

**IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

SOUTH AMERICAN SILVER LIMITED

CLAIMANT,

v

THE PLURINATIONAL STATE OF BOLIVIA

RESPONDENT.

CLAIMANT'S NOTICE OF ARBITRATION

April 30, 2013

KING & SPALDING LLP

1185 Avenue of the Americas
New York, New York 10036
U.S.A.

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I. INTRODUCTION

1. South American Silver Limited, a company incorporated under the laws of the Bermuda Islands, (“South American Silver” or “Claimant”), hereby serves notice of the institution of an arbitration proceeding under the 2010 Arbitration Rules of the United Nations Commission on International Trade Law (the “UNCITRAL Rules”) against the Plurinational State of Bolivia (“Bolivia”, “Respondent” or the “Government”) pursuant to Article 8 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Bolivia for the Promotion and Protection of Investments (the “Treaty”).¹ South American Silver has duly authorized the undersigned to institute and pursue arbitration proceedings on its behalf against Bolivia under the Treaty.²

2. This dispute involves the expropriation of South American Silver’s investments in the mining sector by Bolivia, specifically the taking of South American Silver’s 100% interest in the mining concessions held by Compañía Minera Malku Khota S.A. (“CMMK”)³ without the payment of just and effective compensation in violation of the Treaty and international law. This dispute arose on or before August 1, 2012, the date of Supreme Decree No. 1308 expropriating South American Silver’s investments (the “Expropriation Decree”).⁴

3. South American Silver reserves the right to expand upon the factual and legal claims, arguments and evidence submitted in this Notice during the course of the arbitral

¹ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Bolivia for the Promotion and Protection of Investments, signed on 24 May 1988 and entered into force on 16 February 1990, Exhibit C-1. Statement by the UK on the Exchange of Notes at La Paz (dated 3 and 9 Dec. 1992) extending the Treaty to Bermuda, Exhibit C-2.

² Powers of Attorney executed by South American Silver, Exhibit C-3.

³ As described below, South American Silver holds 100% of the shares in CMMK through its wholly owned Bahaman subsidiaries: Malku Khota Ltd., Productora Ltd. and G.M. Campana Ltd.

⁴ Supreme Decree No. 1308, Exhibit C-4.

proceeding. This Notice of Arbitration does not include the Statement of Claim referred to in Article 20 of the UNCITRAL Rules.

II. THE PARTIES

A. Claimant

4. South American Silver is a company incorporated under the laws of the Bermuda Islands, an overseas territory of the United Kingdom. The following is South American Silver's principal place of business, telephone and facsimile numbers:

South American Silver Limited
Jardine House - 4th Floor
33-35 Reid Street
P.O. Box HM 1431
Hamilton HM FX
Bermuda
Tel: +1 441 292 6972
Fax: +1 441 296 0329

5. South American Silver is represented in this arbitration proceeding by King & Spalding LLP. All required notification should be addressed to:

Henry G. Burnett
Guillermo Aguilar Alvarez
Cristina Ferraro
Rocío Digón
King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, New York 10036
United States of America
Tel: +1 212 556 2100
Fax: +1 212 556 2222
Email: hburnett@kslaw.com
gaguilar@kslaw.com
cferraro@kslaw.com
rdigon@kslaw.com

-and-

Roberto Aguirre Luzi
Silvia Marchili
King & Spalding LLP
1100 Louisiana Street
Suite 4000
Houston, Texas 77002-5213

United States of America
Tel: +1 713 751 3200
Fax: +1 713 751 3290
Email: raguirreluzi@kslaw.com
smarchili@kslaw.com

B. Respondent

6. The government of Bolivia is the properly constituted *de jure* government of the people and territory of Bolivia. This Notice is served on Bolivia at each of the following addresses:

Dr. Hugo Raul Montero Lara
Procurador General del Estado
Calle Martin Cardenas No. 109,
entre Noel Kempff y
Calle 1 El Alto
La Paz, Bolivia
Tel: +591 2 2118454
Fax: +591 2 2173905

Ing. Mario Virreira Iporre
Ministro de Minas y Metalurgia de Bolivia
Av. Mariscal Santa Cruz
Edif. Centro de Comunicaciones La Paz - Piso 14
La Paz, Bolivia
Tel: +591 2 2310846
Fax: +591 2 2391241

7. Unless and until Bolivia informs South American Silver of other addressees for notices and correspondence relating to this arbitration, South American Silver will address such notices and correspondence to the First Attorney General of the State (*Procurador General del Estado*) at the address set out in paragraph 6 above.

III. FACTUAL BACKGROUND

A. Bolivia's Legal Framework for Mining Investments

8. In the 1990s, Bolivia implemented significant economic reforms and promoted a new policy aimed at attracting private investments. After a long period of economic instability, the Bolivian government focused on encouraging investments, including foreign investments, as part of their plan aimed at stimulating the growth, development and modernization of the country.

9. With the purpose of attracting foreign investments into the country, Bolivia approved a new legal framework that included certain legal commitments to prospective foreign investors. In September 1990, Bolivia enacted its law on investments (the "Investment Law") according to which: "Domestic and foreign investment is encouraged and guaranteed to promote Bolivia's economic and social growth and development, through a legal regime that will apply both to domestic and foreign investment."⁵

10. The Investment Law expressly provided that its guarantees would, in turn, be backed by bilateral and multinational investment treaties.⁶ In accordance with the new policy aimed at attracting foreign investment, Bolivia negotiated and ratified multiple bilateral investment treaties to provide a more stable framework of protections for foreign investors. Among the many investment treaties signed by Bolivia during the late 1980s and early 1990s, Bolivia and the United Kingdom signed the Treaty on 24 May 1988. The Treaty entered into force on 16 February 1990 and its extension to Bermuda entered into force on December 9, 1992.

11. Bolivia has significant mineral resources. However, the mining sector in the late 1980s was in need of significant investment in order for it to expand and support economic

⁵ Law No. 1182, 17 September 1990, published in the *Gaceta Oficial* No. 1662 on 17 September 1990, Exhibit C-5, Article 1.

⁶ *Ibid.*, Article 7.

development. One of the primary reasons that the mining sector lacked significant investment in exploration, in particular, was the lack of a comprehensive mining law that provided the necessary legal certainty to investors. Another issue was technical difficulties derived from imprecise records relating to historical concession ownership.

12. Much-needed reforms were adopted through the enactment of Law No. 1777 in 1997 (the “Mining Law”). The Mining Law provided a clearer method for acquisition of concessions, dramatically restricted the grounds upon which the validity of concessions could be challenged and created a well-functioning administrative structure to grant, supervise and operate mining concessions. Finally, it also created a tax structure with the intent to allow foreign investors, in particular, to credit taxes paid in Bolivia against taxes owed in their respective countries.

B. South American Silver’s Investment

13. South American Silver, through its 100%-owned Bahaman subsidiaries, Malku Khota Ltd., Productora Ltd. and G.M. Campana Ltd.,⁷ which together hold 100% of the shares in CMMK⁸, owned the Malku Khota mining project (“Malku Khota Mining Project”).

14. South American Silver was incorporated under the laws of the Bermuda Islands on October 7, 1994 under the name General Minerals Corporation Limited.⁹ It changed its name to South American Silver Limited on October 22, 2008, after South American Silver Corp. (“SASC”), a company incorporated on September 28, 2006, pursuant to the *Canada Business*

⁷ Certificate of Incorporation, Certificate of Good Standing and Register of Members of Malku Khota Ltd. evidencing South American Silver’s 100% stake in Malku Khota Ltd., Exhibit C-6; Certificate of Incorporation, Certificate of Good Standing and Register of Members of Productora Ltd. evidencing South American Silver’s 100% stake in Productora Ltd., Exhibit C-7; Certificate of Incorporation, Certificate of Good Standing and Register of Members of G.M. Campana Ltd. evidencing South American Silver’s 100% stake in G.M. Campana Ltd., Exhibit C-8.

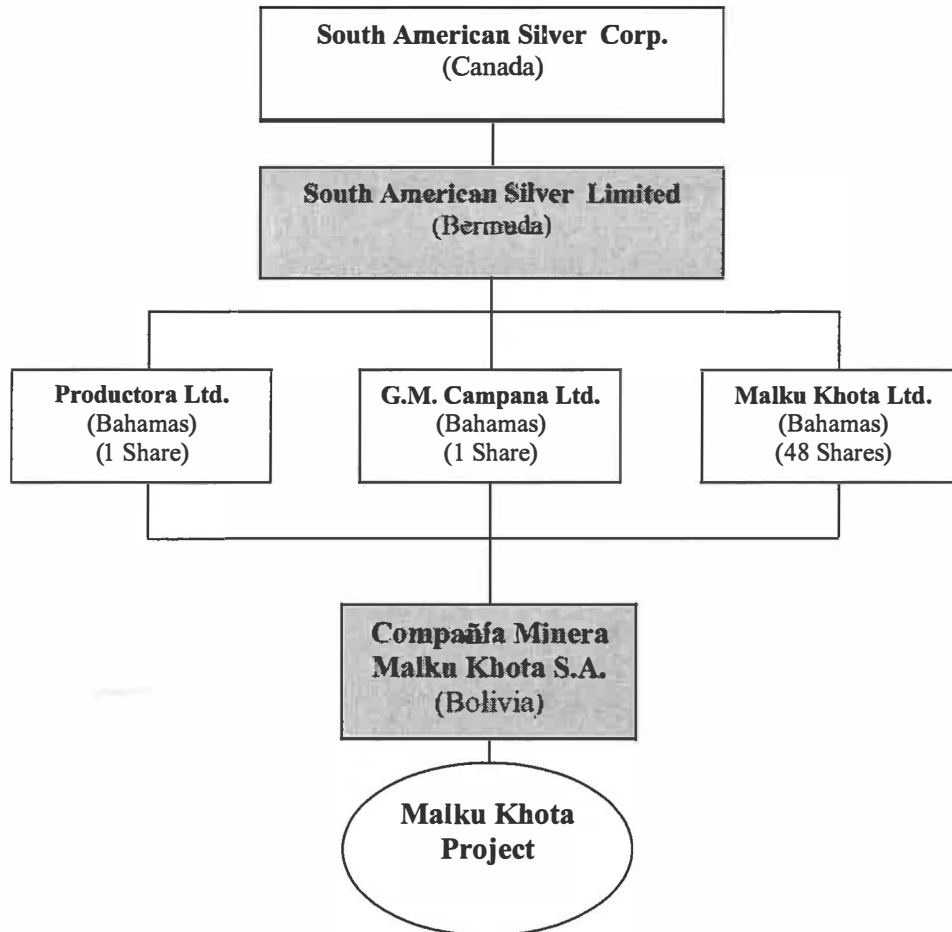
⁸ Share Certificates issued by CMMK in favor of Malku Khota Ltd., Productora Ltd. and G.M. Campana Ltd., Exhibit C-9.

⁹ Certificate of Incorporation of General Minerals Corporation Limited, Exhibit C-10.

Corporations Act, had acquired all its issued and outstanding common shares on December 18, 2006 from General Minerals Corporation.¹⁰

15. CMMK was incorporated under Bolivian law on November 7, 2003, by Public Deed No. 204/2003, before Notary Public No. 045 of La Paz (Ernesto Ossio)¹¹ with the purpose of developing mining activities, and is registered at the Commercial Registry (FUNDEMPRESA) with Commercial License (*Matrícula de Comercio*) No. 00106205.¹²

16. South American Silver indirectly holds 100% of the shares in CMMK, as illustrated in the diagram below:

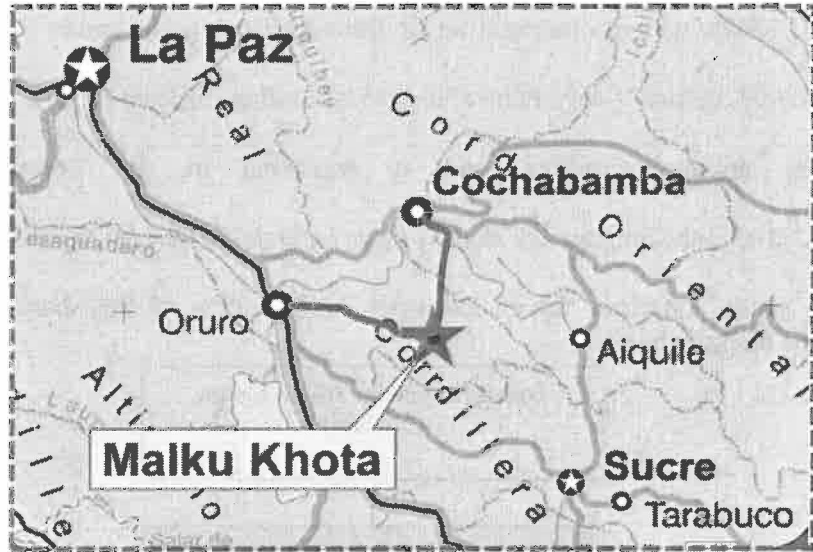


¹⁰ Certificate of Incorporation on Change of Name certifying the change of name to South American Silver Limited, Exhibit C-10.

¹¹ Incorporation of CMMK, Public Deed No. 204/2003 and Public Deed No. 228/2003, Exhibit C-11.

¹² Certificate of Registration at the Commercial Registry (*Certificado de Actualización de Matrícula de Comercio*) of CMMK, Exhibit C-12.

17. The Malku Khota Mining Project is located in the Department of Potosi, Bolivia, approximately 200 kilometers north of the city of Potosi:



18. CMMK held mineral rights to 5,475 hectares at Malku Khota covering 15km of projected strike length. At the time of expropriation, the Malku Khota Mining Project was at an advanced stage of exploration and pre-development was underway. A Preliminary Economic Assessment (“PEA”) for the Malku Khota Mining Project was completed in March 2009¹³ based on resource estimates of November 2008. A PEA Update undertaken in 2010-2011 and published in a NI 43-101¹⁴-qualified technical report dated May 10, 2011, updated the resource estimate and indicated pre-tax net present value for the project at a 5% discount rate of \$704 million at metal prices of \$18.00/oz silver and \$500/kg indium, increasing to \$1.482 billion at metal prices of \$25.00/oz silver and \$570/kg indium, and to \$2.571 billion at the metal prices of \$35.00/oz silver and \$650/kg indium.¹⁵ At the time of the expropriation, a pre-feasibility study was substantially advanced and the environmental and social impact assessments required for a definitive feasibility study preceding construction had been initiated.

19. The Malku Khota Mining Project is one of the world’s largest silver, indium and gallium resources with a NI 43-101-qualified Indicated Resource of 255 million tonnes of mineralized material containing 230.3 million ounces of silver, 1,481 tonnes of indium and 1,082 tonnes of gallium at a grade of 28.1 grams per ton of silver, 5.8 grams per tonne indium and 4.3 grams per tonne gallium (43.2 grams per tonne silver equivalent),¹⁶ and an additional Inferred Resource of 230 million tonnes containing 140 million ounces of silver, 935 tonnes of indium,

¹³ Preliminary Economic Assessment Technical Report for the Malku Khota Project, dated 13 March 2009, Exhibit C-13.

¹⁴ “National Instrument 43-101 Standards of Disclosure for Mineral Projects” as adopted by the securities regulatory authorities of Canada. NI 43-101 governs the manner of disclosure of technical and scientific information about mineral projects material to public companies, including SASC.

¹⁵ Preliminary Economic Assessment Update Technical Report for the Malku Khota Project, dated 10 May 2011, Exhibit C-14.

¹⁶ The silver equivalent calculation includes metal price values of US\$18.00/oz for silver, US\$500/kg for indium, US\$0.90/lb for lead and zinc, US\$3.00/lb for copper and US\$500/kg for gallium.

and 1,001 tonnes of gallium at a grade of 18.9 grams per tonne of silver, 4.1 grams per tonne of indium and 4.3 grams per ton of gallium (32.5 grams per tonne silver equivalent).¹⁷

20. CMMK held the following mining concessions, which together constitute the Malku Khota Mining Project:

- **Alkasi.** The concession was granted by Constitutive Resolution No. 004/2004 on January 5, 2004. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 112/2004 dated May 12, 2004 granted before the Notary Public of Potosi No. 004 (Miriam Montoya). It was transferred to CMMK on May 4, 2005 by Public Deed (*Testimonio*) No. 79/2005, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Antacuna.** The concession was granted by Constitutive Resolution No. 179/05 on August 8, 2005. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 6/2005 dated August 22, 2005 granted before the Notary Public of Potosi No. 003 (Gisela Argandoña). It was transferred to CMMK on September 22, 2006 by Public Deed (*Testimonio*) No. 102/2006, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Cobra.** The concession was granted by Constitutive Resolution dated November 14, 2001. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deeds (*Testimonio*) Nos. 731/2001 dated December 5, 2001 granted before the Notary Public of Potosi No. 001 (Ximena Prieto). It was transferred to CMMK on March 30, 2007 by Public Deed (*Testimonio*) No. 40/2007, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Daniel.** The concession was granted by Constitutive Resolution dated June 8, 2001. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 001/2002 dated January 3, 2002 granted before the Notary Public of Potosi No. 005 (Bernardino Orellana). It was transferred to CMMK on March 30, 2007 by Public Deed (*Testimonio*) No. 40/2007, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Jalsuri.** The concession was granted by Constitutive Resolution No. 001/2004 on January 6, 2004. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 113/2004 dated May 12, 2004 granted before the Notary Public of Potosi No. 004 (Miriam Montoya). It was

¹⁷ Updated PEA, p. 13, Exhibit C-14.

transferred to CMMK on May 4, 2005 by Public Deed (*Testimonio*) No. 79/2005, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).

- **Norma.** The concession was granted by Constitutive Resolution No. 231/2005 on June 9, 2005. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 109/2005 dated September 8, 2005 granted before the Notary Public of Potosi No. 005 (Lourdes Araoz). It was transferred to CMMK on April 22, 2008 by Public Deed (*Testimonio*) No. 39/2008, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Silluta.** The concession was granted by Constitutive Resolution No. 178/05 on July 18, 2005. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 5/2005 dated August 10, 2005 granted before the Notary Public of Potosi No. 003 (Gisela Argandoña). It was transferred to CMMK on September 22, 2006 by Public Deed (*Testimonio*) No. 102/2006, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Takhaua.** The concession was granted by constitutive Resolution No. 02/2004 on January 6, 2004. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 100/2004 dated April 30, 2004 granted before the Notary Public of Potosi No. 004 (Miriam Montoya). It was transferred to CMMK on May 4, 2005 by Public Deed (*Testimonio*) No. 79/2005, granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Takhuani.** The concession was granted by constitutive Resolution No. 003/2004 on January 5, 2004. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 99/2004 dated April 30, 2004 granted before the Notary Public of Potosi No. 004 (Miriam Montoya). It was transferred to CMMK on May 4, 2005 by Public Deed (*Testimonio*) No. 79/2005 granted before Notary Public No. 045 of La Paz (Ernesto Ossio).
- **Viento.** The concession was granted to CMMK by constitutive Resolution No. 155/2007 on April 5, 2007. Executorial Title was granted by the Regional Superintendent of Mines Potosi - Chuquisaca as described in Public Deed (*Testimonio*) No. 141/2007 dated June 5, 2007 granted before the Notary Public of Potosi No. 004 (Miriam Montoya).

C. South American Silver's Activities at the Malku Khota Mining Project

21. In connection with the Malku Khota Mining Project, South American Silver has spent millions of dollars in exploration and development activities including:

- geological mapping and geophysical surveys;

- underground and surface channel sampling;
- surveying;
- more than 40,000 meters of drilling;
- metallurgical testing (including extensive acid-chloride and cyanide leach testing) and geochemical surface testing;
- kinetic tests and acid optimization testing;
- engineering cost studies;
- evaluation of mining and treatment options;
- hydrology and hydrogeology studies;
- resource modeling and mineral resource estimates;
- groundwork for environmental and social baseline studies;
- power supply study;
- two weather and data collection stations;
- construction of exploration camps for workers and site visits;
- consulting and supervision;
- preliminary economic assessment studies, updated preliminary economic assessment studies, work toward pre-feasibility study;
- institution of health, agrarian and other programs and facilities for the local indigenous communities;
- investment in property;
- land and options payments;
- database creation, verification and maintenance; and
- intellectual property and rights pursuant to law such as licenses and permits.

22. Claimant also incurred millions of dollars in general and administrative expenses including, but not limited to, consulting services, directors' fees, filing and transfer agent fees,

office and miscellaneous expenses, professional fees, depreciation and amortization of property and equipment, travel expenses, and wages and benefits to employees and contractors related to the Malku Khota Mining Project.

23. CMMK knew that within the area of the Malku Khota Mining Project exist several “rural native indigenous peoples.” Rural native indigenous peoples are organized into “ayllus” which are areas with common ancestral roots that include several communities within their boundaries. The “ayllu” organization was inherited from the Inca empire. The indigenous communities in and around the Malku Khota Mining Project belong to the Aymara and Quechua ethnic groups. There are approximately six ayllus in and around the Malku Khota Mining Project which, in turn, include many different communities, each with its own leadership and with, very often, divergent interests.

24. Indigenous communities often engage in small-scale illegal mining activities themselves and/or try to establish mining “cooperatives” to illegally mine resources on their land on a larger scale. In addition, people from outside the indigenous communities also establish mining cooperatives frequently clash with the communities themselves. The mining cooperatives have significant political power in the country and most are fervent supporters of the administration of President Evo Morales, who is Aymara and frequently invokes his indigenous roots.

25. CMMK understood that good relations with the ayllus and communities was important for the success of the Malku Khota Mining Project. Against this complex, historical, geographical, cultural and political landscape, CMMK undertook good faith efforts to establish positive relations with the ayllus and communities. This involved a process of approaching and meeting with communities and community leaders, providing an explanation of planned exploration, development and mining activities and timelines, entering into various agreements

of reciprocal cooperation, including community members in the workforce and establishing programs for the community in the areas of education (scholarships and educational assistance), infrastructure development, healthcare, agricultural enhancement, livestock breeding, health and welfare, water management and job training.

26. These efforts and projects involved significant expenditures of time and money as well as the use of outside experts and consultants, local community members and company employees in order to try to understand and reconcile what at times were extremely divergent interests on the part of the different communities.

27. The Government, including that of the Department of Potosi, has had extensive experience in addressing and resolving issues related to indigenous communities as well as conflicts between communities themselves and between communities and domestic and foreign investors involved in various industry sectors, including mining, oil & gas, electricity and others.

28. Despite requests by CMMK for assistance during times of disturbance and violence fomented by elements opposed to the Malku Khota Mining Project, the Government provided no meaningful assistance or guidance to help solve the problems.

D. Events Leading Up to the Expropriation of the Malku Khota Mining Project

29. In early 2012, when some tensions arose with local communities in the Malku Khota area, the Government initially purported to support CMMK's mining rights. As late as May 28, 2012, Mario Virreira, the Minister of Mining and Metallurgy, Felix Gonzales, the Governor of the Department of Potosi, Gunar Periera, Director of Environmental Protection, Juan de la Cruz Willka, a representative of the Ministry of the Presidency, and other governmental officials entered into an agreement with five of the six relevant ayllus. This agreement was reflected in minutes of a meeting between them that included that: (i) CMMK should continue its exploration activities; (ii) CMMK's concessions should be respected; (iii)

activities of the company that had been paralyzed, namely fixing schools and houses, building roads and providing training should be continued; (iv) school classes that had been suspended should resume immediately; (v) health facilities that had been abandoned should resume operation; and (vi) police security should be provided in key places.¹⁸

30. The efforts to foster positive relations with the indigenous communities were largely successful as a vast majority of the indigenous communities were supportive of the Malku Khota Mining Project, while others were not. In June 2012, however, organized opposition from a faction of local communities supported by activists from outside the Malku Khota area led to tensions and threatened the safety of CMMK's employees and local communities. Among other violent incidents, on June 28, 2012, two CMMK employees were taken hostage and held captive for 11 days by opponents of the Malku Khota Mining Project.

31. Despite the May 28 agreement confirming the validity of the concessions and agreeing that work should continue, on July 7, 2012, the Government reversed course and withdrew its support for CMMK and agreed that the Government would revoke CMMK's mining concessions. "Minutes of Understanding" reflect the new agreements reached between them.¹⁹ Present at the meeting were Daniel Santalla Torres, the Minister of Labor, Tiburcio Aguilar, the Vice-Minister of Employment, Cooperatives and Civil Service, Jorge Villca Condori, Vice Minister of Mining Policy, Rene Navarro Miranda, the Secretary General of Coordination for the Governorship of Potosi also acting as representative of the Plurinational State of Bolivia, and representatives of the indigenous communities, corresponding to the five provinces located in northern Potosi, also representing the Bartolinas (an organization of

¹⁸ Minutes of Meeting on the Malku Khota Case dated May 28, 2012, Exhibit C-15.

¹⁹ Minutes of Understanding, dated 7 July, 2012, Exhibit C-16.

indigenous women), and Mrs. Elena Argandoña, representing the Permanent Assembly of Human Rights and Dr. Rene Arroyo, representing the Ombudsman the Government.

32. Among other issues discussed, the parties agreed that CMMK's mining concessions would be annulled and would be reverted to the Plurinational State of Bolivia.²⁰ The Minutes go on to state that the five provinces of northern Potosi had reached consensus in that regard. Finally, the Minutes state that a Supreme Decree would be issued to implement the agreement reached on a date to be agreed with the President of the Plurinational State of Bolivia.

33. On July 9, 2012, the Government reiterated its intention to revoke CMMK's mining concessions in a public statement by President Morales. Despite the May 28 Agreement supporting continued exploration and activities at the Malku Khota Mining Project, through press releases the President, the Vice-President, Alvaro Garcia Linera, and the Minister of Communications, Amanda Davila revealed that it had actually been the Government's intention to nationalize the Malku Khota Mining Project up to a year prior to these events.

34. Various parties were then summoned to a meeting in La Paz by President Evo Morales and, according to a document titled "Agreement" signed at the meeting, the meeting was attended by Benedicto Aguilar and Leonardo Montaña, representatives of the ayllus from San Pedro de Buena Vista and Sacaca, the union leaders of northern Potosi, Mario Virreira, the Minister of Mining and Metallurgy, Daniel Santalla, the Minister of Labor and Felix Gonzales, the Governor of Potosi.²¹ The Agreement states that the parties agreed to the following:

- a technical commission would be formed to draft the Supreme Decree revoking CMMK's concessions;
- all exploration and exploitation activities in the area would be suspended;

²⁰ *Ibid.*

²¹ Agreement dated July 10, 2012, Exhibit C-17.

- the State would be in charge of all of the productive activities in the Malku Khota mining area;
- peaceful co-habitation of all of the peoples and communities would be guaranteed;
- the houses unlawfully occupied would be returned to their legitimate owners; and
- the Attorney General's office would carry out the necessary investigations into the events that took place in the region.

35. In response to public statements by the Government, on July 21, 2012, the President of the Board of Directors and General Manager of CMMK wrote to the Minister of Mines and Metallurgy, Mario Virreira Iporre, and requested a meeting “with the goal of resolving the current situation and enable the continuation of the [Malku Khota] mining project...”²² In early July, the Canadian Ambassador to Peru and Bolivia, also met with the Government in order to discuss the problems at the Malku Khota Mining Project, but those meetings did not result in any progress toward resolving the Government's newly adopted stance that the lawful concessions would be revoked.

36. Thereafter, in a further effort to meet with the Government, on July 31 2012, Ralph G. Fitch, President of South American Silver, and Greg S. Johnson, President of SASC wrote to Vice President Alvaro Garcia Linera to request a meeting “to discuss the present situation related to our important investment in Bolivia in an effort to explore potential avenues of resolution.”²³

²² Letter from CMMK to the Minister of Mines dated July 21, 2012, Exhibit C-18.

²³ Letter from South American Silver and SASC to the Vice President of Bolivia, dated July 31, 2012, Exhibit C-19.

E. Bolivia Expropriates the Malku Khota Mining Project

37. On August 1, 2012, President Morales issued the Expropriation Decree²⁴ illegally revoking Malku Khota's mining concessions and transferring the administration and development of the Malku Khota Mining Project to the Bolivian Mining Corporation ("COMIBOL") and stating that no other mining company that is not state-owned is permitted to engage in mining activities related to the Malku Khota Mining Project.

38. The Expropriation Decree provided that COMIBOL would retain an independent valuation firm within 120 business days to render a valuation of South American Silver's expropriated investments for purposes of compensation.²⁵ However, despite the commitment in the Expropriation Decree, to date no valuation firm has been retained and no compensation has been paid or offered to South American Silver.

39. On August 7, 2012, within a week of the Expropriation Decree, Hector R. Cordova, the former President of COMIBOL who has since resigned, made public statements that the Government had already contacted five Chinese companies seeking assistance with the technical aspects and human resource needs to exploit the indium deposits at Malku Khota.

40. Thereafter, by letter dated August 24, 2012 addressed to South American Silver, but delivered to CMMK on August 27, 2012, Hector Cordova, stated:

Based upon the Supreme Decree No. 1308 of August 1, 2012, whereby the Malku Khota mining deposit was reversed to the State of Bolivia and subject to the provisions thereof, you are hereby invited to a meeting on Tuesday, August 28, 2012 at 9:00 a.m. in order for you to hand over all relevant documents related to the development of the activities of said mining deposit.²⁶

²⁴ Expropriation Decree, Exhibit C-4, Article 2.

²⁵ *Ibid.*, Article 4.

²⁶ Letter from COMIBOL addressed to South American Silver dated August 24, 2012, Exhibit C-20.

41. By letter dated September 4, 2012, Alastair Macdonald, a Director and Vice President of South American Silver wrote to COMIBOL advising that it was not practicable to appear for a meeting in La Paz on August 28, 2012 as South American Silver personnel were not resident in La Paz.²⁷ South American Silver advised COMIBOL that it would be pleased to discuss COMIBOL's proposal and requested a prompt meeting on a mutually acceptable date. Bolivia did not respond to this letter.

F. South American Silver Notified Bolivia of the Dispute and the Claim Under the Treaty

42. On October 23, 2012, South American Silver sent via facsimile the Notice of Dispute under the Treaty to the Minister of Mining and Metallurgy. The next day, South American Silver served the Notice of Dispute by hand delivery to the Minister of Mining and Metallurgy and the First Attorney General of the State²⁸ and unsuccessfully attempted to serve a copy on the office of the President, as they refused to accept the communication. Thereafter, South American Silver sent letters dated December 12, 2012, January 16, 2013 and February 15, 2013, all of which reiterated South American Silver's willingness to attend meetings with Government representatives, in good faith, to seek an amicable settlement of the dispute, within the six-month waiting period provided for the Article 8(1) of the Treaty.²⁹

43. It was not until February 21, 2013, that the Attorney General of Bolivia sent a letter to Alastair Macdonald, Director and Vice President of South American Silver, summoning South American Silver to appear on April 17, 2013 for a meeting at the Ministry of Mining and

²⁷ Letter from South American Silver to COMIBOL dated September 4, 2012, Exhibit C-21.

²⁸ Notice of Dispute from South American Silver dated October 22, 2012, Exhibit C-22.

²⁹ Letters from South American Silver dated December 12, 2012, January 16, 2013 and February 15, 2013, Exhibit C-23.

Metallurgy in La Paz, to discuss alternative amicable resolutions related to Supreme Decree No. 1308.³⁰

44. By letter dated March 4, 2013, South American Silver confirmed receipt of the Government's letter and advised the Government that in order to be in a better position to decide who should attend the meeting, it would like the Government to provide the Government's objectives for the meeting, an agenda of specific topics that the Government representatives wished to discuss, and a list of the names of the Government representatives who would attend the meeting.³¹ South American Silver also proposed that the meeting take place via videoconference or, alternatively, in a neutral location outside of Bolivia such as Lima, Peru, Santiago, Chile or Buenos Aires, Argentina. The Government never responded to this request for information.³²

45. Nevertheless, and despite Bolivia's failure to provide the requested information, South American Silver attended a meeting with Government representatives on April 17, 2013, in a good faith effort to resolve the dispute amicably. However, no resolution was achieved and the Government made no offer of compensation whatsoever, but requested information as a precondition to any further discussions. South American Silver has provided the Government with the information requested and will continue efforts to reach an amicable settlement of the dispute.³³

³⁰ Letter from the Attorney General of Bolivia dated February 21, 2013. Exhibit C-24.

³¹ Letter from South American Silver to the Attorney General of Bolivia, dated March 4, 2013, Exhibit C-25.

³² Letter from South American Silver dated April 12, 2013, Exhibit C-26.

³³ Letter from South American Silver dated April 24, 2013, Exhibit C-27.

IV. RESPONDENT'S CONDUCT BREACHED ITS OBLIGATIONS UNDER THE TREATY AND INTERNATIONAL LAW

A. Bolivia Expropriated South American Silver's Investments without Just and Effective Compensation Contrary to the Treaty and International Law

46. Article 5 of the Treaty provides that:

(1) Investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose and for a social benefit related to the internal needs of that Party and against just and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial or legal rate, whichever is applicable in the territory of the expropriating Contracting Party, until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have the right to establish promptly by due process of law in the territory of the Contracting Party making the expropriation the legality of the expropriation and the amount of the compensation in accordance with the principle set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.³⁴

47. Through the Expropriation Decree, Bolivia has expropriated the entirety of South American Silver's investments in Bolivia,³⁵ namely its 100% interest in the Malku Khota Mining Project, without just and effective compensation, contrary to Article 5 of the Treaty and

³⁴ Treaty, Exhibit C-1, Article 5.

³⁵ Expropriation Decree, Exhibit C-4, Article 2.

international law. More than eight months after the expropriation of its investment, South American Silver has not received any compensation for the expropriation of its mining project.

B. Bolivia Has Treated South American Silver's Investments Unfairly and Inequitably, Has Failed to Provide Full Protection and Security and Has Impaired Them Through Unreasonable and Discriminatory Measures, Contrary To the Treaty

48. Article 2(2) of the Treaty provides that:

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall, in any way, impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.³⁶

49. By depriving South American Silver's of its investments, Bolivia has acted unfairly and inequitably in breach of the fair and equitable treatment standard provided under Article 2(2) of the Treaty, and has impaired the management, maintenance, use, enjoyment and disposal of South American Silver's investment, through unreasonable and discriminatory measures, contrary to Article 2(2) of the Treaty.

50. In addition, despite requests and the Government's obligations under the Treaty, Bolivia failed to provide full protection and security to South American Silver's investments, allowing, among others, illegal mining activities to be carried out in the Malku Khota Mining Project area and certain groups opposing the project to attack the Malku Khota Mining Project site, injure CMMK's personnel and cause significant damage to South American Silver's investments.

³⁶ Treaty, Exhibit C-1, Article 2.

C. Bolivia Has Treated South American Silver's Investment Less Favorably Than It Treats the Investments of Its Own Nationals and Nationals of Third States

51. Article 3 of the Treaty provides that:

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their managements, use enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own nationals or companies or to nationals or companies of any third State.³⁷

52. Bolivia has treated South American Silver and its investment less favorably than it treats Bolivian companies, their investments, and companies and investments from other States, among others, with respect to the treatment South American Silver received when requesting the Government's assistance to protect its investment and the sudden and unwarranted revocation of its mining concessions.

D. Bolivia Has Not Observed Its Obligations with Regards to South American Silver's Investment

53. Article 2(2) of the Treaty provides, in the relevant part, that:

Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.³⁸

54. Bolivia breached its legal obligations and specific commitments with respect to South American Silver's investment by, among others, failing to uphold South American Silver's concessions and formally reverting the concessions in favor of the State.

³⁷ *Ibid.*, Article 3.

³⁸ *Ibid.*, Article 2.

V. AGREEMENT TO ARBITRATE

55. Article 8 of the Treaty provides Bolivia's express and unequivocal consent to resolve disputes with UK companies through international arbitration:

(1) Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been legally and amicably settled shall after a period of six months from written notification of a claim be submitted to international arbitration if either party to the dispute so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or

(b) the Court of Arbitration of the International Chamber of Commerce; or

(c) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of six months from written notification of the claim there is no agreement to an alternative procedure, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.³⁹

56. Thus, under Article 8 of the Treaty, an investor may pursue arbitration in accordance with the UNCITRAL Rules if: (i) the dispute involves an obligation of Bolivia under the Treaty, (ii) the investor has submitted to Bolivia a written notification of its claims, and (iii)

³⁹ *Ibid.*, Article 8.

at least six months have elapsed from the written notification of the claim and the dispute has not been settled. South American Silver has satisfied each of these requirements.

57. Pursuant to Article 8(1) of the Treaty, South American Silver provided the Government formal notice of the dispute on October 23, 2012 and sought the commencement of negotiations and consultations for its amicable settlement. On that date, South American Silver submitted via facsimile a written notification of the claims arising under the Treaty to the Government.⁴⁰ The six-month period to pursue legal and amicable negotiation pursuant to Article 8(1) of the Treaty has since elapsed and the parties have been unable to reach an amicable settlement of their dispute during this period.

58. The Treaty constitutes Bolivia's consent to arbitration. The consent of South American Silver is constituted and provided by this Notice, by which the dispute is duly submitted to arbitration under the UNCITRAL Rules pursuant to Article 8 of the Treaty.

59. South American Silver and Bolivia have not agreed on any of the alternative procedures established in Article 8(2)(a) to (c) of the Treaty to resolve the dispute within six months of the written notification of the claim. Accordingly, the dispute is validly submitted to arbitration under the UNCITRAL Rules pursuant Article 8(2), final paragraph, of the Treaty.

VI. SOUTH AMERICAN SILVER'S INVESTMENTS ARE PROTECTED UNDER THE TREATY

60. South American Silver is a protected investor with protected investments in accordance with terms of the Treaty. The Treaty applies to the qualifying "investments" of "companies", as defined by the Treaty, made within the territory of Bolivia.⁴¹

⁴⁰ Notice of Dispute from South American Silver dated 22 October 2012, Exhibit C-22. On 23 October 2012, South American Silver sent via facsimile the Notice of Dispute under the Treaty to the Minister of Mining and Metallurgy. Additionally, South American Silver served the Notice of Dispute by hand delivery to the Minister of Mining and Metallurgy and the First Attorney General of the State on October 24, 2012.

⁴¹ *Ibid.*, Article 1(a) and (d)(i).

61. South American Silver fulfils these requirements: it is a company constituted under the laws of the Bermuda Islands, an overseas territory of the United Kingdom, with protected investments in Bolivia, as explained below.

A. South American Silver Is A “Company” Protected Under the Treaty

62. The protections of the Treaty apply to “companies” of a Contracting Party.

Article 1(d) of the Treaty defines “companies”, in respect of the United Kingdom, as:

corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 11⁴²

63. Under Article 11 of the Treaty its provisions may be extended:

to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.⁴³

64. South American Silver is a company incorporated under the laws in force in the Bermuda Islands, an overseas territory of the United Kingdom.⁴⁴ The application of the Treaty was extended to Bermuda by an Exchange of Notes at La Paz dated December 3 and 9, 1992 (the “Notes”). The Notes entered into force on December 9 1992;⁴⁵ thus, as of this date, corporations, firms and associations incorporated or constituted under the laws of Bermuda qualify as “companies” of the United Kingdom under Article 1(d) of the Treaty. Thus, South American Silver is a qualifying “company” under the Treaty.

⁴² *Ibid.*, Exhibit C-1, Article 1(d) (emphasis added).

⁴³ *Ibid.*, Exhibit C-1, Article 11.

⁴⁴ See paragraph 14 *supra* and Exhibit C-10.

⁴⁵ Statement by the UK on the Exchange of Notes at La Paz, dated December 3 and 9, 1992, extending the Treaty to Bermuda, Exhibit C-2.

B. South American Silver Has Made Qualifying Investments In Bolivia

65. Article 1(a) and 1(b) of the Treaty provides a broad definition of what constitutes an investment protected by the Treaty:

(a) “investment” means every kind of asset which is capable of producing returns and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other form of participation in a company;

(iii) claims to money or to any performance under contract having a financial value;

(iv) intellectual property rights and goodwill;

(v) any business concessions granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their characters as investments. Investments made before the date of entry into force as well as those made after entry into force shall benefit from the provisions of this Agreement;

(b) “returns” means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.⁴⁶

66. As described in Section III.B. above, South American Silver, through its wholly owned Bahaman subsidiaries, owns 100% of the shares in CMMK, a company established under the laws of Bolivia. The mining concessions that were held by CMMK, described in paragraph 20 *supra*, qualify as an “investment” under Article 1(a)(v) of the Treaty. As detailed in *supra* Section III.C., paragraph 21, in connection with the Malku Khota Mining Project, South

⁴⁶ Treaty, Exhibit C-1, Article 1.

American Silver spent millions of dollars in exploration and development activities adding significant value to those mining concessions.

67. South American Silver has therefore made significant investments in Bolivia that fall within the definition of “investment” under the Treaty. South American Silver’s investments are thus protected by the Treaty.

VII. NUMBER AND APPOINTMENT OF ARBITRATORS

68. The Arbitration Agreement does not specify the number of arbitrators to hear and decide the dispute. Pursuant to Article 7 of the UNCITRAL Rules, South American Silver proposes that this dispute be adjudicated by a panel of three (3) arbitrators, one arbitrator to be appointed by South American Silver, one by the Respondent, and the President of the Tribunal to be chosen by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after the nomination by Bolivia of their party-appointed arbitrator.

69. Pursuant to Article 9 of the UNCITRAL Rules, Claimant hereby appoints Professor Francisco Orrego Vicuña as its party-appointed arbitrator. Professor Orrego Vicuña may be contacted at:

Francisco Orrego Vicuña
Avenida El Golf No. 40, 6° piso
Santiago 755-0107
Chile

Tel: +56 2 441 6300
Fax: +56 2 441 6398
Email: forregovicuna@20essexst.com

VIII. PLACE, ADMINISTRATION AND LANGUAGE OF THE ARBITRATION

70. As the parties have not agreed upon the place where the arbitration is to be held, it will be for the Tribunal, once constituted, to determine the place of arbitration pursuant to Article 18 of the UNCITRAL Rules. The Claimant requests that the arbitration have its seat in a neutral city where neither Claimant or Respondent is based, and one that is not only conveniently

located but also located in a country that is a party to the New York Convention. South American Silver proposes New York City in the United States of America as the place of the arbitration.

71. South American Silver considers that it would be appropriate to designate an institution to provide appointing and administrative services, and technical and secretarial assistance to this arbitration and hereby proposes that the Secretary-General of the Permanent Court of Arbitration at the Hague (hereinafter “PCA”) serve as both appointing authority and administrator of these proceedings.

72. The Tribunal, once constituted, shall determine the language of the arbitration in accordance with Article 19 of the UNCITRAL Rules. South American Silver proposes English as the working language of the arbitration.

IX. REQUEST FOR RELIEF

73. For the reasons stated herein, without limitation and fully reserving its right to supplement this request, South American Silver respectfully requests an award granting the following relief:

- a) A declaration that Bolivia has breached the Treaty and international law, and in particular, that it has:
 - (i) expropriated South American Silver’s investments in violation of Article 5 of the Treaty and international law;
 - (ii) failed to accord South American Silver’s investments fair and equitable treatment and full protection and security, and impaired them through unreasonable and discriminatory measures, in violation of Article 2(2) of the Treaty and international law;
 - (iii) treated South American Silver’s investment less favorably than it treated the investments of its own nationals and nationals of third States, in violation of Article 3 of the Treaty; and
 - (iv) failed to observe its obligations with regards to South American Silver’s investments, in violation of Article 2(2) of the Treaty.

- b) An award to compensate South American Silver for Bolivia's breaches of the Treaty and international law in an amount to be determined at the appropriate stage in these proceedings, in any freely convertible currency accepted by South American Silver, plus interest until full payment of the award is made;
- c) An award to compensate South American Silver for moral damages caused by Bolivia;
- d) Any other relief the Tribunal may deem just and proper; and
- e) An award to South American Silver for all the costs of this arbitration proceeding, including the fees and expenses of the Tribunal, the fees and expenses of the institution which is selected to provide appointing and administrative services and assistance to this arbitration, the fees and expenses relating to South American Silver's legal representation, and the fees and expenses of any expert appointed by South American Silver or the Tribunal, plus interest.

Respectfully submitted,

KING & SPALDING LLP



Henry G. Burnett
Guillermo Aguilar Alvarez
Cristina Ferraro
Rocio Digón
1185 Avenue of the Americas
34th Floor
New York, New York 10036
United States of America
Tel: +1 212 556 2100
Fax: +1 212 556 2222
Email: hburnett@kslaw.com
gaguilar@kslaw.com
cferraro@kslaw.com
rdigon@kslaw.com

and

Roberto Aguirre Luzi
Silvia Marchili
King & Spalding LLP
1100 Louisiana Street

Suite 4000
Houston, Texas 77002-5213
United States of America
Tel: +1 713 751 3200
Fax: +1 713 751 3290
Email: raguirreluzi@kslaw.com
smarchili@kslaw.com

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COUNSEL FOR CLAIMANT