

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 ARBITRATION RULES

-between-

GLENCORE FINANCE (BERMUDA) LTD

(the “Claimant”)

-and-

THE PLURINATIONAL STATE OF BOLIVIA

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

PROCEDURAL ORDER NO. 1

Tribunal

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

31 May 2017

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 the agreement of the Parties, the place of arbitration is fixed at Paris, France.
- 2.2 The Tribunal may hold meetings and hearings with the Parties at any location it considers appropriate, as decided by the Tribunal after consultations with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.

3. Language

- 3.1 The languages of the arbitration shall be English and Spanish.
- 3.2 The Tribunal's awards, decisions and procedural orders shall be issued simultaneously in English and Spanish.
- 3.3 The Parties may submit their pleadings, witness statements and expert reports or opinions in either English or Spanish. A courtesy translation of the pleadings shall be provided within 21 calendar days of a Party's submission. A courtesy translation of the witness statements and expert reports or opinions shall be provided within 28 calendar days of a Party's submission.
 - 3.3.1 Translations of Spanish language exhibits shall be provided if the Tribunal so requests it, within 28 calendar days of a Party's submission. Translations of exhibits may be limited to relevant excerpts, provided that the full original document is submitted and the excerpt is sufficient to allow a full appreciation of its context. Legal authorities may be submitted in their original language, without translation.
- 3.4 Routine, administrative, or procedural communications from the Tribunal or the PCA to the Parties may be submitted in either English or Spanish, without need for translation.
- 3.5 Ordinary communications from the Parties to the Tribunal or the PCA may be submitted in either English or Spanish, without need for translation.
- 3.6 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 appropriate decision, and may for this purpose appoint a certified translator to have the document(s) in question translated.
- 3.7 Oral argument before the Tribunal shall be made in English or Spanish. Simultaneous interpretation shall be provided into the other language.
- 3.8 Documents produced in response to requests or orders for production may be produced in their original language. If a Party submits any such document as an exhibit, the provisions of this section shall apply.

3.9 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 is enclosed as **Annex 1** to this order.

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 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 be preceded by a hyper-linked table of contents.

4.4 Within three (3) business days following the submission of a written submission and accompanying documents by e-mail, the Party in question shall:

4.4.1 Upload the written submission and all accompanying documents (including witness statements, expert reports and opinions, all exhibits and legal authorities) to a secure file-sharing electronic platform to be created by the PCA for the purpose of this case.

4.4.2 Send, via courier, one complete hard copy set of the written submission and all accompanying documents (except for legal authorities) to the PCA, at the address listed in the Terms of Appointment. The hard copy documents shall be printed double-sided in A4 or letter-size paper, 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). The foregoing documents (including legal authorities) shall also be submitted to the PCA in electronic form on a USB flash memory drive, as searchable PDF files.

4.4.3 Send, via courier, the written submission and all accompanying documents to each member of the Tribunal in electronic form on a USB flash memory drive, as searchable PDF files.

4.5 Translations of submissions and any accompanying documents shall be submitted in electronic form only, unless a hard copy is so requested by the Tribunal.

4.6 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.

4.7 The Parties shall endeavor to number each exhibit page separately and consecutively using Bates numbering during the procedure. In any event, such numbering shall be included before the Hearing.

4.8 Unless otherwise provided, all time limits shall refer to midnight at the place where counsel for the Parties are located (New York for Claimant and Washington D.C. for Respondent) on the day of the deadline. If the deadline for a submission falls on a Saturday, a Sunday, or a public holiday observed at the place where counsel for the Parties are located, then the submission shall be due before the close of business on the next subsequent business day.

4.9 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 becomes 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 applicable time limit.

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.

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 2** (modified 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.

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

5.4 The Parties shall not copy the Tribunal or the PCA on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the Parties in response to document production requests shall only form part of the evidentiary record if a Party subsequently submits them as exhibits to its written submissions or upon authorization of the Tribunal after the exchange of submissions.

5.5 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.

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, exhibits, legal authorities and all other evidence and authority in whatever form.
- 6.3 In the Reply and Rejoinder, such evidence shall only be submitted in support of the factual or legal arguments advanced in rebuttal to the other side's prior written submission or in relation to new evidence arising from 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 a reasoned request justifying why such documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.
- 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. Any exhibit translations shall be appended to the original exhibit.
- 6.6 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.
- 6.7 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.
- 6.8 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (*i.e.*, in Excel format rather than PDF) and shall be submitted in electronic form only, unless a hard copy is so requested by the Tribunal.
- 6.9 Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal in hard copy.

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, if the Tribunal grants such leave, in accordance with its directions.
- 7.3 Each witness statement shall contain at least the following:
- (a) the name, date of birth, and present address of the witness;
 - (b) a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
 - (c) a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
 - (d) a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
 - (e) the signature of the witness.
- 7.4 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.
- 7.5 Any issues relating to the testimony of witnesses at an oral hearing shall be addressed by the Tribunal in a subsequent pre-hearing procedural order, after consultation with the Parties.

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 It shall not be improper for counsel to meet with experts and potential experts to discuss the expert reports and the examinations.
- 8.4 Any issues relating to the testimony of experts at an oral hearing shall be addressed by the Tribunal in a subsequent pre-hearing procedural order, after consultation with the Parties.
- 8.5 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall determine whether it intends to appoint any experts as soon as possible, and preferably within a reasonable period after receiving the parties' first round of submissions relating to the relevant issue. 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.

10. Closure of Proceedings

10.1 The Tribunal shall periodically report on its progress towards reaching an award after the last submission of the Parties.

11. Confidentiality/Transparency

11.1 The PCA shall publish the existence of the arbitration and the names of the Parties, counsel representing the Parties and the members of the Tribunal on its website. The PCA shall provide a draft of the contents of any webpage relating to the arbitration to the Tribunal and the Parties for their approval prior to publication on its website.

11.2 Hearings shall be held in camera and transcripts shall remain confidential unless the parties agree otherwise.

11.3 The PCA shall make available to the public all submissions filed by the Parties, excluding accompanying documents. Before their publication, each Party may redact the documents to exclude any confidential information, including information whose disclosure could jeopardize the conduct of a fair and efficient arbitration. Any information provided by a Party which has been designated as confidential by that Party shall be kept confidential and treated as confidential, unless the Tribunal, at the request of the other Party, determines that it shall not be redacted. The Parties may also publish the uncontested or Tribunal's approved version of the submissions through their respective websites.

11.4 The PCA shall publish the Tribunal's decisions or procedural orders on its website in accordance with the following procedure:

(a) Within 30 calendar days after its issuance, the Parties will agree on any redactions to the decision or procedural order in question. Once there is an agreement the decision or procedural order will be published.

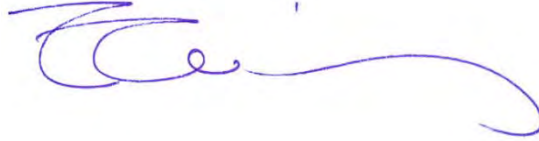
(b) If no agreement is reached, the Parties will submit, within 45 calendar days after its issuance, to the Tribunal their proposed redactions to the document together with the Parties' views on them.

(c) No later than 60 calendar days after its issuance, the Tribunal will notify the public version of the document to the Parties and the PCA for its publication.

11.5 Awards may be made public with the consent of all Parties.

11.6 If the parties cannot agree to the publication of an award, the Tribunal may prepare an executive summary of the proceedings. Before issuance of this document, the Tribunal will consult with the Parties. The Tribunal will remain constituted for the purpose of making any decision with respect to this paragraph.

So ordered by the Tribunal.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke ending in a small hook.

On behalf of the Tribunal

Annex 1: Procedural Calendar

<u>Event</u>	<u>Date</u>
First Procedural Meeting	15 May 2017
Claimant's Statement of Claim, including the Claimant's Response to the Respondent's Request for Bifurcation	14 August 2017
Respondent's Statement of Defense, including all objections to the Tribunal's jurisdiction and counterclaims, as well as the Respondent's Reply on Bifurcation	12 December 2017
Tribunal's Decision on whether to hold a hearing on bifurcation	22 December 2017
Hearing on Bifurcation (if any)	Any day between 11-19 January 2018
Tribunal's Decision on Bifurcation and Further Procedural Calendar (if no hearing is held)	11 January 2018
Tribunal's Decision on Bifurcation and Further Procedural Calendar (if a hearing is held)	31 January 2018

Annex 2: 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			