

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

GLENCORE FINANCE (BERMUDA) LIMITED



Claimant

-v-

PLURINATIONAL STATE OF BOLIVIA

Respondent

NOTICE OF ARBITRATION



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I. INTRODUCTION

1. Glencore Finance (Bermuda) Ltd (*Claimant* or *Glencore*), a company incorporated under the laws in force in the United Kingdom overseas territory of Bermuda (*Bermuda*), hereby initiates arbitration proceedings against the Plurinational State of Bolivia (*Bolivia* or the *Respondent*) pursuant to: (a) Article 8 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland (the *UK*) and the Government of Bolivia for the Promotion and Protection of Investments, which entered into force on 16 February 1990 (the *Treaty*);¹ and (b) Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (the *UNCITRAL Rules*).² In accordance with Article 3(2) of the UNCITRAL Rules, the arbitration proceedings are deemed commenced on the date this Notice of Arbitration (the *Notice*) is received by Bolivia.
2. Glencore has taken all the necessary internal actions to authorize the submission of this Notice and has duly authorized the undersigned to institute and pursue arbitration proceedings against Bolivia under the Treaty on its behalf.³
3. This dispute concerns Bolivia's nationalization of certain investments made by Glencore in Bolivia; specifically, Glencore's investment in the Vinto tin smelter – the largest smelter in Bolivia – (the *Tin Smelter*), in the Vinto antimony smelter (the *Antimony Smelter*), and in the Colquiri mine – the second-largest tin mine in Bolivia (the *Colquiri Mine*).

¹ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Bolivia for the Promotion and Protection of Investments (the *Treaty*), 24 May 1988, C-1. The Treaty was extended to the UK overseas territories of Bermuda and Jersey on 9 December 1992. Exchange of Notes, 3 December 1992 and 9 December 1992, pursuant to which the Treaty was extended to Bermuda, Jersey and other territories attached as C-2.

² Article 8 of the Treaty provides that the dispute may be submitted for settlement by binding arbitration in accordance with the UNCITRAL Rules as then in force. Therefore the UNCITRAL Rules as revised in 2010 shall be applicable to this arbitration.

³ Power of Attorney executed by Glencore Finance (Bermuda) Ltd (*Glencore*), 26 April 2016, C-3.

4. The Tin Smelter, the Antimony Smelter (together, the *Smelters*), and the Colquiri Mine were nationalized by Bolivia by three separate Supreme Decrees issued on 7 February 2007, 1 May 2010 and 20 June 2012, respectively, in breach of both the Treaty and Bolivian law. To date, no compensation has been paid by Bolivia for these nationalizations.
5. In this Notice, Glencore outlines the jurisdictional and substantive bases upon which it is entitled to bring these proceedings. In Section II, Glencore describes the factual background to the dispute. Then, in Section III, Glencore explains that Bolivia has violated the protections afforded to Glencore under the Treaty. In Section IV, it demonstrates that it fulfills all of the requirements of the Treaty to bring these proceedings and is entitled to initiate this arbitration pursuant to Article 8 of the Treaty. In Section V, Glencore proposes the constitution of a three-member Tribunal to adjudicate the Dispute and addresses other procedural matters. In Section VI, Glencore provides the contact details of the parties to the Dispute and, finally, in Section VII, Glencore sets out the relief requested in these proceedings.
6. Glencore reserves its right to expand upon or amend the factual and legal claims, arguments and evidence it has submitted in the present Notice during the course of the proceedings.

II. THE FACTUAL BACKGROUND TO THE DISPUTE

A. BOLIVIA'S LEGAL FRAMEWORK IN THE EARLY 1990S WAS DESIGNED TO ATTRACT FOREIGN INVESTMENT IN STRATEGIC SECTORS

7. In the early 1990s Bolivia implemented far-reaching legal and financial reforms aimed at attracting foreign investment to stimulate the development of the country and its economy. This included the implementation of a legal framework that provided certain commitments to prospective foreign investors.

8. The first piece of legislation was Law No. 1182 (the *Investment Law*), enacted in September 1990 with the purpose of “stimulat[ing]” and “guarantee[ing]” domestic and foreign investments in Bolivia.⁴ The Investment Law provided (a) guarantees to prospective investors (including in relation to property rights, exchange rates, investment insurance, imports/exports and production/marketing);⁵ and (b) that these guarantees would, in turn, be backed up by any bilateral or multilateral instruments to be entered into by Bolivia with other nations or international organizations.⁶
9. Accordingly, over the next ten years, Bolivia undertook a program of bilateral investment treaty negotiation and ratification,⁷ guaranteeing foreign investors that their investments would, *inter alia*, be treated fairly and equitably, would be guaranteed full protection and legal security and would not be expropriated without prompt, adequate and effective compensation. Should Bolivia breach any of these protections, foreign investors would have the right to bring an arbitral claim against Bolivia before a neutral forum.
10. In order to further encourage the influx of foreign capital, Bolivia issued a variety of laws and regulations to facilitate the privatization of State-owned entities across the major industrial and services sectors. The two principal laws governing the process were the following:

⁴ Article 1 of the Investment Law noted the need “to promote the growth and economic and social development of Bolivia, with a regulatory system that governs both domestic and foreign investments”. Law No. 1182 (the *Investment Law*), 17 September 1990, published in the *Gaceta Oficial* No. 1662 on 17 September 1990, C-4, Art 1. Free translation. Original Spanish wording: “*promover el crecimiento y desarrollo económico y social de Bolivia, mediante un sistema normativo que rija tanto para las inversiones nacionales como extranjeras.*” The Investment Law remained in effect for almost 24 years, being repealed only in April 2014.

⁵ *Ibid*, Arts 4-7 and 8-9.

⁶ *Ibid*, Art 7.

⁷ During the 1990s, Bolivia signed a broad number of bilateral investment treaties, including, among others, treaties with Argentina, Austria, Belgium and Luxembourg, Chile, China, Cuba, Denmark, Ecuador, France, Germany, Italy, the Republic of Korea, the Netherlands, Peru, Romania, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

- (a) Law No. 1330 (the *Privatization Law*), enacted in April 1992, which authorized the transfer of public assets to private investors; and
 - (b) Law No. 1544 (the *Capitalization Law*), enacted in March 1994, which provided for the transfer of public assets to new “mixed” companies, in which the State would share ownership with private investors who contributed capital by purchasing shares through an international public bidding process.⁸
11. The Bolivian mining sector was identified by the Government early on in this process as particularly in need of foreign investment.⁹ Accordingly, a new legal regime was also enacted in the mining sector to open it up to foreign investment. In March 1997, Law No. 1777 (the *Mining Code*) was enacted authorizing the government to, *inter alia*, grant mining rights to private parties in return for the payment of an annual royalty. The mining rights were given the status of real property rights and could be freely transferred and mortgaged. The Mining Code further provided that the State-owned Corporación Minera de Bolivia (*Comibol*)¹⁰ was required to transfer by way of public tender some of the mining concessions it had acquired between Comibol’s creation and the date in which the Mining Code was issued.¹¹

⁸ Both the Privatization Law and the Capitalization Law remained in effect for over 20 years, being repealed only in April 2014.

⁹ In early 1992, then Minister of Energy, Herbert Muller highlighted the need for foreign investment in the Bolivian mining sector, stating: “We need to attract more foreign investment to make this economy grow. The most promising areas are mining and hydrocarbons. But so far there hasn’t been enough investment...If it doesn’t happen soon, there will be increased social tension and political instability.” “Bolivians Pray to Mine God For Jobs”, *Chicago Tribune*, 22 March 1992, C-5, p 2.

¹⁰ Comibol was created in 1952 to administer State-owned mines, following the nationalization of three of Bolivia’s largest mining companies, Patiño, Hochschild and Aramayo.

¹¹ Law No. 1777 (the *Mining Code*), 17 March 1997, Art 93.

B. BOLIVIA OPENED ITS MINING INDUSTRY TO FOREIGN INVESTORS

12. Two State-owned companies and subsidiaries of Comibol, Empresa Metalúrgica Vinto (*EMV*) and Empresa Minera Estatal del Norte originally owned the Smelters and the rights to the Colquiri Mine, respectively.
13. Starting in 1997, the Bolivian Government engaged in various attempts to promote foreign investment in these assets. First, the Government attempted (on two separate occasions) to capitalize EMV through international public tenders, under the terms of the Capitalization Law. These attempts took place in June 1997 and December 1998 and were both unsuccessful.
14. In 1999, the Government changed track, deciding instead to privatize these assets. On 17 June 1999, the Government passed Law No. 1982 which excluded EMV from the scope of the Capitalization Law and instead permitted the transfer of 100 percent of EMV's assets to the private sector. Subsequently, on 24 and 25 June 1999, Comibol and the Ministry of Foreign Trade and Investment (the *Trade Ministry*) issued resolutions approving the national and international tenders, *inter alia*, for: (a) the sale of the Smelters; and (b) the transfer of the Colquiri Mine under a lease agreement.

C. THE PUBLIC TENDER PROCESSES FOR THE SALE OF THE SMELTERS AND THE LEASE OF THE COLQUIRI MINE

1. The public tender process for the sale of the Tin Smelter

15. The Tin Smelter is the largest smelter in Bolivia and is primarily engaged in the production of high-grade metallic tin ingots. It processes the minerals produced from various mining operations in Bolivia, including the Colquiri Mine and Huanuni mine, which are Bolivia's two largest tin deposits.
16. In June 1999, the public tender terms for the sale of the Tin Smelter were issued by the Trade Ministry and Comibol. Potential bidders were required to be, or to

include, an operator satisfying certain financial and technical/operational requirements, such as specific levels of revenue in mining operations.

17. On 24 December 1999, the tender for the Tin Smelter was awarded to UK-based Allied Deals plc (*Allied Deals*).¹² The sale and purchase agreement was signed in November 2000 with a subsidiary created to purchase the Tin Smelter, Allied Deals Estaño Vinto SA¹³ (which later changed its name to Complejo Metalúrgico Vinto SA (*Complejo Vinto*)¹⁴). Complejo Vinto was subsequently sold in June 2002 to a company incorporated in Bolivia called Compañía Minera Colquiri SA (*Colquiri SA*).¹⁵

2. The public tender process for the sale of the Antimony Smelter

18. The Antimony Smelter was built for the treatment of antimony concentrates and had historically processed minerals from the Tupiza region in south Bolivia. In June 1999, the public tender terms for the sale of the Antimony Smelter were issued. The first attempt to sell the Antimony Smelter later that year was unsuccessful. A second attempt to launch the tender process took place in August 2000. The tender was successful and the Antimony Smelter was awarded to Colquiri SA in January 2001.¹⁶ On 11 January 2002, the sale and purchase agreement was signed between Colquiri SA (as buyer), Compañía Minera Del Sur

¹² Supreme Decree No 25,631, 24 December 1999, published in the *Gaceta Oficial* No 2,192 on 24 December 1999, C-6, Art 1.

¹³ Notarizations of the sale and purchase agreement of the Tin Smelter between the Ministry of Trade, Corporación Minera de Bolivia (*Comibol*), Empresa Metalúrgica Vinto and Allied Deals Estaño Vinto SA, 21 November 2000, as supplemented on 4 July 2001, C-7.

¹⁴ Notarization of the change of name of Complejo Vinto, 30 August 2002, C-45.

¹⁵ Sale and purchase agreement of Complejo Vinto between RGB Resources PLC, its provisional liquidators, and Compañía Minera Colquiri SA (*Colquiri SA*), 1 June 2002, C-46.

¹⁶ Supreme Decree No 26,042, 5 January 2001, published in the *Gaceta Oficial* No 2,282 on 9 January 2001, C-8.

SA (*Comsur*) (as its controlling entity and operator), Comibol (as seller) and the Trade Ministry.¹⁷

3. The national and international public tender process for the lease of the Colquiri Mine

19. The Colquiri Mine is a tin and zinc underground producing mine located approximately 160 kilometers south of the city of La Paz, which had been mined privately since colonial times. The Colquiri Mine was nationalized in 1952 and operated under the ownership of Comibol for nearly five decades until its privatization in 1999. During most of this time, the Colquiri Mine was run at a significant loss – for example, between 1981 and 1985 the mine lost around US\$76 million.¹⁸ By the time of its privatization, the Colquiri Mine included a mill and concentrator, offices, warehouses and other mining facilities. The main veins exploited at the mine are Blanca, Rosario, San Antonio and San Carlos.
20. The terms of the public tender for the 30-year lease of the Colquiri Mine were issued in August 1999. Bidders were required to be, or to include, an operator satisfying certain financial requirements, similar to those in the Tin Smelter bidding rules. In December 1999, the tender for the Colquiri Mine was awarded by Bolivia to a consortium formed by Commonwealth Development Corporation (*CDC*) and Comsur.¹⁹ On 27 April 2000, the Trade Ministry, Comibol (as lessor), Colquiri SA (as lessee) and Comsur (as operator), entered into a lease agreement for the Colquiri Mine (the *Colquiri Lease*) for an initial term of 30 years comprised of two separate phases.²⁰ The first phase involved an exploration

¹⁷ Notarization of the sale and purchase agreement of the Vinto Antimony Smelter between the Ministry of Trade, Comibol, Empresa Minera Colquiri and Compañía Minera Del Sur SA (*Comsur*), 11 January 2002, C-9.

¹⁸ “Mina Colquiri”, *El Diario Opinión*, 17 October 2012, C-10.

¹⁹ Supreme Decree No. 25631, 24 December 1999, published in the *Gaceta Oficial* No. 2192 on 24 December 1999, C-6, Art 2.

²⁰ Lease agreement for the Colquiri Mine between the Ministry of Trade, Comibol, Colquiri SA and Comsur (*Colquiri Lease*), 27 April 2000, C-11.

period of two years followed by a second phase of exploitation that would last for the remaining 28 years of the lease. In accordance with the terms of the Colquiri Lease, Colquiri SA was granted exclusive rights for the entire period of the lease to exploit, explore and commercialize the mineral products from the Colquiri Mine in return for, *inter alia*, payment of a royalty. The royalty was calculated at 3.5 percent of Colquiri SA's net income and later increased on 11 November 2005 to between 3.5 percent and 8 percent depending on the market rate of zinc and tin.²¹

4. Glencore's investments in the mining sector in Bolivia

21. By 2006, Glencore had acquired the Smelters and the rights to the Colquiri Lease. Glencore's investment was carried out through the acquisition of a number of Bolivian companies including:²²
 - (a) Complejo Vinto which owned the Tin Smelter;
 - (b) Colquiri SA, which owned the Antimony Smelter and held the rights in the Colquiri Lease; and
 - (c) Sinchi Wayra SA (*Sinchi Wayra*), formerly known as Comsur,²³ which acted as operator under the Colquiri Lease.

²¹ Colquiri Lease, 27 April 2000, C-11, clause 2.7 (and 5.1 of the Addendum to the Colquiri Lease, 11 November 2005, C-12).

²² Between October of 2004 and December 2006, Glencore acquired all the shares of three companies incorporated in Panama, namely, Kempsey SA (*Kempsey*), Iris Mines & Metals SA (*Iris*) and Shattuck Trading SA (*Shattuck*) (together, the *Panamanian Companies*). These companies owned 100 percent of Sinchi Wayra (formerly known as Comsur) since November 2006. In turn, Shattuck, Kempsey and Sinchi Wayra, together, own 100 percent of the shares of Colquiri SA since October 2006, when CDC sold all its remaining shares. Finally, Kempsey, Shattuck and Colquiri SA together, owned 100 percent of the shares of Complejo Vinto since March 2005.

See Certificate No 1 of Kempsey, 10 March 2005, C-47; Certificate of the Secretary of Kempsey, 19 May 2011, C-13; Certificate of the Secretary of Iris, 19 May 2011, C-14; Certificate of the Secretary of Shattuck, 1 February 2012, C-15; Share register of Sinchi Wayra, C-16; Share register of Colquiri SA, C-17; and Share register of Complejo Vinto, C-18.

See detailed chart of Glencore's ownership structure in paragraph 43, below.

22. Since then, Glencore has made significant contributions to the Bolivian economy. By the end of 2015, Glencore had paid royalties, taxes and fees to Bolivia of over US\$380 million and had invested close to US\$290 million in the Bolivian mining industry and wider economy, providing the community with jobs, education, access to healthcare and improved infrastructure.

D. BOLIVIA NATIONALIZED GLENCORE'S INVESTMENTS WITHOUT PROVIDING COMPENSATION

1. Nationalization of Glencore's Tin Smelter in 2007

23. Following the resignation of President Carlos Mesa in June 2005, the subsequent election of President Evo Morales (who was formally inaugurated in January 2006) led to an era of significant social, political and economic change in Bolivia. In a speech to the Bolivian National Congress in late January 2007, President Morales announced a program of government nationalizations which included the nationalization of the Tin Smelter.²⁴
24. A few days later, on 9 February 2007, the Bolivian armed forces forcibly entered the premises of Complejo Vinto, and took physical control of the Tin Smelter with no advance warning whatsoever and in flagrant violation of Glencore's rights. That same day, a number of Bolivian Government officials, including President Morales himself, arrived at the Tin Smelter. An official ceremony took place, during which an official read out Supreme Decree No. 29026 (the *Tin Smelter Nationalization Decree*), which ordered the "reversion" of Complejo Vinto (together with all its assets, including the Tin Smelter) to the Bolivian

²³ In late 2005, Comsur changed its name to Sinchi Wayra. Share register of Sinchi Wayra, 5 January 2006, C-16, p 2. See also Supreme Decree No. 1,264, 20 June 2012, published in the *Gaceta Oficial* No. 384NEC on 20 June 2012, C-39, Preamble.

²⁴ "Evo Morales anuncia más nacionalizaciones para este año en Bolivia", *ABC*, 22 January 2007, C-19.

state.²⁵ A large banner stating “Nationalized” was affixed to the front of Complejo Vinto’s offices (as shown below). Glencore’s senior executives were then asked to leave the premises immediately. In addition, the Government took control of a number of tax refund certificates issued by the Government in favor of Complejo Vinto for an amount of approximately US\$7.9 million²⁶ that were never returned to Complejo Vinto.



25. Pursuant to the Tin Smelter Nationalization Decree, the State-owned EMV was to take control of the Tin Smelter with immediate effect; however, the Decree made no provision for the payment of compensation to Glencore.
26. Glencore’s parent company, Glencore International AG, wrote to the Bolivian Government expressing its concerns in relation to the nationalization of the Tin Smelter and the lack of any reference to compensation.²⁷ After several attempts

²⁵ Supreme Decree No. 29,026 (the *Tin Smelter Nationalization Decree*), 7 February 2007, published in the *Gaceta Oficial* No. 2969 on 9 February 2007, C-20.

²⁶ The tax refund certificates taken amounted to a total of 54,933,567.00 Bolivian pesos (equivalent to US\$7,892,753 using an exchange rate of 6.96 Bolivian pesos / US\$1). Letter from Complejo Vinto (Mr Capriles Tejada) to Minister of Mining and Metallurgy (Mr Luis Alberto Echazú A), 7 December 2007, C-48.

²⁷ Letter from Glencore International AG (Mr Strothotte) to the President of Bolivia (Mr Morales Ayma), 22 February 2007, C-21.

by Glencore to engage in discussions with the Bolivian Government,²⁸ a number of meetings took place between Glencore, Comibol, the Ministry of Mining and the Ministry of the Presidency during 2007. However, no agreement on compensation was forthcoming and Glencore formally notified Bolivia of the existence of a dispute under the Treaty arising out of the nationalization of the Tin Smelter on 11 December 2007.²⁹ Discussions on compensation for the nationalization of the Tin Smelter proceeded during 2008 and 2009 without resolution. As of today, Glencore has not received any compensation for the nationalization of the Tin Smelter.

2. Nationalization of Glencore's Antimony Smelter in 2010

27. On 2 May 2010, again without any prior warning, the then Minister of the Presidency, Oscar Coca, announced the nationalization of the Antimony Smelter in a press conference. That same day, Minister of Mines José Pimentel travelled to the site of the Antimony Smelter and read out Supreme Decree No. 499 nationalizing the Antimony Smelter (the *Antimony Smelter Nationalization Decree*).³⁰
28. The Antimony Smelter Nationalization Decree ordered the “reversion” of the smelter to the Bolivian state with immediate effect and with no provision for compensation.
29. On 14 May 2010, Glencore formally notified the Bolivian Government of the existence of a dispute arising under the Treaty from the nationalization of the

²⁸ Letter from Freshfields Bruckhaus Deringer (Mr Blackaby) to Ministry of the Presidency (Mr Quintana Taborga), 19 March 2007, C-22; Letter from Freshfields Bruckhaus Deringer (Mr Blackaby) to Ministry of the Presidency (Mr Quintana Taborga), 4 April 2007, C-23; Letter from Freshfields Bruckhaus Deringer (Mr Blackaby) to Ministry of the Presidency (Mr Quintana Taborga), 3 May 2007, C-24.

²⁹ Letter from Glencore (Mr Kalmin and Mr Hubmann) to Ministry of the Presidency (Mr Quintana Taborga), 11 December 2007, C-25.

³⁰ Supreme Decree No 499 (the *Antimony Smelter Nationalization Decree*), 1 May 2010, published in the *Gaceta Oficial* No 127NEC on 1 May 2010, C-26.

Antimony Smelter.³¹ In its letter, Glencore also reminded the Bolivian Government of the pending dispute over compensation for the nationalization of the Tin Smelter and requested that the Bolivian Government resume the discussions on this issue. Glencore attempted to settle the dispute amicably but despite a number of meetings with the Government, no satisfactory outcome was forthcoming.

30. At the time of nationalization of the Antimony Smelter, 161 tonnes of tin concentrates –the property of Colquiri SA– were being stored in the smelter. Colquiri SA sent a letter to the Ministry of Mining requesting the return of the tin concentrates as these had not been subject to nationalization under the Antimony Smelter Nationalization Decree.³² Although the Mining Ministry acknowledged that the tin concentrates were not part of the assets of the Antimony Smelter and instructed the government-controlled EMV to return the tin concentrates,³³ EMV never complied. As of today, Glencore has not received any compensation for the nationalization of the Antimony Smelter or the concentrates.

3. Nationalization of Glencore’s Colquiri Mine in 2012

31. Finally, in early April 2012, a group of local independent mining associations known as “*cooperativas*” (*Cooperatives*)³⁴ demanded access to new mineral veins and mining machinery at the Colquiri Mine. Subsequently, on 30 May 2012, more than 1,000 Cooperative members violently took control of the Colquiri Mine, expelling Colquiri SA’s salaried miners, blocking the access road and occupying

³¹ Letters from Glencore (Mr Maté and Mr Glasenberg) to the President of Bolivia (Mr Morales Ayma) and the Ministry of Mining (Mr Pimentel Castillo), 14 May 2010, C-27.

³² Letter from Colquiri SA (Mr Capriles Tejada) to Ministry of Mining (Mr Pimentel Castillo), 3 May 2010, C-28.

³³ Letter from Ministry of Mining (Mr Pimentel Castillo) to EMV (Mr Ramiro Villavicencio), 5 May 2010, C-29.

³⁴ Cooperativas are private entities which carry out mining activities for their own benefit and whose interests are represented by various umbrella organizations, the main two of which are the National Federation of Mining Cooperatives (known as “*Fencomin*”) and the Mining Cooperatives Federation (known as “*Fedecomin*”).

the site.³⁵ Operations at the mine were at a standstill for several weeks as a result of the occupation.³⁶

32. Over the following days, as Glencore appealed to the Bolivian Government to bring the situation at the Colquiri Mine under control and provide protection,³⁷ violent clashes continued between the Cooperatives, local residents, salaried miners and the police.
33. On 7 June 2012, under intense pressure from the Bolivian authorities and in an effort to diffuse the situation, Glencore agreed to extend the sections of the Colquiri Mine designated to the Cooperatives to include the resource-rich Rosario vein.³⁸ In exchange for this, the Cooperatives agreed to end the occupation of the mine. A formal agreement to this effect was entered into by Colquiri SA, Fedecomín, Fencomín, the Cooperatives themselves³⁹ and the Bolivian authorities, represented by the Deputy Minister of the Ministry of Mining and Comibol (the *Act of Agreement*).⁴⁰ The Act of Agreement provided that Colquiri SA would buy the Cooperatives' production and Colquiri SA even agreed to provide technical and financial support and supervision to the Cooperatives.⁴¹ As

³⁵ It was reported that at least 15 individuals were injured as a result of the takeover. Letter from Colquiri SA (Mr Capriles Tejada) to Comibol (Mr Córdova Eguivar), 3 April 2012; C-30 and Letter from Colquiri SA (Mr Capriles Tejada) to Comibol (Mr Córdova Eguivar), 30 May 2012, C-31. "Trabajadores de Colquiri dan hasta las 16.00 para que el Gobierno desaloje a los avasalladores de una mina", *La Razón*, 31 May 2012, C-32.

³⁶ "Bolivia says may revoke Glencore mine license", *Reuters*, 11 June 2012, C-33.

³⁷ Letter from Colquiri SA (Mr Capriles Tejada) to Comibol (Mr Córdova Eguivar), 30 May 2012, C-31.

³⁸ The Rosario vein contains large deposits of zinc and tin and is reported to be the Colquiri Mine's richest vein. "Gobierno otorga mayor parte de la veta Rosario a cooperativistas", *La Razón*, 1 September 2012, C-34.

³⁹ Including Central Local de Cooperativas Mineras de Colquiri, Cooperativa Minera Collpa Cota, Cooperativa Minera Socavón Inca and the Cooperativa 26 de Febrero.

⁴⁰ Agreement between Colquiri SA, Fedecomín, Fencomín, Central Local de Cooperativas Mineras de Colquiri, Cooperativa Minera Collpa Cota, Cooperativa Minera Socavón Inca, Cooperativa 26 de Febrero and the Mining Ministry Act of Agreement, 7 June 2012, C-35, Arts 1 and 5.

⁴¹ *Ibid.*, Arts 1 to 4.

a result of the Act of Agreement, the Cooperatives eventually lifted the blockades and ended their occupation of the Colquiri Mine on 8 June 2012.⁴²

34. However, in an unforeseen turn of events, a mere three days after the Act of Agreement was signed, on 10 June 2012, Vice-President García Linera announced on national television the Government's decision to nationalize the Colquiri Mine, in total disregard of the terms of the Act of Agreement.⁴³ Glencore immediately protested directly to the President and reserved its rights to bring a claim.⁴⁴
35. Protests and blockades of major roads by the various mining groups represented by different unions started over the next week. Eventually, on 20 June 2012, the Bolivian Government issued Supreme Decree No. 1264, allowing Comibol to take control of the Colquiri Mine and nationalizing the machinery, equipment and supplies of Colquiri SA located at the Colquiri Mine in favor of a new company to be created called Empresa Minera Colquiri SA (the *Colquiri Mine Nationalization Decree*).⁴⁵ The decree failed to provide for just compensation in relation to the entirety of Glencore's investment in the Colquiri Mine, limiting the compensation payable to compensation for machinery, equipment and supplies.⁴⁶ Subsequently, the Government granted the Cooperatives the right to mine additional veins at the Colquiri Mine which had previously been mined by Glencore.

⁴² "Sinchi Wayra entrega veta Rosario a tres cooperativas", *La Razón*, 9 June 2012, C-36.

⁴³ Transcript of "Bolivia nacionalizará minera Colquiri: García Linera", video prepared by *TeleSUR Noticias*, 12 June 2012, C-37.

⁴⁴ Letter from Glencore (Mr Maté) to the President of Bolivia (Mr Morales Ayma), 13 June 2012, C-38.

⁴⁵ Supreme Decree No 1,264 (the *Colquiri Mine Nationalization Decree*), 20 June 2012, published in the *Gaceta Oficial* No 384NEC on 20 June 2012, C-39, Arts 1 and 3.

⁴⁶ *Ibid.*, Art 1. No process has ever been established by Bolivia to provide compensation even in accordance with the limited terms of the Colquiri Mine Nationalization Decree.

36. As a result, on 27 June 2012, Glencore sent another notice of dispute under the Treaty to Bolivia, in relation to the nationalization of the Colquiri Mine.⁴⁷ Once again, this notice highlighted that these government measures constituted an exacerbation of the existing dispute in relation to the nationalization of the Smelters. As of today, Glencore has not received any compensation for the nationalization of the Colquiri Mine.

4. Glencore unsuccessfully attempted to amicably settle the dispute during nine years

37. During the past nine years Glencore has met on numerous occasions with several government authorities with the aim of amicably settling the Dispute. In fact, in 2014, in meetings held with the Government, Glencore was even promised the expedited resolution of the Dispute. However, despite Glencore's efforts, the parties have been unable to reach an amicable settlement of the Dispute,⁴⁸ and to date, Glencore has yet to receive any compensation for its nationalized investments.

38. Therefore, given that the six-month amicable negotiation periods under the Treaty in relation to the nationalization of the Tin Smelter, the Antimony Smelter and the Colquiri Mine have all long elapsed, Glencore has decided to initiate the present arbitration.

⁴⁷ Letters from Glencore (Mr Maté) to the President of Bolivia (Mr Morales Ayma), 27 June 2012, C-40.

⁴⁸ Letter from Glencore (Mr Eskdale) to the Solicitor General (Mr Arce Zaconeta) and the Minister of Mining and Metallurgy (Mr Navarro Miranda), 5 January 2016, C-41.

III. THE PARTIES' CONSENT TO ARBITRATION UNDER THE TREATY AND UNCITRAL RULES

A. GLENCORE IS A PROTECTED INVESTOR UNDER THE TREATY

1. The temporal scope of the Treaty

39. The Treaty was signed on 24 May 1988,⁴⁹ and entered into force on 16 February 1990. The Treaty was extended to the UK overseas territory of Bermuda on 9 December 1992.⁵⁰ Glencore made its initial investments prior to Bolivia's first Treaty breach in 2007.⁵¹ Accordingly, the Treaty's *ratione temporis* requirements are fully satisfied.

2. Glencore is a "company" protected under the Treaty

40. The Treaty applies to qualifying "investments" of "companies" established under the laws of the UK made within the territory of Bolivia.⁵² The definition of a UK company is set out in Article 1(d) of the Treaty and includes:

[C]orporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 11.⁵³

41. Glencore is a company incorporated and constituted in accordance with the laws in force in Bermuda,⁵⁴ a UK overseas territory to which the Treaty has been

⁴⁹ Treaty, C-1.

⁵⁰ Exchange of Notes, 3 December 1992 and 9 December 1992, pursuant to which the Treaty was extended to Bermuda and other territories attached as C-2.

⁵¹ See Section II.C above.

⁵² Treaty, C-1, Art 1(a) and (d)(i).

⁵³ *Ibid.*, C-1, Art 1(d).

⁵⁴ Certificate of incorporation of Glencore (as Sandon Ltd), 23 December 1993, C-42; Certificate of incorporation on change of name of Glencore (from Sandon Ltd), 30 December 1994, C-43; and By-Laws of Glencore, C-44.

extended, as noted above. Accordingly, for the purpose of the Treaty, Glencore is a UK company, and hence a protected investor under the Treaty.

3. Glencore holds protected “investments” under the Treaty

42. Article 1(a) of the Treaty contains a broad definition of what constitutes a protected “investment”:

“investment” means every kind of asset which is capable of producing returns and in particular, though not exclusively, includes:

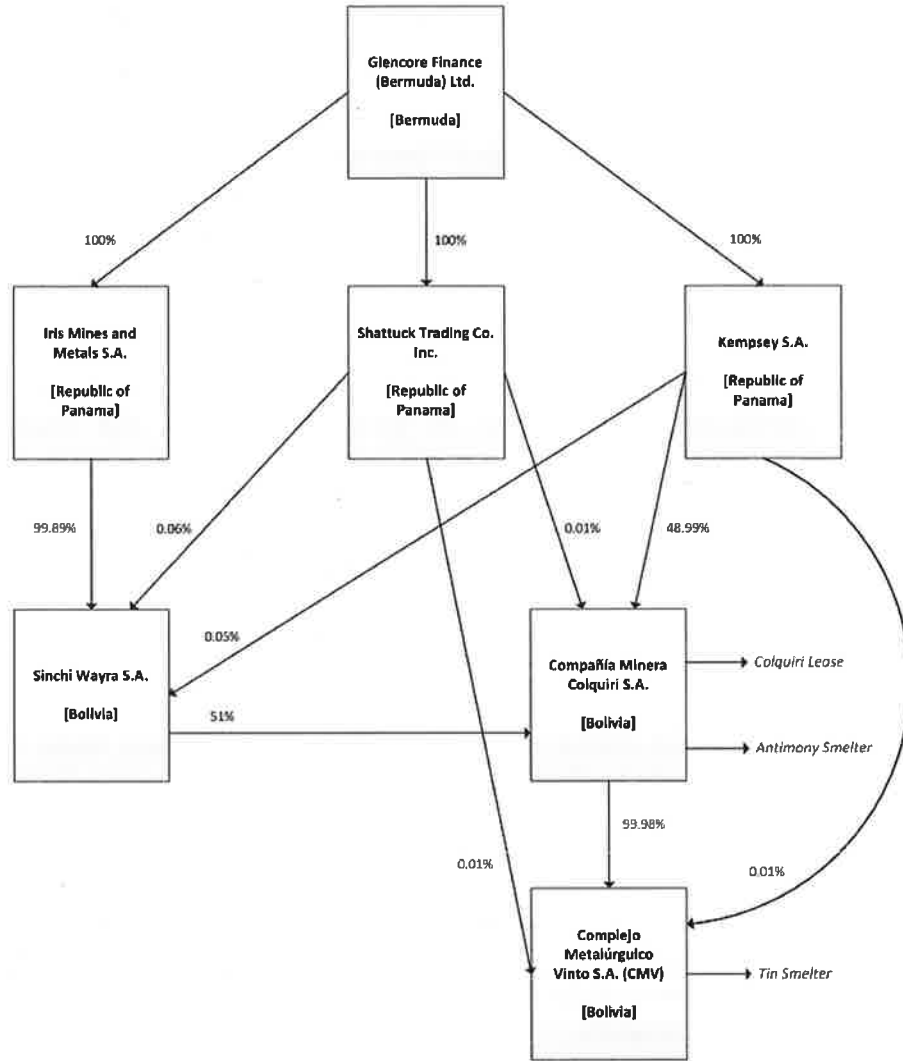
- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) shares in and stock and debentures of a company and any other form of participation in a company;
- (iii) claims to money or to any performance under contract having a financial value;
- (iv) intellectual property rights and goodwill;
- (v) Any business concessions granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their characters as investments.⁵⁵

43. Prior to Bolivia’s Measures, Glencore indirectly owned a 100 percent shareholding in each of Complejo Vinto and Colquiri SA, companies established under the laws of Bolivia.⁵⁶ An illustration of the corporate structure is shown below:

⁵⁵ Treaty, C-1, Art 1(a).

⁵⁶ By October 2006, Glencore had acquired all the shares of the Panamanian Companies. Certificate No 1 of Kempsey, 10 March 2005, C-47; Certificate of the Secretary of Kempsey, 19 May 2011, C-13; Certificate of the Secretary of Iris, 19 May 2011, C-14; and Certificate of the Secretary of Shattuck, 1 February 2012, C-15.



44. Glencore's indirect shareholdings in these Bolivian companies fall within the definition of investments under Article 1(a)(ii) of the Treaty. Moreover, Glencore also indirectly held assets such as moveable and immoveable property and other property rights, claims to money or to any performance under contract having a financial value, intellectual property rights and goodwill, and a concession to

Glencore wholly owns the Panamanian Companies, which together wholly own Sinchi Wayra since November 2006. Share register of Sinchi Wayra, C-16; Shattuck, Kempsey and Sinchi Wayra, together, wholly own Colquiri SA since October 2006. Share register of Colquiri SA, C-17. Kempsey, Shattuck and Colquiri SA together, wholly own Complejo Vinto since March 2005. Share register of Complejo Vinto, C-18.

extract and exploit minerals, all of which fall within the definition of investments under Article 1(a)(i), (iii), (iv) and (v) of the Treaty respectively.

45. Accordingly, Glencore's investments in Bolivia are protected by the Treaty.

B. THE PARTIES' CONSENT TO ARBITRATION UNDER THE TREATY AND THE UNCITRAL RULES

46. Bolivia expressly and unequivocally consented to resolve investment disputes with UK investors such as Glencore through international arbitration by virtue of Article 8 of the Treaty, which provides:

(1) Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been legally and amicably settled shall after a period of six months from written notification of a claim be submitted to international arbitration if either party to the dispute so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and nationals of other States, opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

(b) the Court of Arbitration of the International Chamber of Commerce; or

(c) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of six months from written notification of the claim there is no agreement to an alternative procedure, the parties to the

dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules. (Emphasis added)

47. Article 8 of the Treaty establishes a number of requirements for jurisdiction/admissibility, all of which are satisfied in this case:
- (a) a dispute exists between Glencore (as a national of one Contracting Party) and Bolivia (the other Contracting Party) concerning the obligations of Bolivia under the Treaty in relation to investments made by Glencore in Bolivia;
 - (b) in its written notices dated 11 December 2007, 14 May 2010 and 27 June 2012 Glencore formally notified Bolivia of the existence of the Dispute, pursuant to Article 8 of the Treaty;⁵⁷
 - (c) Glencore repeatedly sought to resolve the Dispute amicably. However, no satisfactory response was ever received from the Bolivian Government; and
 - (d) more than six months have now elapsed since Glencore notified Bolivia of the existence of the Dispute in relation to each of the nationalizations, and the Dispute remains extant.
48. The parties are free to agree on the procedural rules applicable to this arbitration. The Treaty, however, provides in Article 8(2) for the UNCITRAL Rules to be the default procedure if the parties cannot agree on an alternative. Glencore and Bolivia have not agreed on any of the alternative procedures established in Article 8(2)(a) to (c) of the Treaty to resolve the Dispute within six months of the written

⁵⁷ Letter from Glencore (Mr Kalmin and Mr Hubmann) to Ministry of the Presidency (Mr Quintana Taborga), 11 December 2007, C-25; Letters from Glencore (Mr Strothotte) to the President of Bolivia (Mr Morales Ayma), 14 May 2010, C-27; and Letters from Glencore (Mr Maté) to the President of Bolivia (Mr Morales Ayma), 27 June 2012, C-40. *See also* Letter from Glencore International AG (Mr Strothotte) to the President of Bolivia (Mr Morales Ayma), 22 February 2007, C-21.

notifications of the claim. Accordingly, the Dispute is validly submitted to arbitration under the UNCITRAL Rules pursuant to Article 8(2), final paragraph, of the Treaty.

IV. BOLIVIA BREACHED ITS OBLIGATIONS UNDER THE TREATY AND INTERNATIONAL LAW

49. The Treaty imposes obligations on all organs (executive, legislative and judicial) and emanations of the Bolivian state, including, without limitation, the Ministry of Mining, Ministry of the Presidency, Ministry of Energy, Ministry of Finance, Trade Ministry, Comibol, the Bolivian courts and all their employees, agents, officials and representatives. Accordingly, the Bolivian Government's conduct in nationalizing the Tin Smelter, the Antimony Smelter and the Colquiri Mine is attributable to Bolivia and engages its responsibility under international law.

50. Bolivia's Measures (outlined in Section II above) have violated its obligations under the Treaty, including but not limited to its obligations: (a) not to subject Glencore's investments to nationalization, expropriation or measures having equivalent effect; and (b) to accord Glencore's investments fair and equitable treatment and full protection and security and not impair it by unreasonable or discriminatory measures. Each of these Treaty breaches is considered briefly, in turn.

A. BOLIVIA EXPROPRIATED GLENCORE'S INVESTMENTS WITHOUT JUST AND EFFECTIVE COMPENSATION

51. Article 5 of the Treaty provides the following protection to Glencore's investments:

(1) Investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose

and for a social benefit related to the internal needs of that Party and against just and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial or legal rate, whichever is applicable in the territory of the expropriating Contracting Party, until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have the right to establish promptly by due process of law in the territory of the Contracting Party making the expropriation the legality of the expropriation and the amount of the compensation in accordance with the principle set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

52. As outlined in Section III above, Bolivia nationalized the Tin Smelter, the Antimony Smelter and the Colquiri Mine without fulfilling the requirements of Article 5 of the Treaty. In particular, Bolivia has failed to make prompt payment of just and effective compensation to Glencore. Bolivia's conduct amounts to a violation of Article 5 of the Treaty and International Law.

B. BOLIVIA TREATED GLENCORE'S INVESTMENTS UNFAIRLY AND INEQUITABLY, HAS FAILED TO PROVIDE FULL PROTECTION AND SECURITY AND HAS IMPAIRED THEM THROUGH UNREASONABLE AND DISCRIMINATORY MEASURES

53. Article 2(2) of the Treaty provides the following protection:

Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall, in any way, impair by

unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

54. Bolivia breached the protections of Article 2(2) of the Treaty by its unreasonable conduct in nationalizing the Tin Smelter, the Antimony Smelter and the Colquiri Mine. These measures were contrary to Glencore's investment-backed legitimate expectations and acquired rights and failed to observe obligations entered into by Bolivia with regard to Glencore's investments. This was particularly apparent in the case of the nationalization of the Colquiri Mine, which took place only three days after the Act of Agreement was signed by various Bolivian authorities and Colquiri SA, and in direct contradiction with its terms. Bolivia's actions in connection with the nationalization of the Colquiri Mine were also discriminatory, given that other operators in the Bolivian mining sector (including the Cooperatives) were treated more favorably than Colquiri SA. Additionally, Bolivia failed to protect Glencore's investment prior to the nationalization of the Colquiri Mine when more than 1,000 Cooperative members violently took control of the mine, harming and expelling Colquiri SA's salaried miners, blocking the road and occupying the site. Bolivia is consequently in breach of its obligations under Article 2(2) of the Treaty and International Law.

C. COMPENSATION PAYABLE TO GLENCORE UNDER THE TREATY

55. In accordance with well settled principles of international law, Glencore seeks full reparation for the losses resulting from Bolivia's violation of the Treaty, in the form of monetary compensation sufficient to wipe out all the consequences of Bolivia's wrongful acts. Such compensation should be paid without delay, be effectively realizable and be freely transferable, and bear interest at a compound rate sufficient fully to compensate Glencore for the loss of the use of this capital as from the date of each of Bolivia's Measures. The award of damages and

interest should be made net of all Bolivian taxes; Bolivia should not tax, or attempt to tax, the payment of the award.

56. Glencore will submit detailed evidence at the appropriate stage of the proceedings to quantify the losses suffered. Glencore reserves all its rights in relation to further claims that may arise as a result of the ongoing or future actions of Bolivia in connection with its remaining investments in Bolivia.

V. CONSTITUTION OF THE ARBITRAL TRIBUNAL, PLACE AND LANGUAGE OF THE ARBITRATION

57. In accordance with Article 7(1) of the UNCITRAL Rules, and in light of the substantial amounts that will be involved in these proceedings, Glencore proposes that the Tribunal be composed of three arbitrators; one arbitrator to be appointed by each party and the President to be appointed by agreement of the two party-appointed arbitrators within a period of 30 days after the nomination of the second party-appointed arbitrator.
58. Glencore will notify Bolivia of the appointment of its arbitrator in due course. If within 30 days of notification by Glencore of this appointment, Bolivia has not notified Glencore of its appointed arbitrator, the procedure under Article 9(3) of the UNCITRAL Rules shall apply and Glencore may request the relevant appointing authority to appoint the second arbitrator. In this regard, Glencore considers that it would be appropriate to designate an institution to provide appointing services, and it hereby nominates the Secretary General of the Permanent Court of Arbitration (the *PCA*) at the Hague as appointing authority. Glencore also considers that it would be appropriate to designate the PCA as the institution to provide administrative services and technical and secretarial assistance in this arbitration.
59. The parties have not agreed upon the place where the arbitration is to be held. Glencore will also make its submissions in this respect in due course. In the event

that the parties cannot reach an agreement on the seat, it will be for the Tribunal, once constituted, to determine the place of arbitration pursuant to Article 18(1) of the UNCITRAL Rules.

60. The Treaty is silent on the question of the language of the arbitration, and the parties have not reached an agreement on this issue. Glencore proposes English and Spanish as the joint procedural languages of the arbitration. Accordingly, documents, exhibits, and authorities in English and Spanish may be submitted by the parties in the course of the proceedings without translation into the other language.⁵⁸ In the event that the parties cannot agree on the language(s) of the arbitration, it will be for the Tribunal, once constituted, to determine in accordance with Article 19(1) of the UNCITRAL Rules.

VI. THE PARTIES TO THE DISPUTE

A. THE CLAIMANT

61. Glencore is a company incorporated and constituted in accordance with the laws in force in Bermuda and its registered office is located at:

Glencore Finance (Bermuda) Ltd
Canon's Court,
22 Victoria Street,
HM 12 Hamilton
Bermuda

62. All correspondence and notices relating to this case should be sent to the following address:

Nigel Blackaby
Noiana Marigo
Natalia Zibibbo
Freshfields Bruckhaus Deringer US LLP
601 Lexington Avenue, 31st Floor
New York, NY 10022

⁵⁸ The Claimant has adopted this practice in the present Notice.

United States
Tel: +1 212-284-4969

Email: nigel.blackaby@freshfields.com
noiana.marigo@freshfields.com
natalia.zibibbo@freshfields.com

B. THE RESPONDENT

63. The Respondent in this arbitration is the Plurinational State of Bolivia. This Notice has been served on Bolivia at each of the following addresses:

Juan Evo Morales Ayma
President of the Plurinational State of Bolivia
Palacio de Gobierno
Calle Ayacucho esquina Comercio
La Paz, Bolivia

Héctor Arce Zaconeta
Solicitor General's Office
Calle Martín Cárdenas N° 109 entre Calles Noel Kenf y Calle 1 El Alto
La Paz, Bolivia

César Navarro Miranda
Minister of Mining and Metallurgy
Av. Mariscal Santa Cruz
Edificio Centro de Comunicaciones La Paz - Piso 14
La Paz, Bolivia

64. Unless and until Bolivia informs Glencore of details of its legal representatives, Glencore will continue to address notices and correspondence in these proceedings to the addressees set out in paragraph 63 above.

VII. GLENCORE'S REQUEST FOR RELIEF

65. On the basis of the foregoing, without limitation and fully reserving its right to supplement this request, Glencore respectfully requests that the Tribunal:

(a) DECLARE that Bolivia has breached Articles 2(2) and 5 of the Treaty;

- (b) ORDER Bolivia to compensate Glencore for its losses resulting from Bolivia's breaches of the Treaty and international law, in an amount to be determined at a later stage in these proceedings; such compensation to be paid without delay, be effectively realizable and be freely transferable, and bear (pre and post award) interest at a compound rate sufficient fully to compensate Glencore for the loss of the use of this capital as from the date of each of Bolivia's breaches of the Treaty;
- (c) DECLARE that: (i) the award of damages and interest in (b) be made net of all Bolivian taxes; and (ii) Bolivia may not deduct taxes in respect of the payment of the award of damages and interest in (b);
- (d) AWARD such other relief as the Tribunal considers appropriate; and
- (e) ORDER Bolivia to pay all of the costs and expenses of these arbitration proceedings, including the fees and expenses of the Tribunal, the fees and expenses of the institution which is selected to provide appointing and administrative services and assistance to this arbitration, the fees and expenses relating to Glencore's legal representation, and the fees and expenses of any expert appointed by Glencore or the Tribunal, plus interest.

Respectfully submitted on 19 July 2016



Freshfields Bruckhaus Deringer US LLP

For the Claimant