

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bear Creek Mining Corporation

v.

Republic of Peru

(ICSID Case No. ARB/14/21)

PROCEDURAL ORDER NO 10 (PO-10)

Regarding the Procedure after the Hearing

Date of the Order: September 15, 2016

Members of the Tribunal

Prof. Karl-Heinz Böckstiegel, President of the Tribunal

Dr. Michael Pryles, Arbitrator

Prof. Philippe Sands QC, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski

Assistant to the Tribunal

Dr. Katherine Simpson

Taking into account the discussion and the agreements reached with the Parties at the Hearing held in Washington D.C. from September 7 to September 14, 2016, the Tribunal issues this Procedural Order No. 10 as follows:

1. **Corrections to the Transcript of the Hearing**

- 1.1 **By November 2, 2016**, the Parties shall consult with each other in respect of any amendments to the Transcripts of the Hearing that they wish to make for submission to the Secretary of the Tribunal, for transmittal to the Court Reporters. The Parties are to provide one agreed version incorporating all revisions to the Transcripts. To such effect, the Parties should use the Word files provided by the Court Reporters for this purpose, and incorporate the amendments using track changes (in colors) visible for everyone to see. The Court Reporters shall finalize the corrected version of the Transcripts on this basis for resubmission to the Parties and Tribunal.
- 1.2 In the event that a Party contests a particular correction, this should be indicated in a separate document reflecting each Party's position, which is to be sent to the Secretary of the Tribunal, for transmittal to the Court Reporters. The Court Reporter shall in this respect verify the accuracy of the transcript on the basis of the audio recording

2. **Post-Hearing Briefs**

- 2.1 **By December 21, 2016**, the Parties shall simultaneously submit Post-Hearing Briefs, limited to a maximum of 65 pages (double-spaced) in length and in font *Times Roman* 12, containing the following:
- 2.1.1. Any comments they have regarding issues raised at the Hearing;
- 2.1.2. In case a legal expert has not been examined at the Hearing, any further comments regarding the opinions of the legal experts;
- 2.1.3. Any comments they have regarding the new submission by DHUMA which was authorized during the Hearing;
- 2.1.4. In **separate sections** of the brief, any comments the Parties have regarding the following questions of the Tribunal (which are without prejudice as to the final relevance given by the Tribunal to such questions and the comments received):
- a) What is the standard by which the Tribunal is to determine whether Claimant sufficiently reached out to the relevant communities needed to obtain a Social License?
- i. Which national and international legal provisions are applicable to informing that standard?
- ii. Insofar as the State authorities have any discretion in this regard, what are the limits?

- iii. What actions were legally required of Claimant in seeking to obtain a Social License, and did the Claimant take these actions?
 - iv. In the present case, what were the State authorities' responsibilities in relation to obtaining a Social License?
 - v. As a matter of law, what are the consequences that follow from an absence of support on the part of one or more relevant communities, or parts thereof, in relation to this investment?
- b) Did the Claimant make all required disclosures in making its application for a Public Necessity Decree? If not, what are the consequences for this case, including for the jurisdiction of the Tribunal?
- c) What was the basis for the decision to issue Supreme Decree 032, and on what evidence did the State authorities rely?
- d) Of the two reasons relied upon by Respondent for Decree 032, could that Decree also have been legally issued, if only one of the two reasons could be established:
- i. only the alleged illegality of the Claimant's Application?
 - ii. or only the unrest as it existed at that time?
- e) What are the monetary amounts that the Tribunal should award to the Claimant if it were to conclude that:
- i. the Claimant's alleged investment was lawfully expropriated?
 - ii. the Claimant's alleged investment was unlawfully expropriated?
 - iii. Respondent breached its obligations under the FTA for FET or other obligations under other provisions of the FTA?
 - iv. if the Tribunal was to find that the Claimant had contributed to the social unrest that occurred in the spring of 2011 – by act or omission - how should such a contribution be taken into account in determining matters of liability and/or quantum?
- f) Was the Claimant denied due process in the procedure leading to the promulgation of Supreme Decree 032, or otherwise?

- 2.2. **By February 15, 2017**, the Parties shall simultaneously submit a **second round** of Post- Hearing Briefs, limited to a maximum of 30 pages (double-spaced) in length and in font *Times Roman 12*, but only in rebuttal to the first round Post-Hearing Briefs of the other side.
- 2.3. No new documents may be enclosed to the Post-Hearing Briefs unless a party shows that exceptional circumstances require such an enclosure and unless the Tribunal has granted prior leave for such an enclosure. Applications for such leave shall be submitted to the Tribunal no later than four weeks before the deadline for submission of the respective Post-Hearing Brief in order to give the other Party time to comment within three days, the Tribunal time to decide, and the Parties time to take that decision into account.

3. Cost Claims

- 3.1. **By March29, 2017**, the Parties shall simultaneously submit their Statements of Costs, without further argumentation.
- 3.2. **By April 14, 2017**, the Parties shall simultaneously submit any comments on the Statement of Cost submitted by the other side, together with a brief submission dealing with the basis on which cost should be allocated.

On behalf of the Tribunal

[*SIGNED*]

Karl-Heinz Böckstiegel
President of Tribunal
Date: September 15, 2016