

PCA Case No. 2016-39

**IN THE MATTER OF AN ARBITRATION UNDER 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, SIGNED ON 24 MAY 1988**

**- and -**

**THE UNCITRAL ARBITRATION RULES**

**-between-**

**GLENCORE FINANCE (BERMUDA) LTD**

**(the “Claimant”)**

**-and-**

**THE PLURINATIONAL STATE OF BOLIVIA**

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

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**TERMS OF APPOINTMENT**

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*Tribunal*

Prof. Ricardo Ramírez Hernández (Presiding Arbitrator)  
Prof. John Y. Gotanda  
Prof. Philippe Sands

29 March 2017

**1. Parties to the Arbitration**

**The Claimant**

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

**Counsel for the Claimant**

**Nigel Blackaby**  
**Noiana Marigo**  
**Guadalupe López**  
**Giulia Previti**  
Freshfields Bruckhaus Deringer US LLP  
601 Lexington Avenue  
31st Floor  
New York, NY 10022  
United States of America  
Tel.: +1 212-284-4969  
E-mail: [nigel.blackaby@freshfields.com](mailto:nigel.blackaby@freshfields.com)  
[noiana.marigo@freshfields.com](mailto:noiana.marigo@freshfields.com)  
[lupe.lopez@freshfields.com](mailto:lupe.lopez@freshfields.com)  
[giulia.previti@freshfields.com](mailto:giulia.previti@freshfields.com)  
[projectglencorebolivia@freshfields.com](mailto:projectglencorebolivia@freshfields.com)

**The Respondent**

**The Plurinational State of Bolivia**

**Counsel for the Respondent**

**Pablo Menacho Diederich**  
**Ernesto Rossell Arteaga**  
**Marco Ergueta Flores**  
*Procuraduría General del Estado*  
Calle Martín Cárdenas No. 109, Zona Ferropetrol  
El Alto, La Paz  
Bolivia  
E-mail: [pmenacho@procuraduria.gob.bo](mailto:pmenacho@procuraduria.gob.bo)  
[erossell@procuraduria.gob.bo](mailto:erossell@procuraduria.gob.bo)  
[mergueta@procuraduria.gob.bo](mailto:mergueta@procuraduria.gob.bo)  
[casoglencore@procuraduria.gob.bo](mailto:casoglencore@procuraduria.gob.bo)

**Eduardo Silva Romero**  
**José-Manuel García Represa**  
Dechert LLP  
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France  
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**Álvaro Galindo**  
**Juan Felipe Merizalde**  
Dechert LLP  
1900 K St NW,  
Washington, DC 20006  
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**Maria Claudia Procopiak**  
Dechert LLP  
160 Queen Victoria Street  
EC4V 4QQ  
London  
United Kingdom  
E-mail: mariaclaudia.procopiak@dechert.com

## **2. The Dispute and Commencement of Arbitration**

- 2.1 According to the Claimant, a dispute has arisen between the Parties 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, signed on 24 May 1988 and entered into force on 16 February 1990 (the “**Treaty**”).
- 2.2 By Notice of Arbitration dated 19 July 2016, the Claimant commenced arbitration proceedings against the Respondent pursuant to Article 8 of the Treaty and the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted in 2010 (the “**UNCITRAL Rules**”).
- 2.3 In accordance with the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on 19 July 2016, the date on which the Respondent received the Notice of Arbitration.

## **3. Applicable Procedural Rules**

- 3.1 Pursuant to Article 8 of the Treaty, this arbitration shall be conducted in accordance with the UNCITRAL Rules.
- 3.2 By agreement of the Parties, the Secretary-General of the Permanent Court of Arbitration (the “**PCA**”) acts as the appointing authority in this arbitration for all purposes under the UNCITRAL Rules.
- 3.3 Procedural orders shall be signed and issued by the presiding arbitrator alone after consultation with his co-arbitrators. In cases of urgency or if a co-arbitrator cannot be reached in a timely manner, the presiding arbitrator may take procedural decisions on his own, subject to revision, if any, by the full Tribunal.

## **4. Representation**

- 4.1 The Parties have designated their respective representatives listed above as being authorized to act on their behalf in these arbitration proceedings.
- 4.2 To the extent they have not already done so, the Parties shall confirm these designations by each Party providing to the other copies of the powers of attorney or letter of representation granted to its representative(s).
- 4.3 In the event of any change by a Party of its representatives or of the contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each member of the Tribunal, and to the PCA. The Tribunal reserves the right to exclude the participation of any representatives from any hearing or other meeting where their participation has not been duly notified sufficiently in advance of that hearing or meeting.

**5. Appointment of the Tribunal**

- 5.1 By letter dated 15 September 2016, the Claimant appointed Professor John Y. Gotanda as the first arbitrator. His contact details are as follows:

**Prof. John Y. Gotanda**  
President  
Hawai'i Pacific University  
Office of the President, Suite 3100  
1 Aloha Tower Drive  
Honolulu, Hawai'i 96813-2823  
United States of America  
Email: jgotanda@hpu.edu

- 5.2 By letter dated 24 October 2016, the Respondent appointed Professor Philippe Sands as the second arbitrator. His contact details are as follows:

**Prof. Philippe Sands**  
Matrix Chambers  
Griffin Building  
Gray's Inn  
London WC1R 5LN  
DX400 Chancery Lane, London  
United Kingdom  
E-mail: philippesands@matrixlaw.co.uk

- 5.3 Pursuant to the Appointment of Presiding Arbitrator dated 28 February 2017, the Secretary-General of the PCA appointed Professor Ricardo Ramírez Hernández as presiding arbitrator. His contact details are as follows:

**Prof. Ricardo Ramírez Hernández**  
Islote 71  
Colonia Las Aguilas, C.P. 03100  
Mexico, D.F.  
Mexico  
E-mail: ricardoramirez@derecho.unam.mx  
ricardoramirez@icloud.com

- 5.4 The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the Treaty and the UNCITRAL Rules.
- 5.5 The members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the members of the Tribunal confirms that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
- 5.6 The Parties confirm that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them as at the date of these Terms of Appointment.

**6. Place of Arbitration**

- 6.1 Pursuant to the UNCITRAL Rules, the Tribunal will determine the legal place (or “seat”) of the arbitration having regard to the circumstances of the case, after consultation with the Parties.
- 6.2 The Tribunal may hold meetings and hearings with the Parties at any location it considers appropriate, as decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.
- 6.3 Irrespective of the place where an award is signed, it will be deemed to have been made at the place of arbitration.

**7. Language of Proceedings**

- 7.1 By agreement of the Parties, English and Spanish shall be the languages of the arbitration.

**8. Case Administration**

- 8.1 The PCA shall act as registry and shall administer the arbitral proceedings on the terms set forth in this section.
- 8.2 In consultation with the Tribunal, the Secretary-General of the PCA shall designate a legal officer of the International Bureau to act as Registrar and Secretary to the Tribunal.
- 8.3 The PCA shall maintain an archive of filings of correspondence and submissions.
- 8.4 The PCA shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal’s supervision.
- 8.5 If needed, the PCA shall make its hearing and meeting rooms at the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.
- 8.6 Upon request, the PCA shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out purely administrative tasks. Work carried out by the PCA shall be billed in accordance with the PCA’s schedule of fees.
- 8.7 The PCA’s fees and expenses shall be paid in the same manner as the Tribunal’s fees and expenses.
- 8.8 The contact details of the PCA are as follows:

**Permanent Court of Arbitration**  
Attn: Mr. Martin Doe Rodríguez, Senior Legal Counsel  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands

Tel: +31 70 302 4140  
Fax: +31 70 302 4167  
E-mail: mdoe@pca-cpa.org  
bureau@pca-cpa.org

8.9 The appointment of the PCA as registry shall not affect the legal place of arbitration, the geographical location of meetings and hearings, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to these Terms of Appointment, any agreement between the Parties, and any decisions by the Tribunal.

## **9. Procedural meeting**

9.1 Further procedural details, and in particular a procedural calendar and the determination of the place and language of arbitration, shall be discussed and, as far as possible, agreed at a procedural meeting to be held with the Parties in person or by telephone conference call.

9.2 The results of the procedural meeting shall be included in a further procedural order.

## **10. Communications**

10.1 Subject to any modification arising from the procedural meeting, the following provisions shall apply to communications.

10.2 The Parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

10.3 The Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel, to each member of the Tribunal, and to the PCA.

10.4 The Parties shall send copies of correspondence between them to the Tribunal and to the PCA only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event that the Tribunal and the PCA should be apprised of.

## **11. Deposit**

11.1 The parties shall cover the direct costs of the proceedings in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

11.2 In accordance with the UNCITRAL Rules, each Party shall make an initial deposit of US\$ 200,000 within 30 days of the date of these Terms of Appointment, to be deposited with the PCA by wire transfer to the following PCA account:

Bank: ABN Amro Bank N.V.  
Kneuterdijk 8  
2514 EN  
Den Haag  
The Netherlands

Account number: 0533 5127 51  
IBAN: NL61 ABNA 0533 5127 51  
BIC: ABNANL2A  
Beneficiary: Permanent Court of Arbitration  
Reference: PCA Case No 2016-39

- 11.3 The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits.
- 11.4 Any transfer fees or other bank charges will be charged by the PCA to the deposit. No interest will be paid on the deposit.
- 11.5 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

## **12. Tribunal Fees and Expenses**

- 12.1 Each member of the Tribunal shall be remunerated at the rate of US\$ 400 per hour plus Value Added Tax (VAT) or General Excise Tax (GET), if applicable, for all time spent in connection with the arbitration.
- 12.2 The members of the Tribunal shall be remunerated in the amount of 50% of their fees for each day reserved for a hearing or meeting, based on an eight hour day, in respect of any hearing or other meeting for which they are asked to reserve more than one day and that is cancelled, or postponed by more than one week, at the request of one or both of the Parties within two weeks from the first day of such hearing or meeting.
- 12.3 Members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to travel expenses, telephone, fax, delivery, printing, and other expenses.
- 12.4 Members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the PCA periodic bills in respect of fees.
- 12.5 All payments to the Tribunal shall be made from the deposit administered by the PCA.

## **13. Immunity of the Tribunal**

- 13.1 The Parties shall not seek to make the Tribunal or any of its members liable in respect of any act or omission in connection with any matter related to this arbitration.
- 13.2 The Parties shall not require any member of the Tribunal to be a party or witness in any judicial, administrative, or other proceedings arising out of or in connection with the arbitration.

## **14. Signature of the Terms of Appointment**

- 14.1 These Terms of Appointment may be signed in counterparts, collectively forming one composite signed document.

[signature page follows]

**THE CLAIMANT:**

**THE RESPONDENT:**



**Glencore Finance (Bermuda) Ltd**

**Date:** April 4, 2017

**The Plurinational State of Bolivia**

**Date:**

**THE TRIBUNAL:**

**John Y. Gotanda**

**Date:**

**Philippe Sands**

**Date:**

**Ricardo Ramírez Hernández  
(Presiding Arbitrator)**

**Date:**



**THE CLAIMANT:**

**THE RESPONDENT:**

\_\_\_\_\_  
**Glencore Finance (Bermuda) Ltd**

**Date:**

  
\_\_\_\_\_  
**The Plurinational State of Bolivia**

**Date:**

*April 6, 2017*

**THE TRIBUNAL:**

\_\_\_\_\_  
**John Y. Gotanda**

**Date:**

\_\_\_\_\_  
**Philippe Sands**

**Date:**

\_\_\_\_\_  
**Ricardo Ramírez Hernández**  
**(Presiding Arbitrator)**

**Date:**

**THE CLAIMANT:**

**THE RESPONDENT:**

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**Glencore Finance (Bermuda) Ltd**

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**The Plurinational State of Bolivia**

**Date:**

**Date:**

**THE TRIBUNAL:**



**John Y. Gotanda**

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**Philippe Sands**

**Date:**

4/25/17

**Date:**

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**Ricardo Ramírez Hernández  
(Presiding Arbitrator)**

**Date:**

**THE CLAIMANT:**

**THE RESPONDENT:**

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**Glencore Finance (Bermuda) Ltd**

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**The Plurinational State of Bolivia**

**Date:**

**Date:**

**THE TRIBUNAL:**

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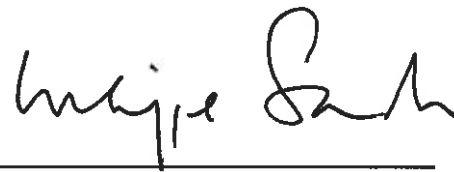
**John Y. Gotanda**

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**Philippe Sands**

**Date:**

**Date:**



26.4.2017

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**Ricardo Ramírez Hernández**  
**(Presiding Arbitrator)**

**Date:**

**THE CLAIMANT:**

**THE RESPONDENT:**

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**Glencore Finance (Bermuda) Ltd**

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**The Plurinational State of Bolivia**

**Date:**

**Date:**

**THE TRIBUNAL:**

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**John Y. Gotanda**

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**Philippe Sands**

**Date:**

**Date:**



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**Ricardo Ramírez Hernández**  
**(Presiding Arbitrator)**

**Date:**