

PCA Case No. 2013-15

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE
PROMOTION AND PROTECTION OF INVESTMENTS, DATED MAY 24, 1988**

- and -

THE UNCITRAL ARBITRATION RULES (AS REVISED IN 2010)

- between -

SOUTH AMERICAN SILVER LIMITED (BERMUDA)

(the “Claimant”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

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

PROCEDURAL ORDER NO. 5

Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Prof. Francisco Orrego Vicuña
Mr. Osvaldo César Guglielmino

February 17, 2015

I. Introduction

1. The Tribunal has received the following communications from the Parties:
 - a. Respondent's letter of February 6, 2015, requesting an extension of forty-five (45) days, i.e., until April 8, 2015, to submit its Counter-Memorial.
 - b. Claimant's response of February 9, 2015, opposing the extension requested by the Respondent.
 - c. Respondent's letter of February 10, 2015, addressed to the Tribunal and the Claimant, requesting that the Claimant "implement the necessary actions to facilitate the access to the information listed in Exhibit A to Procedural Order No. 2 of December 1, 2014 (the 'Protected Information')" [Tribunal's translation].
 - d. Claimant's response of February 10, 2015, affirming that it has had every intention of cooperating with the taking of evidence concerning the Protected Information and noting that the Respondent's requests are not reasonable with respect to the intended schedule and, in addition, that they do not comply with the Tribunal's orders.
 - e. Respondent's letter of February 10, 2015, responding to the Claimant, and justifying the request for extension with reasons that it attributes to the Claimant and affirming that the extension would not affect the tentative dates set for the hearing.
2. By PCA's letter of February 11, 2015, the Tribunal instructed the Parties to confer, without copying the Tribunal, and attempt to agree upon the matters referred to in Procedural Order No. 3, and in particular on the place, periods of time and hours for the review of the Protected Information. Likewise, the Tribunal requested the Parties to inform the Tribunal on the agreements they were able to reach and on the points of disagreement by February 16, 2015.
3. In response, the Tribunal has received a letter from the Claimant of February 15, a letter from the Respondent of February 16, and a letter from the Claimant of February 16, informing the Tribunal that they were unable to reach an agreement and explaining the point of their disagreement.
4. In addition, the Tribunal received a communication from the Respondent on February 17, requesting the Tribunal not to admit the second letter from the Claimant of February 16 and that, if admitted, Respondent is granted leave to reply.

II. Analysis and Decision of the Tribunal

5. The Tribunal observes that this arbitration's procedural calendar, set forth in paragraph 4.1 of Procedural Order No. 1, was fixed by the Tribunal after hearing the positions of the Parties. The dates established therein for the submission of written pleadings took into account the Parties' proposals.
6. The Tribunal reminds the Parties that pursuant to Procedural Order No. 1, extensions to procedural deadlines may be granted but the Parties must request the extension as soon as practicable after they become aware of the circumstances which prevent them from complying with the original deadline.
7. In this case, the Tribunal does not agree that, as the Respondent argues, the need to grant the extension requested by the Respondent is due solely to delays or actions attributable to the Claimant.

8. The submission by the Respondent of new comments to Procedural Order No. 2 after the corresponding procedural phase, and the resulting exchanges between the Parties on the Protected Information and the terms under which it may be reviewed by the Respondent, resulted in delays and made necessary for the Tribunal to adopt decisions to this respect.
9. Nonetheless, the Tribunal considers that the remaining period for the submission of the Counter-Memorial may not be sufficient for the Respondent to review the Protected Information. Likewise, the Tribunal considers that granting the extension would not alter the equality of the Parties taking into account the time the Claimant had available to prepare its Statement of Claim.
10. The Tribunal, pursuant to its authority to conduct the arbitration in such manner as it considers appropriate provided that the Parties are treated with equality, taking into account the positions of the Parties, in accordance with Article 19 of the UNCITRAL Arbitration Rules (as revised in 2010) and paragraph 4.7 of Procedural Order No. 1, grants the Respondent an extension of the period for the submission of its Counter-Memorial until **Tuesday, March 31, 2015**.
11. Should it be necessary to make adjustments to the procedural calendar as a result of this extension, the Tribunal shall make them after consulting the Parties.
12. The Tribunal grants Respondent until **February 18, 2015**, to respond exclusively on the issues raised by the Claimant in its second communication of February 16. The Tribunal reminds the Parties of their duty to collaborate so that the taking of evidence concerning the Protected Information is carried out in an efficient and expedited manner. Nonetheless, in the absence of an agreement between the Parties, the Tribunal will decide the place, terms and form of review of the Protected Information.

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal