

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”)

PROCEDURAL ORDER NO. 7

**Respondent’s Request for Suspension of the Time-limit
for the Submission of its Statement of Defense**

Tribunal

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

April 10, 2020

I. Background

1. On August 12, 2019, the Tribunal issued Procedural Order No. 4, whereby the Tribunal fixed the procedural calendar for the phase on jurisdiction and liability.
2. On November 20, 2019, following a request from the Claimants for an extension of the deadline to file their Statement of Claim, the Tribunal issued Procedural Order No. 5, whereby it amended the procedural calendar established by Procedural Order No. 4. In sum, the Tribunal granted a 9-day extension of the deadline for the filing of the Statement of Claim, and made corresponding adjustments to the procedural calendar.
3. On March 17, 2020, following a request from the Respondent for an extension of the deadline to file its Statement of Defense (the “SOD”), the Tribunal issued Procedural Order No. 6, whereby it amended the procedural calendar established by Procedural Order No. 5. In particular, Procedural Order No. 6 fixed the deadline for the submission of the SOD on April 6, 2020 (i.e. a two-week extension of the deadline fixed in Procedural Order No. 5 for submission of the SOD), and made corresponding adjustments to the procedural calendar.
4. By letter dated March 23, 2020, the Respondent requested the suspension of the time-limit for the submission of its SOD on grounds of *force majeure*, in relation to the COVID-19 health crisis (the “**Respondent’s Request**”). On March 25, 2020, the Respondent provided further arguments in support of its request (the “**Respondent’s Supplemental Submission**”).
5. On March 26, 2020, the Claimants submitted their response to the Respondent’s Request (the “**Claimants’ Response**”).
6. On March 30, 2020, the Tribunal recognized the difficulties caused by the existing crisis, while also noting that it was not minded to suspend the proceeding indefinitely or to otherwise jeopardize the hearing dates. Accordingly, the Tribunal (i) proposed an amended schedule where all deadlines were pushed back 30 days (the “**Proposed Schedule**”); (ii) invited the Parties to provide comments on the Proposed Schedule; and (iii) advised that it would issue the corresponding order in the absence of compelling reasons to reconsider the Proposed Schedule.
7. By separate communications of April 3, 2020, the Parties submitted their respective comments with regard to the Tribunal’s letter of March 30, 2020.
8. On April 6, 2020, the Tribunal informed the Parties that it would shortly issue its decision on the Respondent’s Request, noting that it understood that the Respondent would not file its SOD on that date as scheduled.

II. The Respondent’s Request for Suspension of the Time-limit for the Submission of its Statement of Defense

9. The Respondent requests the Tribunal to suspend the time-limit for the submission of its SOD, on grounds of *force majeure* arising from the current COVID-19 pandemic.¹ The Claimants ask that the Respondent’s request be rejected.²

¹ Respondent’s Request, pp. 1, 9; Respondent’s Supplemental Submission.

² Claimants’ Response, pp. 1, 7.

a) The Respondent's Position

10. *Right to invoke force majeure.* The Respondent posits that a breach of its obligation to arbitrate its dispute with the Claimants in good faith pursuant to Article IX of the Treaty³ may be excused on grounds of *force majeure*. It relies, in this regard, on Article 61(1) of the Vienna Convention on the Law of the Treaties (the “VCLT”) and Article 23 of the Articles on Responsibility of States for Internationally Wrongful Acts (the “**Articles on State Responsibility**”).⁴
11. According to the Respondent, the relevant *force majeure* test requires three conditions to be fulfilled, namely, (i) the occurrence of an irresistible force or an unforeseen event, which (ii) is beyond the control of the State; and (iii) makes it materially impossible for the State to perform the obligation in the circumstances.⁵
12. *Existence of a force majeure event.* According to the Respondent, the “worldwide health crisis triggered by the COVID-19 pandemic”, which has seen a staggering increase in the number of cases and caused thousands of deaths, constitutes an event of *force majeure* in the present instance.⁶
13. The Respondent underscores that most States have taken extraordinary action in an attempt to slow down the spread of the COVID-19 coronavirus.⁷ First, it explains that France, as the third most affected European State, has taken drastic measures to this effect,⁸ which are applicable for various periods of time and include, *inter alia*, (i) the prohibition of all assemblies of more than 100 people;⁹ (ii) closing to the public non-essential commercial establishments;¹⁰ (iii) the

³ Respondent's Request, p. 2; Vienna Convention on the Law of Treaties, 1969, Art. 26 (**CLA-191**); 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, April 17, 1998, Art. IX (**C-1**).

⁴ Respondent's Request, pp. 1-2; Vienna Convention on the Law of Treaties, 1969, Art. 61(1) (**CLA-191**); Draft Articles on Responsibility of States for Internationally Wrongful Acts, December 12, 2001, Art. 23(1) (**CLA-86**).

⁵ Respondent's Request, p. 2; Draft Articles on Responsibility of States for Internationally Wrongful Acts, December 12, 2001, Art. 23, commentary (2) (**CLA-86**).

⁶ Respondent's Request, pp. 2-3; WHO Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020 (**R-42**). For up-to-date statistics on COVID-19, see <https://coronavirus.jhu.edu/map.html>.

⁷ Respondent's Request, p. 3.

⁸ See generally Respondent's Request, pp. 4-5; Le Monde, “Coronavirus - follow the pandemic’s advancement throughout the world and in France” (updated on March 22, 2020) (**R-56**); The New York Times, “Macron Declares France ‘at War’ With Virus, as E.U. Proposes 30-Day Travel Ban”, press article, March 16, 2020 (**R-48**); President Macron’s address to the French People, March 16, 2020 (**R-49**). See also Le Parisien, “Coronavirus : «Il faut aller vers un confinement beaucoup plus sévère», estime Anne Hidalgo”, press article, March 21, 2020 (**R-55**).

⁹ Decree establishing measures in the fight against COVID-19 (France), March 13, 2020, Art. 1 (**R-44**).

¹⁰ Decision establishing measures in the fight against COVID-19 (France), March 14, 2020, Arts. 1, 4 (**R-45**); Decision supplementing the decision of March 14, 2020 establishing measures in the fight against COVID-19, March 15, 2020 (**R-46**); Decision supplementing the decision of March 14, 2020 establishing measures in the fight against COVID-19, March 16, 2020 (**R-47**).

confinement of all residents to their homes;¹¹ and (iv) the declaration of the state of health emergency.¹²

14. Second, the Respondent stresses that Bolivia has also implemented a strong response against COVID-19 despite having identified a lower number of cases,¹³ progressively adopting measures such as (i) various protective actions by public and private employers;¹⁴ (ii) the limitation of the duration of the workday;¹⁵ (iii) the declaration of the state of emergency involving prohibition of all assemblies, suspension of all domestic travel and closure of borders;¹⁶ (iv) the confinement of all residents to their homes;¹⁷ and (v) the suspension of the presidential elections scheduled for May 3, 2020.¹⁸ The Respondent adds that the Conciliation and Arbitration Commission of the National Chamber of Commerce has declared the suspension of arbitration and conciliation proceedings, as well as of all deadlines therein, between March 22 and April 5, 2020, both inclusive.¹⁹
15. Third and last, the Respondent notes that the situation regarding COVID-19 in the United States is also bound to deteriorate further,²⁰ referring to the implementation of shelter-in-place measures such as (i) confinement;²¹ (ii) closure of borders with Canada and Mexico to all non-essential travel;²² (iii) recommendations against all international travel;²³ and (iv) closure of all non-

¹¹ President Macron's address to the French People, March 16, 2020 (**R-49**); Decree no. 2020-260 regulating movement within the framework of the fight against COVID-19, March 16, 2020, Art. 1 (**R-50**); Decree no. 2020-264 creating a misdemeanor to punish the failure to abide by the measures aimed at preventing and limiting the consequences of the serious sanitary threat to the health of the population, March 17, 2020 (**R-51**).

¹² France 24, "French Senate approves state of health emergency amid spike in infections", press article, March 23, 2020 (**R-52**); Emergency bill regarding the COVID-19 epidemic adopted by the French Senate, March 21, 2020, Arts. 5(bis), 7 (**R-53**); French National Assembly greenlights coronavirus 'public health emergency' bill, March 22, 2020 (**R-54**).

¹³ Respondent's Request, pp. 5-6.

¹⁴ Bi-ministerial resolution 001/20, March 13, 2020, Art. 4(2).

¹⁵ Communication no. 08/2020 of the Labor Ministry, March 16, 2020 (**R-57**), Art. 1; Communication no. 09/2020 of the Labor Ministry, March 18, 2020 (**R-58**), Art. 1.

¹⁶ Supreme Decree No. 4196, March 17, 2020, Arts. 2, 4-5, 7-8, 13 (**R-59**).

¹⁷ Supreme Decree No. 4199, March 21, 2020, Arts. 1-2, 7 (**R-60**); Página Siete, "Rige la cuarentena total con arresto y multa de Bs 500 para los infractores", press article, March 22, 2020 (**R-61**). The Respondent notes that any failure to observe this order shall be sanctioned by a prison sentence of between 1 and 10 years. *See* Respondent's Supplemental Submission; Comunicado del Ministerio de Justicia y Transparencia Institucional, March 25, 2020.

¹⁸ France 24, "Bolivia delays presidential elections mandates 14-day quarantine against virus", press article, March 21, 2020 (**R-62**); Página Siete, "Se poserga calendario electoral por 14 días y el TSE plantea nueva fecha para las elecciones", press article, March 20, 2020 (**R-63**).

¹⁹ Respondent's Request, p. 7. *See* <http://arbitraje.bo/> (last visited on March 23, 2020).

²⁰ Respondent's Request, p. 7; U.S. News, "U.S. coronavirus cases pass 26,000, with 1 in 4 Americans under 'shelter-in-place' orders", press article, March 22, 2020 (**R-64**); CNN, "US surgeon general warns 'this week, it's going to get bad' as hospitals struggle to keep up with sharply increasing coronavirus cases", press article, March 23, 2020 (**R-65**).

²¹ CNN, "US surgeon general warns 'this week, it's going to get bad' as hospitals struggle to keep up with sharply increasing coronavirus cases", press article, March 23, 2020 (**R-65**).

²² BBC, "Coronavirus: One in five Americans ordered to stay at home", press article, March 21, 2020 (**R-66**).

²³ U.S. Department of State, Bureau of Consular Affairs, "Global Level 4 Health Advisory – Do Not Travel", March 19, 2020 (**R-67**).

essential businesses in the District of Columbia (with Dechert LLP's Washington D.C. office being closed as a result).²⁴

16. Having described this context, the Respondent recalls that the preparation of its SOD was already adversely impacted by the transition period triggered by the resignation of President Morales in November 2019.²⁵ It contends that the difficulties arising from such situation have only been compounded by the measures implemented by France, Bolivia and the United States, rendering work on its SOD "virtually impossible".²⁶
17. First, the Respondent argues that the mandatory confinement, which will be in force until at least April 4, 2020, has prevented it from conducting the public bidding process for the retainer of expert witnesses as required by Bolivian law.²⁷ Consequently, it would be unable to retain expert witnesses prior to the existing deadline for the SOD (i.e. April 6, 2020).²⁸
18. Second, the Respondent submits that the mandatory confinement, alongside with the suspension of all travel within Bolivian territory, is also creating difficulties in retaining and liaising with potential experts and witnesses, to the extent that some of them (i) do not live in Bolivia's capital; and (ii) are elderly individuals often unfamiliar with the technology required to work at a distance.²⁹
19. Third, the Respondent posits that the confinements imposed in France and other countries have "materially impacted" the working conditions of its external counsel team, as the entirety of Dechert LLP's personnel is now working remotely.³⁰ In particular, it claims that such situation precludes any work that requires use of equipment and personnel located at the offices, while also affecting the functionality of the firm's virtual resources, such as the software used to store and organize evidence.³¹
20. Fourth, the Respondent advises that the ill health of certain members of its external counsel team, "potentially due to coronavirus", has further impacted the preparation of its SOD.³²
21. The Respondent concludes that the above described reasons demonstrate that the COVID-19 pandemic represents an unforeseen event leading to irresistible conditions which (i) are beyond Bolivia's control; and (ii) make submission of the SOD on April 6, 2020 materially impossible.³³ The Respondent also notes that the evolution of the pandemic remains uncertain, leading to

²⁴ Respondent's Supplemental Submission; Mayor's Order 2020-053, March 24, 2020.

²⁵ Respondent's Request, pp. 7-8; Letter from the Respondent to the Tribunal, February 13, 2020 (**R-41**); Letter from the Respondent to the Tribunal, February 27, 2020 (**R-43**).

²⁶ Respondent's Request, pp. 7-8.

²⁷ Respondent's Request, p. 8; Supreme Decree No. 4156, February 13, 2020, First Additional Provision (**R-68**).

²⁸ Respondent's Request, p. 8; Respondent's Supplemental Submission. Similarly, the Respondent adds that, as a result of the quarantine, the physical archives of many institutions holding information material to the facts of the arbitration are no longer accessible. *See* Respondent's Supplemental Submission.

²⁹ Respondent's Request, p. 8. *See also* Respondent's Supplemental Submission.

³⁰ Respondent's Request, pp. 8-9.

³¹ Respondent's Request, p. 9; Exhibit Manager presentation (**R-69**).

³² Respondent's Request, p. 9.

³³ Respondent's Request, p. 9.

difficulty in ascertaining whether, and if so, for how long, the implemented confinement measures will be extended.³⁴

22. *Proposed Schedule.* In response to the Proposed Schedule, the Respondent states that it will “continue making its best efforts” to submit the SOD on the due date, while noting that the uncertainty arising from COVID-19 “makes it impossible at this stage for Bolivia to commit firmly to any date” in that respect.³⁵ Accordingly, the Respondent reiterates that the proper course of conduct would be for the proceedings to be suspended; and proposes the Parties and the Tribunal monitor the situation and hold a conference call so as to resume the proceedings as soon as possible.³⁶

b) The Claimants’ Position

23. *Right to invoke force majeure.* While recognizing the impact of the COVID-19, the Claimants submit that the Respondent has not properly invoked any rule of public international law that would allow it to delay these proceedings.³⁷
24. By operation of Article IX.4 of the Treaty, they argue, Bolivia has obligated itself to submit an investment dispute to arbitration in accordance with the applicable arbitration rules, such that the UNCITRAL Rules, alongside with the Tribunal’s orders and decisions, govern the conduct and procedural calendar of the present proceedings.³⁸ Consequently, the Respondent is precluded from suspending its obligation to arbitrate its dispute with the Claimants under the VCLT or the Articles on State Responsibility.³⁹
25. In any event, the Claimants note that there is no valid ground to suspend these proceedings under the UNCITRAL Rules, since that would cause unnecessary delay and prejudice the Claimants and their case in contravention of Article 17(1).⁴⁰
26. *Existence of a force majeure event.* Even if Bolivia was entitled to invoke Article 61(1) of the VCLT and Article 23 of the Articles on State Responsibility to allege a *force majeure* event that could lead to suspension of the proceedings, the Claimants dispute that such an event has occurred.⁴¹ In this regard, the Claimants observe that the grounds invoked by the Respondent in support of its request for suspension are largely similar to the ones alleged in its previous requests for extensions of deadlines, yet “now dressed in COVID-19 clothing”.⁴²
27. The Claimants submit that the COVID-19 health crisis does not constitute a *force majeure* event that would justify either a suspension of the proceedings or of the Respondent’s obligation to submit its SOD within the time-limit set by the Tribunal.⁴³ In particular, they claim that the

³⁴ Respondent’s Request, p. 9.

³⁵ E-mail from the Respondent to the Tribunal, April 3, 2020.

³⁶ E-mail from the Respondent to the Tribunal, April 3, 2020.

³⁷ Claimants’ Response, pp. 1-2.

³⁸ Claimants’ Response, p. 2.

³⁹ Claimants’ Response, p. 2.

⁴⁰ Claimants’ Response, p. 2.

⁴¹ Claimants’ Response, pp. 1-2.

⁴² Claimants’ Response, pp. 2-3; Letter from the Respondent to the Tribunal, November 8, 2019; Letter from the Respondent to the Tribunal, February 13, 2020; E-mail from Respondent’s counsel to Claimants’ counsel, February 6, 2020 (**R-38**); Letter from the Tribunal to the Parties, February 20, 2020; Letter from the Respondent to the Tribunal, February 27, 2020.

⁴³ Claimants’ Response, p. 3.

Respondent has failed to prove (i) the existence of an irresistible force or unforeseen event; (ii) that such situation is beyond its control; (iii) that such situation makes it materially impossible to perform the obligation; (iv) that it has not contributed to the situation; and (v) that it has not assumed the risk of the situation occurring.⁴⁴

28. The Claimants first posit that the spread of COVID-19 was not an unforeseen or unforeseeable event to Bolivia, to the extent that the disease and its consequences were known to governments “since at least January of this year”.⁴⁵
29. Further, the Claimants assert that the COVID-19 health crisis does not constitute an “irresistible force” “beyond the control of the State” that would prevent or make it “materially impossible” for Bolivia to file its SOD by the established deadline.⁴⁶ They note that all communications services in Bolivia remain available and operating without interruptions, while the decree imposing quarantine in the country foresees exceptions for “public institutions”, allowing them to operate, circulate and travel.⁴⁷
30. The Claimants further reject the Respondent’s reliance on its difficulties in retaining and liaising with potential witnesses and experts, arguing that the *force majeure* standard requires that “the State has no way to perform its obligation” to file its SOD timely.⁴⁸ In any event, they claim that the Respondent’s arguments in this regard are unavailing, to the extent that the Respondent (i) has had over two years to prepare its defense and should have met with witnesses and hired experts long ago;⁴⁹ (ii) may still meet and communicate with witnesses and experts given the exceptions to the confinement restrictions and the availability of telephone and internet services;⁵⁰ and

⁴⁴ Claimants’ Response, p. 3; Draft Articles on Responsibility of States for Internationally Wrongful Acts, December 12, 2001, Art. 23(1) (**CLA-86**).

⁴⁵ Claimants’ Response, pp. 3-4; Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCov) (at [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)); <https://www.who.int/ihr/procedures/pheic/en/>); News article regarding the detection of COVID-19 in Argentina, Brazil and Chile, all neighboring countries to Bolivia, March 3, 2020 (at <https://www.opinion.com.bo/content/print/coronavirus-paises-fronterizosbolivia/20200303184858754430>); Bolivian news article regarding COVID-19 containment measures taken in Argentina, March 5, 2020 (at <https://www.opinion.com.bo/articulo/mundo/argentina-confirma-segundo-casocoronavirus-territorio/20200305201136754849.html>); Bolivian news article regarding the arrival of COVID-19 to Peru and the measures adopted by that country, March 6, 2020 (at <http://www.larazon.com/mundo/Covid2019-Peru-primer caso-coronavirus-mundo 0 3325467434.html>); News article regarding many measures adopted in the region, March 12, 2020 (at <https://www.paginasiete.bo/especial01/2020/3/12/argentina-chile-colombia-peru-dictan-cuarentena-para-viajeros-249340.html>).

⁴⁶ Claimants’ Response, p. 4.

⁴⁷ Claimants’ Response, p. 4; Supreme Decree No. 4199, March 21, 2020 (**R-60**); Supreme Decree No. 4200, March 25, 2020 (**Annex B**). See also Daily Report issued by the Bolivian Health Ministry, March 5, 2020 (**Annex A**).

⁴⁸ Claimants’ Response, pp. 4-5 (emphasis omitted); Draft Articles on Responsibility of States for Internationally Wrongful Acts, December 12, 2001, Art. 23(1), commentary (3) (**CLA-86**).

⁴⁹ Claimants’ Response, p. 5.

⁵⁰ Claimants’ Response, p. 5; Bolivian newspaper article documenting President Añez public declaration prohibiting internet cuts during the quarantine, March 14, 2020 (at <https://lapatria.bo/2020/03/21/anez-declara-cuarentena-total-desde-las-cero-horas-del-domingo-por-14-dias/>); Respondent’s Request, p. 5, fn 19.

(iii) itself opposed to a similar argument in support of a prior request for an extension from the Claimants.⁵¹

31. In addition, the Claimants dispute that the Respondent's external counsel working remotely would prevent it from complying with the deadline for the SOD, noting that electronic submissions are possible and that Dechert LLP is providing "uninterrupted service to [its] clients" during this time.⁵² They add, however, that they "would agree to exempt Respondent from preparing and sending hard copies of its submission".⁵³
32. In conclusion, the Claimants warn that suspending this proceeding would not only cause substantial prejudice to them, but could also affect the entire international arbitration system if a similar rationale was applied to all sovereign nations' obligation to continue arbitrating investment disputes.⁵⁴ They recall that all or most all international arbitral institutions are continuing to operate and administer their cases with no delays or suspensions, suggesting that the system and its participants should adapt to the current circumstances.⁵⁵
33. *Proposed Schedule.* In their communication of April 3, 2020, the Claimants accepted the Proposed Schedule, while objecting to (i) any more extensions of the deadline for the SOD being granted to the Respondent; (ii) the proceedings being suspended; and (iii) a conference call being held to further discuss these matters.⁵⁶

III. Analysis

34. The Respondent has requested three extensions for the filing of its written briefs in the course of these proceedings, on different grounds:
 - (i) On November 9, 2019, the Respondent proposed a procedural calendar extending the deadlines for the submission of the Reply and Rejoinder by 15 days, on the grounds that adopting the calendar that the Respondent itself had proposed on October 30, 2019 would result in the Respondent having to file its Rejoinder on January 11, 2021, that is, during the end-of-the-year period. The Tribunal rejected this extension request in its Procedural Order No. 5.
 - (ii) On February 13, 2020, the Respondent requested a 45-day extension of the deadline to file its SOD (i.e. from March 23 to May 7, 2020), citing difficulties in the preparation of the brief as a result of the political situation in Bolivia. The Tribunal granted this request in part, allowing a two-week extension.

⁵¹ Claimants' Response, pp. 5-6; Letter from the Respondent to the Tribunal, October 30, 2019, p. 4.

⁵² Claimants' Response, pp. 6-7. See <https://www.dechert.com/knowledge/hot-topic/coronavirus-business-impact.html>. The Claimants clarify that law firms are not affected by the order to close non-essential businesses in Washington D.C.

⁵³ Claimants' Response, fn 15.

⁵⁴ Claimants' Response, p. 7.

⁵⁵ Claimants' Response, p. 7; ICSID, *Message Regarding COVID-19*, March 19, 2020 (at <https://icsid.worldbank.org/en/Pages/News.aspx?CID=361>); ICC, *Covid-19: Urgent communication to DRS community*, March 17, 2020 (at <https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-usersarbitrators-and-other-neutrals/>); LCIA, *LCIA Services Update: COVID-19*, March 18, 2020 (at: <https://www.lcia.org/lcia-services-update-covid-19.aspx>); JAMS, *Coronavirus (COVID-19) Advisory for JAMS Visitors*, March 25, 2020 (at [https://www.jamsadr.com/news/2020/coronavirus-\(covid-19\)-advisory-for-jams-visitors](https://www.jamsadr.com/news/2020/coronavirus-(covid-19)-advisory-for-jams-visitors)).

⁵⁶ E-mail from the Claimants to the Tribunal, April 3, 2020.

- (iii) Finally, on March 23, 2020, the Respondent requested a suspension of the deadline for the filing of the SOD in the wake of the COVID-19 pandemic.
35. The Tribunal's reference to those requests is not meant to imply that the Respondent has been seeking to delay the proceeding by filing a series of extension requests on different grounds. The Tribunal has no doubt that the Respondent and its counsel have been acting in good faith. In fact, the Tribunal granted one of Respondent's extension requests taking into consideration the situation in Bolivia at the time. The Tribunal refers to the procedural history to indicate that, in its view, the Respondent has already had an extended period of time to prepare its SOD before the advent of the COVID-19 pandemic.
36. The Tribunal recognizes that the COVID-19 pandemic has created a new reality. In the context of arbitration proceedings, new demands have been imposed by the crisis on parties, counsel, tribunals and institutions. While there have been difficulties, practice shows that in most cases the participants in the proceedings have been able to adjust to the new reality.
37. There are, of course, numerous challenges that present themselves; this is particularly obvious in the context of holding in-person hearings in the new environment. This is not the case here, however. The question here relates to the filing of a written submission. It is true that preparing a statement of defense requires interaction *inter alia* with witnesses and experts, between counsel and client, and within counsel's team. Those interactions, however, could be conducted using different means of communications. While the Tribunal recognizes that adapting to the new reality may require more time and effort, the Tribunal believes that the preparation of proper written submissions, with all the necessary supplementary materials and documentation, is feasible.
38. The Tribunal is comforted in that regard by the practice in other proceedings, where written submissions may have been delayed, within reason, and hearings may have been re-scheduled (or held online), but the proceedings have not been suspended or ruled impossible to continue.
39. In that context, the Tribunal does not need to rule or opine on the existence or not of *force majeure* as a legal matter. The Tribunal recognizes that the COVID-19 pandemic has brought about a new reality and has had a profound effect on the professional and personal lives of everybody, including the participants in arbitration proceedings. The Tribunal further recognizes its social responsibility, which requires at a minimum that the Tribunal not take any action that would put at risk the lives and the health of the participants in this proceeding.
40. The Tribunal also recognizes, however, that the proceeding can move forward, albeit with some delay, in a socially responsible manner by adapting to the new reality of communicating remotely – a practice that, as noted earlier, has already been established in other proceedings.
41. The Tribunal therefore wishes to maintain the Proposed Schedule, which pushes back by 30 days the current (already extended) deadline. This latest extension will give the Respondent 173 days, i.e. almost 6 months, from the submission of Claimants' Statement of Claim (compared to the initial period of 120 days under the schedule approved pursuant to Procedural Order No. 4). The Tribunal also notes that, in the interest of efficiency and with the objective of not disturbing the hearing dates, the Proposed Schedule does not provide for corresponding adjustments that would grant an equivalent, or in fact any, extension to the Claimants. The Proposed Schedule simply pushes back all deadlines by 30 days; as a result, the Claimants will have the same number of days for the preparation of their next submission as they had under the previous schedule.

42. In light of the above, the Tribunal sees no need for a conference with counsel at this stage. The Tribunal will of course carefully monitor the situation and the developments related to the COVID-19 pandemic. The Parties will no doubt do the same and revert to the Tribunal if a compelling reason arises to hold a conference.

IV. Decision

43. Having carefully considered the positions of the Parties, and absent compelling reasons to reconsider the reasoning outlined in its letter of March 30, 2020, the Tribunal has decided to adopt the Proposed Schedule. The Tribunal determines that the Amended Procedural Calendar for the Phase on Jurisdiction and Liability shall be as set out in **Annex 1** to this order.
44. The Tribunal may decide to amend the procedural calendar at any stage, as may be necessary, following consultations with the Parties.
45. For the time being, the Tribunal considers it unnecessary to hold a conference call with the Parties to discuss the impact of the COVID-19 pandemic in these proceedings. However, the Tribunal may decide to summon the Parties to a procedural conference for that purpose in the future, should the need arise.

Place of Arbitration: Paris, France



Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Amended Procedural Calendar for the Phase on Jurisdiction and Liability

Description	By	Days	Dates
<i>Initial Phase on Jurisdiction and Liability</i>			
Step 1: Statement of Claim, with any Witness Statement(s) and Expert Report(s)	Claimants	129 days from Decision on the Respondent's Application for Termination, Trifurcation and Security for Costs	November 15, 2019
Step 2: Statement of Defense, including any objection to the Tribunal's jurisdiction and/or counterclaim, with any Witness Statement(s) and Expert Report(s)	Respondent	173 days from Step 1	May 6, 2020
<i>Document Production Phase on Jurisdiction and Liability</i>			
Step 3: Request to Produce Documents	Claimants and Respondent	21 days from Step 2	May 27, 2020
Step 4: Production of Non-Objected Documents and Objections to Produce	Claimants and Respondent	33 days from Step 3	June 29, 2020
Step 5: Response to Objections to Produce and reasoned applications for an order on production of documents in the form of a Redfern Schedule (Annex 2 of Procedural Order No. 1)	Claimants and Respondent	14 days from Step 4	July 13, 2020
Step 6: Decision on Request to Produce Documents	Tribunal	14 days from Step 5	July 27, 2020
Step 7: Production as ordered	Claimants and Respondent	31 days from Step 6	August 27, 2020

Description	By	Days	Dates
<i>Written Pleadings on Jurisdiction and Liability</i>			
Step 8: Reply with any Reply Witness Statement(s) and Expert Report(s)	Claimants	91 days from Step 7	November 26, 2020
Step 9: Rejoinder with any Rejoinder Witness Statement(s) and Expert Report(s)	Respondent	91 days from Step 8	February 25, 2021
Step 10: Notification of witnesses and experts for the examination at the Hearing	Claimants and Respondent	32 days from Step 9	March 29, 2021
<i>Oral Pleadings on Jurisdiction and Liability</i>			
Step 11: Pre-hearing Conference	All	TBD	TBD
Step 12: Oral Hearing on Jurisdiction and Liability	All	TBD	May 17-21, 2021
<i>Post-Hearing Pleadings on Jurisdiction and Liability</i>			
Step 13: Post-Hearing Briefs (TBD)	Claimants and Respondent	TBD	TBD
Step 14: Award on Jurisdiction and Liability	Tribunal	TBD	TBD

[***the schedule for the next phase of the proceedings shall be fixed, if necessary, once the Tribunal issues its Award on Jurisdiction and Liability***]