

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”)**

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**TERMS OF APPOINTMENT**

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*Tribunal*

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

**March 4, 2014**

**1. Parties to the Arbitration**

<b>The Claimant</b>	<b>Counsel for the Claimant</b>
<p><b>South American Silver Limited (Bermuda)</b> Jardine House – 4<sup>th</sup> Floor 33-35 Reid Street P.O. Box HM 1431 Hamilton HM FX Bermuda</p> <p>Tel.: +1 441 292 6972 Fax: +1 441 296 0329</p>	<p><b>Mr. Henry G. Burnett</b> <b>Mr. Guillermo Aguilar Alvarez</b> <b>Mr. Fernando Rodriguez Cortina</b> <b>Mr. Louis-Alexis Bret</b> King &amp; Spalding LLP 1185 Avenue of the Americas 34<sup>th</sup> Floor New York, NY 10036-2222 U.S.A.</p> <p>Tel.: +1 212 556 2100 Fax: +1 212 556 2222 E-mail: hburnett@kslaw.com gaguilar@kslaw.com frodriguez-cortina@kslaw.com lbret@kslaw.com</p> <p><b>Mr. Roberto Aguirre Luzi</b> King &amp; Spalding LLP 1100 Louisiana Street Suite 4000 Houston, Texas 77002-5213 U.S.A.</p> <p>Tel.: +1 713 751 3200 Fax: +1 713 751 3290 E-mail: raguirreluzi@kslaw.com</p> <p><b>Mr. Ramiro Guevara</b> <b>Mr. Enrique Barrios</b> Guevara &amp; Gutiérrez S.C. Calle 15 No. 7715 esquina Calle Sánchez Bustamante Torre Ketal, Piso 4, Oficina No. 2 Casilla Postal 9332 La Paz Bolivia</p> <p>Tel.: +591 2 277 0808 Fax: +591 2 279 6462 E-mail: rguevara@gg-lex.com ebarrios@gg-lex.com</p>

The Respondent	Counsel for the Respondent
The Plurinational State of Bolivia	<p><b>Dr. Hugo Raul Montero Lara</b> <i>(Procurador General del Estado)</i> Procuraduría General del Estado Calle Martín Cárdenas No. 109 entre Noel Kempff y Calle 1 El Alto, La Paz Bolivia</p> <p>Tel.: +591 2 211 8454 Fax: +591 2 217 3905 E-mail: hmontero@procuraduria.gob.bo epozo@procuraduria.gob.bo earismendi@procuraduria.gob.bo pbonadona@procuraduria.gob.bo</p>

## 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 May 24, 1988, entered into force on February 16, 1990 (the “**Treaty**”), and the application of which was extended to the Bermuda Islands on December 9, 1992 by an exchange of notes dated December 3 and 9, 1992.
- 2.2 By Notice of Arbitration dated April 30, 2013, the Claimant commenced arbitration proceedings against the Respondent pursuant to Article 8 of the Treaty and Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2010 (the “**UNCITRAL Rules**”). The Notice of Arbitration was received by the Respondent on the same date and on June 28, 2013, upon agreement of the Parties, the Respondent filed its Response to the Notice of Arbitration.
- 2.3 According to Article 3(2) of the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on April 30, 2013, the date on which the Respondent received the Notice of Arbitration.

## 3. Applicable Procedural Rules

- 3.1 Pursuant to Article 8(2) 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 The Respondent indicated that the *Procurador General del Estado* is the legal representative of Bolivia by virtue of Article 231 of the Political Constitution of Bolivia and Law No. 064, and therefore does not require further accreditation to represent the Bolivian State in this arbitration. To the extent they have not already done so, the Parties shall confirm all the other designations by each providing copies of the powers of attorney or letter of representation granted to its representative(s) not later than by the first procedural meeting referred to in paragraph 9.1 of this Terms of Appointment.
- 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 in advance of that hearing or meeting.

#### **5. Appointment of the Tribunal**

- 5.1 In its Notice of Arbitration, the Claimant appointed Professor Francisco Orrego Vicuña as the first arbitrator. His contact details are as follows:

**Prof. Francisco Orrego Vicuña**  
Avenida El Golf No. 40, Piso 6  
Santiago 755-0107  
Chile  
Tel.: +56 2 2441 6300  
Fax: +56 2 2441 6398  
E-mail: forregovicuna@20essexst.com

- 5.2 In its Response to the Notice of Arbitration dated June 28, 2013, the Respondent appointed Mr. Osvaldo César Guglielmino as the second arbitrator. His contact details are as follows:

**Mr. Osvaldo César Guglielmino**  
Cerrito 1320, Piso 9  
Argentina  
Tel./Fax: +54 11 4811 7609  
Mobile: +54 9 11 6218 3686  
E-mail: oguglielmino@hotmail.com

- 5.3 Pursuant to Appointment of Presiding Arbitrator dated January 22, 2014, the Secretary-General of the PCA appointed Dr. Eduardo Zuleta Jaramillo as presiding arbitrator. His contact details are as follows:

**Dr. Eduardo Zuleta Jaramillo**  
Gómez-Pinzón Zuleta Abogados  
Calle 67 No. 7-35  
Of. 1204 Edificio Caracol  
Bogota D.C.  
Colombia  
Tel.: +571 319 29 00, Ext. 928  
Fax: +571 321 02 95  
E-mail: ezuleta@gpzlegal.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 signature of these Terms of Appointment.

## **6. Place of arbitration**

- 6.1 Pursuant to Article 18(1) of 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 Pursuant to Article 18(2) of the UNCITRAL Rules, meetings and hearings may take place at other locations if so decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.
- 6.3 Also pursuant to Article 18(2) of the UNCITRAL Rules, 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 arbitration**

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

## **8. Case Administration**

- 8.1 By agreement of the Parties, the PCA acts as registry (the “**Registry**”) and shall administer the arbitral proceedings on the following terms:
- 8.1.1 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.
- 8.1.2 The Registry shall maintain an archive of filings of correspondence and submissions.

- 8.1.3 The Registry shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.
- 8.1.4 If needed, the Registry 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.
- 8.1.5 Upon request, the Registry 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 Registry shall be billed in accordance with the PCA's schedule of fees. PCA fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.

8.2 The contact details of the Registry are as follows:

**Permanent Court of Arbitration**  
Attn: Ms. Hyun Jung Lee, Legal Counsel  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands  
Tel: +31 70 302 4171  
Fax: +31 70 302 4167  
E-mail: [hjunglee@pca-cpa.org](mailto:hjunglee@pca-cpa.org)  
[mdoe@pca-cpa.org](mailto:mdoe@pca-cpa.org)  
[bureau@pca-cpa.org](mailto:bureau@pca-cpa.org)

8.3 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 determinations 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 Further details regarding communications shall be discussed at the procedural meeting. Subject to any modification arising from the procedural meeting, the following provisions shall apply.
- 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 Registry.
- 10.4 A hard copy of all communications exceeding 30 pages (including all attached documents) shall also be sent by courier within the next business day following their transmission by e-mail.
- 10.5 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 In accordance with the UNCITRAL Rules and in order to assure sufficient funds for the Tribunal's fees and expenses, the Tribunal invites the Parties to make an initial deposit of USD 100,000.00 (USD 50,000 each Party), to be deposited with the PCA by wire transfer to the following PCA account:

Bank:	ING Bank N.V. Schenkkade 65 2519 AS The Hague The Netherlands
Account number:	02.02.86.511
IBAN:	NL75 INGB 002 028 6511
BIC:	INGBNL2A
Name of beneficiary:	Permanent Court of Arbitration
Reference:	2013-15

- 11.2 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.
- 11.3 Any transfer fees or other bank charges will be charged by the PCA to the deposit. No interest will be paid on the deposit.
- 11.4 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 USD 600 per hour plus VAT, if applicable, for all time spent in connection with the arbitration. Time spent on travel will be charged at 50% of this rate.
- 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, by one or both of the Parties within four 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 Registry periodic bills in respect of fees.
- 12.5 All payments to the Tribunal shall be made from the deposit administered by the Registry.

**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:**



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South American Silver Limited (Bermuda)

Date: March 11, 2014

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The Plurinational State of Bolivia

Date:

**THE TRIBUNAL:**

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Francisco Orrego Vicuña

Date:

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Oswaldo César Guglielmino

Date:

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Dr. Eduardo Zuleta Jaramillo  
(Presiding Arbitrator)

Date:

LA DEMANDANTE:

\_\_\_\_\_  
South American Silver Limited (Bermudas)

Fecha:

LA DEMANDADA:



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Estado Plurinacional de Bolivia  
La Paz

Fecha: 11/03/2014

EL TRIBUNAL:

\_\_\_\_\_  
Francisco Orrego Vicuña

Fecha:

\_\_\_\_\_  
Osvaldo César Guglielmino

Fecha:

\_\_\_\_\_  
Dr. Eduardo Zuleta Jaramillo  
(Árbitro Presidente)

Fecha:

**THE CLAIMANT:**

**THE RESPONDENT:**

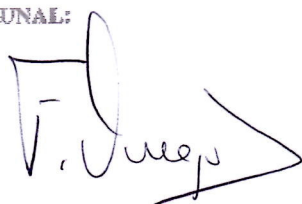
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South American Silver Limited (Bermuda)

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The Plurinational State of Bolivia

Date:

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**THE TRIBUNAL:**



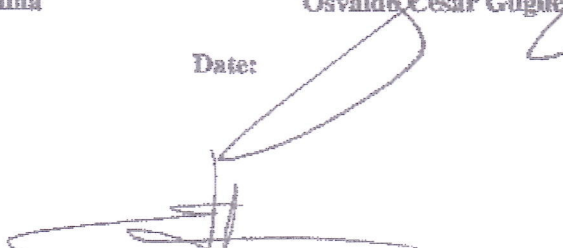
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Francisco Orrego Vicuña

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Date:

  
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Dr. Eduardo Zuleta Jaramillo  
(Presiding Arbitrator)

Date: