

PCA Case No. 2018-39

**IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF
THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED ON APRIL 17, 1998 AND
ENTERED INTO FORCE ON JUNE 6, 2001**

- and -

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

- between -

- 1. JULIO MIGUEL ORLANDINI-AGREDA (U.S.A./Bolivia)**
- 2. COMPAÑÍA MINERA ORLANDINI LTDA. (Bolivia)**

(the “Claimants”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent”, and together with the Claimants, the “Parties”)

TERMS OF APPOINTMENT

Tribunal

Dr. Stanimir A. Alexandrov (Presiding Arbitrator)
Professor Guido Santiago Tawil
Dr. José Antonio Moreno Rodríguez

December 18, 2018

1. Parties to the Arbitration

The Claimants	Counsel for the Claimants
<p>1. Julio Miguel Orlandini-Agreda</p> <p>2. Compañía Minera Orlandini Ltda.</p>	<p>Mr. David M. Orta Mr. Daniel Salinas-Serrano Ms. Dawn Y. Yamane Hewett Mr. Brian H. Rowe Mr. Lucas Loviscek Mr. Kristopher Yue Quinn Emanuel Urquhart & Sullivan LLP 1300 I Street, N.W., Suite 900 Washington, D.C. 20005 United States of America</p> <p>Tel.: +1 202 538 8000 Fax: +1 202 538 8100 E-mail: davidorta@quinnemanuel.com danielsalinas@quinnemanuel.com dawnhewett@quinnemanuel.com brianrowe@quinnemanuel.com lucasloviscek@quinnemanuel.com krisyue@quinnemanuel.com</p> <p>Dr. Bernardo A. Wayar Caballero Dr. Bernardo A. Wayar Ocampo Dr. Mauricio Dávila Jordán Dr. Joaquín Vásquez Schaer Wayar & Von Borries Abogados S.C. Av. 20 de Octubre No. 2473 Ed. Topater, Piso 8, Casilla 6015 La Paz Bolivia</p> <p>Tel.: +591 2 2435087 E-mail: bernardow@wayarabogados.bo berwayar@wayarabogados.bo mauriciodavila@wayarabogados.bo joaquinvasquez@wayarabogados.bo</p>

The Respondent	Counsel for the Respondent
The Plurinational State of Bolivia	<p>Dr. Pablo Menacho Diederich Procurador General del Estado</p> <p>Dr. Ernesto Rossell Arteaga Subprocurador de Defensa y Representación Legal del Estado</p> <p>Dr. Ariel Flores Mamani Director General de Defensa 2 Procuraduría General del Estado Calle Martín Cárdenas No. 109 El Alto, La Paz Bolivia</p> <p>E-mail: pmenacho@procuraduria.gob.bo erossell@procuraduria.gob.bo aflores@procuraduria.gob.bo</p> <p>Mr. Eduardo Silva Romero Mr. José Manuel García Represa Dechert (Paris) LLP 32, Rue de Monceau Paris, 75008 France</p> <p>Mr. Álvaro Galindo Cardona Mr. Juan Felipe Merizalde Urdaneta Dechert LLP 1900 K St. NW Washington, D.C. 20006 United States of America</p> <p>E-mail: eduardo.silvaromero@dechert.com jose-manuel.garciarepresa@dechert.com alvaro.galindo@dechert.com juanfelipe.merizalde@dechert.com boliviaorlandini@dechert.com</p>

2. The Dispute and Commencement of Arbitration

- 2.1 According to the Claimants, a dispute has arisen between the Parties under the *Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment*, signed on April 17, 1998, entered into force on June 6, 2001 and denounced by the Respondent on June 7, 2012 (the “**Treaty**”).

- 2.2 By Notice of Arbitration dated January 31, 2018, the Claimants commenced arbitration proceedings against the Respondent pursuant to Article IX of the Treaty and the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2010. The Notice of Arbitration was received by the Respondent on February 5, 2018.
- 2.3 On April 6, 2018, the Respondent provided its response to the procedural proposals set forth in the Claimants' Notice of Arbitration. In said communication, the Respondent stated that it was not required to submit a Response to the Notice of Arbitration on account of the fact that the 1976 version of the UNCITRAL Rules governs this arbitration.
- 2.4 According to the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on February 5, 2018, the date on which the Respondent received the Notice of Arbitration.

3. Applicable Procedural Rules

- 3.1 Pursuant to Article IX of the Treaty, this arbitration shall be conducted in accordance with the UNCITRAL Rules.
- 3.2 Which version of the UNCITRAL Rules applies to these proceedings is a matter of dispute between the Parties. The Tribunal shall decide this issue after these Terms of Appointment have been signed and the Parties have had the opportunity to fully brief the Tribunal on this matter.
- 3.3 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.
- 3.4 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 providing to the others copies of the powers of attorney or letter of representation granted to its representative(s).
 - 4.2.1 In the case of the Respondent, the *Procurador General del Estado* of the Plurinational State of Bolivia is the legal representative of the State of Bolivia in accordance with Article 231 of the Political Constitution of the State and pursuant to Act No. 064. Thus, the *Procurador General del Estado* does not require any further credentials to represent the State of Bolivia in this arbitration.

- 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 June 22, 2018, the Claimants appointed Professor Guido Santiago Tawil, a national of Argentina, as the first arbitrator. Professor Tawil's contact details are as follows:

Professor Guido Santiago Tawil
Arribeños 1740, piso 10
1426 Ciudad Autónoma de Buenos Aires
Argentine Republic
E-mail: arb-gtawil@arb-chambers.com

- 5.2 By letter dated July 23, 2018, the Respondent appointed Dr. José Antonio Moreno Rodríguez, a national of Paraguay, as the second arbitrator. His contact details are as follows:

Dr. José Antonio Moreno Rodríguez
Altra Legal
Senador Long 463 entre
Del Maestro y Moisés Bertoni
Asunción
Paraguay
Tel: +595 21 237 6695
E-mail: jmoreno@altra.com.py

- 5.3 Pursuant to the Appointment of Presiding Arbitrator dated November 19, 2018, the Secretary-General of the PCA appointed Dr. Stanimir A. Alexandrov, a national of Bulgaria, as presiding arbitrator. His contact details are as follows:

Dr. Stanimir A. Alexandrov
Stanimir A. Alexandrov PLLC
1501 K Street, N.W. Suite C-072
Washington D.C. 20005
United States of America
Tel: +1 (202) 736-8186
E-mail: salexandrov@alexandrovlaw.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 In accordance with Article IX(5) of the Treaty, this arbitration shall be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.
- 6.2 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.
- 6.3 Pursuant to 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.
- 6.4 Pursuant to 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 UNCITRAL Rules, the Tribunal will determine the language(s) of the arbitration having regard to the circumstances of the case, after consultation with the Parties.

8. Case Administration

- 8.1 By agreement of the Parties, the PCA shall act 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 PCA shall maintain an archive of filings of correspondence and submissions.
- 8.1.3 The PCA shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal’s supervision.
- 8.1.4 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.
- 8.1.5 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. 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 PCA are as follows:

Permanent Court of Arbitration
Attn: Mr. José Luis Aragón Cardiel, Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel: +31 70 302 4155
Fax: +31 70 302 4167
E-mail: jaragoncardiel@pca-cpa.org
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 the Treaty, 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 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 In accordance with the UNCITRAL Rules and the Tribunal's instructions, as set forth in its letter of November 20, 2018, the Parties shall make an initial deposit of USD 300,000 (USD 150,000 each Party) to be deposited with the PCA by wire transfer to the following PCA account:

Bank:	ABN Amro Bank N.V. Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands
BIC:	ABNANL2A
Account number:	0533 5127 51
IBAN:	NL61 ABNA 0533 5127 51
Beneficiary:	Permanent Court of Arbitration
Reference:	PCA Case N° 2018-39

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. The Tribunal will request that the Parties make supplementary deposits in equal amounts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

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 800 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 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 undertake not to initiate legal proceedings against, or in any other manner impair the independence and/or immunity of, any of the members of the Tribunal 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 CLAIMANTS:



Date: December 4, 2018

THE RESPONDENT:

Date:

THE TRIBUNAL:

Professor Guido Santiago Tawil

Date:

Dr. José Antonio Moreno Rodríguez

Date:

**Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)**

Date:

THE CLAIMANTS:

THE RESPONDENT:

Date:

Date:


6/12/18

THE TRIBUNAL:

Professor Guido Santiago Tawil

Dr. José Antonio Moreno Rodríguez

Date:

Date:

Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

Date:

THE CLAIMANTS:

THE RESPONDENT:

Date:

Date:

THE TRIBUNAL:



Professor Guido Santiago Tawil

Date: December 18, 2018

Dr. José Antonio Moreno Rodríguez

Date:

**Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)**

Date:

THE CLAIMANTS:

THE RESPONDENT:

Date:

Date:

THE TRIBUNAL:

Professor Guido Santiago Tawil



Dr. José Antonio Moreno Rodríguez

Date:

Date: *December 17, 2019*

Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

Date:

THE CLAIMANTS:

THE RESPONDENT:

Date:

Date:

THE TRIBUNAL:

Professor Guido Santiago Tawil

Dr. José Antonio Moreno Rodríguez

Date:

Date:



Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

Date: December 18, 2018