

PCA Case No. 2013-15

**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, DATED MAY 24, 1988**

- and -

**THE UNCITRAL ARBITRATION RULES (AS REVISED IN 2010)**

-between-

**SOUTH AMERICAN SILVER LIMITED (BERMUDA)**

**(the “Claimant”)**

-and-

**THE PLURINATIONAL STATE OF BOLIVIA**

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

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**PROCEDURAL ORDER NO. 1**

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*Tribunal*

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)  
Prof. Francisco Orrego Vicuña  
Mr. Osvaldo César Guglielmino

**May 27, 2014**

**WHEREAS** the Parties and the Tribunal have signed the Terms of Appointment dated March 4, 2014.

**WHEREAS** the Tribunal held a First Procedural Meeting with the Parties on May 13, 2014, in Bogota, Colombia.

**WHEREAS** this Procedural Order records the agreements of the Parties on procedural matters reached at the First Procedural Meeting, and, having taken into account the Parties' comments, records the Tribunal's decisions on matters that the Parties submitted to it for determination.

**1. Continuation in Force of Prior Orders**

1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.

1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

**2. Place of Arbitration**

2.1 Pursuant to Article 18(1) of the UNCITRAL Rules, having regard to the circumstances of the case and the positions of the Parties, the place of arbitration is fixed at The Hague, the Netherlands.

2.2 Pursuant to Article 18(2) of the UNCITRAL Rules, having considered the Parties' positions, unless otherwise agreed by the Parties and the Tribunal, meetings and hearings shall take place at either Bogota (Colombia) or Washington DC (USA), as decided by the Tribunal after consultation with the Parties for each hearing or meeting. The Tribunal may meet at any location it considers appropriate for deliberations.

**3. Language**

3.1 Pursuant to paragraph 7.1 of the Terms of Appointment, the languages of the arbitration shall be English and Spanish.

3.2 The Tribunal's awards and procedural orders shall be issued in English and Spanish. Communications and other decisions of the Tribunal may be issued in either language alone.

3.3 Written submissions of the Parties and the accompanying documents may be submitted in either language of the arbitration. Within 15 calendar days of a Party's submission made in one procedural language, that Party shall provide a translation of the written submission into the other procedural language. Translations of the statements of fact witnesses and expert reports and opinions shall be provided within 21 calendar days of the date of their submission. Parties are not required to provide translations into the other procedural language of other documents accompanying the written pleadings. Legal authorities shall be submitted in their original language, without translation. Informal translations will be accepted as accurate unless contested by the other Party, in which case, the Parties shall attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Tribunal shall take the corresponding decision, for which it may appoint a certified translator to have the document(s) in question translated. Routine communications may be sent in either language of the arbitration, without translation.

- 3.4 Oral testimony and argument before the Tribunal shall be given in English or Spanish. Simultaneous interpretation shall be provided at the request of either Party or as ordered by the Tribunal.
- 3.5 Documents produced in response to requests or orders for production may be produced in their original language.
- 3.6 The Tribunal reserves the right to require a Party to translate any document in whole or in part.

**4. Procedural Calendar**

4.1 The procedural calendar shall be as follows:

<u>Event</u>	<u>Date</u>
 <i>Initial Phase</i>	
First Procedural Meeting	May 13, 2014
 <i>Written Pleadings</i>	
Claimant’s Statement of Claim and Memorial, accompanied by all supporting Witness Statements, Expert Reports or Opinions, Factual Exhibits, Legal Authorities, and any other supporting document	120 days from the date of this Procedural Order No. 1
Respondent’s Statement of Defense and Counter-Memorial (and counterclaims, if any), and any objection to the Tribunal’s jurisdiction, accompanied by all supporting Witness Statements, Expert Reports or Opinions, Factual Exhibits, Legal Authorities, and any other supporting document	120 days from the Claimant’s Statement of Claim and Memorial
 <i>Document Production</i>	
Requests for document production to the other Party, if any	21 days from Respondent’s Statement of Defense and Counter-Memorial
Production of documents and objections to production, if any	45 days from Document Production Requests
Replies to objections to production, if any	14 days from Objections to production
Reasoned applications for an order on production of documents in the form of a Redfern Schedule (Annex 1), if necessary	14 days from Replies to objections to production
Tribunal’s decision on document production, if necessary	14 days from Requests to the Tribunal

**Event**

**Date**

Production of remaining documents, if any 40 days from the Tribunal’s decision

*\* The Parties may agree to modify the dates in this Document Production Phase. However, in any case, this phase shall not exceed in total five (5) months from the date of Respondent’s Statement of Defense and Counter-Memorial.*

***Further Written Pleadings***

Claimant’s Reply, including any Response to any Objections to the Tribunal’s jurisdiction, and accompanied by Reply Witness Statement(s) and Expert Report(s) or Opinion(s) 90 days from the last date in the document production phase

Respondent’s Rejoinder, including any Reply to any Objections to the Tribunal’s jurisdiction, and accompanied by Rejoinder Witness Statement(s) and Expert Report(s) or Opinion(s) 90 days from Claimant’s Reply

Claimant’s Rejoinder to any Objections to the Tribunal’s jurisdiction, if any 30 days from Respondent’s Rejoinder

***Oral Pleadings***

Pre-Hearing Conference Around 45 days from the last written submission, at a date to be determined by the Tribunal in consultation with the Parties

Deadline to notify witnesses to be called at the Hearing 45 days before the Oral Hearing

Oral Hearing 10 days between April and May of 2016, as determined by the Tribunal in consultation with the Parties at a later stage

- 4.2 On or before the date of the deadline for any written submission, the Party in question shall send the submission, together with any witness statements and expert reports or opinions (but excluding other supporting documents and legal authorities), to the Tribunal, PCA, and opposing counsel by e-mail in accordance with section 10 of the Terms of Appointment.
- 4.3 To facilitate filing, citations, and word processing, all written submissions, including witness statements and expert reports or opinions, shall be provided as searchable Adobe Portable Document Format (“PDF”) files, and preceded by a hyper-linked table of contents.
- 4.4 Within three (3) business days following submission of pleadings and accompanying documents by e-mail pursuant to paragraph 4.2 above, hard copies of the pleadings and all accompanying document (except for legal authorities), shall be sent to the Tribunal, PCA, and opposing counsel, by courier, unbound in self-standing ring binders, organized in chronological or other appropriate order, with a separate tab for each exhibit, and preceded by a list describing each document by exhibit number, date, type of exhibit, author, and recipient (as applicable).

Documents (including legal authorities) shall also be submitted in electronic form on a USB flash memory drive or CD-ROM, preferably as searchable PDF files.

- 4.5 For any simultaneous submissions, each side shall submit all electronic and hard copies only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 4.6 Unless otherwise provided, all time limits shall refer to midnight at the place of arbitration on the day of the deadline.
- 4.7 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party became aware of the circumstances which prevent it from complying with the deadline.

## **5. Document Production**

- 5.1 Each Party may request the production of documents from the other Party in accordance with the procedural calendar above. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set forth in the procedural calendar.
- 5.2 If the requested Party objects to production, the following procedure shall apply:
  - 5.2.1 The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
  - 5.2.2 The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
  - 5.2.3 The Parties shall seek agreement on production requests to the greatest extent possible.
  - 5.2.4 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
  - 5.2.5 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as Annex 1 (alternative Redfern schedule). The Parties shall use the model format throughout their exchange of requests, objections, and responses.
  - 5.2.6 The Tribunal shall rule on any such application and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.

5.2.7 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.

5.3 Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the procedural calendar.

5.4 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

## **6. Evidence and Legal Authorities**

6.1 In addition to the relevant articles of the UNCITRAL Rules and the provisions on document production above, the Tribunal may use, as an additional guideline, the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, when considering matters of evidence.

6.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form.

6.3 In their rebuttal submissions (i.e., Reply and Rejoinder), the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production.

6.4 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence. The Tribunal shall not admit any evidence that has been available to the Party pretending to introduce it prior to the submission of its written pleadings, or, even if not available prior to the submission, when the introduction is requested less than 20 days prior to the Hearing.

6.5 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter "C" followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

6.6 Statements of fact witnesses or reports of experts shall be numbered separately as "CWS-" for Claimant's witness statements and as "CER-" for Claimant's expert reports, and "RWS-" for Respondent's witness statements and "RER-" for Respondent's expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]).

6.7 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters "CLA" followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

- 6.8 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
- 6.9 Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal in hard copy.
- 6.10 Should a Party be requested to produce information it considers “highly confidential” or it otherwise wishes or is required to use such information in the proceeding (including but not limited to information to be supplied to an expert appointed by the Tribunal), that Party shall make an application to have that information classified as “highly confidential” by notice to the Tribunal, with a copy to the other Party. Without disclosing the information, the Party shall give in the notice the reasons for which it considers the information “highly confidential”. The Tribunal shall determine whether the information is to be classified as “highly confidential” and should the Tribunal so determine, the Tribunal shall order any special measures of protection in the proceeding as it considers necessary and may decide the conditions under which, and the persons to whom, the highly confidential information may in part or in whole be disclosed, and shall require any person to whom the highly confidential information is to be disclosed to sign a confidentiality undertaking that the Tribunal considers as appropriate.

## **7. Witnesses**

- 7.1 Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 7.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions.
- 7.3 Each witness statement shall contain at least the following:
- 7.3.1 the name, date of birth, and present address of the witness;
  - 7.3.2 a description of the witness’s position and qualifications, if relevant to the dispute or to the contents of the statement;
  - 7.3.3 a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
  - 7.3.4 a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge; and
  - 7.3.5 the signature of the witness.
- 7.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce, at the hearing for examination and cross-examination, any witness whose written testimony has been submitted with the written submissions. Should a Party wish to present any of its own witnesses for examination at the hearing that have not been called by the Tribunal or the other Party, it shall request leave from the Tribunal. Any such request shall be presented at least 45 days before the Hearing. The

Tribunal shall rule on any such request and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*.

- 7.5 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 7.6 On a date no later than 45 days before the Hearing, each Party shall file a notification regarding the witnesses and experts presented by the other Party that it wishes to cross-examine at the Hearing.
- 7.7 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear. Such witness shall submit a short written statement to the Tribunal and the Parties at least 45 days prior to the Hearing in which he or she will appear, and may only be examined or cross-examined about the content of his or her witness statement.
- 7.8 If a witness who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.
- 7.9 Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 7.10 At any hearing, the examination of each witness shall proceed as follows:
  - (a) the witness shall make a declaration of truthfulness;
  - (b) although direct examination will be given in the form of witness statements and expert reports, the Party presenting the witness may conduct a brief direct examination;
  - (c) the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;
  - (d) the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
  - (e) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.
- 7.11 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
  - (a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
  - (b) limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
  - (c) direct that a witness be recalled for further examination at any time.



- 7.12 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 7.13 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination.

## **8. Experts**

- 8.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.
- 8.2 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough.
- 8.3 The provisions set out in relation to witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
- 8.4 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

## **9. Hearings**

- 9.1 After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
- 9.2 Hearings shall be recorded and shall be transcribed in both English and Spanish using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.
- 9.3 No new evidence may be presented at the hearing except with leave of the Tribunal. PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party during the hearing, provided that those materials strictly reflect evidence on the record and do not introduce new evidence, directly or indirectly. On the date of the Hearing, immediately prior to the commencement of the Hearing, each Party shall provide the other Party with a hard copy of any demonstrative exhibit that it intends to use at the Hearing. The Parties are not required to exchange these demonstrative exhibits before the Hearing date. Should the Tribunal grant leave to a party to present new evidence in the course of the Hearing, it should grant the other party the opportunity to introduce new evidence to rebut it.

## **10. Confidentiality/Transparency**

- 10.1 Pursuant to the UNCITRAL Rules, hearings shall be held *in camera* unless the Parties agree otherwise.
- 10.2 Pursuant to the agreement of the Parties, the PCA shall publish the existence of the arbitration, the names of the Parties, counsel representing the Parties and the members of the Tribunal on its

website. The PCA shall provide an advance draft of the contents of any webpage relating to the case to the Tribunal and the Parties for their approval prior to publication on its website.

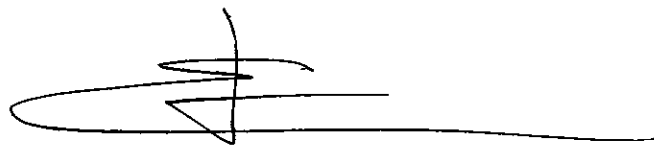
10.3 In addition, pursuant to the agreement of the Parties, the PCA shall make the following documents (excluding accompanying documents) available to the public through publication on the PCA's website:

- 10.3.1 Claimant's Notice of Arbitration
- 10.3.2 Respondent's Response to the Notice of Arbitration
- 10.3.3 Claimant's Statement of Claim and Memorial
- 10.3.4 Respondent's Statement of Defense and Counter-Memorial
- 10.3.5 Claimant's Reply
- 10.3.6 Respondent's Rejoinder
- 10.3.7 Claimant's Rejoinder on Jurisdiction (if applicable)
- 10.3.8 Terms of Appointment
- 10.3.9 Tribunal's Procedural Orders
- 10.3.10 Tribunal Awards

Before their publication, the Parties may redact the documents to exclude any confidential or sensitive information.

- 10.4 The Parties may also publish through their respective websites the information described in paragraphs 10.2 and 10.3 above.
- 10.5 All other information exchanged or submitted in this proceeding shall be confidential and not disclosed to any third party, except as authorized by the Tribunal or as necessary for a Party to pursue or defend a legal right (including in related proceedings between the same or related parties).

**Place of Arbitration: The Hague, the Netherlands**



Dr. Eduardo Zuleta Jaramillo  
(Presiding Arbitrator)

On behalf of the Tribunal

**Annex I: Model 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			