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1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595 ▪ p202 624-2500 ▪ f202 628-5116

Alexandre de Gramont
(202) 624-2517
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April 30, 2009

BY HAND & FEDEX

Government of the Republic of El Salvador
Dirección de Administración de Tratados Comerciales
Ministerio de Economía
Alameda Juan Pablo II y Calle Guadalupe, Edificio C1-C2
Plan Maestro Centro de Gobierno
San Salvador — El Salvador

Re: Pac Rim Cayman LLC v. Republic of El Salvador

Dear Sir/Madam:

We hereby serve Pac Rim Cayman LLC's Notice of Arbitration pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Also enclosed is the consent and waiver for this arbitration executed by Pac Rim Cayman LLC.

Please note that all communications concerning this matter should be sent to the undersigned counsel at the address shown above.

Very truly yours,

Alexandre de Gramont

Enclosures
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(202) 624-2517
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April 30, 2009

BY HAND

Mr. Nassib G. Ziadé
Acting Secretary-General of ICSID
1818 H Street, N.W.
MSN U3-301
Washington, D.C. 20433

Re: Pac Rim Cayman LLC v. Republic of El Salvador

Dear Mr. Ziadé:

Enclosed please find Pac Rim Cayman LLC's Notice of Arbitration (with Exhibits 1-9), pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. This Notice of Arbitration has been served on El Salvador on this same date, in accordance with Annex 10-G of Chapter Ten of CAFTA. Also enclosed please find a copy of the Joint Written Consent of Pacific Rim Cayman LLC granting power of attorney to the firm Crowell & Moring LLP to act as its counsel in this proceeding.

Respectfully submitted,

Alexandre de Gramont

Enclosures
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JOINT WRITTEN CONSENT OF THE SOLE MEMBER AND MANAGERS OF PAC RIM CAYMAN LLC

We, the undersigned, being the sole Member and all of the Managers of Pac Rim Cayman LLC (the "Company"), hereby consent to and adopt in writing the following resolutions this 23rd day of April, 2009:

Authorization to Bring ICSID Arbitration

WHEREAS, the sole Member and all of the Managers, in their business judgment, believe that it is in the best interest of the Company to file an arbitration (the "Arbitration") against the Republic of El Salvador ("El Salvador") under Section B of Chapter Ten of the Central America—Dominican Republic—United States Free Trade Agreement and El Salvador's Investment Law at the International Centre for Settlement of Investment Disputes ("ICSID") on behalf of the Company and its wholly-owned subsidiaries, Pacific Rim El Salvador, Sociedad Anónima de Capital Variable and Dorado Exploraciones, Sociedad Anónima de Capital Variable (collectively, the "Enterprises"); and

WHEREAS, in order to represent the Company in its ongoing legal actions against El Salvador, the Company has retained Crowell & Moring LLP as its legal counsel.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Company is authorized and directed to commence and prosecute the Arbitration, at the discretion of the management of the sole Member, on its own behalf and that of each of the Enterprises.

2. The Company engages Crowell & Moring LLP as counsel to the Company in and with respect to the Arbitration.

3. In connection with the Arbitration, Crowell & Moring LLP is hereby authorized and directed to enter into and deliver any such documents as such attorneys may deem to be necessary or appropriate in order to initiate and prosecute the Arbitration.

4. Crowell & Moring LLP is authorized and directed, in the name and on behalf of the Company, from time to time, to take, or cause to be taken, such actions and to execute and deliver such additional agreements and such certificates, instruments, notices and documents as may be required or as any such attorney may deem necessary or appropriate in order to carry out and perform the obligations to initiate or sustain the course of the Arbitration, the performance and execution thereof by any such attorney shall be conclusive evidence binding upon the Company of approval.

5. In connection with the Arbitration, Crowell & Moring LLP is hereby authorized, empowered, and directed, for and on behalf of the Company, to pay any required costs,

expenses and fees incurred in connection therewith, and any such costs, expenses and fees previously negotiated or paid are expressly approved.

Authorization of Further Actions

6. The Managers of the Company and all other authorized representatives of the Company hereby are authorized and directed to execute any and all documents or instruments and to do and perform any and all such other acts and things that they may deem necessary, appropriate or advisable to effect the purposes of each of the foregoing resolutions.

Execution in Counterparts

BE IT RESOLVED that these resolutions may be signed by the Managers and the sole Member in as many counterparts as may be necessary each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the date as at the 23rd day of April, 2009.

MANAGERS:

PAC RIM CAYMAN LLC
A Nevada Limited Liability Company

THOMAS C. SHRAKE, Manager

RONDA FULLERTON, Manager

, Manager

SOLE MEMBER:

PACIFIC RIM MINING CORP.
A British Columbia Corporation

By:

Name: THOMAS C. SHRAKE

Title: PRESIDENT & CEO

IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, THE CENTRAL AMERICA – UNITED STATES – DOMINICAN REPUBLIC FREE TRADE AGREEMENT AND THE FOREIGN INVESTMENT LAW OF EL SALVADOR

PAC RIM CAYMAN LLC,	)
Claimant,	)
v.	)
REPUBLIC OF EL SALVADOR,	)
Respondent	)

NOTICE OF ARBITRATION

I. INTRODUCTION

1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID Convention"), Articles 10.16(1)(a), 10.16(1)(b), and 10.16(3)(a) of the Central America - United States - Dominican Republic Free Trade Agreement ("CAFTA"), and Article 15(a) of the *Ley de Inversiones* of El Salvador ("Investment Law"), the Claimant, Pac Rim Cayman LLC ("PRC"), hereby submits, on its own behalf and on behalf of its enterprises, its request for arbitration under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

2. PRC is a U.S. investor organized under the laws of Nevada, United States of America, with investments in the Republic of El Salvador ("El Salvador"), including its sole ownership of the Salvadoran companies, Pacific Rim El Salvador, Sociedad Anónima de Capital Variable ("PRES") and Dorado Exploraciones, Sociedad Anónima de Capital Variable

("DOREX") (collectively, the "Enterprises"). PRC is in turn owned by Pacific Rim Mining Corp. ("Pacific Rim"), a publicly traded company organized under the laws of Canada, which is traded primarily on the U.S. stock exchange and owned primarily by U.S. investors. PRC's investments in El Salvador also include rights conferred by exploration licenses, authorizations, permits, and similar rights acquired pursuant to Salvadoran law and held by the Enterprises, including PRES's perfected right to a mining exploitation concession in the area known as "El Dorado," located in the Salvadoran administrative department of Cabañas in north-central El Salvador. PRC and the Enterprises have incurred over US $77 million in out-of-pocket expenses in order to acquire, perfect, and maintain the Enterprises' exploration and exploitation rights in El Salvador, which capital expenditure also qualifies as an investment. PRC's investment has been duly registered with the *Oficina Nacional de Inversiones* ("ONI"),[1] a division of the *Ministerio de Economía* of El Salvador ("MINEC"),[2] in accordance with the Investment Law.

3. Pursuant to CAFTA Article 10.16(2), on December 9, 2008, PRC served written notice of its intent to submit a claim to arbitration (the "Notice of Intent") on the Government of El Salvador ("El Salvador," "Government," or "Respondent"). More than ninety (90) days have elapsed between PRC's service of the Notice of Intent and the submission of this claim.

4. At least six (6) months have passed since the events giving rise to the Claimant's claim, as required by Section B of CAFTA Chapter 10 (Article 10.16(3)). Furthermore, no more than three (3) years have elapsed from the date on which PRC first acquired, or should have first acquired, knowledge (a) of the breach alleged under Article 10.16(1), and (b) that the Claimant

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1 National Office of Investments.

2 Ministry of Economy.

(for claims brought under Article 10.16(1)(a)) or the Enterprises (for claims brought under Article 10.16(1)(b)) incurred loss or damage. (Article 10.18(1)).

5. Pursuant to Article 10.15 of CAFTA, PRC met with El Salvador in an effort to seek an amicable resolution of this dispute through consultation and negotiation. El Salvador has declined to address the merits of the dispute, thereby compelling this formal demand for arbitration.

6. Pursuant to Article 25 of the ICSID Convention, this arbitration is a legal dispute arising directly out of PRC's investment. It is a dispute between a Contracting State, El Salvador, and a national of another Contracting State, PRC, which the parties to the dispute consent in writing to submit to the Centre.

7. As previously set out in the Notice of Intent and further summarized herein, PRC's claims arise out of unlawful and politically motivated measures taken by the Government of President Elías Antonio Saca González, through the *Ministerio de Medio Ambiente y Recursos Naturales* ("MARN")[3] and MINEC, against Claimant's investments. In sum, the Government, through its own actions and the established legal framework, induced and encouraged Pacific Rim, PRC, and the Enterprises to spend tens of millions of dollars to undertake mineral exploration activities in El Salvador. Acting with licenses duly granted by the Government, in full accordance with Salvadoran law, and the stated approval of the Salvadoran officials, the Enterprises proceeded to explore for and find gold and silver, and then to prepare for their extraction.

8. Under the plain and explicit provisions of Salvadoran law – and according to the Government's direct and explicit representations – the Enterprises were entitled to proceed to

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[3] Ministry of Environment and Natural Resources.

extract minerals upon the successful completion of the exploration phase. Indeed, since 2002, Pacific Rim and its affiliates, including PRC and the Enterprises, have devoted enormous resources to approved exploration activities and to pursuing the proper regulatory procedures in order to move to the extraction phase. These investments included, *inter alia*, building infrastructure, community development initiatives, and mineral exploration and mine development conducted in an environmentally and socially responsible manner.

9. However, in March 2008, President Saca abruptly and without any justification announced that he opposed granting any new mining permits. This pronouncement followed an extended period during which the Government had simply ceased to communicate with the Enterprises or to act upon their regulatory filings. Without Government action, the Enterprises could not exercise their vested rights – earned through the costly and time-consuming mineral exploration process – to proceed to extraction. And although the Enterprises pressed hard for an explanation of why they had been effectively shut off from communication with the Government, only after President Saca's announcement in March 2008 did they understand that they had become the target of something other than bureaucratic delay or incompetence. Rather, President Saca, without any legal or other valid reason, had simply decided to shut the Enterprises down and deprive them of their substantial and long-term investments. As a result of the Government's actions and inactions, the rights held by the Enterprises have been rendered virtually valueless and PRC's investments in El Salvador have been effectively destroyed.

10. In light of the Government's actions and inaction, El Salvador has breached its obligations under Section A of CAFTA, including the following provisions:

(i) Article 10.3: National Treatment;

(ii) Article 10.4: Most-Favored Nation Treatment;

(iii) Article 10.5: Minimum Standard of Treatment; and

(iv) Article 10.7: Expropriation and Compensation.

11. PRC and the Enterprises have incurred damages in the hundreds of millions of U.S. dollars as a direct result of El Salvador's breaches of CAFTA and the Investment Law.

II. PARTIES TO THE DISPUTE

A. Claimant

12. The Claimant in this arbitration is Pac Rim Cayman LLC (previously defined as "PRC"), a company organized under the laws of Nevada, United States of America. PRC's address and contact details are as follows:

Pac Rim Cayman, LLC
3545 Airway Drive, Suite 105
Reno, NV 89511 – USA

13. Pursuant to CAFTA Article 10.16.1(b), Claimant also submits the present Notice of Arbitration on behalf of the following enterprises organized under the laws of El Salvador (previously defined as the "Enterprises"), which are both solely owned and controlled by PRC:

Pacific Rim El Salvador, Sociedad Anónima de Capital Variable
5ª Avda. Norte, No. 16, Barrio San Antonio
Sensuntepeque, Cabañas – El Salvador

Dorado Exploraciones, Sociedad Anónima de Capital Variable
5ª Avda. Norte, No. 16, Barrio San Antonio
Sensuntepeque, Cabañas – El Salvador

14. PRC is an environmentally and socially responsible mining company dedicated to the exploration, development, and extraction of precious metals in the Americas. It supports robust environmental protection and fair mineral royalty payments. The company is ultimately owned by a majority of individual U.S. investors, and is predominantly managed and directed

from its exploration headquarters in Reno, Nevada. PRC's most significant investment is in El Salvador via the Enterprises, as described below.

15. PRES is a wholly-owned subsidiary of PRC, incorporated under the laws of El Salvador. It is the owner of rights in the mining areas denominated "El Dorado Norte," "El Dorado Sur," and "Santa Rita." DOREX is also a wholly-owned subsidiary of PRC, incorporated under the laws of El Salvador. It is the owner of rights in the mining areas denominated "Huacuco," "Pueblos," and "Guaco." All of these mining areas are located in Las Cabañas, in the north of El Salvador – a region that, even today, is designated on MINEC's website as a "zone of mining interest."[4]

16. Claimant is represented in this arbitration by:

Arif H. Ali
R. Timothy McCrum
Alexandre de Gramont
Daniel E. Vielleville

Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington D.C. 20004
United States of America
Telephone: (1) 202 624 2500
Telefax: (1) 202 628 5116
Email: aali@crowell.com; rmccrum@crowell.com; adegramont@crowell.com; dvielleville@crowell.com

17. All communications in connection with this arbitration should be directed to the above-named counsel.

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[4] Unofficial translation. All English translations provided throughout this Notice are unofficial, and provided solely for informational purposes. The original text of the designation reads: "Zona de interés minero." *See* MINEC Home Page, http://www.minec.gob.sv/default.asp?id=52&mnu=50.

B. Respondent

18. Respondent in this arbitration is the Republic of El Salvador (previously defined as "El Salvador," "Government," or "Respondent"). Pursuant to Article 10.27 of CAFTA, service of this Notice of Arbitration may be made on El Salvador using the following contact details:

Republic of El Salvador
Dirección de Administración de Tratados Comerciales
Ministerio de Economía
Alameda Juan Pablo II y Calle Guadalupe, Edificio C1-C2
Plan Maestro Centro de Gobierno
San Salvador – El Salvador

III. CONSENT TO ARBITRATION

19. El Salvador's consent to submit the present dispute to arbitration under the auspices of ICSID is contained in Article 10.17 of CAFTA, as well as in Article 15(a) of the Investment Law.

20. Article 10.17 of CAFTA provides as follows:

> 1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
>
> 2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:
>
> > (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute . . .

21. Article 15 of the Investment Law provides, in relevant part:

> In the case of disputes arising among foreign investors and the State, regarding their investments in El Salvador, the investors may submit the controversy to:
>
> a) The International Centre for Settlement of Investment Disputes (ICSID), in order to settle the dispute by conciliation and arbitration, in accordance with the Convention on Settlement of

Investment Disputes Between States and Investors of Other States (ICSID Convention) . . .[5]

22. As contemplated in Article 10.18.2(a) of CAFTA, this Notice of Arbitration constitutes Claimant's written consent to arbitration under the auspices of ICSID, and in accordance with the procedures set out in CAFTA.

23. Pursuant to Article 10.18.4 of CAFTA, Claimant affirms that neither PRC nor the Enterprises previously have submitted any of the breaches alleged in the present Notice of Arbitration to any other binding dispute resolution procedure for adjudication or resolution.

24. As required by Article 10.18.2(b)(ii) of CAFTA, PRC and the Enterprises hereby waive their rights to initiate or continue any domestic proceeding with respect to any measure alleged to constitute a breach for purposes of the present Notice of Arbitration. A copy of Claimant's and the Enterprises' waiver, the original of which was delivered to Respondent on the same date as this Notice of Arbitration, is attached as Exhibit 1 hereto.

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[5] The original Spanish text of Article 15 of the Investment Law reads:

En caso que surgieren controversias o diferencias entre los inversionistas nacionales o extranjeros y el Estado, referentes a inversiones de aquellos, efectuadas en El Salvador, las partes podrán acudir a los tribunales de justicia competentes, de acuerdo a los procedimientos legales.

En el caso de controversias surgidas entre inversionistas extranjeros y el Estado, referentes a inversiones de aquellos efectuadas en El Salvador, los inversionistas podrán remitir la controversia:

a) Al Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (CIADI), con el objeto de resolver la controversia mediante conciliación y arbitraje, de conformidad con el Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados (Convenio del CIADI);

b) Al Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (CIADI), con el objeto de resolver la controversia mediante conciliación y arbitraje, de conformidad con los procedimientos contenidos en el Mecanismo Complementario del CIADI; en los casos que el Inversionista extranjero parte en la controversia sea nacional de un Estado que no es parte contratante del Convenio del CIADI.

25. Notwithstanding the foregoing, pursuant to Article 10.18.3 of CAFTA, the Claimant and the Enterprises reserve the right to initiate or continue any proceedings for injunctive relief not involving the payment of damages before any administrative or judicial tribunal of the Respondent, for the purposes of preserving their rights and interests during the pendency of this arbitration.

IV. FACTUAL BASES FOR THE CLAIM

26. The Claimant's and Enterprises' claims arise out of El Salvador's arbitrary and discriminatory conduct, lack of transparency, and unfair and inequitable treatment in failing to act upon the Enterprises' applications for a mining exploitation concession and for various environmental permits following PRC's discovery of valuable deposits of gold and silver under exploration licenses granted by MINEC, as well as El Salvador's failure to protect Claimant's investments in accordance with the provisions of its own law, and its expropriation of Claimant's and the Enterprises' investments. The relevant factual background underlying these claims is summarized below.

A. Overview of the Legal Framework for Mining in El Salvador

27. In 1996, El Salvador enacted a new and modern *Ley de Minería* ("Mining Law").[6] It replaced an antiquated mining law that had been in place since 1922. The new law was born of the Government's stated desire to attract increased investment in – and increased exploration and extraction of – the country's natural minerals. The Preamble of the 1996 Mining Law explicitly states that the law was enacted as a result of the obsolescence of the Mining Code of

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[6] *See* Legislative Decree No. 544 of December 14, 1995, published in the Official Diary No. 16, Book 330, of January 24, 1996. Until 1996, mining activities in El Salvador were governed by the *Código de Minería* of 1922 and the *Ley Complementaria de Minería* of 1953. The Mining Law was amended in 2001. Legislative Decree No. 475 of July 11, 2001, published in the Official Diary No. 144, Book 352, of July 31, 2001. The Mining Law has not been modified since then.

1922, and the need to adopt new legal rules for modern times. Thus, according to its Preamble, the 1996 Mining Law was designed to *"promote the exploration and exploitation of mining resources by means of the application of modern techniques allowing an integral use of the minerals."*[7] Moreover, the same Preamble acknowledged the paramount importance of modern legislation, which would be desirable to mining investors and promote the social and economic development of the areas where the minerals might be located.[8]

28. Pursuant to the Mining Law's corresponding regulations ("Mining Law Regulations"),[9] MINEC is the authority charged with regulating all mining activity within El Salvador. All mining companies, whether local or foreign, must apply to MINEC in order to receive a license to explore for precious metals in a specific area, and subsequently for an exploitation concession once precious metal deposits are confirmed.

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[7] *Id.*, Preamble (emphasis added). The original Spanish text of the second preambulatory clause reads: "Que el Código de Minería fue emitido por Decreto Legislativo sin número, de fecha 17 de mayo de 1922, publicado en el Diario Oficial N° 183, Tomo 93, del 17 de agosto de ese mismo año, resultando a la fecha obsoletas sus disposiciones, lo que hace necesario emitir normas que además de ser acordes a la época actual, promuevan la exploración y explotación de los recursos mineros mediante la aplicación de sistemas modernos que permitan el aprovechamiento integral de los minerales . . . ."

[8] The original Spanish text of the third preambulatory clause reads: "Que es de primordial importancia que nuestro país cuente con un cuerpo normativo que armonice con los principios de una economía social de mercado, conveniente para los inversionistas del sector minero; a efecto de propiciar la creación de nuevas oportunidades de trabajo para los salvadoreños; promoviendo el Desarrollo Económico y Social de las regiones en donde se encuentran localizados los minerales, permitiendo de esta manera al Estado la percepción de ingresos tan necesarios para el cumplimiento de sus objetivos."

[9] Contemporaneously with the Mining Law of 1996, the President of El Salvador enacted the Regulations to the Mining Law, with the purpose of developing the application of the newly-adopted legal rules and defining several technical terms contained therein. *See* Executive Decree No. 68 of July 19, 1996, published in the Official Diary No. 144, Book 332, of August 8, 1996. The Mining Law Regulation was modified in 2003. *See* Executive Decree No. 47 of June 20, 2003, published in the Official Diary No. 125, Book 360, of July 8, 2003.

1. MINEC Licensing Requirements

29. Article 9 of the Mining Law provides that only those applicants that demonstrate the technical and financial ability to develop mining projects can obtain mining rights.

30. Exploration licenses are granted by resolution issued by MINEC's *Dirección de Hydrocarburos y Minas* ("Department of Mines").[10] The applicant seeking an exploration license must file an application with the Department of Mines, enclosing certain requirements, which include a technical exploration program, evidence of the applicant's technical and financial ability, and experience in mining activities.[11] Once an application is filed, the Department of Mines performs a physical inspection of the proposed exploration area.[12] Upon completing this inspection and evaluating the application, the Department of Mines must issue a resolution that either grants or denies the exploration license.[13]

31. If an exploration license is granted, the Mining Law imposes a number of obligations on the licensee. Specifically, Article 22 of the Mining Law sets out the obligations of an exploration licensee to demonstrate the extent of its investment activities to MINEC in detail. For example, licensees are required to: (a) comply with a technical program for exploration activities approved by the Department of Mines;[14] (b) demonstrate on an annual basis to the Department of Mines the activities and investments that were undertaken by the licensee pursuant to the technical program; (c) file annual reports describing, *inter alia*, the nature of the

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[10] Article 13. Pursuant to this provision, the Mining Law instructed the Department of Mines to establish "special areas of mining interest."

[11] Mining Law, Article 37.

[12] Mining Law, Article 38.

[13] Mining Law, Article 39.

[14] Pursuant to Article 37 of the Mining Law, an applicant interested in an exploration license must provide, *inter alia*, a technical program of exploration, which shall include the intended mining activities and the minimum investment amount for each activity.

minerals being explored, the nature and extent of the licensees' exploration efforts, the results of those efforts, the corresponding expenses incurred, and plans for future explorations;[15] and (d) pay the annual license fee. In short, licensees must undertake and maintain substantial exploration activities, in compliance with the requirements of the Mining Law, in order to preserve their right to continue to explore. A licensee cannot simply "sit on its rights" to develop a claim merely by paying a license fee.

32. While the Mining Law imposes detailed obligations on exploration licensees, it also extends to them significant rights and assurances. In particular, the Mining Law establishes a two-phase framework applicable to mining extraction activities. Article 23 of the Mining Law provides in relevant part:

> Once the exploration is concluded and the existence of economic mining potential on the authorized area is proved, the granting of the Concession for the exploitation and utilization of minerals shall be requested; which Concession will be verified through an Accord with the Ministry, followed by the granting of a Contract between the Ministry and the Holder, for a thirty (30) year term, which may be extended if the interested party requests it, if in the judgment of the Department [of Mines] and the Ministry, the requisites established by this Law are fulfilled.[16]

33. As already set out above, during the mineral exploration phase, licensees are required to make substantial investments while also assuming significant risk. In accordance

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[15] The last annual report must include the estimate mineral reserves and the model for exploration of the deposits. In addition to these requirements, Article 17 of the Mining Law Regulation establishes that the annual report must include a summary of the works performed by the licensee and the total investment amount.

[16] Mining Law, Article 23. The original Spanish text reads: "Concluida la exploración y comprobada la existencia del potencial minero económico en el área autorizada, se solicitará el otorgamiento de la Concesión para la explotación y aprovechamiento de los minerales; la cual se verificará mediante Acuerdo del Ministerio seguido del otorgamiento de un contrato suscrito entre éste y el Titular por un plazo de treinta años, el cual podrá prorrogarse a solicitud del interesado, siempre que a juicio del Ministerio cumpla con los requisitos que la Ley establece."

with the regime established by the Mining Law, the exploration phase may last up to eight years,[17] during which time the mining company expends significant capital in its attempt to locate and develop mineable deposits of minerals.

34. Therefore, under the two-phase framework, a licensee who completes the exploration phase is entitled to proceed to the mineral extraction or "exploitation" phase – without which all of the investment and effort devoted to the exploration phase would be wasted. Once the exploration phase is concluded and the licensee has determined that there is "economical mining potential" at a site, the licensee has the *right* to request an exploitation concession for the purpose of mineral extraction in order to protect its exclusive rights over the license area.[18] Moreover, the Government is *required* to grant the licensee an exploitation concession once the exploration phase is concluded, the existence of mineable deposits has been demonstrated, and the licensee has both filed the application provided in Article 36 of the Mining Law and enclosed the documents described below.[19]

35. For purposes of submitting an application to receive an exploitation concession, the pertinent documents provided by the law to be attached to a concession application are set out in Article 37 of the Mining Law. These documents include presentation of:

- ◊ A description of the area for which the concession is requested;
- ◊ A showing that the licensee owns or is authorized to use the real estate property where the mine project is located;

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[17] Mining Law, Article 19. Exploration licenses are granted for an initial period of four years, which can be extended by the Department of Mines for periods of two years, up to a maximum of eight years.

[18] Mining Law, Article 23.

[19] Mining Law, Articles 23, 36 and 37.

◊ The relevant *Permiso Ambiental*[20] ("Permit") issued by MARN and accompanied by a copy of the corresponding *Estudio de Impacto Ambiental*[21] ("EIA");

◊ An *Estudio de Factibilidad Técnico Económico* ("Feasibility Study"); and

◊ A five-year *Programa de Explotación* ("Development Plan").

36. In addition to the requirements of the Mining Law, Article 18 of the Mining Law Regulation requires that the applicant for the exploitation concession submit a summary of the proposed work and investment to be made during the initial exploitation phase.

37. In accordance with Article 38 of the Mining Law, as well as applicable principles of Salvadoran administrative law, if a qualified licensee fails to comply with any of these requirements for presentation of a concession application, MINEC must grant the licensee a reasonable period to cure. However, the licensee *does not lose its right* to obtain the exploitation concession because of such a failure; that right is perfected upon the discovery and demonstration of the existence of mineable ore deposits in the license area in accordance with Article 23. Indeed, the Mining Law makes it clear that the right to develop a mine constitutes a *property right*, subject to all the protections of the Salvadoran Constitution and other applicable laws.[22]

38. Under the legal framework established by the Mining Law, the mining company assumes the great risks inherent in the exploration phase. However, it undertakes those risks

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20 Environmental Permit.

21 Environmental Impact Study.

22 Mining Law, Article 10 (concessions are deemed property rights (*bienes inmuebles*) and can be the subject matter of security interests); Mining Law, Article 11 (constructions and equipment become accessories to exploration or exploitation rights); Mining Law, Article 14 (mining rights can transferred as other property rights); Mining Law, Article 49 (exploration licenses and exploitation concession subject to public registration as other property rights); Mining Law, Article 54 (mining rights create servitudes affecting third parties' property rights, in favor of titleholders of licenses or concessions).

with the expectation that, if it is able to prove that a discovery of a valuable mineral deposit has been made and otherwise complies with the requirements of the Mining Law, it will be able to obtain an exploitation concession. Without that expectation, no one would undertake exploration. Only during the exploitation phase can a mining company extract metal from the land and begin to generate a return on the substantial upfront investment it has made during the exploration phase. Receiving an exploitation concession after demonstrating that the discovery of a valuable mineral deposit has been made and otherwise complying with the requirements of the Mining Law represents the benefit to be derived from the large expense incurred by a mining licensee during the exploration phase. In short, the promise of an exploitation concession is the reason why companies undertake their investments in the first place.

39. To be sure, the mining company undertakes the risk that the mine will not be viable for valid technical or engineering reasons. But the mining company does *not* undertake the risk that the Government will arbitrarily or capriciously either deny the company its right to proceed to the exploitation phase, or, as in this case, destroy its investment simply by failing to act once the company has successfully completed the exploration phase and complied with all of the legal requirements to obtain an exploitation concession.

2. MARN's Environmental Permit Process

40. As indicated above, Article 37 of the Mining Law requires that the applicant for an exploitation concession attach an environmental permit to its application. In addition, pursuant to Articles 19 and 82 of the *Ley del Medio Ambiente* ("Environmental Law"),[23] an

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[23] *See* Legislative Decree No. 233 of March 2, 1998, published in the Official Diary No. 79, Book 339, of April 5, 1998.

entity seeking to engage in mining exploration or exploitation must also apply to MARN for an environmental permit before undertaking those activities.

41. The administrative procedure to obtain an environmental permit is detailed in Article 19 of the Regulations to the Environmental Law (the "Environmental Law Regulations").[24] In order to obtain the required environmental permit, the company must initially file an environmental form containing the preliminary information requested by MARN.[25] Once it has received the form, MARN issues the terms of reference for the preparation of a "multidisciplinary" EIA.[26] The EIA then filed by the applicant is subject, first, to a technical review by MARN, second, to public comment,[27] and, third, to a report on the public comments to be issued by MARN. MARN is only authorized to provide a single set of observations on the EIA during the process. Once the applicant has responded to these observations, MARN is authorized to provide further comments only in relation to *new* facts or information that the applicant may have provided in its responses.[28] In turn, if the applicant cannot adequately respond to these further comments, the permit may be denied.[29] If the

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[24] *See* Executive Decree No. 17 of March 21, 2000, published in the Official Diary No. 73, Book 347, of December 4, 2000.

[25] Environmental Law, Article 22; Environmental Law Regulations, Articles 20 and 21.

[26] Environmental Law, Article 23; Environmental Law Regulations, Article 19.

[27] Pursuant to Articles 25 of the Mining Law and 32 of the Environmental Law Regulations, the EIA must be published in a national newspaper and be presented before the local communities potentially affected by the project.

[28] Environmental Law, Article 33.

[29] *Id.*

applicant does respond adequately, the permit will be granted.[30] In any case, the permit must be either granted or denied within sixty (60) working days of submission of the original EIA.[31]

42. As discussed below, the Enterprises complied strictly with all of the requirements imposed on them under the Mining Law and its regulations, the Environmental Law and its Regulations, and all other applicable law to obtain the requisite exploration and exploitation environmental permits.

B. Pacific Rim Invests in El Salvador

43. In consideration of and reliance on the legal framework set forth above, in April 2002, Pacific Rim set its sights on investing in El Salvador by merging with Dayton Mining Corporation ("Dayton"), a Canadian mining company that had been operating in El Salvador on its own or through affiliated companies since 1993. In particular, Dayton had two exploration licenses: one for El Dorado Norte, and one for El Dorado Sur.[32]

44. Because of El Salvador's unique geological features, it was and is an ideal location for an environmentally responsible mining company such as Pacific Rim. In particular, El Salvador is a country dominated by "low sulfidation" geological systems, which allow for

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[30] Environmental Law, Article 29; Environmental Regulation, Article 34. Once MARN has issued a resolution approving the EIA, the applicant is required to deposit an environmental compliance bond. Upon the bond being deposited, MARN must issue the environmental permit.

[31] Environmental Law, Article 24; Environmental Law Regulations, Article 34. This period can be extended for sixty (60) additional business days in the case of "complex" applications.

[32] The original titleholder of the El Dorado exploration area was the New York and El Salvador Mining Company, Inc., which sold its license to explore the area to Kinross El Salvador, Sociedad Anónima de Capital Variable ("Kinross-ES") in 1993. Kinross-ES was wholly owned by Mirage Resource Corporation, which merged with Dayton Acquisitions Inc, a wholly owned subsidiary of Dayton Mining Corp., in April 2000. In 1996, in accordance with the new mining legislation that had been introduced that year, the Government confirmed Kinross-ES's exploration rights over the area for a period of three years, pursuant to Resolution No. 1, dated July 10, 1996, and Resolution No. 2, dated July 23, 1996. By means of those same resolutions, MINEC divided the El Dorado exploration area into two separate claim areas, denominated "El Dorado Norte" and El Dorado Sur." The Government then twice renewed these licenses, granting a second two-year extension via resolutions dated December 10, 2001.

non-acid-generating precious metals recovery, and therefore for mining with minimal environmental impacts. In addition, the high-grade, vein-type precious metal deposits found in El Salvador, and specifically in the area of Las Cabañas, are suitable for underground mine development, which has a significantly reduced impact on the environment and community surrounding the mine site as compared to "open-pit" mines.

45. In connection with its due diligence for the Dayton merger, Pacific Rim of course studied and relied upon the new Mining Law and Mining Regulations that had been enacted in 1996, as well as the 2001 amendments. While those amendments – which extended the number of years for which exploration licenses could be granted – were under review, on June 28, 2001, the Government issued Decree No. 456.[33] This decree extended the validity of all exploration licenses due to expire in 2001 until the end of the year, in order to allow the Legislative Assembly sufficient time to promulgate the amendments to the Mining Law that were necessary to allow for further extensions of the relevant licenses. Significantly, the Preamble to Decree No. 456 stated that the reasons for the "emergency" extension of the exploration licenses included the "great importance [of mining activity] to the economy of the country; as it generates investments by national and foreign companies, contributing in this way to the creation of jobs and development in the areas where these activities are made."[34] Moreover, the decree

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[33] Legislative Decree No. 456 of June 28, 2001, published in the Official Diary No. 130, Book No. 352, of July 11, 2001.

[34] The original Spanish text of Decree No. 456 states, in relevant part: "Que las actividad minera es de mucha importancia para la economía del país; ya que genera inversiones de empresas nacionales y extranjeras, contribuyendo de esta manera a la generación de empleo y desarrollo en las áreas donde éstas se efectúan. . ."

acknowledged that the expiration of the exploration licenses would cause "great prejudice" to the investors in light of the investments that they had made in pursuit of their exploration activities.[35]

46. In addition to relying on the country's specific promotion of the mining sector, Pacific Rim was impressed by the pro-foreign investment legal framework that recently had been introduced and that was actively being promoted by El Salvador during the same time frame. In 1999, for example, the Government had adopted a new Investment Law, which, *inter alia*, granted equal conditions for national and foreign companies,[36] and prohibited the Government from expropriating foreigners' property without compensation.[37] Indeed, the purported aim of this law was to avoid the application of any unjustified or discriminatory measures that could

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35 The original Spanish text of the Preamble Decree No. 456 states, in relevant part:

> I. Que la actividad minera es de mucha importancia para la economía del país; ya que genera inversiones de empresas nacionales y extranjeras, contribuyendo de esta manera a la generación de empleo y desarrollo de las áreas donde éstas se efectúan;
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> ...
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> III. Que las empresas antes mencionadas han realizado inversiones millonarias para llevar a cabo tal actividad, por lo que, la circunstancia antes señalada les causaría grandes perjuicios, en razón de que actualmente existe depresión en los precios en los precios internacionales del oro, dificultándose la captación de capital.

36 Investment Law, Legislative Decree No. 732, 1999, Article 5 (El Sal.) ("Foreign investors and the commercial companies in which they participate, shall enjoy the same rights and be bound by the same responsibilities as local investors and partnerships, with no exceptions other than those established by law, and no unjustified or discriminatory measures which may hinder the establishment, administration, use, usufruct, extension, sale and liquidation of their investments, shall be applied to them."). The original Spanish text states: "Los inversionistas extranjeros y las sociedades mercantiles en las que éstos participen, tendrán los mismos derechos y obligaciones que los inversionistas y sociedades nacionales, sin más excepciones que las señaladas por la ley, sin que puedan aplicárseles medidas injustificadas o discriminatorias que obstaculicen el establecimiento, administración, uso, usufructo, extensión, venta y liquidación de sus inversiones."

37 Investment Law, Article 8 (El Sal.) ("According to the Constitution of the Republic, expropriation shall proceed, due to legally established cause of public need or social interest, prior advance payment of fair indemnity . . . "). The original Spanish text of Article 8 states: "De conformidad a lo establecido en la Constitución de la República, la expropiación procederá por causa de utilidad pública o de interés social, legalmente comprobados, previa una justa indemnización. . . ."

impede the normal activities of foreign investors. Paragraph IV of the Preamble to the Investment Law specifically states:

> That to increase the level of foreign investment in the country, an appropriate legal framework should be established that contains clear and precise rules in accordance with best practices in this area, enabling the country to compete internationally in the effort to attract new investment . . . .[38]

47. Furthermore, in 2000, the Government founded the *Agencia de Promoción de Inversión de El Salvador* ("PROESA").[39] The specific aim of PROESA is to generate employment, transfer technology, and aid the country's development process through the attraction of foreign investment to Salvadoran industries. And in that same time period, El Salvador had signed or ratified various bilateral and multilateral investment protection and promotion treaties aimed at further assuring the rights of foreign investors in the country. Thus, between 1995 and 2002, El Salvador undertook a number of actions specifically aimed at increasing foreign investment flows and securing the rights of foreign investors.

48. In addition to the financial, legal, scientific, technical, and operational due diligence that is customarily completed in merger and acquisition transactions such as the one undertaken by Pacific Rim, the company's senior management also held due diligence meetings with the Government. In the course of these meetings, Pacific Rim's representatives received assurances from the Ministers of both MINEC and MARN that the mineral rights in the El Dorado license areas had been legally acquired and properly administered under the relevant

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[38] The original Spanish text states: "Que para incrementar el nivel de inversiones extranjeras en el país, debe establecerse un marco legal apropiado que contenga reglas claras y precisas, de acuerdo a las mejores prácticas en esta materia, que le permita competir internacionalmente en el esfuerzo de atraer inversiones nuevas."

[39] National Investment Promotion Agency of El Salvador. *See* PROESA Home Page, http://www.proesa.com.sv (last visited April 27, 2009).

laws. In particular, high-level officials from MINEC's Department of Mines gave their assurances that the company's local operating subsidiary (which, at the time, was called Kinross-ES) would be granted an exploitation concession upon confirming the commercial mining potential of the El Dorado exploration site.

49. Assured by its due diligence into the legal, economic, political, and technical aspects of the Salvadoran mining claims, in April 2002, Pacific Rim consummated its merger with Dayton and thereby acquired the assets of Dayton in El Salvador, Chile, and the United States. As a result of the transaction, Pacific Rim became the owner of Kinross-ES, Dayton's wholly owned Salvadoran operating authority, and of Kinross-ES' mineral exploration rights in various license areas in El Salvador. Of principal importance among these areas (as noted above) were two contiguous license areas known as "El Dorado Norte" and "El Dorado Sur," located in the administrative department of Cabañas.

50. In January 2003, Kinross-ES was renamed "Pacific Rim El Salvador" (previously defined as "PRES"). PRES's mining rights in the El Dorado Sur and El Dorado Norte license areas were acknowledged by the Government of El Salvador in Resolutions No. 181, dated December 5, 2003, and No. 189, dated December 18, 2003. Resolutions 181 and 189 specifically modified all previous exploration licenses issued with respect to the El Dorado Norte and El Dorado Sur areas, recognizing PRES as the owner of all exploration rights in those areas.

51. On November 30, 2004, Pacific Rim vested sole ownership rights in PRES in its subsidiary, PRC. On August 11, 2005, MINEC's *Oficina Nacional de Inversiones* (previously

defined as "ONI") acknowledged PRC's status as the new owner of PRES via Resolution No. 383-R.[40]

52. In June 2005, PRC incorporated a second Salvadoran enterprise, DOREX, in order to acquire exploration rights over three additional license areas contiguous to, and partially overlapping with, the El Dorado Norte and El Dorado Sur license areas.[41] As stated above, these three areas are known as "Huacuco," "Pueblos," and "Guaco" (collectively with El Dorado Norte and El Dorado Sur, the "El Dorado Project").

53. Since 2002, Pacific Rim, PRC, and the Enterprises have spent many tens of millions of U.S. dollars in El Salvador on infrastructure, community development initiatives, and mineral exploration and development activities related to the El Dorado Project. Their activities in El Salvador have been undertaken in reliance on and with the reasonable investment-backed expectation of being able to engage in income-generating mine development pursuant to a legally authorized exploitation concession. To ensure their entitlement to such a concession, the Enterprises have complied at all times with the provisions of the Mining Law, the Environmental Law, and all other relevant Salvadoran laws. Their continued investment in El Salvador has been based on the Government's express support for the Enterprises' mining operations in the

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[40] *See* Resolution No. 383-R dated August 11, 2005, here attached as Exhibit 2. PRC's last updates of its registered investment in the Enterprises are here attached as composite Exhibit 3.

[41] As explained in greater detail below, when PRES sought an exploitation concession for El Dorado Norte and El Dorado Sur in 2004, MINEC explained that it could not approve a concession covering such a large area. The parties agreed to "carve out" the smaller areas of Huacuco, Pueblos, and Guaco, which would be the subject of a separate administrative process.

country.[42] As of this filing, Pacific Rim, PRC, and the Enterprises have invested in excess of US$ 77 million in mining operations and related activities in El Salvador.

C. The El Dorado Exploitation Concession

54. During 2002 and 2003, PRES[43] carried out significant exploration activities at the El Dorado site under valid exploration licenses. By early 2004, PRES had verified the substantial gold ore deposits at the El Dorado Norte and El Dorado Sur license areas. PRES immediately undertook the necessary steps to secure an exploitation concession from MINEC, and accordingly, in March 2004, filed an application with MARN for an environmental permit in order to be able to commence exploitation activities on those areas.

55. In furtherance of its application for the environmental permit, PRES prepared the required EIA for exploitation activities (the "Exploitation EIA") for submission to MARN. The

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[42] In December 2003, for example, MINEC recognized PRES as the new holder of the El Dorado Norte and El Dorado Sur exploration licenses, and also granted PRES additional extensions to both exploration licenses via MINEC Resolutions Nos. 191 and 192. *See* composite Exhibit 4. Likewise, MARN granted the company environmental permits for exploration activities undertaken on the El Dorado Norte and El Dorado Sur license areas on June 15, 2004, by means of MARN Resolution No. 151-2004. *See* Exhibit 5.

A further example of the Government's prior interest and willingness to allow and support PRC's mining operations is shown by PRES's experience with the Santa Rita exploration license. On July 8, 2005, MINEC granted an exploration license to PRES to search for minerals in Santa Rita, a mining claim near El Dorado. Accordingly, in September 2005, PRES applied to MARN to receive the environmental permit related to the exploration of the Santa Rita license. During this process, PRES filed an EIA and participated in the public consultation process as required by the Environmental Law. On May 30, 2006, MARN granted the requested environmental permit. These Government's actions with respect to the initial development of Santa Rita strengthened PRC's expectations that it would receive similar environmental permits for its other claims, including El Dorado.

Time would tell that the Santa Rita permit would be the last that PRC and the Enterprises would receive from the Government. Although PRES has received both the exploration license and environmental permit for Santa Rita, and has invested substantial resources in exploration activities, the Government's recent actions and current attitude towards mining has made any further development of this claim area impossible. PRC's claim includes its lost investments in connection with Santa Rita.

[43] Previously known and doing business as Kinross-ES.

Exploitation EIA was a thorough and detailed study, fully assessing the baseline environmental conditions and the projected environmental impacts of the mining and reclamation activities using best available operating practices and mitigation measures.

56. In a letter dated August 25, 2004, PRES received assurances from the Director of the Department of Mines, Ms. Gina Navas de Hernández, that the company's rights to solicit a concession over the El Dorado Norte and El Dorado Sur license areas would not be affected by any potential delay in receiving the environmental permit.[44]

57. In September 2004, PRES filed its Exploitation EIA with MARN. By December 2004, the company had not yet received a response to its EIA. Notwithstanding this lack of information, in order to comply with the requirements of the Mining Law – which mandates that a licensee apply for an exploitation concession upon termination of the exploration phase – and in reliance on MINEC's earlier representations that delays at MARN would not affect its application, PRES formally submitted its application for a mining exploitation concession to MINEC on December 22, 2004. Pursuant to preliminary discussions between PRES and MINEC, the concession application covered only a portion of the area previously covered by the El Dorado Norte and El Dorado Sur exploration licenses. Specifically, MINEC explained that it could not approve a concession covering such a large area. Accordingly, PRES and MINEC worked together to define an acceptable portion of the two license areas over which PRES could solicit an exploitation concession. The areas that were "carved out" of the original proposed concession areas were the Huacuco, Pueblos, and Guaco areas, where PRES had not carried out significant exploration work, and for which DOREX later acquired exploration licenses.

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44 *See* Exhibit 6.

58. In the meantime, in February 2005, MARN responded to the EIA that PRES had submitted in September 2004 with a series of observations. These observations were fully addressed by the company via a supplemental volume to the EIA, which PRES submitted to MARN in April 2005.

59. After receiving additional input from MARN, PRES submitted a final Exploitation EIA in September 2005, which addressed not only the comments provided by MARN in April, but also responses to further observations PRES received from MARN in August 2005.

60. In October 2005, in accordance with the Environmental Law and MARN's instructions, PRES published information related to the EIA in local newspapers in order to allow the public the opportunity to provide comments on the assessment. At the same time, PRES held public meetings with the local communities to present and explain the EIA. Then, in March 2006, MARN provided PRES with the observations to the EIA that had been submitted during this required public comment period.

61. In July 2006, MARN supplemented these observations with thirteen additional comments. Although the provision of these additional comments was not contemplated within the permitting process – which was supposed to conclude with the public comment period – PRES nevertheless provided detailed written responses to each of them. Thus, by September 2006, PRES filed a response to the public comments on the EIA, and in October, the company filed a response to MARN's additional thirteen comments.

62. Finally, in December 2006, PRES presented the Ministry with a plan for a state-of-the-art water treatment facility that the company proposed to build in order to treat any effluent from the mining and processing operations. This proposal, like the company's responses

to MARN's additional thirteen comments, was not contemplated within the permitting process, but was rather provided upon the informal request of MARN.

63. With the submission of the water treatment facility proposal, PRES had addressed every observation and concern expressed by MARN (whether reasonable, substantiated, or otherwise) throughout the extended EIA review process. Indeed, since December 2006, MARN has not once expressed any concerns as to the adequacy of the company's EIA. It has likewise never expressed any doubt as to PRES's full compliance with all of the requirements of the permitting process. As such, in accordance with Salvadoran law, PRES is entitled to receive an environmental permit for mining on the El Dorado site.

64. From December 2006 through December 2008, however, MARN ceased all official communication with the company in regards to its application, notwithstanding the fact that Salvadoran law clearly stipulates that MARN must take definitive action on EIA submissions ***within 60 business days***, *and even under exceptional circumstances,* ***within a maximum of 120 business days***. Despite this requirement, MARN did not provide, and still has not provided, PRES with any justification for MARN's inexplicable silence. Indeed, on December 5, 2008, MARN requested that PRES provide information about the same water treatment plant that PRES had already submitted in December 2006.[45] As discussed below, it is now apparent that MARN's inaction had been directed from above, and specifically from the offices of President Saca.

65. As a result of the Government's inaction, PRES has been unable to obtain the exploitation concession to which it is legally entitled, and which it legitimately expected to

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[45] On December 8, 2008, in response to this request, PRES informed MARN that its request had already been answered during the EIA review process.

receive upon complying with the requirements of the environmental permitting process. With the exception of the environmental permit that remains unjustifiably withheld by the government, PRES has met all of the requirements to receive the concession. Nevertheless, the company has been unable to develop any mining activities in El Salvador over the last two years.

D. The Exploration Licenses for Pueblos, Guaco, and Huacuco

66. As mentioned above, in anticipation of the expiration of the exploration licenses for El Dorado Norte and El Dorado Sur in 2004, PRES engaged MINEC in discussions that same year with respect to the possibility of converting the entire area covered by the two El Dorado exploration licenses into one exploitation concession. These discussions led to a "carve out" of a central portion of the two license areas, over which the exploitation concessions had been formally solicited. The area surrounding this carve-out was then divided into three small exploration areas, denominated Huacuco, Pueblos, and Guaco. MINEC agreed to grant PRC's new-established subsidiary, DOREX, three additional exploration licenses for these three areas.

67. Thus, in September 2005, DOREX was granted exploration licenses for Huacuco, Pueblos, and Guaco by, respectively, Resolution No. 205 (dated September 28, 2005), Resolution No. 208 (dated September 29, 2005), and Resolution No. 211 (dated September 29, 2005). DOREX immediately began the process of receiving the necessary environmental authorizations to continue exploration of the newly-designated sites, which had been commenced by PRES under the El Dorado Norte and El Dorado Sur exploration licenses.

68. In November 2005, DOREX submitted an environmental permit application for the Huacuco license area to MARN. In December, MARN responded to the application with a request for an EIA regarding the impact of the exploration activities to be undertaken. The requested EIA was submitted to MARN by DOREX on February 17, 2006. MARN then asked

for, and DOREX posted, public announcements regarding the EIA in May 2006. In November 2006, MARN indicated that the environmental permit for Huacuco was all but ready to be awarded, and asked that DOREX submit the required environmental financial assurance bond – a bond which is normally requested and deposited only *after final approval* of the relevant EIA.

69. DOREX submitted the bond to MARN as requested. Since then, however, the Ministry has failed to act on its application, even though the Environmental Law itself requires MARN to execute the license within ten business days of approving the EIA. Moreover, although there had been some communication between DOREX and MARN in the months following the submission of the application, all communication channels inexplicably shut down in December of 2006, the same month that PRES submitted the final proposal in connection with its exploitation permit application for El Dorado. Clearly, this silence could not be attributed to any technical problems with the applications. Indeed, with respect to Huacuco, as with respect to El Dorado, no such problems or concerns were ever expressed.

70. MARN's subsequent actions vis-à-vis the Enterprises followed the same pattern. Thus, in October 2006, DOREX had submitted environmental applications for both the Pueblos and Guaco exploration license areas. MARN responded to both applications within that same month, requesting that DOREX submit an EIA for each license area, which DOREX proceeded to provide in August 2007. The Ministry acknowledged receiving the Guaco EIA in November 2007, and requested that DOREX respond to observations on it. In turn, MARN acknowledged the Pueblos EIA in January 2008, and requested that the company answer observations regarding that assessment as well. Rather than express legitimate concerns, however, many of MARN's observations to the two EIAs simply requested information that had already been included within the original assessments provided to it.

71. Nevertheless, in order to be responsive to the request, DOREX answered all the observations presented to it by the Government regarding the Guaco license on February 8, 2008 and regarding the Pueblos license on March 26, 2008. DOREX's responses largely reiterated and expanded upon many of the same details discussed within the original EIAs, since MARN's observations concerned information that had already been provided therein.

72. Since responding to the observations, which should have resulted in the EIAs passing on to the public phase of the evaluation, DOREX has received no further communications from MARN regarding either the Guaco or Pueblos applications. In short, as with PRES's environmental permit application for exploitation activities on the El Dorado Sur and El Dorado Norte license areas, MARN's conduct with respect to DOREX's environmental permit applications for exploration of Huacuco, Pueblos, and Guaco reflects the arbitrary about-face in the Government's policies with respect to the Enterprises' operations in El Salvador.

E. President Saca's 2008 Announcement of Opposition to PRC's Investment Activities

73. Initially, the Enterprises legitimately believed that MARN's inaction was an unofficial temporary aberration, perhaps the result of bureaucracy, incompetence, inter-agency lack of communication, or some combination of those factors. As such, the Enterprises continued to meet with MARN in the hope of achieving a negotiated solution to what they considered to be only a temporary impasse, and were repeatedly assured by senior government officials that the permits would be issued imminently.

74. In 2008, it became clear that the Government's delay tactics with respect to the issuance of the Enterprises' various permits had been designed and implemented with the unlawful, discriminatory, and politically motivated aim of preventing the Enterprises' mining operations.

75. In March 2008, President Saca[46] publicly stated that he opposed the granting of any pending mining permits. At a press conference, President Saca announced that he intended to revisit the entire legal framework that was already in place to regulate mining in El Salvador, the very system on which PRC and the Enterprises had relied in investing many tens of millions of dollars in the country. According to press accounts, President Saca stated (among other things):

> What I am saying is that, in principle, I do not agree with granting [pending mining] permits.[47]

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[46] President Saca came into power in March 2004. He was recently voted out of office and will be replaced by President-elect Carlos Mauricio Funes Cartagena as of June 1, 2009.

[47] *See* Exhibit 7. The original Spanish text reads in pertinent part: "El presidente de El Salvador, Elías Antonio Saca, aseguró este martes que 'en principio' se opone a la concesión de permisos para nuevas explotaciones mineras en el país y pidió al Congreso estudiar el tema a profundidad. 'El tema de la minería es un tema que hay que estudiarlo a profundidad. Yo entiendo que los diputados han formado una comisión (y) que hay que hacer una ley, el ministerio del Medio Ambiente y el ministerio de Economía están caminando de la mano con los diputados,' aseguró Saca en una rueda de prensa. 'Lo que estoy diciendo es que, en principio, yo no estoy de acuerdo con otorgar esos permisos,' señaló el mandatario en referencia a 26 proyectos mineros que están requiriendo los permisos de explotación. La explotación minera es adversada por la iglesia y la oposición de izquierda por considerar que contaminará los mantos acuíferos y destruirá el medio ambiente en general, en el escaso territorio de 20.742 km2 de El Salvador . . ." See *Presidente de El Salvador pide cautela ante proyectos de explotación minera*, INVERTIA, Mar. 11, 2008, http://cl.invertia.com/noticias/noticia.aspx?idNoticia=200803112248_AFP_224800-TX-SXH27&idtel.

76. PRC and the Enterprises were astonished by President Saca's assertions, which were contrary to the duly adopted El Salvadoran Mining Law and the stated 2001 policy of the Government in favor of "mining activity" because it "is of great importance to the economy of the country[,] as it generates investments by nationals and foreign companies, contributing in this way to the creation of jobs and development in the areas where these activities are made."[48] By letter dated April 14, 2008, Mr. Tom Shrake, who serves both as a Director and a Manager of PRC, wrote to President Saca:

> We have been unable to obtain a formal response from the government with respect to our proposed exploitation project for El Dorado. Similarly, our other exploration projects are awaiting receiving their respective permits, as well as our new applications for exploration licenses.
> . . .
>
> Through the press, we have noticed that you have stated that you are opposed to awarding us our operating permits. In these public statements, you have stated that, 'In principle I do not agree with granting these permits.'
> . . .
>
> I would also like to explain to you that the situation of Pacific Rim in El Salvador is extremely critical and precarious. Should we not receive a response on behalf of your government that addresses our rights as investors, our company would be in unavoidable situation of having to initiate the resolution of controversies procedure established in the Free Trade Agreement between Central America, the United States and the Dominican Republic (CAFTA-DR).[49]

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48 Decree 456, *supra* note 34.

49 *See* Exhibit 8.

77. Nonetheless, President Saca adhered to his newly announced "policy" of opposing the issuance of mining permits. President Saca continued to assert that El Salvador's existing mining law had to be rewritten. He also vaguely asserted that a "country-wide environmental strategic study" needed to be undertaken – while offering no other details. In a press interview dated July 15, 2008, President Saca was specifically asked about PRC and the Enterprises' pending permits. He responded:

> [F]or now, I will not grant mining permits, until two requirements are satisfied.[50]

The first requirement, according to President Saca, was that new mining legislation had to be passed, notwithstanding the vested rights of PRC and the Enterprises under the existing Mining Law enacted in 1996, and amended in 2001, which remains the law today. The second requirement, he said, was for MINEC and MARN to complete a vague "study" on the possible effects of mining on the entire country. President Saca acknowledged, however, that he did not know what the study would entail, or even whether it had been started.[51] In fact, as of the date of this Notice, no such study has been completed (or to our knowledge, even commenced).

78. Notwithstanding President Saca's comments, and the Government's actions and inactions, the Enterprises engaged in several meetings with the Government in 2008 in an effort to resolve the matter amicably. Nonetheless, President Saca's public statements adhered to the position he had announced in March 2008. Thus, in February 2009, President Saca was quoted in the press as stating:

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[50] *See Saca afirma que no concederá permisos de extracción minera*, CADENAGLOBAL.COM, July 15, 2008, http://www.cadenaglobal.com/noticias/default.asp?not=182976&sec=8%20-%2056k. The original Spanish text of the article reads: "Al ser consultado sobre declaraciones de la empresa canadiense Pacific Rim, que podría iniciar un proceso de arbitraje internacional contra el Estado, Saca dijo que 'hoy por hoy no daré ningún permiso para la minería, mientras no se cumplan' dos requisitos."

[51] *Id.*

> While Elias Antonio Saca is in the Presidency, he will not grant a single permit [for mining exploration], not even environmental permits, which are issued prior to [the mining permits'] being granted by the Ministry of Economy.
> ...
>
> [PRC and the Enterprises] are about to file an international complaint and I would like to reaffirm, I would prefer to pay the $90 million then give them a permit.[52]

79. Despite the Enterprises' best efforts to reach a negotiated solution with the Government, as of the time of this Notice, the Government's conduct has impeded the ability of the Enterprises to conduct mining activities and benefit from their investments. The Government has also impeded their ability to obtain further financing for their activities – financing which would without doubt be forthcoming were the permits in hand – and has thereby rendered further operation of their activities virtually impossible.

80. In addition to El Salvador's refusal to act upon its obligations, the Government has further compounded the unfairness of its treatment of PRC's investments by requiring the Enterprises to continue costly exploration work on those very license areas for which they have requested, but have not yet been granted, environmental permits. For example, DOREX filed all of the required annual reports for its exploration licenses over Guaco, Pueblos, and Huacuco in 2007 and 2008, and has – at significant expense – complied with the Mining Law and the Environmental Law to the extent possible without having received the environmental permits. On the other hand, MINEC representatives informed company officials that physical work such as drilling and trenching would also need to be completed on those license areas in 2008 in order

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[52] *See* http://www.laprensagrafica.com/index.php/economia/nacional/20190.html. The original Spanish text reads: "Mientras Elías Antonio Saca esté en la presidencia, no otorgará ni un tan solo permiso, (para la explotación minera) ni siquiera permisos ambientales, que son previos a los que otorga el Ministerio de Economía" and "Están a punto de entablar una demanda internacional y le quiero dejar claro algo, prefiero pagar los $90 a darles un permiso."

to maintain them in good standing, even though DOREX cannot legally conduct these activities due to MARN's unjustified refusal to approve the EIAs submitted by DOREX in connection with those areas.

81. The Enterprises have satisfied all legal requirements and have responded to all of the observations presented by MARN, in most cases exceeding the requirements of the law and international standards. Significantly, the Government has not actually denied any of the Enterprises' applications; indeed, it cannot, as *it has no legal basis to do so*. Instead, it has unlawfully failed to act upon these applications, thus effectively preventing the Enterprises from continuing their operations without providing them the benefit of due process, and indeed without providing any justification whatsoever for its decision. This conduct constitutes a gross abuse of administrative discretion, which is impermissible under both Salvadoran and international law.

V. APPLICABLE LAW

82. PRC's CAFTA claims against El Salvador are governed by CAFTA itself, as well as by applicable rules of international law. PRC's claims for El Salvador's breaches of the Enterprises' investment authorizations are governed by Salvadoran law, and by applicable rules of international law.[53] With respect to PRC's claims for violations of the Investment Law, the

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[53] CAFTA Article 10.22 Governing Law:

> 1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
>
> 2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:

(continued...)

parties have not agreed to the application of any particular substantive law, and the Investment Law itself does not prescribe one. In such circumstances, pursuant to Article 42(1) of the ICSID Convention, PRC's claims under the Investment Law are governed by Salvadoran law, and by such rules of international law as may be applicable.[54]

VI. LEGAL BASES FOR THE CLAIM

83. CAFTA is a broad based free trade agreement aimed at fostering a number of fundamental economic goals and objectives designed to increase the opportunities for trade and investment in the CAFTA region. These goals are set out in the CAFTA Preamble and Treaty provisions. On signing CAFTA, El Salvador confirmed in the CAFTA Preamble its resolve to:

> **STRENGTHEN** the special bonds of friendship and cooperation among their nations and promote regional economic integration;
>
> **CREATE** new opportunities for economic and social development in the region;
>
> And,

(continued)

> (a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or
>
> (b) if the rules of law have not been specified or otherwise agreed:
>
> (i) the law of the respondent, including its rules on the conflict of laws; and
>
> (ii) such rules of international law as may be applicable.

[54] Article 42(1) of the ICSID Convention provides:

> The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

> **ENSURE** a predictable commercial framework for business planning and investment.

84. These resolutions to promote and protect trade and investment are also reflected in CAFTA's objectives which govern the interpretation and application of El Salvador's obligations under the treaty, as set out in Article 1.2: Objectives:

> 1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment, and transparency, are to:
> . . .
>
> (d) ***substantially increase investment opportunities in the territories of the Parties;*** [emphasis added]

85. As reflected in the terms of CAFTA Chapter 10, titled "Investment," consistent with these objectives CAFTA also includes a wide coverage of the types of investments protected by the treaty, including what are referred to as "pre-establishment" investments with respect to the making and acquisition of investments in El Salvador by CAFTA investors.

86. The broad scope of protection is reflected throughout CAFTA Chapter 10. For example, the definition of "investor" in CAFTA Article 10.28 provides that an "investor" includes a U.S. enterprise that "attempts to make, is making, or has made an investment" in the territory of El Salvador. Moreover, the provisions of CAFTA Articles 10.3 ("National Treatment") and 10.4 ("Most-Favored-Nation Treatment") confirm that El Salvador is required to provide the standards of protection included therein with respect to "the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory."

87. The scope and coverage of CAFTA with respect to a large range of U.S. investments is consistent with El Salvador's overall objective to encourage investment in its territory. El Salvador fulfills that objective by providing U.S. investors with assurances of a

stable and predictable legal framework for business planning from the beginning to the end of the investment process. This is the fundamental objective behind El Salvador's commitment to U.S. investors undertaken in CAFTA. El Salvador's failure to fulfill that commitment in numerous respects underlies El Salvador's breaches of its obligations under CAFTA, as well as under the Investment Law.

88. Specifically, PRC claims that El Salvador has breached its obligations under Section A of Chapter 10 of CAFTA, including the following provisions:

(i) Article 10.3 – National Treatment;

(ii) Article 10.4 – Most-Favored-Nation Treatment;

(iii) Article 10.5 – Minimum Standard of Treatment; and

(iv) Article 10.7 – Expropriation and Compensation.

89. In addition, pursuant to CAFTA Article 10.16.1(b)(i)(B), PRC claims that El Salvador has breached the express and implied terms of the Enterprises' investment authorizations, including, without limitation, all resolutions issued by MINEC in relation to the investments in El Salvador.

90. PRC also claims that El Salvador has breached its own domestic law vis-à-vis the Enterprises, including relevant provisions of the Investment Law. El Salvador enacted its Investment Law in 1999, with the express purpose of attracting increased foreign investment by establishing an "appropriate legal framework" with "clear and precise rules in accordance with best practices in this area," which would "enabl[e] the country to compete internationally in the effort to attract new investment."[55] Among other rights and protections conferred by the Investment Law, it specifically prohibits expropriation without compensation, as well as

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[55] Investment Law, Preamble, para. IV. The original Spanish text is set forth *supra* at n. 38.

"unjustified or discriminatory measures which may hinder the establishment, administration, use, usufruct, extension, sale and liquidation of [foreign] investments."[56] Thus, the Government's conduct violates Articles 5 (equal protection), 6 (non-discrimination), and 8 (compensation for expropriation) of the Investment Law. Finally, the Government's actions and omission constitute violations of the most fundamental principles of Salvadoran constitutional and administrative law. In particular, the Government's conduct breaches, among several principles of Salvadoran law, that of the principles of legality, *stare decisis*, due process, and reasonability established under Salvadoran law. Furthermore, the Government's conduct infringes upon the Enterprises' acquired rights under Articles 8, 14, 19, and 23 of the Mining Law. By imposing additional conditions not included in the existing regulatory regime, and refusing to grant the requested permits notwithstanding the Enterprises' compliance with all legal requirements, the Government has violated the principle of legality set forth in Article 86 of the Salvadoran Constitution, Article 1 of the Salvadoran Civil Code, and Article 4(j) of the Ley de Ética Gubernamental.[57]

91. The factual bases for these claims are summarized above. In short, they include:

- El Salvador's illegal refusal to grant (or even act upon) the Enterprises' applications for their respective exploitation concession and environmental permits, when the Enterprises had met all of the necessary legal requirements to receive them;
- El Salvador's granting of certain permits – followed by the illegal denial or withholding of subsequent necessary permits to which the Enterprises

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56 *Id.* at Article 5.

57 Governmental Ethics Law.

were entitled – so that the Enterprises invested many tens of millions of dollars in the country, only to be illegally denied of any benefit from their investment;

- El Salvador's failure to honor the commitments it made to Pacific Rim, PRC and the Enterprises when they commenced their investment in El Salvador, and which the Government continued to make as they invested tens of millions of dollars in the country (including, without limitation, commitments made by government officials, as well as in the investment authorizations and in numerous applicable Salvadoran laws and regulations);
- El Salvador's numerous delays, departure from its own laws and regulations, imposition of duties and requirements not contained in its laws and regulations, and, ultimately, its refusal even to communicate with the Enterprises, when supposedly "acting" on the Enterprises' applications;
- El Salvador's failure to treat PRC and the Enterprises with the best treatment accorded to domestic investors and their investments, and the investors and investments of any other CAFTA Party or of any non-Party;
- El Salvador's arbitrary and discriminatory conduct against PRC and the Enterprises and their investments;
- El Salvador's stated intention (via President Saca) to suddenly change its entire body of laws and regulatory framework for mining without

justification *after* PRC and the Enterprises had invested many tens of millions of dollars in the country in reliance on the laws and regulatory framework that existed at the time – and that still exist as of the filing of this Notice;

- El Salvador's stated intention (via President Saca) to deny the Enterprises the permits, concession, and other rights to which they were legally entitled, pending the Government's consideration of a new mining law and the conduct of an undefined "country-wide environmental strategic study" (neither of which has happened as of the filing of this Notice);
- El Salvador's substantial deprivation of PRC's and the Enterprises' investments, which has made them effectively worthless. El Salvador's expropriation of these investments was conducted:
  - not for a public purpose;
  - in a non-discriminatory manner;
  - without due process; and
  - without prompt, adequate, and effective compensation.

VII. ALL JURISDICTIONAL REQUIREMENTS FOR THE COMMENCEMENT OF AN ARBITRATION HAVE BEEN SATISFIED

A. Jurisdiction Under CAFTA

92. The jurisdictional requirements for CAFTA arbitration are contained in Article 10.16, which provides in relevant part:

> 1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached
(A) an obligation under Section A,
(B) an investment authorization

[. . .]

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,
(B) an investment authorization

[. . .]

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention

[. . .]

93. In accordance with Article 10.16, disputes with El Salvador may therefore be submitted to ICSID arbitration under the terms of CAFTA as long as the following requirements are met:

(1) There is an "investment dispute," as defined by CAFTA;

(2) The claims are brought by a "claimant," as defined by CAFTA, against a "respondent," as defined by CAFTA;

(3) The claims involve breach(es) by Respondent of Chapter 10, Section A of CAFTA, and/or of an investment authorization;

(4) Claimant and/or Claimant's enterprises in El Salvador, have incurred loss or damage by reason of, or arising out of, those breaches;

(4) Ninety days have elapsed since Claimant submitted a written Notice of Arbitration to Respondent;

(5) Six months have elapsed since the events giving rise to the claim;

(6) Both the Respondent and the Party of the Claimant are parties to the ICSID Convention.

94. As demonstrated below, the present dispute between PRC and the Enterprises, and the Republic of El Salvador, fulfills all the requirements for ICSID jurisdiction contained in CAFTA.

1. There is an "investment dispute," as defined by CAFTA

95. As explained above, the present dispute arises out of the treatment accorded to PRC's Enterprises by El Salvador. CAFTA's definition of "investment" is contained in Article 10.28, which provides as follows:

> **Investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
>
> (a) an enterprise;
>
> (b) shares, stock, and other forms of equity participation in an enterprise;
>
> (c) bonds, debentures, other debt instruments, and loans;
>
> (d) futures, options, and other derivatives;
>
> (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
>
> (f) intellectual property rights;
>
> (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
>
> (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

96. PRC's investment includes the Enterprises. Furthermore, PRC's investment includes the property rights conferred by the exploration licenses and held by the Enterprises, as well PRES's perfected right to exploit El Dorado. PRC has incurred over US$77 million in out-

of-pocket expenses in order to perfect and maintain the Enterprises' mineral exploration and exploitation rights, which as capital expenditure also qualifies as an investment.

97. Accordingly, PRC's investments satisfy the definition of Investment contained in CAFTA. Additionally, PRC's investment has been duly registered with MINEC's ONI pursuant to the Investment Law.

2. The claims are brought by a "claimant," as defined by CAFTA, against a "respondent," as defined by CAFTA

98. For purposes of investment disputes arising under CAFTA, "respondent means the Party that is a party to an investment dispute."[58] In this case, El Salvador is a party to an investment dispute, as explained in subsection 1, *supra*. El Salvador is also a Party to CAFTA, which it ratified on December 17, 2004.[59] CAFTA entered into force in El Salvador on March 1, 2006. As a result, El Salvador is a proper party to CAFTA Chapter 10 arbitration.

99. PRC is also a proper party to the present arbitration. According to CAFTA, "claimant means an investor of a Party that is a party to an investment dispute with another Party."[60] As already explained, PRC is a party to an investment dispute with El Salvador, which is itself a Party to CAFTA. PRC is also an "investor of a Party," which is defined as:

> a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party . . . [61]

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58 Article 10.28.

59 *See* Official Diary, Book 366, No. 17, p. 1-2563.

60 Article 10.28.

61 *Id.*

100. Specifically, PRC is an enterprise of the United States of America, duly organized under the laws of the state of Nevada, which has made an investment in the territory of El Salvador. The United States of America is a Party to CAFTA, which it passed into law on August 2, 2005.[62] CAFTA was implemented by the United States on February 28, 2006 by virtue of Presidential Proclamation 7987.

101. PRC's claims in this case are brought on its own behalf, as well as on behalf of the Enterprises, its wholly-owned subsidiaries. Both of the latter companies are "Enterprises of Respondent," which is defined by CAFTA as "enterprise[s] constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there."[63] The Enterprises are duly organized under the laws of El Salvador, and both carry out substantial business activities within the territory of Respondent. In particular, PRES holds mineral rights with respect to the areas known as the El Dorado Project and Santa Rita while DOREX holds mineral rights with respect to the areas known as Pueblos, Guaco, and Huacuco.

3. The claims involve Respondent's breaches of CAFTA Chapter 10 and of Claimant's investment authorizations

102. See Section VI above.

4. Claimant and Claimant's Enterprises have incurred loss or damage as a result of Respondent's breaches

103. As a result of the Government's conduct, PRC and the Enterprises have incurred significant damage. Indeed, unless the Government reverses its conduct immediately, PRC will have lost the entire US$ 77 million that it has directly expended to date in furtherance of PRES's and DOREX's exploration licenses and eventual exploitation concessions in El Salvador.

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62 *See* Public Law 109-53.

63 Article 10.28.

104. Moreover, PRC and the Enterprises will also suffer the loss of the enormous fair market value of its mineral rights. Finally, PRC – which has been capitalized *entirely* on the legitimate expectation that its Enterprises will undertake successful, environmentally and socially responsible exploitation of the minerals deposits at their respective exploration sites in El Salvador – will suffer irreparable harm to its shareholder relations, its overall business reputation, and ultimately, to its very existence.

5. Ninety days have elapsed since Claimant submitted a written Notice of Arbitration to Respondent

105. Claimant delivered to Respondent a written Notice of Intent to Submit a Claim to Arbitration ("Notice of Intent") on December 9, 2008. The Notice of Intent, a copy of which is attached as Exhibit 9 hereto, fulfilled all the requirements for notice set out in CAFTA Article 10.16(2).[64] In particular, the Notice of Intent specified that PRC, an enterprise organized under the laws of Nevada, would seek compensation from El Salvador for violations of its Investment Law, of CAFTA Articles 10.3, 10.4, 10.5 and 10.7, and of the investment authorizations granted to the Enterprises, as a result of El Salvador's arbitrary, unjustified, and discriminatory conduct in failing to grant permits and concessions necessary for the operation of PRC's investments in the territory of that country.

6. Over one year has elapsed since the events giving rise to the claim

106. As previously explained, PRES met with officials of MARN in August and September of 2006 in order to discuss the El Dorado EIA and the company's response to the

[64] Article 10.16.2 provides: "The notice shall specify: (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise; (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions; (c) the legal and factual basis for each claim; and (d) the relief sought and the approximate amount of damages claimed."

observations made during the public consultation period. Further to those meetings, PRES filed a response to the observations on October 26, 2006. On December 4, 2006, the company filed an amended proposal for a water treatment facility for the El Dorado site in order to ensure full compliance with all the requests and observations that had been presented by MARN in connection with the EIA. Following submission of this proposal, however, MARN ceased formal communication with the Enterprises with respect to El Dorado. Furthermore, DOREX completed the evaluation process of the EIA related to Huacuco, Pueblos, and Guaco by March 2008. To date, MARN has not issued an official decision on PRES's pending permit application for the El Dorado site, nor has it issued the necessary permits to DOREX for exploration of Huacuco, Guaco, or Pueblos.

107. In March 2008, after several months of discussion with MARN officials over the reasons why the Enterprises' application for environmental permits remained unresolved, President Saca made a public declaration against mining. The declaration represented a radical change in the Government's position with respect to mining and was a radical departure from controlling Salvadoran law. But it cast new light on the extraordinary delays, the administrative irregularities, and ultimately, the silence, that PRC had endured from MINEC and MARN over the proceeding months.

108. El Salvador's unjustified failure to grant either the concession or the various permits constituted a breach of its obligations under CAFTA. Thus, more than one year has passed since the breaches of CAFTA materialized, and the Treaty's *ratione temporis* provision is satisfied. MARN has not issued any permits as of the date of the Notice of Arbitration.

7. Both Respondent and the Party of Claimant are parties to the ICSID Convention

109. As set out in Subsection C, *infra*, both El Salvador and the United States of America are parties to the ICSID Convention.

B. Jurisdiction under the Investment Law

110. Article 15, set out below, contains the Investment Law's jurisdictional requirements for ICSID arbitration of the present dispute:

> In the case of disputes arising among foreign investors and the State, regarding their investments in El Salvador, the investors may submit the controversy to:
>
> > a) The International Center for Settlement of Investment Disputes (ICSID), in order to settle the dispute by conciliation and arbitration, in accordance with the Agreement on Settlement of Investment Disputes Among States and Citizens of other States (ICSID Agreement)
> > . . . .[65]

111. In accordance with this provision, disputes with El Salvador may therefore be submitted to ICSID arbitration under the terms of the Investment Law provided that:

> (1) The dispute is between a foreign investor and the State;
>
> (2) The dispute is related to an investment made by the foreign investor in El Salvador.

112. As demonstrated below, both of these requirements have been met in the present case.

1. The dispute is between a foreign investor and the State

113. PRC's dispute in this case is with the State of El Salvador, and PRC is a foreign investor. Article 2 of the Investment Law defines a foreign investor as follows:

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[65] The original Spanish text of Article 15 of the Investment law cited *supra* note 5.

> Foreign Investor: Individuals or legal entities . . . who invest in the country.[66]

114. PRC is a foreign legal entity, incorporated under the laws of the United States. Moreover, as explained in the following subsection, PRC has made an investment in El Salvador for purposes of the Investment Law.

2. The dispute is related to an investment made by the foreign investor in El Salvador

115. The present dispute arises out of, and is in connection with a dispute over El Salvador's treatment of the Enterprises, specifically with respect to the two companies' mineral rights and operations in El Salvador. The definition of investment for purposes of the Investment Law is as follows:

> Investments: Tangible and intangible assets or resources, the providing of services or financing in local or foreign currency of free convertibility, devoted to the execution of economic activities, or to the expansion or improving of existing activities, for the production of goods or services, and the generation of employment.[67]

116. As set out previously, PRC is the 100 percent shareholder of both Enterprises, and has contributed significant amounts of capital to their organization and operation. The ultimate aim of the Enterprises is to employ a local Salvadoran labor force in order to develop and produce precious metals within El Salvador, thereby generating profits for the Enterprises, for their employees, for the shareholders of PRC, and for the country of El Salvador. Thus, the

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[66] The original Spanish text of Article 2(d) of the Investment law reads: "Inversionistas Extranjero: Las personas naturales y jurídicas extranjeras . . . que realicen inversiones en el país."

[67] The original Spanish text of Article 2(a) of the Investment law reads: "Inversiones: Aquellos activos o recursos, ya sean en bienes tangibles e intangibles, prestación de servicios financieros en moneda nacional o extranjera de libre convertibilidad, que se destinen a la ejecución de actividades de índole económica o a la ampliación o perfeccionamiento de las existentes, para la producción de bienes o servicios y la generación de fuentes de trabajo."

present dispute is clearly related to an investment as required by Article 15 of the Investment Law.

B. Jurisdiction Under the ICSID Convention

117. In addition to the requirements of CAFTA, Articles 25 and 26 of the ICSID Convention also set forth several conditions that must be satisfied in order for an ICSID tribunal to have jurisdiction over the present dispute. These conditions are as follows:

(1) the dispute must be "between a Contracting State and a national of another Contracting State;"[68]

(2) the dispute must be "legal;"[69]

(3) the dispute must be one "arising directly out of an investment;"[70]

(4) the parties to the dispute must "consent in writing to submit [the dispute] to the Centre;"[71]

(5) the dispute must not fall within the class or classes of disputes which the Contracting State that is a party to the dispute would not consider submitting to the jurisdiction of the Centre;[72] and

(6) the dispute must not violate any applicable provisions concerning exhaustion of local remedies.[73]

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68 ICSID Convention, Article 25(1).

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*, Article 25(4).

73 *Id.*, Article 26.

118. As demonstrated below, the claims asserted herein by PRC and the Enterprises also fulfill each of the requirements for jurisdiction imposed by the ICSID Convention.

1. The dispute is between a Contracting State and a National of another Contracting State

119. Article 25(1) of the ICSID Convention requires that the dispute must be "between a Contracting State and a national of another Contracting State." The Republic of El Salvador is a Contracting Party to the ICSID Convention, which it signed on June 9, 1982. The ICSID Convention entered into force in El Salvador on April 5, 1984.

120. Article 25(2)(a) of the Convention defines "national of another Contracting State" as follows:

> any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute.

121. PRC is a limited liability company duly organized under the laws of the state of Nevada, in the United States of America. PRC has never been a national of El Salvador. The United States of America is a Contracting Party to the ICSID Convention. It signed the Convention on August 27, 1965 and the Convention entered into force in the United States of America on October 14, 1966. Accordingly, PRC is a "national of another Contracting State" for purposes of the ICSID Convention.

2. The Parties' dispute is a legal dispute

122. As set out herein, the subject matter of the present dispute concerns the Government of El Salvador's breaches of the Investment Law, as well as of the investment

protections and guarantees contained in CAFTA and of the various investment authorizations afforded to the Enterprises in accordance with the laws of El Salvador.

123. In order for a dispute to be legal in nature, it is sufficient that there is an assertion of legal rights and the articulation of claims in terms of law. In this case, PRC's claims concern the existence or scope of legal rights under CAFTA and under Salvadoran and international law, and the nature and extent of the relief to which it may be entitled for losses suffered as a result of the Government's violation of those legal rights. The company's claims are thus unequivocally presented in legal terms.

3. The dispute arises directly out of an investment

124. See Section VII(A) above.

4. The Parties have consented to ICSID arbitration

125. As set out in Section III, *supra*, Article 10.17 of CAFTA and Article 15 of the Investment Law contain Respondent's consent to ICSID arbitration of the present dispute. PRC has likewise consented to arbitration under the auspices of ICSID by means of submitting the present Notice of Arbitration.

5. El Salvador has not designated any class of disputes which it would not submit to ICSID jurisdiction

126. According to the list of "Contracting States and Measures Taken by Them for the Purpose of the Convention," published by ICSID on December 7, 2007, El Salvador has not made any designation, pursuant to Article 25(4), of classes of disputes which it would not consider submitting to ICSID jurisdiction. Moreover, neither CAFTA nor applicable Salvadoran legislation excludes the present dispute from arbitration under the Convention.

6. Neither CAFTA nor the Investment Law imposes any requirements with respect to domestic remedies

127. Article 26 of the Convention requires the absence (or fulfillment) of any prerequisite regarding the exhaustion of local administrative or judicial remedies. Neither the applicable Salvadoran legislation nor CAFTA contain any requirement that a party bringing an international arbitration against the Government of El Salvador under the ICSID Convention first exhaust any available local remedies.

VIII. RELIEF SOUGHT AND DAMAGES CLAIMED

128. Without prejudice to its rights to amend, supplement or restate the relief to be requested in the arbitration, PRC respectfully requests the Arbitral Tribunal to:

(1) Declare that El Salvador has breached the terms of CAFTA and of the Salvadoran Investment Law.

(2) Award compensation in excess of US $77 million for out-of-pocket expenses incurred in connection with mineral exploration activities upon the Exploration Licenses and associated rights and obligations, including real estate, materials, equipment, labor, and attorneys' fees and costs.

(3) Award a sum in compensation to be proven in the arbitration for losses sustained as a result of PRC and the Enterprises being deprived of their investment and property rights pursuant to CAFTA, the Exploration Licenses, and Salvadoran law, including, *inter alia*, the right to complete exploration activities at all sites subject to their control, the right to obtain exploitation concessions for those same sites, the right to develop the valuable minerals discovered, reasonable lost profits, and indirect losses; while this sum has not yet been quantified, it is far in excess of the amount of expenditures made by PRC and the Enterprises.

(4) Award costs associated with any proceedings undertaken in connection with this arbitration, including all professional fees and costs.

(5) Award pre- and post- award interest at a rate to be fixed by the tribunal.

(6) Grant such other relief as counsel may advise and that the Tribunal may deem appropriate.

IX. APPOINTMENT OF ARBITRATOR

129. In accordance with CAFTA Article 10.16(6), PRC hereby appoints Dr. Guido Santiago Tawil, a national of Argentina, to serve as arbitrator in this arbitration.

130. Dr. Tawil's contact details are as follows:

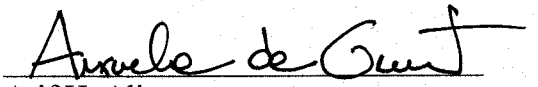
Dr. Guido Santiago Tawil
B&B Bomchil
Suipacha 268, 12th Floor
C1008AAF Buenos Aires, Argentina
Tel. (5411) 4321-7506
Email: guido.tawil@bomchil.com

131. Dr. Tawil has confirmed to counsel that he is and shall remain impartial and independent of the parties during the pendency of the arbitration.

DATE OF ISSUE:

April 30, 2009

CROWELL & MORING LLP

By: 

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