

PCA Case No. 2016-39

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN  
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE  
PROMOTION AND PROTECTION OF INVESTMENTS, SIGNED ON 24 MAY 1988**

**- and -**

**THE UNCITRAL ARIBTRATION RULES 2010**

**- between -**

**GLENCORE FINANCE (BERMUDA) LIMITED**

**(the “Claimant”)**

**- and -**

**THE PLURINATIONAL STATE OF BOLIVIA**

**(the “Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 4**

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*Tribunal*

Prof. Ricardo Ramírez Hernández (Presiding Arbitrator)  
Prof. John Y. Gotanda  
Prof. Philippe Sands

*Registry*

Permanent Court of Arbitration

**27 March 2018**

## **I. PROCEDURAL BACKGROUND**

1. Pursuant to Section 5 of Procedural Order No. 1, and to the procedural calendar enclosed as Annex 1 to Procedural Order No. 2, the Parties submitted to the Tribunal for decision their respective written submissions regarding document production, which are contained in the Redfern Schedules prepared by the Parties, as follows:
  - a) The Parties' respective requests for document production of 9 February 2018;
  - b) The Parties' respective responses and objections of 2 March 2018; and
  - c) The Parties' respective replies to these responses and objections of 16 March 2018.

## **II. ANALYSIS OF THE TRIBUNAL**

2. Pursuant to paragraph 5.2.6 of Procedural Order No. 1, the Tribunal shall rule on any application and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, which according to paragraph 6.1 of the same Procedural Order, may be used as an additional guideline when considering matters of evidence.
3. Pursuant to paragraph 5.5 of Procedural Order No. 1, should a party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced.
4. The Tribunal takes note of the Respondent's offer to conclude a non-disclosure agreement in respect of confidential documents requested from the Claimant. The Tribunal invites the Respondent to do so prior to the production of the requested documents. The Claimant is equally invited to conclude an equivalent non-disclosure agreement in respect of confidential documents requested from the Respondent.

## **III. DECISION OF THE TRIBUNAL**

5. In light of the above, after having reviewed carefully the observations submitted by the Parties and having considered each request and taken into account all the relevant circumstances, the Tribunal decides to:

- i. Grant, in accordance with the foregoing reasons and pursuant to the terms of this Procedural Order, the Claimant's document production requests No.: 2, 3, 4, 6, 7, and 8; and the Respondent's document production requests No.: 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15. Pursuant to the procedural calendar already established, the Parties shall have until **16 April 2018** to produce these documents to each other.
  - ii. Reject all remaining document production requests in accordance with the foregoing reasons and the terms of this Procedural Order.
6. The decisions of the Tribunal on each request are recorded in the enclosed Redfern Schedules which constitute Annexes 1 and 2 to this Order and form an integral part of it.
7. To the extent that a party wishes to assert privilege over responsive documents, the Tribunal directs such party to file a privilege log identifying the responsive document, its date, and the basis for the privilege claimed by **16 April 2018**.
8. The decision under 4.ii. denying the remaining requests is without prejudice to the Tribunal's right to demand that any of the documents be produced in the future if necessary.



(Presiding Arbitrator)

On behalf of the Tribunal

**PCA Case N° 2016-39/AA641**

**ARBITRATION UNDER THE RULES OF ARBITRATION OF THE UNITED NATIONS  
COMMISSION ON INTERNATIONAL TRADE LAW**

**GLENCORE FINANCE (BERMUDA) LTD**

Claimant

-v-

**PLURINATIONAL STATE OF BOLIVIA**

Respondent

**CLAIMANT'S REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

BEFORE

Professor Ricardo Ramírez Hernández (Presiding Arbitrator)  
Professor John Y Gotanda  
Professor Philippe Sands

9 FEBRUARY 2018

(INCLUDING BOLIVIA'S OBJECTIONS OF 2 MARCH 2018 AND CLAIMANT'S REPLIES OF 16 MARCH 2018)



**Freshfields Bruckhaus Deringer US LLP**

1. Pursuant to paragraph 5.1 of the Tribunal’s Procedural Order No 1 of 31 May 2017 (*Procedural Order No 1*) and Annex 1 of the Tribunal’s Procedural Order No 2 of 31 January 2018 (*Procedural Order No 2*) (together, the *Orders*), Claimant hereby submits its Requests for the Production of Documents (*Requests*).<sup>1</sup> In accordance with the Orders, these Requests are submitted in the form of the Redfern Schedule attached to Procedural Order No 2 as Annex 2, and are consistent with the IBA Rules on the Taking of Evidence in International Arbitration (2010) (*IBA Rules*).<sup>2</sup>
2. The Requested Documents, as defined below, are relevant to the case and material to its outcome, for the reasons explained below.
3. The Requested Documents are not within Claimant’s possession, custody, or control.
4. Claimant assumes that the Requested Documents are within the possession, custody, or control of Respondent, because the Requested Documents were created by or for Respondent, and/or provided to Respondent (and not to Claimant), and/or should be kept and maintained by Respondent in the ordinary course of business. To the extent that the Requested Documents did exist but are said no longer to exist and/or be in Respondent’s possession, custody, or control, Respondent should identify such Documents and the circumstances in which they are said to have been lost and/or destroyed and/or to have left Respondent’s possession, custody, or control. To the extent that the Requested Documents ought to have been generated by Respondent in the ordinary course of business, but were not so generated, Respondent should identify such Documents and the reasons why they were not so generated.
5. Documents in Respondent’s possession, custody, or control include documents in the possession, custody, or control of Respondent, State organ, and/or State-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including their respective State organs, principals, officers, directors, employees, representatives, or agents during the time periods relevant to these Requests. For the avoidance of doubt, Documents in Respondent’s possession, custody, or control include Documents in the possession, custody, or control of State organs at the relevant time(s), and also Documents that may be in the possession,

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<sup>1</sup> All capitalized terms not defined herein have the meaning ascribed in the Statement of Claim dated 15 August 2017 (*SoC*).

<sup>2</sup> IBA Rules, Article 3(2) (“Within the time ordered by the Arbitral Tribunal, any Party may submit to the Arbitral Tribunal and to the other Parties a Request to Produce.”); Article 3(3) (“A Request to Produce shall contain: (a)(i) a description of each requested Document sufficient to identify it, or (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; [...] (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and (c)(i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.”).

custody, or control of the entities that currently oversee, own in whole or in part, and/or beneficially own the Tin Smelter, the Antimony Smelter, and the Colquiri Mine.

6. Claimant requests that responsive documents be numbered by Respondent and produced in an electronic form sufficient to identify each separate document, document families (e.g., e-mails and their attachments) and the relationship between documents within a family (e.g., multiple attachments to an e-mail).
7. Claimant reserves the right to amend or supplement these Requests in light of the documents produced (or not produced) by Respondent. Claimant also reserves the right to amend or supplement these Requests should Respondent seek to raise any new allegations or produce any additional evidence.

### **Definitions**

8. As used in these Requests:

“*Bolivia*” or “*Respondent*” means the Plurinational State of Bolivia.

“*Colquiri*” means Compañía Minera Colquiri SA.

“*Colquiri Lease*” means the lease agreement for the Colquiri Mine between the Ministry of External Trade and Investment, Comibol, Colquiri SA and Comsur dated 27 April 2000.

“*Colquiri Mine*” means the Colquiri mine—the second largest tin mine in Bolivia.

“*Colquiri Mine Nationalization Decree*” means Supreme Decree No 1,264 of 20 June 2012, published in the *Gaceta Oficial* No 384NEC on 20 June 2012, ordering Comibol to take over control of the Colquiri Mine.

“*Comibol*” means the State-owned Corporación Minera de Bolivia.

“*Comsur*” means the Bolivian-based Compañía Minera del Sur SA.

“*Cooperativistas*” means members of local private groups of miners who carry out mining activities for their own benefit in the area of the Colquiri Mine.

“*Document*” means a writing or recording of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information, including, but not limited to, e-mails, faxes, correspondence, memoranda, working drafts, loose and pad notes, presentations, internal files, guidelines, charts, advertising or reporting material, contemporaneous meeting notes, minutes and analyses, advice or recommendations, records of discussions or deliberations, draft decisions or assessments, orders or instructions, however retained, and whether or not prepared by Respondent. Documents recorded on “electronic means” include Documents that are readily accessible from computer systems and other electronic devices and media, Documents stored on servers and back-up systems, and electronic Documents that have been software deleted. Any reference to “Documents” includes drafts of those Documents.

“*Glencore Bermuda*” or “*Claimant*” means Glencore Finance (Bermuda) Ltd.

“*Government*” means the Government of the Plurinational State of Bolivia, including all of its political subdivisions, entities, departments, agencies and organs.

“*Requested Documents*” means the Documents requested by Claimant pursuant to these Requests.

“*Sinchi Wayra*” means Sinchi Wayra SA, formerly known as Comsur.

“*SoC*” means Claimant’s Statement of Claim, including the Claimant’s Response to the Respondent’s Request for Bifurcation dated 15 August 2017.

“*SoD*” means Respondent’s Preliminary Objections, Statement of Defence, and Reply on Bifurcation dated 18 December 2017.

“*Tin Smelter*” means the Vinto tin smelter—the largest tin smelter in Bolivia.

“*Tin Smelter Nationalization Decree*” means Supreme Decree No 29,026 of 7 February 2007, published in the *Gaceta Oficial* No 2,969 on 9 February 2007, which ordered the immediate “reversion” of Vinto, and all of its assets, including the Tin Smelter, to the State.

“*Vinto*” means Complejo Metalúrgico Vinto SA.

**Redfern Schedule for Document Requests**

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
1.	Complete copy of Documents included in “Envelope A of the bid for the Colquiri Lease submitted by the Comsur-CDC Consortium (excerpts) of 20 December 1999,” exhibited by Bolivia as exhibit <b>R-106</b> .	SoD, ¶ 57, n.45 <b>R-106</b>	The exhibit submitted by Bolivia as <b>R-106</b> is incomplete, since it includes only 134 of the 751 pages that comprise the full document.  The Requested Documents are relevant to assessing the context and purpose of the bid in its entirety.	While Claimant fails to state the reasons as to why the Requested Documents are “ <i>relevant to the case and material to its outcome</i> ” (IBA Rules, Art. 3(3)(b)), in the spirit of cooperation, Bolivia produces the Requested Documents herewith.	N/A	The Tribunal takes note.
2.	Any discovery, including but not limited to Documents and deposition testimony already obtained or to be obtained in the future by Bolivia in relation to Glencore Bermuda’s acquisition of its investment by way of the 28 USC Section 1782 proceedings brought by Julio Miguel Orlandini-Agreda and Compañía Minera Orlandini Ltda	SoD, ¶ 124-27	The Requested Documents are relevant to the case and material to its outcome because they pertain to Bolivia’s claims in relation to Claimant’s acquisition of its investment (SoD, ¶ 124-27).  The Orlandini discovery proceedings seek, among others, Documents pertaining to Glencore Bermuda’s acquisition of	While Bolivia has no objection to producing Documents that it could obtain in the Orlandini discovery proceedings, not all such Documents are relevant to the present case and material to its outcome (IBA Rules, Art. 3(3)(b)), and some might be protected by a protective order (IBA Rules, Art. 9(2) and (3)).	While Claimant recognizes that not all Documents exchanged in the Orlandini discovery proceedings may be relevant to the instant dispute because some of them may not relate to Claimant’s acquisition of its investment and does not disagree in principle with Respondent’s proposal, it submits that	Request granted under the following modalities: <ul style="list-style-type: none"> <li>the relevance and materiality of the Requested Documents be decided jointly by the Parties at the appropriate time.</li> </ul>

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
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	(together, <i>Orlandini</i> ) against the following parties: (i) Gibson Dunn LLP (Case No. 1:17-mc-00354-LAP); (ii) Mr Peter E Stein (Case No. 1:17-mc-00355-PAE); and (iii) Mr Gonzalo Sánchez de Lozada (Case No. 1:17-mc-00029-LO-IDD) (collectively, the <i>Orlandini discovery proceedings</i> ).		Comsur and thereby the assets underlying the present dispute. Bolivia has successfully intervened in each of the <i>Orlandini</i> discovery proceedings.	First, Claimant admits that some of the Documents in the <i>Orlandini</i> proceeding might be irrelevant when it states that the “ <i>Orlandini discovery proceedings seek, among others, Documents pertaining to Glencore Bermuda’s acquisition of Comsur and thereby the assets underlying the present dispute</i> ” (emphasis added).  Moreover, on 23 February 2018, Judge Anthony Trenga, United States District Judge for the Eastern District of Virginia, rejected <i>Orlandini</i> ’s request to intervene in Bolivia’s 1782 action against Mr. Sánchez de Lozada for the <i>Glencore Arbitration (the Bolivia discovery proceedings)</i> because, precisely, the issues at stake in the <i>Orlandini</i> and <i>Glencore</i> arbitrations are different (see Order, page 5).	the relevance and materiality of the Requested Documents be decided jointly by the Parties at the appropriate time. Specifically, Claimant submits that Respondent share with Claimant the categories of Documents that the parties agreed to produce in the <i>Orlandini</i> discovery proceedings. Claimant and Respondent can then come to a joint agreement with respect to what categories of Documents would be relevant to the present case and material to its outcome. In the event that Claimant and Respondent cannot reach an understanding, they may request that	<ul style="list-style-type: none"> <li>Respondent will share with Claimant the categories of Documents that the parties agreed to produce in the <i>Orlandini</i> discovery proceedings. Claimant and Respondent will try to come to a joint agreement with respect to what categories of Documents would be relevant to the present case and material to its outcome.</li> <li>In the event that Claimant and Respondent cannot reach an</li> </ul>

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				<p>Second, some of the Documents produced in the Orlandini discovery proceedings will be subject to a protective order.</p> <p>Therefore, Bolivia will only produce the Requested Documents that (i) are not protected by a protective order, and (ii) are relevant to the present case and material to its outcome.</p> <p>Lastly, and also in the spirit of cooperation, Bolivia will not oppose Glencore's requests to participate in Mr. Sanchez de Lozada's depositions in both the Bolivia and Orlandini discovery proceedings, or to any request to access the evidence produced in those proceedings.</p>	<p>the Tribunal issue an order.</p> <p>With respect to Documents that may be subject to a protective order, Claimant submits that Bolivia disclose the existence of such Documents to Claimant and the Tribunal, as well as the reasons for the protective order. Claimant reserves its rights to request the production of such Documents, if relevant and material to the outcome of the case.</p> <p>Lastly, Claimant notes that it has already successfully intervened in the section 1782 discovery proceedings brought by Bolivia in relation to the instant arbitration. Intervention in the Orlandini</p>	<p>understanding, they may request that the Tribunal issue an order.</p> <ul style="list-style-type: none"> <li>Respondent will inform the Tribunal if documents are subject to a protective order and the Tribunal will address this in due course.</li> </ul>

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					discovery proceedings would be burdensome and costly for Claimant, especially when it may seek access to relevant Documents disclosed to Bolivia in the context of those proceedings through the present document disclosure phase.	
3.	Documents relating to Comibol’s 29 January 2007 report regarding the reversion of the Tin Smelter ( <b>R-247</b> ), including any supporting documents and analysis (including the cited “ <i>estudios económicos</i> ”) and any Documents issued by Comibol and/or the Government in response to said report.	SoC, ¶¶ 149-51 SoD, ¶¶ 458-63 <b>R-247</b>	There is a dispute between the Parties as to whether Bolivia’s taking of the Tin Smelter through the Tin Smelter Nationalization Decree amounted to an unlawful expropriation of Claimant’s investment (SoC, ¶¶ 149-51; SoD, ¶¶ 458-63).  Respondent claims that the alleged irregularities in the assets’ privatization	Claimant’s request is not sufficiently “ <i>narrow and specific</i> ” (IBA Rules, Art. 3 (3) (a) (ii)), as it covers <u>all</u> documents by <u>any</u> Bolivian official that could, in any way, be related to a report regarding the reversion of the Tin Smelter. Thus, the production of the Requested Documents would be unreasonably burdensome (IBA Rules, Art. 9(2)(c)).  Without prejudice to the foregoing, Bolivia will conduct a reasonable search	<b>Bolivia’s objections to Claimant’s Request 3 are without merit</b> and should be denied for the following reasons:  Claimant’s request is both narrow and specific, in accordance with Article 3.3(a) of the IBA Rules.  Claimant is asking for Documents relating to one specific report issued on 29 January 2007 and prepared by	Request granted.

		<p>justified the “reversion” of the Tin Smelter.</p> <p>Comibol’s 29 January 2007 report submitted by Respondent as exhibit <b>R-247</b> is a document contemporaneous to the issuance of the Tin Smelter Nationalization Decree which elaborates on the Government’s reasons for its “reversion.”</p> <p>The Requested Documents are relevant to the case and material to its outcome because they serve to complete the analysis presented by Bolivia in <b>R-247</b>.</p>	<p>with a view to producing the Documents expressly referred to in COMIBOL’s report of 29 January 2007, submitted as exhibit <b>R-247</b>.</p>	<p>Comibol, which Bolivia submitted on the record (<b>R-247</b>).</p> <p>By its very nature, the request relates to “a narrow and specific requested category of Documents that are reasonably believed to exist,” in accordance with Article 3.3(a) of the IBA Rules.</p> <p>Bolivia’s attempt to argue that the production of the Requested Documents would be unreasonably burdensome is therefore not tenable and should not be heeded to, especially because the Requested Documents are highly relevant to issues that are at the core of the instant dispute.</p> <p>Specifically, the report submitted by Bolivia as exhibit <b>R-247</b> expressly indicates that the “reversion” of the Tin Smelter” was carried out for the government’s economic and financial benefit, and the reasons given by Bolivia in the instant arbitration are purely pretextual (<i>see, e.g., R-</i></p>	
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					<p><b>247</b> at 3 providing that “[e]l proyecto de la reversión de la fundición de Vinto es rentable al país y COMIBOL;” “[c]on la transferencia del Complejo Vinto a propiedad de COMIBOL dará la oportunidad a ésta cerrar el circuito de producción de estaño, es decir prospección, minería y fundición, hecho que es corriente en empresas mineras grandes;” at 4 “[l]a[s] utilidades netas a obtenerse serán en beneficio del desarrollo industrial de la empresa y por ende del país”).</p> <p>Bolivia should therefore be ordered to produce the Requested Documents and not only the narrow subset</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					Bolivia has agreed it would search for (and which, in any event, should have been produced to Claimant on 2 March 2018).	
4.	Any agreements not already included in the record entered into by Comibol with the <i>cooperativas</i> and / or <i>subsidiarios</i> prior to the privatization of the Colquiri Mine relating to the Colquiri Mine and any correspondence between Comibol and the <i>cooperativas</i> in relation to those agreements.	SoC, ¶¶ 87-113, 183-91 SoD, ¶¶ 28-38, 169-229, 520-49 <b>R-92; R-93; R-94</b>	There is a dispute between the Parties as to whether Respondent took appropriate and reasonable measures to protect Claimant’s investment in the Colquiri Lease against violent interference from the local <i>cooperativas</i> (SoC, ¶¶ 87-113, 183-91; SoD, ¶¶ 169-229, 520-49).  Specifically, it is Claimant’s position that Bolivia allowed the Colquiri Mine to be violently taken over by members of a local mining cooperative known as <i>Cooperativa 26 de Febrero</i> and subsequently failed to secure the return	<b><u>Bolivia objects to Claimant’s Request</u></b> for the following reasons:  <i>First</i> , Claimant’s request is not sufficiently “ <i>narrow and specific</i> ” (IBA Rules, Art. 3 (3) (a) (ii)), as it covers <u>all</u> probable agreements entered into by COMIBOL and <u>every single subsidiario</u> or <u>cooperativa</u> operating at the Colquiri Mine over a time period of more than a decade and a half. In fact, it is undisputed that the Colquiri Mine has been active since the nineteenth century ( <b>RPA-4</b> , p. 121; Statement of Defence, ¶ 31), and that the presence of <i>subsidiarios</i> and	<b>Bolivia’s objections to Claimant’s Request 4 are without merit</b> and should be denied for the following reasons:  Claimant’s request is both narrow and specific, in accordance with Article 3.3(a) of the IBA Rules.  Claimant is requesting two specific categories of documents (agreements and correspondence related to those agreements) concerning a specific asset (the Colquiri Mine) within a defined time period (prior to the	Request granted.

		<p>of the mine operation to Claimant, despite Claimant’s repeated requests for protection (SoC, ¶¶ 87-113).</p> <p>On the other hand, Bolivia asserts that the violent invasion of the Colquiri Mine is to be blamed on Sinchi Wayra’s purported mismanagement of the social conflicts that it inherited from Comsur (SoD, ¶ 169).</p> <p>In contrast to Sinchi Wayra’s alleged mismanagement, Bolivia claims that, prior to the asset’s privatization, Comibol maintained good relations with the local <i>cooperativas</i> or <i>subsidiarios</i> (SoD, ¶¶ 28-38), despite entering into lease agreements that ceded working areas to these groups of miners (<i>see, e.g., R-92; R-93; R-94</i>).</p> <p>The Requested Documents are relevant to the case and material to its outcome because they are necessary to evaluate the situation that existed at the Colquiri Mine prior to, and following, its privatization.</p>	<p><i>cooperativistas</i> at mines operated by COMIBOL dates back to 1985 (<b>R-90</b>, p. 12) (that is, 15 years before the execution of the Colquiri Mine Lease (<b>C-11</b>)).</p> <p><i>Second</i>, Claimant’s request further seeks that Bolivia produce <u>all</u> communications between <u>any</u> <i>cooperativa</i> and/or <i>subsidiario</i>, on the one hand, and <u>any</u> COMIBOL official, on the other, related to any of the above mentioned agreements within the same 15-year period.</p> <p>Therefore, Claimant’s request amounts to a fishing expedition and producing the Requested Documents would be, in the circumstances, unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p>	<p>privatization of the Colquiri Mine) and between identified parties (Comibol and the <i>cooperativas</i> or <i>subsidiarios</i>). This is exactly what is required by the IBA Rules.</p> <p>Far from being a fishing expedition, Claimant’s request is a targeted effort at obtaining relevant information from Bolivia.</p> <p>In fact, it is Bolivia that has argued that before the privatization, and purportedly in contrast to Sinchi Wayra, Comibol maintained good relations with the local <i>cooperativas</i> or <i>subsidiarios</i>, despite entering into lease agreements that ceded working areas to these groups of miners.</p> <p>It follows that Bolivia should have already gathered and reviewed the Requested Documents in support of its own argument. Claimant’s request for such Documents cannot, therefore, be unduly burdensome.</p>	
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No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
5.	Complete copy of the 13 October 2000 lease agreement between Comibol and the <i>Cooperativa 26 de Febrero</i> , submitted by Bolivia as exhibit <b>R-94</b> .	<b>R-94</b>	<p>The 13 October 2000 lease agreement between Comibol and the <i>Cooperativa 26 de Febrero</i>, submitted by Bolivia as exhibit <b>R-94</b>, is incomplete, since clauses 2, 3 and 4 of the lease are missing from the document.</p> <p>The Requested Documents are relevant to assessing the context and purpose of the lease agreement in its entirety.</p>	Bolivia has no objection to Claimant's request and produces the Requested Document herewith.	N/A	The Tribunal takes note.
6.	Documents and correspondence between representatives of Comibol and the <i>cooperativas</i> in relation to the <i>cooperativas'</i> requests for working areas within the Colquiri Mine, from the time of the privatization of the Colquiri Mine until the issuance of the Colquiri	SoC, ¶¶ 87-113, 183-91 SoD, ¶¶ 169-229, 520-49 <b>R-196; R-206; R-207</b>	There is a dispute between the Parties as to whether Respondent took appropriate and reasonable measures to protect Claimant's investment in the Colquiri Lease against violent interference from the local <i>cooperativas</i>	<p><b>Bolivia objects to Claimant's request</b> for the following reasons:</p> <p><i>First</i>, Claimant's request is not sufficiently "<i>narrow and specific</i>" (IBA Rules, Art. 3 (3) (a) (ii)). In fact, Claimant is seeking to obtain <u>all</u> communications between <u>any</u> member of the <i>Cooperativas</i>, on the one</p>	<p><b>Bolivia's objections to Claimant's Request 6 are without merit</b> and should be denied for the following reasons:</p> <p><i>First</i>, Claimant's request is both narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Contrary to Bolivia's</p>	Request granted.

<p>Mine Nationalization Decree.</p> <p>For the avoidance of doubt, such documents shall include, but not be limited to, any agreements signed by Comibol with the <i>cooperativas</i> and any communication between Comibol and the <i>cooperativas</i> regarding such agreements (including any documents relating to <b>R-206</b> and <b>R-207</b>).</p>		<p>(SoC, ¶¶ 87-113, 183-91; SoD, ¶¶ 169-229, 520-49).</p> <p>Bolivia alleges that Claimant and its affiliated companies did not involve Bolivia in their relations with the <i>cooperativas</i> (SoD, ¶ 203).</p> <p>The Requested Documents are relevant to the case and material to its outcome because they will allow to better assess the extent to which Comibol was aware of, and involved in, any agreements entered into with the <i>cooperativas</i> present at the Colquiri Mine during the life of Claimant’s investment in the Colquiri Lease.</p>	<p>hand, and <u>any</u> COMIBOL official, on the other, over a period of 7 years, relating to <u>any</u> aspect of the operation of <u>any</u> <i>cooperativa</i> present at the Colquiri Mine. Claimant’s overbroad request thus amounts to a fishing expedition and producing the Requested Documents would be, in the circumstances, unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p> <p><i>Second</i>, Claimant fails to reasonably establish the existence of the Requested Documents (IBA Rules, Art. 3(3)(a)(ii)). To the contrary, the evidence in the record shows that COMIBOL was rarely aware of or involved “<i>in, any agreements entered into with the cooperativas present at the Colquiri Mine.</i>” Indeed, on 3 April 2012, Colquiri S.A. (Glencore International’s subsidiary) wrote to COMIBOL, belatedly requesting its intervention in order to solve the social conflict Glencore International had created at the Mine. On that occasion, Colquiri S.A. acknowledged that the demands by the <i>cooperativas</i> were “<i>atendidas en gran medida y hasta el momento por</i></p>	<p>assertions, Claimant is <u>not</u> seeking Documents “relating to <u>any</u> aspect of the operation of <u>any</u> <i>cooperativa</i> present at the Colquiri Mine.” Instead, Claimant has specifically requested Documents and correspondence “in relation to the <i>cooperativas</i>’ <u>requests for working areas within the Colquiri Mine</u>” (emphasis added). Claimant’s request identifies the relevant parties (Comibol and the <i>cooperativas</i> operating at the Colquiri Mine) is limited to a particular subject (the <i>cooperativas</i>’ requests for working areas within the Colquiri Mine) and to a defined timeframe (from the time of the privatization of the Colquiri Mine until the issuance of the Colquiri Mine Nationalization Decree). It therefore satisfies the requirements of Article 3.3(a) of the IBA Rules.</p> <p><i>Second</i>, Bolivia’s claim that Claimant’s request fails to reasonably establish the existence of the Requested</p>	
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No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				<p><i>nuestra empresa</i>” (C-30) without involving the Government.</p>	<p>Documents is entirely without merit. In fact, the agreements with the <i>cooperativas</i> for the assignment of areas of the Colquiri Mine were generally entered into under the supervision and with the express approval of Comibol (Bolivia’s mining State entity and lessor of the Colquiri Mine) and / or the Ministry of Mining. Bolivia itself, through Comibol and / or the Ministry of Mining, was often a signatory or a party to such agreements with the <i>cooperativas</i> (see, e.g., SoD, ¶ 173; R-93; R-94).</p> <p>Moreover, Bolivia’s position that Comibol was rarely aware of or involved “<i>in, any agreements entered into</i></p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					<p><i>with the cooperativas present at the Colquiri Mine</i>” is contradicted by Bolivia’s own statements and exhibits. For example, in the SoD, Bolivia states that “COMIBOL followed up with Colquiri on several requests made by the cooperativas to gain access to new areas of the Mine . . .” (SoD, ¶ 179). The documents Bolivia cites to indicate that the <i>cooperativas</i> would often go directly to Comibol with their requests. For instance, exhibit <b>R-206</b> is a letter from Comibol to Colquiri in which Comibol notes that the <i>Cooperativa 26 de Febrero</i> had reached out to Comibol to present a plan for the increase in production and request a</p>	

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					<p>meeting with Comibol, the cooperative and Colquiri. Exhibit <b>R-207</b> is also a letter from Comibol to Colquiri whereby Comibol notes that another cooperative requested a tunnel area within the Colquiri Mine.</p> <p>It follows that Claimant's request is narrow and specific and relates to a category of documents that are reasonably believed to exist based on the information on the record, in accordance with Article 3.3(a) of the IBA Rules.</p>	
7.	Official records including details as to the identities and affiliations of the members of the Comibol Board from the time in which Glencore Bermuda	SoC, ¶¶ 87-113, 183-91 SoD, ¶¶ 169-229, 520-49	There is a dispute between the Parties as to whether Respondent took appropriate and reasonable measures to protect Claimant's investment in	<p><b>Bolivia objects to Claimant's Request</b> for the following reasons:</p> <p><i>First</i>, Claimant fails to establish how the Requested</p>	<p><b>Bolivia's objections to Request 7 are without merit</b> and should be denied for the following reasons:</p>	Request granted.

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	acquired its investment until the issuance of the Colquiri Mine Nationalization Decree, including details as to how the Comibol Board members were appointed and any Comibol Board member's affiliation with any <i>cooperativas</i> present at the Colquiri Mine.		<p>the Colquiri Lease against violent interference from the local <i>cooperativas</i> (SoC, ¶¶ 87-113, 183-91; SoD, ¶¶ 169-229, 520-49).</p> <p>Bolivia alleges that Claimant and its affiliated companies did not involve Bolivia in their relations with the <i>cooperativas</i> (SoD, ¶ 203).</p> <p>The Requested Documents are relevant to the case and material to its outcome because they pertain to the <i>cooperativas</i>' decision-making power inside Comibol during the life of Claimant's investment in the Colquiri Lease, as well as to Comibol's contemporaneous knowledge of any activities carried out by the <i>cooperativistas</i> inside the Colquiri Mine.</p>	<p>Documents are relevant to the case and material to its outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)). Concretely, Claimant does not – and cannot – point to a single allegation in Claimant's Statement of Claim linking Bolivia's measures concerning the Assets to the identity or affiliation of any of the members of COMIBOL's board of directors. Claimant's request is based on mere speculation.</p> <p><i>Second</i>, Claimant's request is not sufficiently "<i>narrow and specific</i>" (IBA Rules, Art. 3 (3) (a) (ii)). In fact, the Requested Documents comprise <u>all</u> documents related to or showing the affiliation of <u>any</u> person acting as a COMIBOL board member over a period of time exceeding seven years. This lack of specificity is</p>	<p><i>First</i>, the Requested Documents are relevant to the case and material to its outcome, in accordance with IBA Rules 3.3(b) and 9.2(a). Claimant claims that Bolivia, through its representatives, including Comibol, failed to take all appropriate and reasonable measures to protect Claimant's investment in the Colquiri Lease against violent interference from the local <i>cooperativas</i>.</p> <p>While Bolivia accuses Sinchi Wayra of engaging in "consistent and considerable leniency with the <i>cooperativas</i>" (SoD, ¶ 186) it simultaneously notes that the <i>cooperativas</i> are</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				<p>compounded by the fact that Claimant does not identify the names of the board members related to or representing “<i>the cooperativas’ decision-making power inside Comibol.</i>”</p> <p>Therefore, Claimant’s request amounts to a fishing expedition and producing the Requested Documents in the circumstances would be unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p>	<p>entitled to “constitutional and legal protection” and represent “a powerful and significant actor in Bolivian politics, in particular since the events in 2003 which prompted Sánchez de Lozada’s resignation and <u>created the basis for a new political agenda in the country.</u>” (SoD, ¶ 205; emphasis added).</p> <p>The level and degree of involvement of the <i>cooperativas</i> in the Bolivian government through the <i>cooperativas’</i> direct participation in Comibol (Bolivia’s mining State entity and lessor of the Colquiri Mine, specifically tasked with protecting the Colquiri Lease from third party interference) is</p>	

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					<p>therefore relevant to assessing: (i) the <i>cooperativas</i>' actions, including the 30 May 2012 takeover of the Colquiri Mine; and (ii) the government's (including Comibol's) response to the <i>cooperativas</i>' 30 May 2012 takeover of the Colquiri Mine and to Claimant's repeated requests for intervention.</p> <p><i>Second</i>, Claimant's request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Claimant seeks a specific category of Documents (official records indicating the identifies and affiliations of the members of the Comibol Board) within</p>	

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					a specific timeframe (from Claimant’s acquisition of its investment until Bolivia’s expropriation of the same). These are Documents that are plainly in Bolivia’s custody, possession and control and Bolivia’s position that they would be “unreasonably burdensome” to produce is without merit.	
8.	Documents and correspondence relating to the agreement reached on or about 12 June 2012 between Comibol, the Minister of Mining, the Vice Minister of Mining and Metallurgic Development and Fencomin, Fedecomín and various local <i>cooperativas</i> concerning the Colquiri Mine.	SoC, ¶¶ 87-113, 183-91 SoD, ¶¶ 169-229, 520-49 <b>C-129; C-38bis</b>	There is a dispute between the Parties as to whether Respondent took appropriate and reasonable measures to protect Claimant’s investment in the Colquiri Lease against violent interference from the local <i>cooperativas</i> (SoC, ¶¶ 87-113, 183-91; SoD, ¶¶ 169-229, 520-49).  Before the issuance of the Colquiri Mine	Claimant’s request is not sufficiently “ <i>narrow and specific</i> ” (IBA Rules, Art. 3 (3) (a) (ii)) as it seeks to obtain all communications between any official from COMIBOL or the Ministry of Mining, on the one hand, and any member of FENCOMIN, FEDECOMIN, or of the <i>cooperativas</i> operating at the Colquiri Mine, on the other,	<b>Bolivia’s objections to Claimant’s Request 8 are without merit</b> and should be denied for the following reasons:  It is clear from the face of Claimant’s request that it is both narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Bolivia’s position to the	Request granted.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
			<p>Nationalization Decree, Bolivia admittedly discussed with Colquiri’s workers “the option of reverting the Mine” (SoD, ¶ 209). Claimant was not involved in this process.</p> <p>The Requested Documents are relevant to the case and material to its outcome because they would help evaluate Bolivia’s response to the Colquiri Mine invasion and the reasons behind its decision to nationalize the Colquiri Mine.</p>	<p>regarding the minutes of agreement executed on 12 June 2012 (C-129). Claimant’s request is overbroad and thus amounts to a fishing expedition, and producing the Requested Documents in the circumstances would be unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p>	<p>contrary is simply not tenable.</p> <p>As recognized by Bolivia, Claimant’s request seeks documents related to a <u>specific document</u>—an agreement reached on a specified date (12 June 2012) by members of the government and the <i>cooperativas</i>, to which Claimant was not a party (C-129). As admitted by Bolivia itself, before nationalizing the Colquiri Mine Bolivia discussed with Colquiri’s workers and the <i>cooperativas</i> “the option of reverting the Mine” (SoD, ¶ 209).</p> <p>Bolivia’s attempt to argue that such a narrow and specific request does not meet the</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					<p>requirements of the IBA Rules is a plain attempt to avoid having to produce the Requested Documents.</p> <p>In addition, Bolivia should have already gathered and reviewed the Requested Documents in support of its position that it took all reasonable measures to protect Claimant's investment (SoD, ¶¶ 169-229, 520-49). It therefore cannot argue that a search for such documents would be unreasonably burdensome.</p>	

PCA Case No. 2016-39/AA641

Glencore Finance (Bermuda) Ltd.  
(Claimant)

– VS –

The Plurinational State of Bolivia  
(Respondent)

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**BOLIVIA’S REPLIES TO CLAIMANT’S OBJECTIONS TO  
BOLIVIA’S REQUEST FOR PRODUCTION OF DOCUMENTS**

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16 March 2018

Members of the Tribunal:

Prof. Ricardo Ramírez Hernández  
Prof. John Y. Gotanda  
Prof. Philippe Sands



ESTADO PLURINACIONAL DE BOLIVIA  
Procuraduría General del Estado

Dechert (Paris) LLP

32 rue de Monceau  
75008 Paris, France

1. In accordance with the procedural calendar enclosed as Annex 1 to Procedural Order No. 2 dated 31 January 2018, the Plurinational State of Bolivia (“**Bolivia**”) hereby requests Glencore Finance (Bermuda) Ltd. (“**Glencore Bermuda**” or “**Claimant**”) to produce the document(s) and categories of documents described below (the “**Requested Documents**” and the “**Request**”).
2. Pursuant to paragraph 58 of Procedural Order No. 2, Bolivia submits its Request in tabular form, using the template provided by the Arbitral Tribunal at Annex 2 to Procedural Order No. 2.
3. Bolivia confirms that the Requested Documents are not in its possession, custody or control.
4. Should the native files of any of the Requested Documents (*e.g.*, Microsoft Excel or Outlook files) be available, Bolivia requests that Claimant produce the Requested Documents in such native format. In this connection, Bolivia notes that all the Documents produced by Claimant until the date of the present submission are in .PDF format, instead of native format. Further, certain email chain communications produced by Claimant were not produced together with the enclosures of all such communications. Bolivia requests the production of all such enclosures, identifying the email communications to which they correspond.
5. The following defined terms are used in Bolivia’s Request:
  - **Allied Deals**: Allied Deals plc and, following the change in the company’s name on 5 October 2001, RBG Resources.
  - **Antimony Smelter**: Vinto antimony smelter.
  - **Antimony Smelter Reversion Decree**: Supreme Decree No 499 of 1 May 2010 (**C-26**).
  - **Assets**: the mining assets relevant to this dispute (*i.e.*, the Antimony Smelter, the Tin Smelter, and the Mine Lease).
  - **Cachi**: Witness Statement of Andrés Cachi of 7 December 2017.
  - **CDC**: Commonwealth Development Corporation.
  - **Colquiri**: Colquiri S.A., a Bolivian company indirectly owned and controlled by Glencore International through Sinchi Wayra (51%) and Kempsey (a Panamanian Company).
  - **Colquiri Mine**: the Colquiri mine, a tin mine active since the 19<sup>th</sup> century, located in the Department of La Paz, Bolivia.

- **COMIBOL:** Bolivian State entity *Corporación Minera de Bolivia*.
- **Comsur:** Compañía Minera del Sur, S.A. and, following the change in the company's name in 2005, Sinchi Wayra.
- **Cooperativas:** organisations of independent workers known as *Cooperativas* or *cooperativistas* (formerly *subsidiarios*) operating at the Colquiri Mine. The *Cooperativas* include, but are not limited to the *Cooperativa 26 de Febrero*, the *Cooperativa 21 de Diciembre*, and/or the Association of *Cooperativas* of Colquiri.
- **Correspondence:** any communication sent or received, in any format and form (soft and/or hard copy), including, but not limited to letters, emails, faxes, memoranda, SMS, WhatsApp messages, handwritten notes, communiqués and drafts of the same.
- **Document(s):** all forms of written communications and Correspondence, including, but not limited to emails, letters, notes, minutes of meetings, memoranda, surveys, audits, assessments, internal analyses, reports, contracts, agreements, drawings, graphs, charts, photographs, phono records, and data compilations.
- **EMV:** Bolivian State company *Empresa Metalúrgica Vinto*.
- **Eskdale:** Witness Statement of Christopher Eskdale of 15 August 2017.
- **First Antimony Smelter Tender:** tender process organized for the privatization of the Antimony Smelter in 1999.
- **FSTMB:** *Federación de Sindicatos de Trabajadores Mineros de Bolivia*.
- **Glencore Bermuda:** Glencore (Finance) Bermuda Limited, Claimant in this arbitration.
- **Glencore International:** Glencore International AG.
- **Glencore Group:** Glencore International AG and/or Glencore International plc and/or Glencore (Finance) Bermuda Limited and their affiliates.
- **Lazcano:** Witness Statement of Eduardo Lazcano of 15 August 2017.
- **Mamani:** Witness Statement of Joaquín Mamani of 12 December 2017.
- **Mine Lease:** Lease agreement for the Colquiri Mine between the Ministry of External Trade and Investment, COMIBOL, Colquiri S.A. and Comsur (**C-11**).
- **Mine Lease Reversion Decree:** Supreme Decree No 1.264 of 20 June 2012 (**C-39**).

- **Moreira:** Witness Statement of David Alejandro Moreira of 17 December 2017.
- **Panamanian Companies:** Iris Mines and Metals S.A., Shattuck Trading Co Inc., and Kempsey S.A.
- **Paribas:** the investment bank which acted as a consultant, assisting Bolivia in the privatization process, *inter alia*, of the Assets.
- **Romero:** Witness Statement of Minister Carlos Romero of 14 December 2017.
- **Rosario Agreement:** Agreement between Colquiri S.A., FEDECOMIN, FENCOMIN, *Central Local de Cooperativas Mineras de Colquiri*, *Cooperativa Minera Collpa Cota*, *Cooperativa Minera Socavón Inca*, and *Cooperativa 26 de Febrero* of 7 June 2012 (C-35).
- **Sánchez de Lozada:** Gonzalo Sánchez de Lozada, former president of Bolivia.
- **Second Amended and Restated Stock Purchase Agreement:** Second Amended and Restated Stock Purchase Agreement between Minera S.A. and Glencore International A.G. dated 30 January 2005, disclosed by Claimant in response to Request 3 below.
- **Second Antimony Smelter Tender:** tender process organized for the privatization of the Antimony Smelter in 2000.
- **Sinchi Wayra:** Sinchi Wayra S.A. (and prior to the change in the company's name in 2005, Comsur), a Bolivian company indirectly owned and controlled by Glencore International through the Panamanian companies Kempsey, Iris and Shattuck.
- **Smelters:** the Tin Smelter and the Antimony Smelter.
- **STMC:** *Sindicato Mixto de Trabajadores Mineros de Colquiri*.
- **Statement of Claim:** Claimant's Statement of Claim of 15 August 2017.
- **Statement of Defence:** Bolivia's Preliminary Objections, Statement of Defence, and Reply on Bifurcation of 18 December 2017.
- **Tin Smelter:** Vinto tin smelter.
- **Tin Smelter Reversion Decree:** Supreme Decree No 29.026 of 7 February 2007 (C-20).

6. This Request is without prejudice to all of Bolivia's rights and, in particular, to the right to request further documents after reviewing the Requested Documents or any other Document that Claimant may submit in these proceedings.

Bolivia’s Request for Production of Documents

No.	Documents or category of documents requested	Relevance and materiality, incl. references to submissions		Reasoned objections to document production request	Response to objections to document production request	Tribunal’s decision
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
<b>I. Acquisition of the Assets by Glencore International</b>						
1.	<p>(i) Correspondence exchanged between Glencore International and/or the Glencore Group and Argent Partners and/or the seller of the Assets prior to their sale to Glencore International in 2005, during the negotiation process and thereafter in connection to such sale, including, but not limited to:</p> <p>a. the description of all the assets for sale, of the seller and of the bidding process and conditions of the sale (including, but not limited to the asking price for each asset); and</p>	<p>Statement of Defence, Section 2.5.3; Statement of Claim, ¶ 34 <i>et seq.</i>; <b>C-62</b>; Eskdale, ¶ 13.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that, rather than being an arms-length transaction, the sale of the Assets was a way to apparently dissociate the Assets from their ownership by Sánchez de Lozada and Comsur (though the reality was likely different). In fact, it is likely that Sánchez de Lozada retained an interest in the Assets, either directly or through Comsur or another entity. <i>Second</i>, and as a result, the Requested</p>	<p>Claimant <b>objects</b> to this request for the following two reasons:</p> <p>(a) <u>The Requested Documents are irrelevant to this case and immaterial to its outcome</u>, and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules on the Taking of Evidence in International Arbitration (the <b>IBA Rules</b>).</p> <p>The issue before the Tribunal in relation to this request is whether Claimant acquired the Assets with “unclean hands” and whether it committed an abuse of the corporate form by receiving the investment when this dispute was foreseeable.</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents under items (i)(a) and (ii).</u></b> On the basis of exhibit <b>C-62</b>, <b><u>Bolivia narrows down the scope of item (i)(a)</u></b> from “<i>the description of all the assets for sale</i>” to “<i>the description of (1) the 100% interest in Minera, and (2) ‘Colquiri, Colquiri Tailings and Vinto Metallurgical Complex.’</i>”</p> <p>Claimant’s objections to the Request are misplaced, for the following reasons:</p> <p><i>First</i>, on Claimant’s own case, the Requested Documents are relevant to the case and material to its outcome, insofar as the issue before this Tribunal is “<i>whether Claimant acquired the Assets with</i></p>	<p>Request is granted as modified by Respondent.</p>

No.	Documents or category of documents requested	Relevance and materiality, incl. references to submissions		Reasoned objections to document production request	Response to objections to document production request	Tribunal's decision
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	<p>b. the invitation to Glencore International and/or the Glencore Group to submit a bid.</p> <p>(ii) To the extent not covered by point (i) above, Documents exchanged by Argent Partners and Glencore International and/or the Glencore Group in connection with the assets for sale, including, but not limited to any offers and counter-offers, any draft agreements, any memoranda of understanding and/or any Documents underpinning the asking price and the price offered for each of the assets for sale, respectively.</p>		<p>Documents will dispose of Claimant's claims in this arbitration, insofar as they will demonstrate that Claimant is nothing more than a smokescreen and certainly not the real investor in this case. Thus, the claims it submits fall outside the jurisdiction of the Tribunal.</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated and exchanged between Argent Partners and Glencore International</p>	<p>Bolivia has failed to articulate why the details of Argent Partners' private, international bidding process is relevant or material to the outcome of this case, or why the Requested Documents would indicate that the Claimant's acquisition was anything but an arm's length transaction fully protected under the Treaty.</p> <p>Claimant has been consistently transparent in regard to the bidding process between Glencore International and Argent Partners and has no need for a "smokescreen" to show that it is the real investor, as claimed by Bolivia. Claimant has always acknowledged that it acquired the Assets from Glencore International five days following the signing of the relevant purchase agreements and has held the Assets ever since (SoC, ¶</p>	<p><i>'unclean hands' and whether it committed an abuse of the corporate form.</i>" It is only by scrutinizing the details of the bidding process that such an issue may be determined.</p> <p>A legitimate bidding process and subsequent transaction would have been characterized by sufficient documentation, such as offers and counter-offers evidencing arm's length negotiations between Glencore International and/or the Glencore Group and the seller of the Assets, with the intermediation of Argent Partners.</p> <p>In the present case, the asking price and any counter-offers are particularly important, as they value (or their absence) will indicate whether the transaction was only simulated, in order to conceal Sánchez de Lozada's continued interest in the Assets.</p>	

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			<p>and/or the Glencore Group. A record of the Requested Documents would reasonably have been kept, in particular, by Christopher Eskdale (Claimant's witness), who (i) was the Glencore representative that Argent Partners initially contacted in connection with the sale of the Assets and (ii) acted as "lead negotiator on behalf of Glencore" in such sale (Eskdale, ¶ 13, 17). Mr. Eskdale is still employed within Glencore International today (Eskdale, ¶ 1).</p>	<p>37), until their unlawful expropriation.</p> <p>Bolivia uses this opportunity to submit allegations which, as it openly admits, are based on mere suspicion. Namely, Bolivia's allegation that Mr Sánchez de Lozada "likely" retained an interest in the Assets was not only discredited at the time of Bolivia's measures (<i>see</i> SoC, ¶¶ 63-64; Witness Statement of Christopher Eskdale, ¶¶ 40-41; <b>C-68</b>), but also contradicted by all the evidence on the record (<b>C-13; C-14; C-15; C-16; C-17; C-18</b>). Therefore, Bolivia's request is based on mere speculation.</p> <p>Bolivia also fails to specify how the documents "underpinning the asking price and price offered for each of the assets for sale" listed in Request 1(ii) would be relevant or material to the Tribunal's jurisdiction.</p>	<p>The "<i>Opportunity Overview</i>" disclosed by Claimant does not contain such information or such information has been redacted.</p> <p>Further, Claimant's criticism of this Request as being based on "<i>mere speculation</i>" is misguided. It stands to reason that a transaction aimed at concealing a person's continued interest in an asset would be shrouded in secrecy, all the more so if it was intended to form the basis of an abuse of corporate form for the purposes of initiating litigation. It is not unreasonable that Bolivia would have no choice but to frame its Request in terms of "likelihood".</p> <p>Claimant's evident reticence to disclose the Requested Documents – and, generally, documents in response to the other three Requests in this category – is telling: Claimant seeks to preserve the secrecy</p>	

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				<p>(b) <u>Bolivia's Request 1 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>It is particularly telling that Bolivia asks for the "description of all the assets for sale" in the transaction, along with their asking price, despite knowing that the transaction included assets outside of this dispute, even in countries outside Bolivia (SoD, ¶ 125).</p> <p>Moreover, Bolivia seeks in Request 1(ii) a wide array of commercially confidential documents involving assets outside of the dispute and throughout an indefinite period of time (prior, during, and after the sale to Glencore International).</p>	<p>surrounding this transaction, in order to avoid a negative finding on jurisdiction by this Tribunal. If Claimant had nothing to hide, surely it would not oppose the disclosure of information underpinning "<i>a transaction that took place more than 13 years ago.</i>"</p> <p><i>Second</i>, Bolivia identifies two narrow and specific categories of documents in its Request, and has further narrowed down its Request, as explained above. Claimant's concerns should have thus been laid to rest.</p> <p><i>Third</i>, Claimant's reference to purported confidentiality is merely an unsubstantiated presumption. Bolivia notes that Claimant is not alleging that the Requested Documents would be barred from disclosure on such unproven basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-</p>	

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				<p>It would be unreasonably burdensome and it would affect the fairness and equality of the procedure for Claimant to search its records for underlying a transaction that took place more than 13 years ago and that is completely unrelated to the issues at stake in this arbitration, especially when it has less than four months to prepare and submit its Reply.</p> <p>Finally, Claimant has already produced documents identified in Bolivia's Request 1(i)(b). As set out in Christopher Eskdale's Witness Statement (¶ 13), Argent Partners invited Glencore International to submit its bid for the assets in April 2004. This invitation includes an overview of the bidding process and is on the record as <b>C-62</b>.</p> <p style="text-align: center;">* * *</p>	<p>disclosure agreement in connection with the Requested Documents.</p> <p>Claimant's assertion that it would be unreasonably burdensome to carry out the search for the Requested Documents is misleading. Claimant may easily base its search on the responsive document it has produced, which, in its unredacted version, identifies all assets for which bids were invited (<b>C-62</b>).</p>	

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				<p>Notwithstanding and without prejudice to the above, in the spirit of cooperation, Claimant has conducted a reasonable search of documents within its possession and hereby <b><u>voluntarily produces the following responsive documents:</u></b></p> <ul style="list-style-type: none"> <li>• Opportunity overview from Argent Partners to Glencore attached to Letter from Argent Partners to Chris Eskdale, 30 April 2004.</li> </ul>		
2.	<p>Documents recording and/or discussing the due diligence carried out by Glencore International and/or the Glencore Group prior to acquiring the Assets, including, but not limited to:</p> <p>a. economic and financial analyses of the Assets, their operations and their</p>	<p>Statement of Defence, Sections 2.5.3, 2.5.4, 4.2; <b>R-182.</b></p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that, through its own due diligence, Glencore International and/or the Glencore Group became sufficiently familiar with the Assets (assuming,</p>	<p>Claimant <b><u>objects</u></b> to this request for the following two reasons:</p> <p>(a) <b><u>The Requested Documents are irrelevant to this case and immaterial to its outcome</u></b>, and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p>Claimant's objections to the Request are misplaced, for the following four reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are relevant, insofar as the issue before this Tribunal is "<i>whether Claimant acquired the Assets with 'unclean</i></p>	Request granted.

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	<p>value, including, but not limited to any Documents underpinning the purchase price(s) offered;</p> <p>b. Documents discussing any obligations towards the Bolivian State undertaken under the sale/lease agreements, including, but not limited to the obligation to operate the Antimony Smelter in a way that contributed to the economic development of Bolivia;</p> <p>c. socio-economic analyses of the Assets, the workforce of the Colquiri Mine and the Smelters (including <i>subsidiarios</i>, <i>cooperativistas</i> and</p>		<p><i>quod non</i>, that such familiarity had not been previously acquired) to realise that the history and characteristics of such Assets would prompt the State to take action against them (Statement of Defence, Section 2.5.4). <i>Second</i>, and as a result, the Requested Documents will show that Claimant's claims in this arbitration are underpinned by events which had been a long time in the making and were foreseeable to Glencore International and/or the Glencore Group. Thus, Claimant committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable, which places such dispute outside the scope of the Tribunal's</p>	<p>request is whether Claimant acquired the Assets with "unclean hands" and whether it committed an abuse of the corporate form by receiving the investment when this dispute was foreseeable.</p> <p>Bolivia once again produces no evidence to support that the dispute was foreseeable and that Glencore International "restructured" its investment through Claimant to abuse the corporate form. As explained in the Statement of Claim, Claimant acquired the Assets from Glencore International on 7 March 2005, <u>five days</u> after the purchase by Glencore International and almost <u>two years</u> prior to the State's first measure (SoC, ¶ 36-37; C-64). More importantly, Bolivia has failed to show how these due diligence documents would prove the abuse of process that</p>	<p><i>hands' and whether it committed an abuse of the corporate form by receiving the investment when this dispute was foreseeable.</i>" The Requested Documents will show the extent of the due diligence carried out by Glencore International prior to acquiring the Assets. Extensive due diligence, as would have been carried out by a reasonable buyer, would have allowed Glencore International to recognize the high probability that the State would take action against the Assets. For example, adequate economic due diligence would have allowed Glencore International to determine the fair market value of the Assets. In addition to underpinning its own price offered (a further indication of whether the transaction was at arm's length), such due diligence would have revealed to Glencore International the fact</p>	

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	<p>paid workers), and any specificities in the relationship between the various categories of workers, on the one hand, and the public, then private administration of the Colquiri Mine and the Smelters.</p> <p>d. Documents discussing any political risk(s) involved in the acquisition of the Assets; and</p> <p>e. Documents discussing any risk(s) of adverse State measures against the Assets (including, but not limited to expropriation, nationalization and/or reversion).</p>		<p>jurisdiction and/or renders the claims inadmissible (Statement of Defence, Section 4.2).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated by Glencore International and/or the Glencore Group internally and/or by any consultants as part of Glencore International's and/or the Glencore Group's due diligence prior to Glencore International's acquisition of the Assets.</p>	<p>allegedly occurred during that five-day window.</p> <p>As noted by Gary Born, "tribunals are generally very unwilling to permit parties to engage in 'fishing expeditions', aimed at identifying possible claims or sources of further inquiry" and "[t]he focus of disclosure should be on obtaining relevant and material evidence, not playing guessing games" (G Born, <i>International Commercial Arbitration</i> (2d edn 2014), pp 2359, 2361).</p> <p>Since all the facts on the record demonstrate that Bolivia's hypothesis is false, this request (together with requests 3 through 17) amounts to a fishing expedition, as it asks for a broad universe of documents in the <i>hopes</i> of creating a case where it has none. Bolivia cannot invent a claim purely for the purpose</p>	<p>that the Assets had been acquired for a fraction of their actual worth (Statement of Defence, Sections 2.3, 2.4). Legal due diligence would have revealed the fact that the Antimony Smelter was to be operated in such a way as to contribute to the economic development of Bolivia (Statement of Defence, Section 2.6.2; <b>R-109</b>). Likewise, any due diligence regarding the Colquiri Mine would have brought to light the increasing tensions between the paid workers and the <i>cooperativistas</i>, thus highlighting the need for a specific type of management of the Mine (Statement of Defence, Sections 2.5.1, 2.5.2). Such due diligence would also have highlighted the changing political climate in Bolivia at the time, and most likely would have triggered Glencore International's general policy of taking out adequate</p>	

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				<p>of obtaining documents via this disclosure process – it must first establish a <i>prima facie</i> claim and use the disclosure process to obtain documents that exist and are relevant and material to that claim.</p> <p>(b) <u>Bolivia's request is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Under Request 2 Bolivia seeks a category of documents dating back to 2004 without establishing a temporal limit as required by the IBA Rules. The search for and production of documents responsive to this Request would be unduly burdensome for Claimant, as it would require Claimant to search through a data room</p>	<p>insurance when political risk is high (<b>R-193</b>).</p> <p><i>Second</i>, Claimant's assertion that "<i>Bolivia [...] produces no evidence to support that the dispute was foreseeable</i>" is disingenuous. The simple fact that Claimant disagrees with Bolivia's position does not mean, as Claimant implies, that Bolivia has no case and is seeking to construct one through a fishing expedition. The Requested Documents will confirm the case set out by Bolivia in its Statement of Defence.</p> <p>If Glencore International did carry out the necessary and proper due diligence before acquiring the Assets, then it must have known, at that time, that Bolivia would take measures against such Assets. Thus, Claimant would have committed an abuse of process by receiving the investment from Glencore International when the dispute was</p>	

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				<p>underlying a transaction that occurred almost 14 years ago.</p> <p>It would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time. A search for such documents will therefore be costly, inefficient and add no value to this Tribunal in resolving the dispute.</p>	<p>foreseeable, placing such dispute outside the scope of the Tribunal's jurisdiction and/or rendering the claims inadmissible (Statement of Defence, Section 4.2).</p> <p>Conversely, if Glencore International's due diligence was not extensive, but instead insufficient or inexistent, then, by virtue of the principle of clean hands, as applied in <i>Churchill Mining v. Indonesia (RLA-25)</i>, Claimant's claims are inadmissible (Statement of Defence, Section 4.3.2).</p> <p><i>Third</i>, Claimant's reliance on the timing of the acquisition and assignment of the Assets in relation to the adverse State measures as purported evidence that it did not carry out an abuse of process is a <i>non sequitur</i>. It is irrelevant to a finding of abuse of process that the assignment to Claimant would have been carried out only five days following the acquisition of</p>	

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					<p>the Assets by Glencore International. Corporate restructuring such as the one carried out in the present case requires advance planning, but takes little time to execute. Likewise, it is irrelevant that the assignment took place almost two years prior to the State's first measure. At the time, Glencore International knew (or should have known) there was an imminent risk of State action against the Assets. If anything, it is Claimant's insistence on such timing that is irrelevant to the case and immaterial to its outcome.</p> <p><i>Fourth</i>, Claimant's contention that Bolivia "<i>fails to identify a 'narrow and specific [...] category of Documents'</i>" is incorrect. Bolivia seeks "<i>Documents recording and/or discussing</i>" five specific aspects characterizing the due diligence carried out prior to the acquisition of the Assets in 2004. Claimant's assertion that the age of the data room</p>	

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					would make searching for the Requested Documents too burdensome makes no sense – nor does Claimant make any effort to explain why that would be so or provide any evidence thereof. Though Claimant asserts that “[i]t would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time,” Claimant does not in fact assert that such data room would have been lost or destroyed. Neither does Claimant contend that such data room would be subject to any kind of privilege.	
3.	(i) Documents discussing and/or recording the transaction carried out between the seller(s) of the Assets and Glencore International and/or the Glencore Group, including, but not limited to: <p>a. the sale purchase agreements executed</p>	Statement of Defence, Section 2.5.3; Statement of Claim, ¶ 34 <i>et seq.</i>	The Requested Documents are relevant to this dispute and material to its outcome. <p><i>First</i>, the Requested Documents will show that rather than being an arms-length transaction, the sale of the Assets was a way to apparently</p>	Claimant <b>objects</b> to this request for the following two reasons: <p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p>	<b><u>Bolivia moves to compel production of all the Requested Documents.</u></b> <p>Bolivia takes note of the disclosure of the Second Amended and Restated Stock Purchase Agreement. Bolivia notes, however, that (i) such document is redacted (concealing the identity of</p>	Request granted partially. Claimant will produce documents refer to in literals a and b, including the “unredacted version of the Second Amended and Restated Stock Purchase Agreement,

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	<p>between Glencore International and/or the Glencore Group and the seller(s) of the Assets, and any drafts thereof;</p> <p>b. any ancillary agreements, such as side letters, insurance contracts concluded with the seller(s) or to which the seller(s) may have been privy, insuring the Assets against any risks arising in connection with the operation of the Assets (such as adverse State action against the Assets); and</p> <p>c. Documents generated internally by Glencore International and/or</p>		<p>dissociate the Assets from their ownership by Sánchez de Lozada and Comsur. In fact, it is likely that Sánchez de Lozada retained interest in the Assets (Statement of Defence, ¶ 126), either directly or through Comsur or another entity. Likewise, it is possible that the sale purchase agreements also included a refund clause, pursuant to which Glencore International and/or the Glencore Group would be reimbursed the purchase price in the event that the Assets were subject to State (or other) adverse measures. <i>Second</i>, and as a result, the Requested Documents will dispose of Claimant's claims in</p>	<p>Bolivia has failed to articulate why the details of this private, commercial transaction are relevant or material to the outcome of this case. In particular, Bolivia has failed to show how such details will prove that Claimant is not a protected investor under the Treaty.</p> <p>Contrary to Bolivia's claims, Claimant has no need for a "smokescreen" to show that it is the real, protected investor in this case. Claimant has been consistently transparent in regard to the initial purchase of the Assets by Glencore International (NoA, ¶¶ 21, 43-44; SoC ¶¶ 36-38, 131). Claimant has always acknowledged that it acquired the Assets from</p>	<p>certain "Excluded Businesses"<sup>1</sup> which are not subject to the transaction) and (ii) is not accompanied by the documents listed in the "<i>List of Schedules, Annexes and Exhibits</i>." Further, Claimant has not produced (i) the original purchase agreement, (ii) any drafts of these documents, nor (iii) the Ancillary Agreements<sup>2</sup> referred to therein (including the Tripartite Indemnification and Dispute Resolution Agreement). <b><u>Bolivia thus further moves to compel the production of an unredacted version of the Second Amended and Restated Stock Purchase Agreement, of all documents in the "<i>List of Schedules, Annexes and Exhibits</i>" and of the Ancillary Agreements.</u></b></p>	<p>of all documents in the "<i>List of Schedules, Annexes and Exhibits</i>" and of the Ancillary Agreements."</p> <p>Literal c request is denied on the ground of lack of specificity.</p>

<sup>1</sup> As defined under Article I Section 1.1 of the Second Amended and Restated Stock Purchase Agreement ("*mining and metallurgical businesses and operations other than the zinc, tin, lead and silver mining and metallurgical operations conducted by the Seller through the Company or any of its Subsidiaries, together with any and all assets and liabilities relating thereto, but including, without limitation, (i) the owner ship interest currently held by Comsur in [redacted] and (ii) the assets, liabilities, operations and businesses described on Schedule 1.1(a)*").

<sup>2</sup> Id. ("*all agreements, documents and instruments required to be executed or delivered by any party pursuant to this Agreement, and any other agreements, documents or instruments entered into at or prior to Closing in connection with this Agreement or the transactions contemplated hereby, including the Tripartite Indemnification and Dispute Resolution Agreement*").

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	the Glencore Group and/or by any external consultant in this connection, to the extent not covered by points a and b above.		<p>this arbitration, insofar as they will demonstrate that Claimant is nothing more than a smokescreen and certainly not the real investor in this case. Thus, the claims it submits fall outside the jurisdiction of the Tribunal.</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated by Glencore International and/or the Glencore Group and/or by any external consultant in connection with the</p>	<p>Glencore International five days after the signing of the relevant purchase agreements and that it has held the Assets ever since (SoC ¶ 37; Witness Statement of Christopher Eskdale, ¶ 20; <b>C-64</b>). Claimant has also shown that it is incorporated under the laws of Bermuda, a UK territory, qualifying it as a protected investor under the Treaty (SoC, ¶¶ 127-128; <b>C-42, C-43, C-44</b>).</p> <p>(b) <u>Bolivia's Request 3 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia's requests "Documents discussing and/or recording the transaction carried out" 13 years ago. In fact, Bolivia's</p>	<p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, the Requested Documents are relevant to Bolivia's case and material to its outcome. The fact that they contradict Claimant's position that it would be the real, protected investor in this case does not detract from their relevance and materiality.</p> <p>The Requested Documents will shed light on the transaction carried out between the seller of the Assets and Glencore International, demonstrating that it was a staged operation, aimed at concealing Sánchez de Lozada's continued interest in the Assets (Statement of Defence, ¶ 126). For this reason, <b><u>Bolivia seeks an unredacted version of the Second Amended and Restated Stock Purchase Agreement, notably</u></b></p>	

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			<p>transaction carried out between the seller(s) of the Assets and Glencore International and/or the Glencore Group.</p>	<p>Request 3(i)(c) is impossibly vague, has no temporal limit, and makes no attempt to identify a “narrow and specific ... category of Documents.” It would be unduly burdensome to expect Claimant to have retained an entire data room of documents for more than a decade. A search for such documents would therefore be costly, inefficient, and without significance to the parties or the Tribunal in resolving the matters in dispute.</p> <p>Bolivia uses this Request to submit allegations of “unclean hands” based on mere speculation. As with <u>Request 2</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case on the basis of evidence that it <i>hopes</i> to find in Claimants’ files. This is clear from Bolivia’s careful choice of words in justifying</p>	<p><b><u>identifying the presently redacted “Excluded Businesses” and the identity of the entity in respect of which “the Buyer will not object to those persons currently serving as Chief Executive Officer, Chief Financial Officer and Chief Operating Officer [...] continuing to serve in those positions until September 30, 2005.”</u></b></p> <p>The Requested Documents will also show that, from the outset, Glencore International was fully aware of the high risk that the State would take action against the Assets. Glencore International took all the necessary precautions in this connection, likely taking out political insurance risk, including from the seller of the Assets. This is supported by the reference (i) in the Notice of Assignment from Glencore international to CDC (C-66) to a “<i>Tripartite Indemnification and Dispute</i></p>	

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				<p>its request (eg, “it is likely that,” “it is possible that”).</p> <p>Namely, Bolivia’s allegation that Mr Sánchez de Lozada “likely” retained an interest in the Assets following their sale was discredited at the time of Bolivia’s measures (<i>see</i> SoC, ¶¶ 63-64; Witness Statement of Christopher Eskdale, ¶¶ 40-41; <b>C-68</b>) and is contradicted by evidence on the record (<b>C-13; C-14; C-15; C-16; C-17; C-18</b>).</p> <p>Equally speculative is Bolivia’s claim that “it is possible” that the sale purchase agreements included a refund clause pursuant to which Glencore would be reimbursed the purchase price in the event that the Assets were subject to adverse measures.</p> <p style="text-align: center;">* * *</p> <p>Notwithstanding and without prejudice to the above, in the spirit of cooperation,</p>	<p><i>Resolution Agreement</i>” and (ii) in the Second Amended and Restated Stock Purchase Agreement, to Ancillary Agreements, (including the Tripartite Indemnification and Dispute Resolution Agreement). Claimant has disclosed none of these documents, though they support Bolivia’s case that the transaction also included a refund clause. If Claimant did not have anything to hide and were in reality more than a smoke screen (<i>quod non</i>), there would be no reason for it not to produce the Requested Documents. Claimant’s production of certain redacted documents and refusal to produce other documents responsive to Bolivia’s Request suggests the opposite is true.</p> <p>The Requested Documents are material to the outcome of the case, as they will show that Claimant committed an abuse of process by receiving the</p>	

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				<p>Claimant has conducted a reasonable search of documents within its possession and hereby <b><u>voluntarily produces</u></b> the Stock Purchase Agreements whereby Glencore International acquired 100% of the Assets, and which were assigned to Claimant shortly thereafter, evidencing that this was in fact an arm's length transaction.</p>	<p>investment from Glencore International when the dispute was foreseeable, placing such dispute outside the scope of the Tribunal's jurisdiction and/or rendering the claims inadmissible (Statement of Defence, Section 4.2).</p> <p><i>Second</i>, Claimant's reliance on the timing of the acquisition and assignment of the Assets in relation to the adverse State measures as purported evidence that it did not carry out an abuse of process is a <i>non sequitur</i>. It is irrelevant to a finding of abuse of process that the assignment to Claimant would have been carried out only five days following the acquisition of the Assets by Glencore International. Corporate restructuring such as the one carried out in the present case requires advance planning, but takes little time to execute. Likewise, it is irrelevant that the assignment took place almost two years prior to the</p>	

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					<p>State's first measure. At the time, Glencore International knew (or should have known) there was an imminent risk of State action against the Assets. If anything, it is Claimant's insistence on such timing that is irrelevant to the case and immaterial to its outcome.</p> <p><i>Third</i>, the Request is anything but "<i>impossibly vague</i>" and Claimant's objection to its purported breadth and lack of specificity is disingenuous. Bolivia's request for "<i>Documents discussing and/or recording the transaction</i>" targets three narrow and specific categories of documents. Claimant cannot convincingly argue that the sale purchase agreements and drafts thereof are imprecise. Nor that agreements ancillary to such sale purchase agreement – specifically identified as side letters and/or insurance contracts covering the operation of the Assets – are an unduly broad category</p>	

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					<p>of documents. Claimant's concern is now moot, in any event, as Bolivia has further specified that it seeks the Ancillary Agreements, as defined in Second Amended and Restated Stock Purchase Agreement.</p> <p><i>Fourth</i>, Claimant's assertion that "[i]t would be unduly burdensome to expect Claimant to have retained an entire data room of documents for more than a decade" is disingenuous. If Claimant preserved the documents it has already disclosed, there is no reason for it not to have preserved the other Requested Documents.</p> <p>Though Claimant asserts that "[i]t would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time," Claimant does not in fact assert that such data room would have been lost or destroyed. Neither does</p>	

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					<p>Claimant contend that such data room would be subject to any kind of privilege.</p> <p><i>Finally</i>, Bolivia notes that the Second Amended and Restated Stock Purchase Agreement between Minera S.A. and Glencore International A.G. dated 30 January 2005 bears Mr Eskdale's (Claimant's witness) signature – as do other documents produced by Claimant.<sup>3</sup> A record of the Requested Documents would reasonably have been kept by Mr Eskdale, who (i) was the Glencore representative that Argent Partners initially contacted in connection with the sale of the Assets and (ii) acted as <i>lead negotiator on</i></p>	

<sup>3</sup> Notice of Assignment (Re: the Stock Purchase Agreement, dated as of March 2, 2005, between Glencore International AG (“GIAG”), as assignee of Compañía Minera Concepción S.A. (“Comco”), and CDC Group plc (“CDC”) (the “SPA”); and the Tripartite Indemnification and Dispute Resolution Agreement, dated as of March 2, 2005, among GIAG, CDC and Minera S.A. (the “Tripartite Agreement”)) dated 23 May 2005; Notice of Assignment (Re: the Stock Purchase Agreement, dated as of January 30, 2005, between Glencore International AG (“GIAG”) and Minera S.A. (“Minera”) (the “SPA”); the Second Amended and Restated Stock Purchase Agreement, dated as of January 30, 2005, between GIAG and Minera (the “Second Restated SPA”); the Framework Agreement, dated as of March 4, 2005, between GIAG and Minera (the “Framework Agreement”); the letter agreement, dated January 30, 2005, between GIAG and Minera (the “Side Letter”); the amendment to the Side Letter, dated March 2, 2005 (the “Side Letter Amendment”); the Stock Purchase Agreement, dated as of March 2, 2005, between GIAG and Minera (the “Kempsey SPA”); the Tripartite Indemnification and Dispute Resolution Agreement, dated as of March 2, 2005, among GIAG, Minera and CDC Group plc (the “Tripartite Agreement”); the Escrow Agreement, dated as of March 2, 2005, among GIAG, Minera and The Bank of New York, as Escrow Agent (the “Escrow Agreement”); and the Account Control Agreement, dated as of March 2, 2005, among GIAG, Minera and The Bank of New York, as Intermediary (the “Account Control Agreement”)), dated 23 May 2005.

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					<i>behalf of Glencore</i> ” in such sale (Eskdale, ¶ 13, 17). Mr Eskdale is still employed within Glencore International today (Eskdale, ¶ 1).	
4.	To the extent not covered by Request 3 above, any insurance contracts, including, but not limited to political insurance contracts, entered into by Glencore International and/or by any member of the Glencore Group in connection with the acquisition of the Assets, for the insurance of any of the Assets against any risks arising out of or connected with their past, present and/or future operations in Bolivia, including, but not limited to contracts insuring the Assets against political risk.	Statement of Defence, ¶¶ 7, 138-140, 161, Section 4.2.2; <b>R-193</b> .	The Requested Documents are relevant to this dispute and material to its outcome.  <i>First</i> , the Requested Documents will show that, at the time Glencore International acquired the Assets, Glencore International and/or the Glencore Group were reasonably aware of the risks that the Assets would become the subject of a dispute with Bolivia. Glencore International and/or the Glencore Group took specific measures to palliate such risks, including by executing political (and/or other types of) risk insurance agreements for the	Claimant <b>objects</b> to this request because the requested category of Documents is irrelevant and immaterial to the outcome of this arbitration.  This category of documents aims to show that Claimant “committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable.”  Bolivia once again produces no evidence to support that the dispute was foreseeable and that Glencore International “restructured” its investment through Glencore Bermuda for this purpose.	<b><u>Bolivia moves to compel production of all the Requested Documents.</u></b>  <i>In limine</i> , Bolivia notes that Claimant does not object to the relevance and materiality of the <i>Second</i> and <i>Third</i> reasons for Bolivia’s request. Claimant therefore concedes that these Documents are relevant to prove that (i) ownership of the Assets <i>may</i> have been assigned due to a cashed political insurance, and (ii) Claimant would have already received an amount of compensation following the materialisation of the risks covered.  Claimant’s sole objection to the Request is in any case misplaced. The Requested Documents are relevant to Bolivia’s case and material to	Request granted.

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			<p>protection of the Assets. This is consistent with Glencore's statements, in its 2011 prospectus, that it (i) <i>"maintains a number of key insurance policies that it believes are commercially appropriate to cover the risks associated with its business operations [...] cover[ing] its subsidiaries and its industrial assets [...]"</i> and (ii) seeks <i>"wherever possible to obtain political risk insurance [...] in situations where Glencore believes that obtaining such insurance is financially prudent"</i> (R-193). Second, the Requested Documents may show that the political risk and/or other insurance policies underwritten by Glencore International and/or the Glencore Group in connection with</p>		<p>its outcome. As explained at length in Sections 2.5 and 4.2 of Bolivia's Statement of Defence, at the time of Glencore International's Acquisition of the Assets, it was clear that the State would take action against them, for several reasons.</p> <p><i>First</i>, the privatization and acquisition of the Assets by Sánchez de Lozada was plagued with irregularities and caused public outrage and cries for reversion (Statement of Defence, Sections 2.3.2, 2.4).</p> <p><i>Second</i>, Comsur's mismanagement of the work relationships at the Colquiri Mine had led to tensions and already caused certain confrontations (Statement of Defence, Section 2.5.1).</p> <p><i>Third</i>, the Antimony Smelter was privatized with the aim of ensuring its operation would contribute to the economic development of Bolivia, yet</p>	

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			<p>the Assets contained assignment provisions which would have materially altered the actual ownership of the Assets in the event the risks covered (<i>e.g.</i>, adverse State measures affecting the Assets) materialised. <i>Third</i>, the Requested Documents may also demonstrate that Glencore International and/or the Glencore Group would have received an amount of compensation following the materialisation of the risks covered. Thus, the harm purportedly suffered by Glencore International and/or the Glencore Group as a result of Bolivia's conduct may have been already compensated, partially or in full. <i>Fourth</i>, and as a result, the Requested</p>		<p>Comsur had little interest in reactivating production (Statement of Defence, ¶ 162).</p> <p>Glencore International was evidently aware of the existence of such risk, which explained why it would have executed a side agreement to insure the Assets against adverse State measures (Statement of Defence, ¶¶ 138-139).</p> <p>Thus, Bolivia moves to compel the production of all the Requested Documents, including also the Ancillary Agreements referred to in the Second Amended and Restated Stock Purchase Agreement.</p>	

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			<p>Documents will dispose of Claimant's claims in this arbitration, insofar as they will demonstrate that (i) Claimant committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable, and/or (ii) that Claimant is nothing more than a smokescreen and certainly not the real owner of the Assets and investor in this case.</p> <p>Thus, the dispute at hand is outside the scope of the Tribunal's jurisdiction and/or Claimant's claims are inadmissible (Statement of Defence, Section 4.2.).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the</p>			

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			<p>Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated by or for Glencore International and/or the Glencore Group following the acquisition of the Assets by Glencore International. As explained in the Statement of Defence, Bolivia understands, from certain information made available in the insurance industry, that that Glencore International took out political risk insurance for the Tin Smelter from a syndicate led by Lloyd's, and suspects it did so for the Antimony Smelter and Colquiri Mine Lease, to guard against exactly the sort</p>			

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			of expropriation that Claimant now claims to have suffered. This is consistent with Glencore's prospectus, cited above, according to which Glencore seeks " <i>wherever possible to obtain political risk insurance [...] in situations where Glencore believes that obtaining such insurance is financially prudent</i> " (R-193).			
<b>II. Privatization: the Colquiri Mine Lease</b>						
5.	Documents received and/or reviewed by the Glencore Group recording and/or discussing the due diligence carried out by Comsur and/or by any external consultants for Comsur in connection with the privatization process of the Colquiri Mine Lease underway in the late 1990s,	Statement of Defence, Sections 2.3.1, 4.3; Statement of Claim, ¶¶ 27-30; <b>R-104; R-106; R-107; R-108; C-11.</b>	The Requested Documents are relevant to this dispute and material to its outcome.  <i>First</i> , the Requested Documents will show that the Colquiri Mine Lease was transferred to the private sector through a procedure fraught with irregularities (including with no consideration	Claimant <b>objects</b> to this request for the following three reasons:  (a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.  The issue before the Tribunal in relation to this	<b><u>Bolivia moves to compel production of all the Requested Documents.</u></b>  <i>In limine</i> , Bolivia notes that Claimant has not raised any objections to the disclosure of Documents responsive to item (ii) of this Request. Nor has Claimant produced any such Documents or asserted that such documents would not be in its possession, custody or	Request denied on grounds of lack of relevance and specificity.

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	<p>including, but not limited to:</p> <p>a. any assessment of the legal framework governing the privatization process and of the conditions for participation therein;</p> <p>b. Documents discussing the Terms of Reference for the Colquiri Mine Lease tender; and</p> <p>c. Documents discussing and/or justifying and/or recording Comsur's decision to submit a bid for the Colquiri Mine Lease and to do so jointly with CDC, including Correspondence between Comsur and CDC in this connection;</p> <p>d. any economic and/or financial analyses</p>		<p>being paid in exchange, a very small investment commitment being undertaken by Comsur and an equally small percentage of royalties being offered to Bolivia from the operation of the Mine).</p> <p><i>Second</i>, and as a result, the Requested Documents will show that Claimant's claims in this arbitration, insofar as they concern the Colquiri Mine, fall outside the Tribunal's jurisdiction and/or are inadmissible (Statement of Defence, Section 4.3).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or</p>	<p>request is whether Claimant knowingly acquired the Assets with "unclean hands", as alleged by Bolivia in its Statement of Defence (SoD, Section 4.3).</p> <p>Here it is worth noting that Claimant was not a party to the original transaction or public tender processes for the sale of the Colquiri Mine Lease. It was Bolivia that administered the privatization process pursuant to a legal framework that Bolivia itself had created, implemented and ratified throughout the 1990s.</p> <p>Bolivia has failed to articulate why due diligence in relation to the State's privatization of the Colquiri Mine is relevant or material to the outcome of this case.</p> <p>(b) <u>Bolivia's Request 5 as a whole is excessively broad and fails to identify a</u></p>	<p>control. Bolivia moves to compel production of these Requested Documents.</p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are relevant to the case and material to its outcome, as "[t]he issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with 'unclean hands'." In the words of the tribunal in the <i>Churchill Mining v. Indonesia</i> case, "claims arising from rights based on fraud or forgery <u>which a claimant deliberately or unreasonably ignored</u> are inadmissible as a matter of international public policy" (RLA-25, emphasis added). Thus, Claimant's deliberate or unreasonable ignorance of the irregularities affecting the privatization of the Colquiri Mine Lease</p>	

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	<p>underpinning Comsur and CDC's bid, including, but not limited to the US\$ 2 million investment commitment and 3.5% yearly royalties included in such bid;</p> <p>e. any analyses of the proposed terms of lease; and</p> <p>Documents exchanged between Comsur and Paribas in connection with the Colquiri Mine Lease tender, including, but not limited to any Documents discussing the value of such lease.</p>		<p>control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated internally by Comsur and/or by external consultants for Comsur and/or received by Comsur from CDC in connection with the submission of their joint bid for the Colquiri Mine Lease. The Requested Documents would have passed into Glencore International's and/or the Glencore Group's possession either as part of their pre-acquisition due diligence or upon Glencore International's acquisition of the Assets (including Comsur) in 2005.</p>	<p><u>"narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia seeks a category of documents and information that it admits: (i) formed part of the due diligence conducted by entirely separate private parties, and (ii) dates back to "the late 1990s." The burdensome nature of Bolivia's request cannot be understated.</p> <p>Such inquiry would require Claimant to go back 14 years through its files in hopes of finding some mention of a due diligence carried out by a <u>third party</u> nearly 20 years ago, even when such due diligence would (presumably) have been kept confidential.</p> <p>As with Request 2 above, it would not be customary commercial practice to retain the entire data room</p>	<p>serves as a bar to this Tribunal's jurisdiction.</p> <p><i>Second</i>, Claimant's criticism of Bolivia for purportedly "<i>once again submit[ting] allegations based on mere speculation</i>" is a purely rhetorical exercise. Bolivia has described in detail the irregularities affecting the privatization of the Colquiri Mine Lease. That Claimant disagrees with Bolivia's position does not make it incorrect, nor does it wipe out the evidence that Bolivia has already marshalled in support of such position (Statement of Defence, Section 2.3.1).</p> <p><i>Third</i>, Claimant's assertion that the Requested Documents would be in the possession, custody or control of Bolivia is misguided. Bolivia is not seeking "<i>the underlying source of any due diligence</i>" conducted by Comsur or any third party engaged in the tender process. Bolivia</p>	

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				<p>from a due diligence for such a vast period of time, much less have access to the data rooms of wholly separate private parties. A search for such documents would therefore be costly, inefficient and would add no value to the Tribunal in resolving the dispute.</p> <p>Instead of requesting documents “that are reasonably believed to exist”, Bolivia uses this opportunity to once again submit allegations based on mere speculation. Bolivia has failed to produce any substantive proof of the alleged “irregularities” surrounding the privatization, despite having produced countless pages of empty accusations in its Statement of Defence (SoD, Section 2). As with <u>Request 2</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case</p>	<p>instead seeks Documents recording the due diligence that Comsur carried out on the basis of such Documents (for example, Comsur’s own assessments and legal, economic and financial analyses and discussions thereof). Such Documents can only be in the possession, custody or control of Claimant. When Glencore International acquired the Assets and their holding companies, and proceeded to assign them to Claimant, their records and archives would have come in Claimant’s possession, custody or under its control. Thus, it is irrelevant that Claimant itself was not a party to the original transaction or public tender processes.</p> <p>It is equally irrelevant that Bolivia organized and “<i>administered the privatization process.</i>” This would not have granted it access to the due diligence</p>	

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				<p>on the basis of evidence that it <i>hopes</i> to find in Claimants' files.</p> <p>(c) More importantly, <u>the request seeks Documents that are, or would reasonably be, in Bolivia's possession, custody, or control.</u></p> <p>Bolivia does not deny that it owned and operated the Colquiri Mine prior to its privatization. Accordingly, Bolivia possessed the information that would have been the underlying source of any due diligence conducted by Comsur, or any third party engaged in the tender process.</p> <p>Moreover, since Bolivia issued and approved the public tender for the Colquiri Mine Lease, it is in the best position to have the very documents that it claims would prove its jurisdictional and</p>	<p>carried out by any of the bidders.</p> <p>Claimant's remaining objections to this Request are equally unavailing.</p> <p>On the one hand, records relating to a transaction of the magnitude of the acquisition of the Colquiri Mine Lease would undoubtedly have been preserved, even if the data room in its entirety would, for some reason, not have survived. It should not be difficult for Claimant to search for and find much more than "<i>some mention</i>" of the due diligence underpinning a major transaction carried out by a company it owns and controls. In any event, Claimant does not allege that such records and archives do not exist or would somehow have been destroyed.</p> <p>On the other hand, it is difficult to see how confidentiality concerns could arise in the relationship</p>	

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				admissibility allegations (SoD, Section 4.3).	<p>between Claimant and a fully-owned subsidiary. Claimant's reference to the purported confidentiality of such due diligence is merely an unsubstantiated presumption. Bolivia notes that Claimant is not alleging that the Requested Documents would be barred from disclosure on such unproven basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-disclosure agreement in connection with the Requested Documents.</p> <p>For all the above reasons, Bolivia moves to compel the production of all the Requested Documents.</p>	
<b>III.</b>	<b>Privatization: the Antimony Smelter</b>					
6.	(i) Documents received and/or reviewed by the Glencore Group recording and/or discussing the due diligence carried out by Comsur and/or Colquiri and/or any external	Statement of Defence, Sections 2.3.2, 2.6, 4.3; Statement of Claim, ¶ 31; <b>C-6; C-8; C-9; R-108; R-109; R-110; R-</b>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that the Antimony</p>	<p>Claimant <b>objects</b> to this request for the following three reasons:</p> <p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should</p>	<p><b><u>Bolivia moves to compel production of all the Requested Documents.</u></b></p> <p><i>In limine</i>, Bolivia notes that Claimant has not raised any objections to the disclosure of Documents responsive to item</p>	Request denied on grounds of lack of relevance and specificity.

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	<p>consultants for Comsur in connection with the privatization process of the Antimony Smelter underway in the late 1990s, including, but not limited to:</p> <p>a. any assessment of the legal framework governing the privatization process and/or of the conditions for participation in the First and Second Antimony Smelter Tenders;</p> <p>b. Documents discussing a potential participation in the First Antimony Smelter Tender and/or justifying Comsur's decision not to participate in such tender;</p> <p>c. Documents discussing the Terms of Reference to the</p>	<b>111; R-112; R-113; R-114.</b>	<p>Smelter was transferred to the private sector through a procedure fraught with irregularities (including for a very low price, which did not take into account Bolivia's recent investments in the Antimony Smelter). <i>Second</i>, the Requested Documents will show that Comsur and/or Colquiri were aware, upon acquiring the Antimony Smelter, that it would have to be operated in a manner contributing to the development of Bolivia. Thus, Glencore International and/or the Glencore Group were in a privileged position to assess the operations and profitability of the Antimony Smelter, in light of the fact that the terms of reference of the Second Antimony</p>	<p>therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with "unclean hands", as alleged by Bolivia in its Statement of Defence (SoD, Section 4.3).</p> <p>Like with Request 5, it is worth noting that Claimant was not a party to the original transaction or public tender processes for the sale of the Antimony Smelter. It was Bolivia that administered the privatization process pursuant to a legal framework that Bolivia itself had created, implemented and ratified throughout the 1990s.</p> <p>Bolivia has failed to articulate why due diligence in relation to the State's privatization of the</p>	<p>(ii) of this Request. Nor has Claimant produced any such Documents or asserted that such documents would not be in its possession, custody or control.</p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are relevant to the case and material to its outcome, as "[t]he issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with 'unclean hands'." In the words of the tribunal in the <i>Churchill Mining v. Indonesia</i> case, "<i>claims arising from rights based on fraud or forgery which a claimant deliberately or unreasonably ignored are inadmissible as a matter of international public policy</i>" (RLA-25, emphasis added). Thus, Claimant's deliberate or unreasonable</p>	

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	<p>Second Antimony Smelter Tender, including, but not limited to the provision that “[l]a Licitación tiene por objeto la transferencia a título oneroso de los Activos y Derechos de la fundición de antimonio de la Empresa Metalúrgica Vinto, en favor de una empresa especializada con capacidad económica, financiera y técnica, que permita el ingreso de capital, tecnología, prácticas comerciales y de gestión privada, posibilitando a la Fundición continuar la producción, constituyéndose en una fuente de generación de empleo</p>		<p>Smelter Tender (pursuant to which Comsur acquired the Smelter) specifically provided that the successful bidder would be “<i>una empresa especializada con capacidad económica, financiera y técnica, que permita el ingreso de capital, tecnología, prácticas comerciales y de gestión privada, posibilitando a la Fundición continuar la producción, constituyéndose en una fuente de generación de empleo y tributos, en apoyo a la actividad minera de explotación y concentración de antimonio en el país</i>” (R-109, emphasis added). Glencore International and/or the Glencore Group should thus have been aware of this when Glencore International acquired the Antimony</p>	<p>Antimony Smelter is relevant or material to the outcome of this case.</p> <p>(b) <u>Bolivia’s Request 6 as a whole is excessively broad and fails to identify a “narrow and specific . . . category of Documents that are reasonably believed to exist,”</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia seeks a category of documents and information that it admits: (i) formed part of the due diligence conducted by entirely separate private parties, and (ii) dates back to “the late 1990s.” The burdensome nature of Bolivia’s request cannot be understated.</p> <p>Such inquiry would require Claimant to go back 14 years through its files in hopes of finding some mention of a due diligence carried out by a <u>third party</u> nearly 20 years ago, even</p>	<p>ignorance of the irregularities affecting the privatization of the Antimony Smelter serves as a bar to this Tribunal’s jurisdiction.</p> <p><i>Second</i>, Claimant’s criticism of Bolivia for purportedly “<i>once again submit[ting] allegations based on mere speculation</i>” is a purely rhetorical exercise. Bolivia has described in detail the irregularities affecting the privatization of the Antimony Smelter. That Claimant disagrees with Bolivia’s position does not make it incorrect, nor does it wipe out the evidence that Bolivia has already marshalled in support of such position (Statement of Defence, Section 2.3.2).</p> <p><i>Third</i>, Claimant’s assertion that the Requested Documents would be in the possession, custody or control of Bolivia is misguided. Bolivia is not seeking “<i>the underlying source of any due diligence</i>”</p>	

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	<p><i>y tributos, en apoyo a la actividad minera de explotación y concentración de antimonio en el país;</i>" <b>(R-109)</b></p> <p>d. Documents discussing a potential participation in the Second Antimony Smelter Tender and/or justifying Comsur's and/or Colquiri's decision to participate independently in such tender;</p> <p>e. Due diligence carried out by Comsur and/or Colquiri in connection with Colquiri's participation in the Second Antimony Smelter Tender;</p> <p>f. any economic and financial analyses underpinning Colquiri's bid for the</p>		<p>Smelter in 2005. <i>Third</i>, and as a result, the Requested Documents will show that (i) Claimant's claims in this arbitration, insofar as they concern the Antimony Smelter, fall outside the Tribunal's jurisdiction and/or are inadmissible and (ii) that Bolivia reverted the Antimony Smelter for public purposes (Statement of Defence, Sections 4.3, 2.6).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have</p>	<p>when such due diligence would (presumably) have been kept confidential.</p> <p>As with Requests 2 above, it would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time, much less have access to the data rooms of wholly separate private parties. A search for such documents would therefore be costly, inefficient and would add no value to the Tribunal in resolving the dispute.</p> <p>Instead of requesting documents "that are reasonably believed to exist", Bolivia uses this opportunity to once again submit allegations based on mere speculation. Bolivia has failed to produce any substantive support of supposed "irregularities" surrounding the privatization instead proffering countless</p>	<p>conducted by Comsur or any third party engaged in the tender process. Bolivia instead seeks Documents recording the due diligence that Comsur carried out on the basis of such Documents (for example, Comsur's own assessments and legal, economic and financial analyses and discussions thereof). Such Documents can only be in the possession, custody or control of Claimant. When Glencore International acquired the Assets and their holding companies, and proceeded to assign them to Claimant, their records and archives would have come in Claimant's possession, custody or under its control. Thus, it is irrelevant that Claimant itself was not a party to the original transaction or public tender processes.</p> <p>It is equally irrelevant that Bolivia organized and "<i>administered the</i></p>	

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	<p>Antimony Smelter, including, but not limited to its proposed acquisition price of US\$ 1.1 million;</p> <p>g. any analyses of the proposed terms of the sale purchase contract; and</p> <p>h. Documents exchanged between Comsur and/or Colquiri and Paribas in connection with the Second Antimony Smelter Tender, including, but not limited to any Documents discussing the value and/or the minimum sale price recommended by Paribas.</p> <p>(ii) Documents received and/or reviewed by the Glencore Group generated internally within Comsur</p>		<p>been generated internally by Comsur and/or Colquiri and/or by external consultants in connection with the First and Second Antimony Smelter Tenders and Colquiri's participation in the second tender. The Requested Documents would have passed into Glencore International's and/or the Glencore Group's possession either as part of the pre-acquisition due diligence or upon Glencore International's acquisition of the Assets (including Comsur) in 2005.</p>	<p>pages of conspiracy theories purported in its Statement of Defence (SoD, Section 2). As with <u>Requests 2</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case on the basis of evidence that it <i>hopes</i> to find in Claimants' files.</p> <p>(c) <u>The request seeks Documents that are, or would reasonably be, in Bolivia's possession, custody, or control.</u></p> <p>Bolivia does not deny that it owned and operated the Antimony Smelter prior to its privatization. Accordingly, Bolivia possessed the information that would have been the underlying source of any due diligence conducted by Comsur, or any third party engaged in the tender process.</p>	<p><i>privatization process,</i>" as this would not have granted it access to the due diligence carried out by any of the bidders.</p> <p>Claimant's remaining objections to this Request are equally unavailing.</p> <p>On the one hand, records relating to a transaction of the magnitude of the acquisition of the Antimony Smelter (for which Colquiri paid US\$ 1.1 million) would undoubtedly have been preserved, even if the data room in its entirety would, for some reason, not have survived. It should not be difficult for Claimant to search for and find much more than "<i>some mention</i>" of the due diligence underpinning a major transaction carried out by a company it owns and controls. In any event, Claimant does not allege that such records and archives do not exist or would somehow have been destroyed.</p>	

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	and/or Colquiri and/or by any external consultants discussing the public outrage at the minimum price recommended by Paribas for the Antimony Smelter.			Moreover, since Bolivia issued and approved the public tender for the Antimony Smelter, it is in the best position to have the very documents that it claims would prove its jurisdictional and admissibility allegations (SoD, Section 4.3).	On the other hand, it is difficult to see how confidentiality concerns could arise in the relationship between Claimant and a fully-owned subsidiary. Claimant's reference to the purported confidentiality of such due diligence is merely an unsubstantiated presumption. Bolivia notes that Claimant is not alleging that the Requested Documents would be barred from disclosure on such unproven basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-disclosure agreement in connection with the Requested Documents.  For all the above reasons, Bolivia moves to compel the production of the Requested Documents.	
<b>IV.</b>	<b>Privatization: the Tin Smelter</b>					
7.	(i) Documents received and/or reviewed by the Glencore Group recording	Statement of Defence, Sections 2.4.1, 2.4.2, 4.2;	The Requested Documents are relevant	Claimant <b>objects</b> to this request for the following three reasons:	<b><u>Bolivia moves to compel production of all the Requested Documents.</u></b>	Request denied on grounds of lack of

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	<p>and/or discussing the due diligence carried out by Comsur and/or by any external consultants for Comsur in connection with the privatization process of the Tin Smelter underway in the late 1990s, including, but not limited to:</p> <p>a. any assessment of the legal framework governing the privatization process and of the conditions for participation therein;</p> <p>b. Documents discussing the Terms of Reference for the Tin Smelter tender; and</p> <p>c. Documents discussing and/or justifying and/or recording Comsur's decision to submit a package bid for the Tin Smelter and the Huanuni mine joint</p>	<p><b>C-6; C-7; R-108; R-115; R-116; R-118; R-119; R-120; R-121; R-122; R-123; R-124; R-125; R-126.</b></p>	<p>to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that Comsur became familiar with the Tin Smelter in the course of the privatization process and would have been in a position to assess its actual value. Thus, for example, Comsur had information regarding the technical (industrial, productive and financial) specificities of the Tin Smelter's operations. Likewise, Comsur had information as to the particular socio-economic context in which the Tin Smelter operated. Finally, Comsur must have undertaken due diligence at the time of acquiring the Tin Smelter from Allied Deals. Such information would naturally have passed to</p>	<p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with "unclean hands", as alleged by Bolivia in its Statement of Defence (SoD, Section 4.3).</p> <p>Here it is worth noting that Claimant was not a party to the original transaction or public tender processes for the sale of the Tin Smelter. It was Bolivia that administered the privatization process pursuant to a legal framework that Bolivia itself had created, implemented and ratified throughout the 1990s. Moreover, Claimant was not a party to the</p>	<p><i>In limine</i>, Bolivia notes that Claimant has not raised any objections to the disclosure of Documents responsive to items (ii) and (iii) of this Request. Nor has Claimant produced any such Documents or asserted that such documents would not be in its possession, custody or control.</p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are relevant to the case and material to its outcome, as "[t]he issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with 'unclean hands'." In the words of the tribunal in the <i>Churchill Mining v. Indonesia</i> case, "<i>claims arising from rights based on fraud or forgery which a claimant deliberately or unreasonably ignored are inadmissible as a</i></p>	<p>relevance and specificity.</p>

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	<p>venture and to do so jointly with CDC, including any Correspondence between Comsur and CDC in this regard;</p> <p>d. any economic and/or financial analyses underpinning Comsur and CDC's bid, including, but not limited to the decision to submit a conditional offer;</p> <p>e. any analyses of the proposed terms of the sale purchase agreement; and</p> <p>f. Documents exchanged between Comsur and Paribas in connection with the Tin Smelter tender, including, but not limited to any Documents discussing the value and/or the minimum sale price</p>		<p>Glencore International and/or the Glencore Group, either as part of the pre-acquisition due diligence or upon Glencore International's acquisition of the Assets. <i>Second</i>, the Requested Documents will show that Glencore International knew or should reasonably have known that the Tin Smelter was transferred to the private sector through a procedure fraught with irregularities (including for a very low price, which, for example, did not take into account the tin in the pipeline or the tin to be processed or the materials in inventory). <i>Third</i>, the Requested Documents will show that Claimant's claims in this arbitration, insofar as they relate to the Tin Smelter, are underpinned</p>	<p>subsequent transaction for the Tin Smelter between Allied Deals and Comsur in 2002. Claimant only acquired the Tin Smelter several years later in 2005 (SoC, ¶¶ 31, 36; <b>C-46</b>; <b>C-64</b>).</p> <p>Bolivia has failed to articulate why due diligence in relation to the State's privatization of the Tin Smelter or the 2002 transaction between Allied Deals and Comsur is relevant or material to the outcome of this case.</p> <p>(b) <u>Bolivia's Request 7 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia seeks a category of documents and information that it admits: (i) formed part</p>	<p><i>matter of international public policy"</i> (<b>RLA-25</b>, emphasis added). Thus, Claimant's deliberate or unreasonable ignorance of the irregularities affecting the privatization of the Antimony Smelter serves as a bar to this Tribunal's jurisdiction.</p> <p><i>Second</i>, Claimant's criticism of Bolivia for purportedly "<i>once again submit[ting] allegations based on mere speculation</i>" is a purely rhetorical exercise. Bolivia has described in detail the irregularities affecting the privatization of the Tin Smelter. That Claimant disagrees with Bolivia's position does not make it incorrect, nor does it wipe out the evidence that Bolivia has already marshalled in support of such position (Statement of Defence, Section 2.4).</p> <p><i>Third</i>, Claimant's assertion that the Requested Documents would be in the possession,</p>	

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	<p>recommended by Paribas.</p> <p>(ii) Documents received and/or reviewed by the Glencore Group generated by Comsur and Correspondence between Comsur and CDC as a result of and/or in connection with the public outrage at the minimum price recommended by Paribas for the Tin Smelter and/or at the surplus inventory delivered to Allied Deals together with the Tin Smelter.</p> <p>(iii) Documents received and/or reviewed by the Glencore Group recording and/or discussing the due diligence carried out by Comsur in connection with the acquisition of the Tin Smelter from Allied Deals in June 2002.</p>		<p>by events which had been a long time in the making and were foreseeable to Glencore International and/or the Glencore Group. Thus, (i) Claimant's claims fall outside the scope of the Tribunal's jurisdiction and/or are inadmissible and (ii) Claimant committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable, which places such dispute outside the scope of the Tribunal's jurisdiction and/or renders the claims inadmissible (Statement of Defence, Sections 4.2, 4.3).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p>	<p>of the due diligence conducted by entirely separate private parties, and (ii) dates back to "the late 1990s." The burdensome nature of Bolivia's request cannot be understated.</p> <p>Such inquiry would require Claimant to go back 14 years through its files in hopes of finding some mention of a due diligence carried out by a <u>third party</u> nearly 20 years ago, even when such due diligence would (presumably) have been kept confidential.</p> <p>As with Requests 2, above, it would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time, much less have access to the data rooms of wholly separate private parties. A search for such documents would therefore be costly, inefficient and would add no</p>	<p>custody or control of Bolivia is misguided. Bolivia is not seeking "<i>the underlying source of any due diligence</i>" conducted by Comsur or any third party engaged in the tender process. Bolivia instead seeks Documents recording the due diligence that Comsur carried out on the basis of such Documents (for example, Comsur's own assessments and legal, economic and financial analyses and discussions thereof). Such Documents can only be in the possession, custody or control of Claimant. When Glencore International acquired the Assets and their holding companies, and proceeded to assign them to Claimant, their records and archives would have come in Claimant's possession, custody or under its control. Thus, it is irrelevant that Claimant itself was not a party to the original</p>	

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			<p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated internally by Comsur and/or by external consultants in connection with the Tin Smelter tender and Comsur's participation therein. The Requested Documents would have been made available to Glencore International and/or the Glencore Group either as part of the due diligence prior to acquiring the Assets or subsequent to Glencore International's acquisition of the Assets (including Comsur).</p>	<p>value to the Tribunal in resolving the dispute.</p> <p>Instead of requesting documents "that are reasonably believed to exist", Bolivia uses this opportunity to once again submit allegations based on mere speculation. Bolivia has failed to produce any substantive proof of the alleged "irregularities" surrounding the privatization of the Tin Smelter, despite having produced countless pages of empty accusations in its Statement of Defence (SoD, Section 2). As with <u>Requests 2</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case on the basis of evidence that it <i>hopes</i> to find in Claimants' files.</p> <p>(c) More importantly, <u>the request seeks Documents that are, or would reasonably</u></p>	<p>transaction or public tender processes.</p> <p>It is equally irrelevant that Bolivia organized and "<i>administered the privatization process.</i>" This would not have granted it access to the due diligence carried out by any of the bidders.</p> <p>Claimant's remaining objections to this Request are equally unavailing.</p> <p>On the one hand, records relating to a contemplated transaction of the magnitude of the acquisition of the Tin Smelter (for which Paribas set the minimum price at US\$ 10 million) would undoubtedly have been preserved, even if the data room in its entirety would, for some reason, not have survived. It should not be difficult for Claimant to search for and find much more than "<i>some mention</i>" of the due diligence underpinning a major transaction carried out</p>	

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				<p><u>be, in Bolivia's possession, custody, or control.</u></p> <p>Bolivia does not deny that it owned and operated the Tin Smelter prior to its privatization. Accordingly, Bolivia possessed the information that would have been the underlying source of any due diligence conducted by Comsur, or any third party engaged in the tender process.</p> <p>Moreover, since Bolivia issued and approved the public tender for the Tin Smelter, it is in the best position to have the very documents that it claims would prove its jurisdictional and admissibility allegations (SoD, Section 4.3).</p>	<p>by a company it owns and controls. In any event, Claimant does not allege that such records and archives do not exist or would somehow have been destroyed.</p> <p>On the other hand, it is difficult to see how confidentiality concerns could arise in the relationship between Claimant and a fully-owned subsidiary. Claimant's reference to the purported confidentiality of such due diligence is merely an unsubstantiated presumption. Bolivia notes that Claimant is not alleging that the Requested Documents would be barred from disclosure on such unproven basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-disclosure agreement in connection with the Requested Documents.</p> <p>For all the above reasons, Bolivia moves to compel the</p>	

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					production of the Requested Documents.	
8.	<p>(i) Documents received and/or reviewed by the Glencore Group recording and/or discussing the due diligence carried out by Allied Deals and/or by any external consultants for Allied Deals in connection with the privatization process of the Tin Smelter underway in the late 1990s, including, but not limited to:</p> <p>a. Documents discussing the Terms of Reference for the Tin Smelter tender; and</p> <p>b. Documents discussing and/or justifying and/or recording Allied Deals' decision to submit a package bid for the Tin Smelter</p>	<p>Statement of Defence, Sections 2.4.1, 2.4.2, 2.6, 4.2; <b>C-6; C-7; R-108; R-115; R-116; R-118; R-119; R-120; R-121; R-122; R-123; R-124; R-125; R-126, R-135; R-136.</b></p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that the Tin Smelter was transferred to the private sector through a procedure fraught with irregularities (including for a very low price, which, for example, did not take into account the tin in the pipeline or the materials in inventory). This would have been or would have become known to Comsur at the latest when it acquired the Tin Smelter from Allied Deals and such information would naturally have passed to Glencore International and/or the Glencore</p>	<p>Claimant <b>objects</b> to this request for the following three reasons:</p> <p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with “unclean hands”, as alleged by Bolivia in its Statement of Defence (SoD, Section 4.3).</p> <p>Here it is worth noting that Claimant was not a party to the original transaction or public tender processes for the sale of the Tin Smelter. It was Bolivia that administered the privatization process</p>	<p><b><u>Bolivia moves to compel production of all the Requested Documents.</u></b></p> <p><i>In limine</i>, Bolivia notes that Claimant has not raised any objections to the disclosure of Documents responsive to item (ii) of this Request. Nor has Claimant produced any such Documents or asserted that such documents would not be in its possession, custody or control.</p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are relevant to the case and material to its outcome, as “[t]he issue before the Tribunal in relation to this request is whether Claimant knowingly acquired the Assets with ‘unclean hands’.” In the words of the tribunal in the</p>	<p>Request denied on grounds of lack of relevance and specificity.</p>

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	<p>and the Huanuni mine joint venture;</p> <p>c. any economic and/or financial analyses underpinning Allied Deals' bid for the Tin Smelter, including, but not limited to the US\$ 14 million purchase price;</p> <p>d. any analyses of the proposed terms of the sale purchase agreement;</p> <p>e. Documents exchanged between Allied Deals and COMIBOL management in or before February 1999; and</p> <p>f. Documents exchanged between Allied Deals and Paribas in connection with the Tin Smelter tender, including, but not limited to any Documents</p>		<p>Group, either as part of the pre-acquisition due diligence or upon Glencore International's acquisition of the Assets in 2005. <i>Second</i>, and as a result, the Requested Documents will show that (i) Claimant's claims in this arbitration, insofar as they concern the Tin Smelter, fall outside the Tribunal's jurisdiction and/or are inadmissible, (ii) Bolivia reverted the Tin for public purposes and (iii) such reversion was underpinned by events which had been a long time in the making and were foreseeable to Glencore International and/or the Glencore Group. Thus, Claimant committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable, which places</p>	<p>pursuant to a legal framework that Bolivia itself had created, implemented and ratified throughout the 1990s.</p> <p>Bolivia has failed to articulate why due diligence in relation to the State's privatization of the Tin Smelter is relevant or material to the outcome of this case.</p> <p>(b) <u>Bolivia's Request 8 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia seeks a category of documents and information that it admits: (i) formed part of the due diligence conducted by entirely separate private parties, and (ii) dates back to "the late 1990s." The burdensome</p>	<p><i>Churchill Mining v. Indonesia</i> case, "<u>claims arising from rights based on fraud or forgery which a claimant deliberately or unreasonably ignored are inadmissible as a matter of international public policy</u>" (RLA-25, emphasis added). Thus, Claimant's deliberate or unreasonable ignorance of the irregularities affecting the privatization of the Antimony Smelter serves as a bar to this Tribunal's jurisdiction.</p> <p><i>Second</i>, Claimant's criticism of Bolivia for purportedly "<u>once again submit[ting] allegations based on mere speculation</u>" is a purely rhetorical exercise. Bolivia has described in detail the irregularities affecting the privatization of the Tin Smelter. That Claimant disagrees with Bolivia's position does not make it incorrect, nor does it wipe out the evidence that Bolivia has already marshalled in support</p>	

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	<p>discussing the value and/or the minimum sale price recommended by Paribas;</p> <p>(ii) Documents generated by Glencore International and/or by the Glencore Group prior to the acquisition of the Tin Smelter in 2005 discussing:</p> <p>a. the public criticism of the minimum price recommended by Paribas for the Tin Smelter and at the surplus inventory delivered to Allied Deals; and</p> <p>b. the calls for reversion of the Tin Smelter to the State.</p>		<p>such dispute outside the scope of the Tribunal's jurisdiction and/or renders the claims inadmissible (Statement of Defence, Section 4.2, 2.6).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated internally by Allied Deals and/or external consultants and would have passed into Comsur's possession when it acquired the Tin Smelter and subsequently into Glencore International's</p>	<p>nature of Bolivia's request cannot be understated.</p> <p>Such inquiry would require Claimant to go back 14 years through its files in hopes of finding some mention of a due diligence carried out by a <u>third party</u> nearly 20 years ago, even when such due diligence would (presumably) have been kept confidential.</p> <p>As with Requests 2 above, it would not be customary commercial practice to retain the entire data room from a due diligence for such a vast period of time, much less have access to the data rooms of wholly separate private parties. A search for such documents would therefore be costly, inefficient and would add no value to the Tribunal in resolving the dispute.</p> <p>Instead of requesting documents "that are reasonably believed to</p>	<p>of such position (Statement of Defence, Section 2.4).</p> <p><i>Third</i>, Claimant's assertion that the Requested Documents would be in the possession, custody or control of Bolivia is misguided. Bolivia is not seeking "<i>the underlying source of any due diligence</i>" conducted by Comsur or any third party engaged in the tender process. Bolivia instead seeks Documents recording the due diligence that Comsur carried out on the basis of such Documents (for example, Comsur's own assessments and legal, economic and financial analyses and discussions thereof). Such Documents can only be in the possession, custody or control of Claimant. When Glencore International acquired the Assets and their holding companies, and proceeded to assign them to Claimant, their records and archives would have come in Claimant's</p>	

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			possession when it acquired the Assets in 2005.	<p>exist”, Bolivia uses this opportunity to once again submit allegations based on mere speculation. Bolivia has failed to produce any substantive proof of the alleged “irregularities” surrounding the privatization of the Tin Smelter, despite having produced countless pages of empty accusations in its Statement of Defence (SoD, Section 2). As with <u>Request 2</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case on the basis of evidence that it <i>hopes</i> to find in Claimants’ files.</p> <p>(c) More importantly, <u>the request seeks Documents that are, or would reasonably be, in Bolivia’s possession, custody, or control.</u></p> <p>Bolivia does not deny that it owned and operated the Tin Smelter prior to its</p>	<p>possession, custody or under its control. Thus, it is irrelevant that Claimant itself was not a party to the original transaction or public tender processes.</p> <p>It is equally irrelevant that Bolivia organized and “<i>administered the privatization process.</i>” This would not have granted it access to the due diligence carried out by any of the bidders.</p> <p>Claimant’s remaining objections to this Request are equally unavailing.</p> <p>On the one hand, records relating to a contemplated transaction of the magnitude of the acquisition of the Tin Smelter (for which Paribas set the minimum price at US\$ 10 million) would undoubtedly have been preserved, even if the data room in its entirety would, for some reason, not have survived. It should not be difficult for Claimant to</p>	

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				<p>privatization. Accordingly, Bolivia possessed the information that would have been the underlying source of any due diligence conducted by Comsur, or any third party engaged in the tender process.</p> <p>Moreover, since Bolivia issued and approved the public tender for the Tin Smelter, it is in the best position to have the very documents that it claims would prove its jurisdictional and admissibility allegations (SoD, Section 4.3).</p>	<p>search for and find much more than “<i>some mention</i>” of the due diligence underpinning a major transaction carried out by a company it owns and controls. In any event, Claimant does not allege that such records and archives do not exist or would somehow have been destroyed.</p> <p>On the other hand, it is difficult to see how confidentiality concerns could arise in the relationship between Claimant and a fully-owned subsidiary. Claimant’s reference to the purported confidentiality of such due diligence is merely an unsubstantiated presumption. Bolivia notes that Claimant is not alleging that the Requested Documents would be barred from disclosure on such unproven basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-disclosure</p>	

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					<p>agreement in connection with the Requested Documents.</p> <p>For all the above reasons, Bolivia moves to compel the production of the Requested Documents.</p>	
<b>V. Assignment of the Assets by Glencore International to Claimant and Claimant's subsequent involvement in their management</b>						
9.	<p>Documents describing the ownership, management, and control of Claimant, including, but not limited to:</p> <ol style="list-style-type: none"> <li>Entries in the corporate registry of Claimant in Bermuda from 2004 through present;</li> <li>Entries in the Bermudan Registrar's register of directors of Claimant from 2004 through present;</li> <li>Entries in the register of directors and officers of Claimant</li> </ol>	<p>Statement of Defence, Section 2.5.3; Statement of Claim, ¶ 36 <i>et seq.</i></p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that, rather than being an arms-length transaction, the sale of the Assets was a way to apparently dissociate the Assets from their ownership by Sánchez de Lozada and Comsur (though the reality was likely different). In fact, it is likely that Sánchez de Lozada retained an interest in the Assets, either directly or through Claimant or another</p>	<p>Claimant <b>objects</b> to this request for the following two reasons:</p> <p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant is a qualified investor under the Treaty.</p> <p>In its Statement of Claim, the Claimant has set out the applicable legal test for what constitutes a protected investor under the Treaty</p>	<p><b><u>Bolivia moves to compel production of all the Requested Documents.</u></b></p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are neither irrelevant to Bolivia's case nor immaterial to its outcome. As Claimant recognizes, "[t]he issue before the Tribunal in relation to this request is whether Claimant is a qualified investor under the Treaty."</p> <p>In the present case, as Bolivia has explained at length, the protection of the Treaty extends only to those foreign</p>	Request granted.

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	<p>from 2004 through present; and</p> <p>d. Entries in the register of members of Claimant or any other registry of shareholders from 2004 through present.</p>		<p>entity. <i>Second</i>, and as a result, the Requested Documents will dispose of Claimant's claims in this arbitration, insofar as they will demonstrate that Claimant is nothing more than a smokescreen and certainly not the real investor in this case. Thus, the claims it submits fall outside the jurisdiction of the Tribunal.</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents are mandatory corporate records under the law of</p>	<p>(SoC, ¶¶ 127-128) and has offered evidence to show that it meets the Treaty's requirements (<i>ie</i>, incorporation in the UK or a UK territory) (C-1). Bolivia seeks to argue (wrongly in Claimant's view) that a different standard should apply (SoD, ¶¶ 265-278, 348-369), and thereby seeks to create additional requirements not written in the Treaty. Pursuant to this wrongful interpretation, Bolivia has submitted a wish list of broad categories of document from which it hopes to manufacture an argument for relevance and materiality, despite the clear language of the Treaty.</p> <p>(b) <u>Bolivia's Request 9 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to</u></p>	<p>nationals and companies having made an active investment (Statement of Defence, Section 4.1.1). Claimant did not participate in the acquisition of the Assets by Glencore International, but instead was only assigned such Assets, for no apparent consideration. Further, the Requested Documents will show that Claimant was absent from the daily management of the Assets, that role reverting to Glencore International and its staff (Statement of Defence, ¶¶ 286-290). Claimant has never been more than an empty shell and, as such, cannot be a protected investor under the Treaty. In all likelihood, Claimant is simply a smokescreen designated to conceal Sánchez de Lozada's continued interest in the Assets.</p> <p>The mere fact that Claimant has put forth what <u>it</u> considers to be "<i>the applicable legal test for what constitutes a</i></p>	

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			Bermuda, the place of Claimant's incorporation.	<p><u>exist</u>," as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia's request seeks a vast universe of documents which, given their nature, will be commercially confidential and involve assets outside of the dispute. Here it is worth noting that Claimant manages a multi-billion dollar portfolio of assets and operations around the world, naturally giving rise to concerns regarding the protection of commercially confidential information.</p> <p>This is exacerbated by Bolivia's failure to even attempt to narrow its Request by reference to the relevant date range. Despite the fact that one can be readily identified by reference to the life of Claimant's investment, Bolivia has instead requested documents "from 2004 through present" for</p>	<p><i>protected investor under the Treaty</i>" does not make such test <i>ipso facto</i> correct. Nor does it render irrelevant or material to Bolivia's case the Requested Documents.</p> <p><i>Second</i>, the Request is neither excessively broad nor unspecific. Bolivia expressly identifies the relevant period of time, extending from 2004 (<i>i.e.</i>, the time of the acquisition of the Assets) to the present date, when the dispute is ongoing and Bolivia has expressed serious and valid concerns regarding Claimant's undue reliance on the protection of the Treaty, under the pretence of being a protected investor. Claimant's reference to a "<i>universe</i>" of Documents should also not be misinterpreted for an estimation of the volume of Documents sought by Bolivia – for example, the two Documents disclosed by</p>	

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				<p>reasons that it fails to explain. It goes without saying that complying with such a broad and temporally indeterminate request would also be excessively burdensome.</p> <p>Instead of requesting documents “that are reasonably believed to exist”, Bolivia once again relies on allegations that are based on mere speculation. As with <u>Requests 2 to 8</u> above, this request amounts to a fishing expedition by Bolivia in an attempt to construct a case when it has none. As explained above, Bolivia’s allegation that Mr Sánchez de Lozada “likely” retained an interest in the Assets following their sale was discredited at the time of Bolivia’s measures (<i>see</i> SoC, ¶¶ 63-64; Witness Statement of Christopher Eskdale, ¶¶ 40-41; <b>C-68</b>)</p>	<p>Claimant<sup>4</sup> amount to under 10 pages.</p> <p><i>Third</i>, Claimant’s thinly veiled suggestion that Bolivia would not be seeking Documents “that are reasonably believed to exist” is surprising. Claimant is an active company, lawfully incorporated in the British overseas territory of Bermuda. As such, Claimant can reasonably be expected to have generated and to maintain a corporate registry, a register of directors and officers, as well as registers of members and of shareholders. Claimant confirms it has produced extracts of the latter and does not assert any valid reason why it should be excused from producing the former.</p> <p><i>Fourth</i>, Bolivia notes that, even though Claimant has referred to “concerns regarding the protection of</p>	

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				<p>and is contradicted by evidence on the record (C-13; C-14; C-15; C-16; C-17; C-18).</p> <p style="text-align: center;">* * *</p> <p>Notwithstanding and without prejudice to the above, in the spirit of cooperation, <b><u>Claimant hereby voluntarily produces</u></b> its register of shareholders and register of members from 1993 to the present.</p>	<p><i>commercially confidential information,</i>” it has not, in fact, objected to the production of the Requested Documents on such basis. In any event and in the spirit of cooperation, Bolivia is willing to execute a non-disclosure agreement in connection with the Requested Documents.</p> <p>For all these reasons, Bolivia moves to compel production of all the Requested Documents.</p>	
10.	<p>Documents assessing and/or recommending and/or implementing the assignment of the Assets by Glencore International to Claimant subsequent to their acquisition in 2005, including, but not limited to:</p> <p>a. Documents describing the rationale for, discussing and/or implementing the choice of Claimant</p>	<p>Statement of Defence, Sections 2.5.4, 4.2; Statement of Claim, ¶ 37; C-64; Eskdale, ¶ 20.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that Glencore International’s assignment of the Assets to Claimant took place at a time when it was evident that the State would take action against such Assets. Further, the assignment was carried</p>	<p>Claimant <b><u>objects</u></b> to this request for the following two reasons:</p> <p>(a) <b><u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u></b> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant</p>	<p><b><u>Bolivia moves to compel production of all the Requested Documents.</u></b></p> <p><i>In limine</i>, Bolivia takes note of the disclosure of certain correspondence purportedly “<i>evidencing consideration paid by Claimant in the acquisition of the investment.</i>” Such Documents only show that a certain amount was transferred by Claimant into an “<i>Attorney Trust Account</i>” on 3 March 2005. This does not constitute proof of</p>	Request granted.

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	<p>for such assignment; and</p> <p>b. the conditions underpinning such assignment, including, but not limited to any consideration paid by Claimant in this connection; and</p> <p>c. any Documents evidencing the actual payment of such consideration.</p>		<p>out in exchange for no consideration (or, at best, in exchange for a symbolic consideration). <i>Second</i>, and as a result, the Requested Documents will dispose of Claimant's claims in this arbitration, insofar as they will demonstrate that Claimant committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable, which places such dispute outside the scope of the Tribunal's jurisdiction and/or renders the claims inadmissible (Statement of Defence, Section 4.2).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the</p>	<p>made a qualifying investment under the Treaty. Specifically, Bolivia has requested this category of documents to argue that Claimant paid no consideration for its investment and committed an abuse of process by receiving the investment from Glencore International when the dispute was foreseeable (SoD, Sections 4.1.2 and 42.2).</p> <p>Bolivia's assertions are based on unsupported Treaty interpretation that an investor must make an "active investment" to qualify for protection (SoD, Section 4.1.1). This requirement simply does not exist under the Treaty.</p> <p>Moreover, as explained above, Claimant acquired the Assets on 7 March 2005, <u>five days</u> after the original acquisition by Glencore International and almost <u>two</u></p>	<p>payment of consideration by Claimant to Glencore International in connection with the assignment of the rights, titles and interests acquired as a result of the acquisition of the Panamanian Companies.</p> <p>Further, Bolivia notes that the correspondence disclosed by Claimant is not in native format, as requested under paragraph 4 above.</p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are neither irrelevant to Bolivia's case nor immaterial to its outcome. As Claimant recognizes, "[t]he issue before the Tribunal in relation to this request is whether Claimant made a qualifying investment under the Treaty."</p> <p>In the present case, as Bolivia has explained at length, the protection of the Treaty</p>	

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			<p>Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. The Requested Documents would have been generated internally by Glencore International and/or the Glencore Group following the acquisition of the Assets by Glencore International.</p>	<p>years prior to the State's measures (SoC, ¶¶ 36-37). Bolivia's abuse of process claims are therefore unfounded, rendering Bolivia's request irrelevant to the case.</p> <p>(b) <u>Bolivia's Request 10 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia's request seeks a category of documents that dates back to 2005 without establish a temporal limit as required by Article 3.3(a) of the IBA Rules. It goes without saying that complying with such a broad and temporally indeterminate request would also be excessively burdensome.</p>	<p>extends only to those foreign nationals and companies having made an active investment (Statement of Defence, Section 4.1.1). Claimant did not participate in the acquisition of the Assets by Glencore International, but instead was only assigned such Assets, for no apparent consideration. Further, the Requested Documents will show that Claimant was absent from the daily management of the Assets, that role reverting to Glencore International and its staff (Statement of Defence, ¶¶ 286-290). Claimant has never been more than an empty shell and, as such, cannot be a protected investor under the Treaty. In all likelihood, Claimant is simply a smokescreen designated to conceal Sánchez de Lozada's continued interest in the Assets.</p> <p>The mere fact that Claimant has put forth what <u>it</u> considers to be "<i>the applicable legal test</i>"</p>	

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				<p style="text-align: center;">* * *</p> <p>Notwithstanding and without prejudice to the above, in the spirit of cooperation, <b><u>Claimant hereby voluntarily produces</u></b> correspondence from 2005 implementing the assignment and evidencing consideration paid by Claimant in the acquisition of the investment.</p>	<p><i>for what constitutes a protected investor under the Treaty” does not make such test ipso facto correct. Nor does it render irrelevant or material to Bolivia’s case the Requested Documents.</i></p> <p><i>Second, Claimant’s reliance on the timing of the acquisition and assignment of the Assets in relation to the adverse State measures as purported evidence that it did not carry out an abuse of process is a non sequitur. It is irrelevant to a finding of abuse of process that the assignment to Claimant would have been carried out only five days following the acquisition of the Assets by Glencore International. Corporate restructuring such as the one carried out in the present case requires advance planning, but takes little time to execute. Likewise, it is irrelevant that the assignment took place almost two years prior to the State’s first measure. At the</i></p>	

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					<p>time, Glencore International knew (or should have known) there was an imminent risk of State action against the Assets. If anything, it is Claimant's insistence on such timing that is irrelevant to the case and immaterial to its outcome.</p> <p><i>Third</i>, the Request is neither excessively broad nor unspecific. The Requested Documents record specific details of a clearly-identified transaction, which is at the heart of this dispute. Documents recommending, assessing and implementing the assignment – and, in particular, its rationale, conditions and any consideration underpinning it – are specific and narrow. Indeed, without access to the Requested Documents, Bolivia is not in a position to be more specific in its Request.</p> <p>For all these reasons, Bolivia moves to compel production</p>	

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					of all the Requested Documents.	
11.	<p>Documents reflecting any funds invested by Claimant in the Assets between 2005 and 2012, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) minutes of meetings of Claimant's board of directors discussing and/or approving such investments;</li> <li>(ii) minutes of meetings of Claimant's shareholders assembly discussing and/or approving such investments;</li> <li>(iii) Documents recording the funds funneled into the Assets by Claimant;</li> <li>(iv) Documents reflecting any transfer of technology and/or technical assistance from Claimant to</li> </ul>	<p>Statement of Claim, ¶¶ 127-132; Statement of Defence, Section 4.1; <b>R-243</b>.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p><i>First</i>, the Requested Documents will show that Claimant is a shell company that only exists in a nearly empty room that “<i>held a filing cabinet, a computer, a telephone, a fax machine and a checkbook</i>” (<b>R-243</b>) and apparently nothing more (Statement of Defence, ¶ 365). The Requested Documents will thus prove that Claimant made no active contribution of assets to Bolivia and/or, at most, holds an indirect investment. <i>Second</i>, and as a result, the Tribunal lacks jurisdiction over this dispute, as (i) Treaty requires an active</p>	<p>Claimant <b>objects</b> to this request for the following two reasons:</p> <p>(a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant is a qualified investor and made a qualified investment under the Treaty.</p> <p>Claimant has set out the applicable legal test for what constitutes a protected investor under the Treaty (SoC, ¶¶ 127-128) and has offered evidence to show that it meets the Treaty's requirements (<i>ie</i>, incorporation in the UK or a UK territory) (<b>C-1</b>).</p>	<p><b><u>Bolivia moves to compel production of all the Requested Documents.</u></b></p> <p>Claimant's objections to the Request are misplaced, for the following reasons.</p> <p><i>First</i>, on Claimant's own case, the Requested Documents are neither irrelevant to Bolivia's case nor immaterial to its outcome. As Claimant recognizes, “[<i>t</i>]he issue before the Tribunal in relation to this request is whether Claimant made a qualifying investment under the Treaty.”</p> <p>In the present case, as Bolivia has explained at length, the protection of the Treaty extends only to those foreign nationals and companies having made an active investment (Statement of Defence, Section 4.1.1). Claimant did not participate in the acquisition of the Assets</p>	Request granted.

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	<p>Colquiri, Sinchi Wayra and/or their affiliates; and</p> <p>(v) financial statements of Claimant reflecting any investment made in the Assets.</p>		<p>investment by a protected investor, (ii) the tainted corporate veil of an empty shell company such as Claimant cannot be the basis to assert jurisdiction over the claims of the concealed true party in interest and, (iii) under international law, Claimant may not bring claims for its indirect investment (Statement of Defence, Sections 4.1, 4.4).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group, as they relate to</p>	<p>Claimant has also demonstrated that it indirectly holds investments (the Assets) that are expressly protected by the Treaty (NoA, ¶¶ 21, 43-44; SoC, ¶¶ 36-38, 131). In fact, Article 5(2) of the Treaty specifically provides that the expropriated assets of any Bolivian company owned by a foreign company (such as Glencore Bermuda) are to be treated for compensation purposes as if they were owned by the foreign shareholder (SoC, ¶ 132).</p> <p>Bolivia seeks to argue that different standards to the Treaty should apply (SoD, Sections 4.1, 4.4), and thereby seeks to create additional requirements in the Treaty.</p> <p>Pursuant to this wrongful interpretation, Bolivia has submitted a wish list of broad categories of document from which it</p>	<p>by Glencore International, but instead was only assigned such Assets, for no apparent consideration. Further, the Requested Documents will show that Claimant did not make any investments in the Assets. Claimant has never been more than an empty shell and, as such, cannot be a protected investor under the Treaty. In all likelihood, Claimant is simply a smokescreen designated to conceal Sánchez de Lozada's continued interest in the Assets.</p> <p>The mere fact that Claimant has put forth what <u>it</u> considers to be "<i>the applicable legal test for what constitutes a protected investor under the Treaty</i>" does not make such test <i>ipso facto</i> correct. Nor does it render irrelevant or material <u>to Bolivia's case</u> the Requested Documents.</p> <p>In any event, Claimant's reliance on Article 5(2) of the</p>	

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			<p>Claimant's operations as a company.</p>	<p>hopes to manufacture an argument for relevance and materiality, despite the clear language of the Treaty.</p> <p>(b) <u>Bolivia's Request 11 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p> <p>Bolivia request is excessively broad in scope, seeking "Documents reflecting any funds invested by Claimant in the Assets" in a period of over seven years, relating to three different investments. This is clearly not a "narrow and specific" request compliant with Article 3.3(a) of the IBA Rules.</p> <p>Responding to this request would therefore be excessively burdensome for Claimant as it would have to</p>	<p>Treaty is unavailing. Article 5 concerns "<i>Expropriation</i>," <i>i.e.</i>, a substantive protection under the Treaty. It does not address jurisdictional matters and cannot be validly invoked by Claimant, which is not a protected investor.</p> <p><i>Second</i>, Claimant's assertion that the Request is excessively broad and unspecific is misleading. The Request seeks "<i>Documents reflecting any funds invested by Claimant</i>" in each of the three Assets which are the subject of this dispute, over a period of time corresponding to the ownership of such Assets by Claimant. It bears recalling that is Claimant who brought this dispute to the Tribunal and articulated its claims in the manner it saw fit. It cannot now invoke the subject matter and temporal breadth of its own claims to resist disclosure.</p>	

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				search through a vast number of documents to locate this information which would be scattered across the files of many individuals at Claimant and its subsidiaries. The time and cost of producing them significantly outweighs their expected probatory value, especially in light of the fact that Bolivia has failed to establish the relevance and materiality of the requested documents.	Likewise, Claimant knew (or should reasonably have known) the requirements in order to qualify as a protected investor under the Treaty. It thus knew (or reasonably should have known) that it would have to demonstrate it had actively made an investment in Bolivia. Claimant cannot now seek to elude such demonstration merely under the pretext that searching for the Requested Documents would allegedly be burdensome.  For all these reasons, Bolivia moves to compel production of all the Requested Documents.	
12.	Documents recording operations of management of the Assets by Claimant's employees, including, but not limited to:  (i) organizational charts of Claimant's top	Statement of Claim, ¶¶ 127-132; Statement of Defence, Section 4.1; <b>R-243</b> .	The Requested Documents are relevant to this dispute and material to its outcome for the same reasons underpinning Request 11 above.  Bolivia confirms that the Requested Documents	Claimant <b>objects</b> to this request for the following two reasons:  (a) <u>The Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded	<b><u>Bolivia moves to compel production of all the Requested Documents.</u></b>  Claimant's objections to the Request are misplaced, for the following reasons.  <i>First</i> , on Claimant's own case, the Requested Documents are	Request granted.

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	<p>executives between 2005 and 2012;</p> <p>(ii) travel documents to Bolivia of Claimant's executives; and</p> <p>(iii) reports of the projects discussed and/or implemented by such executives for the management and development of the Assets.</p>		<p>are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group, as they relate to Claimant's operation as a company.</p>	<p>pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The issue before the Tribunal in relation to this request is whether Claimant is a qualifying investor that holds a qualifying investment under the Treaty.</p> <p>As with Request 9 and 11 above, the Claimant has set out the applicable legal test for what constitutes a protected investor under the Treaty (SoC, ¶¶ 127-128) and has offered evidence to show that it meets the Treaty's requirements (<i>ie</i>, incorporation in the UK or a UK territory) (C-1).</p> <p>Furthermore, Claimant does not deny that it indirectly holds the Assets protected by the Treaty (NoA, ¶¶ 21, 43-44; SoC, ¶¶ 36-38, 131) and, as mentioned above, Article 5(2) of the Treaty expressly protects against the expropriation of</p>	<p>neither irrelevant to Bolivia's case nor immaterial to its outcome. As Claimant recognizes, "[t]he issue before the Tribunal in relation to this request is whether Claimant is a qualifying investor that holds a qualifying investment under the Treaty."</p> <p>In the present case, as Bolivia has explained at length, the protection of the Treaty extends only to those foreign nationals and companies having made an active investment (Statement of Defence, Section 4.1.1). Claimant did not participate in the acquisition of the Assets by Glencore International, but instead was only assigned such Assets, for no apparent consideration. Further, the Requested Documents will show that Claimant did not make any investments in the Assets. Claimant has never been more than an empty shell and, as such, cannot be a protected investor under the</p>	

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				<p>indirectly held investments (SoC, ¶ 132).</p> <p>Bolivia seeks to argue (wrongly in Claimant's view) that a different standard should apply (SoD, Sections 4.1, 4.4), and thereby seeks to create additional requirements that are not provided for in the Treaty. Pursuant to this wrongful interpretation, Bolivia has submitted a wish list of broad categories of documents from which it <i>hopes</i> to manufacture an argument for relevance and materiality, despite the clear language of the Treaty.</p> <p>(b) <u>Bolivia's Request 12 as a whole is excessively broad and fails to identify a "narrow and specific . . . category of Documents that are reasonably believed to exist,"</u> as required by Article 3.3(a) of the IBA Rules.</p>	<p>Treaty. In all likelihood, Claimant is simply a smokescreen designated to conceal Sánchez de Lozada's continued interest in the Assets.</p> <p>The mere fact that Claimant has put forth what <u>it</u> considers to be "<i>the applicable legal test for what constitutes a protected investor under the Treaty</i>" does not make such test <i>ipso facto</i> correct. Nor does it render irrelevant or material to <u>Bolivia's case</u> the Requested Documents.</p> <p>In any event, Claimant's reliance on Article 5(2) of the Treaty is unavailing. Article 5 concerns "<i>Expropriation</i>," <i>i.e.</i>, a substantive protection under the Treaty. It does not address jurisdictional matters and cannot be validly invoked by Claimant, which is not a protected investor.</p> <p><i>Second</i>, Claimant's assertion that the Request is excessively broad and unspecific is</p>	

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				<p>Bolivia request is excessively broad in scope, seeking “Documents recording operations of management of the Assets by Claimant’s employees” in a period of over seven years, relating to three different investments. This is clearly not a “narrow and specific” request compliant with Article 3.3(a) of the IBA Rules.</p> <p>As with Request 11, responding to this request would therefore be excessively burdensome for Claimant as it would have to search through a vast number of documents to locate this information which would be scattered across the files of many individuals at Claimant and its subsidiaries. The time and cost of producing them significantly outweighs their expected probatory value, especially in light of the fact that Bolivia has failed to</p>	<p>misleading. The Request seeks “<i>Documents recording operations of management of the Assets by Claimant’s employees</i>” in each of the three Assets which are the subject of this dispute, over a period of time corresponding to the ownership of such Assets by Claimant. It bears recalling that is Claimant who brought this dispute to the Tribunal and articulated its claims in the manner it saw fit. It cannot now invoke the subject matter and temporal breadth of its own claims to resist disclosure.</p> <p>Likewise, Claimant knew (or should reasonably have known) the requirements in order to qualify as a protected investor under the Treaty. It thus knew (or reasonably should have known) that it would have to demonstrate it had made an active investment in Bolivia. Claimant cannot now seek to elude such demonstration merely under</p>	

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				establish the relevance and materiality of the requested documents.	the pretext that searching for the Requested Documents would allegedly be burdensome.  For all these reasons, Bolivia moves to compel production of all the Requested Documents.	
<b>VI.</b>	<b>Relationship between Colquiri and/or Sinchi Wayra with the Cooperativas</b>					
<b>13.</b>	<p>Agreements entered into by Sinchi Wayra, Colquiri, and/or their affiliates, on the one hand, and the <i>Cooperativas</i>, on the other hand, for the assignment of areas of the Mine and/or the production of tin or zinc concentrates at the Mine, including, but not limited to:</p> <p>(i) the agreement(s) that followed the <i>Cooperativas'</i> demand "<i>a la empresa [para] que se les entregue más áreas de trabajo</i>" in 2007 and 2008 (R-</p>	<p>Statement of Claim, ¶87; Statement of Defence, ¶¶ 170-182, <b>R-208; R-209; R-197; R-179; R-198; R-199; R-200; R-201; R-202; R-203; R-204; R-205.</b></p>	<p>The Requested Documents are relevant to this dispute and material to its outcome as they prove that Claimant's portrayal of the <i>Cooperativas</i> and <i>cooperativistas</i> as "<i>private groups of miners who carry out mining activities for their own benefit in the area</i>" with no relation to Sinchi Wayra's operation at the Mine is inaccurate (Statement of Defence, ¶ 171).  The Requested Documents further prove</p>	<p>Claimant <b>objects</b> to this request for the following three reasons:</p> <p>(a) <u>the Requested Documents are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Contrary to Bolivia's allegation, Claimant does not argue that the <i>cooperativistas</i> have "no relation to Sinchi Wayra's operation at the Mine." It is particularly telling that</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p><i>First</i>, contrary to Claimant's assertion, the Requested Documents are relevant to this dispute and material to its outcome. While Claimant purports to minimize the role of the conflicts with the <i>Cooperativas</i> in the events that led to the Mine Lease Reversion Decree (Statement of Claim, ¶ 87), it is Bolivia's submission that such reversion was the result of Colquiri's mismanagement of its relations with the <i>Cooperativas</i> under both</p>	<p>Request partially granted. Claimants will produce such documents in which Comibol or any government entity had no direct involvement or which are not likely part of Colquiri's internal files.</p>

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	<p><b>208; R-209</b>) and the agreement through which “<i>se tiene el apoyo a la Cooperativa 26 de Febrero para rehabilitar infraestructura independiente de extracción de minerales y la creación de incentivos para concentrar su producción en el zinc</i>” in 2007 (<b>R-208</b>);</p> <p>(ii) the agreements that enabled the <i>Cooperativas</i> to be present in the areas shown in the plan of the Colquiri Mine produced as exhibit <b>R-179</b>; and</p> <p>(iii) the agreements that authorized the <i>Cooperativa 26 de Febrero</i> to operate at</p>		<p>that Sinchi Wayra’s and Colquiri’s permissive attitude with the presence of <i>Cooperativas</i> at the Mine ignited a social conflict of great magnitude that left the State with no choice but to revert the Mine Lease (Statement of Defence, Section 2.6.3.3).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. After conducting a reasonable search through Colquiri’s Documents, Bolivia discovered that the <i>Cooperativas</i> were authorised to operate in</p>	<p>Bolivia makes this assertion by reference to its own Statement of Defence, instead of the Statement of Claim, showing that Claimant has in fact not argued this.</p> <p>In any event, this is just Bolivia’s attempt to shift the blame to Claimant for Bolivia’s own failures, distracting from the issues relevant to the instant dispute. Bolivia was well-aware of the existence of agreements with the <i>Cooperativas</i> since they were generally signed or approved by Comibol, yet failed to appropriately intervene either before the 30 May 2012 takeover or thereafter. In fact, any agreements between Sinchi Wayra / Colquiri and the <i>Cooperativas</i> do not affect Bolivia’s obligation to protect Claimant’s investment.</p>	<p>Comsur and Sinchi Wayra’s administration (Statement of Defence, sections 2.5.1, 2.6.3, and ¶ 956).</p> <p>Moreover, the fact that Claimant denies Bolivia’s characterisation of these events underscores the relevance of the Requested Documents.</p> <p><i>Second</i>, Claimant’s allegations that category # 13 is not sufficiently narrow and specific are unavailing.</p> <p><u>One</u>, the agreements between Colquiri and/or Sinchi Wayra, on the one hand, and the <i>Cooperativas</i>, on the other, are identified by documents from Colquiri (<b>R-197; R-208; R-199</b>).</p> <p><u>Two</u>, Claimant contends that Bolivia’s request is not sufficiently narrow and specific because “<i>the referenced language [in R-208 and R-209] does not indicate that the Cooperativas’ demands necessarily resulted</i></p>	

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	<p>level -285 of the Mine (R-199).</p> <p>The Requested Documents do not comprise the assignments agreed with COMIBOL and registered as public deeds (R-39; R-92; R-93; R-94; R-210).</p>		<p>areas covering almost the entire area of the Mine (R-179). Bolivia also discovered that, prior to formally assigning areas to the <i>Cooperativa 26 de Febrero</i> as deep as level -325 in 2009 (R-210), Sinchi Wayra and/or Colquiri had authorized the <i>Cooperativas</i> to operate at level -285 in 2008 (R-199 to R-205).</p> <p>Bolivia did not find any agreement authorizing the <i>Cooperativas</i> (i) to operate at level -285 or (ii) through which, in 2007, Colquiri secured “<i>el apoyo a la Cooperativa 26 de Febrero para rehabilitar infraestructura independiente de extracción de minerales y la creación de incentivos para concentrar su producción en el zinc</i>” (R-208). Claimant (and</p>	<p>(b) <u>Request 13 as a whole is excessively broad and fails to identify a “narrow and specific . . . category of Documents that are reasonably believed to exist,”</u> as required by IBA Rule 3.3(a). Bolivia failed to frame its request by reference to <i>any</i> date range, therefore requesting documents in relation to a time period that spans over a decade between Colquiri’s establishment and Colquiri’s expropriation. Such a broad request is unduly burdensome.</p> <p>With respect to Request 13(i), Bolivia premises the first part of its Request on language from Colquiri’s 2007 and 2008 annual reports. Bolivia generally requests the “agreements that followed the <i>cooperativas’</i> demand ‘<i>a la empresa [para] que se les</i></p>	<p><i>in agreements.</i>” Claimant’s position is misguided. The references to potential agreements in R-208 and R-209 are sufficient to establish the putative existence of agreements between Colquiri and the <i>Cooperativas</i>. If those agreements were not concluded, Claimant could simply assert that such agreements do not exist. Claimant, however, does not assert that the Requested Documents do not exist. It must, therefore, produce them. <u>Three</u>, it is a <i>non sequitur</i> to assert that Bolivia would not be entitled to request Documents because such documents are related to an exhibit it has marshalled into the record (R-197). In no way do the applicable procedural rules set forth such a requirement.</p> <p>To the contrary, Bolivia’s request meets the standards of specificity and relevance required by the applicable</p>	

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			<p>the Glencore Group) are in a better position to produce the Requested Documents.</p>	<p><i>entregue más áreas de trabajo</i>' in 2007 and 2008 (<b>R-208; R-209</b>).” However, the referenced language does not indicate that the <i>Cooperativas</i>' demands necessarily resulted in agreements. The relevant paragraph goes on to state that “[l]as acciones implementadas permitieron resolver los conflictos que se presentaron y prevenir el escalonamiento de los mismos.” It follows that Bolivia’s request is clearly not based on a “narrow and specific . . . category of documents that are reasonably believed to exist.” This request instead amounts to a fishing expedition by Bolivia in an attempt to construct a case on the basis of documents that it <i>hopes</i> to find in Claimant’s files.</p> <p>With respect to Request 13(ii), Bolivia has asked for “the agreements that enabled</p>	<p>procedural rules. If Claimant is in possession, custody or control of the agreements reflected in the map exhibited as <b>R-197</b>, it must accordingly produce them.</p> <p>Moreover, Claimant does not contend that such documents would not be in its possession, custody or control.</p> <p><i>Third</i>, as Bolivia specified in its original request, the Requested Documents do not comprise the assignments agreed with COMIBOL and registered as public deeds (<b>R-39; R-92; R-93; R-94; R-210</b>). The Requested Documents are those agreements concluded without COMIBOL’s intervention. Claimant itself admits the existence of “<i>agreements that are not likely to be in Bolivia’s possession</i>”.</p> <p><i>Fourth</i>, it is true that Colquiri lost control of the Mine on 19 June 2012. It is, however, undisputed, that <u>Bolivia did</u></p>	

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				<p>the <i>Cooperativas</i> to be present in the areas shown in the plan of the Colquiri Mine produced as exhibit <b>R-179</b>.” Claimant notes that Bolivia has likely referred to exhibit <b>R-179</b> in error, as the relevant document would appear to be exhibit <b>R-197</b>. Exhibit <b>R-197</b> is a document that has been introduced by Bolivia. It is Bolivia’s responsibility to substantiate any representations purportedly made through exhibits it has itself chosen to introduce.</p> <p>(c) More importantly, <u>Request 13 as a whole covers documents that are, or would reasonably be, in Bolivia’s possession, custody or control</u>, contrary to the requirements of Article 3.3(c) of the IBA Rules.</p> <p><i>First</i>, the agreements with the <i>Cooperativas</i> for the</p>	<p><u>not seize all the Documents pertaining to the Mine operation</u> that were in Claimant’s possession custody or control.</p> <p>In particular, it is remarkable that Claimant does not raise this objection in relation to all of Bolivia’s requests that relate to the operation and/or social conflicts at the Colquiri Mine (see requests Nos. 16 and 17 below).</p> <p>While Bolivia has conducted reasonable searches through Colquiri’s files, it has been unable to locate the Requested Documents. Claimant must therefore produce such Documents.</p>	

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				<p>assignment of areas of the Mine were generally entered into under the supervision and with the express approval of Comibol (Bolivia's mining State entity and lessor of the Colquiri Mine) and / or the Ministry of Mines. In fact, Bolivia itself, through Comibol and / or the Ministry of Mines, was often a signatory or a party to such agreements with the <i>Cooperativas</i> (see, e.g., SoD, ¶ 173; <b>R-93</b>; <b>R-94</b>). Moreover, Bolivia's own statements and evidence show that Comibol communicated regularly with both Sinchi Wayra / Colquiri and the <i>Cooperativas</i>, indicating that it was aware and kept informed of the situation and relevant agreements (see, e.g., SoD, ¶ 179; <b>R-196</b>; <b>R-206</b>; <b>R-207</b>).</p> <p><i>Second</i>, with respect to agreements signed by</p>		

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				<p>Colquiri, Bolivia would have access to such documents by reason of having nationalized the Colquiri Mine. Bolivia has in fact produced several documents from Colquiri's internal files, showing that it indeed does have access to such information (<i>see, e.g.</i>, SoD, ¶¶ 174-75; <b>R-194; R-195; R-198; R-199; R-200; R-201; R-202; R-203; R-204; R-205; R-208; R-209; R-212</b>). Furthermore, Bolivia even recognized that it has "search[ed] through Colquiri's Documents." Claimant, on the other hand, lost control of the Mine on 30 May 2012.</p> <p>The documents requested by Bolivia are therefore plainly within its possession, custody and control.</p> <p style="text-align: center;">* * *</p> <p>If anything, Request 13 should be limited to the two categories of documents</p>		

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				<p>Bolivia specifically states it was not able to find after searching Colquiri's internal files, namely (i) "any agreement authorizing the <i>Cooperativas</i> to operate at level -285" between 2004 and 2012 and (ii) "any agreement through which, in 2007, Colquiri secured '<i>el apoyo a la Cooperativa 26 de Febrero para rehabilitar infraestructura independiente de extracción de minerales y la creación de incentivos para concentrar su producción en el zinc</i>' (R-208)."</p> <p>In a good faith effort to collaborate and without prejudice to the above, Claimant has conducted a reasonable search of documents within its possession and hereby <b><u>voluntarily produces documents</u></b> responsive to these two categories, as well as agreements that are not likely to be in Bolivia's</p>		

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				possession by reason of either (i) Comibol's and / or the government's direct involvement; or (ii) the fact that they would be a part of Colquiri's internal files.		
14.	<p>Documents reflecting the “<i>inversiones en proyectos de responsabilidad social</i>” (Lazcano, ¶ 41) made by Colquiri, Sinchi Wayra and/or their affiliates during the time they were in control of the Mine, including, but not limited to:</p> <p>(i) Documents discussing “<i>la construcción de viviendas para las familias de los trabajadores que vivían en las comunidades aledañas de la Mina de Colquiri</i>” (Lazcano, ¶ 41), including:</p>	<p>Lazcano, ¶¶ 41-45; C-97; Moreira, ¶ 22; Statement of Defence, ¶ 283; Section 2.6.3.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome as they prove that Colquiri and Sinchi Wayra, under the Glencore Group's control, poorly managed social relations at Colquiri. Such mismanagement led to increasing tensions within the local communities and, in particular, between the <i>Cooperativas</i> and the workers of the Mine (Statement of Defence, Section 2.6.3).</p> <p>The Requested Documents further prove that, contrary to</p>	<p>Claimant <b>objects</b> to this request because it relates to documents which would be in Bolivia's possession, custody, or control.</p> <p><i>First</i>, this request pertains to documents that were kept in Colquiri and over which Bolivia would have access by reason of having expropriated the Mine.</p> <p><i>Second</i>, the Requested Documents largely involve arrangements with local authorities, which would also be within Bolivia's custody, possession or control.</p> <p>Finally, Claimant has already produced relevant and supportive documents in its possession with its</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p><i>In limine</i>, Claimant does not dispute the relevance or specificity of Bolivia's request.</p> <p>That said, Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p><i>First</i>, it is true that Colquiri lost control of the Mine in 19 June 2012. It is, however, undisputed, that <b><u>Bolivia did not seize all the Documents pertaining to the Mine operation</u></b> that were in Claimant's possession custody or control.</p> <p>In particular, it is remarkable that Claimant does not raise</p>	Request granted.

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	<p>a. the number of houses built; and</p> <p>b. the amounts invested by the Glencore Group, Sinchi Wayra and/or Colquiri for such purpose.</p> <p>(ii) Documents reflecting the investments for “<i>la prestación de servicios públicos tales como el suministro de agua potable y el tratamiento de efluentes cloacales, la construcción y mantenimiento vial, y telefonía celular a las comunidades circundantes</i>” (Lazcano, ¶ 42);</p>		<p>Claimant’s assertion, Glencore Bermuda did not invest in a diverse range of social initiatives (Statement of Defence, ¶ 283).</p> <p>The Requested Documents further confirm that Colquiri’s and Sinchi Wayra’s mismanagement of social relations at the Mine encourage the <i>Cooperativas</i> to take over the Mine (first, on or around 1 April 2012 and second, on or around 30 May 2012) (Statement of Defence, ¶¶ 187-194).</p> <p>The unprecedented violence at the Mine in mid-2012 fostered by Sinchi Wayra left the State with no choice but to revert the Mine Lease (Statement of Defence, Section 2.6.3.3).</p> <p>Bolivia confirms that the Requested Documents</p>	<p>Statement of Claim (C-97; C-160).</p> <p style="text-align: center;">* * *</p> <p>Notwithstanding and without prejudice to the above, in the spirit of cooperation, <b><u>Claimant hereby voluntarily produces</u></b> the responsive documents from the lifetime of Claimant’s investment in the Colquiri Lease that it was able to locate following a reasonable search of documents within its possession.</p>	<p>this objection in relation to all of Bolivia’s requests that relate to the operation and/or social conflicts at the Colquiri Mine (see requests Nos. 16 and 17 below).</p> <p>While Bolivia has conducted reasonable searches through Colquiri’s files, it has been unable to locate the Requested Documents. Claimant must therefore produce such Documents.</p> <p><i>Second</i>, Claimant fails to prove that the Requested Documents are in possession, custody or control of “<i>local authorities</i>”. Rather, the evidence in the record suggest that such Documents relate to agreements concluded with: “<i>comunidades circundantes</i>” of the Mine or “<i>organizaciones civiles y sindicales del municipio de Colquiri</i>” (Lazcano, ¶ 42) (and not the local authorities under the State’s control).</p>	

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	<p>(iii) Documents reflecting the investments made in order to “<i>ayudar al desarrollo económico y cultural de las comunidades, [...] con sistemas de riego, dotación de insumos y equipos agropecuarios, construcción de escuelas y campos deportivos, equipamiento escolar y apoyo a actividades culturales y deportivas</i>” (Lazcano, ¶ 42);</p> <p>(iv) the “<i>plan quinquenal</i>” proposed by Colquiri to the local communities in order to “<i>crear fuentes de trabajo para la población del Cantón Colquiri</i>” (C-97, p. 14).</p> <p>(v) the “<i>convenio suscrito entre las autoridades</i>”</p>		<p>are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group, as they relate to projects identified by Mr Lazcano (Claimant's witness in these proceedings) and in exhibit C-97.</p>		<p><i>Third</i>, and, in any event, the Requested Documents pertain to the amounts invested by Colquiri in social responsibility projects and <u>not</u> only to agreements with the local communities pursuant to which those expenditures were made. Those Documents are not in Bolivia's possession, custody or control. The fact that Mr Lazcano, a witness for Claimant, testifies about these investments confirms these Documents are within Claimant's control.</p>	

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	<p>y organizaciones civiles y sindicales del municipio de Colquiri con la Universidad Nacional Siglo XX” (Lazcano, ¶ 42);</p> <p>(vi) Documents reflecting the the commitments to “contratar locales para mano de obra no calificada, y a preferir a los comunitarios locales para la mano de obra especializada o calificada” (Lazcano, ¶ 43); and</p> <p>(vii) Documents reflecting the investments made in “proyectos para la construcción de caminos, incluyendo la realización de la ingeniería y suministro de equipos y materiales del proyecto para asfaltar la vía que conduce de Colquiri a Caracollo, una población</p>					

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	<i>principal a medio camino de Cochabamba</i> " (Lazcano, ¶ 43).					
15.	<p>Documents sent, received, or reviewed by Colquiri and/or Sinchi Wayra discussing the tensions and conflicts between the <i>Cooperativas</i> and the workers of the Mine, including, but not limited to:</p> <p>(i) the “<i>amenazas [...], intervenciones y presiones de parte de las dos cooperativas que trabajan, una en la mina y la otra en las colas antiguas</i>” between 1 January and 30 November 2005 (R-194);</p> <p>(ii) the “<i>amenazas [...], intervenciones y presiones de parte de las dos cooperativas que trabajan, una en la mina y la otra en</i></p>	<p>Statement of Claim, ¶¶ 87-98; Eskdale, ¶¶ 74-80; Statement of Defence, Sections 2.6.3.1 and 2.6.3.2; Cachi, ¶¶ 12-31; Mamani, ¶¶ 18-27; R-194; R-195; R-208; R-209; C-30.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p>In its Statement of Defence, Bolivia explained that Glencore International inherited the problems created by Comsur's mismanagement of the social conflicts at Colquiri. In addition, after Glencore International acquired the Assets from Sánchez de Lozada, the social conflicts at the Mine worsened and the ambitions of the <i>Cooperativas</i> to take over the Mine gradually increased (Statement of Defence, Section 2.6.3.1).</p>	<p>Claimant <b>objects</b> to this request for the following three reasons:</p> <p>(a) <u>the Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The question before the Tribunal is whether Bolivia took all reasonable and appropriate measures to protect Claimant's investment in the Colquiri Lease when, as Bolivia itself recognizes, the <i>Cooperativas'</i> invasion resulted in “<i>unprecedented violence</i> at the Mine.” Specific instances of tension or conflict in the several</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p><i>First</i>, contrary to Claimant's assertion, the Requested Documents are relevant to this dispute and material to its outcome. While Claimant purports to minimize the role of the conflicts with the <i>Cooperativas</i> in the events that led to the Mine Lease Reversion Decree (Statement of Claim, ¶ 87), it is Bolivia's submission that such reversion was the result of Colquiri's mismanagement of its relations with the <i>Cooperativas</i> under both Comsur and Sinchi Wayra's administration (<i>i.e.</i> from <u>2001 to 2012</u>) (Statement of Defence, sections 2.5.1, 2.6.3, and ¶ 956). Moreover, the fact that Claimant denies</p>	<p>Request partially granted. Claimants will produce such documents in which Comibol or any government entity had no direct involvement or are not likely part of Colquiri's internal files.</p>

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	<p><i>las colas antiguas</i>” between 1 December 2005 and 27 November 2006 (<b>R-195</b>);</p> <p>(iii) the “<i>conflictos que se presentaron</i>” between the workers of the Mine and the <i>Cooperativas</i> between 28 November 2006 and 18 December 2007 (<b>R-208</b>);</p> <p>(iv) the “<i>conflictos que se presentaron</i>” involving the <i>Cooperativas</i> and the workers of the Mine between 19 December 2007 and 22 January 2009 (<b>R-209</b>);</p> <p>(v) the “<i>conflictos entre el personal de Sinchi Wayra y los cooperativistas</i>” between 23 January 2009 and 31</p>		<p>The Requested Documents prove that neither Sinchi Wayra nor Colquiri made significant efforts to solve the social tensions at the Mine. On the contrary, under Sinchi Wayra’s administration, the <i>Cooperativas</i> gained access to new areas of the Mine and, “[p]ara finales de 2011, los cooperativistas teníamos prácticamente el control de la Mina” (Cachi, ¶ 31) (See Statement of Defence, ¶¶ 170-186).</p> <p>The Requested Documents further confirm that Colquiri’s and Sinchi Wayra’s mismanagement of social relations at the Mine encouraged the <i>Cooperativas</i> to take over the Mine (first, on or around 1 April 2012 and second, on or around 30 May 2012) (Statement</p>	<p>years prior to such “<i>unprecedented</i>” violence are not material to this determination.</p> <p>(b) <u>Request 15 as a whole is excessively broad and fails to identify a “narrow and specific . . . category of Documents that are reasonably believed to exist,”</u> as required by Article 3.3(a) of the IBA Rules. Bolivia failed to frame its Request by reference to any date range, therefore requesting documents in relation to a time period that spans over a decade between Colquiri’s establishment and Colquiri’s expropriation. Such a broad request is unduly burdensome for Claimant, as Bolivia also requests all documents “sent, received or reviewed” by an unspecified number of employees working for “Colquiri and/or Sinchi</p>	<p>Bolivia’s characterisation of these events underscores the relevance of the Requested Documents.</p> <p><i>Second</i>, Claimant’s allegations that category # 15 is not sufficiently narrow and specific are unavailing.</p> <p><u>One</u>, every sub-category of Requested Documents pertains to a 12-month or shorter period of time.</p> <p><u>Two</u>, the Requested Documents relate to:</p> <ul style="list-style-type: none"> <li>• events narrowly identified in Colquiri’s annual reports (<b>R-194; R-195; R-208; R-209</b>);</li> <li>• specific events described by Mr Eksdale (¶¶ 74 and 80), Claimant’s own witness.</li> <li>• specific events described by Mr Cachi (¶ 30) and Mr Mamani (¶ 20) over specific periods of time; and</li> </ul>	

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	<p>December 2009 (Mamani, ¶ 20);</p> <p>(vi) the “enfrentamiento con el personal de seguridad y los ingenieros de la empresa” in early 2011 (Cachi, ¶ 30);</p> <p>(vii) the “ataques a nuestros compañeros [i.e. the workers of the Mine]” by the members of the Cooperativas during 2011 (Mamani, ¶ 20);</p> <p>(viii) the incident in 2011 in which “un conductor de una volqueta quiso atropellar a los cooperativistas que estaban saliendo de la Mina por la rampa blanca” and “[l]os cooperativistas agarraron al operador y lo querían dinamitar” (Cachi, ¶ 30);</p>		<p>of Defence, ¶¶ 187-194). The unprecedented violence at the Mine in mid-2012 created by Sinchi Wayra left the State with no choice but to revert the Mine Lease (Statement of Defence, Section 2.6.3.3).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. In fact, Colquiri often reported in its annual reports about the “conflictos” involving the Cooperativas and the workers of the Mine (<b>R-208; R-209</b>). Colquiri also reported on the “amenazas [...],</p>	<p>Wayra,” during a time period that spans over a decade. A search for such documents would be costly, inefficient and would not materially aid the Tribunal in resolving the matters in dispute.</p> <p>Notably, Bolivia goes so far as to request documents in support of statements made <i>by its own witnesses</i> (see Request 15(v) to 15(viii)). Clearly, it cannot be Claimant’s burden to support Bolivia’s own assertions. Bolivia’s request therefore amounts to a fishing expedition, asking for a broad swathe of documents in the hopes of creating a case where it has none.</p> <p>(c) <u>Request 15 as a whole covers documents that are, or would reasonably be, in Bolivia’s possession, custody or control</u>, contrary</p>	<ul style="list-style-type: none"> <li>events described in correspondence sent by Colquiri at the time Sinchi Wayra operated the Mine (<b>C-30</b>).</li> </ul> <p>Therefore, it would not be burdensome for Claimant to search for and produce the Requested Documents.</p> <p><i>Third</i>, contrary to Claimant’s assertion, the Requested Documents are not in Bolivia’s possession, custody or control.</p> <p><u>One</u>, Bolivia <u>confirms that this request does not cover correspondence between Bolivia and the Cooperativas</u>. Nor does this request cover correspondence between Claimant and/or its affiliates and Bolivia.</p> <p><u>Two</u>, it is true that Colquiri lost control of the Mine in 19 June 2012. It is, however, undisputed, that <u>Bolivia did not seize all the Documents pertaining to the Mine operation</u> that were in</p>	

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	<p>(ix) the “<i>perturbaciones al desenvolvimiento de la operación minera</i>” by the Cooperativas during the first three months of 2012 (C-30);</p> <p>(x) the events in which “<i>a group of about one hundred people [i.e., cooperativistas] violently and unlawfully entered the Colquiri Mine</i>” on or around 1 April 2012 (Eskdale, ¶ 74; C-30); and</p> <p>(xi) the events in which, “<i>in the early hours of 30 May 2012, at around 4:30 am, the Colquiri Mine was violently taken over by more than one thousand members of a local cooperative known as Cooperativa 26 de</i></p>		<p><i>intervenciones y presiones de parte de las dos cooperativas que trabajan, una en la mina y la otra en las colas antiguas</i>” (R-194; R-195) to which its workers were subjected. In addition, in April 2012, Colquiri confirmed to COMIBOL that the social tensions at the Mine “<i>han sido atendidas en gran medida y hasta el momento por nuestra empresa</i>” (C-30). Claimant or its affiliates must be in a position to produce the Documents related to those incidents.</p>	<p>to the requirements of Article 3.3(c) of the IBA Rules.</p> <p><i>First</i>, Comibol (Bolivia’s mining State entity and lessor of the Colquiri Mine) and / or the Ministry of Mines were generally kept apprised of the Cooperativas’ activities within the Mine. Bolivia’s own statements and evidence show that Comibol communicated regularly with both Sinchi Wayra / Colquiri and the Cooperativas (see, e.g., SoD, ¶ 179; R-196; R-206; R-207).</p> <p><i>Second</i>, Bolivia would have access to the Requested Documents by reason of having expropriated the Colquiri Mine. Bolivia has in fact produced several documents from Colquiri’s internal files, showing that it indeed does have access to such information (see, e.g.,</p>	<p>Claimant’s possession, custody or control.</p> <p>In particular, it is remarkable that Claimant does not raise this objection in relation to all of Bolivia’s requests that relate to the operation and/or social conflicts at the Colquiri Mine (see Requests 16 and 17 below).</p> <p>While Bolivia has conducted reasonable searches through Colquiri’s files, it has been unable to locate the Requested Documents. Claimant must therefore produce such Documents.</p>	

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	<i>Febrero</i> " (Eskdale, ¶ 80).			<p>SoD, ¶¶ 174-75; <b>R-194; R-195; R-198; R-199; R-200; R-201; R-202; R-203; R-204; R-205; R-208; R-209; R-212</b>). Furthermore, in its Request 13 Bolivia even recognized that it has "search[ed] through Colquiri's Documents." Claimant, on the other hand, lost control of the Mine on 30 May 2012.</p> <p style="text-align: center;">* * *</p> <p>Notwithstanding and without prejudice to the above, in the spirit of cooperation, Claimant has conducted a reasonable search of documents within its possession and hereby <b><u>voluntarily produces responsive documents</u></b> from the lifetime of Claimant's investment in the Colquiri Lease that are not likely to be in Bolivia's possession by reason of either (i) Comibol's and / or the government's direct</p>		

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				involvement; or (ii) the fact that they would be a part of Colquiri's internal files.		
16.	<p>Documents describing the rationale for, discussing and/or implementing Sinchi Wayra's, Colquiri's and/or any or their affiliates' decision to "ced[e] the San Antonio to the mining cooperatives" and to "undertak[e] to create 200 additional jobs and to provide the Cooperativa 26 de febrero with the necessary technical and financial support to exploit the San Antonio vein" (Eskdale, ¶ 88), including, but not limited to:</p> <p>(i) Documents discussing the "several areas" that Colquiri considered to cede to the Cooperativas prior to offering the San Antonio vein</p>	<p>Statement of Claim, ¶ 101-102; Eskdale, ¶ 88; Statement of Defence, ¶ 199-200; Cachi, ¶ 35; Mamani, ¶ 33; C-120.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome, as they show that the Government worked closely with Glencore and the unions at Colquiri in order to prepare a proposal that could satisfy all of the parties involved in the conflict that arose after 30 May 2012 (Statement of Defence, ¶ 198).</p> <p>The Requested Documents are also relevant to prove that Claimant's assertion that the Cooperativas did not accept the San Antonio Vein "because the government had failed to respond to their requests in a timely manner"</p>	<p>Claimant <b>objects</b> to this request because it relates to documents that would be in Bolivia's possession, custody, or control, contrary to the requirements of Article 3.3(c) of the IBA Rules.</p> <p>Bolivia admittedly is seeking documents that would "show that the Government worked closely with Glencore and the unions at Colquiri in order to prepare a proposal that could satisfy all of the parties involved in the conflict that arose after 30 May 2012." By definition, since any such documents would relate to the Government's actions, they would be within Bolivia's possession, custody or control.</p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p><i>First</i>, Claimant does not allege that Bolivia's request lacks specificity. Neither does Claimant dispute the relevance and materiality of Bolivia's request. Nor could Claimant dispute it, as the Requested Documents are relevant to assess Claimant's (and its affiliates') views on the conduct and actions undertaken by the State in order to solve the social crisis that erupted at Colquiri in mid-2012.</p> <p><i>Second</i>, Claimant's assertion that the Requested Documents are in Bolivia's possession, custody or control is incorrect. Bolivia did not request documents reflecting the</p>	<p>Request denied on grounds of lack of relevance and specificity.</p>

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	<p>(Statement of Claim, ¶ 101); and</p> <p>(ii) Documents sent, received, or reviewed by Colquiri, Sinchi Wayra or their affiliates during the period they “were vigorously working to find a resolution that would have de-escalated the situation” (Eskdale, ¶ 87); and</p> <p>(iii) Documents discussing the “several proposals” advanced by the Sinchi Wayra representatives to the Cooperativas (Eskdale, ¶ 87).</p>		<p>(Statement of Claim, ¶ 102) is incorrect.</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. It is, in fact, undisputed that, “[a]fter considering several areas, Colquiri accepted ceding the San Antonio vein to the cooperative” and it “also undertook to create 200 additional jobs and to provide the Cooperativa 26 de Febrero with financing, as well as with the necessary technical support to exploit the San Antonio vein”</p>	<p>Bolivia also argues that the requested documents are “relevant to prove that Claimant’s assertion that the Cooperativas did not accept the San Antonio Vein ‘because the government had failed to respond to their requests in a timely manner’ (Statement of Claim, ¶ 102) is incorrect.” However, any such documentation would be squarely within Bolivia’s possession, custody, or control.</p> <p>Specifically, in its Statement of Defence Bolivia explains that “the Government first suggested to hand over the San Antonio vein to the Cooperativa 26 de Febrero” during a meeting held between Comibol, officers from the Ministries of Mines and Labour and leaders of the Cooperativa 26 de Febrero (SoD, ¶ 199). It is undisputed that neither Claimant nor any of its</p>	<p>Government’s actions prior to Sinchi Wayra’s proposal to cede the San Antonio vein to the <i>Cooperativa 26 de Febrero</i> (as Claimant wrongly implies). Rather, Bolivia requested Documents describing the rationale for, discussing and/or implementing Sinchi Wayra’s, Colquiri’s and/or any or their affiliates’ decision to “ced[e] the San Antonio vein to the mining cooperatives” and to “undertak[e] to create 200 additional jobs and to provide the Cooperativa 26 de febrero with the necessary technical and financial support to exploit the San Antonio vein” (Eskdale, ¶ 88). The Requested documents are, <i>inter alia</i>, internal correspondence and Documents reflecting internal discussions within Sinchi Wayra, Colquiri and/or any or their affiliates. Bolivia is not in possession, custody or control of such Documents.</p>	

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			(Statement of Claim, ¶ 101).	<p>affiliates attended this meeting. Bolivia then explains that it relayed Colquiri's specific proposals to the <i>cooperativa</i> and summoned its leaders for another meeting in which, again, Colquiri did not participate (SoD, ¶ 200; <b>R-216</b>). Documentation relating to why the <i>Cooperativas</i> did not accept the San Antonio proposal would therefore be within Bolivia's possession, custody or control, since it was Bolivia that met with the <i>Cooperativas'</i> leaders to present and discuss such proposal.</p> <p>Instead, Claimant has already included in the record relevant documentation showing the efforts it engaged in to find a solution to the conflict and the proposals it put forth (<i>see C-119; C-120</i>).</p>		

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17.	<p>Documents describing the rationale for, discussing and/or implementing Sinchi Wayra's, Colquiri's and/or any or their affiliates' decision to enter into the Rosario Agreement (C-35), including, but not limited to:</p> <p>(i) Documents discussing any potential contradiction and/or difficulty to implement the Rosario Agreement due to other agreements concluded by the Government with the <i>Cooperativas</i>, the FSTMB, the STMC, or the workers of the Mine;</p> <p>(ii) Documents discussing the outcome (or potential outcome) of the Government's</p>	<p>Statement of Claim, ¶ 105; Eskdale, ¶¶ 92-93; Statement of Defence, ¶¶ 213-214; Cachi, ¶¶ 41-42; Mamani, ¶ 41; C-35.</p>	<p>The Requested Documents are relevant to this dispute and material to its outcome.</p> <p>As Bolivia explained in its Statement of Defence, on 7 June 2012, a section of the <i>Cooperativas</i>, the civil society and the workers of the Mine convened a <i>Gran Cabildo</i> in the village of Colquiri. That <i>Cabildo</i> adopted a resolution endorsing the Government's proposal to revert the Mine Lease (R-17; R-223; Statement of Defence, ¶¶ 210-211).</p> <p>The Requested Documents prove that Sinchi Wayra, Colquiri, and/or their affiliates—who were aware of the efforts to settle the dispute undertaken by the Government, and of the probable outcome of the <i>Gran Cabildo</i>—</p>	<p>Claimant <b>objects</b> to this request because <u>the Documents requested are irrelevant and immaterial to the outcome of this arbitration</u> and should therefore be excluded pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The pertinent questions before the Tribunal are whether Bolivia took all reasonable and appropriate measures to protect Claimant's investment in the Colquiri Lease and whether Bolivia unlawfully expropriated Claimant's investment.</p> <p>Bolivia itself admits that it had <i>already decided to "revert" the Colquiri Lease</i> by the time the <i>Gran Cabildo</i> took place. Claimant's decision to enter into the Rosario Agreement—which was executed by the government itself <i>after the Gran</i></p>	<p><b><u>Bolivia moves to compel production of the Requested Documents.</u></b></p> <p><i>In limine</i>, Claimant does not dispute the specificity of Bolivia's request. Nor does Claimant contend that the Requested Documents are in Bolivia's possession, custody or control.</p> <p>That said, and contrary to Claimant's assertion, the Requested Documents are relevant to this dispute and material to its outcome. While Claimant purports to minimize the role of the conflicts with the <i>Cooperativas</i> in the events that led to the Mine Lease Reversion Decree (Statement of Claim, ¶ 87), it is Bolivia's submission that such reversion was the result of Colquiri's mismanagement of its relations with the <i>Cooperativas</i> under both Comsur and Sinchi Wayra's administration (Statement of</p>	<p>Request denied on grounds of lack of relevance.</p>

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	<p>negotiation with the <i>Cooperativas</i>, the FSTMB, the STMC and the workers of the Mine on or around the date the Rosario Agreement was executed (7 June 2012);</p> <p>(iii) Documents discussing the effect of the Rosario Agreement on the public order at Colquiri; and</p> <p>(iv) Documents discussing the effect of the Rosario Agreement on the tensions between the workers of the Mine and the <i>Cooperativas</i>.</p>		<p>decided to capitalize on the divisions among the <i>Cooperativas</i> and to engage in the Rosario Agreement, a contradictory agreement. In order to achieve this goal, Sinchi Wayra, Colquiri, and/or their affiliates took advantage of the fact that the <i>Federación Nacional de Cooperativas Mineras</i> (FENCOMIN) actively opposed the reversion, and convened a meeting in La Paz with the faction of the <i>Cooperativa 26 de Febrero</i> members that opposed the reversion (Statement of Defence, ¶ 212).</p> <p>The Requested Documents further prove that, by executing the Rosario Agreement, Sinchi Wayra, Colquiri and their affiliates created significant unrest</p>	<p><i>Cabildo</i>—has no bearing on whether Bolivia acted lawfully when it decided to “revert” the Colquiri Lease following the invasion of the Mine by the <i>cooperativistas</i>.</p>	<p>Defence, sections 2.5.1, 2.6.3, and ¶ 956).</p> <p>Put differently, in order to assess whether “<i>Bolivia took all reasonable and appropriate measures</i>” in relation to the Colquiri Mine Lease, the Tribunal will also have to assess the relations between Colquiri, Sinchi Wayra and the <i>Cooperativas</i> and their incidence in the events that led to the Mine Lease Reversion Decree. The Requested Documents are relevant to this dispute and material to its outcome as they confirm that the violence at Colquiri was caused by Claimant’s and its affiliate’s actions (in particular, Sinchi Wayra’s decision to enter into the Rosario Agreement), rather than Bolivia’s.</p> <p>Moreover, the fact that Claimants denies Bolivia’s characterisation of these events underscores the</p>	

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			<p>among the mining workers. This unrest lead to unprecedented levels of violence at Colquiri and left the State with no choice but to revert the Mine Lease (Statement of Defence, ¶¶ 212-217).</p> <p>Bolivia confirms that the Requested Documents are not in its possession, custody, or control.</p> <p>Bolivia reasonably believes that the Requested Documents exist and are in the possession, custody or control of Claimant and/or of the Glencore Group. As Mr Eskdale confirms, Colquiri decided to offer the Rosario vein to a fraction of the <i>Cooperativas</i> on 7 June 2012, despite being aware that, on 6 June 2012, the Government had proposed to the workers of the Mine to</p>		relevance of the Requested Documents.	

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			explore the possibility of reverting the Mine Lease (Eskdale, ¶ 91).			