

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, AS REVISED IN 2010/2013 (the “UNCITRAL Rules”)**

- between -

- 1. THE ESTATE OF JULIO MIGUEL ORLANDINI-AGREDA**
- 2. COMPAÑÍA MINERA ORLANDINI LTDA.**

**(the “Claimants”)**

- and -

**THE PLURINATIONAL STATE OF BOLIVIA**

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

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**PROCEDURAL ORDER NO. 11**

**Oral Hearing on Jurisdiction and Liability**

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*Tribunal*

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

**March 23, 2021**

## **I. Background**

1. Pursuant to Section 10.1 of Procedural Order No. 1, “[a]fter consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.”
2. In its Procedural Order No. 4, dated August 12, 2019, the Tribunal (i) established the procedural calendar for the Phase on Jurisdiction and Liability, which fixed the dates of the Oral Hearing on Jurisdiction and Liability (the “**Hearing**”) on May 17-21, 2021; and (ii) fixed the venue of the Hearing in Washington, D.C., USA. All subsequent amendments of the procedural calendar (last amended by Procedural Order No. 9, dated February 21, 2021) have confirmed the same dates for the Hearing.
3. On February 16, 2021, the Tribunal invited the Parties to confer and attempt to agree on the issues of the conduct of the Hearing.
4. On March 15, 2021, the Parties filed a joint submission noting their areas of agreement and disagreement with regard to the conduct of the Hearing.
5. On March 18, 2021, the Tribunal held a pre-hearing videoconference with the Parties.

## **II. Hearing Dates**

6. The Hearing will take place from Monday, May 17, 2021 to Saturday, May 22, 2021.

## **III. Hearing Format**

7. In light of the circumstances arising from the COVID-19 pandemic, and having consulted with the Parties, the Tribunal hereby determines that the Hearing shall be held by videoconference.

## **IV. Pre-Hearing Preparation**

8. Prior to the Hearing, the Parties shall jointly prepare USB devices containing the entire record of the arbitration for each member of the Tribunal and the PCA. In addition, the Parties shall jointly prepare core hearing bundles in hard copy for Prof. Tawil and Dr. Moreno (**not** for Dr. Alexandrov or the PCA) containing the key documents upon which either Party intends to rely in the course of the Hearing (but not including the Parties’ submissions, expert reports and witness statements filed in this arbitration). The members of the Tribunal and the PCA should receive these USB devices and core bundles, as applicable, no later than **Monday, May 10, 2021**.
9. On a date to be determined, the PCA will hold a test-call with the Parties in order to verify the proper functioning of the videoconference system. The members of the Tribunal may also attend if they so wish. All participants shall strive to replicate the conditions under which they will participate in the Hearing:
  - (i) To the extent possible, at least one participant per device or connection to be used at the Hearing should attend the test call;
  - (ii) Each participant should join the test call with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing;

- (iii) Participants will join the test-call through the waiting room function and will follow the same identification procedure as for the Hearing itself (*see* Sections 27 to 29 below); and
  - (iv) The test call shall include a test of each of the functions of the videoconference platform that is intended to be used during the Hearing (*e.g.*, presentation of evidence via shared screen, simultaneous interpretation, etc.).
10. In addition to the test call described above, the Parties may undertake further test calls with the PCA or different groups of Participants (as defined in Section 24 below), both prior to and following the main test call, in order to facilitate the readiness of all Participants for the Hearing.
11. The Tribunal may direct further videoconference testing sessions to take place with all or some Hearing Participants, as it considers necessary.

#### **V. Hearing Schedule**

12. Having consulted with the Parties, the Tribunal determines that the daily schedule of the Hearing shall generally be as follows:
- (i) Commence each day at 8:30 AM Washington, D.C./EST (also 8:30 AM Asunción, La Paz; 9:30 AM Uruguay; 2:30 PM CET);
  - (ii) Conclude each day at 3:00 PM Washington, D.C./EST (also 3:00 PM Asunción, La Paz; 4:00 PM Uruguay; 9:00 PM CET); and
  - (iii) Total time each day: 6.5 hours, two breaks of 10 minutes each (starting around 10:00 AM and 1:30 PM EST each day) and one 45-minute break (starting around 11:30 AM EST each day), for a total of 5 hours and 25 minutes of effective hearing time per day.
13. The schedule for the Hearing is subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing. In particular, the Tribunal may adjust the schedule of the Hearing as necessary in the event of delays or other interruptions caused by technical problems in the functioning of the videoconference.

#### **VI. Hearing Sequence and Allocation of Time**

14. The Hearing will proceed sequentially, Claimants first followed by Respondent, as to each item, as follows: Opening Statements, Witness Examination, Expert Examination, Closing Statements.
15. Time shall be allocated equally between the Parties, subject to the discretion of the Tribunal. The PCA will keep the time count using the chess-clock system and advise the Parties daily of the length of time used.
16. Each Party shall have up to 2.5 hours for its Opening Statement and up to 1.5 hours for its Closing Statement. In addition, each Party will have a total of 9 hours and 15 minutes for the examination of fact and experts witnesses, to be allocated among the witnesses to be examined as each Party deems fit, subject to the following restrictions:
- (i) Fact witnesses shall be examined in accordance with paragraph 8.9 of Procedural Order No. 1;

- (ii) Direct examination of experts (or presentations prepared by them) shall take up to 20 minutes; any Party may apply to the Tribunal for an extension if they consider that direct examination of a particular expert requires additional time.
17. Within one week of the notification of witnesses and experts for the examination at the Hearing (*i.e.*, by **Monday, April 5, 2021**), the Parties shall submit a joint tentative schedule for the Hearing. If the Parties are unable to reach an agreement regarding the tentative schedule, they shall submit their respective proposals by the same deadline and the Tribunal will establish a tentative schedule on that basis.
18. Time devoted to procedural issues or to address questions or matters raised by the Tribunal will not be counted against the Parties' time. The Tribunal has tentatively allocated 6 hours to be used throughout the Hearing as it deems fit for questions and further procedural matters. Any time lost due to potential technical interruptions or other contingencies shall be deducted from the Tribunal's time, without prejudice to the Tribunal's powers under Section 13 above.

#### **VII. Videoconference Platform**

19. The Hearing shall be held by videoconference, using the *Zoom* videoconference platform.
20. The log-in details for the videoconference will be circulated by the PCA on the day prior to the start of the Hearing.
21. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, counsel and party representatives should remain connected throughout the hearing day.
22. Each Party will make its own separate arrangements for private communication with their respective teams during the Hearing by instant messenger or other appropriate means.
23. The Parties will make use of the breakout room functions within the *Zoom* videoconference platform to avoid delays associated with admitting Participants to the videoconference and to enable the Tribunal to promptly reconvene all Participants following breaks.

#### **VIII. Participants**

24. Access to the videoconference shall be restricted to the Members of the Tribunal, the Parties' representatives, counsel (and support staff), witnesses, experts, PCA staff, court reporters, interpreters and any further technical support personnel retained by the PCA in connection with the Hearing (the "**Participants**"). All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
25. The Parties shall provide a provisional indication by **Friday, April 30, 2021** of the location from which each of their Participants (including counsel, party representatives, witnesses and experts) will join the videoconference and confirm that adequate connectivity or technology is available at that location or is in the process of being procured. The Parties will confirm the final locations from which each of their Participants will join the videoconference by **Friday, May 7, 2021**.
26. The Parties are each requested to further provide a final list of the Participants who will attend the Hearing on their behalf by no later than **Friday, May 7, 2021**. The Parties' lists must also include the *Zoom* usernames with which participants will join the videoconference. Any person

not included in the lists provided by the Parties will not be admitted to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.

27. All Participants in the Hearing shall join the videoconference at least 30 minutes in advance of the start of each day. Parties are encouraged to join the videoconference earlier to facilitate the identification of Participants and avoid any technical contingencies.
28. Participants will join the videoconference through a “waiting room” to be managed by the PCA. In order to facilitate identification of all attendees, Participants must join the videoconference showing a username that enables them to be readily identified (*i.e.*, “(C)” for the Claimants or “(R)” for the Respondent [First Name] [Last Name]<sup>1</sup>). Any prospective Participant who cannot be identified shall not be granted access to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.
29. Each Participant is encouraged to have at least two devices or screens available for use during the Hearing, one to connect to the videoconference and another for the transcription. Where possible, using a third device or screen to display evidence and demonstrative exhibits is recommended.

#### **IX. Videoconference Etiquette**

30. All Participants without an active role at any given moment should mute their own audio and turn off their video in order to preserve internet bandwidth for the active Participants.
31. The Parties shall provide a list of the Participants from each side who will speak to a specific issue or conduct examination of a witness by e-mail to all other Participants (including the other side, the Members of the Tribunal, the PCA, the court reporters, the interpreters and further technical support personnel retained by the PCA) at least one hour prior to the start of each day. Similarly, the Parties should, insofar as possible, circulate any speaking notes to the court reporters and interpreters prior to the start of any relevant session.
32. In order to facilitate the simultaneous interpretation and accurate transcription of the Hearing, speakers and witnesses shall speak slowly and with pauses between phrases.
33. Participants should join the Hearing from a location without background noise and with adequate lighting. Participants (especially those making oral presentations) may also consider using a complete headset (headphones with integrated microphone) of good quality.
34. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

#### **X. Interpretation**

35. In accordance with Section 4.4 of Procedural Order No. 1, simultaneous interpretation to and from English and Spanish will be organized by the PCA and made available through the videoconference platform.

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<sup>1</sup> Participants joining collectively from a conference room should be identified by “Conference Room” and the name of relevant Party.

36. In order to facilitate simultaneous interpretation, at the time of providing the list described at Section 31 above, the Parties shall indicate the language(s) that will be used by each intervening Participant.

#### **XI. Transcription**

37. In accordance with Sections 4.4 and 10.2 of Procedural Order No. 1, live transcripts of the Hearing in English and Spanish will be organized by the PCA and made available on a separate platform. The PCA will circulate the connection details for the transcript on the day prior to the start of the Hearing. Participants are encouraged to use a second device or a second screen for viewing the transcript. Final transcripts will be circulated by e-mail at the end of each day.

#### **XII. Recording**

38. The PCA will arrange to record the Hearing in both audio and video and will provide separate recordings of the floor hearing and the Spanish and English channels.
39. No other Participants, other than the court reporters, shall record any part of the Hearing, unless the Tribunal grants express leave to this effect.

#### **XIII. Evidence and Demonstrative Exhibits**

40. In accordance with Section 10.3 of Procedural Order No. 1, no new evidence may be presented at the Hearing except with leave of the Tribunal, further to an application as described in Sections 7.4 and 10.3 of Procedural Order No. 1. Should the Tribunal grant leave to a Party to present new evidence in the course of the Hearing, it will grant the other Party the opportunity to introduce new evidence to rebut it.
41. As further established in Section 10.3 of Procedural Order No. 1, PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party during the Hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, and that the exhibit from which the referred information originates is clearly identified in each presentation. Each Party shall number its demonstrative exhibits consecutively.
42. The Party displaying demonstrative exhibits during its oral pleadings at the Hearing shall provide electronic copies (in PDF editable format) by e-mail and through the online document exchange platform used in this proceeding to all Participants (including the other side, the Members of the Tribunal, the PCA, the court reporters, the interpreters and further technical support personnel retained by the PCA), at least 30 minutes in advance of their use during the Hearing. Hard copies of demonstrative exhibits shall not be required. The same rule shall apply to any demonstrative exhibits used by expert witnesses for the purposes of their direct examination.
43. The presentation of any evidence, authority, or demonstrative exhibit shall be made through the screen-sharing function of the videoconference platform in order that the speaker and the relevant document can be seen simultaneously at all times. The Parties are encouraged to designate one person on each side who shall be responsible for presentation of evidence, authority or demonstrative exhibit through the screen-sharing function of the videoconference platform during the Hearing (the “**Document Manager**”).
44. In principle, each Party will utilize its own document management system to organize and display documents during the Hearing. Upon request, the PCA may retain additional technical support personnel to assist with document management.

#### **XIV. Witness Examination**

45. The examination of fact and expert witnesses shall take place in accordance with Sections 8.9 and 8.10 of Procedural Order No. 1. In light of the videoconference nature of the examination of witnesses, the following additional considerations will apply:
- (i) As part of their declaration of truthfulness, all witnesses shall confirm that no unauthorized person is present in the room with them or can communicate with them. Fact witnesses shall further confirm that they have not seen any part of the Hearing or read any transcript of the Hearing.
  - (ii) Any witness under examination shall not have access to any documents or items beyond the bundle provided by the relevant Party, the equipment necessary for participating in the videoconference and, in the case of expert witnesses, any notes necessary for presentations given in lieu of direct examination.
46. Having considered the Parties' positions with regard to the sequence of witness examination, the Tribunal determines as follows:
- (i) All of the Claimants' fact witnesses called for appearance at the Hearing (if any) shall be examined first, in the order decided by the Claimants, to be followed by the examination of all of the Respondent's fact witnesses called for appearance at the Hearing (if any), likewise in the order decided by the Respondent.
  - (ii) Any expert witnesses called for appearance at the Hearing shall be examined on a topic-based order, with the Claimants' expert witnesses on each topic (if any) going first and the Respondent's expert witnesses on that topic (if any) going second. If either Party has more than one expert witness being examined on the same topic, the Party tendering those expert witnesses shall decide the order in which they are to be examined.
  - (iii) The Parties shall submit their proposals regarding the order for examination of fact and expert witnesses, including the division and order of topics on the basis of which the examination of expert witnesses will be organized, by **Monday, April 5, 2021**, as part of the tentative schedule described at Section 17 above.
47. In accordance with Section 8.12 of Procedural Order No. 1, unless the Parties agree otherwise, a fact witness shall not be present in the Hearing videoconference during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination. Upon application by one of the Parties, the Tribunal may make exceptions to this rule for Party or State representatives who also are factual witnesses. This limitation does not apply to expert witnesses. All witnesses shall remain sequestered during any breaks or interruptions that arise in the course of their examination.
48. It is not permitted for counsel to communicate with fact or expert witnesses during their examination by any means other than communication on the record.
49. Cross-examining counsel will display the relevant documents through the screen-sharing function. The Parties will also provide electronic cross-examination (and direct examination, if applicable) bundles in PDF editable format that will be distributed electronically no later than 30 minutes in advance of each testimony; but no witness or expert shall review such bundle prior to testimony.

50. The Parties may seek further directions from the Tribunal as necessary in relation to the procedures for the examination of witnesses.
51. To the extent possible, witnesses under examination should use a 360-camera. In any event, the Tribunal shall have the authority at any time during the examination of a witness to request the witness to reorient their camera, whether to provide a better angle, lighting, or to verify the surroundings or any materials available to the witness.
52. Lastly, the Respondent has indicated its potential intention to call for the appearance of Ms. Gina Viveka Orlandini Agreda and Ms. Vinka Slabka Orlandini de García Agreda as fact witnesses, arguing that certain exhibits submitted by the Claimants (C-336 and C-337) qualify as witness statements under Procedural Order No. 1. The Claimants object to the inclusion of these individuals as witnesses and note that they have no control over them, such that they cannot guarantee their appearance at the Hearing if the Tribunal were to order it. Having carefully considered the Parties' positions on the matter, the Tribunal has decided that it will not order these individuals to testify as witnesses at the Hearing. The Tribunal understands that the Respondent will not have an opportunity to test the content of the mentioned exhibits by cross-examining these individuals, and the Tribunal will assess the probative value of such exhibits in light of all relevant circumstances and the totality of the evidence.

#### **XV. Technical Problems**

53. Each Party shall designate, no later than **Friday, May 7, 2021**, one of its representatives to act as videoconferencing contact person ("**VC Emergency Contact Person**") for purposes of addressing any technical incidents which arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the PCA on the videoconference if an essential Participant from their side is disconnected or otherwise cannot participate, such that the Tribunal is requested to pause the Hearing. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with Luis Popoli of the PCA (tel.: +31 621 631 760; e-mail: lpopoli@pca-cpa.org), without interrupting the Hearing.
54. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available, mitigating any prejudice arising from the failure of any given Participant to be able to follow the entire Hearing on the videoconference platform.

#### **XVI. Post-Hearing Matters**

55. After consultation with the Parties, the Tribunal shall decide at the conclusion of the Hearing whether the submission of post-hearing briefs is necessary and, if so, shall establish their scope, maximum length and submission dates.
56. The need and process for the review and correction of transcripts will be determined by the Tribunal, following consultations with the Parties, at the conclusion of the Hearing.
57. The Tribunal shall also consider whether and when the Parties shall file submissions on costs.

#### **XVII. Confidentiality**

58. In accordance with paragraph b) of the Protocol on Confidentiality and Transparency set out as Annex 1 to Procedural Order No. 2, the Hearing shall be held *in camera*.



**XVIII. Costs**

59. The costs of the Hearing, including court reporting and interpretation, shall be paid from the case deposit established with the PCA, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.
60. Each Party shall be responsible for the costs associated with preparation of its Participants (any additional equipment, necessary internet connectivity, etc.), subject to the decision of the Tribunal as to which Party shall ultimately bear those costs.

**Place of Arbitration: Paris, France**



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Dr. Stanimir A. Alexandrov  
(Presiding Arbitrator)

On behalf of the Tribunal