the surface property of the communities (with the participation of the communities), which is a common practice by the mining owners in this type of situation. In fact, in the February 2019 minutes, IMC and the Parán RC reached an agreement to conduct a topographic survey to identify and locate the surface lands affected by IMC's activities.⁴⁶³ However, this visit was not carried out.
414. As I have previously indicated, a common treatment for this situation is for the company to seek to reach an agreement with the two owners in dispute and thus avoid aggravating the existing frictions between the communities claiming to have ownership over the same area. In this regard, according to industry practice in

⁴⁶² Exhibit C-0433, Weekly Report.

⁴⁶³ Exhibit C-0200, Minutes of Meeting between the Parán Community, Invicta and MINEM.

Peru, IMC would have been well advised to reach an agreement with each of the three communities.

415. In addition to the above, in the community relations reports it was possible to verify that a large part of the relationship was with the communities of Lacsagna and Santo Domingo. Based on the information in these reports, the relationship with the Parán RC was limited.⁴⁶⁴ For example, in the processes of acquiring local products, services from community enterprises, training activities, etc., participants from the Parán RC were not included.⁴⁶⁵ Likewise, the usufruct, surface and easement contract signed between IMC and the Lacsanga rural community shows that the agreement grants exclusive preference to this community for the provision of certain services, as well as jobs.⁴⁶⁶
416. This would not only imply a breach of the obligations derived from the Community Relations Plan, but would also denote a selective criterion of the company at the time of distributing the benefits of the project. This constitutes a selective *engagement* with those groups that perceive the Project positively. In this case, such *engagement* would have been with the communities that would have reached agreements with IMC, that is, the Rural communities of Lacsanga and Santo Domingo de Apache. As explained in paragraphs 270 and following paragraphs, this behavior affects the obtaining or preservation of the social license.

I declare that I have the capacity and knowledge necessary to issue this Report. I also declare that the Report reflects my objective and independent opinion and that I have no conflict or incompatibility to issue this Report.

24 January 2023

[Signature]

Miyanou Dufour von Gordon

⁴⁶⁴ Exhibit C-0162, Monthly Report.

⁴⁶⁵ Exhibit C-0162, Monthly Report, pages 36-37.

⁴⁶⁶ Exhibit C-0089. Constitution of Usufruct, Surface and Mining Easement Rights between Invicta and the Lacsanga community, Clauses 8.8 to 8.10.

List of Exhibits

- MD-0001 *Curriculum Vitae* of Miyanou Dufour.
- MD-0002 Permits timeframe review result - Common Permit planning timeframes.
- MD-0003 Supreme Decree 006-2017-JUS, Single Ordered Text of the General Administrative Procedure Law.
- MD-0004 Supreme Decree 040-2014-EM, Regulation of Environmental Protection and Management for Mining, Beneficiation, General Labor, Transportation and Storage Activities.
- MD-0005 Supreme Decree 019-2009-MINAM, Regulation of Law 27446, Law of the National System of Environmental Impact Assessment.
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