

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. 21

Tribunal

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

June 9, 2016

I. Introduction

1. Paragraph 9.1 of Procedural Order No. 1 provides that “[a]fter 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.”
2. By letter dated April 30, 2015, the Tribunal, after consultation with the Parties, confirmed that the hearing will take place from July 11 to 22, 2016, excluding Saturday 16 and Sunday 17.
3. By letter dated June 11, 2015, considering that the Parties had confirmed their agreement to hold the hearing in Washington D.C., the PCA advised the Parties that it had confirmed the availability of hearing rooms to hold the hearing at the World Bank in Washington D.C.
4. On April 14, 2016, the PCA circulated to the Parties a list of logistical issues to prepare the hearing, requesting that the Parties confirm their preference on the court reporters and interpreters so that the PCA may proceed to confirm their engagement. The Parties confirmed their agreement on the logistical issues and the engagement of the court reporters and interpreters proposed by the PCA.
5. On May 24, 2016, the Tribunal convened a pre-hearing conference call and circulated to the Parties an agenda for the call requesting the Parties to confer on the items listed therein and inform the Tribunal on their agreement or points of disagreement by June 3.
6. Accordingly, on June 3, 2016, the Claimant communicated to the Tribunal the points of agreement and disagreement between the Parties. On the same date, the Respondent confirmed its agreement with the Claimant’s correspondence.
7. On June 6, 2016, the Parties, the Tribunal and the PCA held a teleconference call prior to the hearing, where, among others, the matters on which the Parties had not reached agreement were discussed.

II. The Tribunal’s Decisions

8. The present Procedural Order contains the Parties agreements regarding procedural matters and the Tribunal’s decisions, in view of the Parties comments, on other matters with respect to which the Parties have not reached an agreement.

A. Hearing Date, Time and Venue

9. As already confirmed with the Parties, the hearing will be held on July 11-22, 2016, excluding Saturday 16 and Sunday 17.
10. As also previously confirmed with the Parties, the hearing will be held at the World Bank’s premises, located at 701 18th Street N.W., Washington D.C., USA.
11. The hearing shall start at 9:00 a.m. on Monday July 11, 2016.
12. Every hearing day shall start at 9:00 a.m. and finish by 6:00 p.m., with a lunch break of approximately 1 hour 15 minutes (from 1:00 p.m. to 2:15 p.m.) and two brief breaks of approximately 15 minutes each, one in the morning and one in the afternoon. The Tribunal may, after consulting the Parties, adjust this schedule for each of the hearing days.

B. Attendees

13. Pursuant to paragraph 10.1 of Procedural Order No. 1, the hearing shall be held in camera unless the Parties agree otherwise.
14. Each Party shall communicate the list of hearing attendees by July 1, 2016.

C. Agenda and Time Allocation

15. Considering the daily hours of work during the hearing (excluding breaks) and the time that the Tribunal must reserve for its interventions, as well as the exclusion of the time for opening and closing statements as agreed by the Parties, each Party may use a total of 28 hours during the 10 days of the hearing. The Tribunal does not consider that the circumstances of the case justify a different allocation of time between the Parties.
16. The opening statements will take place on the first day of the hearing (*i.e.*, July 11, 2016) and shall not last more than 3 hours 30 minutes per Party. The Claimant shall proceed first followed by the Respondent. Each Party in its presentation shall address both issues of jurisdiction and merits and there shall be no rebuttal.
17. The closing statements shall take place on the last day of the hearing, which for the time being is estimated to be July 22, 2016. The closing statements of each Party shall not last more than 1 hour 45 minutes per Party. The Claimant shall proceed first, followed by the Respondent, with a thirty-minute break between them, and there shall be no rebuttal.
18. The time allocated to each Party, *i.e.*, 28 hours will be subject to the “chess clock”. Consequently, each Party may distribute its available time as it deems appropriate or convenient for the examination of fact and expert witnesses, notwithstanding the precisions set out below, provided that the total time does not exceed the prescribed maximum for each side for the duration of the hearing.
19. The time used by a Party for direct and re-direct examination of the witnesses provided by said Party (as described in paragraphs 7.10(b) and 7.10(d) of Procedural Order No. 1) and for cross-examination, and re-cross examination, if applicable, of the witnesses provided by the other side (as described in paragraph 7.10(c) of Procedural Order No. 1) shall be counted towards that Party’s time allocation. Any time used for English/Spanish interpretation of the presentations or examinations, if applicable, and any time dedicated to discussions concerning a procedural objection raised by a Party, shall also be counted towards that Party’s time allocation.
20. The time used by any witness or expert to answer the Tribunal’s questions shall not be counted towards the time allocation of the Parties (pursuant to paragraph 7.10(e) of Procedural Order No. 1). Similarly, the time used in connection with administrative matters shall not be counted towards the total available time of either Party. The Tribunal may pose questions to the Parties at any given time during the hearing and the time used in answering the Tribunal’s questions will not be counted towards the total available time of either Party.
21. The Parties shall use their best efforts to ensure that the examination of a given witness or expert is conducted in its entirety on the same day.
22. The following agenda is established for the hearing:
 - 1) Commencement of the hearing and procedural matters
 - 2) Claimant’s opening statements
 - 3) Respondent’s opening statements
 - 4) Examination of Claimant’s witnesses (except Mr. Dreisinger)
 - 5) Examination of Respondent’s witnesses

- 6) Examination of Claimant's expert witnesses (and Mr. Dreisinger)
 - 7) Examination of Respondent's expert witnesses
 - 8) Claimant's closing statements
 - 9) Respondent's closing statements
 - 10) Additional Tribunal's questions (where appropriate)
 - 11) Procedural and administrative matters or any other miscellaneous matters, and closure of hearing.
23. Notwithstanding the foregoing, the Tribunal shall have flexibility for the allocation of time with a view to ensuring the efficient development of the proceedings and that each Party has a fair and equitable opportunity to present its case. Therefore, the Tribunal, after consulting with the Parties, may adjust the agenda or the time allocation during the course of the hearing.

D. Examination of Fact and Expert Witnesses

24. The examination of fact witnesses, with the exception of Mr. Dreisinger, shall start on the second day of the hearing (*i.e.*, July 12, 2016). Each Party shall communicate to the Tribunal and the other Party the order of examination of its fact witnesses by **Friday, June 10, 2016**.
25. The examination of expert witnesses and of fact witness Mr. Dreisinger shall take place from the 6th day of the hearing (*i.e.*, July 18, 2016) to the 9th day of the hearing (*i.e.*, July 21, 2016). The order of examination of the expert witnesses and Mr. Dreisinger shall be the following:
- Mining/valuation:
 - 1) RPA Inc.
 - 2) Prof. Dagdelen
 - Metallurgy:
 - 1) Mr. Dreisinger
 - 2) Prof. Taylor
 - Damages Valuation:
 - 1) FTI Consulting and Mr. Barry Cooper
 - 2) The Brattle Group
26. The order of examination of fact and expert witnesses shall be continuous *en bloc*: first, the Claimant's fact witnesses, followed by the Respondent's fact witnesses; and then, the Claimant's expert witnesses, followed by the Respondent's expert witnesses, but divided by topics of their expertise. As an exception to the foregoing, and by agreement of the Parties, Mr. Dreisinger will testify in the expert witnesses examination phase. However, Mr. Dreisinger is considered a fact witness for all purposes of the hearing.
27. The examination of fact and expert witnesses shall be conducted in accordance with section 7 of Procedural Order No. 1, in particular with paragraphs 7.10 to 7.13. The direct examination of fact witnesses shall be limited to a maximum of 20 minutes, and the witness may be interrogated on his or her testimony, on the say of other witnesses or experts, or on documents in the record of this arbitration. By agreement of the Parties, the re-cross examination shall take place only with leave of the Tribunal and showing good cause.
28. Pursuant to paragraph 7.13 of Procedural Order No. 1, prior to his or her examination, a factual witness shall not be present in the hearing room during the examination of other witnesses, nor discuss the testimony of any other witness, nor read any transcript of any oral testimony. Nevertheless, their presence shall be allowed during opening statements.

29. During the examination of Witness X, and at any other time during the hearing when issues related to Witness X are discussed, only those having signed a confidentiality undertaking pursuant to Procedural Order No. 14 and the accompanying Protective Order may be present in the hearing room.
30. Subject to paragraph 28, and unless the Tribunal decides otherwise, expert witnesses may be present at all times in the hearing room.

E. Use of the Protected Information

31. Only the persons who have signed the confidentiality agreement referred to in Procedural Orders Nos. 2 and 3 may be present during those phases of the hearing in which use of, or reference to the Protected Information is to be made. With the exception of independent outside counsel and experts for Bolivia, who have signed the aforementioned confidentiality agreement, no person shall be allowed to keep any records of the hearing (either in hard-copy or electronic format) referring to or containing Protected Information. Only the persons who have signed the said confidentiality agreement are allowed to have access to the records of the hearing containing Protected Information.
32. A copy of the Protected Information shall be made available to Bolivia's independent outside counsel and experts for preparation purposes and during the hearing in a secure room of the World Bank. Except as provided under Procedural Orders Nos. 2 and 3, the Protected Information may be used as any other documentary evidence from the record. Such Protected Information shall be made available from July 5, 2016 onwards and only upon a minimum 3 hour notice by Bolivia to SAS by any means, with copy to the Secretary of the Tribunal. Review and use of said information shall be subject to the rules set forth under Procedural Orders Nos. 3 and 4.

F. Use of PowerPoint or Other Support Material

33. Pursuant to paragraph 9.3 of Procedural Order No. 1, “[n]o 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 strictly reflect evidence on the record and do not introduce new evidence, directly or indirectly. [...] Should the Tribunal grant leave to a party to present new evidence in the course of the Hearing, it should grant the other party the opportunity to introduce new evidence to rebut it.” Each Party shall provide a hard copy of any slides or other demonstrative exhibit that it intends to use for its opening and closing statements and the presentations of its expert witnesses prior to their commencement. The Parties are not required to exchange these demonstrative exhibits before the hearing date.
34. The parties shall deliver a set of copies of their demonstrative exhibits in conformity with the previous paragraph to each member of the Tribunal (3 copies), to the PCA (1 copy), to the opposing Party (3 copies), to the interpreters (1 copy), and to the court reporters (2 copies). Likewise, during the course of the day, the Parties shall provide electronic copies to the Tribunal, the PCA, and the other Party.
35. At the commencement of the examination of any fact or expert witness, the Parties shall furnish witness and expert examination bundles to each member of the Tribunal (3 copies), to the PCA (1 copy), to the opposing Party (3 copies), to the interpreters (1 copy), and to the court reporters (2 copies).

G. Languages, Transcripts

36. The hearing shall be conducted in English and in Spanish.
37. Pursuant to paragraph 9.2 of Procedural Order No. 1, the hearing shall be recorded and shall transcribed on a real-time basis in both English and Spanish. The court reporters engaged to this effect will provide transcripts at the end of each hearing day.
38. The Tribunal shall fix at the end of the hearing the terms for the Parties to submit corrections to the transcript.

H. Hearing Bundle

39. Each party shall provide to each member of the Tribunal and the PCA, at least one week before the hearing, a bundle for the hearing containing all memorials, evidence and legal authorities submitted by that Party, in searchable electronic format, notwithstanding the demonstrative exhibits delivered pursuant to the forgoing to which said Party may wish to refer in its oral presentations during the hearing, which shall be furnished as provided for under paragraph 33 *supra*.

I. Post-Hearing Briefs

40. The Parties shall submit post-hearing briefs at a time determined by the Tribunal in consultation with the Parties, which shall not be limited as to their scope. Their extension shall not exceed fifty (50) pages, double space.

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal