

BEFORE THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Freeport McMoRan Inc. on its Own Behalf and on Behalf of
Sociedad Minera Cerro Verde S.A.A.,**
Claimant,

v.

Republic of Perú,
Respondent.

ICSID Case No. ARB/20/8

Request for Interpretation of the Award

March 18, 2026

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1. Pursuant to Article 50 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”) and Rule 50 of the Rules of Procedure for Arbitration Proceedings, entered into force as of April 10, 2006 (“ICSID Arbitration Rules”), the Republic of Perú, (“Applicant” or “Respondent”) hereby submits this Request for Interpretation (“Request”) of the arbitral award rendered on May 17, 2024 in the matter of *Freeport-McMoRan Inc. v. Republic of Perú*, ICSID Case No. ARB/20/8 (the “Award”).

I. INTRODUCTION

2. This Request concerns a discrete issue on which a dispute has arisen between Respondent and Freeport-McMoRan Inc on its own behalf and on behalf of Sociedad Minera Cerro Verde S.A.A. (“Claimant” or “Freeport”)¹ regarding the interpretation of the Award. Respondent seeks the Tribunal’s decision on the interpretation of the disputed issue in order to ensure the proper implementation of the Award.

3. The Parties’ dispute concerns the interpretation of the Award with respect to whether the Tribunal found that it had jurisdiction over Claimant’s claims concerning penalties and interest on the Royalty Assessments. Respondent reads the Award as determining that the Tribunal lacked jurisdiction to hear Claimant’s claims concerning penalties and interest, including those related to the Royalty Assessments. Claimant has advanced a conflicting interpretation in the annulment proceeding it initiated in December 2024, in which it seeks the partial annulment of the Award (the “Annulment Proceeding”). In the Annulment Proceeding, Claimant argues that the Tribunal upheld jurisdiction over its claims concerning penalties and interest on the Royalty Assessments but allegedly failed to address those claims on the merits. With the completion of

¹ Capitalized terms not defined in this Application have the same meaning as in the previous pleadings that Respondent submitted in this arbitration.

two rounds of pleadings in the Annulment Proceeding, the dispute between the Parties on the interpretation of the Award has crystallized and the question, in which the parties have a conflicting view, has been clearly defined. Respondent now submits the present Request seeking the Tribunal's interpretation of that disputed question.

4. Respondent seeks the Tribunal's decision as to the proper interpretation of the Award. Such decision is necessary in order to ensure a common understanding of the Award and to resolve the Parties' conflicting views regarding its scope and effect.

5. The Tribunal is already familiar with the issues addressed in the Award, and the Parties' respective positions in the Annulment Proceeding are reflected in their submissions in those proceedings attached to this Request.² Accordingly, Respondent respectfully submits that the Tribunal may determine this Request on an expedited basis, without the need for a hearing.

6. Finally, Respondent notes that the Annulment Proceeding is pending before an *ad hoc* committee, with a hearing scheduled to take place from May 5-6, 2026. For the sake of transparency, Respondent informs the Tribunal that it intends to request the suspension of the Annulment Proceeding pending the Tribunal's decision on the present Request for Interpretation, as the interpretation sought in this Request bears directly on the issues raised in the Annulment Proceeding.

II. PROCEDURAL HISTORY

7. The Tribunal is well acquainted with the factual and procedural background of the dispute. For ease of reference, Respondent provides below a succinct overview of the issues and

² See **Annex A**, Claimant's Application for Partial Annulment, September 16, 2024 ("Application for Partial Annulment"); **Annex B**, Applicant's Memorial on Annulment, May 23, 2025 ("Memorial on Partial Annulment"); **Annex C**, Respondent's Counter-Memorial on Partial Annulment, September 16, 2025 ("Counter-Memorial on Partial Annulment"); **Annex D**, Applicant's Reply on Annulment, December 12, 2025 ("Reply on Partial Annulment"); **Annex E**, Respondent's Rejoinder on Partial Annulment, February 24, 2026 ("Rejoinder on Partial Annulment").

claims submitted to the Tribunal, the Tribunal’s decisions in the Award, and actions taken by Claimant in the Annulment Proceeding.

A. THE DISPUTE

8. The dispute submitted to ICSID arose from disagreements between Freeport and the Republic of Perú regarding the scope of a mining stabilization agreement entered into on February 13, 1998, between Claimant’s Peruvian subsidiary, Sociedad Minera Cerro Verde S.A.A. (“SMCV”), and Peru’s Ministry of Energy and Mines (“MINEM”) (the “Stabilization Agreement” or “Agreement”).³ The Agreement was executed pursuant to Title Nine of the Single Unified Text of the General Mining Law (*Texto Único Ordenado de la Ley General de Minería*) and its Regulations.⁴

9. Claimant alleged that the Stabilization Agreement granted broad and open-ended stability guarantees covering all present and future activities conducted within a mining concession or “mining unit.”⁵ On that basis, Claimant argued that the Stabilization Agreement covered not only the Leaching Project—the project for which the Agreement had been entered into—but also the Concentrator Project developed several years later.⁶

10. Beginning in 2009, Perú’s tax authority, the *Superintendencia Nacional de Administración Tributaria* (“SUNAT”), issued Tax and Royalty Assessments to SMCV on the basis that the Stabilization Agreement did not extend to the Concentrator Project. SUNAT also assessed penalties and interest on the unpaid taxes and royalties.⁷ SMCV challenged those

³ See *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/08, Award, May 17, 2024 (“Award”), at paras. 5-6.

⁴ See Award at paras. 157-59, 164-66.

⁵ Award at paras. 649-54.

⁶ See Claimant’s Memorial, October 19, 2021 (“Claimant’s Memorial”), at paras. 300-57; Claimant’s Reply and Counter-Memorial on Jurisdiction, September 13, 2022 (“Claimant’s Reply”), at paras. 93, 120-21.

⁷ See Award at paras. 342-43.

assessments before the domestic authorities and, in the alternative, requested that SUNAT waive the penalties and interest associated with the assessments on the basis of alleged “reasonable doubt” regarding the interpretation of the Mining Law pursuant to Article 170 of the Peruvian Tax Code.⁸

11. In the arbitration, Freeport advanced both principal and alternative claims arising out of Perú’s Tax Assessments, Royalty Assessments, and associated penalties and interest in connection with the Concentrator Project.⁹ Freeport’s case was premised on its interpretation that the Stabilization Agreement extended beyond the Leaching Project and covered the Concentrator Project as well.¹⁰

12. Freeport’s principal claims were framed both as claims for breach of the Stabilization Agreement and as treaty claims under Article 10.5 of the United States–Peru Trade Promotion Agreement (“TPA”).¹¹ Freeport alleged that Perú breached the Stabilization Agreement by denying stability guarantees to products produced by the Concentrator and by issuing Tax and Royalty Assessments on that basis.¹² Freeport further alleged that Perú breached Article 10.5 of the TPA by, *inter alia*, frustrating Claimant’s alleged legitimate expectations, acting arbitrarily and inconsistently, and denying due process in the domestic proceedings concerning certain Royalty Assessments.¹³

⁸ See Award at paras. 352, 364, 368-69, 372-77. See also Claimant’s Memorial at para. 213; Claimant’s Reply at paras. 138, 179-82.

⁹ See Award at Section I.C.

¹⁰ See Claimant’s Memorial at paras. 300-57; Claimant’s Reply at paras. 93, 120-21.

¹¹ See Award at paras. 623, 632-44; 831, 835-37.

¹² See Award at paras. 623, 632-44; Claimant’s Memorial at paras. 241, 300-57; Claimant’s Reply at paras. 70-83, 120-21.

¹³ See Award at paras. 831, 835-37; Claimant’s Memorial at paras. 22, 358, 368-77, 384-99; Claimant’s Reply at paras. 163-74; 231-34.

13. Freeport also advanced alternative claims under Article 10.5 of the TPA. Freeport argued that, even if the underlying Tax and Royalty Assessments were valid, Perú acted unlawfully by refusing to waive the penalties and interest imposed in connection with those assessments.¹⁴ Freeport relied on the alleged existence of “reasonable doubt” under Article 170 of the Peruvian Tax Code and contended that Perú was required to waive penalties and interest because the applicable legal framework was, in its view, ambiguous.¹⁵ Freeport also advanced additional alternative claims relating to certain mining levy payments and the alleged application of a non-stabilized regime to assets and activities that, according to Claimant, should have benefited from stability protections.¹⁶ Of particular relevance to this Application is Freeport’s alternative claim concerning penalties and interest associated with the Tax and Royalty Assessments.

14. Perú disputed Freeport’s claims on both jurisdictional and substantive grounds. As a threshold matter, Perú raised several jurisdictional objections under the TPA, including that certain claims were time-barred, that others were based on acts predating the treaty’s entry into force, and that some claims had already been submitted to domestic fora.¹⁷ Perú further argued that claims relating to penalties and interest on Tax Assessments fell within the Treaty’s carve-out for taxation measures established in Article 22.3.1.¹⁸ Perú’s jurisdictional objections did not address the claims related to penalties and interest associated with the Royalty Assessments. This issue was, however, addressed at the hearing on jurisdiction and merits held on May 1-12, 2023.

¹⁴ See Award at paras. 967-73; Claimant’s Memorial at paras. 202-13, 413-16; Claimant’s Reply at paras. 179-84, 196, 201.

¹⁵ See Claimant’s Memorial at paras. 202-13, 403; Claimant’s Reply at paras. 179-84, 196.

¹⁶ See Award at paras. 987-992.

¹⁷ See Award at paras. 457-77; 554-63; 585-92; 610-21.

¹⁸ See Award at paras. 526-31.

15. On the merits, Perú rejected Freeport’s interpretation of the Stabilization Agreement and maintained that the stability guarantees granted under that Agreement applied exclusively to the Leaching Project identified in the feasibility study on which the Agreement was entered into.¹⁹ According to Perú, the Concentrator Project—developed years later—fell outside the scope of the Stabilization Agreement, and SUNAT therefore acted consistently with Peruvian law in issuing the Tax and Royalty Assessments.

16. Perú also disputed Freeport’s treaty claims under Article 10.5 of the TPA, contending that the measures challenged by Claimant were consistent with the applicable legal framework and did not frustrate any legitimate expectations, nor were they arbitrary, inconsistent, or lacking in due process.²⁰

17. Finally, Perú rejected Freeport’s alternative claim concerning penalties and interest, arguing that the conditions for a waiver under Article 170 of the Peruvian Tax Code were not satisfied and that the domestic authorities had acted properly in declining to grant such relief.²¹

B. THE AWARD

18. Upon completion of the merits phase of the proceedings, on May 17, 2024, the Tribunal issued its Award, deciding:

- a. The Tribunal has jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest;**
- b. The Claimant’s claims are rejected in their entirety;**
- c. Each Party shall bear its own costs and half of the arbitration costs;**

¹⁹ See Award at paras. 680-92.

²⁰ See Award at paras. 843-58; 885-92; 909-19; 940-48; 993-98.

²¹ See Award at paras. 974-84.

d. All other claims and pleas for relief are rejected.²²

19. The Tribunal ultimately dismissed Claimant's claims as set out in its determinations in the *dispositif* of the Award.

20. Relevant to the present Request are the Tribunal's findings concerning Claimant's alternative claims relating to Perú's failure to waive penalties and interest associated with the Tax Assessments and the Royalty Assessments.

21. The majority of the Tribunal addressed in paragraphs 526 through 553 of the Award Respondent's jurisdictional objection concerning claims related to penalties and interest associated with Tax Assessments.²³ The Tribunal concluded that "Claimant's claims under Article 10.5 of the TPA for the Tax Assessments' penalties and interest assessed against SMCV [were] not within the jurisdiction of the Tribunal as they constitute '*taxation measures*' excluded by Article 22.3.1 of the TPA."²⁴

22. Then, in paragraphs 967 through 986 of the Award, the majority of the Tribunal addressed Claimant's alternative claim concerning Perú's failure to waive the assessment of penalties and interest against SMCV.²⁵ After summarizing the Parties' arguments, the Tribunal concluded in paragraph 986 the following:

The Tribunal has found that penalties and interest constitute "*taxation measures*" within the meaning of Article 22.3.1 of the TPA (see above, paras. 540 *et seq.*). The Tribunal has therefore no jurisdiction to decide on the merits of the Claimant's claim based on the Respondent's alleged violation of Article 10.5 of the TPA in relation to the Respondent's assessment of penalties and interest. During the Hearing, evidence was taken with regard to Article 170 of the Peruvian Tax Code and the waiver requirements. However,

²² Award at para. 1047 (emphasis in original).

²³ See Award at paras. 526-53.

²⁴ Award at para. 553 (emphasis in original).

²⁵ See Award at paras. 967-86.

this was done without prejudice to the Tribunal's decision on jurisdiction.¹⁶⁰¹

¹⁶⁰¹ Hearing Transcript, Day 9, p. 2592, lines 6-9.²⁶

C. POST-AWARD PROCEEDINGS - CLAIMANT'S APPLICATION ON PARTIAL ANNULMENT

23. On September 16, 2024, Claimant filed an application for partial annulment.²⁷ The gist of Claimant's Application is that the Tribunal found jurisdiction over the claims relating to penalties and interest on the Royalty Assessments but failed to decide them on the merits. According to Claimant, the Award should be annulled on three grounds. *First*, Claimant contends that the Tribunal manifestly exceeded its powers by failing to decide on the merits claims that were allegedly within its jurisdiction, including, in particular, Freeport's claims relating to penalties and interest on the Royalty Assessments.²⁸ *Second*, Claimant claims that the Tribunal failed to state reasons in rejecting Freeport's claims relating to penalties and interest on the Royalty Assessments.²⁹ *Third*, Claimant argues that the Tribunal's alleged failure to address those claims constitutes a serious departure from a fundamental rule of procedure.³⁰

24. On December 12, 2024, ICSID notified the Parties that an *ad hoc* Committee had been constituted, composed of Sir Christopher Greenwood (President), Ms. Carita Wallgren-Lindholm, and Mr. José Antonio Moreno Rodríguez, and that the Annulment Proceeding was deemed to have begun on that date.

²⁶ Award at para. 986 (emphasis in original).

²⁷ See **Annex A**, Application for Partial Annulment.

²⁸ See **Annex A**, Application for Partial Annulment at paras. 43-48.

²⁹ See **Annex A**, Application for Partial Annulment at paras. 49-54.

³⁰ See **Annex A**, Application for Partial Annulment at paras. 55-60.

25. On January 27, 2025, the Committee held the first session by video conference. On February 12, 2025, the Committee issued Procedural Order No. 1 concerning procedural matters.

26. On May 23, 2025, Claimant filed its Memorial on Annulment.³¹ On September 16, 2025, Respondent filed its Counter-Memorial on Partial Annulment.³²

27. On November 7, 2025, the Annulment Proceeding was suspended following the resignation of Committee member Mr. José Antonio Moreno Rodríguez in light of an alleged conflict of interest raised by Claimant's counsel related to their interactions with Mr. Moreno. The Committee was reconstituted on December 8, 2025, with the appointment of Ms. Dyalá Jiménez to fill the vacancy left by Mr. Moreno.

28. On December 12, 2025, Claimant filed its Reply on Annulment.³³ Respondent filed its Rejoinder on Annulment on February 24, 2026.³⁴

29. With both Parties having submitted all pleadings in the Annulment Proceeding, the dispute between the Parties regarding the interpretation of the Award crystallized, giving rise to the present Request for Interpretation.

III. OVERVIEW OF THE REQUEST FOR INTERPRETATION

A. APPLICABLE LEGAL FRAMEWORK

30. The present Request is made pursuant to Article 50 of the ICSID Convention, which provides as follows:

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

³¹ See **Annex B**, Memorial on Partial Annulment.

³² See **Annex C**, Counter-Memorial on Partial Annulment.

³³ See **Annex D**, Reply on Partial Annulment.

³⁴ See **Annex E**, Rejoinder on Partial Annulment.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.³⁵

31. The requirements for a Request for Interpretation are set forth in Rule 50(1) of the ICSID Arbitration Rules as follows:

(1) An application for the interpretation, revision or annulment of an award shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the application;

(c) state in detail: (i) in an application for interpretation, the precise points in dispute . . .

(d) be accompanied by the payment of a fee for lodging the application.³⁶

32. Further, Rule 53 of the ICSID Arbitration Rules provides: “The provisions of these Rules shall apply *mutatis mutandis* to any procedure relating to the interpretation, revision or annulment of an award and to the decision of the Tribunal or Committee.”³⁷

33. Based on these provisions, the *Wena Hotels* tribunal summarized the requirements for an ICSID Article 50 post-award interpretation as follows: (i) there must be a dispute between the parties over “the meaning or scope” of the award;³⁸ (ii) “the purpose of the application must

³⁵ CA-22, ICSID Convention, Regulations and Rules (2006), ICSID Convention, Art. 50.

³⁶ CA-22, ICSID Convention, Regulations and Rules (2006), ICSID Arbitration Rules, Rule 50(1).

³⁷ CA-22, ICSID Convention, Regulations and Rules (2006), ICSID Arbitration Rules, Rule 53.

³⁸ RA-177, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application by Wena Hotels Ltd. for Interpretation of the Arbitral Award, October 31, 2005, at para. 76.

be to obtain a true interpretation of the award,” rather than to reopen the matter;³⁹ and (iii) the requested interpretation “must have some practical relevance to the Award’s implementation.”⁴⁰

34. All three of the above-listed requirements are met in this case.

35. *First*, there is a dispute between Claimant and Respondent over “the meaning or scope” of the Award. As explained further below, and as Respondent explains at length in the Annulment Proceeding, Respondent is of the view that the Tribunal did not assert jurisdiction over Claimant’s claims relating to penalties and interest on both the Tax Assessments and the Royalty Assessments; it concluded that all of Claimant’s penalties and interest claims were excluded as “taxation measures.”⁴¹ On the other hand, Claimant alleges that the Tribunal upheld jurisdiction over its penalties and interest claims on the Royalty Assessments and failed to address them on the merits.⁴²

36. *Second*, the purpose of Respondent’s Request is to obtain a true interpretation of the Award on one single and discrete issue: namely, whether the Award establishes that the Tribunal lacked jurisdiction over all of Claimant’s claims concerning penalties and interest, and whether, as a consequence, it was not necessary to consider those claims on the merits.

37. *Third*, the Request for Interpretation has practical relevance to the Award’s implementation. Article 53 of the ICSID Convention provides that the Tribunal’s decision interpreting the Award forms part of its binding effect on the parties and is relevant for the Award’s

³⁹ **RA-177**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application by Wena Hotels Ltd. for Interpretation of the Arbitral Award, October 31, 2005, at para. 76.

⁴⁰ **RA-177**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application by Wena Hotels Ltd. for Interpretation of the Arbitral Award, October 31, 2005, at para. 88.

⁴¹ See *infra* paras. 39-44. See also **Annex C**, Counter-Memorial on Partial Annulment, at Section II.C.2(a); **Annex E**, Rejoinder on Partial Annulment, at Section II.B.1 and III.B.

⁴² See *infra* para. 45. See also **Annex B**, Memorial on Partial Annulment, at Sections III.A and III.C; **Annex D**, Reply on Partial Annulment, at Sections II and III.B.

recognition and enforcement. The interpretation of the Award on the disputed issue is manifestly relevant as the disputed issue is at the core of Claimant's alleged grounds for annulment of the Award.

B. THE DISPUTE BETWEEN THE PARTIES ON THE INTERPRETATION OF THE AWARD

38. There is a dispute between the Parties on the interpretation of the Award regarding whether the Tribunal had or did not have jurisdiction over Claimant's penalties and interest claims on the Royalty Assessments.

39. As Respondent explained in its Rejoinder on Annulment, the reasoning of the Tribunal is clear in this regard: the Tribunal indicates that Claimant's penalties and interest claims on the Royalty Assessments were dismissed for lack of jurisdiction. The relevant reasoning of the Award may be summarized as follows.

40. *First*, in the jurisdictional section of the Award, the Tribunal framed the issue as follows: "Are Claimant's claims based on penalties and interest outside of the Tribunal's jurisdiction because they constitute '*taxation measures*' which are excluded from the scope of the TPA under Article 22.3.1 of the TPA?"⁴³ In posing that question, the Tribunal did not distinguish between penalties and interest arising from the Tax Assessments and those arising from the Royalty Assessments.

41. *Second*, the Tribunal then conducted a detailed analysis beginning in paragraph 540 of the Award examining the ordinary meaning of "taxation measures," the context of Article 22.3.1, and the object and purpose of the TPA.⁴⁴ Applying the VCLT, the Tribunal interpreted the term "taxation measures" and concluded that "taxation" is broader than "tax."⁴⁵

⁴³ Award at para. 455.b (emphasis added).

⁴⁴ See Award at paras. 540 *et seq.*

⁴⁵ Award at paras. 545-47. See also **Annex C**, Counter-Memorial on Partial Annulment, at para. 184.

42. *Third*, relying on investment treaty jurisprudence and the purpose of the TPA, the Tribunal found that the term “taxation” could encompass not only taxes *stricto sensu*, but it could also broadly encompass laws, regulations, procedures, requirements, or other practices related to revenue-generating actions within a State’s authority—including enforcement mechanisms such as penalties and interest.⁴⁶

43. On that basis, the Tribunal concluded that penalties and interest—though not classified as taxes under Peruvian law—are nonetheless integral components of Perú’s domestic tax regime and qualify as “taxation measures” under the TPA.⁴⁷ Accordingly, the Tribunal determined in paragraph 553 of the Award that Claimant’s claims under Article 10.5 of the TPA concerning penalties and interest on SMCV’s Tax Assessments were excluded from its jurisdiction pursuant to the carve-out in Article 22.3.1.

44. Respondent understands this reasoning to apply generally to penalties and interest as taxation measures, irrespective of whether they arose from the Tax Assessments or the Royalty Assessments. In paragraph 986, the Tribunal reaffirmed that penalties and interest, in general, qualify as “taxation measures,” and thus fall outside its jurisdiction.⁴⁸ Crucially, when doing so, the Tribunal made no distinction between the Tax and Royalty Assessments.⁴⁹ Paragraph 986 serves as the conclusion to a section addressing Claimant’s “claims that the Respondent violated Article 10.5 of the TPA each time it failed to waive the penalties and interest assessments against SMCV for the Royalty and Tax Assessments.”⁵⁰ Respondent also understands that the Tribunal’s

⁴⁶ See Award at para. 547. See also **Annex C**, Counter-Memorial on Partial Annulment, at para. 185.

⁴⁷ See Award at para. 214. See also **Annex C**, Counter-Memorial on Partial Annulment, at para. 194.

⁴⁸ See Award at para. 986. See also **Annex C**, Counter-Memorial on Partial Annulment, at paras. 192-93.

⁴⁹ See Award at para. 986. See also **Annex C**, Counter-Memorial on Partial Annulment, at paras. 192-93.

⁵⁰ See Award at para. 967 (emphasis added).

statement in the *dispositif* that “[it] [had] jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest”⁵¹ does not reflect any contradiction but is an inadvertent omission, or a mere typographical or clerical error, not an error of substance. The absence of an explicit reference in the *dispositif* to the Tribunal’s lack of jurisdiction over claims concerning penalties and interest on the Royalty Assessments does not negate or cancel out the conclusions reached in the jurisdiction and merits sections of the Award. For this reason, and because the effect of the Award would be the same regardless of a correction, there was no need for Respondent to request a correction of the Award under Article 49(2) of the ICSID Convention.

45. Claimant, however, advances a different interpretation. In the Annulment Proceeding, Claimant alleges that the Award’s plain text confirms that the Tribunal upheld jurisdiction over Freeport’s claims on penalties and interest on the Royalty Assessments and yet failed to consider these claims on the merits.

46. If Claimant truly believed that the Tribunal had failed to decide on the merits Claimant’s alternative claim on penalties and interest on the Royalty Assessments, it should have raised this issue with the Tribunal. As Respondent explained in its Rejoinder on Annulment, however, Claimant failed to seek clarification and/or supplementation of the Award under Articles 49(2) or 50 of the ICSID Convention—a remedy that was available at the time the Award was rendered to address alleged omissions.⁵² Article 49(2) expressly provides that a tribunal may “decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award,” upon the request of any party made “within 45 days

⁵¹ Award at para. 1047.a.

⁵² See **Annex C**, Counter-Memorial on Partial Annulment, at para. 258.

after the date on which the award was rendered.”⁵³ The drafting history of the ICSID Convention confirms that the drafters considered that the proper recourse to address a tribunal’s failure to rule on every issue presented was not annulment but a different remedy similar to a supplemental review.⁵⁴ By seeking annulment rather than requesting from the Tribunal a supplementation of the Award under Article 49(2) when Claimant was well aware of the views of the Tribunal, Claimant abused the annulment process under the ICSID Convention.⁵⁵

C. REQUESTED INTERPRETATION

47. Respondent respectfully requests that the Tribunal confirm that: (i) the Tribunal determined that claims relating to penalties and interest (both arising out of the Tax Assessments and the Royalty Assessments) constitute taxation measures within the meaning of Article 22.3.1 of the TPA; and (ii) on that basis, the Tribunal dismissed Claimant’s claims relating to penalties and interest (arising out of both the Tax Assessments and the Royalty Assessments) on jurisdictional grounds.

⁵³ **CA-22**, ICSID Convention, Regulations and Rules (2006), ICSID Convention, Art. 49(2) (emphasis added) (“(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.”).

⁵⁴ See **RA-178**, ICSID, History of the ICSID Convention: Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Vol. II-2 (1968) (excerpt), at p. 849 (“Mr. BROCHES (Chairman) . . . Whereupon a vote was taken on the question whether arbitrators should be required to rule on every issue presented, with 32 delegates voting in the affirmative and none against. The meeting then voted on the question whether a failure to comply with this duty would give the parties the right to seek annulment and the motion was defeated by 8 to 6. Thirty delegations, however, then voted in favor of there being some kind of remedy where the Tribunal has failed to discharge its duty. A majority of 32 to none then indicated that the remedy should be in the nature of a supplemental review which was not identical with the revision of the award, and the Chairman announced that the Secretariat would try and prepare a draft provision giving effect to the sense of the meeting.”).

⁵⁵ See **Annex C**, Counter-Memorial on Partial Annulment, at paras. 277-78 and **Annex E**, Rejoinder on Partial Annulment, at Section V.A.

IV. COSTS

48. Respondent respectfully submits that Claimant should bear the costs associated with this interpretation proceeding, including Respondent's legal and other expenses incurred in connection with this Request. The need for this Request arises from Claimant's decision to complicate the matter by initiating annulment proceedings rather than referring the issue to the Tribunal through the more straightforward procedure available under Articles 49(2) and 50 of the ICSID Convention, as explained above. Respondent has therefore been required to seek an interpretation from the Tribunal to ensure the proper understanding and implementation of the Award.

49. Respondent reserves its position with respect to the allocation of costs in the annulment proceeding, which is a separate matter to be addressed in that forum.

V. REQUEST FOR RELIEF

50. Respondent respectfully requests that the Tribunal issue its interpretation as to the Award as follows:

- i. Confirm that the Award, including, in particular, paragraphs 553, 986, and 1047, determined that Claimant's claims relating to penalties and interest on both the Tax Assessments and the Royalty Assessments constitute taxation measures excluded from the Tribunal's jurisdiction under Article 22.3.1 of the TPA;
- ii. Confirm that Claimant's claims relating to penalties and interest on the Royalty Assessments were dismissed on jurisdictional grounds;
- iii. Confirm that the Tribunal's statement in the *dispositif* that "[it] [had] jurisdiction over the Claimant's claims except for the Claimant's claims based on the disputed Tax Assessments' penalties and interest"⁵⁶ is an inadvertent omission, or a mere typographical error, and cannot be read as negating or overriding the conclusions reached in the jurisdiction and merits sections of the

⁵⁶ See Award at para. 1047.a.

Award over claims concerning penalties and interest on the Royalty Assessments; and

- iv. Order Claimant to bear all costs and expenses related to this interpretation proceeding, including ICSID's fees, and Perú's legal representation costs.

51. Respondent respectfully requests that this Request for Interpretation be decided by the original Tribunal, *i.e.*, a tribunal composed of the same arbitrators.

52. Respondent reserves its right to add to, reformulate, and expand upon the grounds above and file further submissions, authorities, and exhibits as needed in due course. We expect that the Tribunal will be able to address this matter expeditiously, without the need for a hearing, and render the decision within a short period of time.

Respectfully submitted,



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