

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”, or “Bolivia”, and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 8

Decision on the Parties’ Requests for Document Production

Tribunal

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

July 27, 2020

I. Background

1. On February 4, 2019, following consultations with the Parties, the Tribunal issued Procedural Order No. 1. Section 6 of Procedural Order No. 1 provides that each Party may request the production of documents from the other Party in accordance with the procedural calendar in force, and establishes a procedure for the Parties to object to production and submit for the Tribunal's decision all requests on which no agreement is reached.
2. On July 13, 2020, pursuant to Sections 6.2.4 and 6.2.5 of Procedural Order No. 1 and Annex 1 to Procedural Order No. 7, dated April 10, 2020, the Parties submitted their outstanding requests for the production of documents in the form of Redfern Schedules (respectively, the "**Claimants' Redfern Schedule**" and the "**Respondent's Redfern Schedule**"). In accordance with the Tribunal's directions, as set out in its letter of May 14, 2020, the Claimants also filed a supplemental request for document production addressing matters raised in the expert report of Mr. Arturo Yáñez Cortes (the "**Claimants' Supplemental Redfern Schedule**").
3. On July 17, 2020, the Claimants requested that the Tribunal (i) reject and not consider certain inter-Party correspondence dated June 29, 2020 filed by the Respondent as exhibit R-425 alongside its Redfern Schedule or, at least, allow the Claimants to respond to such correspondence; and (ii) reject the Respondent's application for fees and costs incurred during the document production phase and instead order the Respondent to pay such fees and costs.
4. On July 22, 2020, the Respondent replied to the Claimants' communication of July 17, 2020, requesting that the Tribunal (i) dismiss the Claimants' claims regarding exhibit R-425; (ii) reject and not consider "the belated submissions by Claimants on the Parties' document requests"; and (iii) award the Respondent the costs of the disclosure phase.

II. Analysis

5. The Tribunal's rulings on the Parties' outstanding requests for production of documents, as reflected in the Parties' Redfern Schedules and in accordance with the relevant standards provided in the UNCITRAL Rules and Procedural Order No. 1, are set forth in **Annexes 1-3** to this Procedural Order.
6. The Tribunal recalls that, as per Articles 17(1) and 27(3) of the UNCITRAL Rules and section 6.2.6 of Procedural Order No. 1, it may exercise wide discretion when deciding on document production. In particular, and as permitted under Section 6.2.6 of Procedural Order No. 1, the Tribunal has taken guidance from the *IBA Rules on the Taking of Evidence in International Arbitration 2010* in reaching its decisions on the Parties' requests for document production.
7. The Tribunal notes that the rulings set out in Annexes 1-3 to this order are based on a *prima facie* assessment of the relevance and materiality of the documents requested by the Parties. The Tribunal does not intend to prejudge the materiality of such documents as far as its final determinations on admissibility and burden of proof are concerned.

III. Decision

8. Having carefully considered the Parties' document production requests and their observations with respect to each of them in light of all relevant circumstances, the Tribunal decides as follows:
- (i) To grant, for the reasons and to the extent set out in the Tribunal's decisions as incorporated in the Parties' Redfern Schedules (enclosed as Annexes 1-3 to this Procedural Order):
 - a) The Claimants' document production requests Nos. 1-8, 10, 12, 15-17, 21, 23, 25-30, 33-37, 39-42 and 45, as set out in the Claimants' Redfern Schedule;
 - b) The Claimants' document production requests Nos. 1-5, as set out in the Claimants' Supplemental Redfern Schedule; and
 - c) The Respondent's document production requests Nos. 2-12, 15-16, 20-23 and 25-32, as set out in the Respondent's Redfern Schedule.
 - (ii) To reject all remaining document production requests submitted by the Parties for the reasons set out in the Tribunal's decisions as incorporated in the Parties' Redfern Schedules.
 - (iii) In accordance with the Amended Procedural Calendar for the Phase on Jurisdiction and Liability set out in Annex 1 of Procedural Order No. 7, each side shall produce all documents as ordered by **Thursday, August 27, 2020**.
 - (iv) Should either side seek to assert either confidentiality or privilege over any document for which production has been ordered, that side should prepare a confidentiality and/or privilege log including the following information: (i) the date of the document; (ii) its author(s); (iii) its recipient(s) (if any); (iv) a very brief description of the document; and (v) the basis for the assertion of privilege or confidentiality.
 - (v) Pursuant to Section 6.2.7 of Procedural Order No. 1, if a Party fails to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
 - (vi) Pursuant to Section 6.3 of Procedural Order No. 1, the documents produced 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.

Place of Arbitration: Paris, France



Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

On behalf of the Tribunal

PERMANENT COURT OF ARBITRATION
PCA Case No. 2018-39

**IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

Between

**The Estate of Julio Miguel Orlandini-Agreda
and
Compañía Minera Orlandini Ltda.**

Claimants

and

the Plurinational State of Bolivia

Respondent

CLAIMANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS

13 July 2020

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Instructions¹

1. In accordance with the procedural calendar included in Annex 1 to Procedural Order No. 7 dated April 10, 2020, the Estate of Julio Miguel Orlandini-Agreda (“**The Estate of Mr. Orlandini**”) and Compañía Minera Orlandini Ltda. (“**CMO**” and collectively with The Estate of Mr. Orlandini, the “**Claimants**”), hereby submit their Requests for Production of Documents (the “**Requests**”).
2. Pursuant to paragraph 6 of Procedural Order No. 1, Claimants submit their Requests in the form of the Redfern Schedule attached to Procedural Order No. 1 as Annex 2.
3. The term “document” has the meaning attributed to it under the IBA Rules on the Taking of Evidence in International Arbitration, that is: “a writing of any kind, whether recorded on paper, electronic means, audio or visual recordings or any other mechanical or electronic means of storing or recording information.” The term “document” thus includes all writings of any kind, whether in draft or final form, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information, including, but not limited to, all communications (including letters, e-mails and facsimile correspondence), notes, reports, memoranda, analyses, summaries, presentations, meeting minutes, board resolutions, briefs, official resolutions or decisions, working drafts, records of discussions or deliberations, transcripts, talking points, pitch books, speeches, financial statements, proposals, maps, diagrams, drawings, and charts.
4. The Requests encompass all documents within the possession, custody or control of the Respondent, because the documents requested were created by or for Respondent, and/or provided to Respondent, and/or should be kept and maintained by Respondent in the ordinary course of business. To the extent that documents responsive to any request are located and withheld by Respondent on account of any alleged privilege or for any other reason, please provide together with your response a privilege log, setting forth a description of the responsive document (including its date, its author, and its recipient) and the reason for withholding that document from production.
5. The term “correspondence” means any communication sent or received, in any format and form (soft and/or hard copy), including, but not limited to, letters, emails, faxes, SMS, *oficios*, and handwritten notes.
6. “Any” and “all” mean “all;” “Including” means “including, but not limited to;” “And” and “or” mean “and/or.”
7. Unless otherwise specified, the period of time covered by the requests is from 1985 to 1986 and from 1997 to the present.

¹ These instructions were included with Claimants’ Redfern as originally sent to Respondent.

8. The documents requested should be produced in the manner in which they are regularly maintained. Please submit responsive documents as one PDF file per document. If the documents requested are stored electronically, Respondent may produce the electronic versions of such documents, but should maintain the original format of the document without removing or altering the document's "metadata." The documents must be submitted in their entirety, and, in the case of e-mail correspondence, with any attached files.
9. All capitalized or previously defined terms shall have the same meaning as detailed in Claimants' Statement of Claim ("SOC") and the Appendix I (Glossary of Terms) thereto.
10. Requests for documents prepared by or related to a government agency, State-owned entity (or its affiliates, subsidiaries or other entity or person controlling, controlled by, or otherwise affiliated with such company or entity), State organ, subdivision or instrumentality of Respondent include any document prepared by officials, employees, representatives and/or agents of that agency, State-owned entity, State organ, subdivision, or instrumentality, without regard to whether elected, appointed, contracted, or otherwise employed.
11. Claimants reserve the right to amend or supplement the Requests in light of the documents produced or not produced by Respondent or any other document or evidence that Respondent may submit in these proceedings, including, without limitation the expert report of Arturo Yáñez Cortes that Respondent submitted today.² Claimants also reserve the right to amend or supplement the Requests should Respondent enact any additional measures affecting Claimants' rights and investments during the course of these proceedings, and/or should Respondent seek to raise any new allegations or produce any additional evidence.

² By its letter of May 14, 2020, the Tribunal has already afforded Claimants the opportunity to submit a supplementary request for document production until June 8, 2020, if necessary, addressing any matters raised in the expert report of Arturo Yáñez Cortes.