

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 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES, AS REVISED IN 2010**

- between -

**GLENCORE FINANCE (BERMUDA) LTD
(the “Claimant”)**

- and -

THE PLURINATIONAL STATE OF BOLIVIA

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

DECISION ON INTERPRETATION AND CORRECTION OF THE AWARD

Tribunal

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

Secretary to the Tribunal
Martin Doe Rodríguez

6 November 2023

I. BACKGROUND

1. On 8 September 2023, the Tribunal issued its Award in these proceedings, by which the Tribunal ruled on all the issues in dispute between the Parties, including jurisdiction, liability, and quantum, as well as the costs of the arbitration (the “**Award**”), as follows:

564. For the reasons stated in this Award, the Tribunal decides as follows:

Objections to Jurisdiction

- a) The Respondent’s objections to jurisdiction on the basis of the Claimant’s qualification as an investor, piercing of the corporate veil, indirect investment, abuse of process, the unclean hands principle, and the ICC arbitration clause are dismissed.
- b) The Tribunal has jurisdiction over the Tin Stock claims.


Merits of the Dispute

- c) The Respondent breached Article 5 of the Treaty when expropriating the Tin Smelter, the Antimony Smelter (including the Tin Stock) and the Colquiri Mine without a public purpose and without just and effective compensation.
- d) The Respondent’s actions in response to the Colquiri events do not constitute a breach to Article 2(2) of the Treaty.
- e) The Respondent breached Article 2(2) of the Treaty as to the Tin Smelter Reversion Decree.
- f) As a result of the Respondent’s breaches, Bolivia shall pay to the Claimant damages amounting to US\$ 253,591,796, consisting of the following elements:
 1. Colquiri Mine: US\$ 235,800,000;
 2. Tin Smelter: US\$ 15,970,000;
 3. Antimony Smelter: US\$ 694,960; and
 4. Tin Stock: US\$ 1,126,836.
- g) The Respondent shall also pay simple interest on the damages awarded for the Colquiri Mine, the Tin Smelter, the Antimony Smelter and the Tin Stock at fixed rates established by the Central Bank of Bolivia for commercial loans denominated in US dollars as of the respective valuation dates for the Assets and up to the date of payment.
- h) The amounts awarded are net of taxes imposed by the Plurinational State of Bolivia.
- i) Each Party is ordered to bear its own legal costs and expenses incurred in the arbitration. The common costs of the arbitration shall be borne in equal shares by both Parties.

2. On 6 October 2023, the Claimant submitted a Request for Interpretation of the Award under Article 37 of the UNCITRAL Rules in relation to the compensation awarded for the Tin Smelter (“**Request for Interpretation**”). On the same date, the Respondent submitted a Request for Correction of the Award under Article 38 of the UNCITRAL Rules in relation to the computation of damages in the Award (“**Request for Correction**”).
3. On 9 October 2023, the Tribunal invited the Claimant to submit any comments it may have on the Respondent’s Request for Correction and the Respondent to submit any comments it may have on the Claimant’s Request for Interpretation.
4. On 13 October 2023, the Parties submitted their respective comments on each other’s requests (“**Claimant’s Response**” and the “**Respondent’s Response**”). The Claimant partially accepted the Respondent’s Request for Correction, and the Respondent opposed the Claimant’s Request for Interpretation.

II. REQUEST FOR INTERPRETATION

A. THE CLAIMANT’S POSITION

5. The Claimant requests “that the Tribunal provide an interpretation of the Award confirming (i) whether the [Respondent’s] payment of US\$ 13,500,000 of the compensation due in relation to the Vinto Tin Smelter is conditioned on [the Claimant] providing Bolivia with the written confirmations specified in paragraph 470 of the Award [...]; (ii) if the response to point (i) is in the affirmative, whether the letter attached as Appendix A to this Request satisfies that condition [...]; and (iii) the Tribunal’s method for calculating interest on the compensation awarded for the Vinto Tin Smelter”.¹
6. In paragraph 470 of the Award, the Tribunal wrote:


7. However, no express condition was condition on the Respondent’s payment of compensation was included in paragraph 564(f)(2) of the dispositive part of the Award. The Claimant therefore

¹ Request for Interpretation, ¶ 2.

requests clarification of “whether [the Claimant] is required to provide to Bolivia the written confirmations described in paragraph 470 [REDACTED] in order to trigger Bolivia’s obligation to pay to Glencore Bermuda the compensation ordered in paragraph 564(f)(2).”²

8. In the affirmative, the Claimant requests that the Tribunal confirm that the letter e [REDACTED] [REDACTED] submitted as Appendix A to its Request for Interpretation satisfies the condition stipulated in paragraph 470 of the Award.³ Otherwise, the Claimant requests that the Tribunal specify what edits to the letter would be necessary to satisfy that condition.⁴
9. Lastly, the Claimant requests that the Tribunal confirm the method of calculation of interest applied to the compensation for the Tin Smelter set forth in footnote 884 of the Award, where the Tribunal stated as follows:

[REDACTED]

10. Specifically, the Claimant requests that the Tribunal “clarify that the Tribunal calculated (i) interest on the fair market value of the Vinto Tin Smelter (US\$ 33,750,192) from the date of valuation (8 February 2007) to [REDACTED] [REDACTED] (2 July 2008), and (ii) interest on [REDACTED] US\$ 5,150,192 [REDACTED] [REDACTED] from 3 July 2008 to the date of the Award.”⁶

B. THE RESPONDENT’S POSITION

11. The Respondent requests that the Tribunal dismiss the Claimant’s Request for Interpretation “insofar as it refers to the interest payable on the compensation awarded for the Vinto Tin

² Request for Interpretation, ¶ 5.

³ Request for Interpretation, ¶¶ 6-7.

⁴ Request for Interpretation, ¶ 8.

⁵ Request for Interpretation, ¶ 9.

⁶ Request for Interpretation, ¶ 10.

Smelter.”⁷ According to the Respondent, the request is not a “proper request for interpretation in accordance with the UNCITRAL Rules but rather a belated attempt to introduce a new claim that [the Claimant] did not previously make in the arbitration.”⁸

12. The Respondent argues that the Claimant’s request constitutes a new claim “disguise[d]” as a request for interpretation, and consequently, the request should be dismissed.⁹ The Respondent explains that the Tribunal recognized that the damages for Bolivia’s breaches relating to the Tin Smelter amounted to US\$ 5.15 million (excluding interest), but that the Claimant “seeks to inflate this figure by adding to its pre-award interest calculated in a manner that Glencore never proposed during the arbitration.”¹⁰ Neither party, says the Respondent, requested that interest be calculated as described by the Claimant in its Request for Interpretation.¹¹

13. Alternatively, the Respondent considers the Request for Interpretation “at odds with the Tribunal’s reasoning once the proper facts are considered.”¹² According to the Respondent, the Claimant “has not ‘suffered a loss of the use of money’ that would require interest to be payable on the compensation awarded for the Vinto Tin Smelter in the manner it now claims.”¹³ [REDACTED]

[REDACTED]

[REDACTED]

⁷ Respondent’s Response, p. 1.

⁸ Respondent’s Response, p. 1.

⁹ Respondent’s Response, p. 2.

¹⁰ Respondent’s Response, pp. 2-3. [REDACTED]

¹¹ Respondent’s Response, p. 3.

¹² Respondent’s Response, p. 3.

¹³ Respondent’s Response, p. 4.



III. REQUEST FOR CORRECTION

A. THE RESPONDENT'S POSITION

14. According to the Respondent, the Award contains two errors in paragraph 564(f)-(g) regarding the computation of damages.¹⁵ First, the Respondent requests that paragraph 564(f) of the Award “be corrected to indicate that the amounts [the Respondent] is ordered to pay thereunder are inclusive of pre-award interest, up to and including 8 September 2023”¹⁶ and that paragraph 564(g) of the Award “be corrected to indicate that [the Respondent] shall pay simple interest at the rate retained by the Tribunal on the amounts indicated in the prior paragraph, from the date of the Award.”¹⁷ Second, the Respondent requests that paragraph 564(f) “be corrected to indicate that damages to Claimant pertaining to the Tin Smelter (including pre-award interest) amount to US\$ 5.15 million, instead of US\$ 15.97 million” and that the total amount of damages “be corrected to US\$ 242,771,796 [instead of US\$ 253,591,796] to reflect the corrected value of damages pertaining to the Tin Smelter.”¹⁸

15. In particular, with respect to the amount of compensation for the Tin Smelter, the Respondent states that it “has been unable to replicate the Tribunal’s conclusions as to the drivers of valuation of the Tin Smelter and its holding that Bolivia shall pay to Claimant US\$ 15.97 million”.¹⁹



On this basis, the Respondent asserts that the Joint Model for the Tin Smelter produces an amount of US\$ 5.15 million instead

¹⁴ Respondent’s Response, p. 4.

¹⁵ Request for Correction, ¶ 6.

¹⁶ Request for Correction, ¶ 19.

¹⁷ Request for Correction, ¶ 19.

¹⁸ Request for Correction, ¶¶ 6, 22-23.

¹⁹ Request for Correction, ¶ 18.

²⁰ Request for Correction, ¶ 21.

of US\$ 15.97 million.²¹ The Respondent notes that such an amount remains subject to the Tribunal's decision in paragraph 470 of the Award.²²

B. THE CLAIMANT'S POSITION

16. The Claimant “does not oppose Bolivia’s Request that the Tribunal clarify that the compensation granted in paragraph 564(f) of the Award is inclusive of pre-award interest, and that the interest granted in paragraph 564(g) of the Award should be calculated from the date of the Award”.²³ However, the Claimant “requests that the Tribunal dismiss [the Respondent’s] Request to reduce the compensation granted for the Vinto Tin Smelter from US\$15.97 million to US\$5.15 million as (i) an impermissible request that the Tribunal reconsider the merits of the compensation awarded or, in the alternative, (ii) unfounded because the Tribunal correctly calculated the compensation for the Vinto Tin Smelter”.²⁴
17. The Claimant argues that the Respondent, in its request for correction of the amount of compensation for the Tin Smelter, is trying to “reargue the merits of the Tribunal’s Award” against the rule provided in Article 38 of the UNCITRAL Rules, which only allows corrections of clerical or typographical errors and errors in the computation of damages.²⁵ The Claimant submits that the Respondent’s request “is incompatible with the Tribunal’s clear decision to include pre-award interest in the compensation for the Tin Smelter as stated in footnote 884 of the Award.”²⁶
18. Even if the Respondent’s request was admissible under Article 38 of the UNCITRAL Rules, the Claimant considers that the Tribunal correctly calculated the compensation for the Tin Smelter.²⁷ According to the Claimant, the Tribunal explained in footnote 884 of the Award how it calculated interest on the amount for the Tin Smelter.²⁸ The Claimant argues that it replicated the Tribunal’s calculation method and reached the same result as the Tribunal (*i.e.*, US\$ 15.97 million).²⁹ The

²¹ Request for Correction, ¶ 22.

²² Request for Correction, ¶¶ 21-23.

²³ Claimant’s Response, ¶¶ 2, 13.

²⁴ Claimant’s Response, ¶ 2.

²⁵ Claimant’s Response, ¶¶ 2, 4-5.

²⁶ Claimant’s Response, ¶¶ 2, 4-5.

²⁷ Claimant’s Response, ¶¶ 2, 8.

²⁸ Claimant’s Response, ¶ 9.

²⁹ Claimant’s Response, ¶ 10.

Respondent's request [REDACTED] says the Claimant, is in direct contradiction to the Tribunal's decision in footnote 884 of the Award and the Tribunal's instruction in paragraph 470 of the Award, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IV. TRIBUNAL'S ANALYSIS

19. The Tribunal confirms that the Claimant's Request for Interpretation properly reflects the Tribunal's calculation of interest on compensation for the Tin Smelter in accordance with paragraph 470 and footnote 884 of the Award, leading to a final amount of compensation for the Tin Smelter of US\$ 15.97 million. Thus, the Respondent's Request for Correction of the amount of compensation for the Tin Smelter is dismissed.
20. With respect to the Claimant's requests for interpretation regarding Respondent's obligation to pay the compensation pertaining to the Tin Smelter ordered in paragraph 564(f)(2) is subject to the condition stipulated in paragraph 470 of the Award [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] the Tribunal first notes that the Respondent did not submit any comments on the Claimant's further requests on this issue. The Tribunal accordingly confirms that the Respondent's obligation to pay the compensation pertaining to the Tin Smelter ordered in paragraph 564(f)(2) is subject to the condition stipulated in paragraph 470 of the Award. The Tribunal further confirms that the letter submitted by the Claimant as Appendix A to its Request for Interpretation (and annexed to this decision) has satisfied this requirement.³³
21. The Tribunal also notes that there is agreement between the Parties as regards the corrections requested by the Respondent in order to clarify that the total amount of damages granted in

³⁰ Claimant's Response, ¶ 11.

³¹ Claimant's Response, ¶ 11.

³² Award, ¶ 470.

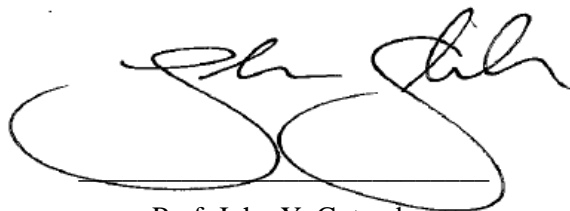
³³ Request for Interpretation, Appendix A.

paragraph 564(f) of the Award includes pre-award interest and that the interest granted in paragraph 564(g) of the Award should be calculated from the date of the Award. Thus, these requests are also accepted by the Tribunal.

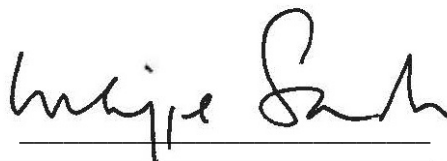
V. DECISION

22. For the foregoing reasons, the Tribunal decides as follows:
- a. The letter submitted by the Claimant as Appendix A to its Request for Interpretation (and annexed to this decision) has satisfied the condition stipulated in paragraph 470 of the Award.
 - b. The following corrections are made to the Award:
 1. In paragraph 564(f), add “(including pre-award interest up to and including 8 September 2023)”, such that this paragraph shall read as follows:
 - f) As a result of the Respondent’s breaches, Bolivia shall pay to the Claimant damages amounting to US\$ 253,591,796 (including pre-award interest up to and including 8 September 2023), consisting of the following elements: [...]”
 2. In paragraph 564(g), add “from the date of the award” in place of “as of the respective valuation dates for the Assets”, such that this paragraph shall read as follows:
 - g) The Respondent shall also pay simple interest on the damages awarded for the Colquiri Mine, the Tin Smelter, the Antimony Smelter and the Tin Stock at fixed rates established by the Central Bank of Bolivia for commercial loans denominated in US dollars from the date of the award and up to the date of payment.
 - c. A corrected version of the Award is annexed to this decision.
 - d. All other requests are dismissed.

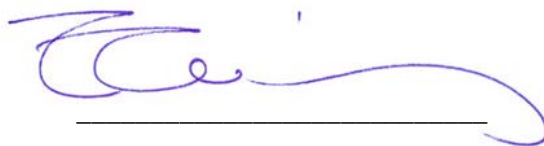
Place of arbitration: Paris, France

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Prof. John Y. Gotanda
(Arbitrator)

A handwritten signature in black ink, consisting of 'Philippe' followed by 'Sands'.

Prof. Philippe Sands
(Arbitrator)

A handwritten signature in purple ink, consisting of a stylized 'R' followed by 'amírez Hernández'.

Prof. Ricardo Ramírez Hernández
(Presiding Arbitrator)

GLENCORE



4 October 2023

Dear Sirs,

1.

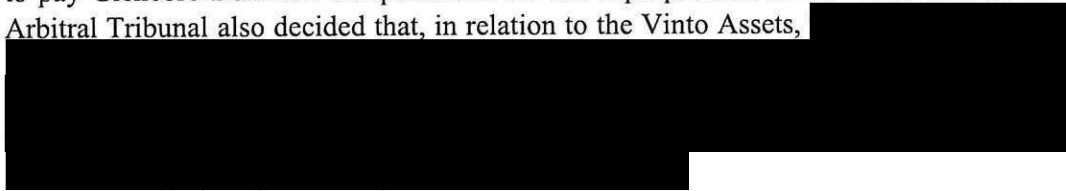


2.

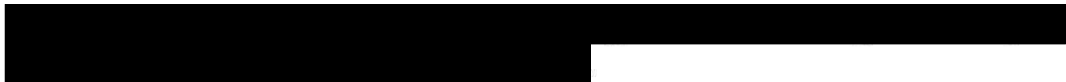


3.

On 8 September 2023, the arbitral tribunal in the case *Glencore Finance (Bermuda) Ltd v Plurinational State of Bolivia*, PCA Case No 2016-39/AA 641 (the “**Arbitral Tribunal**”), issued its final award (the “**Award**”). In the Award, the Arbitral Tribunal ordered Bolivia to pay Glencore Bermuda compensation for the expropriation of the Vinto Assets. The Arbitral Tribunal also decided that, in relation to the Vinto Assets,



4.




5.



Yours faithfully,


Martin Häring


Peter Friedli

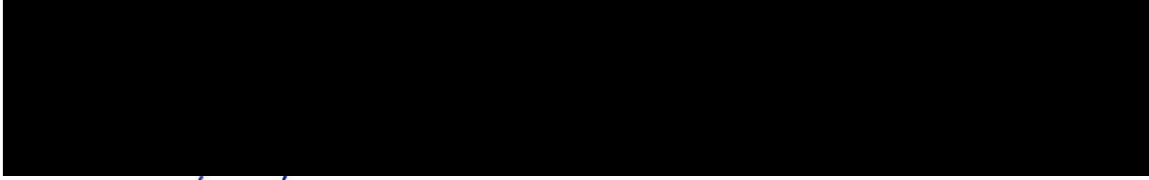

Swapna Mathew

Glencore International AG

Glencore Finance (Bermuda) Ltd

GLENCORE

Accepted and agreed:



Date: 6/10/2023