

PCA Case No. 2018-39

**IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF
THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED ON APRIL 17, 1998 AND
ENTERED INTO FORCE ON JUNE 6, 2001**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2010/2013 (the “UNCITRAL Rules”)**

- between -

**1. THE ESTATE OF JULIO MIGUEL ORLANDINI-AGREDA
2. COMPAÑÍA MINERA ORLANDINI LTDA.**

(the “Claimants”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

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

PROCEDURAL ORDER NO. 1

Tribunal

Dr. Stanimir A. Alexandrov (Presiding Arbitrator)
Professor Dr. Guido Santiago Tawil
Dr. José Antonio Moreno Rodríguez

February 4, 2019

1. Continuation in Force of Prior Orders

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

2. Applicable Rules

- 2.1 The arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules, as revised in 2010 (with new article 1, paragraph 4, as adopted in 2013) (the “**UNCITRAL Rules**”).

3. Place of Arbitration

- 3.1 The place of arbitration shall be Paris, France.
- 3.2 Meetings and hearings may take place at other locations if so decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.

4. Languages of the Arbitration

- 4.1 The languages of the arbitration shall be English and Spanish.
- 4.2 The Tribunal’s awards shall be issued simultaneously in English and Spanish. Communications and other decisions of the Tribunal may be issued in either language alone.
- 4.3 Written submissions of the Parties and their accompanying documents may be submitted in either English or Spanish, without translation. Legal authorities shall be submitted in their original language, without translation. Requests for document production shall be submitted in either English or Spanish, without translation. Routine communications may be sent in either English or Spanish, without translation.
- 4.4 Oral testimony and argument before the Tribunal shall be given in English or Spanish. Simultaneous interpretation shall be provided. Arrangements for English and Spanish *verbatim* transcripts shall be made. In the event of conflict between the English and the Spanish transcripts, the transcript in the original language in which the oral testimony or argument was given shall prevail. The Parties shall bring any discrepancy between English and Spanish transcripts to the Tribunal’s attention together with any other corrections to the transcripts that they might have, if and when invited to do so.
- 4.5 Documents produced in response to requests or orders for production may be produced in their original language.
- 4.6 The Tribunal reserves the right to require a Party to translate any document in English or Spanish in whole or in part.

5. Procedural Calendar

- 5.1 The procedural calendar is set forth in **Annex 1** to this order.

- 5.2 On or before the date of the deadline for any written submission, the Party in question shall send the submission, together with any witness statements and expert reports or opinions (but excluding other supporting documents and legal authorities), to the Tribunal, PCA, and opposing counsel by e-mail in accordance with Section 10 of the Terms of Appointment.
- 5.3 To facilitate filing, citations, and word processing, all written submissions, including witness statements and expert reports or opinions, shall be provided as searchable Adobe Portable Document Format (“PDF”) files, and preceded by a hyper-linked table of contents. Routine correspondence shall also be sent in searchable PDF files, except for short communications contained in the body of an e-mail message.
- 5.4 Within one business day following the submission of a written submission and accompanying documents by e-mail, electronic copies of the written submission, all accompanying documents (including exhibits and legal authorities, which should be preferably filed as searchable PDF files) and a list describing each document by exhibit number, date, type of exhibit, author, and recipient (as applicable) shall be sent by courier to the Tribunal, PCA, and opposing counsel in electronic form on a USB flash memory drive. By the same deadline, the Parties will also upload the written submission and all accompanying materials to a secure online document exchange platform, such as *Box Platform* or any other platform that provides similar services, to be jointly chosen by the Parties with the agreement of the Tribunal. The selected document exchange platform must be accessible to the Parties, the Tribunal and the PCA. Any costs associated with establishing a secure document exchange platform shall be borne equally by the Parties. The Tribunal will decide upon the appropriate allocation of costs in respect of the document exchange platform at the time of fixing the costs of the arbitration.
- 5.5 For any simultaneous submissions, each side shall submit all copies only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 5.6 Unless otherwise provided, all time limits shall refer to midnight Eastern Standard Time (“EST”). If the deadline for a submission falls on a Saturday, a Sunday or a legal holiday in the United States, then the submission shall be due at midnight EST on the next business day.
- 5.7 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.

6. Document Production

- 6.1 Each Party may request the production of documents from the other Party in accordance with the procedural calendar then in force. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set forth in the procedural calendar. If a party objects to only a certain aspect of a request, it shall produce responsive documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural calendar.

- 6.2 If the requested Party objects to production, the following procedure shall apply:
- 6.2.1 The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
 - 6.2.2 The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
 - 6.2.3 The Parties shall seek agreement on production requests to the greatest extent possible.
 - 6.2.4 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
 - 6.2.5 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex 2** (alternative Redfern schedule). The Parties shall use the model format throughout their exchange of requests, objections, and responses.
 - 6.2.6 The Tribunal shall rule on any such application and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
 - 6.2.7 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 6.3 Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the procedural calendar.
- 6.4 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

7. Evidence and Legal Authorities

- 7.1 In addition to the relevant articles of the UNCITRAL Rules and the provisions on document production above, the Tribunal may use, as an additional guideline, the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, when considering matters of evidence.
- 7.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form.
- 7.3 In their rebuttal submissions (i.e., Reply and Rejoinder), the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production.

- 7.4 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence. When making an application for leave to submit new evidence, a Party shall not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.
- 7.5 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimants shall begin with a letter “C” followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter “R” followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. The Parties shall number each exhibit page separately and consecutively using Bates numbering (i.e., C-1_001, C-1_002, C-1_003, C-2_001, etc. or R-1_001, R-1_002, R-1_003, R-2_001, etc.).
- 7.6 Statements of fact witnesses or reports of experts shall be numbered separately as “CWS-” for Claimants’ witness statements and as “CER-” for Claimants’ expert reports, and “RWS-” for Respondent’s witness statements and “RER-” for Respondent’s expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]). Numbered paragraphs should be used in witness statements and expert reports.
- 7.7 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimants shall begin with the letters “CLA” followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters “RLA” followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 7.8 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (i.e., in Excel format rather than PDF).
- 7.9 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.

8. Witnesses

- 8.1 Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 8.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions. Should such a situation arise, a Party shall seek leave from the Tribunal and the Tribunal’s directions well in advance to allow sufficient time to produce the evidence in whatever form ordered by the Tribunal within the time limit set forth in the procedural calendar.

- 8.3 Each witness statement shall contain at least the following:
- 8.3.1 the name, date of birth, and present address of the witness;
 - 8.3.2 a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
 - 8.3.3 a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
 - 8.3.4 a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge, and this should be done in a narrative form containing the full substance of the witness's testimony; and
 - 8.3.5 the signature of the witness.
- 8.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been submitted with the written submissions. Should a Party wish to present any of its own witnesses or experts for examination at the hearing who have not been called by the Tribunal or the other Party, it shall request leave from the Tribunal.
- 8.5 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. The Tribunal may grant leave for a witness to testify by video-conferencing in exceptional circumstances or if the Parties so agree.
- 8.6 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 8.7 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's or expert's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.
- 8.8 Each Party shall cover the costs of appearance of its own witnesses, including video-conferencing costs if any. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 8.9 At any hearing, the examination of each witness shall proceed as follows:
- (a) the witness shall make a declaration of truthfulness;
 - (b) although direct examination will be given in the form of witness statements and expert reports, the Party presenting the witness may conduct a brief direct examination;
 - (c) the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;

- (d) the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
 - (e) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.
- 8.10 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
- (a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
 - (b) limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
 - (c) direct that a witness be recalled for further examination at any time.
- 8.11 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 8.12 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination. Upon application by one of the Parties, the Tribunal may make exceptions to this rule for Party or State representatives who also are factual witnesses.

9. Experts

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

10. Hearings

- 10.1 After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
- 10.2 Hearings shall be recorded and shall be transcribed in both English and Spanish using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.

10.3 No new evidence may be presented at the hearing except with leave of the Tribunal. PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party during the hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, or new calculations. Should the Tribunal grant leave to a party to present new evidence or new calculations in the course of the hearing, it should grant the other party the opportunity to introduce new evidence or new calculations to rebut it. When making an application for leave to submit new evidence, a Party may not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.

11. Third Party Funding

11.1 The Parties shall submit a written notice disclosing the use of third party funding to cover the costs of this arbitration and the identity of the third party funder. Such notice shall be sent to the Tribunal once the third party funding agreement has been signed.

11.2 Each Party bears the ongoing duty to disclose any change in the information addressed in Section 11.1 occurred after the initial disclosure, including termination or withdrawal of the funding agreement.

12. Confidentiality

12.1 The Parties shall confer and propose to the Tribunal the terms of an appropriate order, consistent with Article 28(3) and Article 34(5) of the UNCITRAL Rules, that provides appropriate protection to business proprietary and other confidential information while ensuring transparency where confidentiality is not required.

13. Closure of Proceedings

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

14. Issuance of Procedural Order No. 1

14.1 This Procedural Order No. 1 is issued subject to the legal representative of Mr. Orlandini's estate ratifying the actions taken so far in this arbitration by the Second Claimant.

14.2 The Second Claimant shall bear any costs of arbitration, as defined in Article 40 of the UNCITRAL Rules, that may arise from the legal representative of Mr. Orlandini's estate not ratifying the actions taken by the Second Claimant in this arbitration.

14.3 The dispositions in this Procedural Order are without prejudice to the rights of Respondent to challenge the representation or the standing of either Claimant or to raise any other objections to the jurisdiction of the Tribunal.

Place of Arbitration: Paris, France



Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Procedural Calendar

Description	By	Days	Dates
<i>Preliminary Phase</i>			
Step 1: First Procedural Meeting	All	N/A	January 29, 2019
Step 2: Report on the outcome of the Florida Court proceeding concerning the appointment of the personal representative of Mr. Orlandini's estate	Claimants	N/A	N/A
Step 3: Request for Bifurcation of the Proceedings	Respondent	Up to 30 days from Step 2	TBD
Step 4: Response to the Request for Bifurcation of the Proceedings	Claimants	Up to 30 days from Step 3	TBD
Step 5: Decision on Bifurcation	Tribunal	Up to 30 days from Step 4	TBD

[***the schedule for the next phase of the proceedings shall be fixed once the Tribunal issues its Decision on Bifurcation***]

Annex 2: Model Redfern Schedule for Document Requests

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			