

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
Interpretation Proceeding

Respondent's Reply on the Application for Interpretation of the Award

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1. The Republic of Perú (“Applicant” or “Respondent”) hereby submits this Reply (“Reply”) on its 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”). This Reply is submitted pursuant to the procedural calendar established by the Tribunal in Annex B of Procedural Order No. 1, in response to the Counter-Memorial on the Application for Interpretation submitted by Freeport-McMoRan Inc. on its own behalf and on behalf of Sociedad Minera Cerro Verde S.A.A. (“Claimant” or “Freeport”).¹

I. INTRODUCTION

2. Claimant’s Counter-Memorial confirms that the Parties are in dispute over the interpretation of the Award. The Parties’ dispute concerns whether the Tribunal found that it had jurisdiction over Claimant’s claims concerning penalties and interest on the Royalty Assessments. Perú’s Request is based on the language and reasoning of the Award in its entirety, including its *dispositif*.

3. Respondent reads the Award as determining that the Tribunal lacked jurisdiction to hear all of Claimant’s claims concerning penalties and interest on assessments, including those related to the Royalty Assessments. Perú’s Request is narrow. It asks the Tribunal to confirm one thing: that the Award dismissed Claimant’s claims for penalties and interest on the Royalty Assessments on jurisdictional grounds. Indeed, the Tribunal’s reasoning in paragraphs 455(b), 540 et seq., 553, and 986 makes this clear. The Tribunal (i) framed the jurisdictional question broadly to determine whether penalties and interest on the assessments fall outside of the Tribunal’s jurisdiction because they constitute “*taxation measures*”; (ii) analyzed that question; and (iii) ultimately concluded that it lacked jurisdiction over such claims. Claimant, on the other hand, has advanced a conflicting interpretation in the annulment proceeding in which it seeks to partially annul the Award, claiming that the Tribunal upheld jurisdiction over its claims on penalties and interest on the Royalty Assessments but did not address those claims on the merits.

4. Claimant’s Counter-Memorial strains to have Perú’s Request dismissed on admissibility grounds. Under the well-established *Wena Hotels* standard, a request for interpretation is admissible where (i) there is a genuine dispute as to the award’s meaning or scope,

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

(ii) the request seeks a true interpretation rather than a reopening of the case, and (iii) the interpretation has practical consequences. Perú's Request satisfies each requirement, and Claimant's contrary arguments fail at every turn.

5. Claimant's threshold objection—that no genuine dispute exists—is refuted by Claimant's own conduct. In the annulment proceeding it initiated in September 2024, in which it seeks the partial annulment of the Award (the "Annulment Proceeding"), Freeport's case turns on the proposition that the Tribunal found it had jurisdiction over Claimant's claims for penalties and interest on the Royalty Assessments but failed to decide those claims on the merits. Perú's position is the opposite: the Tribunal found that it lacked jurisdiction to hear Claimant's claims on penalties and interest including with respect to the Royalty Assessments and, thus, did not need to decide those claims on the merits. Two parties, reading the same award, reach irreconcilable conclusions about what that award determined. That is the textbook definition of a dispute as to the "meaning or scope" of an award, which Article 50 of the ICSID Convention is intended to address.

6. Claimant also asserts that no interpretation is warranted, because the disagreement concerns a question the Tribunal never decided. But that framing highlights the very point in dispute. Whether the Tribunal decided Claimant's penalties-and-interest claims on the Royalty Assessments is precisely the issue about which the Parties disagree—and determining "whether a certain point has or has not been settled with binding force in the decision"² is the essence of the interpretive function. Claimant and Respondent read the Award in two different ways: according to Perú, the Tribunal's unqualified holding that penalties and interest constitute excluded "taxation measures," disposes of those claims in their entirety; according to Claimant, the Tribunal found it had jurisdiction but did not decide them on the merits, and thus left Claimant's claims on penalties and interest on the Royalty Assessments undecided. Only one reading is correct, and Respondent requests this Tribunal to decide which. Claimant cannot defeat this Request for Interpretation by simply asserting its own reading of the Award and declaring the matter closed.

7. Across dozens of paragraphs of the Counter-Memorial, Freeport argues at length about what the Tribunal did and did not decide concerning penalties and interest on the Royalty

² **Exhibit CLAI-3**, *Case concerning the delimitation of continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Decision, March 14, 1978 ("Continental Shelf (France v. United Kingdom), Decision"), at p. 295.

Assessments. That extended argument is not a demonstration that there is nothing to interpret—instead, it demonstrates that there is a genuine dispute between the Parties regarding the meaning and scope of the Award to be resolved under Article 50 of the ICSID Convention.

8. Claimant next contends that interpretation would serve no purpose, because the Award is destined to be annulled in any event. The argument is as revealing as it is improper. In effect, Claimant tells this Tribunal that its Award is so irredeemably flawed that no interpretation could save it and that the Tribunal should therefore decline to exercise its function at all. Perú rejects that premise in the strongest terms. There is simply no basis for Claimant’s assertion, and Claimant cannot know what the *ad hoc* Committee will decide. More importantly, the Award, as interpreted by Perú, is logical, consistent, and complete and, thus, does not contain annulable errors. Therefore, the Tribunal’s interpretation is likely to have material impact on Claimant’s annulment claims.

9. In any case, the Tribunal’s mandate under Article 50 of the ICSID Convention—to resolve the Parties’ dispute by stating what the Award means—exists independently of the Annulment Proceeding and is in no way displaced by it. The *ad hoc* Committee will decide whether grounds for annulment exist; this Tribunal, and this Tribunal alone, however, is competent to decide Perú’s Request. Whatever Claimant may argue before the Committee, a live and concrete dispute over the meaning of the Award exists, and it is properly before this Tribunal to resolve.

10. Claimant’s arguments on the merits of Perú’s Request are equally flawed. Claimant focuses its arguments on a single sentence of the *dispositif* (paragraph 1047(a)) while ignoring everything else in the Award. But the *dispositif* does not stand alone. The Tribunal framed the jurisdictional question under Article 22.3.1 of the TPA broadly in paragraph 455(b), analyzed the meaning of “taxation measures” in paragraphs 540 et seq., and concluded—as part of a discussion that expressly included both Tax and Royalty Assessments—that penalties and interest on assessments constitute “taxation measures” over which the Tribunal had no jurisdiction (paragraph 986). Read against that reasoning, the *dispositif*’s failure to refer specifically to the Royalty Assessments is, at most, an inadvertent drafting omission; it cannot override the Tribunal’s reasoned and repeated findings in the Award showing that “penalties and interest” includes claims related to penalties and interest on the Royalty Assessments. Claimant’s fixation on one

paragraph, severed from the analysis that produced it, is not a legitimate reading of the Award—it is an attempt by Claimant to manufacture a contradiction that the Award itself does not contain.

11. Finally, Claimant alleges that Perú is actually seeking a correction dressed up as an interpretation and that Perú should have proceeded to address that issue under Article 49(2) of the ICSID Convention. The opposite is true. The meaning of the Award was never in doubt: every one of Claimant’s claims was dismissed, and Perú had no reason to seek correction, supplementation, or anything else. It was Claimant that manufactured the present dispute as to the meaning of the Award to support its application for annulment. Importantly, Claimant made the strategic choice to bypass the more straight-forward and appropriate remedy of supplementation under Article 49(2), available within 45 days of the issuance of the Award, which would have given this Tribunal the opportunity to put the issue to rest. Instead, Claimant chose the far more aggressive (and unnecessary had Claimant sought supplementation of the Award in the first instance) remedy of annulment. Having engineered the dispute in the annulment proceeding, Claimant cannot now fault Perú for asking this Tribunal through Article 50 of the ICSID Convention to confirm what it plainly decided.

12. Perú’s Request asks the Tribunal to clarify, and confirm Perú’s understanding of, what the Award says. Perú does not ask the Tribunal to revisit the merits, reweigh the evidence, or change a single word of the Award. Perú’s Request is both admissible and well founded.

II. PROCEDURAL HISTORY

13. In its Request, Respondent provided a brief overview of the issues and claims submitted to the Tribunal in the arbitration, the Tribunal’s decisions in the Award, and the actions carried out by Claimant in the Annulment Proceeding.³ In light of the Tribunal’s familiarity with the factual and procedural background of the dispute, Perú does not seek in this submission to revisit the underlying facts or to reiterate the Parties’ arguments in the arbitration.

14. Respondent is, however, compelled to address Claimant’s assertion in its Counter-Memorial that “[b]ecause Perú had disclaimed any argument that Article 22.3.1 posed a jurisdictional bar to the Tribunal’s consideration of penalties and interest on the Royalty

³ See Perú’s Request for Interpretation of the Award, March 18, 2026 (“Request for Interpretation”), at Section II.

Assessments, the parties did not address any such objection and neither did the Tribunal.”⁴ This characterization is misleading.

15. Respondent does not contest that Perú raised a jurisdictional objection with respect to interest and penalties associated with the Tax Assessments but not in relation to the Royalty Assessments. However, as explained in greater detail in Section III.A.5 below, the Tribunal has a duty to satisfy itself that it has jurisdiction over all claims before it.⁵ Indeed, the Award and the record show that the issue of the Tribunal’s jurisdiction over Claimant’s claims concerning interest and penalties associated with both the Tax and Royalty Assessments was raised during the arbitral proceeding and was duly considered by the Tribunal.

16. The Tribunal squarely engaged with this question, including during the hearing, where it directly questioned both sides’ Peruvian tax-law experts on whether interest and penalties as a general matter (whether based on the Tax or Royalty Assessments) were considered taxation measures under Peruvian law.⁶ Both experts not only were afforded the opportunity to address that question but, in fact, presented their views on the issue. For example, the President asked Claimant’s expert, Mr. Hernández:

PRESIDENT HANEFELD: And so, I have one really important thing to better understand, which concerns the question whether Penalties or Interest constitute taxation measures. This Penalties and Interest Claim is 662 million [the value of Claimant’s claims for both the Royalty and Tax Assessments], so, for us, it’s really important to understand the Peruvian law concept on these Penalties and Interest. And I understand your colleagues, the Respondent’s Experts, Mr. Bravo and Mr. Picón, saying in their Second Report, in Paragraphs 259 and 260, that they say Penalties and Interest are clearly taxation measures under the Peruvian Tax Code. They quote there Article 28 of the Tax Code, which states that: “Components of the tax debt are Tax, Penalties, and Interest.” And I see now on your Slide 18 of today that you say, no, there is no definition of taxation

⁴ Freeport’s Counter-Memorial On The Application For Interpretation, June 3, 2026 (“Counter-Memorial on Interpretation”), at para. 15 (emphasis added).

⁵ See *infra* at Section III.A.5, paras. 68-69. See also **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Article 41; see also *id.*, ICSID Arbitration Rules, Rules 41(2), 42(4).

⁶ See **Exhibit CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9), May 11, 2023 (“Tr. Day 9”), at 2592:6 to 2600:5; see also *id.* at 2686:17 to 2690:13.

measures, and this is more a legislative technique rather than a qualification. Can you please explain again now what you mean with this “legislative technique” rather than qualification of the nature?⁷

17. In response, Mr. Hernández explained that Peruvian tax law treats penalties, interest, and the principal tax as a single concept of “tax debt”—a legislative fiction designed to simplify administration and avoid separate procedures, including for royalties:

Article 28 of the Tax Code simply and plainly as a matter of legislative technique fundamentally adopts a legal fiction, under which the concept--under the term “debt”--under the expression “tax debt” groups elements, or components, that clearly do not all refer to the tax itself. It’s distinguishing between Tax, Penalty, and Interest, and then it groups them together under the concept of “tax debt.”⁸

[. . .]

Then, the fact that the Royalty was incorporated under the idea of a tax debt is clearly a legal fiction. This does not respond to the nature of things. This is a legislative technique that has allowed them to simplify, to avoid, for example, the existence of dispersed regulations. Because of the legal fiction it was not necessary to say, for example, “that this is the process to challenge royalties” and to issue a whole regulation about it. One goes straight to the Tax Code. So, this has been a way, a legal fiction that has allowed to simplify the legislation.⁹

18. He further explained that Peruvian law does not define “tax measures,” a term used in certain laws, without substantive meaning:

I don’t know if I am answering your question, but, at any rate, this also leads me to say, how about Tax Measures? While the concept of tax debt that, once again, is a legal fiction, is part of the code as to Tax Code; as to Tax Measures, there is nothing like that. Keep in mind, that the Tax Code in Perú is the one that gathers the main concepts to be applied to tax issues for all sorts of levies. When someone would like to introduce a key issue in connection with taxes, they introduce an amendment to the Tax Code by inserting

⁷ Exhibit CI-9, Tr. Day 9 (President Hanefeld) at 2592:10 to 2593:8.

⁸ Exhibit CI-9, Tr. Day 9 (Mr. Hernández) at 2595:10-18.

⁹ Exhibit CI-9, Tr. Day 9 (Mr. Hernández) at 2598:11–22.

whatever is relevant. Neither the Tax Code, nor any other rule, includes this concept of “tax measures.” And we are going to find some regulations, such as the 30230, cited by Bravo, and the 30506, also cited by Bravo, which is a delegation rule, that refer to Taxation Measures, but without it having a specific significance.¹⁰

19. The Tribunal then raised similar questions to Perú’s experts, Mr. Bravo and Mr. Picón:

PRESIDENT HANEFELD: And I start, and I know you will not be surprised by my questions, they are very similar to the ones I had for Mr. Hernández. So, my first question relates to the question whether the Penalties and Interest constitute Taxation Measures. And just to better understand, if one takes the position and this is undisputed. You just confirmed it that Royalties are not taxes, one could arguably think, okay, Penalties and Interest, which are also a civil law, whatever, in our concept, are separate, and like an Annex only to this nontax. So, there can be no Taxation Measures if one imposes Penalties and Interest. And I understand you saying, oh, no. They are, nevertheless, taxation measures. Do I understand correctly that you base this on Article 3 of the Mining Royalty Law? Because you say and now on your last slide, this is the term “Tax Measures refers to decisions of the State that may hand it down through its legal or regulatory provisions,” and Article 3 of the Royalty Law exactly constitutes such legal provisions?¹¹

20. Mr. Bravo explained that royalties are not taxes as such, but emphasized that Article 3 of Law No. 28969 (Law that Authorizes SUNAT to Implement Provisions that Facilitate the Administration of Mining Royalties) extends certain tax-code provisions to royalties.¹² He further opined in response to a follow-up question from the President that while penalties and interest are likewise not taxes *per se*, they nonetheless qualify as taxation measures, insofar as taxes require ancillary rules—such as enforcement mechanisms and penalties—to be given practical effect:

¹⁰ **Exhibit CI-9**, Tr. Day 9 (Mr. Hernández) at 2599:10 to 2600:5.

¹¹ **Exhibit CI-9**, Tr. Day 9 (President Hanefeld) at 2686:17 to 2687:15.

¹² *See Exhibit CI-9*, Tr. Day 9 (Mr. Bravo) at 2687:16 to 2688:8 (“Yes, Madam President, indeed. What we said is that one must not confuse a ‘tax’ with Taxation Measures. There’s something that needs to be clear, first and foremost. Royalties, in principle, are not taxes. That’s true. They’re not taxes. Does that mean that there are no tax regulations that govern certain aspects of Royalties? No, because they exist. And you made mention of them. Article 3 of that Law indicates, expressly, what the tax rules of the Tax Code are that are applicable to the Royalties, and that transforms the Royalties in taxes. Of course not. But there are certain tax rules that apply to Royalties, and that is the explanation.”).

PRESIDENT HANEFELD: My apologies. Now, I think you said they are not taxes, the Penalties and Interest, but, nevertheless, they qualify as Taxation Measures. Is my understanding correct?

THE WITNESS: Yes, you understood that correctly. That is what I was saying. Although they are not taxes, taxes may not exist by themselves. They need, for example, procedural rules, a penalty regime. They need also other kinds of rules so that the tax may be complied with. And formalities may comply with. And they had that nature as taxation norms.¹³

21. This exchange between the Tribunal and the experts at the hearing demonstrates that the Tribunal squarely engaged on the issue of whether interest and penalties constitute taxation measures, irrespective of whether they arise from unpaid Tax or Royalty Assessments, for purposes of assessing Claimant's alternative claims. The Tribunal emphasized the importance of this issue by noting to Mr. Hernández that Claimant's claims concerning penalties and interest totaled US \$662 million, which encompassed the amounts associated with Claimant's claims regarding both the Tax Assessments and Royalty Assessments.¹⁴ Accordingly, Claimant's suggestion that the Tribunal failed to address its jurisdiction over claims relating to penalties and interest on the Royalty Assessments is misleading at best.

22. Moreover, the Award itself reflects that the Tribunal not only considered, but expressly ruled on, its jurisdiction over Claimant's claims relating to penalties and interest arising from both the Tax and Royalty Assessments.

23. As Respondent noted in its Request, the majority of the Tribunal addressed Perú's jurisdictional objection related to claims concerning penalties and interest associated with the Tax Assessments in paragraphs 526 through 553 of the Award.¹⁵ 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."¹⁶ Then, in paragraphs 967 through

¹³ **Exhibit CI-9**, Tr. Day 9 (President Hanefeld and Mr. Bravo) at 2689:2-13.

¹⁴ See **Exhibit CI-9**, Tr. Day 9 (Mr. Hernández) at 2592:6-15.

¹⁵ See Request for Interpretation at para. 21. See also **Exhibit CI-12**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Award, May 17, 2024 ("Award"), at paras. 526-53.

¹⁶ **Exhibit CI-12**, Award at para. 553 (emphasis in original).

986 of the Award—a section setting out and 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,”¹⁷—the Tribunal addressed Claimant’s alternative claim regarding Perú’s failure to waive the assessment of penalties and interest against SMCV.¹⁸

24. After setting out the Parties’ arguments in that section, the Tribunal concluded the following in paragraph 986:

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

¹⁶⁰¹ Hearing Transcript, Day 9, p. 2592, lines 6-9.¹⁹

25. In its conclusion, the Tribunal reaffirmed—without any distinction or qualification—that penalties and interest are “taxation measures” and therefore fall outside its jurisdiction, regardless of whether they arise from the Tax or Royalty Assessments. Notably, at the end of paragraph 986, the Tribunal cited an excerpt from the hearing transcript reflecting the President’s introductory remarks preceding the Tribunal’s discussion with the Parties’ Peruvian tax law experts on whether interest and penalties qualify as taxation measures.²⁰ The Tribunal thus clearly took into account that exchange with the Parties’ experts in reaching its conclusion in

¹⁷ **Exhibit CI-12**, Award at para. 967 (emphasis added).

¹⁸ See Request for Interpretation at para. 22. See also **Exhibit CI-12**, Award at paras. 967-86.

¹⁹ **Exhibit CI-12**, Award at para. 986 (emphasis in original).

²⁰ See **Exhibit CI-12**, Award at para. 986 (*citing* Hearing Transcript, Day 9, p. 2592, lines 6–9); see also **Exhibit CI-9**, Tr. Day 9 (President Hanefeld) at 2592:6–9 (“PRESIDENT HANEFELD: And when we ask questions as the Tribunal, they are certainly without prejudice to our Decision, whether we have jurisdiction or not on certain aspects.”).

paragraph 986. Accordingly, the Tribunal (in a legitimate exercise of its powers to apply the law and to determine its own jurisdiction)²¹ in fact addressed and ruled on this issue, concluding that it lacked jurisdiction over such claims, *i.e.*, all claims related to penalties and interest.

26. Likewise, contrary to Claimant's assertions, the Parties were granted an opportunity to address an objection to the Tribunal's jurisdiction over claims concerning penalties and interest on the Royalty Assessments. As demonstrated above, the Tribunal raised this issue with the Parties' experts at the hearing, who engaged with the Tribunal in a focused discussion on that very point. Both Parties had ample opportunity to brief the Tribunal and advance arguments on the scope of Article 22.3.1 of the TPA (including the carve-out for taxation measures) throughout the proceedings. In particular, after the Tribunal's questions to the experts on the matter, the Parties had the opportunity to address the Tribunal's jurisdiction over Claimant's claims concerning penalties and interest associated with both Tax and Royalty Assessments in their closing arguments and post-hearing submissions. Nothing precluded Claimant from discussing the Tribunal's exchanges with the tax-law experts on the matter of penalties and interest. Thus, it is disingenuous for Claimant to suggest now that the Parties were not heard on the issue of the Tribunal's jurisdiction over claims concerning penalties and interest on the Royalty Assessments.

27. In its Counter-Memorial, Claimant has omitted these material procedural facts altogether. In doing so, Claimant has admitted that its characterization of the Award and the record on this issue is grounded in a selective, incomplete, and ultimately misleading account of the proceedings.

III. PERÚ'S REQUEST FOR INTERPRETATION IS ADMISSIBLE AND WARRANTED

28. In its Request for Interpretation, Perú sought a narrow and limited clarification regarding the Award's treatment of Claimant's claims concerning penalties and interest associated with the Royalty Assessments. Specifically, Perú requested confirmation that the Award determined that such claims fell outside the Tribunal's jurisdiction, consistent with the findings set out in paragraph 986 of the Award and the analysis incorporated therein by reference.²²

²¹ See **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Article 41; *see also id.*, ICSID Arbitration Rules, Rules 41(2), 42(4). *See also infra* at Section III.A.5, paras. 68-70.

²² *See* Request for Interpretation at paras. 39-44, 47.

Contrary to Claimant's allegations,²³ Perú does not request that the Tribunal revisit the merits of the dispute, reconsider the evidence, supplement the Award, or make any new determination. Rather, Perú is seeking the interpretation of an issue that has become the subject of a concrete disagreement between the Parties following Claimant's assertion in the Annulment Proceeding that the Tribunal failed to decide Claimant's claims on penalties and interest on the Royalty Assessments altogether.²⁴

29. In its Counter-Memorial, Freeport mischaracterizes both the nature and purpose of Perú's Request. According to Claimant, Perú would have this Tribunal "change its Award to reject jurisdiction over Claimant's claims related to penalties and interest on Royalty Assessments[.]"²⁵ "revise the Award by asking the Tribunal to 'confirm' jurisdictional findings that the Award does not contain[.]"²⁶ and "revise, correct, or supplement the Award in aid of the pending annulment proceeding."²⁷ Claimant's characterization of Perú's Request is unfounded and misleading.

30. Perú's Request falls squarely within the scope of Article 50 of the ICSID Convention. It seeks clarification of a dispute that has arisen regarding the meaning and scope of the Award following Claimant's assertion in the Annulment Proceeding that the Tribunal failed to resolve claims that the Award expressly addressed and decided.

31. The Parties agree on the legal framework governing requests for interpretation under Article 50 of the ICSID Convention. As Claimant itself acknowledges, the requirements as articulated in the Decision on Interpretation in *Wena Hotels v. Egypt* ("*Wena Hotels*") are well established: (i) there must be a dispute between the parties as to the meaning or scope of the award; (ii) the request must seek a genuine interpretation of the award rather than a reopening of the case;

²³ See, e.g., Counter-Memorial on Interpretation at paras. 2–3, 23.

²⁴ See Request for Interpretation at paras. 38–47.

²⁵ Counter-Memorial on Interpretation at para. 18.

²⁶ Counter-Memorial on Interpretation at para. 5.

²⁷ Counter-Memorial on Interpretation at para. 21.

and (iii) the requested interpretation must have practical consequences.²⁸ Claimant argues, however, that Perú's Request satisfies none of these requirements.²⁹ That contention is incorrect.

32. Contrary to Claimant's assertions, Perú's Request satisfies the applicable requirements in *Wena Hotels*. *First*, it concerns a genuine dispute as to the scope and meaning of the Award, arising directly from Claimant's assertion that the Tribunal failed to decide claims on penalties and interest on the Royalty Assessments (**Section III.A**). *Second*, the Request does not seek to reopen the merits or obtain a new ruling but is narrowly confined to confirming a determination the Tribunal has already made—reflected, *inter alia*, in paragraph 986 of the Award (**Section III.B**). *Third*, the Request has practical relevance to the Award's implementation, as it bears directly on the framing and scope of the Annulment Proceeding initiated by Claimant (**Section III.C**).

A. THERE IS A GENUINE DISPUTE AS TO THE AWARD'S MEANING AND SCOPE

33. Claimant argues that Perú's Request fails at the outset, because there is allegedly no genuine dispute concerning the meaning or scope of the Award.³⁰ According to Claimant, "Perú does not identify any unclarity in the Award's text or any disagreement about what the words of the *dispositif* mean" and has failed to articulate the precise point allegedly requiring interpretation.³¹ Claimant's assertion is unfounded.

1. The Applicable Standard for Determining the Existence of a Dispute

34. The standard for determining whether a dispute exists or not is well established under international law. As the Permanent Court of International Justice ("PCIJ") explained in *Mavrommatis Palestine Concessions*, a dispute exists if there is "a disagreement on a point of law

²⁸ See Counter-Memorial on Interpretation at para. 22; see also Request for Interpretation at para. 33.

²⁹ See Counter-Memorial on Interpretation at paras. 4, 22.

³⁰ See Counter-Memorial on Interpretation at paras. 23–29.

³¹ Counter-Memorial on Interpretation at para. 23; see also *id.* at para. 29.

or fact” or “a conflict of legal views or interests between two persons.”³² That formulation has been consistently applied by international courts and tribunals, including investment tribunals.³³

35. The International Court of Justice (“ICJ”) has further clarified that, “[i]n order to establish the existence of a dispute, it must be shown that the claim of one party is positively opposed by the other.”³⁴ This requirement has likewise been repeatedly reaffirmed in ICJ jurisprudence and adopted by investment tribunals.³⁵ For example, the tribunal in *Gramercy v. Peru* found that a dispute exists where: (i) there is a disagreement on a point of law or fact; (ii) the disagreement is between parties holding opposing views; and (iii) both parties are aware that the disagreement exists.³⁶

36. Thus, the relevant inquiry is simply whether the parties hold opposing views on a matter of legal significance. That requirement is plainly satisfied here.

³² **Exhibit RLAI-1**, *Mavrommatis Palestine Concessions (Greece v. U.K.)*, Judgment on the Objection to the Jurisdiction of the Court Made by His Britannic Majesty’s Government, 1924 P.C.I.J. (Ser. A) No. 2 (August 30), at p. 11.

³³ See, e.g., **Exhibit RLAI-2**, *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Decision on Annulment, November 16, 2021 (excerpts), at para. 58; **Exhibit RLAI-3**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, April 19, 2021, at para. 136; **Exhibit RLAI-4**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of November 15, 2017, 2017 I.C.J. 289, at para. 71; **Exhibit RLAI-5**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, April 4, 2016, at para. 447; **Exhibit RLAI-6**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, October 29, 2015, at para. 149; **Exhibit RLAI-7**, *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, January 9, 2015, at para. 168.

³⁴ **Exhibit RLAI-8**, *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of December 21, 1962, 1962 I.C.J. 319, at p. 328.

³⁵ See **Exhibit RLAI-9**, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, I.C.J., Preliminary Objections, Judgment of February 2, 2024, 2024 I.C.J. 360, at para. 44; **Exhibit RLAI-10**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of January 26, 2024, 2024 I.C.J. 3, at para. 19; **Exhibit RLAI-11**, *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, April 22, 2005, at paras. 301–04.

³⁶ See **Exhibit RLAI-12**, *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, December 6, 2022, at paras. 322–25.

2. Article 50 of the ICSID Convention Does Not Require Linguistic Ambiguity

37. Claimant alleges that Perú has failed to identify any ambiguity in the Award and that there is no disagreement regarding the meaning of the *dispositif*.³⁷ On that basis, Freeport invokes the truism *in claris non fit interpretatio* and relies on the decision on interpretation of *Micula v. Romania* for the proposition that interpretation proceedings are limited to situations involving ambiguous language.³⁸ Claimant further cites *Gabay v. Iran*, *PepsiCo v. Iran*, and *Ford Aerospace v. Iran* to argue that, absent ambiguity, there is “nothing to interpret.”³⁹ Claimant’s reliance on ambiguity is misplaced.

38. Article 50 of the ICSID Convention does not require that the applicant demonstrate “ambiguity” in the text of the award to consider a request for interpretation. The threshold requirement is the existence of a “dispute . . . as to the meaning or scope of an award”—a broader concept that encompasses any genuine disagreement as to what the tribunal decided, not merely textual ambiguity in a particular passage.⁴⁰ Article 50 reflects the PCIJ’s formulation in the *Chorzów Factory* case, under which the only requirements for the interpretation of judgments are that: “(i) there must be a dispute as to the meaning and scope of the judgment; and (ii) the request must have for its object an interpretation of the judgment.”⁴¹ Neither Article 50 nor *Chorzów* imposes a separate requirement that the applicant identify ambiguous language in the award as Claimant asserts.

39. Nor does *Micula* support the rule advanced by Claimant. As the tribunal in *Micula* recognized, Article 50 may be understood as permitting interpretation whenever the parties disagree regarding the meaning or scope of an award.⁴² Although the tribunal expressed concern that a purely subjective approach could render even frivolous requests admissible, it ultimately

³⁷ See Counter-Memorial on Interpretation at paras. 23–24, 27–28.

³⁸ See Counter-Memorial on Interpretation at para. 24.

³⁹ Counter-Memorial on Interpretation at para. 29.

⁴⁰ **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Article 50(1).

⁴¹ **Exhibit CLAI-1**, *Interpretation of Judgments Nos. 7 and 8 concerning the Factory at Chorzów*, Judgment, December 16, 1927, PCIJ Series A, No. 13, at pp. 10–11.

⁴² See **Exhibit CLAI-22**, *Ioan Micula, Viorel Micula et al. v. Romania (I)*, ICSID Case No. ARB/05/20, Decision on Romania’s Application for Interpretation, December 7, 2023 (“*Micula* Decision on Interpretation”), at para. 85.

stopped short of holding that ambiguity is a prerequisite to interpretation.⁴³ Significantly, the tribunal reached that conclusion after considering the decision on interpretation in *ATA Construction v. Jordan*,⁴⁴ where the tribunal proceeded to interpret its award notwithstanding its view that the award “is clear and means what it says” and that it had “some difficulty in seeing how its Award could be misunderstood.”⁴⁵ Relying on *ATA Construction*, the *Micula* tribunal expressly acknowledged that “interpretation of an award may be warranted, at least in some cases, even if its terms appear clear.”⁴⁶

40. The distinction is material. A dispute as to the “meaning or scope” of an award may arise not because any particular word or phrase is unclear in isolation, but because the parties disagree as to the legal determination the tribunal made when the award is read as a whole—including both its operative provisions and its reasoning.⁴⁷ That is precisely the situation here: the Parties disagree on what the Tribunal decided regarding penalties and interest on the Royalty Assessments and that disagreement is reflected in the conflicting positions set out in the Annulment Proceeding and in the present interpretation proceedings.

41. The decisions in *Micula* and *ATA Construction* are instructive because they confirm that the absence of ambiguity does not preclude an interpretation proceeding. In *Micula*, the tribunal’s decision to reject Romania’s request for interpretation had nothing to do with the absence of ambiguity. Instead, the tribunal scrutinized whether the request fell within the permissible scope of interpretation and rejected Romania’s various requests for interpretation,

⁴³ See **Exhibit CLAI-22**, *Micula* Decision on Interpretation at paras. 87–89.

⁴⁴ See **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 93 (citing **Exhibit CLAI-13**, *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Decision on Interpretation and on the Request for Provisional Measures, March 7, 2011 (“*ATA Construction v. Jordan*, Decision”), at paras. 39–44.).

⁴⁵ **Exhibit CLAI-13**, *ATA Construction v. Jordan*, Decision at paras. 40, 42, 44.

⁴⁶ **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 93 (emphasis added).

⁴⁷ See **Exhibit CLAI-3**, *Continental Shelf (France v. United Kingdom)*, Decision at p. 295 (“A request for interpretation may, on the other hand, be directed to obtaining a ruling on the question whether a certain point has or has not been settled with binding force in the decision (*Chorzów Factory* case, P.C.I.J., Series A, No. 13 pp. 11–12); and the reasoning of a decision may accordingly be referred to for this purpose. Furthermore, if findings in the reasoning constitute a condition essential to the decision given in the *dispositif*, these findings are to be considered as included amongst the points settled with binding force in the decision (*ibid.*, p. 20).”) (emphasis added).

because they did not concern the meaning or scope of determinations made in the award.⁴⁸ In *ATA Construction*, the tribunal proceeded to interpret the award even though it did not find it unclear or ambiguous.⁴⁹

42. Read together, these decisions make clear that the decisive inquiry is not ambiguity but whether there was a genuine dispute between the parties on the meaning or scope of the award. As discussed in the next Section, there is no doubt that requirement is plainly satisfied here.

43. For the same reason, the cases cited by Claimant, *i.e.*, *Gabay*, *PepsiCo*, and *Ford Aerospace*, are inapposite because in each of those cases, no genuine dispute as to the meaning or scope of the award existed; the applicants simply disagreed with the outcome.⁵⁰ Here, in contrast, the Parties hold fundamentally opposing views on what the Tribunal actually decided.

3. Perú Has Identified from the Outset a Genuine and Precise Dispute as to the Award's Meaning

44. Claimant asserts that there is no genuine dispute as to the Award's meaning and scope as Perú has failed to properly articulate the dispute underlying its Request, contending that Perú "only makes a vague gesture to the Award as a whole" without identifying specific language that requires interpretation.⁵¹ That criticism is unfounded.

45. Perú has identified the precise point of disagreement from the outset. As explained in its Request, the Parties hold directly opposing views regarding whether the Award determined Claimant's claims concerning penalties and interest on the Royalty Assessments.

46. Perú's position is that the Tribunal addressed and resolved those claims by finding that "penalties and interest constitute 'taxation measures' within the meaning of Article 22.3.1 of the TPA" and, therefore, concluded that it lacked jurisdiction to hear Claimant's claims regarding

⁴⁸ See **Exhibit CLAI-22**, *Micula* Decision on Interpretation at paras. 87–114.

⁴⁹ See **Exhibit CLAI-13**, *ATA Construction v. Jordan*, Decision at paras. 39–45.

⁵⁰ See **Exhibit CLAI-5**, *PepsiCo, Inc. v. Iran*, IUSCT Case No. 18, Decision No. DEC 55-18-1, December 18, 1986, at para. 3 (denying request for interpretation because "it fails to point to any element of the Award that is ambiguous. The *dispositif* of the Award is specific and detailed."); **Exhibit CLAI-4**, *Ford Aerospace v. Iran*, IUSCT Case No. 159, Decision No. DEC 47-159-3, October 2, 1986, at para. 2 (denying request for interpretation because it "does not identify any ambiguity in the Award").

⁵¹ Counter-Memorial on Interpretation at para. 29.

all penalties and interest, including penalties and interest on the Royalty Assessments.⁵² Respondent's position derives squarely from the text of the Award.

47. In paragraph 455(b) of the Award, the Tribunal identified the jurisdictional issue it needed to resolve 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?⁵³

48. The Award concludes in paragraph 986 that the Tribunal has no jurisdiction on penalties and interests on both the Tax and Royalties Assessments:

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, this was done without prejudice to the Tribunal's decision on jurisdiction.⁵⁴

49. To reach this conclusion, the Tribunal conducted a detailed analysis beginning in paragraph 540 of the Award.⁵⁵ In particular, the Tribunal undertook a treaty interpretation analysis under the Vienna Convention on the Law of Treaties ("VCLT") to determine the meaning of the term "taxation measures" under the TPA. In its analysis, the Tribunal concluded that "*taxation*" is a broader concept than "*tax*."⁵⁶ To support its interpretation, the Tribunal referred to the *Link Trading v. Moldova* case, where the tribunal found that the term "taxation" could include, in addition to taxes, customs duties and "*other forms of raising revenue that are within the State's*

⁵² **Exhibit CI-12**, Award at para. 986; *see also generally id.* at paras. 544–51; *see also Exhibit RI-1*, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Respondent's Counter-Memorial on Partial Annulment, September 16, 2025 ("Counter-Memorial on Partial Annulment"), at paras. 90–95.

⁵³ **Exhibit CI-12**, Award at para. 455(b).

⁵⁴ **Exhibit CI-12**, Award at para. 986 (emphasis added); *see also generally id.* at paras. 544–51.

⁵⁵ *See supra* at paras. 23–24.

⁵⁶ **Exhibit CI-12**, Award at para. 547 (emphasis in the original).

power.”⁵⁷ Thus, the Tribunal concluded that penalties and interest, as a general concept, constituted “taxation measures.”

50. This clear conclusion informs the operative part of the Award: “The Tribunal has jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest.”⁵⁸ The Award’s preceding discussion and conclusions on jurisdiction make it implicit in the *dispositif* of the Award that the phrase “claims based on the disputed Tax Assessment’ penalties and interest” includes also penalties and interest on the Royalty Assessments, because the latter are subject to the same “Peruvian tax regime” as the former and are therefore also “taxation measures” which fall outside of the Tribunal’s jurisdiction.⁵⁹

51. Claimant, by contrast, asserts that the Tribunal upheld jurisdiction over the claims related to penalties and interest on the Royalty Assessments, but failed to decide them on the merits.⁶⁰ Claimant relies on an alleged silence from the Tribunal regarding penalties and interest on the Royalty Assessments in the jurisdictional section of the Award to assert that the Tribunal affirmatively found it had jurisdiction over those claims and then failed to decide them.⁶¹ Claimant ignores paragraph 986 and asserts that the analysis and findings contained in the jurisdictional section of the Award and paragraph 1047(a) allegedly make clear that the Tribunal dismissed Claimant’s claims on penalties and interest with respect to the Tax Assessments but upheld jurisdiction on those claims with respect to the Royalty Assessments.⁶² It is thus obvious that the Parties have a dispute about the meaning of the Award on this point.

⁵⁷ **Exhibit CI-12**, Award at para. 547 (emphasis in the original) (internal quotation marks omitted).

⁵⁸ **Exhibit CI-12**, Award at para. 1047(a).

⁵⁹ See **Exhibit CI-12**, Award, Dissenting Opinion of Professor Dr. Guido Santiago Tawil, at para. 4 (“the majority finds that the word ‘taxation’ refers to a broader notion than the term ‘tax’, and that measures that are part of the regime for the imposition and enforcement of a tax, as those including penalties and interest shall be considered ‘taxation measures’ and, therefore, excluded from the Tribunal’s jurisdiction by Article 22.3.1. of the TPA”).

⁶⁰ See **Exhibit CI-15**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Memorial on Annulment, May 23, 2025 (“Memorial on Partial Annulment”), at paras. 3, 42–47, 53, 63–66; **Exhibit CI-17**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Reply on Annulment, December 12, 2025 (“Reply on Partial Annulment”), at paras. 2, 13–28, 37–39, 51–52, 56–57, 71–72.

⁶¹ See **Exhibit CI-15**, Memorial on Partial Annulment, at paras. 51–54.

⁶² See **Exhibit CI-15**, Memorial on Partial Annulment at paras. 3, 37, 42–47, 52–53.

52. The existence of a dispute is further demonstrated by the Parties' own submissions. In the Annulment Proceeding, Claimant has consistently maintained that the Tribunal failed to decide claims concerning penalties and interest on the Royalty Assessments.⁶³ Perú, in contrast, has consistently maintained that the majority of the Tribunal expressly addressed and dismissed those claims on jurisdictional grounds.⁶⁴ The Parties therefore advance irreconcilable interpretations of the Award on a point of central importance.

53. The same disagreement that divided the Parties in the Annulment Proceeding is reflected in the Parties' submissions in this proceeding. In its Counter-Memorial, Freeport restates the position it advanced in its annulment submissions. Claimant contends that, although the Tribunal found jurisdiction over all claims except those relating to penalties and interest on the Tax Assessments, the Award "did not decide the merits of Freeport's claim regarding penalties and interest on Royalty Assessments."⁶⁵ It further argues that "Peru's Request for Interpretation, far from seeking interpretation of an existing ruling, improperly seeks a new jurisdictional ruling on an issue that Perú never argued and the Tribunal never addressed: whether penalties and interest on the Royalty Assessments also fall within Article 22.3.1's 'taxation measures' exclusion."⁶⁶

54. Perú maintains in its Request for Interpretation that the Tribunal dismissed Freeport's claim regarding penalties and interest on the Royalty Assessments on jurisdictional grounds, while Claimant maintains that the Tribunal found jurisdiction but did not decide that claim on the merits. Contrary to Claimant's allegation, Perú is not seeking a new jurisdictional decision; it seeks interpretation of the decision the Tribunal already rendered.

55. Thus, the Parties' positions remain directly opposed. The existence of a dispute could hardly be more evident.

⁶³ See **Exhibit CI-15**, Memorial on Partial Annulment at paras. 3, 42–47, 53, 63–66; **Exhibit CI-17**, Reply on Partial Annulment at paras. 2, 13–28, 37–39, 51–52, 56–57, 71–72.

⁶⁴ See Request for Interpretation at paras. 38–44; **Exhibit RI-1**, Counter-Memorial on Partial Annulment at paras. 90–95, 126–27, 150–56, 180–96, 201–02; **Exhibit RI-2**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Respondent's Rejoinder on Partial Annulment, February 24, 2026 ("Rejoinder on Partial Annulment"), at paras. 32–37.

⁶⁵ Counter-Memorial on Interpretation at para. 17.

⁶⁶ Counter-Memorial on Interpretation at para. 35 (emphasis added).

56. Moreover, Claimant’s allegation that there is no *bona fide* disagreement over the Award’s meaning, because Perú has impermissibly “cherry-picked” portions of the Award is unfounded.⁶⁷ In fact, it is Claimant that has cherry-picked portions of the Award to support its claims. The paragraphs on which Perú relies are those that directly address the issue in dispute, including the Tribunal’s findings that Claimant conspicuously avoids engaging. Claimant’s Counter-Memorial, in contrast, devotes extensive analysis to paragraphs 456, 540, 543, 551–553, and 1047(a) of the Award—all of which refer to the Tax Assessments—while largely ignoring paragraph 986, the specific paragraph in which the Tribunal addressed penalties and interest on both the Tax and Royalty Assessments without distinction (because it dealt expressly with both in the preceding discussion).⁶⁸

57. The problem for Claimant is therefore not that Perú has failed to identify the dispute. Respondent has identified the dispute with precision. Rather, the problem for Claimant is that it disagrees with Perú’s interpretation of the Tribunal’s determination. That disagreement is precisely what gives rise to the present Request and confirms the existence of a dispute as to the meaning and scope of the Award.

4. Claimant Mischaracterizes Perú’s Request by Focusing Solely on the *Dispositif*

58. Claimant seeks to reduce Perú’s Request to a challenge to the wording of the *dispositif* alone, which refers to the Tribunal’s lack of jurisdiction regarding penalties and interest on the Tax Assessments, asserting that Perú effectively concedes that there is no ambiguity in the wording of the *dispositif* and, therefore, “there can be no genuine dispute regarding the alleged ambiguities of the remainder of the Award.”⁶⁹ To support its position, Freeport relies on *Wena Hotels* and the ICJ’s decision on the *Interpretation of the Decision of 20 June 1977 in Delimitation of the Continental Shelf Case (France v. United Kingdom)* to assert that a dispute under Article 50 must relate “in principle” to the award’s operative section.⁷⁰

⁶⁷ Counter-Memorial on Interpretation at para. 28.

⁶⁸ See Counter-Memorial on Interpretation at paras. 33-34; see also Request for Interpretation at paras. 22, 39–44.

⁶⁹ Counter-Memorial on Interpretation at para. 27; see also *id.* at paras. 24, 28.

⁷⁰ See Counter-Memorial on Interpretation at para. 27 (citing **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at para 82; and **Exhibit CLAI-3**, *Continental Shelf (France v. United Kingdom)*, Decision at p. 170).

59. Neither authority supports the restrictive approach advocated by Claimant. Rather, both decisions recognize that, although interpretation will ordinarily concern matters settled with binding force in the decision, the tribunal's reasoning may be consulted to determine precisely what has been decided.⁷¹ As noted by Professor Schreuer when referring to *Wena Hotels*, while the subject of interpretation is, in principle, the determination embodied in the operative part of the decision, "it is permissible to elucidate what was actually decided by reference to the tribunal's reasoning."⁷²

60. Consistent with that approach, the ICJ, citing to the *Chorzów Factory* case, explained in the *Continental Shelf* case that, although the reasoning of a decision cannot be used to obtain a ruling on a matter not settled in the *dispositif*, a request for interpretation may be directed to determining "whether a certain point has or has not been settled with binding force in the decision; and the reasoning of a decision may accordingly be referred to for this purpose."⁷³ In other words, the reasoning may be examined by the tribunal to interpret the *dispositif*.

61. Notably, Claimant conveniently ignores the ICJ's explanation on how the reasoning of a decision can be used in a request for interpretation.⁷⁴ Claimant emphasizes the statement that interpretation concerns matters settled with binding force in the *dispositif*, while omitting the Court's equally important clarification that the reasoning may be relied upon to determine whether

⁷¹ See, e.g., **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at paras. 84, 88–89.

⁷² **Exhibit CLAI-21**, C. Schreuer and S. Schill (eds), "Schreuer's Commentary on the ICSID Convention" (2022), at p. 1188.

⁷³ **Exhibit CLAI-3**, *Continental Shelf (France v. United Kingdom)*, Decision at p. 295 ("The Court of Arbitration considers it to be well settled that in international proceedings the authority of *res judicata*, that is the binding force of the decision, attaches in principle only to the provisions of its *dispositif* and not to its reasoning. In the opinion of the Court, it is equally clear that, having regard to the close links that exist between the reasoning of a decision and the provisions of its *dispositif*, recourse may in principle be had to the reasoning in order to elucidate the meaning and scope of the *dispositif*. From this it follows that under certain conditions and within certain limits, the reasoning in a decision may properly be invoked as a ground for requesting an interpretation of provisions of its *dispositif* (cf. *Chorzów Factory* case, P.C.I.J., Series A, No. 13). But the subject of a request for interpretation must genuinely be directed to the question of what it is that has been settled with binding force in the decision, that is in the *dispositif* (*ibid.*, p. 11; *Asylum (Interpretation)* case, I.C.J. Reports 1950, p. 402); the reasoning cannot therefore be invoked for the purpose of obtaining a ruling on a point not so settled in the *dispositif*. A request for interpretation may, on the other hand, be directed to obtaining a ruling on the question whether a certain point has or has not been settled with binding force in the decision (*Chorzów Factory* case, P.C.I.J., Series A, No. 13 pp. 11–12); and the reasoning of a decision may accordingly be referred to for this purpose. Furthermore, if findings in the reasoning constitute a condition essential to the decision given in the *dispositif*, these findings are to be considered as included amongst the points settled with binding force in the decision (*ibid.*, p. 20).") (emphasis added).

⁷⁴ See Counter-Memorial on Interpretation at n. 50.

a particular issue was in fact settled by the decision. That omitted qualification is critical and fatal to Claimant's cherry-picked argument.

62. That is precisely what Perú requests here. Perú does not ask the Tribunal to decide a new issue or to supplement the Award. Rather, it asks the Tribunal to confirm, by reference to its reasoning—including in paragraph 986 of the Award—whether claims concerning penalties and interest associated with the Royalty Assessments were addressed and resolved by the Tribunal's jurisdictional determination. Claimant is asking this Tribunal to ignore reasoning elsewhere in the Award because one sentence in the *dispositif* does not explicitly refer to the Tribunal's jurisdiction with respect to penalties and interest on the Royalty Assessments. Claimant's position is untenable. As the authorities indicate, the Tribunal must look at the analysis to inform the *dispositif*. This is exactly the type of inquiry contemplated in *Continental Shelf* and endorsed in *Wena*.

63. In any event, even if Claimant were correct that the Tribunal's interpretation should be confined to the language in the *dispositif* (it should not), the *dispositif* does not support Claimant's interpretation. To the contrary, the operative section of the Award confirms that the Tribunal did not leave Claimant's claims concerning penalties and interest on the Royalty Assessments unresolved. As reflected in subparagraphs (b) and (d) of the *dispositif*, the Tribunal dismissed the claims that remained before it and rejected all claims not otherwise upheld in the following terms:

For all of the foregoing reasons, the Tribunal decides as follows:

- 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;
- d. All other claims and pleas for relief are rejected.⁷⁵

⁷⁵ Exhibit CI-12, Award at para. 1047 (emphasis added).

64. Accordingly, even under Claimant’s restrictive approach, the Award cannot reasonably be read as having preserved a category of claims concerning penalties and interest on the Royalty Assessments that were neither accepted nor left open for future determination. The *dispositif* therefore reinforces, rather than undermines, Perú’s position that those claims were conclusively disposed of by the Tribunal.

5. The Parties’ Pleadings in the Underlying Arbitration Are Irrelevant to the Existence of a Dispute on the Interpretation of the Award

65. Claimant further contends that Perú cannot identify a genuine dispute, because Perú allegedly never raised a jurisdictional objection concerning penalties and interest on the Royalty Assessments in the underlying arbitration.⁷⁶ According to Freeport, because Perú’s Article 22.3.1 jurisdictional objection was expressly limited to penalties and interest on the Tax Assessments, the Tribunal could not have intended to extend its reasoning to the Royalty Assessments, as the issue was not before it.⁷⁷ This argument is irrelevant for purposes of determining whether a dispute exists on the interpretation of the Award under Article 50 and, in any event, fails on its own terms.

66. As a threshold matter, the question under Article 50 of the ICSID Convention is whether there is a dispute between the Parties as to the meaning or scope of the Award as rendered—not whether the Tribunal’s reasoning conforms to any particular Party’s submissions. The existence of a dispute is determined by reference to the Award itself and the Parties’ respective interpretations of it, not by reconstructing the arguments that were or were not advanced during the arbitration.

67. In any event, Claimant’s premise is flawed for at least two reasons.

68. *First*, the Tribunal has both the authority and the obligation to satisfy itself that it has jurisdiction to hear the claims before it, regardless of whether, or how, the parties contest the Tribunal’s jurisdiction. This understanding is confirmed by Article 41 of the ICSID Convention, which codifies the principle of *competence-competence*,⁷⁸ and by Arbitration Rule 41(2) which

⁷⁶ See Counter-Memorial on Interpretation at para. 25.

⁷⁷ See Counter-Memorial on Interpretation at para. 25.

⁷⁸ See **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Article 41(1) (“The Tribunal shall be the judge of its own competence.”).

expressly recognizes tribunals' authority to consider questions of jurisdiction on their own initiative.⁷⁹ This understanding has been consistently recognized and applied in ICSID jurisprudence. Tribunals have repeatedly emphasized that their obligation to determine jurisdiction is autonomous and does not depend on the parties' submissions.

69. For instance, in *Ioannis Kardassopoulos v. Georgia*, the tribunal expressly held that, even in the absence of an objection by the respondent, it remained incumbent upon the tribunal to examine jurisdictional requirements on its own initiative.⁸⁰ Similarly, in *Azurix Corp. v. Argentina*, the tribunal confirmed that it must review jurisdictional prerequisites regardless of whether they have been contested by the parties.⁸¹ The same principle is articulated even more explicitly in *Malicorp v. Egypt*, where the tribunal underscored not only its right, but its obligation, to ensure that all jurisdictional conditions are met, regardless of the parties' focus.⁸² In particular, the tribunal in *Malicorp v. Egypt* explained that the parties' submissions cannot limit the scope of this inquiry; the tribunal must independently verify that jurisdiction exists "on the instruments on which it is based."⁸³ Therefore, the Tribunal's mandate is not (and was not) limited to the parties' jurisdictional objections; the Tribunal was required to verify that all jurisdictional requirements

⁷⁹ See **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), Arbitration Rules, Rule 41(2) ("The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute or any ancillary claim before it is within the jurisdiction of the Centre and within its own competence.").

⁸⁰ See **Exhibit RLAI-15**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, at para. 113 ("Respondent has not raised the issue of the Tribunal's jurisdiction *ratione materiae* under the ICSID Convention. The Tribunal will deal with this issue first, *proprio motu*.").

⁸¹ See **Exhibit RLAI-18**, *Azurix Corp v The Argentine Republic*, ICSID Case No ARB/01/12, Decision on Jurisdiction, December 8, 2003, at para. 51 ("The Tribunal will first review the threshold conditions ... for purposes of the jurisdiction of the Centre and the competence of the Tribunal, whether or not said conditions have been subject of controversy between the parties.").

⁸² See **Exhibit RLAI-19**, *Malicorp Limited v. The Arab Republic of Egypt*, ICSID Case No. ARB/08/18, Award, February 7, 2011, at para. 98.

⁸³ **Exhibit RLAI-19**, *Malicorp Limited v. The Arab Republic of Egypt*, ICSID Case No. ARB/08/18, Award, February 7, 2011, at para. 98 ("It is not disputed that an arbitral tribunal seised of an objection to jurisdiction not only has the right but the obligation to rule on its own jurisdiction (the '*Competenz-Competenz*'). This is expressly confirmed in Article 41(1) of the ICSID Convention, which provides that: '*The Tribunal shall be the judge of its own competence.*' In this respect, the Parties, and the Respondent in particular, have centred all their arguments around the issue of the alleged fraud and its influence on the jurisdiction of the Arbitral Tribunal, without really discussing the other conditions on which such jurisdiction depends. The Arbitral Tribunal must nevertheless satisfy itself that all the conditions are in fact fulfilled. That jurisdiction depends on the instruments on which it is based, making it necessary to begin with a presentation of these.").

were satisfied—and it did so with respect to the claims relating to interest and penalties on the Royalty Assessments.

70. *Second*, under the well-established principle of *iura novit arbiter*, a tribunal may apply the law as it understands it, including treaty provisions and jurisdictional carve-outs, irrespective of how the parties have framed their arguments.⁸⁴

71. Accordingly, the fact that Perú did not formulate a standalone jurisdictional objection concerning penalties and interest on the Royalty Assessments in the arbitration did not prevent the Tribunal from considering independently of the Parties’ arguments the scope of the Treaty’s carve-outs and determining the legal consequences arising therefrom—especially when this exact issue was discussed between the Tribunal and the Parties’ tax experts at the hearing, as discussed in detail in Section II above.

72. Claimant relies on the ICJ’s decision in *Temple of Preah Vihear* for the proposition that “the pleadings and the record of the oral proceedings . . . are . . . relevant to the interpretation of the Judgment, as they show what evidence was, or was not, before the Court and how the issues before it were formulated by each Party.”⁸⁵ That case, however, supports Perú’s position rather than Claimant’s. In the present case, as explained in Section II above, the hearing transcript—which Claimant itself does not contest—confirms that the Tribunal raised the question of penalties and interest on the Royalty Assessments with the Parties’ experts at the hearing.⁸⁶ The Tribunal did not treat the issue as closed or irrelevant; it actively engaged with it. That engagement is

⁸⁴ See **Exhibit RLAI-16**, Giuditta Cordero-Moss, Chapter 6: *Iura Novit Curia*, in Franco Ferrari and Friedrich Jakob Rosenfeld (eds), *Handbook of Evidence in International Commercial Arbitration: Key Concepts and Issues*, Kluwer Law International (April 2022), at p. 122; **Exhibit RLAI-17**, *Caratube International Oil Company LLP v. Republic of Kazakhstan (I)*, ICSID Case No. ARB/08/12, Decision on the Annulment Application of Caratube International Oil Company LLP, February 21, 2014, at para. 91 (“What the parties are discussing is, in fact, the relationship between two legal principles:- the parties’ right to be heard, and - the tribunal’s right (or even duty - a tribunal confronted with inept pleadings cannot content itself with the less implausible of the parties’ arguments) to apply the principle *iura novit curia*.”) (internal citations omitted).

⁸⁵ Counter-Memorial on Interpretation at para. 25 (citing to **Exhibit CLAI-15**, *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment of 11 November 2013, I.C.J. Reports 2013, at para. 69).

⁸⁶ See *supra* at paras. 15-21.

reflected in the Tribunal’s own footnote in paragraph 986 of the Award, referencing the hearing testimony, and confirms that the Tribunal addressed the issue in the Award.⁸⁷

73. Claimant also invokes the *Asylum Case* and *Wena Hotels* for the proposition that interpretation “can in no way go beyond the limits of the Judgment, fixed in advance by the Parties themselves in their submissions.”⁸⁸ Those cases are distinguishable. In the *Asylum Case*, the ICJ found that Colombia was seeking, through interpretation, to obtain decisions on questions the Court had never been asked to address and that were entirely outside the scope of the proceedings.⁸⁹ In *Wena Hotels*, the tribunal rejected the interpretation request, because the issue raised “was not raised at any time during the proceedings.”⁹⁰ Here, by contrast, the issue of penalties and interest on the Royalty Assessments was squarely before the Tribunal. Claimant itself advanced claims concerning those penalties and interest, the issue was discussed at the hearing, and the Tribunal addressed it in paragraph 986 of its Award. The situation here is therefore fundamentally different from both the *Asylum Case* and *Wena Hotels*.

74. Thus, the fact that Perú did not raise an Article 22.3.1 objection specifically as to penalties and interest on the Royalty Assessments is irrelevant. That did not prevent the Tribunal from reaching its own conclusion that penalties and interest imposed based on the Peruvian Tax Code, as a general matter, constitute “taxation measures” under the TPA. The Tribunal’s reasoning in paragraph 986 reflects precisely such an application: it treated the “taxation measures” characterization as applying generally to penalties and interest, without limiting its determination to one category of assessments.

6. The Parties’ Press Releases Are Not Indicative of a Lack of Dispute

75. Finally, Claimant points to post-Award press releases issued by Perú’s counsel and the Ministry of Economy and Finance, arguing that the statements described the jurisdictional

⁸⁷ See **Exhibit CI-12**, Award at n. 1601; see also **Exhibit CI-9**, Tr. Day 9 (President Hanefeld) at 2592:6 to 2600:5; *id.* at 2686:17 to 2690:13.

⁸⁸ Counter-Memorial on Interpretation at n. 46 (citing **Exhibit CLAI-2**, *Request for interpretation of the Judgment of November 20th, 1950, in the Asylum Case*, Judgment, 27 November 1950, ICJ Reports 1950, at pp. 402–03).

⁸⁹ See **Exhibit CLAI-2**, *Request for interpretation of the Judgment of November 20th, 1950, in the Asylum Case*, Judgment, 27 November 1950, ICJ Reports 1950, at pp. 402–03.

⁹⁰ **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at para. 127.

ruling as limited to penalties and interest on the Tax Assessments, thereby demonstrating the absence of any genuine dispute.⁹¹ This argument is wholly without merit.

76. Short press releases published immediately after the issuance of the Award—neither of which addresses the specific issue now in dispute nor constitutes an exhaustive analysis of the Award’s findings—cannot be construed as demonstrating Perú’s agreement with Claimant’s interpretation of the Award.⁹² Press releases are aimed at a general audience and are not legal submissions before a tribunal. Claimant cannot manufacture consent—or negate a dispute—based on silence in a communication that was not intended to serve as a comprehensive legal analysis of the Award’s jurisdictional determinations.

77. In any event, the existence of a legal dispute between the Parties is determined by the Parties’ legal positions, not by the contents of public-facing summaries of an award. As demonstrated above, the Parties have advanced directly opposing interpretations regarding whether the Award addressed and resolved claims concerning penalties and interest associated with the Royalty Assessments.⁹³ The press releases add nothing to that analysis.

* * *

78. In sum, a genuine dispute as to the meaning and scope of the Award plainly exists. The Parties hold opposing views on whether the Tribunal determined that it lacked jurisdiction over Claimant’s claims concerning penalties and interest on the Royalty Assessments and that disagreement is reflected in their respective pleadings in both the Annulment Proceeding and the present interpretation proceeding, thereby satisfying the first requirement for interpretation under Article 50 of the ICSID Convention.

⁹¹ See Counter-Memorial on Interpretation at para. 26.

⁹² See **Exhibit CI-13**, Peru’s Ministry of Economy and Finance Press Release, “Peru obtains absolute victory in ICSID arbitration initiated by Freeport-McMoran Inc. under the Peru-United States Trade Promotion Agreement – United States,” May 20, 2024, May 20, 2024; **Exhibit CI-14**, Baker Botts News Release, “Baker Botts Secures Victory for the Republic of Peru in a U.S. \$1 Billion International Arbitration Related to Mining Sector,” May 31, 2024.

⁹³ See *supra* Sections III.A.2., III.A.4.

B. PERÚ'S REQUEST HAS A LEGITIMATE INTERPRETATIVE PURPOSE

79. The second *Wena Hotels* requirement is that “the purpose of the application must be to obtain a true interpretation of the award,” instead of reopening the matter.⁹⁴ Claimant argues that Perú fails this requirement, because it is allegedly “seeking a new ruling on an issue that was never presented to or decided by the Tribunal.”⁹⁵ In support, Claimant relies principally on the decisions on interpretation in *Wena Hotels* and *Micula*.⁹⁶ That reliance is misplaced. In each of those cases, the request concerned a matter that the tribunal had not decided in the original award.⁹⁷ Perú's Request does the opposite: it seeks confirmation of a determination that the Tribunal did make.

80. The premise underlying Claimant's argument is therefore incorrect. Perú's position is that the Tribunal considered and disposed of Claimant's claims on penalties and interest on the Royalty Assessments on jurisdiction. Claimant argues that the Tribunal asserted jurisdiction over those claims. But if Claimant is correct, then the Tribunal dismissed them on the merits. Indeed, the *dispositif* confirms that Claimant's claims were rejected in their entirety.⁹⁸ The question is therefore not whether the Tribunal decided—and dismissed—those claims (it did), but on what basis it did so. The question requiring interpretation is whether they were dismissed on jurisdiction (as Peru asserts) or on the merits.

81. Against that background, Perú's Request is narrowly confined to obtaining confirmation of what the Tribunal decided in paragraph 986 of its Award, read in conjunction with the provisions cross-referenced therein—the quintessential function of interpretation. Perú seeks clarification on the scope of paragraph 986's holding—that the Tribunal had “no jurisdiction” over Claimant's penalties and interest claims—and how that determination relates to the analysis cross-

⁹⁴ **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at para. 76; *see also* **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 83.

⁹⁵ Counter-Memorial on Interpretation at para. 30.

⁹⁶ *See* Counter-Memorial on Interpretation at n. 55.

⁹⁷ *See* **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 116; **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at para. 127.

⁹⁸ *See* **Exhibit CI-12**, Award at para. 1047 (“For all of the foregoing reasons, the Tribunal decides as follows: ... b. The Claimant's claims are rejected in their entirety; ... d. All other claims and pleas for relief are rejected.”).

referenced therein (“see above, paras. 540 *et seq.*”).⁹⁹ Paragraph 986 exists, forms part of the Award, and the Parties disagree as to its meaning. Asking the Tribunal to confirm what it decided is a request for interpretation in its purest form.

82. In the following sections, Respondent shows, *first*, that its Request is legitimate, because it is not seeking to correct the *dispositif* or to change the language in the jurisdiction section (**Section III.B.1**); *second*, that Claimant, not Respondent, improperly seeks to relitigate the merits of the dispute before the Tribunal (**Section III.B.2**); and, *third*, that Peru’s Request for Interpretation is timely (**Section III.B.3**).

1. Perú Is Not Seeking to Correct the *Dispositif* or to Change the Language of the Jurisdiction Section

83. Claimant contends that Perú “effectively concedes that its Request for Interpretation is improper” by characterizing the *dispositif*’s language as “an inadvertent omission or a mere typographical or clerical error.”¹⁰⁰ On that basis, Claimant argues that Perú is improperly seeking a correction or rectification under the guise of interpretation, which should have been pursued under Article 49(2) within 45 days of the issuance of the Award.¹⁰¹

84. Claimant’s argument misconstrues Perú’s position. Perú’s prayer for relief does not seek the amendment or correction of any portion of the Award. Instead, it asks the Tribunal to confirm the meaning of its findings.¹⁰²

85. Perú’s observation that the *dispositif*’s omission of an express reference to the Royalty Assessments amounts to an “inadvertent omission” is not a request for correction. Far from constituting an admission that the Request is somehow improper, it demonstrates precisely why interpretation is warranted: to confirm that the *dispositif* is to be read consistently with, not in opposition to, the Tribunal’s reasoned findings.

⁹⁹ **Exhibit CI-12**, Award at para. 986.

¹⁰⁰ Counter-Memorial on Interpretation at para. 31.

¹⁰¹ *See* Counter-Memorial on Interpretation at paras. 31–32.

¹⁰² *See* Request for Interpretation at para. 50 (setting forth Perú’s prayer for relief, which requests that the Tribunal “confirm” its findings without any request for amendment or modification of the Award’s text).

86. Claimant invokes the *Archer Daniels* decision for the proposition that any inconsistency in the *dispositif* amounts to a “clerical or similar error” addressable only through correction proceedings.¹⁰³ That case is distinguishable from the case at hand. In the *Archer Daniels* case, the applicant sought to change the operative language; Perú does not. Perú does not ask the Tribunal to modify paragraph 1047(a). It seeks confirmation of what the Award means when read as a whole—including the unqualified finding in paragraph 986 that penalties and interest constitute “taxation measures” falling outside the Tribunal’s jurisdiction.¹⁰⁴

87. Equally without merit is Claimant’s suggestion that Perú is seeking to alter the Tribunal’s jurisdictional analysis. Perú is not asking the Tribunal to rewrite paragraphs 456, 540, 543, or 553.¹⁰⁵ It seeks confirmation of the scope of paragraph 986’s holding and its relationship to the analysis in the jurisdiction section cross-referenced therein.¹⁰⁶

2. Claimant Improperly Seeks to Relitigate the Merits

88. It is Claimant—not Perú—that seeks to reopen the issues argued in the underlying arbitration and decided by the Tribunal in its Award. Claimant’s Counter-Memorial introduces excerpts from Respondent’s experts’ reports and hearing testimony to argue that royalties are not taxes, and, therefore, penalties and interest on the Royalty Assessments cannot be “taxation measures.”¹⁰⁷ Claimant devotes extensive passages to relitigating the scope of Article 22.3.1 by reference to the Parties’ submissions, expert evidence, and closing presentations in the underlying arbitration.¹⁰⁸

89. That exercise is impermissible in an interpretation proceeding. Interpretation proceedings are not a vehicle to relitigate issues, invite reconsideration, or reassess evidence; they

¹⁰³ See Counter-Memorial on Interpretation at para. 33 (citing **Exhibit CLAI-12**, *Archer Daniels* Decision on Interpretation at para. 23).

¹⁰⁴ See Request for Interpretation at para. 50.

¹⁰⁵ See Counter-Memorial on Interpretation at para. 33.

¹⁰⁶ See **Exhibit CI-12**, Award at para. 986.

¹⁰⁷ Counter-Memorial on Interpretation at para. 35 (citing, e.g., **Exhibit CI-9**, Tr. Day 9 (Bravo and Picón), at 2664:22 to 2665:3; **Exhibit CI-6**, Second Expert Report of Prof. Bravo and Prof. Picon, at para. 186).

¹⁰⁸ See Counter-Memorial on Interpretation at paras. 13–14, 25, 33–35.

must be confined to the four corners of the Award.¹⁰⁹ As the *Asylum Case* confirms, “Interpretation can in no way go beyond the limits of the Judgment.”¹¹⁰ The *Micula* tribunal similarly held that “the interpretative mandate of a tribunal is limited to the findings the tribunal has made in the award.”¹¹¹

90. The Tribunal’s finding in paragraph 986 addresses Claimant’s alternative claim concerning Perú’s failure “to waive the penalties and interest assessments against SMCV for the Royalty and Tax Assessments.”¹¹² The Tribunal’s finding speaks for itself. Claimant’s attempt to argue—through expert reports and hearing excerpts—that the Tribunal could not have reached that conclusion is precisely the type of impermissible relitigation that interpretation proceedings are designed to prevent. The Tribunal itself acknowledged in paragraph 986 that evidence was taken at the hearing regarding Article 170 of the Peruvian Tax Code and the waiver requirements but specified that “this was done without prejudice to the Tribunal’s decision on jurisdiction.”¹¹³ The Tribunal was aware of the evidence; it nonetheless concluded that it lacked jurisdiction. It is not for Claimant to invite the Tribunal to reopen and change that conclusion.

3. Perú’s Request Is Timely

91. Finally, Claimant relies on *Micula* to argue that Perú’s Request is untimely and that this purported untimeliness demonstrates it was filed for “tactical reasons” rather than to address a genuine interpretive dispute.¹¹⁴ Claimant’s argument fails on multiple levels.

¹⁰⁹ See **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at para. 76; see also **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 85.

¹¹⁰ **Exhibit CLAI-2**, *Request for interpretation of the Judgment of November 20th, 1950, in the Asylum Case*, Judgment, November 27, 1950, ICJ Reports 1950, at p. 403.

¹¹¹ **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 85.

¹¹² **Exhibit CI-12**, Award at para. 967.

¹¹³ **Exhibit CI-12**, Award at para. 986; see also *id.* at n. 1601 (citing **Exhibit CI-9**, Tr. Day 9 (President Hanefeld) at 2592:6–9).

¹¹⁴ See Counter-Memorial on Interpretation at para. 37 (citing **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 102; **Exhibit CI-19**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Committee’s Decision on Perú’s Request for Suspension of the Proceeding, April 10, 2026, at para. 41).

92. *First*, as Claimant itself acknowledges, Article 50 of the ICSID Convention contains no time limit for filing a request for interpretation.¹¹⁵ The drafters of the Convention deliberately chose not to impose any temporal restriction on interpretation requests—in contrast to the strict 45-day deadline applicable to supplementation and correction requests under Article 49(2). That deliberate choice must be respected. As Schreuer’s Commentary confirms, “A request for an interpretation is not subject to a time limit.”¹¹⁶ The *Wena Hotels* tribunal itself decided on an interpretation request submitted more than three years after the award was rendered, without questioning its timeliness.¹¹⁷

93. *Second*, the *Micula* passage on which Claimant relies does not establish untimeliness as an independent ground of inadmissibility. The *Micula* tribunal instead observed that delay may make it more difficult to establish a “concrete need” for interpretation.¹¹⁸ Here, Perú’s concrete need is manifest: it arises directly from Claimant’s claims in the Annulment Proceeding, in which Claimant asserts that the Tribunal failed to decide the very claims that, in Perú’s reading of the Award, were dismissed on jurisdictional grounds.

94. *Third*, the timing of Perú’s Request is fully explained by the procedural circumstances. Had Claimant not pursued the annulment of the Award, Perú would have had no practical need to seek any interpretation whatsoever. All of Claimant’s claims were dismissed in their entirety. There was no need for Perú to seek any post-award remedy.¹¹⁹ It is only Claimant’s subsequent attempt—through the Annulment Proceeding—to recast the Award as containing a contradiction or failure to decide that has created the need for the interpretation request. Perú’s Request responds directly to Claimant’s interpretation of the Award in the Annulment Proceeding.

95. Claimant cannot have it both ways. It cannot strategically initiate annulment proceedings based on a reading of the Award that conflicts with the Tribunal’s own findings and

¹¹⁵ See Counter-Memorial on Interpretation at para. 37.

¹¹⁶ **Exhibit CLAI-21**, C. Schreuer and S. Schill (eds), “Schreuer’s Commentary on the ICSID Convention” (2022), p. 1196.

¹¹⁷ See **Exhibit CLAI-11**, *Wena Hotels*, Decision on Interpretation at p. 1 (The Award in *Wena Hotels* was rendered on December 8, 2000, and the interpretation request was filed in 2004—over three years later. The tribunal decided the interpretation request on the merits without raising any timeliness objection.).

¹¹⁸ **Exhibit CLAI-22**, *Micula* Decision on Interpretation at para. 102.

¹¹⁹ See **Exhibit CI-12**, Award at para. 1047.

then criticize Perú for seeking the Tribunal’s confirmation of what it actually decided following the initiation of those annulment proceedings. What Claimant characterizes as “procedural gamesmanship”¹²⁰ is, in reality, Perú’s legitimate exercise of its right under Article 50 to address the interpretive dispute that Claimant itself created through its misuse of the annulment mechanism.

96. In fact, it is Claimant that has engaged in procedural gamesmanship. If Claimant truly believed that the Tribunal had upheld jurisdiction over its penalties and interest claims on the Royalty Assessments but failed to decide them on the merits, Claimant could have—and should have—sought supplementation of the Award under Article 49(2) within 45 days of its issuance.¹²¹ 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 after the date on which the award was rendered.”¹²²

97. Claimant deliberately chose not to seek supplementation of the Award by this Tribunal in an attempt to get yet another bite at the apple before a different tribunal. This Tribunal rejected (as Peruvian courts did in the past) Claimant’s interpretation of the Mining Law, its Regulation, and the Stabilization Contract. Indeed, the Tribunal found that the Stabilization Agreement did not extend to the Concentrator Project. In particular, the Tribunal found that it was “convinced that the Mining Law and Regulations limit the scope of stability guarantees to specific mining projects set out in the investment program in the feasibility study”¹²³ and that “nothing” in those instruments supports a reading that stabilization agreements should apply to entire concessions or mining units, as Freeport contended.¹²⁴ The Tribunal further concluded that the Stabilization Agreement clearly limited stability to the Leaching Project and did not apply to the Mining or Beneficiation Concessions as a whole.¹²⁵ The Tribunal, hence, never found that

¹²⁰ Counter-Memorial on Interpretation at para. 37; *see also id.* at para. 6.

¹²¹ *See* Request for Interpretation at para. 46 (explaining that Claimant failed to seek supplementation under Article 49(2) as it was “well aware of the views of the Tribunal”).

¹²² **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Article 49(2).

¹²³ **Exhibit CI-12**, Award at para. 717.

¹²⁴ **Exhibit CI-12**, Award at para. 698; *see also id.* at paras. 694, 697-814.

¹²⁵ *See Exhibit CI-12*, Award at paras. 813–14.

Claimant's interpretation of those laws, regulations, and instruments was reasonable and, importantly, its findings made clear there was no doubt—let alone reasonable doubt (the applicable standard under Peruvian law for waiving penalties and interest)¹²⁶—that the Stabilization Agreement did not extend to the Concentrator Project. Thus, Claimant was well aware that, had it sought supplementation of the Award on the merits of Claimant's penalty and interest claims on the Royalty Assessments (assuming Claimant's interpretation of the Award were correct), this Tribunal would have dismissed Claimant's claims.

98. This is why Claimant chose to pursue annulment—a far more aggressive remedy—without first exhausting the more straightforward and appropriate recourse available to it. By seeking annulment rather than requesting the Tribunal to supplement the Award under Article 49(2) (because it was well aware of the likely outcome had it chosen the Article 49(2) remedy), Claimant abused the annulment process under the ICSID Convention. In any case, Claimant cannot choose annulment for strategic purposes and then allege that Perú has somehow been untimely in seeking clarification on an issue that was raised for the first time in those proceedings.

99. In sum, Perú's Request seeks confirmation of what the Tribunal decided—not a new ruling, not a correction, and not a revision. The second *Wena Hotels* requirement is, thus, satisfied.

C. PERÚ'S REQUEST HAS PRACTICAL RELEVANCE

100. Claimant contends that Perú's Request lacks practical relevance to the implementation of the Award and is instead driven by Perú's view that the Tribunal's interpretation would afford a tactical advantage in the Annulment Proceeding.¹²⁷ Claimant further contends that

¹²⁶ To recall, as part of its challenges before SUNAT, the Tax Tribunal, and the Peruvian courts (which were ultimately rejected), SMCV claimed that ambiguity in the Mining Law and its Regulations excused its nonpayment of the Tax and Royalty Assessments and argued in the arbitration that SUNAT should have waived the related interest and penalties under Article 170 of the Peruvian Tax Code. Article 170 of the Peruvian Tax Code limits the waiver of penalties and interest to cases of "reasonable doubt" or conflicting administrative interpretations. A waiver based on "reasonable doubt" requires a misinterpretation of the law or regulation that would have prevented the assessment to be issued, a subsequent official clarification by the Government correcting that misinterpretation and expressly stating that it is issued under Article 170 of the Tax Code, and publication of that clarification in *El Peruano* (Article 170.1). The test under Article 170 of the Peruvian Tax Code was, therefore, not satisfied in light of the Tribunal's unequivocal conclusion that the Mining Law and its Regulations were clear and that there was no official clarification issued. See **Exhibit CI-12**, Award at paras. 11, 13, 364–65, 383–84, 397–98, 402, 411, 523, 976.

¹²⁷ See Counter-Memorial on Interpretation at para. 38.

the Request lacks practical significance, given that the Award would, in any event, be annulled.¹²⁸ Claimant's allegations are without merit and wholly inappropriate.

101. *First*, Perú's Request bears directly on the framing and scope of the Annulment Proceeding initiated by Claimant and, thus, has clear and immediate practical relevance to the implementation of the Award—in particular, its recognition and enforcement. Perú's Request is not a tactical maneuver, as Claimant asserts, but, rather, a necessary response to the procedural posture created by Claimant itself. As Respondent explained in its Request, Claimant has set in motion annulment proceedings seeking a declaration that the Tribunal failed to decide claims purportedly worth US \$417 million.¹²⁹ The interpretation of the Award on the disputed issue is at the core of Claimant's alleged grounds for annulment. Thus, Perú's Request necessarily bears directly on the Annulment Proceeding. If the Tribunal grants Perú's Request and confirms what the Award already makes clear—namely, that the Tribunal did decide and expressly reject all of Freeport's penalty and interest claims for lack of jurisdiction, including those relating to penalties and interest on the Royalty Assessments—it would largely eviscerate the grounds for Claimant's annulment request.

102. At a minimum, by confirming the scope and content of the Tribunal's findings on Claimant's claims concerning penalties and interest on the Royalty Assessments (*i.e.*, that the Tribunal dismissed those claims on jurisdictional grounds), the Tribunal's decision on Respondent's Request would substantially narrow the claims before the *ad hoc* Committee and may, in any case, have a substantial effect on how the claims are framed and pleaded in the Annulment Proceeding.

103. Hence, the fact that the Award is currently under review by an annulment committee does not detract from the practical relevance of Perú's Request. To the contrary, Respondent's Request performs a concrete and constructive function for the benefit of both Parties: it promotes procedural efficiency and clarifies the meaning and scope of the Award with respect to the issues squarely before the *ad hoc* Committee. Indeed, the *ad hoc* Committee's decision to

¹²⁸ See Counter-Memorial on Interpretation at para. 39.

¹²⁹ See generally Request for Interpretation at para. 23. See also **Exhibit RI-3**, Claimant's Application for Partial Annulment, September 16, 2024 ("Application for Partial Annulment"), at para. 2.

suspend the Annulment Proceeding pending the Tribunal’s decision on Perú’s Request reflects the Committee’s view (stated explicitly in the decision) that the Tribunal’s interpretation may have an impact on Claimant’s annulment claims. For example, the *ad hoc* Committee itself acknowledged that “[i]f the Tribunal decides, on the Request for Interpretation, that the correct interpretation of the Award is that it decided there was no jurisdiction to hear the claims for penalties and interest on the royalties assessments (and therefore agrees with the Respondent’s interpretation), that would dispose of the first ground for annulment and, in that sense would narrow the issues before the Committee.”¹³⁰

104. *Second*, Claimant’s contention that the Request lacks practical significance because the Award would allegedly still be annulable¹³¹ is entirely speculative and inappropriate. Claimant effectively invites this Tribunal to accept—before the *ad hoc* Committee renders its decision—that the Award is irredeemably flawed and beyond clarification. There is simply no basis for Claimant’s assertion. Claimant, of course, does not know the outcome of the Annulment Proceeding. It is for the *ad hoc* Committee to determine, based on the evidence and arguments before it, whether to partially annul the Award or not. And even if the Committee did determine any ground for annulment existed (it should not), it retains full discretion to uphold the Award.¹³²

105. In any case, Claimant’s argument misconstrues the function of an interpretation request under Article 50 of the ICSID Convention. The Tribunal’s duty is to resolve the Parties’ dispute as to the meaning or scope of the Award by stating what the Award means.¹³³ That

¹³⁰ **Exhibit CI-19**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Committee’s Decision on Perú’s Request for Suspension of the Proceeding, April 10, 2026, at para. 45. Claimant submitted a request for reconsideration of the *ad hoc* Committee’s Decision on Respondent’s request for suspension of the Annulment Proceeding on April 10, 2026. The *ad hoc* Committee issued its decision on Claimant’s request for reconsideration on April 17, 2026, rejecting Claimant’s request and confirming its decision to suspend the Annulment Proceeding (“Moreover, the Committee cannot – and should not – try to predict what form any decision by the Tribunal on the Respondent’s request for interpretation might take. Even if the Tribunal were to accept the Respondent’s argument that the Award rejected jurisdiction over the claim for interest and penalties on the Royalties Assessments, the Committee would need to hear from the Parties on the reasoning of the Tribunal regarding that interpretation. For these reasons, the Committee considers that there is no basis for it to reverse its Decision on Suspension of the proceeding and accordingly rejects the Applicant’s Request.”). See **Exhibit RI-4**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Committee’s Decision on the Applicant’s Request for Reconsideration of the Decision on Suspension of the Proceeding, April 17, 2026, at paras. 16–17.

¹³¹ See Counter-Memorial on Interpretation at paras. 39–43.

¹³² See **Exhibit RLAI-14**, ICSID Secretariat, *Updated Background Paper on Annulment*, March 2024, at para. 80(4).

¹³³ See **Exhibit RLAI-13**, ICSID Convention, Regulations and Rules (April 2006), ICSID Convention, Art. 50.

obligation exists independently of, and is not displaced by, parallel annulment proceedings. Thus, regardless of Claimant's claims in the Annulment Proceeding—and irrespective of the outcome of such proceeding—there remains a live and defined dispute between the Parties regarding the interpretation of the Award that this Tribunal alone is competent to resolve.

106. Claimant goes even further and attempts to dissuade this Tribunal from issuing its interpretation by indicating that the Tribunal's decision would give rise to a new "independent ground" for the annulment of the Award under Article 52(1)(b).¹³⁴ According to Claimant, the Award would be annulable on the ground "that the Tribunal has manifestly exceeded its powers' in deciding Peru's Request for Interpretation."¹³⁵ Claimant's reliance on the prospect of annulment to influence the Tribunal's decision-making process is highly improper, undermines the integrity of the proceedings, and must not be condoned by the Tribunal.

107. *Finally*, Perú's request remains practically relevant for the implementation of the Award, even in the event of partial annulment. While it is impossible to speculate whether any portion of the Award might be annulled (it should not be), even if a portion of the Award were annulled, the portions of the Award which remain, including the Tribunal's interpretation decision, will be *res judicata* in any resubmitted case.

108. In sum, Claimant's attempt to undermine the practical relevance of Perú's Request—and to try to dissuade the Tribunal from exercising its interpretative function by threatening annulment—is both misconceived and improper. Perú's Request falls squarely within the Tribunal's mandate under Article 50 of the ICSID Convention and serves a concrete and legitimate purpose in clarifying the meaning and scope of the Award.

IV. THE TRIBUNAL SHOULD CONFIRM THAT IT DISMISSED CLAIMANT'S CLAIMS RELATING TO PENALTIES AND INTEREST ARISING OUT OF BOTH THE TAX ASSESSMENTS AND THE ROYALTY ASSESSMENTS ON JURISDICTIONAL GROUNDS

109. For the reasons discussed in Section III, Perú's Request is admissible, and the Tribunal should issue its decision on that Request. In its decision, the Tribunal should confirm

¹³⁴ Counter-Memorial on Interpretation at para. 43.

¹³⁵ Counter-Memorial on Interpretation at para. 43.

that: (i) the Award, at paragraphs 540-553, 986 and 1047, determined that Claimant's claims concerning 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) the aforementioned paragraphs therefore dismissed Claimant's claims relating to penalties and interest on the Royalty Assessments on jurisdictional grounds; and (iii) the Tribunal's statement in the *dispositif* cannot be read as negating the analysis and conclusions reached elsewhere in the Award over claims related to penalties and interest on the Royalty Assessments.

110. In its Counter-Memorial, Claimant alleges that the Tribunal should confirm that the Tribunal determined that it has jurisdiction over Claimant's claims except for Claimant's claims based on the disputed Tax Assessments' penalties and interest.¹³⁶ According to Claimant, that outcome is the only one that is consistent with Perú's own position in the arbitration and with the Tribunal's reasoning in the Award that focused on the nature of penalties and interest on the Tax Assessments as being part of Peru's taxation regime.¹³⁷ Claimant's allegations are misleading and incorrect.

111. *First*, as Respondent demonstrated in Section III.A, Perú's position in the arbitration is irrelevant for the purposes of interpreting the Tribunal's reasoning and decision in the Award. Under the well-established principles of *competence-competence* and *iura novit arbiter*, the Tribunal has both the authority and the obligation to determine its jurisdiction on its own initiative and is entitled to adopt its own legal reasoning and determine the legal consequences flowing from the facts and arguments before it.

112. *Second*, contrary to Claimant's assertions, confirming that the Tribunal denied jurisdiction only with respect to claims for penalties and interest on the Tax Assessments is not consistent with the Tribunal's reasoning in the Award. As Respondent demonstrated in detail in its Request, the Tribunal framed the jurisdictional issue broadly in the jurisdictional section of the Award. Without distinguishing between Claimant's claims arising from the Tax Assessments and the Royalty Assessments, the Tribunal asked whether claims based on penalties and interest

¹³⁶ See Counter-Memorial on Interpretation at para. 46.

¹³⁷ See Counter-Memorial on Interpretation at para. 46.

qualify as excluded “taxation measures” under the TPA.¹³⁸ The Tribunal then conducted an analysis beginning in paragraph 540 of the Award on the term “taxation measures,” in light of its ordinary meaning, context, and the object and purpose of the TPA.¹³⁹ After applying the VCLT, the Tribunal concluded that “taxation” is broader than “tax.”¹⁴⁰ Relying on investment treaty jurisprudence and the purpose of the TPA, the Tribunal further found that “taxation” broadly encompasses not only taxes but also related laws and enforcement mechanisms, including penalties and interest.¹⁴¹ The Tribunal concluded that penalties and interest—while not taxes under Peruvian law—form part of the domestic tax regime and thus qualify as “taxation measures” under the TPA.¹⁴² Accordingly, the Tribunal held in paragraph 553 of the Award that Claimant’s Article 10.5 claims relating to penalties and interest on SMCV’s Tax Assessments were excluded from its jurisdiction under Article 22.3.1 of the TPA.¹⁴³

113. Respondent’s understanding of the Award—which the Tribunal should confirm—is that this reasoning applies generally to penalties and interest as “taxation measures,” regardless of whether they arise from the Tax or Royalty Assessments. This is confirmed in paragraph 986 of the Award, where the Tribunal reaffirmed that penalties and interest generally fall within the definition of “taxation measures” and, accordingly, fall outside its jurisdiction, without drawing any distinction between the two types of assessments.¹⁴⁴ Significantly, paragraph 986 contains the conclusion of the Award’s 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.”¹⁴⁵

¹³⁸ Request for Interpretation at para. 40. *See also* **Exhibit CI-12**, Award at para. 455(b) (“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?”) (emphasis added).

¹³⁹ Request for Interpretation at para. 41. *See also* **Exhibit CI-12**, Award at paras. 540 *et seq.*

¹⁴⁰ Request for Interpretation at para. 41. *See also* **Exhibit CI-12**, Award at paras. 545-47.

¹⁴¹ *See* Request for Interpretation at para. 42. *See also* **Exhibit CI-12**, Award at para. 547.

¹⁴² Request for Interpretation at para. 43. *See also* **Exhibit CI-12**, Award at para. 214.

¹⁴³ *See* Request for Interpretation at para. 43. *See also* **Exhibit CI-12**, Award at para. 553.

¹⁴⁴ Request for Interpretation at para. 44. *See also* **Exhibit CI-12**, Award at para. 986.

¹⁴⁵ **Exhibit CI-12**, Award at para. 967 (emphasis added).

114. Finally, as set out in its Request, Respondent understands—and the Tribunal should confirm—that the statement in the *dispositif* that the Tribunal “[had] jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest”¹⁴⁶ should not be read as negating or overriding the analysis and conclusions reached in the jurisdiction and merits sections of the Award that Claimant’s claims concerning penalties and interest—whether arising from the Tax or Royalty Assessments—fall outside its jurisdiction.¹⁴⁷

V. THE TRIBUNAL SHOULD AWARD COSTS TO RESPONDENT

115. Respondent submits, as it did in its Request for Interpretation, that Claimant should bear the costs associated with this interpretation proceeding, including Respondent’s legal and other expenses incurred in connection with its Request.¹⁴⁸ In its Counter-Memorial, Claimant contends that having argued before the *ad hoc* Committee that unfounded post-award applications warrant a full allocation of costs to the party that initiated those proceedings due to the burden they impose and their impact on finality of awards, Perú cannot now adopt the opposite position by resisting costs while advancing a “meritless interpretation request.”¹⁴⁹

116. Indeed, in the ongoing annulment proceedings, Perú submitted that, should Claimant’s application be dismissed, the *ad hoc* Committee should, in accordance with the “costs-follow-the-event” principle, order Claimant to bear all costs of the proceedings, including Perú’s full legal fees, expenses, and interest. However, Claimant fails to mention that Respondent also submitted that Claimant should likewise bear Perú’s legal costs in the proceedings, even if Claimant prevailed on any ground for annulment.¹⁵⁰ Respondent explained that while this outcome departs from the traditional “costs-follow-the-event” principle, such a result is nonetheless warranted in light of the specific circumstances of the case, noting that ICSID annulment practice

¹⁴⁶ **Exhibit CI-12**, Award at para. 1047(a).

¹⁴⁷ See Request for Interpretation at para. 45.

¹⁴⁸ See Request for Interpretation at para. 48.

¹⁴⁹ Counter-Memorial on Interpretation at para. 48.

¹⁵⁰ See **Exhibit RI-2**, Rejoinder on Partial Annulment at para. 190.

shows that committees frequently decline to allocate costs to applicants even where they are wholly or partially successful.¹⁵¹

117. In the same vein, Respondent explained in its Request that even if the present Request does not prevail (*quod non*), it would be inappropriate to require Respondent to bear the costs of this interpretation proceeding, including both its own legal fees and those of Claimant. As Respondent explained, the present application was necessitated by Claimant's own procedural choices: rather than availing itself of the remedies expressly provided under Articles 49(2) or 50 of the ICSID Convention to request that the Tribunal clarify or supplement any alleged ambiguities or omissions in the Award, as it should have done if it honestly believed there were an omission in the Award, Claimant elected to initiate annulment proceedings.¹⁵² Having placed Respondent in the position of addressing an uncertainty that could—and should—have been resolved before this Tribunal through an Article 49(2) or 50 application, Claimant cannot now seek to shift the financial burden of its choice onto Respondent. In any case, as Respondent has demonstrated in this submission, its Request serves a legitimate interpretative purpose and is fully admissible and well-founded.

118. Accordingly, in the exercise of its broad discretion over the allocation of costs and fees, and irrespective of the outcome of this interpretation proceeding, Respondent respectfully requests that the Tribunal order Claimant to bear all costs associated with this proceeding, including Respondent's legal fees and other expenses incurred in connection with this Request.¹⁵³

VI. REQUEST FOR RELIEF

119. In light of the above, Respondent respectfully requests that the Tribunal issue its interpretation of 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

¹⁵¹ **Exhibit RI-2**, Rejoinder on Partial Annulment at para. 191.

¹⁵² See Request for Interpretation at para. 48.

¹⁵³ 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.

measures excluded from the Tribunal's jurisdiction under Article 22.3.1 of the TPA;

- ii. 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"¹⁵⁴ cannot be read as negating or overriding the analysis and conclusions reached in the jurisdiction and merits sections of the Award over claims concerning penalties and interest on the Royalty Assessments;
- iii. Confirm that Claimant's claims relating to penalties and interest on the Royalty Assessments were dismissed on jurisdictional grounds; 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.

Respectfully submitted,



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¹⁵⁴ **Exhibit CI-12**, Award at para. 1047(a).