[UNOFFICIAL ENGLISH VERSION BASED ON THE FRENCH ORIGINAL]

NOTICE OF ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

PRESIDENT ALLENDE FOUNDATION, VICTOR PEY CASADO, CORAL PEY GREBE

CLAIMANTS

v.

STATE OF CHILE

RESPONDENT

To H.E. Madame President of the Republic
Palace of La Moneda
Santiago de Chile

Dear Madame President of the Republic,

The Spanish President Allende Foundation, Mr. Victor Pey Casado and Mrs. Coral Pey Grove respectfully inform you of the present Notice of Arbitration, in accordance with 10 (3) of the Agreement between the Kingdom of Spain and the Republic of Chile for the Protection and Mutual Encouragement of Investment (hereinafter, the Chile-Spain treaty), signed at Santiago 2 October 1991, and in accordance with Article 3 of the Arbitration Rule of the United Nations Commission for International Trade Law.

Convinced of the validity of their claim based on the events that occurred following the judgment of the 1st Civil Tribunal of Santiago on 24 July 2008[1], the investors reiterate their continued offers since 1995 to settle this matter amicably, and in manner consistent with the Constitution of Chile and with international law, putting an end to the situation affecting their investment in the newspaper enterprise CPP S.A. and EPC Ltd, which originated under the dictatorship imposed by a violent and bloody coup on the Chilean people, beginning on 11 September 1973.

I.

INTRODUCTION

[Summary of contents of Notice of Arbitration omitted from English version]

II. THE PARTIES

CLAIMANTS

4. There are three Claimants:

[1] Attached piece number **A-1, accessible at** http://bit.ly/2p6Xg5M

-The President Allende philanthropic and cultural foundation of Spanish nationality (…) recipient of 90% of the total shares and total assets of CPP S.A. CPP S.A. holds 99% of the shares of the Journalism Enterprise Clarin Ltd. (EPC Ltda.).

-Mr. Victor Pey Casado, domiciled in Madrid, owner of 10% of the shares and total assets of CPP S.A. which have been assigned to his daughter.

-Mrs. Coral Pey Grebe, daughter of Mr. Victor Pey Casado.

…

6. The Respondent is the State of Chile.

III. The Facts that Give Rise to This Claim

7. The investors own 100% of the shares of CPP S.A., which in turn owns 99% of EPC Ltd., the enterprise publishing the daily newspaper El Clarin, created in 1952 and in 1973 the newspaper with the largest paid circulation in Chile. El Clarin's editorial policy was supportive of representative, democratic government in Chile and of the political orientation of the government of Dr. Salvador Allende, who was democratically elected on 4 September 1970.

8. The military coup against the Republic of Chile, which put an end to democracy and brought to power General Augusto Pinochet as dictator, in the first instance seized the assets of CPP S.A. and EPC Ltd. on 11 September 1973. This was followed by an attempt to dissolve the two corporations and confiscate all of their assets through Decree 165 of the Ministry of the Interior, dated 10 February 1975 and published in the Official Journal on March 10 1975.

9. During the Pinochet dictatorship, the investor and owner of the above-mentioned companies was forced into exile under threat of detention and execution if he returned to Chile. He was not able to return to Chile until the end of the dictatorship and the restoration of the rule of law in 1990.

10. After the dictatorship, the state adopted measures of transitional justice, in order to repair the grave crimes and illegal acts perpetrated during the dictatorship, including the seizure of property for political motivations. But as was the case in a number of other countries, elements of the *deep dictatorial state*, individuals

implicated in the period of oppression and tyranny remained in place (whether in the military, the ministries, the media or even the courts), well-positioned and highly motivated to undermine the ambitious efforts at transitional justice inspired by the new democracy.

11. Under the Constitution, the investors had a right to compensation for the prohibition on the publication of their newspaper and the attempted confiscation of the assets of their publication companies. Nevertheless, through manipulations and blocking tactics, elements of the *deep dictatorial state* frustrated the demand for compensation under law from the moment that a 1995 legal ruling returned in full to the Spanish investors their titles of ownership of CPP S.A. and EPC Ltd., and the corresponding proofs of their payment receipts.

In light of this situation, the investors brought on 7 November 1997 a claim based on the Chile-Spain Treaty for the Protection and Mutual Encouragement of Investment, claiming violations of the provisions of the treaty concerning expropriation and fair and equitable treatment.

That dispute concerning the blocking of compensation persists, despite decades of litigation at ICSID. The dispute before ICSID has rested on the assumption that Decree 165 of the Pinochet dictatorship produced a legal fait accompli, the question being access to compensation. The dispute before ICSID is conceptually distinct from the present claim, which arises out of events beginning with the judgment on July 24 2008 of the 1st Civil Tribunal of Santiago, while the factual record in ICSID was closed with the arbitral award of 8 May 2008. [2]

12. A dramatic turn of events occurred on July 24 2008 when the 1st Civil Tribunal of Santiago held that, taking into consideration articles 4 and 7 of the Constitution of 1925 and 1980, respectively, the confiscatory decree of Pinochet was "a nullity in public law", null and void *ab initio*, imprescriptible, *ex officio,* lacking in all legal authority, such that based on the direct and binding application of the norms of the Constitution, the property rights of the investors remain fully intact. This is the judicial holding from which the present dispute arises.

[2] The Award of May 8 2008 is accessible at http://bit.ly/2mq3Up0

13. The State of Chile opposed before the Tribunal of Santiago the attempt of the investors to maintain a civil action, based on the Civil Code, in order to assert the property rights that the Tribunal of Santiago recognized that they continued to possess, and, all the while acknowledging the existence of these rights, the Tribunal had accepted the objection that any civil action was prescribed by a limitation period that was calculated as running from March 1975, right in the middle of the period where Mr. Victor Pey Casado was absolutely barred from defending his rights in Chile.

14. Following July 24 2009, agents of the Chilean state acted so as, contrary to law, to prevent the judgment from being communicated directly to Mr. Pey Casado, who was only able to learn about it in January 2011. Subsequently, all the attempts by the investors to assert and protect the property rights in question, and to obtain compensation in respect of the deprivation of the exercise of these rights for a period of more than 40 years, were blocked by the Chilean state. In sum, the investor has exhausted all available domestic remedies with respect to the rights that the Santiago Court recognized in 2008 to have never been extinguished, according to the Constitution, by the decree of confiscation emitted by the Pinochet regime.

15. All issues concerning the consequences, as a matter of the Chile-Spain bilateral treaty or general international law, of the judgment on July 24 2008 of the Santiago Court have been deemed in the ICSID arbitral award of 13 September 2016 to be outside the scope of the dispute that the parties consented to submit to ICSID. In sum, the events and conduct out of which the present claim arises are *ultra petita* with respect to the original and continuing dispute in ICSID. Thus, the arbitral award of September 13 2016 affirms (paragraph 244):

> *"The Tribunal's Award does not touch the finding in the First Award that the Respondent had committed a breach of Article 4 of the BIT by failing to guarantee fair and equitable treatment to the Claimants' investments, including a denial of justice; that finding is res judicata and was not part of the present resubmission proceedings. It thus represents a subsisting obligation on the Respondent and one which, as the First Tribunal found, arose out of a failure in the operation of the Chilean internal system for the redress of acknowledged past injustices. The Tribunal has no doubt that, these resubmission proceedings once out of the way, the Respondent will remain conscious of that obligation, and will weigh its consequences appropriately."* (§244).

16. In these circumstances, the present proceeding is in no way incompatible with Article 26 of the Washington Convention. ICSID remains the exclusive forum for the dispute that concerns the situation prior to the decision of the Tribunal of Santiago on July 24 2008.

17. The absence of any effective means that would allow the investor to exercise, affirm and protect the property rights of which the Santiago Court recognized the existence during the entire period of period of time, and which it affirmed continue to exist, as well as the absence of a remedy for the deprivation of the exercise of these rights since the seizure of the property by the Pinochet regime on September 11 1973, constitute a violation of the obligation of fair and equitable treatment in the Chile-Spain treaty. The deprivation in question constitutes a denial of justice; in fact, certain elements in the Chilean government have actively and intentionally utilized all means at their disposal to close any possible route to the effective assertion of the rights in question.

18. In the absence of any other recourse in Chile for the investor to be able to exercise or recover the benefit of property rights that continue to exist, the obstacles that Chile implemented to make ineffective the determination of the Santiago Court in 2008, constitute an indirect taking and a violation of the expropriation provisions of the Chile-Spain treaty.

Even if the government continued to hold that the limitation period had a basis in Chilean law, the application of prescription was fundamental unjust because it was absurd to think that the investor, whose life was at risk, could in the political conditions reflected in the seizure of his property in a military coup against the Republic of Chile, obtain a legally effective remedy before the end of the dictatorship and the re-establishment of democracy and the rule of law in Chile, and before the June 2 1995 judicial decision to return to Mr. Pey the titles of ownership and the proof of payment receipts.

Further, it is generally accepted that domestic law cannot serve as an excuse or defense against the duty of a state to fulfill its international obligations. Thus, the assertion by the government of objections to any recourse in civil law with respect to the property rights that the Santiago court declared to exist, and the subsequent behavior of the government once the judgment of July 24 2008 had been issued, constitute an expropriation of those rights.

19. On February 4 2013, the Claimants delivered the following communication to the office of the President of the Republic of Chile:

"Mr. President:

On September 6 1995, we requested of the President of Chile the restitution of the entire investment reflected in CPP S.A., in turn owner of 99% of the assets of the journalism enterprise Clarin Ltd., publisher of the newspaper Clarin.

On June 29 1999 and July 18 2000 we informed the Minister of National Property that since 6 November 1997, there was a claim pending at ICSID against Chile by the Spanish Foundation "President Allende" and the Spanish investor Victor Pey Casado, owners of 100% of the assets and rights of the investment.

On May 6 2000, we informed the Minister of National Property of our objection to "Decision 43" of April 28 2000, which attributed our rights to a third party. This objection was among the matters before the ICSID tribunal.

The May 8 2008 ICSID Award held that Chile's failure to provide compensation in 1995, the "Decision 43", and other conduct constituted a violation of the fair and equitable treatment provision of the Chile-Spain treaty, including the denial of justice, and that the claimants had a right to compensation for these breaches.

The award recognizes and declares-paragraphs 179 to 229 and 525 to 530- that the rights pertaining to 100% of the shares of CPP S.A. in turn owner of 99% of the shares of EPC Ltd., belong to the Spanish "President Allende" Foundation (90%) and to the undersigned, Victor Pey Casado (10%) and that these rights were ignored in "Decision 43".

These parts of the Award are final, having been confirmed by a Decision of the ICSID Ad Hoc Annulment Committee, notified to Chile December 18 2013, which rejected Chile's 5 September 2008 request for a complete annulment of the Award.

In a letter dated December 28 2012, I requested of the President of Chile the immediate execution of the award, in all its holdings, which is binding on the Republic by virtue of:

The 1991 Chile-Spain treaty, Article 10(5) of which provides

> "arbitral awards are final and binding on the parties to the dispute."

The 1965 Washington Convention, which provides:

> Article 54 (1): "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts

> shall treat the award as if it were a final judgment of the courts of a constituent state."

International law requires that the Republic of Chile must provide full reparation for the consequences of these illegal acts and put the Spanish investors in the position they would have been in had these illegal acts not occurred [footnote omitted].

This principle was recently applied by the International Court of Justice in the Jurisdictional Immunities case (Germany v. Italy: Greece Intervening):

> "The decisions and measures infringing Germany's jurisdictional immunities which are still in force must cease to have effect, and the effects which have already been produced by those decisions and measures must be reversed, in such a way that the situation which existed before the wrongful acts were committed is re-established. It has not been alleged or demonstrated that restitution would be materially impossible in this case, or that it would involve a burden for Italy out of all proportion to the benefit deriving from it. In particular, the fact that some of the violations may have been committed by judicial organs, and some of the legal decisions in question have become final in Italian domestic law, does not lift the obligation incumbent upon Italy to make restitution. On the other hand, the Respondent has the right to choose the means it considers best suited to achieve the required result. Thus, the Respondent is under an obligation to achieve this result by enacting appropriate legislation or by resorting to other methods of its choosing having the same effect." (Paragraphs 137,139)

If an international tribunal declares that an internal juridical act violates international law, this act is a nullity for purposes of international law [footnote omitted], with effects erga omnes*. This is the case with "Decision 43" of April 28 2000, which the Award has rendered a nullity, having the effect of* res judicata*, as with all the other illegal acts committed with injury to the Spanish investors, before, after, and apart from "Decision 43". As the second judgment in AMCO v. Indonesia held:*

> "It is well established in international law that the value of property or contract rights must not be affected by the unlawful act that removed those rights." (Footnote omitted).

In consequence, I respectfully request:

1. *That notice be taken of this communication and the two annexed documents;*
2. *That the demands in our communications of September 6 1995, June 29 1999 and July 18 2000 be considered as now reiterated, that is for recognition of the property of the undersigned including 100% of the rights to CPP S.A., in turn the owner of 99% of the rights to EPC Ltd;*

3. *That such recognition be ordered without delay, executing the May 8 2008 Award of the ICSID Tribunal, reflected in dispositions 1-3, 5-8 of the* Dispositif, *res judicata by virtue of 18 December 2012 ICSID* Ad Hoc *Annulment Committee, and in* conformity *with the international obligations of the Republic of Chile and, consequently,*
4. *That appropriate legislation be promulgated, or any alternative measure of the Republic's choice that is equally capable of depriving "Decision 43" of April 28 200 of any effect that infringes the claimants' rights as recognized in the 2008 Award* (…)."

20. No response to this request was received; the Respondent State, which possesses the assets of CPP S.A. and EPC Ltd, neither provided restitution to the Claimants nor compensation in lieu of restitution.

II.

21. In the 2008 Award the denial of justice also included the failure of the domestic legal institutions to in the first instance consider the merits of the claim for restitution or compensation for the GOSS printing presses for a period of more than 7 years.

22. The Santiago Court judgment issued on July 24 2008, some weeks after the arbitral Award of May 8 2008, held that Decree 165 providing for the dissolution of CPP S.A. and EPC Ltd and the confiscation of their assets was null and void *ab initio*, imprescriptible, to find *ex officio,* lacking in legal authority.

23. In effect, in the matter before the Santiago Court since 1995, the judge was required to take in account the reality of the nullity of Decree 165 the object of which was the dissolution of CPP S.A. and EPC Ltd. and the transfer of the ownership rights these assets to the state, as this was the essential basis of the investor's case before the Court.

24. Had the Santiago Court so acted earlier, The ICSID arbitral tribunal constituted in 1998 could have had no doubt concerning the status of Decree 165 under Chilean domestic law.

26. Nullity in public law in Chilean law has its basis in the Constitution of 1925, which provides (Article 7 of the 1980 Constitution): "State organs only act validly once their members have been regularly invested, within their field of competence, and in the manner prescribed by the law. No power, person or group of persons may claim, even if invoking the pretext of extraordinary circumstances, any other authority or rights than those that have been expressly conferred to them by the Constitution or the laws. Any act that contravenes this article is null and void and will originate the responsibilities and sanctions that the law determines."

27. In 1995 Mr. Pey raised the incontrovertible necessity for the Santiago Court to apply Article 7 of the Constitution of 1980 (Article 4 in the Constitution of 1925) and consequently to take into account the reality of the nullity of Decree 165:

> "*This administrative act, completely void in being contrary to the Constitution in force at the time which it was decreed and contravening the very law on which it was supposedly based (Decree-Law 77) is a nullity lacking all juridical existence. …*"
>
> *"In light of all those violations of the constitution [which have been] repaired, one cannot escape the conclusion that the Supreme Decree 1.726 is null and void, in the sense of Article 4 of the Constitution of 1925, and completely lacking in juridical effect, for which reason Supreme Decree 165 null and void, having its origin in an act that is a nullity."*

28. The domestic judgment of July 24 2008 could thus not but have the effect of invalidating the claim of the Fisc concerning the purported validity of Decree 165 and to declare the Decree null and void ab initio, imprescriptible, as requested by Mr. Pey:

> "*10th:… the plaintiff having observed that, through Decree 165, the Minister of the Interior, in 1975, had proceeded to confiscate the assets belong to the two companies of which he was the owner and, in the case under consideration, a GOSS brand rotary printing press, property of the newspaper enterprise Clarin Ltd.*
>
> *That the said administrative act is a nullity of public law in being contrary to the Constitution of 1925 in force at the time and Decree-Law 77 of 1973, and consequently it is incurably lacking in juridical existence, and all resulting actions undertaken in order to take material possession of the asset have given rise to a factual situation obliging [the plaintiff] to desist from material possession of that which he considers [as constituting] as an essential resource, for which reason the plaintiff maintains the present action.*

> *11th That article 4th of the Political Constitution of the Republic of Chile of 1925 provides that no power, person or group of persons may claim, even if invoking the pretext of extraordinary circumstances, any other authority or rights than those that have been expressly conferred to them by the Constitution or the laws. Any act that contravenes this article is null and void.* "
>
> *Further, that Article 7 of the Political Constitution of the Republic of Chile of 1980 provides that State organs only act validly once their members have been regularly invested, within their field of competence, and in the manner prescribed by the law. No power, person or group of persons may claim, even if invoking the pretext of extraordinary circumstances, any other authority or rights than those that have been expressly conferred to them by the Constitution or the laws. Any act that contravenes this article is null and void and will originate the responsibilities and sanctions that the law determines*. "(Underline added)

29. The nullity *ab initio* of Decree 165 entails effectively the continuity of juridical personality of CPP S.A. and EPC Ltd, but equally it has the consequence that the transfer of property rights in the assets of these companies to the State was never legally effective. In other words, the State of Chile possessed the assets of these societies without good legal title since 1973, the date of their *de facto* seizure. This legal fact was not capable of being formally proven by the Claimants in the ICSID arbitral proceedings given the denial of justice committed by the Respondent in delaying the judgment of the Santiago Court until the arbitral Award had already been rendered. (Admittedly, the Decision of the ICSID *Ad Hoc* Annulment Committee of December 18 2012 did give rise to the factual possibility that a subsequent ICSID tribunal would be aware of the Santiago Court decision prior to its determination on reparations.)[3]

30. Apparently aware of the consequences of the Santiago Court judgment discussed above, the State of Chile attempted to deprive this judgment of all legal effect through an *ex parte* motion to before the Santiago Court that Mr. Pey had "abandoned" this action after the Judgment of 24 July 2008, while the procedural conditions for a determination of "abandonment" were never actually met.

[3] The Decision of the Ad-Hoc Committee of December 18, 2012 is accessible at http://bit.ly/2p8X08J (en) and http://bit.ly/2osj778 (fr)

31. The actions taken by the State of Chile, in contempt of the principle of *Audiat Et Altera Pars*, with the aim of erasing from the Chilean domestic legal order the Judgment of 24 July 2008, constitute further violations of Article 4 of the Chile-Spain treaty, attacking the residual value of the investment that depends on the possibility of establishing the investors' legal rights in regard to the State of Chile.

32. The supervening events after the issuance of the arbitral Award of May 2008, including the decision of the domestic court on July 24 of that year, finding Decree 165 to be null and void, taken individually or cumulatively, give rise to violations of Articles 3, 4, 5 and 10(5) of the Chile-Spain treaty, and of related principles of international law.

33. The claim that the course of conduct of the State of Chile subsequent to the arbitral Award of May 8 2008 violates its international legal obligations takes into account the approach of the Chamber of the International Court of Justice in the *ELSI* case (*United States v. Italy*):

> "*This question arises irrespective of the position in municipal law. Compliance with municipal law and compliance with the provisions of a treaty are different questions. What is a breach of treaty may be lawful in the municipal law and what is unlawful in the municipal law may be wholly innocent of violation of a treaty provision.…* (paragraph 73)
>
> *This question …is one which must be appreciated in each case having regard to the meaning and purpose of the … Treaty.* (paragraph 74)
>
> *Arbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law. This idea was expressed by the Court in the Asylum case, when it spoke of 'arbitrary action' being 'substituted for the rule of law' (Asylum, Judgment, I.C.J. Reports 1950, p. 284). It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety.*" (paragraph 128)

34. The claimed violations of the Chile-Spain treaty and the events giving rise thereto subsequent to the arbitral Award of May 8 2008 have not been adjudicated.

Legal Basis of the Claim

The Chile-Spain treaty contains the following provisions:

"Article 1.2

The term 'investment' means any kind of asset, such as property and rights of every kind, acquired in accordance with the law of the host country of the investment and, in particular, though not exclusively, the following:

Shares and other forms of participation in a company;

Rights derived from any kind of contribution made with the intention of creating economic value, expressly including any loans granted for that purpose, whether or not capitalized;

Movable and immovable property and all rights related thereto. All intellectual property rights, expressly including patents for inventions, trade-marks, manufacturing licences and know-how;

3. The term 'returns on an investment' refers to the amounts yielded by an investment, as defined by the preceding paragraph, and expressly includes profits, dividends and interest.

Article 2.2

This Treaty…applies equally to investments made prior to its entry into force and which, according to the law of the relevant Contracting Party have the status of a foreign investment.

Article 3.1 (Protection)

Each Contracting Party shall protect within its territory the investments made in accordance with its laws by investors of the other Contracting Party and shall not obstruct by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.

Article 4 (Treatment)

1. Each Contracting Party shall guarantee within its territory, in conformity with its municipal law, fair and equitable treatment for the investments made by investors of the other Contracting Party.
2. Such treatment shall be no less favourable than that accorded by each Contracting Party to the investments made within its territory by investors of a third country which enjoys most-favoured-nation status.

Article 5 (Nationalization and Expropriation)

Nationalization, expropriation or any other measure having similar characteristics or effects that may be applied by the authorities of one Contracting Party against the

investments in its territory of investors of the other Contracting Party must be effected exclusively for reasons of public interest or national interest, in accordance with the Constitution and the laws, and shall in no case be discriminatory. The Contracting Party adopting such measure shall pay to the investor without undue delay, appropriate compensation in convertible and freely transferable national currency. The legality of expropriation, nationalization or any other measure having similar characteristics or effects will be subject to ordinary judicial review.

Article 6 (Transfers)

Each Contracting Party shall guarantee to investors of the other Contracting Party in respect of investments made in its territory the unrestricted transfer of returns on those investments and of other related payments, including in particular, though not exclusively, the following:

Returns on an investment as defined in article 1; -
Indemnities as provided for in article 5;

Article 7 (More Favourable Treatment)

More favourable treatment than that in this treaty previously agreed between one of the Parties and investors of the other party shall not be affected by the treaty.
If, as a consequence of provisions of law of a Contracting Party, or present or future obligations in international law between the Contracting Parties distinct from this treaty, there results a general or legal determination in light of which there must be provided to investments of investors of the other Contracting Party treatment more favorable than that provided in this treaty, that determination ruling will prevail over this treaty to the extent that it is more favourable."

Subject to **The ICSID Convention,** the arbitral Award of May 8 2008 must be considered *res judicata*:

"The award is binding on the parties…Each party shall abide by and comply with the terms of the award…" (Article 53 (1)

35. The international responsibility of the Respondent is engaged by its violation of the obligation to provide to the Claimants the rights conferred on them by the above-mentioned provisions of the Chile-Spain treaty, and in accordance with the relevant principles of international law.

The Treaty under which this claim is being brought, the applicable law, place and language of arbitration, and constitution of the arbitral tribunal

a) The treaty establishing consent to arbitration

36. This arbitration is initiated in accordance with Article 10 of the Chile-Spain treaty, which provides:

> "*1. Any dispute concerning investments, as defined in this Agreement, which arises between a Contracting Party and an investor of the other Contracting Party shall, to the extent possible, be settled by means of friendly consultations between the two parties to the dispute.*
>
> *2. If the dispute cannot be settled within six months of the time it was initiated by one of the Parties, it shall be submitted, at the discretion of the investor, to:*
>
> *The national jurisdiction of the Contracting Party involved in the dispute;*
>
> *or International arbitration in the conditions described in paragraph 3.*
>
> *Once the investor has submitted the dispute to the jurisdiction of the Contracting Party involved or to international arbitration, the choice of one or the other procedure shall be final.*
>
> *3. If the dispute is submitted to international arbitration, it may be brought before one of the following arbitration bodies, at the discretion of the investor:*
>
> *The International Centre for Settlement of Investment Disputes (ICSID), …;*
>
> *An ad hoc court of arbitration established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). …"*

b) Place of Arbitration

The Claimants designate Montreal, Quebec, Canada.

c) Applicable Law

Pursuant to Article 10(4) of the Chile-Spain treaty:

> *"The arbitral tribunal will decide on the basis of the provisions of this treaty, that of the Contracting Party that is a party to the dispute-including its conflict of laws rules-and the provisions of any specific agreements made in respect of the investment, as well as the relevant principles of international law."*

d) **Language of Arbitration**

The language of the Claimants in this arbitration is French.

V. The Arbitral Tribunal

In accordance with Article 3(3)(g) of the UNCITRAL Rule, the Claimants propose that the arbitral Tribunal be composed of a single arbitrator. The propose that Mr. Luis Moreno Ocampo, former Prosecutor of the International Criminal Court, be appointed as sole arbitrator.

Appointing Authority

The Claimants propose the Secretary General of the Permanent Court of Arbitration in The Hague.

41. CALCULATION OF DAMAGES IN THIS ARBITRATION

42. Taking into account the violations of the above indicated provisions of the Chile-Spain treaty, the Claimant calculates its damages as those determined by the financial experts of *Accuracy* on the valuation date of 27 June 2014, according to the methodology used in its Report, of which a copy is in the possession of the State of Chile, in addition to a sum that reflects the denial to the claimants of the possibility of exercising their property rights until the present, to which is added a claim for moral damages. The final valuation date should correspondent to the date of the Award in this dispute.

43. The Claimants have the right to compound interest, calculated in accordance with the practice of the financial experts, authors of the *Accuracy* Report, to be estimated on the date of the Award.

VI. RELIEF SOUGHT

44. For the above reasons, the Claimants respectfully request from the Tribunal that is issue an award in which:

i. The Tribunal orders the State of Chile to provide an effective means to allow the investors the benefit and enjoyment of the property rights that the 1st civil Tribunal of Santiago recognized in its judgment of July 24, 2008, in declaring null and void *ab initio*, imprescriptible, to find *ex*

officio, the confiscatory Decree 165 of the Ministry of the Interior in 1975.

ii. The Tribunal orders that the State of Chile compensate the Claimants for the loss of the benefit of these rights since the date of the seizure of the investment, as well as the damages that derive from the denial to the Claimants of the capacity to exercise their property rights up to the present.

iii. The Tribunal orders that, in the absence of i., the State of Chile pay to the investors the full value of the rights of which the investors have been permanently deprived, in conformity with the principles of international law with respect to damages, of which the current estimate corresponds to that established in the *Accuracy* Report of June 27 2014 updated in accordance with the criteria established in that Report, and in addition moral damages.

iv. The Tribunal order Chile to cover the entirety of the costs of this proceeding, including the fees and honoraria of the Member (or Members) of the Tribunal, the costs of the procedure (use of facilities, translation fees, etc.), and, thus that it require Chile to reimburse the investors, within 90 days of the dispatch of the arbitral Award, the totality of the fees and honoraria of counsel, experts, and other persons retained to defend their interests, carrying, in the case of non-reimbursement within this period, compound interest calculated quarterly at a rate of 10% from the date of the Award until full payment, or any other amount that the arbitral Tribunal deems just and equitable,

v. Any other relief that the Tribunal deems appropriate.

45. For greater certainty, the Claimants expressly reserve their right:

i. To make additional requests for relief deriving from or in connection with the matters before the tribunal as stated in this Notice of Arbitration, or which arise in the relations between the Parties;

ii. To seek rectification or fulfillment of any remedy sought;

iii. To establish any fact, make any legal argument or present any evidence (including testimony of witnesses and experts and documentary evidence) which may be necessary to support their claim or to address anything raised by the Respondent; and

iv. To request provisional measures from the arbitral Tribunal or a competent national court.

Respectfully,

Dr. Juan E. Garces
Counsel to the Claimants