

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. 6

Tribunal

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

April 21, 2015

I. Introduction

1. On March 31, 2015, the Plurinational State of Bolivia (“**Bolivia**” or “**Respondent**”) submitted its Objections to Jurisdiction, Admissibility and Counter-Memorial on the Merits (“**Counter-Memorial**”), in accordance with Procedural Order No. 1 and Procedural Order No. 5.
2. On April 14, 2015, the Tribunal addressed the Parties to inform them of the amendments made to the procedural calendar, as a result of the modification of the date for the submission by the Respondent of its Counter-Memorial. The Parties were invited to submit their comments on the new calendar.
3. On April 17, 2015, the Tribunal received the following communications from the Parties:
 - a. A letter from South American Silver Limited (“**SAS**” or “**Claimant**”) acknowledging receipt of the amended procedural calendar and agreeing to the revised calendar. Claimant reserved its rights to seek an extension of any of those time periods, as necessary, in order to reflect prior extensions obtained by Respondent.
 - b. A letter from Bolivia opposing to the amended calendar because, in its view, it affected Bolivia’s right to due process and contained formal mistakes. Bolivia argued that given the manner the calendar was established in Procedural Order No. 1, Claimant would have 238 days from the receipt of Bolivia’s Counter-Memorial to prepare its Reply, whereas Respondent would only have 90 days from the receipt of Claimant’s Reply to prepare its Rejoinder. According to Bolivia, this situation is contrary to the principle of equality of arms and violates its right to due process. In addition, Bolivia alleged that establishing fixed deadlines at this point was premature since there was no certainty that the Document Production Phase would effectively last 148 days, as envisioned by Procedural Order No. 1.

Respondent requested the Tribunal to grant it the same amount of time to present its Rejoinder as Claimant would have to submit its Reply. In the alternative, Bolivia requested the Tribunal to allow it to present its request for production of documents after the submission of Claimant’s Reply and to count the term for the presentation of Respondent’s Rejoinder from the last phase of document production. Given this alternative submission, Bolivia requests the Tribunal to suspend the Document Production Phase while it takes a decision on this matter.

4. On April 20, 2015, SAS opposed to Respondent’s request arguing that it was an attempt to reargue a procedural issue decided by the Tribunal almost one year ago in Procedural Order No. 1, which was adopted after extensive submissions by the Parties and a procedural hearing. Claimant perceives both requests by Respondent as “fundamentally unfair to SAS”¹ and argues that there are no circumstances justifying Bolivia’s request and its attempt to be treated better in this arbitration than Claimant. Thus, Claimant requests the Tribunal to reject Bolivia’s request to alter the terms of Procedural Order No. 1.

II. Analysis and Decision of the Tribunal

5. The Tribunal has carefully reviewed the submissions presented by the Parties on April 17, 2015, and April 20, 2015.

¹ Letter from South American Silver Limited to the Tribunal, dated April 20, 2015.

6. At the outset, the Tribunal must remind the Parties that its communication dated April 14, 2015, contained the procedural calendar that had already been fixed in Procedural Order No. 1 of May 27, 2014, amended “*as a result of the modification on the date for the submission by the Respondent of its Statement of Defense and Counter-Memorial*”². This communication simply indicated the new dates on which the different events had to take place in light of the periods of time that had been fixed in Procedural Order No. 1. In other words, the Tribunal did not modify the time periods fixed in Procedural Order No. 1, it simply signaled the adjusted calendar dates for submission, in application of the periods of time established in Procedural Order No. 1.
7. For the same reason, the Tribunal disagrees with Bolivia’s second argument. If, the Phase of Document Production does not last the amount of days established in Procedural Order No. 1, the procedural calendar provides that Claimant’s Reply shall be submitted “*90 days from the last date in the document production phase*”³. Thus, in such event, the dates for submission would be adjusted accordingly.
8. Procedural Order No. 1 was adopted by the Tribunal taking into account oral and written submissions by both Parties⁴. In fact, preamble to Procedural Order No. 1 clearly indicates:

“WHEREAS this Procedural Order records the agreements of the Parties on procedural matters reached at the First Procedural Meeting, and, having taken into account the Parties’ comments, records the Tribunal’s decisions on matters that the Parties submitted to it for determination.”⁵
9. Based on the above, Tribunal considers that, at this time, there are no circumstances requiring adjustments to the procedural calendar for this arbitration, which was established in May 2014. Further, the Tribunal sees no reason to suspend the document production phase, scheduled to take place in the dates signaled in the Tribunal’s letter of April 14, 2015. Therefore, the Tribunal rejects Bolivia’s requests concerning the arbitration’s procedural calendar on its letter dated April 17, 2015.
10. Notwithstanding the above decision, the Tribunal may, in the course of proceedings, if the circumstances so require, and in consultation with the Parties, amend the procedural calendar, pursuant to Article 4.7 of Procedural Order No. 1 and to Article 17 of the UNCITRAL Arbitration Rules (as revised in 2010).

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal

² Letter from the Tribunal to the Parties, dated April 14, 2015, page 2 of 3.

³ Procedural Order No. 1, dated May 27, 2014, page 3 of 10.

⁴ For example: Letter from Respondent to the Tribunal dated February 18, 2014; Letter from Claimant to the Tribunal dated February 18, 2014; Letter from Respondent to the Tribunal dated February 20, 2014; and Letter from Claimant to the Tribunal dated February 24, 2014. Both Parties participated at the First Procedural Meeting held in Bogota on May 13, 2014.

⁵ Procedural Order No. 1, dated May 27, 2014, page 1 of 10.