

PCA Case No. 2016-39

**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, 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”)

PROCEDURAL ORDER NO. 12

Tribunal

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

3 February 2021

A. PROCEDURAL HISTORY

1. Paragraph 6.4 of Procedural Order No. 1 provides that “[f]ollowing submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of a reasoned request justifying why such documents were not submitted earlier together with the Parties’ written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.”
2. By letter to the Tribunal dated 21 December 2020, the Claimant requested leave to introduce into the record four new factual exhibits (the “**Request**”). The Claimant’s four new factual exhibits, which were enclosed with the letter of 21 December 2020, comprised (i) the “original version of exhibit C-322” (**C-322bis**); (ii) “documents supporting transactions that involve un-delineated mineral resources” (**C-339**); (iii) “documents relating to economies of scale in the mining industry” (**C-340**); and (iv) a “cross section of the Blanca vein of the Colquiri Mine” (**C- 341**).
3. By letter to the Tribunal dated 8 January 2021, the Respondent submitted that the Request “*should be dismissed on grounds that it (i) does not comply with the standard in paragraph 6.4 of Procedural Order No. 1 (“PO 1”), and (ii) would cause prejudice to Bolivia if it were granted.*” The Respondent requested that the Tribunal “*(i) deny Claimant’s request to introduce further evidence into the record at this stage of the proceedings, (ii) strike from the record the submissions Claimant has already made on the basis of such further evidence, and (iii) draw the adverse inferences described [therein].*”
4. By letter dated 15 January 2021, the Claimant stated that, for the reasons set out therein, the Request “*(i) is squarely within the standard in paragraph 6.4 of Procedural Order No 1 (PO 1) pursuant to which the Tribunal may grant leave to introduce new exhibits into the record, and (ii) if granted, would not prejudice Bolivia*” and requested the Tribunal grant leave to introduce onto the record the four exhibits.
5. By letter dated 22 January 2021, the Respondent requested that the Tribunal deny the Request for the following four reasons:

First, Claimant seeks to lower the high threshold for the submission of additional evidence at this late stage of the proceedings [...]

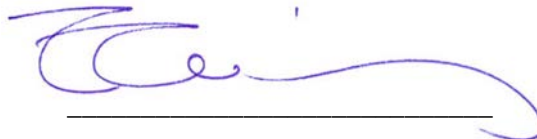
Second, Claimant insists that it is seeking “to introduce new exhibits in response to a new argument Bolivia asserted for the first time in the Rejoinder,” and that this would suffice for the purposes of PO 1. This is, again, misleading and wrong [...]

Third, Claimant is still at a loss to establish that the alleged new (quod non) arguments go beyond what could have been reasonably expected by the Parties and the Tribunal in light of prior written submissions [...]

Fourth, [...] Bolivia [...] would be prejudiced by the introduction into the record, at the 11th hour of this arbitration, of over 200 pages of documents (which could, and should have been submitted together with Claimant’s prior pleadings) [...]

B. DECISION

6. Having considered the submissions of the Parties regarding the Claimant’s request, the Tribunal considers that the Claimant’s four new exhibits should be admitted, pending the Tribunal’s assessment, after hearing the Parties, of the probative value of the evidence in question, if any. For the avoidance of doubt, the Tribunal notes that this decision does not imply any acceptance by the Tribunal at this stage of the authenticity, relevance, materiality, or weight of the evidence in question.
7. Paragraph 6.4 of Procedural Order No. 1, provides that, if the Tribunal grants leave to admit new evidence to one side, “*the other side shall have an opportunity to submit counter-evidence.*” Accordingly, the Respondent is invited to submit, by no later than **Monday, 15 February 2021**, any request for leave to introduce evidence directly responsive to the new materials herein admitted.



Prof. Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal