

**In the Arbitration under the Convention on the Settlement of Investment Disputes
Between States and Nationals of Other States and the
United States-Peru Trade Promotion Agreement**

**FREEPORT-MCMORAN INC.
on its Own Behalf and on Behalf of
SOCIEDAD MINERA CERRO VERDE S.A.A.**

Claimant

— v. —

THE REPUBLIC OF PERU

Respondent

CLAIMANT'S NOTICE OF ARBITRATION

Donald Francis Donovan
Dietmar W. Prager
Laura Sinisterra
Nawi Ukabiala
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
USA
T: +1 (212) 909-6000

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Pursuant to Articles 10.16.1(a), (b) and 10.16.3 of the United States–Peru Trade Promotion Agreement (the “TPA”) and Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “ICSID Convention”), Freeport-McMoRan Inc. (“Freeport” or “Claimant”) and Freeport on behalf of Sociedad Minera Cerro Verde S.A.A. (“SMCV”), hereby submit this Notice of Arbitration against the Republic of Peru (“Peru” or the “Government”) for claims arising out of their investments in Cerro Verde, an open-pit copper and molybdenum mining complex located in the Arequipa Province of Peru.

I. INTRODUCTION

1. This Notice of Arbitration arises out of Peru’s violations of the contractual commitments it made more than 20 years ago to induce Freeport and SMCV to invest hundreds of millions of dollars into the Peruvian economy, Peru’s arbitrary imposition of penalties and interest against SMCV, and Peru’s efforts to sanitize its breaches through tainted proceedings before the Tax Tribunal that have violated Freeport’s and SMCV’s due process rights.

Breach of the Stability Agreement

2. In February 1998, the Government entered into a Stability Agreement with SMCV (the “Stability Agreement”) by which Peru granted SMCV administrative and fiscal stability for a 15-year period ending on 31 December 2013. The Stability Agreement extended the stabilization benefits to SMCV’s sole Mining Concession and its sole Beneficiation Concession at Cerro Verde—one of the world’s most productive copper mines.

3. Stability agreements, such as the one signed with SMCV, provide investors with the predictability needed to make immense, long-term investments without fear that a changing tax or administrative regime will destroy the value of their investments. Stability agreements are especially crucial in the mining industry, which is exceptionally capital-intensive, often requiring hundreds of millions or even billions of dollars of investments before the revenues from those investments can be recovered, often many years or even decades into the future. In short, as the Peruvian Mining Law recognizes, stability agreements serve the purpose of “promoting investment into the mining sector and facilitating the financing of mining projects.”¹

4. As the Government intended, Freeport and SMCV relied on the Stability Agreement and invested hundreds of millions of dollars to develop the Cerro Verde mine,

¹ **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 72.

including US\$240 million to expand the leaching and mining operations and to study the feasibility of a flotation plant, and subsequently a further US\$850 million in a flotation plant (the “Flotation Plant”).

5. Peru has derived massive benefits from those investments. In 2018, Cerro Verde generated an average impact amounting to a remarkable 2% of Peru’s entire GDP and 29% of Arequipa’s GDP. SMCV’s investments have created employment for thousands of workers. In the Arequipa province, SMCV’s tax contributions accounted for over two-thirds of all tariffs and nearly half of all income taxes collected between 2005 and 2010. Moreover, since 2004, SMCV has gone above and beyond its legal obligations by voluntarily contributing millions of dollars to fund social initiatives for the benefit of the community in which it operates.

6. However, after receiving hundreds of millions of dollars from SMCV in investments, taxes and voluntary contributions, the Government reneged on its contractual obligation to provide SMCV with fiscal and administrative stability. In an abrupt about-face in 2009, the Government began assessing royalties on minerals processed by SMCV’s Flotation Plant under a Royalty Law that had been enacted in 2004, even though the Government itself had publicly recognized that SMCV was exempt from royalties by operation of the Stability Agreement. The Government also began assessing new taxes related to the Flotation Plant based on tax modifications and new tax rules.

7. The Government based its Assessments on a completely novel and restrictive interpretation of the stabilization benefits granted under the Mining Law and Regulations and the Stability Agreement pursuant to which the stabilization benefits applied only to the investments set forth in the feasibility study that the investor must submit to obtain the stability agreement. Under the Government’s interpretation, only SMCV’s leaching facility was covered by the Stability Agreement but not SMCV’s Flotation Plant. The Government adopted this novel and restrictive interpretation years after it had signed the Stability Agreement, and after Freeport and SMCV had made their US\$850 million investment in the Flotation Plant in reliance on the terms of the Stability Agreement.

8. The Government’s novel and restrictive interpretation does not find any support in the terms of the Stability Agreement. On the contrary the Stability Agreement expressly notes that the Agreement arises from SMCV’s request for stabilization benefits “in relation with the investment *in its concession*”—not any subpart of the concession—and expressly provides further that the stabilization benefits apply “*to the concessions* [listed] in Annex I,” which includes both the leaching facility and the Flotation Plant.

9. The Government's novel position is equally inconsistent with Peruvian law. Neither the Royalty Law nor the Mining Law and Regulations make any distinction between projects within a single concession. Rather, under the Royalty Law, royalties are imposed on the extraction of minerals of a mining concession regardless of how they are processed, and under the Mining Law and Regulations, stabilization benefits apply to all activities within the relevant concessions or Economic Administrative Units ("EAU"). Nothing in these laws (or in the Stability Agreement) suggests that a company is meant to split its mining activities in the same concession into stabilized and unstabilized investments.

10. In addition to contravening Peruvian laws and the Stability Agreement itself, the Government's novel and restrictive position also defies economic common sense. SMCV's Concessions are financed and operate as a single integrated enterprise. To provide the confidence and predictability required to induce initial and continued investment, stabilization benefits must likewise apply to the Mining and Beneficiation Concessions as a whole, not to any particular investment or asset within the Concessions. Peru's novel and restrictive position results in SMCV's single Mining Concession and single Beneficiation Concession having multiple fiscal regimes even though Peruvian law and regulations provide no guidance whatsoever about how a mining company is meant to split its integrated activities within a single concession into stabilized and non-stabilized investments.

Breach of the TPA

11. The Government's arbitrary and unlawful conduct did not end with the imposition of royalties and taxes in breach of the Stability Agreement. In blatant violation of the TPA, the Government more than *doubled* its windfall from the Royalty and Tax Assessments by arbitrarily failing to waive hundreds of millions of dollars of punitive penalties and interest that Peru's Tax Authority ("SUNAT") imposed on SMCV, even though waiver of those penalties and interest was mandatory. As a result of the extraordinarily punitive interest rate that SUNAT applied, penalties and interest now account for more than 60% of Freeport's damages.

12. Under Peruvian law, the Government *must* waive penalties and interest where the proper interpretation of the applicable legal provision is subject to reasonable doubt. Plainly, such reasonable doubt exists here: the Government's novel and restrictive interpretation of the scope of stabilization benefits finds no support in law or contract, is without precedent, and is contrary to both prevailing industry practice and the purpose of the stability regime itself. Moreover, it is contrary to contemporaneous public statements by Government officials that SMCV did *not* have to pay royalties as a result of the Stability

Agreement. And in 2014, a first instance Contentious Administrative Court agreed with SMCV's position. Although other courts subsequently reversed that decision, the divergent decisions of Peru's own courts clearly illustrate that the relevant legal provisions are—at a bare minimum—subject to reasonable doubt.

13. By arbitrarily failing to waive these penalties and interest, as it was clearly required to do, the Government effectively penalized SMCV for seeking recourse before SUNAT and the Tax Tribunal to challenge the Government's Assessments, as it was entitled to do. As a result of the extraordinarily punitive interest rate that SUNAT applied, penalties and interest now account for more than 60% of Freeport's damages.

14. The Government has further violated the TPA by failing to afford SMCV a fair hearing when it challenged SUNAT Assessments before the Tax Tribunal. Freeport has now learned that, instead of having SMCV's challenges decided by Chambers consisting of three independent and impartial judges, as required under Peruvian law, when SMCV filed its first challenge to SUNAT's Royalty Assessments, the decision confirming the Assessments was drafted by the administrative secretary of the Tax Tribunal President. The Tax Tribunal President and her assistant should have no role in deciding cases. Moreover, that assistant was not even present at the hearing when SMCV presented its arguments. The Chambers hearing SMCV's other challenges of SUNAT's Royalty Assessments then simply copy-pasted virtually all or major parts of the decision drafted by the President's assistant.

15. Further, SMCV's challenge to certain Royalty Assessments was heard—and rejected—by a judge who had not only worked for the same SUNAT division that confirmed the Royalty Assessments on which he was slated to rule, but had also in his capacity as a SUNAT lawyer defended the Government's novel and restrictive interpretation of the Stability Agreement in litigation against SMCV before the Contentious Administrative Courts. Despite the obviously disqualifying conflict of interest of SMCV's opposing counsel becoming the arbiter of the case, the Tax Tribunal rejected in a plenary vote SMCV's application to remove the judge. Barely two weeks after the Tax Tribunal rendered its decision against SMCV, in a tacit admission of judicial impropriety, the Government amended the Tax Code to require judges to recuse themselves under such circumstances, but did not have a different, unconflicted panel reconsider the decision against SMCV.

16. Finally, the Government also breached the TPA by arbitrarily refusing to fully repay SMCV for payments made under former President Humala's Special Contribution (GEM) Program, which the Government established to collect additional revenue from mining companies benefitting from stability agreements to dedicate a larger portion of their proceeds to

projects promoting social welfare in Peru. Based on the good faith belief that it was exempted from paying royalties while the Stability Agreement remained in force, SMCV participated in the GEM Program and contributed over US\$100 million.

17. The Government cannot have it both ways: if its purported taxes and royalties are not barred by the Stability Agreement, then SMCV is entitled under Peruvian law to a full refund of the GEM payments that it made on the assumption that its investments were stabilized and not subject to royalties. Yet, when SMCV requested that Peru reimburse it for the excess payments under the GEM Program, the Government arbitrarily approved only a partial reimbursement of these overpayments.

18. Freeport accordingly claims, on its own behalf and that of SMCV, that:

- a) Peru has violated the Stability Agreement by confirming SUNAT's unlawful Assessment of Royalties and Taxes; and
- b) Peru has violated Articles 10.4 and 10.5 of the TPA by (i) arbitrarily refusing to waive SUNAT's extraordinarily punitive penalties and interest, as required by law; (ii) denying SMCV a fair hearing before the Tax Tribunal; and (iii) arbitrarily refusing to fully repay SMCV the GEM overpayments.

19. As a result of the Government's repeated and continuous breaches of the Stability Agreement and the TPA, Freeport seeks damages on its own behalf and that of SMCV in an amount exceeding US\$1 billion plus pre- and post-award interest, and its legal fees and costs.

II. PARTIES

20. Freeport is an entity incorporated in the State of Delaware in the United States.² Freeport's address is:

Freeport-McMoRan Inc.
c/o General Counsel
333 N Central Ave
Phoenix, AZ 85004-2121
United States of America

21. Freeport indirectly owns 53.56% of the shares of SMCV and indirectly controls the company.³ For the past two decades, Freeport or its predecessors have indirectly

² Ex. CE-263, Certificate of Good Standing Freeport, February 18, 2020.

controlled SMCV. SMCV is incorporated in Peru and operates the mining production unit at Cerro Verde, which is located 30 km southwest of Arequipa, Peru.⁴ SMCV's address is:

Sociedad Minera Cerro Verde
c/o General Counsel
Calle Jacinto Ibañez 315 (Segundo Piso)
Parque Industrial - Cercado
Arequipa, Perú

22. Correspondence with Claimant relating to this matter should be sent to the undersigned counsel of record at the address below.⁵

23. Peru is a Party to the TPA. Pursuant to Annex 10-C of the TPA, Peru shall be notified of claims arising under the TPA at the following address:

Dirección General de Asuntos de Economía Internacional,
Competencia e Inversión Privada
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú

III. BACKGROUND

A. Freeport's and SMCV's Substantial Investments in Cerro Verde Have Greatly Benefited Peru.

24. Cerro Verde is an open-pit copper and molybdenum mining complex located about 30 km south of Arequipa, Peru.⁶ Mining at Cerro Verde dates back as far as the mid-1880s, but output from the mining complex greatly increased after the Peruvian Government privatized the mine in the 1990s.⁷

25. As a result of several large capital investments and expansions by Freeport and SMCV's other shareholders, including a multibillion dollar investment completed in 2016, the Cerro Verde mine now has an annual output of approximately one billion pounds of copper and

³ **Ex. CE-265**, 21 Feb. 2020, Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

⁴ **Ex. CE-262**, Certificate of Good Standing SMCV, February 17, 2020

⁵ **Ex. CE-266**, 21 Feb. 2020, Power of Attorney granted by Freeport to Debevoise & Plimpton LLP; **Ex. CE-239**, 27 Feb. 2020, Power of Attorney granted by SMCV to Debevoise & Plimpton LLP.

⁶ **Ex. CE-222**, https://www.fcx.com/operations/south-america#cerro_verde_link.

⁷ *Id.* (noting that, “[i]n the eight years after privatization, copper production increased by about 350% and costs were reduced by more than 40%”).

30 million pounds of molybdenum,⁸ making it one of the most productive and technologically advanced copper mines in the world.

26. SMCV currently employs around 5,000 full-time Peruvian employees at Cerro Verde and around 1,800 contractors. But SMCV's contribution to the local and national economy goes well beyond formal employment. A 2018 study of Cerro Verde's economic impact found that Cerro Verde's operations and investments generated an average impact (direct and indirect) of 2% of Peru's national GDP and 29% of Arequipa's GDP in 2018.

27. SMCV has made other significant contributions to the region. For example, in 2012, SMCV completed the design, construction, and management of a much needed potable water treatment plant for the Municipality of Arequipa.⁹ This US\$120 million facility currently provides water to over 350,000 people but will be able to serve 750,000 people as Arequipa continues to grow.¹⁰ SMCV invested a further US\$30 million in the distribution lines of the water treatment plant and over US\$30 million to the construction and operation of regional dams, including Pillones, Bamputañe, and San José de Uzuña, preventing water loss to the ocean and ensuring increased availability of water year-round.¹¹ SMCV has likewise co-financed the La Escalerilla Waste Treatment Plant and the La Enlozada Waste Water Treatment Plant, which had an initial cost of US\$454 million dollars. Currently, SMCV operates and maintains La Enlozada, allowing Arequipenians to benefit from the water treatment system without paying for it. And while this investment has allowed SMCV to obtain water for its own operations, it has also treated 95% of the city's sewage and improved the quality of the Chili River, the environment more generally, and the health of Arequipenians. SMCV also makes ongoing contributions to support community development activities, including support for local nurseries, small business employment, women and community trainings, communications, and other sustainable development activities.¹²

⁸ **Ex. CE-217**, Jan. 2019 "Boletín Estadístico Minero," 31 ed., Annex 2, p. 16; **Ex. CE-226**, Aug. 2019 "Boletín Estadístico Minero," 31 ed., Annex 2, p. 15.

⁹ **Ex. CE-224**, "Expanding Resources, 2012 Working Toward Sustainable Development Report," Freeport-McMoRan Copper & Gold, June 24, 2019.

¹⁰ *Id.*

¹¹ See **Ex. CE-53**, 30 May 2011 Empresa de Generación Eléctrica de Arequipa S.A., Liquidación Final de Obra — Presa Pillones Egasa — SMCV (documenting SMCV's agreement to finance the construction of the Pillones dam); **Ex. CE-25**, 2006 Audited Financial Statement (documenting SMCV's agreement to finance the construction of the San José de Uzuña dam); **Ex. CE-30**, 23 May 2007 Contrato para la Construcción de la Presa Bamputañe, 1-4 Adendas (documenting SMCV's agreement to finance the construction of the San José de Uzuña dam).

¹² See **Ex. CE-219**, 28 May 2019 Apoyo Consultoria, "Análisis del impacto de Sociedad Minera Cerro Verde en la economía de Arequipa y Perú (2005-2018)," slides 32-33.

B. Freeport and SMCV Invested in Cerro Verde Relying on the Government's Obligation to Provide Fiscal and Administrative Stability.

28. SMCV holds two types of concessions at Cerro Verde: (i) a concession to explore and extract mineral resources in an area called "Cerro Verde No. 1, No. 2, and No. 3" (the "Mining Concession");¹³ and (ii) a concession to process the minerals extracted under the Mining Concession called "Planta de Beneficio Cerro Verde" (the "Beneficiation Concession").¹⁴ Together, these two concessions form SMCV's sole EAU.¹⁵

29. Historically, SMCV has employed two different metallurgical processes to refine the Cerro Verde minerals in its Beneficiation Concession: leaching and flotation. In simple terms, leaching is a process through which metals are separated from waste rock using an aqueous reagent. Flotation is a chemical process through which sulfide minerals are separated from each other and from waste rock. SMCV extracts all of the Cerro Verde minerals under its sole Mining Concession and processes all of the minerals either through leaching or flotation under its sole Beneficiation Concession which was approved by the Ministry of Energy and Mines.

30. The Government created SMCV more than two decades ago. In August 1993, as part of a broader privatization process in Peru, the state-owned company Empresa Minera del Perú S.A. ("Minero Perú"), which had operated Cerro Verde for the previous two decades, created SMCV, transferred its Mining and Beneficiation Concessions to SMCV and offered SMCV for sale.¹⁶ In March 1994, Minero Perú sold 91.65% of its SMCV shares to Cyprus Climax Metals Company (the "1994 Share Purchase Agreement"), which then assigned its rights under the 1994 Share Purchase Agreement to Cyprus Amax Mineral Company (together with Cyprus Climax Metals, "Cyprus").¹⁷ In 1999, Freeport's predecessor Phelps Dodge Corporation acquired Cyprus and with it a majority of SMCV and the Cerro Verde mining operations.¹⁸

31. In the 1994 Share Purchase Agreement, Cyprus agreed with the Peruvian Government that it would invest in the Cerro Verde mining facilities, including by

¹³ See **Ex. CE-02**, 1976 Mining Concession, Supreme Decree No. 027-76-EM/DGM.

¹⁴ See **Ex. CE-10**, 1996 Beneficiation Concession, Resolution No. 339-96-EM/DGM.

¹⁵ See **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 44.

¹⁶ **Ex. CE-10**, 1996 Beneficiation Concession, Resolution No. 339-96-EM/DGM.

¹⁷ See **Ex. CE-04**, 17 Mar. 1994 Share Purchase Agreement.

¹⁸ See **Ex. CE-265**, 21 Feb. 2020 Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

(i) expanding and modernizing the existing leaching facilities; and (ii) installing new mill and flotation facilities for processing primary sulfides.¹⁹ At the time, SMCV processed mostly leachable ore, but the Mining Concession contained significant primary sulfide deposits that could not be processed through leaching and were being processed in a small concentrator. The potential for processing the primary sulfides at a larger scale (*i.e.*, in a larger concentrator than the one Cyprus acquired during the privatization process) had been studied since 1972, including in a 1985 feasibility study commissioned by Mineró Perú.²⁰ Processing Cerro Verde's primary sulfides was of crucial importance to prolong the life of the mine because the leachable reserves were expected to be exhausted by 2014.²¹

32. In compliance with the 1994 Share Purchase Agreement, SMCV prepared a series of studies exploring the possibility of further expanding the leaching facilities. In early 1996, SMCV completed a feasibility study for a US\$237 million investment program to expand the existing leaching plant and improve the associated infrastructure using the latest technology, thereby increasing Cerro Verde's annual production capacity from 72 million pounds to 105 million pounds (the "1996 Feasibility Study").²²

33. As part of the investments included in the 1996 Feasibility Study, SMCV also completed studies exploring the feasibility of installing the new mill and flotation facilities for processing primary sulfides.²³ At the time, the studies concluded that installing a mill would not be economically feasible,²⁴ among other reasons because of the high cost of power in the Arequipa region and the absence of an economic water source.²⁵ SMCV nonetheless

¹⁹ **Ex. CE-04**, 17 Mar. 1994 Share Purchase Agreement, Background (Antecedentes), p. 8 (stating that Cerro Verde was privatized, among other reasons, to expand its mining operations); *id.*, pp. 145-148 (requiring that Cyprus construct and put in service "un circuito de molienda y flotación convencional de cobre/molibdeno con una capacidad para tratar aproximadamente 28,000 toneladas por día de sulfuros primarios.").

²⁰ **Ex. CE-20**, 2004, Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 4.

²¹ *Id.*

²² *See Ex. CE-09*, 1996 Feasibility Study, Executive Summary, Section 2.

²³ *See Ex. CE-13*, 1998 Cerro Verde Mill Feasibility Study, Section 1.

²⁴ *See Ex. CE-13*, 1998 Cerro Verde Mill Feasibility Study, Section 2, pp. 2-7 (stating that "[t]he project's economics do not support a prudent investment for construction and operation of a copper sulfide ore concentrator").

²⁵ **Ex. CE-11**, 16 Sep. 1996 Letter from Cyprus to Empresa Minera del Peru, p. 2. *See also Ex. CE-20*, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, pp. 9-11 (stating that "[t]he scale of operations and estimated financial performance of these early studies were constrained by the deposit grade and the availability of economic water and power supply sources").

committed to conducting additional studies and testing to establish whether it could be economically feasible to process Cerro Verde's primary sulfides.²⁶

34. As set forth in the 1994 Share Purchase Agreement, on 25 January 1996, SMCV filed an application with the Ministry of Energy and Mines requesting fiscal and administrative stability for its Mining Concession pursuant to Article 82 of the Mining Law.²⁷ The Mining Law provides that a mining company that has committed to making a large capital investment either to build a new mining project or expand an existing one can request "tax stability which shall be guaranteed by contract subscribed with the State for a period of fifteen years, starting from the year in which [the applicant company] prove[s] the implementation of the investment or expansion, as appropriate."²⁸ In turn, Article 14 of the Mining Regulations specifies that tax stability guarantees "that [the title holder] will be subject only to the fiscal regime in force when the feasibility study is approved, and any tax created thereafter is not applicable."²⁹

35. As stated in the Mining Law, the purpose of these stability agreements is "to promote investment and facilitate the financing of mining projects."³⁰ The stability agreements provide investors with predictability by, among other benefits, freezing applicable fiscal laws and regulations. Such stabilization benefits are a common feature in the mining industry. Mining is extremely capital-intensive, often requiring hundreds of millions of dollars of investment before any revenue is generated. Investors are thus more likely to obtain financing and commit significant amounts of capital if they are protected from unforeseen changes in the law and can predict with reasonable certainty what their fiscal burden will be years into the future.

36. As evidence of their commitment to make a minimum investment (the amount of which determines the right to apply either for a ten or fifteen-year stability agreement), the Mining Law requires investors to "submit a technical and economic feasibility study" for approval by the General Directorate of Mining.³¹ SMCV accordingly supported its application

²⁶ **Ex. CE-17**, 30 Mar. 2001 Escritura de Transacción Extrajudicial, p. [9].

²⁷ **Ex. CE-07**, 25 Jan, 1996 Solicitud Convenio de Estabilidad, p. [3].

²⁸ **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82. *See also id.*, Art. 83 ("Holders of mining activities who submit investment programs of national currency equivalent to US\$20,000,000 for the start of any activity of the mining industry shall have the right to sign contracts referred to in the preceding article.").

²⁹ **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Art. 14(a).

³⁰ **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82.

³¹ **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 85.

for a stability agreement by submitting its 1996 Feasibility Study, which the General Directorate of Mining approved on 6 May 1996.³²

37. On 26 February 1998, after the Ministry of Energy and Mines confirmed that SMCV made the required minimum investment, SMCV and the Government executed the Stability Agreement.³³ The Stability Agreement stabilized the fiscal and administrative regimes existing on May 1996 for a period of 15 years from 1 January 1999 to 31 December 2013. Specifically, the Agreement provided that “the modifications or new rules that may be issued” during the 15-year period of stabilization “will not affect [SMCV] in any way,” including any changes to the income tax regime, custom duties or municipal taxes.³⁴ The Stability Agreement moreover excluded the application of any law passed after 6 May 1996 that “directly or indirectly, denaturalizes the guarantees provided” by the Agreement.³⁵

38. Clause 1 of the Stability Agreement referred to SMCV’s Concessions as the “Cerro Verde Leaching Project,” but expressly stated that SMCV had requested stabilization benefits “in relation with the investment in its concession: Cerro Verde No. 1, No. 2, and No. 3.”³⁶ Clause 3 further provided that the stabilization benefits were “circumscribed to the concessions [listed] in Annex I.”³⁷ Annex I expressly listed both of SMCV’s concessions, namely the Mining Concession and the Beneficiation Concession.³⁸

39. On 3 December 1999, the Government confirmed that SMCV had successfully completed construction of the expanded leaching facilities as set forth in the 1996 Feasibility Study.³⁹

40. As required under the terms of the 1994 Share Purchase Agreement with the Government and a March 2001 settlement agreement with Minero Perú, SMCV continued exploring the possibility of processing Cerro Verde’s primary sulfides.⁴⁰

³² See **Ex. CE-08**, 6 May 1996 Feasibility Study Approval, No. 043-96-EM-DGM-DFM/DFAE.

³³ See **Ex. CE-12**, 1998 Stability Agreement.

³⁴ See **Ex. CE-12**, 1998 Stability Agreement, Clause 9.5.

³⁵ *Id.*, Clause 10.1.

³⁶ *Id.*, Clause 1.1.

³⁷ *Id.*, Clause 3.

³⁸ *Id.*, Annex I.

³⁹ See **Ex. CE-14**, 1998 Dictamen Auditec, Fiscal and Accounting Report of SMCV Investments; **Ex. CE-15**, 22 Nov. 1999 Minuta de Ejecución de Estudio de Factibilidad; **Ex. CE-16**, 3 Dec. 1999 Escritura Declarativa de Ejecución de Estudio de Factibilidad.

⁴⁰ See **Ex. CE-04**, 17 Mar. 1994 Share Purchase Agreement, Appendix G – Description of Project Phases, pp. 145-51; **Ex. CE-17**, 30 March 2001 Escritura de Transacción Extrajudicial, p. [9].

41. Specifically, in July 2003, SMCV engaged Fluor Canada Ltd. (“Fluor”) to evaluate further the addition of a “concentrator to treat primary sulfide ore from the existing mining operation at Cerro Verde.”⁴¹ Fluor evaluated two main technology options for treating the primary sulfide ore, milling and pebble crushing (known as “SABC”) and high pressure grinding rolls (known as “HPGR”) and ball mills followed by flotation concentration.⁴² The new HPGR technology presented “financial advantages due to lower operating costs.”⁴³ Prior constraints regarding the absence of economic power and water sources were resolved through upgrades in power lines and SMCV’s participation in a reservoir project that secured water rights for Cerro Verde.⁴⁴ Fluor thus concluded that “[t]he project as currently conceived appears to have sound investment potential”⁴⁵ and that the expected cost of the new facilities for treating the Cerro Verde primary sulfides would exceed US\$800 million.⁴⁶

42. On 30 January 2004, SMCV submitted a proposal to the Government to invest the US\$800 million needed to construct the new facilities (the “Flotation Plant”), which the Government approved on 9 December 2004.⁴⁷ During the two-year construction of the Flotation Plant, SMCV ultimately invested a total of US\$850 million and employed 11,500 people.⁴⁸

43. In late 2006, SMCV started the test period for operating the Flotation Plant.⁴⁹ On 26 February 2007, the Government issued a Resolution approving the extension of SMCV’s Beneficiation Concession to include the Flotation Plant.⁵⁰ Since the Stability Agreement expressly covered the Beneficiation Concession, the Government’s Resolution extending the

⁴¹ **Ex. CE-20**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 1.

⁴² *See id.*

⁴³ *Id.*

⁴⁴ *See id.*, pp. 9-11.

⁴⁵ **Ex. CE-20**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Report Cover Letter, p. [2].

⁴⁶ *Id.*, pp. 40-41.

⁴⁷ **Ex. CE-23**, 9 Dec. 2004 Ministry of Energy and Mines, Ministerial Resolution No. 510-2004-MEM/DM (approving SMCV’s proposal). *See Ex. CE-21*, 3 Dec. 2004 Ministry of Economy and Finance, Oficio No. 942-2004-EF/10; **Ex. CE-22**, 3 Dec. 2004 Ministry of Economy and Finance, Report No. 209-2004-EF/66.01.

⁴⁸ *See Ex. CE-23*, 9 Dec. 2004 Ministry of Energy and Mines, Resolution No. 510-2004-MEM/DM; **Ex. CE-34**, 30 Oct. 2009 Ministry of Energy and Mines, Resolution No. 213-2009-MEM/DM.

⁴⁹ **Ex. CE-28**, 26 Feb. 2007 Ministry of Energy and Mines, Directorial Resolution No. 056-2007-MEM/DGM, p. 23.

⁵⁰ *See Ex. CE-28*, 26 Feb. 2007 Ministry of Energy and Mines, Directorial Resolution No. 056-2007-MEM/DGM.

Beneficiation Concession to include the Flotation Plant shows that the Government itself understood that the stabilization benefits also covered the Flotation Plant.⁵¹

44. In March 2007, Phelps Dodge merged with Freeport, which became the indirect majority owner of SMCV.⁵²

C. Peru Assessed Royalties and Taxes in Breach of the Stability Agreement.

45. On 24 June 2004, Peru passed a new law “establishing a mining royalty”⁵³ (the “Royalty Law”). The Royalty Law defines royalties as “the economic consideration that the title holder of the mining concession pays to the State for the exploitation of metallic and non-metallic mineral resources.”⁵⁴

46. When the Government passed the Royalty Law, senior Peruvian Government officials acknowledged publicly that SMCV and other mining companies that had executed stability agreements with the Government would be exempted from royalty payments while their stability agreements remained in force.

47. For instance, in May 2006, SUNAT’s then-National Intendent, Ms. Nahil Hirsh, and the then-Minister of Economy and Finance, Mr. Fernando Zavala, stated in a presentation to the Peruvian Congress that SMCV and other mining companies were not subject to the Royalty Law because of stability agreements with the Government.⁵⁵ The *El Comercio* newspaper quoted Ms. Hirsh as stating that SMCV was among “10 companies that were not paying royalties” because of “administrative stabilization contracts, agreements with contract-law status that guarantee exchange rate, tax and administrative stability, and that shield these companies against the Royalty Law and other obligations created after their contracts.”⁵⁶

48. In the good faith belief that it was fully exempted from paying any royalties under the Royalty Law until the Stability Agreement expired at the end of December 2013, SMCV made no royalty payments for any of the minerals extracted in the Cerro Verde Mining Concessions. The Government nonetheless received significant revenues from the Cerro Verde

⁵¹ See **Ex. CE-12**, 1998 Stability Agreement, Annex 1.

⁵² See **Ex. CE-265**, 21 Feb. 2020, Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

⁵³ **Ex. CA-06**, Royalty Law, Law No. 28258, Art. 1.

⁵⁴ **Ex. CA-06**, Royalty Law, Law No. 28258, Art. 2.

⁵⁵ See **Ex. CE-24**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” *EL COMERCIO*.

⁵⁶ **Ex. CE-24**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” *EL COMERCIO* (“[A]ccording to MEM, these companies do not pay because they are under the umbrella of administrative stability.”).

mine, particularly after SMCV had expanded its leaching facilities and constructed the Flotation Plant. During the period between 2005 and 2010, SMCV's tax contributions represented approximately 82% of all tariffs and 47% of all income taxes collected in the Arequipa Province.⁵⁷

49. Moreover, because SMCV was fully exempted from paying royalties, it agreed to participate in President Alan Garcia's Voluntary Contribution Program, which sought to encourage mining companies to dedicate a larger portion of their proceeds to projects promoting social welfare and development in the communities where their mining projects were located. Specifically, on 18 January 2007, SMCV signed a Voluntary Contribution Agreement with the Government by which SMCV agreed to contribute 3.75% of its annual net profits to local and regional funds.⁵⁸ SMCV ultimately contributed over US\$130 million to the funds for projects supporting childhood nutrition, primary education, health, and other social goals.

50. After the Voluntary Contribution Agreement expired, SMCV participated in President Humala's Special Contribution (GEM) Program, which sought additional payments to the Government based on profits accruing from mining activities subject to stabilization. On 28 February 2012, SMCV signed a GEM Agreement with the Government.⁵⁹ Ultimately, SMCV paid more than US\$100 million in GEM payments.⁶⁰ The Government accepted those payments, thereby ratifying SMCV's understanding that it was exempted from paying royalties and that it was not entitled to any deductions on account of royalty payments.⁶¹

51. Yet, after receiving these hundreds of millions of dollars from SMCV in investments, taxes and GEM payments, the Government reneged on its contractual obligation to provide SMCV with the fiscal and administrative stability it had promised. On 17 August 2009, SUNAT assessed royalties under the Royalty Law against SMCV in the

⁵⁷ See **Ex. CE-48**, Mar. 2011, Apoyo Consultoria, "Estudio del Impacto de las Actividades de Sociedad Minera Cerro Verde en la Economía de Arequipa y del Perú (2005-2010)," Slide 26.

⁵⁸ See **Ex. CE-27**, 18 Jan. 2007 SMCV Voluntary Contribution Agreement, Arts. 2.2, 2.4, 3.1.

⁵⁹ See **Ex. CE-64**, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), approved by Law No. 29790.

⁶⁰ See **Ex. CE-65**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-70**, 31 May 2012 SMCV Gem Payment, 1Q 2012; **Ex. CE-71**, 31 Aug. 2012 SMCV Gem Payment, 2Q 2012; **Ex. CE-73**, 30 Nov. 2012 SMCV Gem Payment, 3Q 2012; **Ex. CE-78**, 28 Feb. 2013 SMCV GEM Payment, 4Q 2012; **Ex. CE-87**, 30 May 2013 SMCV Gem Payment, 1Q 2013; **Ex. CE-96**, 28 Aug. 2013 SMCV Gem Payment, 2Q 2013; **Ex. CE-101**, 28 Nov. 2013 SMCV Gem Payment, 3Q 2013; **Ex. CE-106**, 27 Feb. 2014 SMCV GEM Payment, 4Q 2013.

⁶¹ See *id.*

amount of around US\$28.87 million⁶² for the minerals processed in the Flotation Plant between December 2006 and December 2007 (the “2006/07 Royalty Assessments”).⁶³ In addition, SUNAT also imposed on SMCV penalties and interest accruing at a punitive rate of 14.4% per year, which as of 31 December 2019 accumulated to around US\$77.12 million, more than *twice* the value of the 2006/07 Royalty Assessments.⁶⁴

52. SUNAT’s 2006/07 Royalty Assessments reflected a complete about-face by the Government and were based on an entirely novel and restrictive interpretation of the Mining Law and Regulations. Although SMCV extracted all of the Cerro Verde minerals under its sole Mining Concession and processed all of those minerals under its sole Beneficiation Concession, both of which were covered by the 1998 Stabilization Agreement, SUNAT took the baseless position that only the minerals processed by the leaching facility were covered by the Stability Agreement, whereas the minerals processed by the flotation plant within the same Beneficiation Concession were not.⁶⁵

53. SUNAT attempted to justify this artificial distinction by claiming that stabilization benefits were limited to the investments set forth in the feasibility study submitted to the Government for purposes of obtaining stabilization benefits.⁶⁶ Under SUNAT’s novel and restrictive interpretation, the scope of the Stability Agreement was therefore allegedly limited to the investments set forth in the 1996 Feasibility Study.⁶⁷

54. SUNAT’s novel and restrictive position violated the plain terms of the Royalty Law, which imposes royalties on the *extraction* of mineral resources, irrespective of whether the minerals are leached, processed in a flotation plant, or sold without any processing.⁶⁸ Moreover, neither the Mining Law nor the Regulations limit stabilization benefits to the specific investments set forth in the feasibility study. On the contrary, they expressly provide that stabilization benefits attach to the *activities* performed by the “title holder of the mining

⁶² All Assessment values in this Notice are based on an exchange rate of 3.317 Soles to 1 U.S. dollar.

⁶³ See **Ex. CE-31**, 17 Aug. 2009 SUNAT Royalty Assessment, 2006-07 Case.

⁶⁴ On 10 October 2013, SMCV signed (under protest) an installment plan with SUNAT for the payment of the royalties and penalties and interest due to the Government. Under the installment payment plan, the applicable interest from 10 October 2013 until SMCV fully pays all amounts due is 11.52%. See **Ex. CE-99**, 10 Oct. 2013 SUNAT Arequipa Regional Office Administrative Decision No. 0510170003363.

⁶⁵ See **Ex. CE-31**, 17 Aug. 2009 SUNAT Royalty Assessment, 2006-07 Case, folio 1/2.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See **Ex. CA-07**, 15 Nov. 2004 Royalty Law Regulations, Supreme Decree No. 157-2004-EF, Art. 4; **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 8.

activity”⁶⁹ within either a particular concession or a particular EAU consisting of multiple related concessions.⁷⁰ For instance, Article 83 of the Mining Law provides that stability benefits “extend exclusively to *the activities of the mining company* in whose favor the investment is made,”⁷¹ without any limitation to the investments set forth in the feasibility study. Likewise, Article 22 of the Regulations provides that stability benefits apply to a mining company “exclusively for investments it makes *in the concessions or Economic Administrative Units*,”⁷² also without any limitation. And Article 25 of the Regulations refers to a mining company “*expanding its facilities or [making] new investments* that benefit from the contractual stability guarantee.”⁷³

55. In addition to being inconsistent with the Royalty Law, the Mining Law, and the Regulations, SUNAT’s novel and restrictive position also ran counter to prevailing industry practice and commercial sense. SUNAT’s position results in a single mining concession having multiple fiscal and administrative regimes, even though stability agreements (including the Stability Agreement at issue here) and Peruvian law and regulations provide no guidance whatsoever about how a mining company is meant to split its activities within a single concession into stabilized and unstabilized investments for accounting and tax (or any other) purposes. At the same time, SUNAT’s novel and restrictive position contradicts the very purpose of the stability regime—to provide mining companies like Freeport and SMCV with the clarity and predictability they need to invest and attract financing for their capital-intensive investments.

56. Accordingly, on 15 September 2009, SMCV requested that SUNAT reconsider the 2006/07 Royalty Assessments.⁷⁴ A few months later, on 31 March 2010, SUNAT rejected SMCV’s reconsideration request.⁷⁵

57. After the initial 2006/07 Royalty Assessments, SUNAT continued to issue further Royalty Assessments against SMCV, which were also premised on its novel and

⁶⁹ See **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Arts. 1, 2; **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 72.

⁷⁰ **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Art.22; **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82.

⁷¹ **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 83.

⁷² **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 22.

⁷³ *Id.*, Art. 25.

⁷⁴ See **Ex. CE-32**, 15 Sep. 2009 SMCV Request for Reconsideration, 2006/07 Royalty Assessment.

⁷⁵ See **Ex. CE-38**, 31 Mar. 2010 SUNAT Rejects SMCV Request, 2006/07 Royalty Assessment, notified to SMCV on 22 April 2010.

restrictive interpretation of the scope of stabilization benefits. For each Assessment, SMCV requested that SUNAT reconsider its novel and restrictive position, but SUNAT rejected each request:

- On 1 June 2010, SUNAT issued royalty assessments for the year 2008 (the “2008 Royalty Assessments”) in the amount of approximately US\$32.08 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$76.30 million.⁷⁶ On 15 July 2010, SMCV submitted a reconsideration request, which SUNAT rejected on 31 January 2011.⁷⁷
- On 27 June 2011, SUNAT issued royalty assessments for the year 2009 (the “2009 Royalty Assessments”) in the amount of approximately US\$32.22 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$71.45 million.⁷⁸ On 9 August 2011, SMCV submitted a reconsideration request, which SUNAT rejected on 21 December 2011.⁷⁹
- On 13 April 2016, SUNAT issued royalty assessments for the year 2010 and the first, second, and third quarters of 2011 (the “2010/11 Royalty Assessments”) in the amount of approximately US\$79.04 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$131.38 million.⁸⁰ On 11 May 2016, SMCV submitted a reconsideration request, which SUNAT rejected on 29 December 2016.⁸¹
- On 29 December 2017, SUNAT issued royalty assessments for the fourth quarter of 2011 (the “4Q 2011 Royalty Assessments”) in the amount of

⁷⁶ See **Ex. CE-39**, 1 Jun. 2010 SUNAT Royalty Assessment, 2008 Royalty Assessment.

⁷⁷ See **Ex. CE-46**, 31 Jan. 2011 SUNAT Rejects SMCV Request, 2008 Royalty Assessment, notified to SMCV on 17 February 2011.

⁷⁸ See **Ex. CE-54**, 27 June 2011 SUNAT Royalty Assessment, 2009 Royalty Assessment.

⁷⁹ See **Ex. CE-55**, 9 Aug. 2011 SMCV Request for Reconsideration, 2009 Royalty Assessment; **Ex. CE-58**, 21 Dec. 2011 SUNAT Rejects SMCV Request, 2009 Royalty Assessment, notified to SMCV on 26 December 2011.

⁸⁰ See **Ex. CE-142**, 13 Apr. 2016 SUNAT Royalty Assessment, 2010/11 Royalty Assessment.

⁸¹ See **Ex. CE-146**, 11 May 2016 SMCV Request for Reconsideration 2010/11 Royalty Assessment; **Ex. CE-150**, 29 Dec. 2016 SUNAT Rejects SMCV Request 2010/11 Royalty Assessment, notified to SMCV on 1 Mar. 2017.

approximately US\$7.36 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$9.99 million.⁸² On 15 February 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 12 October 2018.⁸³

- On 28 March 2018, SUNAT issued royalty assessments for the year 2012 (the “2012 Royalty Assessments”) in the amount of approximately US\$34.50 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$45.71 million.⁸⁴ On 17 May 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 11 January 2019.⁸⁵
- On 28 September 2018, SUNAT issued royalty assessments for the year 2013 (the “2013 Royalty Assessments”) in the amount of approximately US\$25.98 million, plus penalties and interest which as of 31 December 2019 accumulated to around US\$29.45 million.⁸⁶ On 7 November 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 28 May 2019.⁸⁷

58. In addition to the Royalty Assessments, the Government imposed on SMCV several Tax Assessments in violation of the Stability Agreement, which it also based on its novel and restrictive interpretation of the scope of stabilization benefits. For instance, SUNAT and the Tax Tribunal have (i) imposed on SMCV the then-current 19% general sales tax rate, instead of the stabilized 18% rate; (ii) imposed an additional 4.1% income tax rate on non-deductible expenses not in effect at the time of, and therefore not permitted by, the Stability Agreement; (iii) imposed on SMCV a tax depreciation regime that is different to the regime that would apply pursuant to the Mining Law and Regulations and the Stability

⁸² See **Ex. CE-174**, 29 Dec. 2019 SUNAT 4Q 2011 Royalty Assessments.

⁸³ See **Ex. CE-175**, 15 Feb. 2018 SMCV Request for Reconsideration 4Q 2011; **Ex. CE-198**, 12 Oct. 2018 SUNAT Rejects SMCV Request 4Q 2011, notified to SMCV on 30 Oct. 2018.

⁸⁴ See **Ex. CE-176**, 28 Mar. 2018 SUNAT Royalty Assessment, 2012 Royalty Assessment.

⁸⁵ See **Ex. CE-178**, 17 May 2018 SMCV Request for Reconsideration, 2012 Royalty Assessment; **Ex. CE-215**, 11 Jan. 2019 SUNAT Rejects SMCV Request, 2012 Royalty Assessment, notified to SMCV on 23 January 2019.

⁸⁶ See **Ex. CE-195**, 28 Sep. 2018 SUNAT Royalty Assessment, 2013 Royalty Assessment.

⁸⁷ See **Ex. CE-203**, 7 Nov. 2018 SMCV Request for Reconsideration, 2013 Royalty Assessment; **Ex. CE-220**, 28 May 2019 SUNAT Rejects SMCV Request, 2013 Royalty Assessment, notified to SMCV on 28 May 2019.

Agreement; (iv) imposed a Special Mining Tax and Complementary Mining Pension Fund Tax that were created during the life of the Stability Agreement and therefore did not apply to SMCV while its Stability Agreement remained in force; and (v) contrary to Article 22 of the Regulations, penalized SMCV for not keeping separate accounts for the minerals processed in the two different facilities, despite SMCV extracting all minerals under its one and only Mining Concession.⁸⁸ The various Tax Assessments that Peru has imposed in violation of the Stability Agreement and the Mining Law and Regulations are listed in Annex A and Annex B hereto (Annex A lists the Tax Assessments that SMCV appealed before the Tax Tribunal and Annex B lists the Tax Assessments that SMCV challenged before SUNAT but not before the Tax Tribunal because pursuing any such appeals would have been futile at that stage).

59. In total, Peru has unlawfully imposed around US\$240.05 million in Royalty Assessments and around US\$441.41 million in extraordinarily punitive penalties and interest on those Assessments. Similarly, Peru has unlawfully imposed around US\$239.85 in Tax Assessments and around US\$216.63 in extraordinarily punitive penalties and interest on those Assessments.

D. Peru Rebuffed SMCV's Efforts to Challenge the Royalty Assessments.

60. After SUNAT denied SMCV's reconsideration requests of the 2006/07 and 2008 Royalty Assessments, SMCV appealed SUNAT's Assessments to the Tax Tribunal. In Peru, the Tax Tribunal forms part of the Ministry of Economy and Finance (the "MEF") within the Executive Branch of the Peruvian Government and is the "last administrative instance in tax and custom matters."⁸⁹ A SUNAT Assessment therefore does not become final and binding on the taxpayer until the Tax Tribunal resolves the appeal confirming the Assessment.

61. Tax Tribunal judges are supposed to be independent and impartial, but in practice have perverse incentives to decide cases involving significant monetary value amounts in favor of SUNAT and the judges' employer, the MEF. The MEF appoints and employs the Tax Tribunal judges, and by law 2.3% of the total tax funds and 1.2% of the total custom funds

⁸⁸ See **Ex. CE-12**, 1998 Stability Agreement, Annex 1.

⁸⁹ See **Ex. CA-04**, 19 Aug. 1999 Peruvian Tax Code, Supreme Decree No. 135-99-EF, Art. 101(1); **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 101(1); **Ex. CA-15**, 23 May 2014 Regulation of the Organization and Functions of the Ministry of Economy and Finance, Supreme Decree No. 117-2014-EF, Art. 18 ("El Tribunal Fiscal es el órgano resolutorio del Ministerio que constituye la última instancia administrativa en materia tributaria y aduanera, a nivel nacional.").

raised by SUNAT are assigned to the Tax Tribunal's yearly budget.⁹⁰ Therefore, the higher the Government's tax and custom revenues, the higher the budget for the Tax Tribunal.

62. In SMCV's case, the Tax Tribunal was neither independent nor impartial and instead worked closely with SUNAT to uphold the 2006/07, 2008, 2009, 2010/11, and 4Q 2011 Royalty Assessments in violation of SMCV's due process rights.

1. SMCV's Challenge to the 2006/07 and 2008 Royalty Assessments.

63. SMCV appealed the 2006/07 Royalty Assessments to the Tax Tribunal on 22 June 2010, and the 2008 Royalty Assessments on 10 March 2011.⁹¹ It has been the Tax Tribunal's long-standing practice to decide cases in the order in which they are filed.⁹² Accordingly, the Tax Tribunal should have first resolved SMCV's appeal on the 2006/07 Royalty Assessments. But following a series of grave irregularities, the Tax Tribunal first issued a decision regarding SMCV's appeal of the 2008 Royalty Assessments.⁹³

64. Specifically, on 5 April 2013, Chamber No. 10 of the Tax Tribunal, which was assigned the first-filed appeal of the 2006/07 Royalty Assessments, held an oral hearing.⁹⁴ Before Chamber No. 10 could render its decision, however, Chamber No. 1, which was assigned the later-filed appeal of the 2008 Royalty Assessments, suddenly and unexpectedly

⁹⁰ See **Ex. CA-14**, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 99° (“El Vocal Presidente, Vocal Administrativo y los demás Vocales del Tribunal Fiscal son nombrados mediante Resolución Suprema refrendada por el Ministro de Economía y Finanzas.”); **Ex. CA-04**, 19 Aug. 1999, Peruvian Tax Code, Supreme Decree No. 135-99-EF, Art. 98°(4); see also **Ex. CA-05**, 7 Dec. 2000 Urgency Decree No. 112-2000, Article 1 (covering 2000-2003); 19 Dec. 2003 Law No. 28129 (covering 2004); 21 Dec. 2004 Law No. 28426 (covering 2005); 22 Dec. 2005 Law No. 28653 (covering 2006); 12 Dec. 2006 Law No. 28929 (covering 2007); 10 Dec. 2007 Law No. 29144 (covering 2008); 11 Dec. 2008 Law No. 29291 (covering 2009); 8 Dec. 2009 Law No. 29467 (covering 2010); 9 Dec. 2010 Law No. 29628 (covering 2011); 9 Dec. 2011 Law No. 29813 (covering 2012); 4 Dec. 2012 Law No. 29952 (covering 2013); 2 Dec. 2013 Law No. 30115 (covering 2014); 4 Dec. 2014 Law No. 30282 (covering 2015); 6 Dec. 2015 Law No. 30373 (covering 2016); 2 Dec. 2016 Law No. 30519 (covering 2017); 7 Dec. 2017 Law No. 30694 (covering 2018).

⁹¹ See **Ex. CE-40**, 22 June 2010 SMCV Appeal to Tax Tribunal, 2006/07 Royalty Assessments; **Ex. CE-49**, 10 Mar. 2011 SMCV Appeal to Tax Tribunal, 2008 Royalty Assessment.

⁹² See **Ex. CA-18**, Law of Administrative Procedure, No. 27444, Article 159(1) (“En el impulso y tramitación de casos de una misma naturaleza, se sigue rigurosamente el orden de ingreso.”).

⁹³ See **Ex. CE-83**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013 (confirming SUNAT's rejection of SMCV's reconsideration request over the 2008 Royalty Assessments); **Ex. CE-88**, 30 May 2013 Tax Tribunal Decision, No. 08997-10-2013 (confirming SUNAT's rejection of SMCV's reconsideration request over the 2006/07 Royalty Assessments).

⁹⁴ See **Ex. CE-79**, 5 Apr. 2013, Record of Oral Hearing No. 0286-2013-EF/TF.

decided to hold an oral hearing on 2 May 2013.⁹⁵ This was highly unusual since SMCV filed its appeal of the 2008 Royalty Assessments almost *nine months* after filing the appeal of the 2006/07 Assessments.⁹⁶

65. As a review of the Tax Tribunal case files now reveals, on 24 April 2013, the Tax Tribunal President's assistant, Ms. Ursula Villanueva, sent an *ex parte* communication to SUNAT Arequipa requesting a copy of SMCV's first Stability Agreement of 1994, which SUNAT promptly provided her that same day.⁹⁷ According to the Tax Tribunal's rules of procedure, the Tax Tribunal may request parties to provide additional documents but only if the request is signed by the judge presiding over the case ("*vocal ponente*"), not by the assistant to the Tax Tribunal President, as was the case here.⁹⁸ The request also must be made through a formal written communication and not by *ex parte* emails, but the assistant to the Tax Tribunal President violated both of these rules.⁹⁹

66. On 21 May 2013, within just weeks of holding an oral hearing and *before* Chamber No. 10 rendered its decision on the first-filed appeal of the 2006/07 Assessments, Chamber No. 1 rendered its decision confirming the 2008 Royalty Assessments and rejecting all of SMCV's claims.¹⁰⁰

⁹⁵ See **Ex. CE-80**, 9 Apr. 2013, Notification of Oral Hearing No. 0411-2013-EF/TF (scheduling an oral hearing for the 2008 Royalty Assessment appeal for 2 May 2013).

⁹⁶ See **Ex. CE-40**, 22 June 2010 SMCV Appeal of 2006/07 Royalty Assessments to Tax Tribunal; **Ex. CE-49**, 10 Mar. 2011 SMCV Appeal of 2008 Royalty Assessments to Tax Tribunal. See also **Ex. CA-18**, Law of Administrative Procedure, No. 27444, Article 159(1) (establishing the practice that cases should be determined in the order filed).

⁹⁷ See **Ex. CE-81**, 24 Apr. 2013 2:37 P.M. Email sent by Ursula Villanueva to Gabriela Bedoya at SUNAT ("Escribo en relación al . . . Cerro Verde . . . a fin que nos puedan hacer llegar [illegible] esta vía el primer convenio de estabilidad suscrito por la empresa el año 1994."); 24 Apr. 2013 2:55 P.M. Email sent by Gabriela Bedoya at SUNAT to Ursula Villanueva (attaches "Contrato de Garantías y Medidas de Promoción a la Inversión Resolución Ministerial No. 011-94-EM/VMM."). See also **Ex. CE-04**, 1994 Share Purchase Agreement, Appendix H, p. 154.

⁹⁸ See **Ex. CA-04**, 19 Aug. 1999 Peruvian Tax Code, Supreme Decree No. 135-99-EF, Art. 126 ("Para mejor resolver el órgano encargado podrá, en cualquier estado del procedimiento, ordenar de oficio las pruebas que juzgue necesarias y solicitar los informes necesarios para el mejor esclarecimiento de la cuestión a resolver."); **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 126 ("Para mejor resolver el órgano encargado podrá, en cualquier estado del procedimiento, ordenar de oficio las pruebas que juzgue necesarias y solicitar los informes necesarios para el mejor esclarecimiento de la cuestión a resolver."); **Ex. CE-45**, Manual of Organization and Institutional Functions of the Ministry of Economy and Finance, General Secretariat Resolution No. 002-2011-EF/13 ("Funciones específicas . . . j) Solicitar a quien corresponda las informaciones que requiera para el correcto cumplimiento de sus funciones.")

⁹⁹ See **Ex. CA-04**, 19 Aug. 1999 Peruvian Tax Code, Art. 126, Supreme Decree No. 135-99-EF ("Para la presentación de medios probatorios, el requerimiento del órgano encargado de resolver será formulado por escrito, otorgando un plazo no menor de dos (2) días hábiles.")

¹⁰⁰ See **Ex. CE-83**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013.

67. The Chamber No. 1 decision confirming the 2008 Royalty Assessments bears the initials of Ms. Villanueva on the signature page, which strongly suggests that she, and not a judge or clerk of Chamber No. 1, drafted the decision.¹⁰¹ According to the Tax Tribunal's rules of procedure, the Tax Tribunal President and her assistant have no role in drafting decisions or deliberating on cases.¹⁰² That role falls exclusively to the judges and clerks of the presiding Chambers.¹⁰³ Indeed, Ms. Villanueva was not even present when Chamber No. 1 heard oral argument on the appeal to the 2008 Royalty Assessment.¹⁰⁴

68. The Tax Tribunal's case files further show that on 27 May 2013, the Tax Tribunal notified SUNAT of its decision confirming SUNAT's 2008 Royalty Assessments and rejecting SMCV's appeal.¹⁰⁵ In violation of basic due process, SUNAT submitted a copy of the decision the following day to Chamber No. 10, which had not yet issued its decision, without notifying SMCV of the Tax Tribunal's decision confirming the 2008 Royalty Assessments and without copying SMCV in its communication.¹⁰⁶

69. On 30 May 2013, a *mere two days* after SUNAT provided a copy of the Chamber No. 1 decision confirming the 2008 Royalty Assessments to Chamber No. 10, Chamber No. 10 issued its decision confirming SUNAT's 2006/07 Assessments and rejecting all of SMCV's claims.¹⁰⁷ Chamber No. 10 did not draft its own decision or articulate its own analysis as to why SMCV's Stability Agreement should be arbitrarily restricted to the investments set forth in the 1996 Feasibility Study. Instead, Chamber No. 10 copied the Chamber No. 1 decision almost *verbatim*.¹⁰⁸ What is more, Chamber No. 10's copy-and-paste decision did not contain the initials of any clerk who worked on the case or who should have

¹⁰¹ See **Ex. CE-83**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013, p. 24.

¹⁰² See **Ex. CA-13**, 31 Oct. 2012 Manual of Tax Tribunal Procedures, General Secretariat Resolution No. 017-2012-EF/13, pp. [10-14], [17-18]; **Ex. CA-15**, 23 May 2014 Regulation of the Organization and Functions of the Ministry of Economy and Finance, Supreme Decree No. 117-2014-EF, Art. 22.

¹⁰³ See **Ex. CA-13**, 31 Oct. 2012 Manual of Tax Tribunal Procedures, General Secretariat Resolution No. 017-2012-EF/13, pp. 10-14, 17-18.

¹⁰⁴ See **Ex. CE-82**, 27 May 2013 Record of Oral Hearing No. 0411-2013-EF/TF.

¹⁰⁵ See **Ex. CE-85**, 27 May 2013 Tax Tribunal Notice No. 007270-2013-EF/40.01.

¹⁰⁶ See **Ex. CE-86**, 28 May 2013 SUNAT Letter to Chamber No. 10.

¹⁰⁷ See **Ex. CE-88**, 30 May 2013 Tax Tribunal Decision No. 08997-10-2013.

¹⁰⁸ Compare **Ex. CE-88**, 30 May 2013 Tax Tribunal Decision No. 08997-10-2013, with **Ex. CE-83**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013.

assisted the judges with the drafting.¹⁰⁹ This is highly unusual and strongly suggests that Chamber No. 10 played no role in preparing the decision.

70. It was not until 20 June 2013, several weeks after both decisions were rendered, that SMCV was finally notified of the decisions.¹¹⁰

71. On 26 June 2013, promptly after receiving the two almost identically worded decisions, SMCV requested that the Tax Tribunal exempt it from paying penalties and interest on the 2006/07 and 2008 Royalty Assessments.¹¹¹ Pursuant to Article 170 of the Peruvian Tax Code and Article 12 of Law 28969, penalties and interest are not applicable and must be waived when the proper interpretation of the applicable legal provision is subject to “reasonable doubt.”¹¹² There clearly was such reasonable doubt here: the Government based its Royalty Assessments on a completely novel and restrictive interpretation of the scope of stabilization benefits that found no support in law or contract, was without precedent, and was contrary both to prevailing industry practice and the purpose of the stability regime itself. Moreover, both the Ministry of Energy and Mines and SUNAT had publicly included SMCV among the companies that did *not* have to pay royalties as a result of a stability agreement.¹¹³

72. On 15 July 2013, the Tax Tribunal nevertheless denied SMCV’s waiver requests.¹¹⁴ It did so on the pretextual and arbitrary ground that SMCV should have expressly requested a waiver of penalties and interest in its appeals to the Tax Tribunal,¹¹⁵ even though

¹⁰⁹ Compare **Ex. CE-84**, Tax Tribunal Decision No. 18397-10-2013; Tax Tribunal Decision No. 01590-1-2018; Tax Tribunal Decision No. 01699-2-2016; Tax Tribunal Decision No. 003-83-10-2017 (last pages of Tax Tribunal Decisions containing initials of judges and clerks who worked on the case); *with* Tax Tribunal Decision No. 08252-1-2013, p. 28 (last page of the Tax Tribunal Decision containing initials of the vocal ponente, secretario relator, secretaria de la Sala, but not the asesor de la Sala).

¹¹⁰ See **Ex. CE-89**, 20 Jun. 2013 Acknowledgement of Receipt, Resolution 08252-1-2013.

¹¹¹ See **Ex. CE-90**, 26 Jun. 2013 SMCV Letter to the President of Chamber No. 1.

¹¹² See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 170; **Ex. CA-08**, 25 Jan. 2007 Law 28969, Law that Authorizes SUNAT to Implement Provisions that Facilitate the Administration of Royalties, Article 12 (“No procede la aplicación de intereses ni sanciones, tratándose de obligaciones relacionadas a la regalía minera, en los mismos casos y plazo señalado en el Art. 170° del Código Tributario.”).

¹¹³ See **Ex. CE-19**, 11 Mar. 2004 “Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas”; **Ex. CE-24**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” EL COMERCIO.

¹¹⁴ See **Ex. CE-91**, 15 Jul. 2013 Tax Tribunal Decision No. 11667-10-2013; **Ex. CE-92**, 15 Jul. 2013 Tax Tribunal Decision No. 11669-1-2013.

¹¹⁵ See **Ex. CE-91**, 15 Jul. 2013 Tax Tribunal Decision No. 11667-10-2013, p. 5; **Ex. CE-92**, 15 Jul. 2013 Tax Tribunal Decision No. 11669-1-2013, p. 5.

the Tax Tribunal has accepted waiver requests from other taxpayers that were submitted after their corresponding appeal decisions had been issued.¹¹⁶

73. On 18 September 2013, SMCV appealed the Tax Tribunal decision confirming SUNAT's 2008 Royalty Assessments to the Contentious Administrative Courts, which serve as Peru's independent and neutral courts on administrative matters within the Judicial Branch.¹¹⁷

74. On 17 December 2014, the first instance Contentious Administrative Court annulled SUNAT's 2008 Royalty Assessments.¹¹⁸ The Court rightly agreed with SMCV that the Mining Law and Regulations grant "legal stability . . . to the title holder of the mining activity . . . to exercise its activities, specifically to those that exercise mining activities in one concession or several concessions grouped in one Economic-Administrative Unit"¹¹⁹ and that "the benefits are granted to the title holder for the activities it performs within its concessions or Economic Administrative Units."¹²⁰ The Court accordingly concluded that SMCV's "activities related to the flotation of primary sulfides are being performed within the stability time period granted to [SMCV]" and that, as a result, SMCV did not owe any Royalty payments.¹²¹

75. On 29 January 2016, the Appellate Court reversed the first instance Court's decision and also denied SMCV's entitlement to a waiver of penalties and interest on the same pretextual and arbitrary ground as the Tax Tribunal.¹²² The Appellate Court thus denied SMCV's entitlement to a waiver without considering its arguments on the merits or that under Peruvian law inconsistent court decisions constitute proof of "reasonable doubt" about the proper interpretation of the legal provisions at issue.¹²³

76. On 23 February 2016, SMCV appealed the Appellate Court's decision before the Supreme Court, in a last attempt to allow the Peruvian courts to vindicate SMCV's rights

¹¹⁶ See e.g. **Ex. CE-26**, 26 Jul. 2006 Tax Tribunal Decision No. 04123-1-2006.

¹¹⁷ See **Ex. CE-97**, 18 Sep. 2013 SMCV Administrative Court Appeal of the Tax Tribunal Decision, 2008 Royalty Assessment.

¹¹⁸ See **Ex. CE-122**, 17 Dec. 2014 Administrative Court Decision, No. 07650-2013-CA, 2008 Royalty Assessment.

¹¹⁹ See *id.*, p. 24.

¹²⁰ See **Ex. CE-122**, *id.*, p. 5.

¹²¹ See **Ex. CE-122**, *id.*, p. 25.

¹²² See **Ex. CE-137**, 29 Jan. 2016 Appellate Court Decision, No. 7650-2013, 2008 Royalty Assessment.

¹²³ See *id.*, pp. 4, 15; **Ex. CE-05**, 15 Aug. 1995 Tax Tribunal Decision, No. 4363-2; **Ex. CE-06**, 3 Nov. 1995 Tax Tribunal Decision, No. 5208-1.

with regard to the 2008 Royalty Assessments.¹²⁴ On 18 August 2017, the Supreme Court dismissed all of SMCV's claims and upheld the Government's novel and restrictive position that SMCV's stabilization rights under the Stability Agreement were limited to the minerals processed in the leaching facilities.¹²⁵ The Supreme Court also arbitrarily upheld the Appellate Court's decision denying SMCV's entitlement to a waiver of penalties and interest, once again without even considering SMCV's arguments on the merits.¹²⁶

77. SMCV similarly appealed the Tax Tribunal decision confirming the 2006/07 Royalty Assessments to the Contentious Administrative Courts, including up to the Supreme Court.¹²⁷ The First and Second Instance Courts upheld SUNAT's novel and restrictive position. Even though the hearing was held more than 15 months ago on 20 November 2018, the Supreme Court did not issue its decision with respect to the 2006/07 Royalty Assessments and SMCV has now withdrawn its appeal.¹²⁸

2. SMCV's Challenge to the 2009 and 2010/11 Royalty Assessments.

78. SMCV's appeals of the 2009 and 2010/11 Royalty Assessments to the Tax Tribunal followed a similarly irregular pattern to the appeals of the 2006/07 and 2008 Royalty Assessments.

79. On 12 January 2012, SMCV appealed SUNAT's 2009 Royalty Assessments to the Tax Tribunal.¹²⁹ That appeal remained pending for *over six years*. Several years later, on 22 March 2017, SMCV appealed SUNAT's 2010/11 Royalty Assessments.¹³⁰

80. The Tax Tribunal assigned Chamber No. 1 to hear SMCV's appeal of the 2010/11 Royalty Assessments—the same Chamber that had committed grave irregularities in upholding the 2008 Royalty Assessments.¹³¹ Two of the three judges in Chamber No. 1

¹²⁴ See **Ex. CE-138**, 23 Feb. 2016 SMCV Supreme Court Appeal of the Appellate Court Decision No. 7650-2013, 2008 Royalty Assessment.

¹²⁵ See **Ex. CE-153**, 18 Aug. 2017 Supreme Court Decision, No. 5212-2016, 2008 Royalty Assessment.

¹²⁶ See *id.*, pp. 4-5, 18, 36-37, 40.

¹²⁷ See **Ex. CE-98**, 27 Sept. 2013 SMCV Administrative Court Appeal of the Tax Tribunal's Decision, 2006/07 Royalty Assessment; **Ex. CE-144**, 2 May 2016 SMCV Appellate Court Appeal of the Administrative Court Decision.

¹²⁸ See **Ex. CE-242**, 27 Feb. 2020, Withdrawal, 2006/07 Royalty Case, Docket No. 18174-2017.

¹²⁹ See **Ex. CE-62**, 12 Jan. 2012 SMCV Appeal of SUNAT's 2009 Royalty Assessment.

¹³⁰ See **Ex. CE-151**, 22 Mar. 2017 SMCV Appeal of SUNAT's 2010/2011 Royalty Assessments.

¹³¹ See **Ex. CE-180**, 20 Jun. 2018 SMCV Submission Requesting Removal of Judge Victor Mejía Ninacondor.

remained the same. The third judge, Victor Mejía Ninacondor, had joined the Tax Tribunal in around May 2018, just in time for the hearing on the 2010/11 Royalty Assessments.¹³² He had previously worked for SUNAT for almost 18 years, including in the SUNAT division that confirmed the 2010/11 Royalty Assessments on which he was now slated to rule.¹³³ What is more, Judge Mejía Ninacondor had also represented SUNAT in SMCV's appeal of the 2006/07 Royalty Assessments before the Appeals Court.¹³⁴

81. On 20 June 2018, SMCV filed a submission requesting that the Tax Tribunal remove Judge Mejía Ninacondor from hearing the case on the 2010/11 Royalty Assessments. In its submission, SMCV emphasized that Judge Mejía Ninacondor failed to meet the most basic requirements of independence and impartiality, as he had litigated on behalf of SUNAT the same issues between the same parties that he was now being called to rule on as a judge.¹³⁵ But despite the obviously disqualifying conflict of interest, the Tax Tribunal nevertheless denied SMCV's application in a plenary vote. The Tax Tribunal reasoned that disqualification grounds in Peru must be "interpreted narrowly" and that Judge Mejía Ninacondor was not conflicted.¹³⁶

82. As with the appeal of the 2008 Royalty Assessments, Chamber No. 1 scheduled a hearing on the appeal of the 2010/11 Royalty Assessments in record time when compared to other Tax Tribunal Chambers. Although the case involving the 2009 Royalty Assessments had been pending for *over six years* before Chamber No. 2, Chamber No. 1

¹³² See **Ex. CE-177**, 4 May 2018 Supreme Resolution, No. 013-2018-EF, Article 1.

¹³³ See **Ex. CE-227**, M. Victor Mejía Ninacondor LinkedIn Profile, also available at <https://pe.linkedin.com/in/m-victor-mejia-ninacondor-853b43109>; See also **Ex. CE-18**, 27 Dec. 2001 SUNAT Resolution No. 143-2001 (Victor Victor Mejía Ninacondor held the position of Ejecutor Coactivo, Intendencia Regional Lambayeque); **Ex. CE-33**, 6 Oct. 2009 SUNAT Resolution No. 212-2009 (Victor Victor Mejía Ninacondor held the position of Fedatario Titulare de la Intendencia Regional Ica); **Ex. CE-107**, 18 Mar. 2014 SUNAT Resolution No. 080-2014 (Victor Victor Mejía Ninacondor held the position of Ejecutor Coactivo, Intendencia Lima); **Ex. CE-129**, 18 Mar. 2015 SUNAT Resolution No. 011-2016-SUNAT/600000 (Victor Mieja Ninacondor held the position of Supervisor de la Seccion de Cobranza de Oficina y Soporte II (e), División de Cobranza de Oficina y Soporte, Gerencia de Cobranza, Intendencia Lima and Jefe de la Sección de Cobranza de Campo II, División de Cobranza de Camp, Gerencia de Cobranza, Intendencia Lima); **Ex. CE-216**, 14 Jan. 2019, 12:45 P.M., Tax Tribunal Minutes No. 2019-03 (listing Victor Mieja Ninacondor holding the position of Auditor Resolutor de la División de Reclamaciones II de la Intendencia de Principales Contribuyentes Nacionales de la SUNAT).

¹³⁴ See **Ex. CE-149**, 27 Oct. 2016 Fiscal Opinion No. 1368-2016.

¹³⁵ See **Ex. CE-180**, 20 Jun. 2018 SMCV Submission Requesting Removal of Judge Victor Mejía Ninacondor.

¹³⁶ See **Ex. CE-181**, 21 Jun. 2018 Tax Tribunal Rejection of SMCV's Request for Removal, Minutes of Plenary Council Meeting No. 2018-20, pp. 6-7.

quickly scheduled a hearing on the 2010/11 Royalty Assessments within a month of having received SMCV's appeal.¹³⁷

83. SMCV was concerned that, as with the appeal of the 2008 Royalty Assessments, Chamber No. 1 would again render a decision first, which Chamber No. 2 would then simply copy-paste. On 20 June 2018, SMCV accordingly requested that in accordance with its well-established practice, the Tax Tribunal decide the appeal of the 2009 Royalty Assessments first since it had been filed first.¹³⁸ On 18 July 2018, the Tax Tribunal also denied this request and rescheduled the hearing for the 2010/11 Royalty Case to 9 August 2018, the *same day* that Chamber No. 2 had scheduled the hearing for the 2009 Royalty Case.¹³⁹

84. On 15 August 2018, Chamber No. 2 issued a decision confirming SUNAT's 2009 Assessments and rejecting SMCV's request for a waiver of penalties and interest.¹⁴⁰ On 28 August 2018, Chamber No. 1 also confirmed SUNAT's 2010/11 Royalty Assessments and rejected SMCV's waiver request.¹⁴¹ Both decisions followed the same reasoning when confirming SUNAT's Assessments and both copied nearly *verbatim* the Chamber No. 1 decision confirming the 2008 Royalty Assessments drafted by the assistant to the Tax Tribunal President.¹⁴²

85. Both decisions also followed the same reasoning when confirming that SMCV was not entitled to a waiver of penalties and interest.¹⁴³ Despite there clearly being reasonable doubt about the proper interpretation of the Mining Law and Regulations and hence about the scope of SMCV's stabilization benefits—particularly after a Contentious Administrative Court had agreed with SMCV that the Stability Agreement encompassed the Flotation Plant—both

¹³⁷ See **Ex. CE-185**, 18 Jul. 2018 Tax Tribunal Notice of Oral Hearing No. 1170-2018-EF/TF (scheduling the oral hearing in the 2010/11 Royalty Proceedings for 21 May 2018).

¹³⁸ See **Ex. CE-179**, 20 Jun. 2018 SMCV Submission Requesting Suspension of Procedure.

¹³⁹ See **Ex. CE-185**, 18 Jul. 2018 Tax Tribunal Notice of Oral Hearing, No. 1170-2018-EF/TF (hearing on the 2010/11 Royalty Assessments scheduled for 9 Aug. 2018 in Chamber 1); **Ex. CE-183**, 6 Jul. 2018 Tax Tribunal Notice of Oral Hearing, No. 1065-2018-EF/TF (hearing on the 2009 Royalty Assessments scheduled for 9 Aug. 2018 in Chamber 2).

¹⁴⁰ See **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018, notified to SMCV on 28 Sept. 2018.

¹⁴¹ See **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, notified to SMCV on 18 Sept. 2018.

¹⁴² Compare **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018 pp. 1-33 and **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, pp. 15-40, with **Ex. CE-83**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013, pp. 1-21.

¹⁴³ **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018, pp. 33-38; **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, pp. 40-42. See **Ex. CA-01**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 86.

Chambers arbitrarily determined that SUNAT’s penalties and interest against SMCV could not be waived.

86. Ignoring the manifest unfairness of charging SMCV extraordinarily punitive penalties and interest when it had always acted in good faith in its interpretation of the Mining Law and Regulations, the Chambers held that SMCV’s Stability Agreement may have been subject to “reasonable doubt,” but purportedly not the Mining Law and Regulations as required under Article 170 of the Tax Code. The Chambers thus effectively ignored both that the Stability Agreement is a form contract drafted by the Government that must incorporate all stability benefits of the Mining Law and Regulations and that the Mining Law and Regulations plainly provide that stability agreements apply to all activities within the relevant concessions or EAU.¹⁴⁴

87. Shortly after Chamber No. 1, including Judge Mejía Ninacondor, confirmed the 2010/11 Royalty Assessments and rejected all of SMCV’s claims, the Government implicitly recognized that Judge Mejía Ninacondor should never have heard SMCV’s appeal. On 13 September 2018—that is, only 16 days after Chamber No. 1 issued its decision—the Government amended the Tax Code to require Tax Tribunal judges to abstain from participating in proceedings if they worked for SUNAT within the last 12 months and “directly and actively” participated in the SUNAT proceedings at issue before the Tax Tribunal.¹⁴⁵ The Legislative Decree effectively concedes that SMCV’s appeal was not heard by independent and impartial Tax Tribunal judges, but the Tax Tribunal’s decision nevertheless remains in effect.

88. On 28 December 2018 and 3 January 2019, SMCV requested that the Tax Tribunal order SUNAT to recalculate the interest owed by SMCV on the 2009 and 2010/11 Royalty Assessments (*Recursos de Queja*).¹⁴⁶ Pursuant to the Tax Code and decisions by the Peruvian Constitutional Tribunal, in calculating the interest owed by a taxpayer, SUNAT must take account of any delays of more than 12 months in the taxpayer’s proceedings before the Tax Tribunal.¹⁴⁷ After the 12-month threshold, SUNAT must apply the Consumer Price Index

¹⁴⁴ See **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018, pp. 37-38; **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, p. 38.

¹⁴⁵ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 100.

¹⁴⁶ See **Ex. CE-207**, 28 Dec. 2018 SMCV Submission Requesting Recalculation of Interest, 2009 Royalty Assessment; **Ex. CE-212**, 3 Jan. 2019 SMCV Submission Requesting Recalculation of Interest, 2010-11 Royalty Assessments.

¹⁴⁷ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33; **Ex. CE-145**, 10 May 2016 Constitutional Tribunal Judgment, Docket No. 04082-2012-PA/TC; **Ex. CE-189**, 16 Aug. 2018 Constitutional Tribunal Judgment, Docket No. 04532-2013-PA/TC.

(“CPI”) instead of the exorbitant penalty interest rate of 14.4% per year.¹⁴⁸ Despite the years-long delays in SMCV’s cases, SUNAT nonetheless applied the exorbitant penalty interest rate of 14.4%, rather than the CPI, to the 2009 and 2010/11 Royalty Assessments.¹⁴⁹

89. Faced once again with a fundamentally unfair outcome, SMCV challenged SUNAT’s decisions to the Tax Tribunal. But the Tax Tribunal still did not live up to the law or even to the most basic notions of justice. Within just a few days of receiving SMCV’s challenges, the Tax Tribunal dismissed them both on the pretextual ground that it did not have to consider the merits of SMCV’s challenges because SMCV had requested (under protest) an installment plan with SUNAT for the payment of the 2009 and 2010/11 Assessments.¹⁵⁰ In other words, according to the Tax Tribunal, by availing itself of its right under Peruvian law to pay the Assessments through installments, SMCV somehow waived its distinctively different right to a reasonable CPI rate meant to account for the Tax Tribunal’s unjustifiable delays in resolving SMCV’s appeals.

IV. JURISDICTION

90. Pursuant to Article 10.1.1 of the TPA, a tribunal has jurisdiction over “measures adopted or maintained by a Party relating to . . . covered investments.” Pursuant to Article 1.3 of the TPA, a “covered investment” is “with respect to a Party, an investment as defined in Article 10.28 (Definitions), in the territory of an investor of another Party in existence as of the date of entry into force of [the TPA] or established, acquired, or expanded thereafter.”

91. Freeport satisfies each of the requirements because (i) Freeport has a “covered investment” as defined by the TPA, *i.e.*, SMCV and the Cerro Verde mine; (ii) Freeport is an “investor of another Party,” *i.e.*, of the United States; and (iii) Freeport’s investment was “in existence as of the date of entry into force” of the TPA.

A. Freeport Has a Covered Investment under the TPA.

92. Article 10.28 of the TPA defines “investment” as “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment,” and

¹⁴⁸ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33.

¹⁴⁹ See **Ex. CE-213**, 4 Jan. 2019 [*sic*] Tax Tribunal Decision, No. 00019-Q-2019; **Ex. CE-214**, 7 Jan. 2019 Tax Tribunal Decision, No. 00036-Q-2019.

¹⁵⁰ See **Ex. CE-213**, 4 Jan. 2019 Tax Tribunal Complaint Office Decision, No. 00019-Q-2019, 2009 Royalty Assessment; **Ex. CE-214**, 7 Jan. 2019 Tax Tribunal Complaint Office Decision, No. 00036-Q-2019, 2010/11 Royalty Assessment.

specifies that “[f]orms that an investment may take include” an enterprise; shares, stock, and other forms of equity participation; concessions and other similar contracts; and other tangible or intangible property. An investment must be made “in [Peru’s] territory” to be considered a covered investment.¹⁵¹

93. Freeport indirectly “owns or controls” SMCV, an “enterprise” constituted under the laws of Peru.¹⁵² It also indirectly “owns or controls” the Cerro Verde production unit in the province of Arequipa, Peru, and the Mining and Beneficiation Concessions. Therefore, Freeport’s investments satisfy each element of the definition of “investment” under the TPA.

B. Freeport Qualifies as an Investor under the TPA.

94. Article 10.28 of the TPA defines an “investor of a Party” to include “an enterprise of a Party that attempts through concrete action to make, is making, or has made an investment in the territory of another Party.”

95. Freeport is a United States entity organized under the laws of the State of Delaware.¹⁵³ Thus, Freeport qualifies as an “enterprise of a Party” under the TPA. Further, as discussed above, Freeport’s investments were “made” in the territory of Peru—SMCV is a Peruvian entity and the Cerro Verde mine and Concessions are all in Peru.¹⁵⁴

C. Freeport’s Investment Was in Existence When the TPA Entered into Force.

96. Finally, pursuant to Article 1.3, the TPA applies not only to investments “established, acquired, or expanded” after the entry into force, but also to investments “in existence as of the date of entry into force” of the TPA. The TPA entered into force on 1 February 2009.¹⁵⁵

97. In 1999, Freeport’s predecessor (Phelps Dodge) indirectly acquired a majority of SMCV and the Cerro Verde mining operations.¹⁵⁶ In 2007, Phelps Dodge merged with

¹⁵¹ **Ex. CA-10**, TPA, Article 1.3.

¹⁵² **Ex. CE-262**, Certificate of Good Standing SMCV, February 17, 2020.

¹⁵³ **Ex. CE-263**, Certificate of Good Standing Freeport, February 18, 2022.

¹⁵⁴ *See e.g.* **Ex. CE-262**, Certificate of Good Standing SMCV, February 17, 2020.

¹⁵⁵ **CA-19**, 28 Feb. 2020, United Nations Conference on Trade and Development - Division of Investment and Enterprise, Table of Peru – Treaties with Investment Provisions; **CA-09**, Decreto Supremo No. 009-2009-MINCETUR.

¹⁵⁶ *See* **Ex. CE-04**, 17 Mar. 1994 Share Purchase Agreement; **Ex. CE-265**, 21 Feb. 2020, Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

Freeport, which became the indirect majority owner of SMCV.¹⁵⁷ Thus, Freeport’s investment was “in existence” as of February 2009 and qualifies for protection under the TPA.

98. The TPA further states in Article 10.1.3 that “for greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.” Freeport’s claims in this arbitration are all based on acts by Peru—including the first Tax Tribunal decisions confirming the 2006/07 and 2008 Assessments in May 2013—that took place after February 2009, the date of the TPA’s entry into force.

V. CONSENT TO ICSID ARBITRATION

99. Article 25 of the ICSID Convention provides that the Jurisdiction of the Centre shall extend to “any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.”

100. All of these elements are satisfied here. *First*, as described above in Section I (Introduction) and Section III (Background), Freeport submits through this Notice of Arbitration a legal dispute arising directly out of its investments in the Cerro Verde mine. *Second*, the dispute is between Peru, an ICSID Contracting State,¹⁵⁸ and Freeport, a national of the United States, another ICSID Contracting State,¹⁵⁹ acting on its own behalf and that of SMCV. *Third*, Peru consented in writing to submit the dispute to the Centre in the TPA. Specifically, Article 10.16.3 of the TPA provides that investors may submit claims “under the ICSID Convention and the ICSID Rules,” provided that both Peru and the United States are parties to the ICSID Convention.¹⁶⁰ Article 10.17 further provides that Peru “consents to the submission of a claim to arbitration under this Section in accordance with” the TPA and that such consent “shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre).”

¹⁵⁷ See **Ex. CE-29**, 19 Mar. 2007, SEC filing “Freeport-McMoRan Copper & Gold Inc. Completes Acquisition of Phelps Dodge Corp.”; **Ex. CE-265**, 21 Feb. 2020, Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

¹⁵⁸ **Ex. CE-03**, Peru ICSID Membership, available at <https://icsid.worldbank.org/en/Pages/about/MembershipStateDetails.aspx?state=ST109#>

¹⁵⁹ **Ex. CE-01**, US ICSID Membership, available at <https://icsid.worldbank.org/en/Pages/about/MembershipStateDetails.aspx?state=ST181#>

¹⁶⁰ **Ex. CA-10**, TPA, Art. 10.16.3.

101. In turn, Freeport and SMCV hereby consent to submit to the Centre the dispute that is the subject of this Notice of Arbitration.

VI. MERITS

102. Peru has breached both the Stability Agreement and the TPA.

103. *First*, Peru breached the Stability Agreement and its contractual obligation to provide SMCV with fiscal and administrative stability by confirming the 2009, 2010/11, 4Q 2011, 2012, and 2013 Royalty Assessments and the Tax Assessments listed in Annex A and Annex B hereto based on the Royalty Law and other “modifications or new rules”¹⁶¹ that the Government issued while the Stability Agreement remained in force.

104. *Second*, Peru breached Articles 10.5 (Minimum Standard of Treatment) and 10.4 (Most Favored Nation Treatment) of the TPA by (i) failing to grant SMCV a fair hearing before the Tax Tribunal and by denying SMCV effective means to enforce its rights in the 2009, 2010/11, 4Q 2011, 2012, and 2013 Royalty Cases and the Tax Cases listed in Annex A and Annex B; (ii) arbitrarily refusing to waive SUNAT’s extraordinarily punitive penalties and interest in the 2006/07, 2008, 2009, 2010/11, 4Q 2011, 2012, and 2013 Royalty Cases and the Tax Cases listed in Annex A and Annex B; and (iii) arbitrarily refusing to fully repay SMCV the GEM overpayments for the 4Q 2011 to 3Q 2012 time period.

A. Peru Breached the Stability Agreement.

105. Article 10.16.1 of the TPA permits an “investor of a Party” to submit to arbitration a claim that the other Party has breached an “investment agreement” with an enterprise that the investor “owns or controls directly or indirectly.”¹⁶²

106. As explained in Section IV (Jurisdiction) above, Freeport is an investor of the United States and the Stability Agreement is an “investment agreement” as defined in Article 10.28 of the TPA¹⁶³ because it grants rights to SMCV, a “covered investment” of Freeport,

¹⁶¹ **Ex. CE-12**, 1998 Stability Agreement, Clause 9.5.

¹⁶² **Ex. CA-10**, TPA, Arts. 10.16 and 10.28 (defining the terms “Claimant” and “Respondent” used in Art. 10.16).

¹⁶³ **Ex. CA-10**, TPA, Art. 10.28 (“**investment agreement** means a written agreement between a national authority of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor: (a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale; (b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or

“with respect to ... the exploration, extraction, refining, transportation, distribution, or sale” of “natural resources”—namely, the guarantee of a stable administrative and tax regime with respect to the investments in the Mining and Beneficiation Concessions. Further, Freeport and SMCV relied on the Stability Agreement “in establishing or acquiring a covered investment.” Freeport relied on the Stability Agreement in acquiring SMCV’s shares and Freeport and SMCV relied on the Stability Agreement in making their investments in the Cerro Verde mine including, among other investments, the Leaching and the Flotation Plant. Freeport also indirectly “owns or controls” SMCV, a Peruvian entity that is party to an investment agreement with the Peruvian Government.¹⁶⁴

107. Freeport is thus entitled to submit to arbitration on behalf of SMCV Peru’s breaches of the Stability Agreement.¹⁶⁵

108. Peru breached the Stability Agreement and its contractual obligation to (i) provide fiscal and administrative stability to SMCV;¹⁶⁶ (ii) exempt SMCV from the application of any new laws or regulations that “directly or indirectly, denaturalize[d] the guarantees provided” by the Stability Agreement;¹⁶⁷ and (iii) protect SMCV from “any encumbrance or obligation that could represent reduction of its availability of cash”¹⁶⁸ when the Tax Tribunal confirmed the 2009, 2010/11, and 4Q 2011 Royalty Assessments and the Tax Assessments listed in Annex A.¹⁶⁹ Peru also breached the Stability Agreement when SUNAT rejected SMCV’s reconsideration requests of the 2012 and 2013 Royalty Assessments and the Tax Assessments listed in Annex B because in view of the Tax Tribunal’s consistent failure to act independently and impartially with regard to SMCV’s claims, as further explained in

telecommunications; or (c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government”).

¹⁶⁴ **Ex. CA-10**, TPA Art. 10.16.

¹⁶⁵ **Ex. CA-10**, TPA, Art. 10.16.1(b)(i)(C).

¹⁶⁶ **Ex. CE-12**, 1998 Stability Agreement, Clause 9.5 (tax stability) and Clause 9.6 (administrative stability).

¹⁶⁷ *Id.*, Clause 10.1.

¹⁶⁸ *Id.*, Clause 10.2; *see also* Clause 9.4, allowing SMCV to keep its accounting in dollars; and Clause 13 providing that the provisions referenced in the Stability Agreement are the ones in force at the time of the approval of the Feasibility Study.

¹⁶⁹ For clarity, Peru also breached the 1998 Stability Agreement when the Tax Tribunal confirmed the 2006/07 and 2008 Royalty Assessments in May 2013. However, since more than three years have passed since the Tax Tribunal notified SMCV of its decisions, Freeport is not submitting claims for breach of the 1998 Stability Agreement with regard to the 2006/07 and 2008 Assessments. *See* Article 10.18.1 of the TPA.

Section VI(B) below, it had become at that point entirely futile for SMCV to appeal those Assessments further before the Tax Tribunal.

109. Peru's novel and restrictive position that stabilization benefits are limited to the investments set forth in the feasibility study submitted to the Government to obtain the stability agreement and that Clause 1 of the Stability Agreement limits the scope of SMCV's stabilization benefits to the minerals processed through leaching, finds no support in Peru's own laws and practice or the plain terms of the Stability Agreement.

110. *First*, Peru's novel and restrictive position that SMCV's stabilization benefits must be distinguished based on their processing method, *i.e.*, on whether SMCV uses leaching or flotation to process the minerals extracted under its sole Mining Concession, cannot be reconciled with the manner in which Royalty payments are assessed under the Royalty Law. The Royalty Law imposes royalties on the *extraction* of minerals. How such minerals are then processed is entirely irrelevant for purposes of calculating any royalties due to the Government. Specifically, Article 2 of the Royalty Law provides that mining companies shall pay royalties as consideration for the "*exploitation* of metallic and non-metallic mineral resources."¹⁷⁰ In turn, Article 8 of the Mining Law states that "*exploitation* is the activity of *extracting* minerals"¹⁷¹ and Article 4 of the Royalty Law Regulations states that "payment of the mining royalty" shall be calculated based on "the mineral *extracted* while operating mining concessions."¹⁷²

111. *Second*, there is no support in the Mining Law and Regulations for Peru's novel and restrictive position that stabilization benefits are limited to the investments set forth in the feasibility study submitted to obtain the stability agreement. On the contrary, the Mining Law and Regulations provide that stabilization benefits attach to the *activities* performed by the "title holder of the mining activity" either within a particular concession or *within a particular EAU*, without any distinction between different processing methods.¹⁷³ For instance, Article 82 of the Mining Law provides that the purpose of stability agreements is "to promote investment and facilitate the financing of mining projects . . . regarding one or more *Economic Administrative Units*," which include the mining concessions that form an EAU (like SMCV's Mining and Beneficiation Concessions) and "all other assets that form part of a single

¹⁷⁰ **Ex. CA-06**, Royalty Law, Law No. 28258, Art. 2 (emphasis added).

¹⁷¹ *See Ex. CA-01*, 3 Jun. 1992 General Mining Law, which was approved by Supreme Decree No. 014-92-EM, Art. 8 (emphasis added).

¹⁷² *See Ex. CA-07*, 15 Nov. 2004 Royalty Law Regulations, Supreme Decree No. 157-2004-EF, Art. 4.

¹⁷³ *See Ex. CA-01*, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 83; **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Art. 22.

production unit”¹⁷⁴ (such as the Flotation Plant). Similarly, Article 83 of the Mining Law provides that stability benefits “extend exclusively to *the activities of the mining company* in whose favor the investment is made,”¹⁷⁵ again without limitation to a particular subset of activities within the same concession or EAU.¹⁷⁶

112. Moreover, Article 22 of the Regulations specifically provides that stability benefits apply to a mining company “exclusively for investments it makes *in the concessions or Economic Administrative Units.*”¹⁷⁷ And Article 25 of the Regulations expressly recognizes that a mining company may “*expand[] its facilities or [make] new investments* that benefit from the contractual stability guarantee.” If stabilization benefits cover only the initial investments included in the feasibility study submitted to the Government for purposes of obtaining stabilization benefits, as Peru now claims, then it would make no sense for Article 22 to reference the mining company’s investments within its concessions or EAU (rather than investments in its feasibility study), or for Article 25 to expressly reference “new” or “expand[ed]” investments also falling within the “contractual stability guarantee.”

113. *Third*, under the Stability Agreement, the scope of the stabilization benefits likewise extended to SMCV’s activities within its Mining and Beneficiation Concessions without any limitations. In fact, the scope of SMCV’s stabilization benefits under the Stability Agreement cannot be different from that under the Mining Law and Regulations. Pursuant to Article 86 of the Mining Law, the Stability Agreement was a form contract drafted by the Government that incorporated all of the stabilization benefits granted by the Mining Law and Regulations. Article 86 expressly states that “the contracts that guarantee [stability benefits] are form contracts based on templates prepared by the Ministry of Energy and Mines. Such contracts *must incorporate all guarantees* established under this Section” of the Mining Law (*i.e.*, the Section titled “Tax Stability Regime”).¹⁷⁸

114. Clause 1.1 of the Stability Agreement accordingly provided that SMCV requested stabilization benefits “in relation with the investment in its concession Cerro Verde

¹⁷⁴ See **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82.

¹⁷⁵ See **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 83.

¹⁷⁶ *Id.*

¹⁷⁷ See **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Art. 22. See also *id.*, Article 2 (holding that the guaranteed benefits “are applied as of right to all mining activity concessionaires... that exercise mining activity in a concession or in concessions grouped in an Economic Administrative Unit” “[w]hen the natural or legal person is the holder of several concessions or Economic-Administrative Units.”)

¹⁷⁸ See **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 86.

No. 1, No. 2, and No. 3,”¹⁷⁹ and Clause 3 and Annex I provided that the stabilization benefits were “circumscribed” to SMCV’s Mining and Beneficiation Concessions.¹⁸⁰ In turn, Clauses 9 and 10, which define and describe the stabilization benefits, provide that those benefits are granted to “the owner” (*i.e.*, SMCV) without any limitations based on how the Cerro Verde minerals would be processed.¹⁸¹

115. Moreover, when entering into the Agreement, the Government was fully aware that (i) Cerro Verde’s leachable reserves would be exhausted by 2014 and it would thus be necessary to build processing facilities for processing the primary sulfides,¹⁸² and (ii) in the 1994 Share Purchase Agreement, the Government imposed on SMCV the obligation to install new mill and flotation facilities for processing primary sulfides.¹⁸³ As stated above, the Government accordingly approved SMCV’s proposal to invest US\$800 million for the construction of the Flotation Plant and also approved through a Resolution the extension of SMCV’s Beneficiation Concession to include the Flotation Plant.¹⁸⁴

116. *Fourth*, Peru’s novel and restrictive position is inconsistent with its own earlier statements and practice, including in presentations to the Peruvian Congress by high Government officials confirming that SMCV and other mining companies with stability agreements would be exempted from paying royalties under the Royalty Law while their agreements remained in force, as explained in Section III (Background) above.¹⁸⁵

117. *Finally*, Peru’s novel and restrictive position makes no commercial or practical sense. It results in a single mining concession having multiple fiscal regimes even though

¹⁷⁹ See **Ex. CE-12**, 1998 Stability Agreement, Clause 1.1.

¹⁸⁰ *Id.*, Annex I.

¹⁸¹ See *id.*, Clause 9 (“The State hereby guarantees *to the owner* in accordance with [the Mining Law and Mining Regulations] . . . the following . . .” (emphasis added)); *Id.*, Clause 10 (providing that “any law or regulation issued after the date of approval of the feasibility study that, directly or indirectly, denaturalizes the guarantees provided for in the ninth clause *shall not apply to the owner.*” (emphasis added)).

¹⁸² See **Ex. CE-20**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 4.

¹⁸³ See **Ex. CE-04**, 1994 Share Purchase Agreement, Appendix G, p. 148.

¹⁸⁴ **Ex. CE-23**, 9 Dec. 2004 Ministry of Energy and Mines, Ministerial Resolution No. 510-2004MEM/DM (approving SMCV’s proposal). See **Ex. CE-21**, 3 Dec. 2004 Ministry of Economy and Finance, Oficio No. 942-2004-EF/10; **Ex. CE-22**, 3 Dec. 2004 Ministry of Economy and Finance, Report No. 209-2004-EF/66.01; **Ex. CE-34**, 30 Oct. 2009 Ministry of Energy and Mines, Resolution No. 213-2009-MEM/DM.

¹⁸⁵ See **Ex. CE-24**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” EL COMERCIO. See also **Ex. CE-19**, 11 Mar. 2004 “Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas.”

Peruvian law and regulations provide no guidance whatsoever about how a mining company is meant to split its activities within a single concession into stabilized and non-stabilized investments. In fact, Peru's position is so nonsensical that not even SUNAT has been able to properly implement it. One salient example is the 2013 Complementary Mining Pension Fund Case, which is included in Annex B. Through Law No. 29741 of 2011, the Government created a new obligation for mining companies to pay 0.5% of their yearly net income to a Mining Pension Fund. Since Law No. 29741 was passed while the Stability Agreement was in force, SMCV should have been exempted from making any such payments. Under Peru's novel and restrictive position, SMCV would have to pay 0.5% of its yearly net income to the Fund, but only with regard to its "non-stabilized" net income (*i.e.*, the Flotation Plant-related income). Unsurprisingly, however, SUNAT was unable to determine how to assess SMCV based only on its Flotation Plant-related income. Instead, SUNAT simply imposed the payments on the entirety of SMCV's net income, which even under the Government's own novel and restrictive interpretation of the scope of SMCV's stabilization benefits is a clear breach of the Stability Agreement.

118. Peru's novel and restrictive position also flouts the stabilization regime's very purpose, which the Mining Law expressly defines as "promot[ing] investment and facilitat[ing] the financing of mining projects."¹⁸⁶ That purpose can be achieved only if, as the Mining Law provides, stabilization benefits extend to all investments and activities within the covered concessions during the life of the stability agreement.¹⁸⁷ Stabilization benefits that are not artificially limited to specific investments as set forth in the feasibility study better reflect the nature of the industry and better provide mining companies with the clarity and predictability that they need to invest and attract financing for their large and long term investments. Peru's novel and restrictive interpretation of the scope of stabilization benefits strongly discourages investors from making additional capital investments to increase the mine's productivity or to exploit minerals that cannot be processed in the existing facilities.

B. Peru Breached Articles 10.5 (Minimum Standard of Treatment) and 10.4 (Most Favored Nation Treatment) of the TPA.

119. Peru breached Articles 10.5 and 10.4 of the TPA when the Tax Tribunal collaborated with SUNAT to uphold SUNAT's Royalty and Tax Assessments in violation of SMCV's due process rights, and also by arbitrarily failing to waive SUNAT's extraordinarily punitive penalties and interest despite SMCV being entitled under Peruvian law to such a

¹⁸⁶ **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82.

¹⁸⁷ **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Arts. 82, 83, 86.

waiver. Peru also breached Articles 10.5 and 10.4 of the TPA when SUNAT arbitrarily refused to fully repay SMCV GEM overpayments even though SMCV was entitled to those repayments under the GEM Agreement and Peruvian law.

120. Article 10.5 of the TPA (Minimum Standard of Treatment) provides in pertinent part:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide ... “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the legal systems of the world [...].¹⁸⁸

121. Moreover, Freeport here is entitled to an even more protective standard, through the operation of the TPA’s “Most Favored Nation Treatment” Clause. That clause—Article 10.4 of the TPA—ensures that U.S. investors in Peru will be treated no less favorably than investors of any other state, and provides:

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.¹⁸⁹

¹⁸⁸ Ex. CA-10, TPA Art. 10.5.

¹⁸⁹ Ex. CA-10, TPA, Art. 10.4.

122. By operation of that provision, Freeport is entitled to avail itself of the Protocol to the Peru-Italy Treaty on the Promotion and Protection of Investments of 1994, in which Peru agreed to provide Italian investors “effective means of asserting claims and enforcing rights with respect to investments and authorizations related to them and investment agreements.”¹⁹⁰ Accordingly, pursuant to Article 10.4 of the TPA, Peru must provide Freeport with “effective means” to enforce their rights.¹⁹¹ The obligation to provide effective means consists both of a negative obligation to avoid interfering with the investor’s exercise of rights, and a positive obligation to provide effective means to assert and enforce those rights.¹⁹²

1. Peru’s Violation of SMCV’s Due Process Rights.

123. Peru violated SMCV’s due process rights in breach of the minimum standard of treatment and effective means clause when the Tax Tribunal collaborated with SUNAT to confirm the 2009 and 2010/11 Royalty Assessments.

124. While SMCV was afforded the opportunity to present written and oral submissions to the Tax Tribunal in its appeals of the Royalty Assessments, it never had a fair chance to persuade the Tax Tribunal judges of its position. As the facts set forth in Section(III) (D) (Background) above show, the Tax Tribunal judges did not decide SMCV’s cases independently and impartially but rather collaborated with SUNAT to ensure that the Government would prevail. This is demonstrated by, among other things, the fact that:

- The Tax Tribunal’s decision on SMCV’s challenge to the 2008 Royalty Assessments was drafted by the Tax Tribunal President’s assistant instead of by three independent and impartial judges;
- That assistant was not present at the hearing when SMCV presented its arguments;
- That assistant communicated *ex parte* with SUNAT, violating Tax Tribunal rules;

¹⁹⁰ **Ex. CA-03**, Peru-Italy Treaty on the Promotion and Protection of Investments, 5 May 1994, Protocol ¶ 2(c) (unofficial translation).

¹⁹¹ **Ex. CA-12**, *White Industries Australia Ltd. v. India*, UNCITRAL, Final Award of 30 Nov 2011, ¶ 11.2.1 (importing the effective means clause from a third-party treaty through the MFN provision).

¹⁹² **Ex. CA-11**, *Chevron v. Ecuador*, UNCITRAL, Partial Award on the Merits of 30 Mar. 2010, ¶ 248. See also **Ex. CA-12**, *White Industries Australia Ltd. v. India*, UNCITRAL, Final Award of 30 Nov 2011, ¶ 11.3.2(b) (Effective means require “both that the host State establish a proper system of laws and institutions and that those systems work effectively in any given case.”).

- The assistant’s decision was then copied virtually *verbatim* by the Tax Tribunal Chambers hearing SMCV’s other challenges to SUNAT’s Royalty Assessments, including in the 2009 and 2010/11 Royalty Cases;
- The Tax Tribunal arbitrarily refused to disqualify Judge Mejía Ninacondor in the 2010/11 Royalty Case even though he failed to meet the most basic requirements of independence and impartiality; and
- The Tax Tribunal unlawfully allowed Chamber No. 1—the same Chamber that had committed grave irregularities in the 2008 Royalty Case and that Judge Ninacondor had now conveniently joined—to effectively side-step the Tax Tribunal rule that cases must be heard in the order presented.

125. Given that the Tax Tribunal has consistently failed to act independently and impartially with regard to SMCV’s claims, it had become entirely futile for SMCV to appeal the 2012 and 2013 Royalty Assessments to the Tax Tribunal, or any of the Tax Assessments listed in Annex B. Moreover, as a result of the Tax Tribunal’s consistent disregard for the most basic norms of due process, Freeport lacked any effective means to enforce its rights before the Tax Tribunal also with regard to the 4Q 2011 Royalty Assessments and the Tax Assessments listed in Annex A.

2. Peru’s Arbitrary and Grossly Unfair Imposition of Penalties and Interest.

126. Peru also violated its obligations under the minimum standard of treatment and effective-means clauses when (i) the contentious administrative courts (specifically, the Appellate Court and the Supreme Court) arbitrarily refused to waive SUNAT’s extraordinarily punitive penalties and interest on the 2006/07 and 2008 Royalty Assessments; (ii) the Tax Tribunal arbitrarily refused to waive SUNAT’s extraordinarily punitive penalties and interest on the 2009, 2010/11, and 4Q 2011 Royalty Assessments and the Tax Assessments listed in Annex A; and (iii) SUNAT arbitrarily refused to waive its extraordinarily punitive penalties and interest on the 2012 and 2013 Royalty Assessments and the Tax Assessments listed in Annex B.

127. Under Peruvian law, the purpose of imposing punitive penalties and interest of up to 14.4% per year is to penalize taxpayers that unlawfully flout their obligations to pay taxes and deter future wrongdoing. However, in circumstances where the royalty or tax assessments are based on a legal provision that is subject to reasonable doubt, the Government must waive

such penalties and interest.¹⁹³ This ensures that taxpayers are not penalized for exercising their right to challenge assessments that are based on legal provisions subject to reasonable doubt.

128. Specifically, Article 170 of the Peruvian Tax Code and Article 12 of Law 28969 provide that penalties and interest are not applicable and must be waived when the proper interpretation of the applicable legal provision on which the royalty or the tax assessment is based is subject to reasonable doubt.¹⁹⁴

129. Peru has never once disputed that SMCV's decision not to pay Royalties or Taxes for its Flotation Plant-related activities was made in good faith. Peru also cannot seriously dispute that the scope of stabilization benefits under the Mining Law and Regulations was subject to reasonable doubt: (i) the Contentious-Administrative Courts hearing SMCV's appeals in the 2006/07 and 2008 Royalty Cases reached conflicting results, with the first instance Court hearing the appeal of the 2008 Royalty Assessments upholding SMCV's position that the Stability Agreement covers the entirety of SMCV's activities in its Mining Concessions;¹⁹⁵ (ii) as explained in Section VI(A) above, neither the Royalty Law nor the Mining Law and Regulations support Peru's novel and restrictive position that stabilization benefits are limited to the investments set forth in the feasibility study submitted to obtain the stability agreement. On the contrary, the Royalty Law, and the Mining Law and Regulations all expressly support SMCV's position that stabilization benefits attach to a particular concession or EAU, without any distinction between processing methods;¹⁹⁶ (iii) the Stability Agreement expressly states that it applies to SMCV's Mining and Beneficiation Concessions, which include both the Leaching Facilities and Flotation Plant;¹⁹⁷ (iv) several Government officials confirmed that SMCV and other mining companies were exempted from paying royalties under the Royalty Law because of stability agreements with the Government;¹⁹⁸ (v)

¹⁹³ See **Ex. CA-04**, Peruvian Tax Code, Art. 180 (providing that "[t]he Tax Administration shall apply, for the commission of violations, the penalties consisting of fines...").

¹⁹⁴ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 170; **Ex. CA-08**, 25 Jan. 2007 Law 28969, Law that Authorizes SUNAT to Implement Provisions that Facilitate the Administration of Royalties, Article 12 ("No procede la aplicación de intereses ni sanciones, tratándose de obligaciones relacionadas a la regalía minera, en los mismos casos y plazo señalado en el Art. 170° del Código Tributario.").

¹⁹⁵ **Ex. CE-122**, 17 Dec. 2014 Administrative Court Decision, No. 07650-2013-CA, 2008 Royalty Assessment.

¹⁹⁶ See **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 83; **Ex. CA-02**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Art. 22.

¹⁹⁷ **Ex. CE-12**, 1998 Stability Agreement, Annex I.

¹⁹⁸ See **Ex. CE-24**, 4 May 2006 "Congresistas critican contratos de estabilidad y mineras los defienden," EL COMERCIO. See also **Ex. CE-19**, 11 Mar. 2004 "Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas."

the Tax Tribunal issued a Resolution in 2011 acknowledging that stabilization benefits extend to all investments within an EAU;¹⁹⁹ (vi) in a clear reflection of the recognized uncertainty, President Vizcarra submitted a draft law to Congress in 2018 that sought to “modify” the Mining Law “in order to make the interpretation of stabilization benefits uniform” and “to include preexisting investments within the scope of stabilization benefits” provided that they are included in the feasibility study submitted to the Government for purposes of obtaining such benefits.²⁰⁰ While the President’s efforts did not come to fruition, the draft law is a clear recognition from the Peruvian Government that the interpretation of the scope of stabilization benefits is not “uniform” and hence, at a minimum, subject to reasonable doubt;²⁰¹ and (vii) the Government accepted, or at the very least acquiesced in, SMCV’s interpretation of the scope of the stabilization benefits when it accepted GEM payments in lieu of royalty payments.²⁰²

130. In these circumstances, the Government was under a clear obligation to waive SUNAT’s extraordinarily punitive penalties and interest. The Government has nevertheless arbitrarily refused to waive the penalties and interest and thereby has penalized SMCV for defending its rights by challenging in good faith SUNAT’s Royalty and Tax Assessments that SMCV firmly believes violate the Government’s contractual and statutory obligation to provide fiscal and administrative stability to SMCV. The Government has done so on spurious and arbitrary grounds.

131. Specifically, in the 2006/07 and 2008 Royalty Cases, the Contentious Administrative Courts arbitrarily upheld the Tax Tribunal’s decision that SMCV lost its right to a waiver of penalties and interest by not including a waiver request in its appeals to the Tax Tribunal.²⁰³ That ruling stands in stark contrast to decisions issued by the Tax Tribunal in cases brought by other taxpayers, where the Tax Tribunal has accepted waiver requests from other

¹⁹⁹ **Ex. CE-57**, 6 Dec. 2011 Tax Tribunal Decision No. 20290-1-2011, pp. 6-7, 9.

²⁰⁰ *See Ex. CA-17*, Draft Law No. 3664/2018-PE dated 26 Nov. 2018, pp. 3, 10.

²⁰¹ *See Ex. CA-17*, Draft Law No. 3664/2018-PE dated 26 Nov. 2018.

²⁰² *See Ex. CE-64*, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), Law No. 29790, Art. 2.2; **Ex. CE-65**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-70**, 31 May 2012 SMCV Gem Payment, 1Q 2012; **Ex. CE-71**, 31 Aug. 2012 SMCV Gem Payment, 2Q 2012; **Ex. CE-73**, 30 Nov. 2012 SMCV Gem Payment, 3Q 2012; **Ex. CE-208**, 28 Dec. 2018 SMCV Reimbursement Request, 4Q 2011; **Ex. CE-209**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 1Q 2012; **Ex. CE-210**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 2Q 2012; **Ex. CE-211**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 3Q 2012; **Ex. CE-218**, 4 Mar. 2019 SUNAT Resolution No. 012-180-0018640/SUNAT.

²⁰³ *See Ex. CE-91*, 15 Jul. 2013 Tax Tribunal Decision No. 11667-10-2013, p. 5; **Ex. CE-92**, 15 Jul. 2013 Tax Tribunal Decision No. 11669-1-2013, p. 5.

taxpayers that were submitted after the corresponding appeal decisions had been issued. Such inconsistent treatment is a hallmark of arbitrariness.²⁰⁴

132. Further, in the 2009, 2010/11, and 4Q 2011 Royalty Cases and in certain Tax Cases included in Annex A,²⁰⁵ the Tax Tribunal arbitrarily held that reasonable doubt existed only over the scope of the Stability Agreement and not over the Mining Law and Regulations as required by Article 170 of the Tax Code.²⁰⁶ But as explained above, pursuant to Article 86 of the Mining Law, the Stability Agreement was a “form contract[] based on templates prepared by the Ministry of Energy and Mines” and it “*incorporate[s] all guarantees established under*” the Mining Law.²⁰⁷ Moreover, the Supreme Court itself based its decision upholding the 2008 Royalty Assessments, in part, on its interpretation of the Mining Law and Regulations.²⁰⁸

133. As a result of the Government’s arbitrary refusal to waive penalties and interest, as it was required to do under its own laws, the penalties and interest assessed against SMCV today account for more than 60% of Freeport’s damages.

134. To make matters worse, the Government’s arbitrary and grossly unfair conduct does not stop there. Not satisfied with the hundreds of millions of dollars that it unlawfully imposed on SMCV in penalties and interest, the Government also arbitrarily refused to take account of the Tax Tribunal’s excessive delays in resolving SMCV’s appeals against the 2009 and 2010/11 Royalty Assessments even though it was mandated to do so under Peruvian law. As explained in paragraphs 88-89 above, pursuant to the Tax Code and decisions by the Peruvian Constitutional Tribunal, in calculating the interest owed by a taxpayer, SUNAT must take account of any delays of more than 12 months in the taxpayer’s proceedings before the

²⁰⁴ See **Ex. CE-26**, 26 Jul. 2006 Tax Tribunal Decision No. 04123-1-2006.

²⁰⁵ See Annex A, **Ex. CE-191**, 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, notified to SMCV on 16 Nov. 2018; **Ex. CE-192**, 22 Aug. 2018 Tax Tribunal Resolution No. 06369 2 2018, notified to SMCV on 16 Nov. 2018; **Ex. CE-190**, 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, notified to SMCV on 16 Nov. 2018; **Ex. CE-202**, 30 Oct. 2018 Tax Tribunal Resolution No. 08470 2 2018, notified to SMCV on 20 Nov. 2018; **Ex. CE-223**, 20 Jun. 2019 Tax Tribunal Resolution No. 05634-4-2019, notified to SMCV on 31 Jul. 2019.

²⁰⁶ See **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018, notified to SMCV on 28 Sept. 2018; **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, notified to SMCV on 18 Sept. 2018; **Ex. CE-269**, 18 Nov. 2019 Tax Tribunal Decision, No. 10574-9-2019, notified to SMCV on 4 Dec. 2019.

²⁰⁷ See **Ex. CA-01**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 86.

²⁰⁸ **Ex. CE-270**, 4 Jan. 2018, Supreme Court Decision No. 1, File No. 19424-2017.

Tax Tribunal.²⁰⁹ After the 12-month threshold, SUNAT must apply the CPI rate of around 2% instead of the exorbitant penalty interest rate of 14.4% per year.²¹⁰ Despite the years-long delays in SMCV's appeals against the 2009 and 2010/11 Royalty Assessments, SUNAT nonetheless applied the exorbitant 14.4% rate, rather than the CPI, to the 2009 and 2010/11 Royalty Assessments. The Tax Tribunal arbitrarily upheld SUNAT's decision on the specious grounds that, by applying (under protest) for an installment payment plan for the 2009 and 2010/11 Royalty Assessments, SMCV would have waived its right to a reasonable CPI rate.²¹¹

3. Peru's Arbitrary and Grossly Unfair Refusal to Reimburse GEM Overpayments.

135. Peru further violated SMCV's due process rights in breach of the minimum standard of treatment and effective-means clauses when SUNAT arbitrarily refused to reimburse GEM overpayments for the time period 4Q 2011 to 3Q 2012.

136. Under the GEM Agreement and Peruvian law, SMCV had to make GEM payments to the Government provided that it was exempted from paying royalties—mining companies that had to pay royalties were *not* subject to the GEM.²¹² Accordingly, since the Stability Agreement exempted SMCV from making any royalty payments, SMCV paid the GEM to the Government for the time period 4Q 2011 to 4Q 2013.²¹³ Shortly after the Supreme Court dismissed SMCV's appeal on the 2008 Royalty Assessments, SMCV submitted reimbursement requests to SUNAT claiming that SMCV cannot be subject to paying both GEM and the royalties for its Flotation Plant-related activities.²¹⁴ SMCV submitted these requests while fully reserving its rights under the Stability Agreement, the TPA, and international law. SUNAT rightly agreed with SMCV and repaid US\$76 million including interest. However,

²⁰⁹ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33; **Ex. CE-145**, 10 May 2016 Constitutional Tribunal Judgment, Docket No. 04082-2012-PA/TC; **Ex. CE-189**, 16 Aug. 2018 Constitutional Tribunal Judgment, Docket No. 04532-2013-PA/TC.

²¹⁰ See **Ex. CA-14**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33.

²¹¹ See **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018; **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018.

²¹² **Ex. CE-64**, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), Law No. 29790, Art. 2.2.

²¹³ **Ex. CE-65**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-58**, 31 May 2012 SMCV GEM Payment, 1Q 2012; **Ex. CE-71**, 31 Aug. 2012 SMCV GEM Payment, 2Q 2012; **Ex. CE-73**, 30 Nov. 2012 SMCV GEM Payment, 3Q 2012.

²¹⁴ **Ex. CE-208**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 4Q 2011; **Ex. CE-209**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 1Q 2012; **Ex. CE-210**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 2Q 2012; **Ex. CE-211**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 3Q 2012.

SUNAT then arbitrarily refused to repay the remaining overpayments amounting to US\$66 million including interest by conveniently claiming that the statute of limitations under Peruvian law for reimbursements ran from the time of SMCV's GEM payments and not, as it should have, from the date of the Supreme Court's decision, which confirmed that SMCV had to pay the 2008 Royalty Assessments. SUNAT thus effectively imposed both GEM payments and royalties on SMCV.²¹⁵

VII. DAMAGES

137. Peru's breaches of the Stability Agreement and the TPA have caused, and are continuing to cause, Freeport significant loss and damage. In particular, SMCV has been forced to pay, and is still paying to the Peruvian Government, unlawful Royalty and Tax Assessments that together with SUNAT's extraordinarily punitive penalties and interest are presently estimated to exceed US\$1 billion. Accordingly, as compensation for the harm resulting from Peru's breaches, Freeport seeks damages presently estimated to exceed US\$1 billion, plus applicable interest.

138. For purposes of this Notice of Arbitration, Freeport has estimated its "approximate amount of damages"²¹⁶ by applying an exchange rate of 3.317 Soles to 1 U.S. dollar to all Assessment values. Freeport, however, reserves the right to amend the applicable exchange rate in the course of this proceeding to ensure that Freeport's requested damages properly wipe out the effects of Peru's breaches of the Stability Agreement and the TPA.

VIII. PROCEDURAL REQUIREMENTS

139. The TPA sets out specific requirements that must be satisfied before submitting claims to arbitration—all of which have been satisfied by Freeport and SMCV.²¹⁷

140. *First*, Article 10.15 of the TPA requires that "the claimant and the respondent initially seek to resolve the dispute through consultation and negotiation." Freeport and SMCV made considerable efforts to fairly resolve the dispute with the Government, including in numerous meetings with former Presidents and President Vizcarra himself, former and current

²¹⁵ **Ex. CE-218**, 4 Mar. 2019 SUNAT Resolution No. 012-180-0018640/SUNAT.

²¹⁶ *See Ex. CA-10*, TPA, Article 10.16.2(d).

²¹⁷ *See Ex. CE-260*, 27 Feb. 2020, Payment Certificate of Lodging Fee.

Ministers, other high-level Government officials, and most recently, the Peruvian Special Commission that Represents Peru in International Investment Disputes. Freeport has therefore complied with Article 10.15 of the TPA.

141. *Second*, Article 10.16.2 of the TPA requires submitting claims to arbitration “at least 90 days” after filing the Notice of Intent. On 26 November 2019, Freeport delivered a Notice of Intent to Peru specifying its name and address; the provisions of the Stability Agreement and the TPA that Peru breached; the legal and factual basis for its claims; and the relief sought and approximate amount of damages claimed.²¹⁸ More than 90 days have since passed. Freeport has therefore complied with Article 10.16.2 of the TPA.

142. *Third*, Article 10.16.3 of the TPA requires submitting claims to arbitration when “six months have elapsed since the events giving rise to the claims.” As described above in Section III (Background) and Section IV (Merits), more than six months have passed since the events giving rise to Peru’s breaches of the Stability Agreement and the TPA. Freeport has therefore complied with Article 10.16.3 of the TPA.

143. *Fourth*, Article 10.18.1 of the TPA requires that no “more than three years” may “have elapsed from the date on which the claimant first acquired, or should have acquired, knowledge of the breach [and that it] has incurred loss or damage.” Freeport first “acquired knowledge” of Peru’s breaches of the Stability Agreement and the TPA, and knowledge that it “incurred loss or damage,” within the last three years of delivering this Notice of Arbitration to the ICSID Secretary-General.

144. Specifically, as explained in Section IV(A) (Merits), Freeport “acquired knowledge” of Peru’s breaches of the Stability Agreement when SMCV was notified of each of the Tax Tribunal decisions confirming SUNAT’s Royalty and Tax Assessments (or when SUNAT rejected SMCV’s reconsideration requests after further recourse to the Tax Tribunal had become futile). Further, Freeport acquired knowledge of having “incurred loss or damage” only when SMCV was notified of the Tax Tribunal’s and SUNAT’s decisions because that is when each of SUNAT’s Assessments became final and binding on SMCV under Peruvian law. All of those decisions were notified to SMCV within the last three years.²¹⁹ Freeport has

²¹⁸ See **Ex. CE-271**, 26 Nov. 2016, Claimant’s Notice of Intent to Commence Arbitration under the United States-Peru Trade Promotion Agreement; **Ex. CE-273**, 12 Feb. 2020, Letter from Freeport and SMCV to the Peruvian Special Commission that Represents Peru in International Investment Disputes.

²¹⁹ **Ex. CE-188**, 15 Aug. 2018 Tax Tribunal Decision, No. 06141-2-2018, notified to SMCV on 28 Sept. 2018 (confirming SUNAT’s rejection of SMCV’s reconsideration request over the 2009 Royalty Assessments); **Ex. CE-194**, 28 Aug. 2018 Tax Tribunal Decision, No. 06575-1-2018, notified to SMCV on 18 Sept. 2018 (confirming SUNAT’s rejection of SMCV’s

therefore complied with Article 10.18.1 of the TPA with regard to its claims for breach of the Stability Agreement.

145. As explained in Section IV(B) (Merits), Freeport similarly “acquired knowledge” of Peru’s breaches of the TPA and knowledge that it “incurred loss or damage” when (i) SMCV was notified of the arbitrary decisions refusing to waive SUNAT’s extraordinarily punitive penalties and interest that constitute a breach of the TPA; (ii) the Tax Tribunal notified SMCV of its decisions confirming SUNAT’s 2009 and 2010/11 Royalty Assessments and SMCV received access to the case files showing that the Tax Tribunal had violated SMCV’s due process rights in breach of the minimum standard of treatment and effective means clause; (iii) the Tax Tribunal notified SMCV of its decisions confirming the 4Q 2011 Royalty Assessments and the Tax Assessments listed in Annex A in violation of the minimum standard of treatment and effective means clause; (iv) SUNAT notified SMCV of its decisions confirming the 2012 and 2013 Royalty Assessments and the Tax Assessments listed in Annex B in violation of the minimum standard of treatment and effective means clause; and (v) SUNAT notified SMCV of its decision arbitrarily denying part of the GEM reimbursements. Those decisions were all notified to SMCV within the last three years (except in those proceedings where SUNAT or the Tax Tribunal did not issue a decision prior to Freeport withdrawing its claims pursuant to Article 10.18.2(b) of the TPA, where Freeport similarly acquired knowledge of Peru’s breaches and that it “incurred loss or damage” within the last three years).²²⁰ Freeport has therefore complied with Article 10.18.1 of the TPA with regard to its claims for breach of the TPA.

146. *Fifth*, Article 10.18(2)(b) of the TPA requires that Freeport and SMCV each waive their “right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measures alleged to constitute a breach” of the TPA. Freeport and SMCV have each duly signed Waiver Declarations pursuant to the terms of Article 10.18(2)(b), as evidenced in

reconsideration request over the 2010/11 Royalty Assessments); **Ex. CE-269**, 18 Nov. 2019 Tax Tribunal Decision, No. 10574-9-2019, notified to SMCV on 4 Dec. 2019 (confirming SUNAT’s rejection of SMCV’s reconsideration request over the 4Q 2011 Royalty Assessments); **Ex. CE-215**, 11 Jan. 2019 SUNAT Rejects SMCV Request, 2012 Royalty Assessment, notified to SMCV on 23 January 2019; **Ex. CE-220**, 28 May 2019 SUNAT Rejects SMCV Request, 2013 Royalty Assessment, notified to SMCV on 28 May 2019. *See also* Annex A and Annex B.

²²⁰ *See id.*; *see also* **Ex. CE-274**, 12 July 2017 Appellate Court Decision No. 48, File No. 7649-2013 (confirming the Tax Tribunal’s Decision over the 2006/07 Royalty Assessments); **Ex. CE-275**, 18 August 2017 Supreme Court Decision No. 5212-2016 (confirming the Tax Tribunal’s Decision over the 2008 Royalty Assessments); **Ex. CE-218**, 4 Mar. 2019 SUNAT Resolution No. 012-180-0018640/SUNAT.

Ex. CE-267 and **Ex. CE-240**.²²¹ Moreover, as an abundance of caution, SMCV has voluntarily withdrawn from each and every proceeding in Peru related to the Stability Agreement, as evidenced in the withdrawal requests submitted as **Ex. CE-241** to **Ex. CE-259**.²²² Freeport and SMCV have therefore complied with Article 10.18(2)(b) of the TPA.

147. *Sixth*, Article 10.18(4)(a) of the TPA requires that no claim be submitted for a breach of an investment agreement if the claimant or enterprise that it owns or controls directly or indirectly “has previously submitted the *same alleged breach* to an administrative tribunal or court [of Peru] or to any other binding dispute settlement procedure.” As explained above in Section VI (Merits), the Stability Agreement is an investment agreement under the TPA. Neither Freeport nor SMCV has submitted contractual claims for *breach* of the Stability Agreement to Peru’s administrative tribunals, courts, or any other applicable dispute settlement procedure. Rather, SMCV submitted administrative claims challenging the validity of the Tax Tribunal’s decisions and SUNAT’s Assessments under the Mining Laws and Regulations. Freeport has therefore complied with Article 10.18(4)(a) of the TPA.

148. *Seventh*, Annex 10-G of the TPA provides that a U.S. investor may not submit a treaty claim to arbitration if the claimant or enterprise that it owns or controls directly or indirectly “has alleged that breach of an obligation under [the TPA’s substantive treaty protections] in proceedings before a court or administrative tribunal.” Neither Freeport nor

²²¹ **Ex. CE-267**, 21 Feb. 2019, Waiver Declaration, Freeport-McMoRan Inc.; **Ex. CE-240**, 25 Feb. 2019, Waiver Declaration, Sociedad Minera Cerro Verde.

²²² **Ex. CE-242**, 27 Feb. 2020, Withdrawal, 2006/07 Royalty Case, Docket No. 18174-2017; **Ex. CE-241**, 27 Feb. 2020, Withdrawal, 2008 Royalty Case, Docket No. 1774-2019-AA; **Ex. CE-248**, 27 Feb. 2020, Partial Withdrawal, Income Tax 2008, Docket No. 2633-2016; **Ex. CE-249**, 27 Feb. 2020, Partial Withdrawal, Income Tax 2009, Docket No. 16697-2015; **Ex. CE-250**, 27 Feb. 2020, Partial Withdrawal, Income Tax 2010, Docket No. 3201-2016; **Ex. CE-251**, 27 Feb. 2020, Partial Withdrawal, Income Tax 2011, Docket No. 13393-2018; **Ex. CE-252**, 27 Feb. 2020, Partial Withdrawal, Income Tax 2012, Docket No. 0150340017563; **Ex. CE-259**, 27 Feb. 2020, Withdrawal, Additional Income Tax 2012, Docket No. 0150340017566; **Ex. CE-246**, 27 Feb. 2020, Partial Withdrawal, General Sales Tax on Non-Residents 2005, Docket No. 2382-2011; **Ex. CE-247**, 27 Feb. 2020, Partial Withdrawal, General Sales Tax on Non-Residents 2006, Docket No. 1891-2012; **Ex. CE-253**, 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2008 and Additional Income Tax, Docket No. 4457-2014; **Ex. CE-243**, 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2009, Docket No. 2929-2015; **Ex. CE-244**, 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2010, Docket No. 16744-2015; **Ex. CE-245**, 27 Feb. 2020, Partial Withdrawal, General Sales and Other Taxes 2011, Docket No. 13002-2018; **Ex. CE-255**, 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2009, Docket No. 18065-2014; **Ex. CE-256**, 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2010, Docket No. 5721-2016; **Ex. CE-257**, 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2011, Docket No. 8937-2017; **Ex. CE-258**, 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2013, Docket No. 0150340017533; **Ex. CE-254**, 27 Feb. 2020, Withdrawal, Complementary Mining Pension Fund Tax 2013, Docket No. 0150340017649.

SMCV has submitted any treaty claims to Peru’s administrative tribunals, courts, or any other applicable dispute settlement procedure. Freeport has therefore complied with Annex 10-G of the TPA.

149. *Finally*, pursuant to Article 10.18.2(a) of the TPA, Freeport and SMCV hereby consent “in writing to arbitration in accordance with the procedures set out” in the TPA, including pursuant to Article 10.19 the procedures for Selection of Arbitrators. Further, Freeport and SMCV have undertaken all necessary internal actions to authorize their agents, counsel, and advocates to file this Notice of Arbitration.²²³

IX. CONSTITUTION OF THE TRIBUNAL

150. Article 10.19 of the TPA provides that “the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. Article 10.16.6(a) of the TPA further provides that “the claimant shall provide with the notice of arbitration (a) the name of the arbitrator that the claimant appoints.”

151. Freeport hereby appoints Professor Dr. Guido Santiago Tawil as its party-appointed arbitrator. Professor Tawil’s contact details are as follows:

Professor Dr. Guido Santiago Tawil
Ed. Aguas Azules II Ap 003
Rbla. Lorenzo Battle Pacheco Pda. 32
20167-01236 Punta del Este, Maldonado
Uruguay
Email: guidotawil@arb-chambers.com
T: +598 4249 7485

X. REQUESTED RELIEF

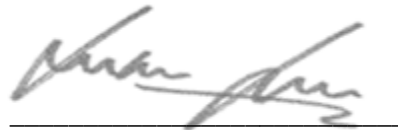
152. Freeport is entitled to relief that would wipe out the effects of Peru’s breaches of the Stability Agreement and the TPA. To this end, Freeport respectfully requests the Tribunal to issue an award:

- A. Declaring that Peru breached the Stability Agreement, including Articles 9.4, 9.5, 9.6, 10.1, 10.2, 13 and Annex 1;

²²³ See **Ex. CE-264**, 21 Feb. 2020, Freeport-McMoRan Inc., Officer’s Certificate; **Ex. CE-261** 10 Feb. 2020, Sociedad Minera Cerro Verde S.A.A., Board of Directors’ Meeting.

- B. Declaring that Peru breached Articles 10.4 and 10.5 of the TPA;
- C. Ordering Peru to pay full compensation for all damages and losses suffered by Freeport and SMCV as a result of Peru's breaches of the Stability Agreement and the TPA, in an amount to be determined in the course of this proceeding;
- D. Ordering Peru to pay all the costs of the arbitration, as well as Freeport's professional fees and expenses in an amount to be determined by such means as the Tribunal may direct;
- E. Ordering Peru to pay pre-award and post-award interest at a rate to be determined in the course of this proceeding; and
- F. Ordering any other such relief as the Tribunal may deem just and appropriate in the circumstances.

153. Freeport reserves its rights to amend or supplement this Notice of Arbitration, including the requested relief and the amount claimed, and to seek relief for additional breaches arising from Peru's past, current, or future conduct.



Donald Francis Donovan
Dietmar W. Prager
Laura Sinisterra
Nawi Ukabiala
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
dfdonovan@debevoise.com
dwprager@debevoise.com
lsinisterra@debevoise.com
nukabiala@debevoise.com

New York, 28 February 2020

Annex A

TAX ASSESSMENTS RELATING TO THE STABILITY AGREEMENT THAT SMCV APPEALED BEFORE THE TAX TRIBUNAL

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2006		
<p>In the Fine Resolutions dated 26 May 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.¹ Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars. ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.² Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession. <p>In the Assessment dated 27 May 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should not have deducted the depreciation of fixed assets of the Flotation Plant.³ Under the 1998 Stability Agreement SMCV had the right to deduct the depreciation of fixed assets of the Flotation Plant and Leaching Facility. ii. SMCV did not have the right to include an additional depreciation of approximately US\$2 million in the Flotation Plant's amended tax return because it was not recorded in the accounting books.⁴ Under the 1998 Stability Agreement this requirement did not apply. <p>In the Fine Resolution dated 27 May 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment of the same date.⁵ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Resolution dated 22 August 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV is not entitled to a waiver of penalties and interest because there is no "reasonable doubt" about the proper interpretation of the applicable legal provisions as required 	<p>Principal amounts to approximately US\$6.48 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$6.9 million.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment and Fine Resolutions.⁷</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>under Article 170 of the Tax Code.⁶ But SMCV is clearly entitled to such waiver because there was a “reasonable doubt” about the proper interpretation of the applicable legal provisions, as explained in paras. 12 and 127-133 of the Notice for Arbitration.</p>		
Income Tax 2007		
<p>In the Assessment dated 28 March 2012, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return on such payments to make them tax deductible.⁸ Under the 1998 Stability Agreement this requirement did not apply. ii. SMCV should have depreciated the buildings of the Flotation Plant at a 3% rate.⁹ Under the 1998 Stability Agreement a 20% rate applied. iii. SMCV failed to comply with formal requirements to deduct expenses of the Flotation Plant from previous fiscal years.¹⁰ Under the 1998 Stability Agreement these requirements did not apply. <p>In the Fine Resolution dated 28 March 2012, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment of the same date.¹¹ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Fine Resolutions dated 28 March 2012, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.¹² Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars. ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.¹³ Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession. 	<p>Principal amounts to approximately US\$2.4 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$776,242.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment and Fine Resolutions.¹⁵</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>In the Resolution dated 22 August 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV is not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provisions as required under Article 170 of the Tax Code.¹⁴ But SMCV is clearly entitled to such waiver because there was a “reasonable doubt” about the proper interpretation of the applicable legal provisions, as explained in paras. 12 and 127-133 of the Notice for Arbitration. 		
Income Tax 2008		
<p>In the Fine Resolutions dated 19 August 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.¹⁶ Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars. ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.¹⁷ Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession. iii. SMCV failed to provide the transfer pricing study.¹⁸ Under the 1998 Stability Agreement SMCV was not required to comply with the transfer pricing rules. <p>In the Assessment dated 21 August 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return on such payments to make them tax deductible.¹⁹ Under the 1998 Stability Agreement this requirement did not apply. ii. SMCV should have depreciated the buildings of the Flotation Plant at a 3% rate.²⁰ Under the 1998 Stability Agreement a 20% rate applied. iii. SMCV should have recognized certain expenses as assets, 	<p>Principal amounts to approximately US\$7.69 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$1.76 million.</p>	<p>On 1 July 2014, SMCV appealed SUNAT's Assessment and Fine Resolutions to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.²⁵</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>and, in any case, SMCV did not have the right to depreciate these assets at a 20% rate.²¹ Under the Stability Agreement SMCV was not required to recognize these expenses as assets, and, in any case, would have been entitled to depreciate them at a 20%.</p> <p>iv. SMCV failed to comply with formal requirements to deduct the depreciation of the High Pressure Grinding Rolls ("HPGR") of the Flotation Plant.²² Under the 1998 Stability Agreement these requirements did not apply.</p> <p>v. SMCV had to pay tax assessments of the previous year due to temporary differences (deferred tax liability).²³ Under the 1998 Stability Agreement SMCV would not have been subject to the tax assessments of the previous year.</p> <p>In the Fine Resolution dated 21 August 2013, SUNAT determined that:</p> <p>i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment of the same date.²⁴ Under the 1998 Stability Agreement SMCV would have not been subject to such fine.</p>		
Income Tax 2009		
<p>In the Assessment dated 30 October 2014, SUNAT determined that:</p> <p>i. SMCV should have depreciated the Flotation Plant Tailings Dam at a 3% rate.²⁶ Under the 1998 Stability Agreement a 20% rate applied.</p> <p>ii. SMCV should have depreciated the buildings of the Flotation Plant at a 3% rate.²⁷ Under the 1998 Stability Agreement a 20% rate applied.</p> <p>iii. SMCV failed to comply with formal requirements to deduct the depreciation of the HPGR of the Flotation Plant.²⁸ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>iv. SMCV should have recognized certain expenses as assets, and, in any case, SMCV did not have the right to depreciate these assets at a 20% rate.²⁹ Under the Stability Agreement</p>	<p>Principal amounts to approximately US\$39.6 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$24.1 million.</p>	<p>On 28 August 2015, SMCV appealed SUNAT's Assessments and Fine Resolutions to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁴²</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>SMCV was not required to recognize these expenses as assets, and, in any case, would have been entitled to depreciate them at a 20%.</p> <p>v. SMCV failed to comply with formal requirements to deduct expenses of the Flotation Plant from previous fiscal years.³⁰ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>vi. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return on such payments to make them tax deductible.³¹ Under the 1998 Stability Agreement this requirement did not apply.</p> <p>vii. SMCV failed to comply with formal requirements to deduct the depreciation of fixed assets of the Flotation Plant (other than buildings).³² Under the 1998 Stability Agreement these requirements did not apply.</p> <p>viii. SMCV failed to comply with formal requirements to deduct additional expenses from previous years of the HPGR of the Flotation Plant.³³ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>ix. SMCV failed to comply with formal requirements to deduct the overhaul costs of the HPGR of the Flotation Plant.³⁴ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>x. SMCV failed to comply with formal requirements to deduct the depreciation of minor fixed assets of the Flotation Plant.³⁵ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>xi. SMCV had to pay tax assessments of the previous year due to temporary differences (deferred tax liability).³⁶ Under the 1998 Stability Agreement SMCV would not have been subject to the tax assessments of the previous year.</p> <p>In the Fine Resolution dated 30 August 2014, SUNAT determined that:</p> <p>i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment</p>		

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>recently issued.³⁷ Under the 1998 Stability Agreement SMCV would have not been subject to such fine.</p> <p>In the Fine Resolutions dated 26 November 2014, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.³⁸ Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars. ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.³⁹ Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession. iii. SMCV failed to comply with formal requirements when submitting the cost accounting.⁴⁰ Under the 1998 Stability Agreement these requirements did not apply. <p>In the Assessment dated 26 November 2014, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation Plant.⁴¹ Under the 1998 Stability Agreement this additional tax did not apply. 		
Income Tax 2010		
<p>In the Assessments dated 13 February 2015, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have depreciated the Flotation Plant Tailings Dam at a 5% rate.⁴³ Under the 1998 Stability Agreement a 20% rate applied. ii. SMCV should have depreciated the buildings of the Flotation Plant at a 5% rate.⁴⁴ Under the 1998 Stability Agreement a 20% rate applied. iii. SMCV failed to comply with formal requirements to deduct the depreciation of the HPGR of the Flotation Plant.⁴⁵ Under the 1998 Stability Agreement these requirements did not apply. 	<p>Principal amounts to approximately US\$51.1 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$39.6 million.</p>	<p>On 27 November 2015, SMCV appealed SUNAT's Assessments and Fine Resolutions to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁵⁴</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>iv. SMCV should have recognized certain expenses as assets, and, in any case, SMCV did not have the right to depreciate these assets at a 20% rate.⁴⁶ Under the Stability Agreement SMCV was not required to recognize these expenses as assets, and, in any case, would have been entitled to depreciate them at a 20%.</p> <p>v. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return on such payments to make them tax deductible.⁴⁷ Under the 1998 Stability Agreement this requirement did not apply.</p> <p>vi. SMCV failed to comply with formal requirements to deduct the depreciation of fixed assets and minor assets of the Flotation Plant.⁴⁸ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>vii. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation Plant.⁴⁹ Under the 1998 Stability Agreement this additional tax did not apply.</p> <p>In the Fine Resolution dated 18 February 2015, SUNAT determined that:</p> <p>i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment recently issued.⁵⁰ Under the 1998 Stability Agreement SMCV would have not been subject to such fine.</p> <p>In the Fine Resolutions dated 18 February 2015, SUNAT determined that:</p> <p>i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.⁵¹ Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars.</p> <p>ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.⁵² Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession.</p>		

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
iii. SMCV failed to comply with formal requirements when submitting the cost accounting. ⁵³ Under the 1998 Stability Agreement these requirements did not apply.		
Income Tax 2011		
<p>In the Assessments dated 31 October 2017, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have depreciated the Flotation Plant Tailings Dam at a 5% rate.⁵⁵ Under the 1998 Stability Agreement a 20% rate applied. ii. SMCV failed to comply with formal requirements to deduct the depreciation of fixed assets of the Flotation Plant.⁵⁶ Under the 1998 Stability Agreement these requirements did not apply. iii. SMCV should have depreciated the buildings of the Flotation Plant at a 5% rate.⁵⁷ Under the 1998 Stability Agreement a 20% rate applied. iv. SMCV failed to comply with formal requirements to deduct the depreciation of minor fixed assets of the Flotation Plant.⁵⁸ Under the 1998 Stability Agreement these requirements did not apply. v. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation Plant.⁵⁹ Under the 1998 Stability Agreement this additional tax did not apply. <p>In the Fine Resolution dated 31 October 2017, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to report income in its tax return based on SUNAT's findings in the Assessment of the same date.⁶⁰ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Fine Resolutions dated 31 October 2017, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV failed to provide the demonstrative annexes that show what activities within its EAU are covered by the 1998 	<p>Principal amounts to approximately US\$28.6 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$43.6 million.</p>	<p>On 12 September 2018, SMCV appealed SUNAT's Assessments and Fine Resolutions to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁶⁴</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>Stability Agreement as required under article 25 of the Mining Regulations.⁶¹ Under the 1998 Stability Agreement the stabilization benefits apply to all the activities within SMCV's sole EAU.</p> <p>ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.⁶² Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession.</p> <p>In Assessments and Fine Resolutions dated 31 October 2017 and 10 August 2018, SUNAT determined that:</p> <p>i. The interest rate for tax liabilities in Peruvian soles applied.⁶³ Under the 1998 Stability Agreement the interest rate for US dollars applied.</p>		
General Sales Tax 2005		
<p>In the Assessment dated 28 December 2009, SUNAT determined that:</p> <p>i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁶⁵ Under the 1998 Stability Agreement an 18% tax rate applied.</p> <p>In the Fine Resolution dated 28 December 2009, SUNAT determined that:</p> <p>i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁶⁶ Under the 1998 Stability Agreement SMCV would have not been subject to such fine.</p>	<p>Principal amounts to approximately US\$403.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$53,899.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment.⁶⁷</p>
General Sales Tax on Non-Residents 2005		
<p>In the Assessment dated 28 December 2009, SUNAT determined that:</p> <p>i. SMCV should have applied a 19% tax rate on services rendered by non-resident providers for the Flotation Plant.⁶⁸ Under the 1998 Stability Agreement an 18% tax rate applied.</p> <p>ii. The interest rate for tax liabilities in Peruvian soles applied.⁶⁹ Under the 1998 Stability Agreement the interest rate for</p>	<p>Principal amounts to approximately US\$689,862.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$1,269,490.</p>	<p>On 15 November 2010, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁷⁰</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
US dollars applied.		
General Sales Tax 2006		
<p>In the Assessment dated 29 December 2010, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁷¹ Under the 1998 Stability Agreement an 18% tax rate applied. <p>In the Fine Resolution dated 29 December 2010, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁷² Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Resolution dated 22 August 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV is not entitled to a waiver of penalties and interest because there is no "reasonable doubt" about the proper interpretation of the applicable legal provisions as required under Article 170 of the Tax Code.⁷³ But SMCV is clearly entitled to such waiver because there was a "reasonable doubt" about the proper interpretation of the applicable legal provisions, as explained in paras 12 and 127-133 of the Notice for Arbitration. 	<p>As of 31 December 2019, penalties and interest accumulated to around US\$38,024.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment.⁷⁴</p>
General Sales Tax on Non-Residents 2006		
<p>In the Assessment dated 29 December 2010, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on services rendered by non-residents providers for the Flotation Plant.⁷⁵ Under the 1998 Stability Agreement an 18% tax rate applied. ii. The interest rate for tax liabilities in Peruvian soles applied.⁷⁶ Under the 1998 Stability Agreement the interest rate for US dollars applied. 	<p>Principal amounts to approximately US\$186,447.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$285,765.</p>	<p>On 21 November 2011, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁷⁷</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
General Sales and Additional Income Tax 2007		
<p>In the Assessment dated 27 December 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁷⁸ Under the 1998 Stability Agreement an 18% tax rate applied. ii. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation Plant.⁷⁹ Under the 1998 Stability Agreement this additional tax did not apply. <p>In the Fine Resolutions dated 27 December 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁸⁰ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Resolution dated 30 October 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV is not entitled to a waiver of penalties and interest because there is no "reasonable doubt" about the proper interpretation of the applicable legal provisions as required under Article 170 of the Tax Code.⁸¹ But SMCV is clearly entitled to such waiver because there was a "reasonable doubt" about the proper interpretation of the applicable legal provisions, as explained in paras. 12 and 127-133 of the Notice for Arbitration. 	<p>Principal amounts to approximately US\$930,672.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$696,794.</p>	<p>On 30 October 2018, the Tax Tribunal confirmed SUNAT's Assessment.⁸²</p>
General Sales and Additional Income Tax 2008		
<p>In the Assessment dated 20 December 2012, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁸³ Under the 1998 Stability Agreement an 18% tax rate applied. ii. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation 	<p>Principal amounts to approximately US\$702,173.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$638,860.</p>	<p>On 25 November 2013, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁸⁶</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>Plant.⁸⁴ Under the 1998 Stability Agreement this additional tax did not apply.</p> <p>In the Fine Resolutions dated 20 December 2012, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁸⁵ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. 		
General Sales Tax 2009		
<p>In the Assessment dated 27 December 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁸⁷ Under the 1998 Stability Agreement an 18% tax rate applied. <p>In the Fine Resolutions dated 27 December 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁸⁸ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. 	<p>As of 31 December 2019, penalties and interest accumulated to around US\$24,350.</p>	<p>On 4 December 2014, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁸⁹</p>
General Sales Tax 2010		
<p>In the Assessment dated 24 June 2014, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have applied a 19% tax rate on the sale of goods for the Flotation Plant.⁹⁰ Under the 1998 Stability Agreement an 18% tax rate applied. <p>In the Fine Resolutions dated 24 June 2014, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV had to pay a fine because it failed to include in its tax return SUNAT's findings of the Assessment of the same date.⁹¹ Under the 1998 Stability Agreement SMCV would have not been subject to such fine. <p>In the Fine Resolutions dated 24 June 2014, SUNAT determined that:</p>	<p>As of 31 December 2019, penalties and interest accumulated to around US\$172,223.</p>	<p>On 1 July 2015, SMCV appealed SUNAT's Assessment and Fine Resolutions to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁹⁴</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.⁹² Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars. ii. SMCV should have kept separate accounting for the Flotation Plant and Leaching Facility.⁹³ Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession. 		
General Sales and Others Taxes 2011		
<p>In the Fine Resolution dated 29 September 2017, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV failed to provide the demonstrative annexes that show what activities within its EAU are covered by the 1998 Stability Agreement as required under article 25 of the Mining Regulations.⁹⁵ Under the 1998 Stability Agreement the stabilization benefits apply to all the activities within SMCV's sole EAU. <p>In the Fine Resolutions dated 29 September 2017, SUNAT determined that:</p> <ul style="list-style-type: none"> i. The interest rate for tax liabilities in Peruvian soles applied.⁹⁶ Under the 1998 Stability Agreement the interest rate for US dollars applied. 	<p>As of 31 December 2019, penalties and interest accumulated to around US\$283,452.</p>	<p>On 6 September 2018, SMCV appealed SUNAT's Fine Resolution to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.⁹⁷</p>
Temporary Tax on Net Assets 2009		
<p>In the Assessment dated 27 December 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have paid the Temporary Tax on Net Assets for the Flotation Plant.⁹⁸ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets. <p>In the Fine Resolution dated 27 December 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have submitted its tax return on Temporary Tax on Net Assets for the Flotation Plant.⁹⁹ Under the 1998 	<p>Principal amounts to approximately US\$6.4 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$2.3 million.</p>	<p>On 6 October 2014, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹⁰⁰</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.		
Temporary Tax on Net Assets 2010		
<p>In the Assessment dated 14 August 2015, SUNAT determined that:</p> <p>i. SMCV should have paid the Temporary Tax on Net Assets for the Flotation Plant.¹⁰¹ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p> <p>In the Fine Resolution dated 14 August 2015, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return on Temporary Tax on Net Assets for the Flotation Plant.¹⁰² Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p>	<p>Principal amounts to approximately US\$5.6 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$3.77 million.</p>	<p>On 8 April 2016, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹⁰³</p>
Temporary Tax on Net Assets 2011		
<p>In the Assessment dated 27 July 2016, SUNAT determined that:</p> <p>i. SMCV should have paid the Temporary Tax on Net Assets for the Flotation Plant.¹⁰⁴ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p> <p>In the Fine Resolution dated 27 July 2016, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return on Temporary Tax on Net Assets for the Flotation Plant.¹⁰⁵ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p>	<p>Principal amounts to approximately US\$6.4 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$4.4 million.</p>	<p>On 27 June 2017, SMCV appealed SUNAT's Assessment to the Tax Tribunal. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹⁰⁶</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Temporary Tax on Net Assets 2013 (Fine)		
<p>In the Fine Resolution dated 3 October 2017, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return on Temporary Tax on Net Assets for the Flotation Plant.¹⁰⁷ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p>	<p>As of 31 December 2019, penalties and interest accumulated to around US\$2,068.</p>	<p>On 14 December 2018, the Tax Tribunal confirmed SUNAT's Assessment.¹⁰⁸</p>
Special Mining Tax 4Q 2011–4Q 2012		
<p>In the Assessment dated 29 December 2017, SUNAT determined that:</p> <p>i. SMCV should have paid the Special Mining Tax for the Flotation Plant.¹⁰⁹ Under the 1998 Stability Agreement SMCV was exempt from the Special Mining Tax.</p> <p>In the Fine Resolutions dated 29 December 2017, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return on Special Mining Tax for the Flotation Plant.¹¹⁰ Under the 1998 Stability Agreement SMCV was exempt from the Special Mining Tax.</p> <p>In the Resolution dated 12 October 2018, SUNAT determined that:</p> <p>i. SMCV is not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provisions as required under Article 170 of the Tax Code.¹¹¹ But SMCV is clearly entitled to such waiver because there was a “reasonable doubt” about the proper interpretation of the applicable legal provisions, as explained in paras. 12 and 127-133 of the Notice for Arbitration.</p>	<p>Principal amounts to approximately US\$36.6 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$40.5 million.</p>	<p>On 20 June 2019, the Tax Tribunal confirmed SUNAT's Assessment and Resolution.¹¹²</p>

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- ¹ **CE-50** 26 May 2011 SUNAT Fine Resolution No. 052-002-0004614, p. [1]; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 30.
- ² **CE-50** 26 May 2011 SUNAT Fine Resolution No. 052-002-0004616, p. [2]; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 33.
- ³ **CE-51** 27 May 2011 SUNAT Assessment No. 052-003-0007147, Annex 2, p. 3; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, pp. 25-26; **CE-69** 30 Mar. 2012 SUNAT Report on Record No. 0550140001556 - No. 326-P-2012-SUNAT/2J0500, pp. 114-17.
- ⁴ **CE-69** 30 Mar. 2012 SUNAT Report on Record No. 0550140001556 - No. 326-P-2012-SUNAT/2J0500, p. 118.
- ⁵ **CE-52** 27 May 2011 SUNAT Fine Resolution No. 052-002-0004617, p. [2]; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 29-30.
- ⁶ **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 26-7.
- ⁷ **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, notified to SMCV on 16 Nov. 2018.
- ⁸ **CE-66** 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2, p. 3; **CE-77** 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 96-7; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 23-4.
- ⁹ **CE-66** 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2; **CE-77** 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 110; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 32-3.
- ¹⁰ **CE-66** 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2; **CE-77** 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 105; **CE-191** 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 35-5.
- ¹¹ **CE-67** 28 March 2012 SUNAT Fine Resolution No. 052-002-0005166, p. [2]; **CE-192** 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 47.
- ¹² **CE-68** 28 Mar. 2012 SUNAT Fine Resolution No. 052-002-0005168; **CE-192** 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 50.
- ¹³ **CE-68** 28 Mar. 2012 SUNAT Fine Resolution No. 052-002-0005167; **CE-192** 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 48.
- ¹⁴ **CE-192** 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 50-3.
- ¹⁵ **CE-192** 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, notified to SMCV on 16 Nov. 2018.
- ¹⁶ **CE-93** 19 Aug. 2013 SUNAT Fine Resolution No. 052-002-0005882, p. [2].
- ¹⁷ **CE-93** 19 Aug. 2013 SUNAT Fine Resolution No. 052-002-0005883, p. [3].
- ¹⁸ **CE-93** 19 Aug. 2013 SUNAT Fine Resolution No. 052-002-0005883.
- ¹⁹ **CE-95** 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; **CE-109** 30 May 2014 SUNAT Resolution No. 0550140001907, p. 93.
- ²⁰ **CE-95** 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; **CE-109** 30 May 2014, SUNAT Resolution No. 0550140001907, p. 96-7.
- ²¹ **CE-95** 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; **CE-109** 30 May 2014, SUNAT Resolution No. 0550140001907, p. 103-16.

22 **CE-95** 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; **CE-109** 30 May 2014, SUNAT Resolution No. 0550140001907, p. 116-122.

23 **CE-95** 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; **CE-109** 30 May 2014, SUNAT Resolution No. 0550140001907, p. 170-71

24 **CE-94** 21 August 2013 SUNAT Fine Resolution No. 052-002-0005884, p. [2]; **CE-109** 30 May 2014 Resolution No. 0550140001907, p. 172.

25 **CE-248** 27 Feb. 2020, Partial Withdrawal, Income Tax 2008, Docket No. 2633-2016.

26 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 165.

27 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 220.

28 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, pp. 226-27.

29 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 233.

30 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 263.

31 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3 and 4, pp. [4-5]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 266-67.

32 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 222-25.

33 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, pp. 269-75.

34 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, pp. 275-76.

35 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 224-25.

36 **CE-115** 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [4]; **CE-131** 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 311.

37 **CE-116** 30 Oct. 2014 SUNAT Fine Resolution No. 052-002-006238, p. [2].

38 **CE-118** 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006272, p. [2].

39 **CE-119** 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006260, p. [2].

40 **CE-119** 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006260, p. [2]; **CE-120** 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006267, p. [2].

41 **CE-121** 26 Nov. 2014 SUNAT Assessment No. 052-003-0012000, p. [2]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012001, p. [5]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012002, p. [6]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012007, p. [1]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012008, p. [10]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012009, p. [11]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012010, p. [12]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012013, p. [4]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012014, p. [7]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012015, p. [8]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012016, p. [9]; 26 Nov. 2014 SUNAT Assessment No. 052-003-0012018, p. [3].

42 **CE-249** 27 Feb. 2020, Partial Withdrawal, Income Tax 2009, Docket No. 16697-2015.

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- 43 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 161.
- 44 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 211.
- 45 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 219-20.
- 46 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 242.
- 47 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 276-79.
- 48 **CE-123** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; **CE-134** 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 215-218.
- 49 **CE-124** 13 Feb. 2015 SUNAT Assessment No. 052-003-0012396, p. [4]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012400, p. [1]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012401, p. [8]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012402, p. [9]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012403, p. [12]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012408, p. [6]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012409, p. [7]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012410, p. [10]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012415, p. [2]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012416, p. [3]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012417, p. [5]; 13 Feb. 2015 SUNAT Assessment No. 052-003-0012418, p. [14].
- 50 **CE-125** 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006347, p. [2].
- 51 **CE-126** 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006356, p. [1].
- 52 **CE-126** 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006355, p. [2].
- 53 **CE-119** 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006260, p. [2]; **CE-127** 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006357, p. [1].
- 54 **CE-250** 27 Feb. 2020, Partial Withdrawal, Income Tax 2010, Docket No. 3201-2016.
- 55 **CE-157** 31 Oct. 2017 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 188; **CE-187** 10 Aug. 2018 SUNAT Resolution No. 0550140014311, p. 63.
- 56 **CE-157** 31 Oct. 2017 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 188-92; **CE-187** 10 Aug. 2018 SUNAT Resolution No. 0550140014311, p. 64-5.
- 57 **CE-157** 31 Oct. 2015 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 196-97; **CE-187** 10 Aug. 2018 SUNAT Resolution No. 055-014-0014311, p. 63.
- 58 **CE-157** 31 Oct. 2017 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 273-75; **CE-187** 10 Aug. 2018 SUNAT Resolution No. 0550140014311, p. 81-2.
- 59 **CE-159** 31 Oct. 2017 SUNAT Assessment No. 012-003-0090368, p. [1]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090369, p. [2]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090370, p. [3]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090371, p. [4]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090372, p. [5]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090373, p. [6]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090374, p. [7]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090375, p. [8]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090376, p. [9]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090377, p. [10]; 31 Oct. 2017 SUNAT Assessment No. 012-003-0090378, p. [11].
- 60 **CE-160** 31 Oct. 2017 SUNAT Fine Resolution No. 012-002-0030879.
- 61 **CE-161** 31 Oct. 2017 SUNAT Fine Resolution No. 012-002-0030893, p. [4].

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- ⁶² **CE-161** 31 Oct. 2017 SUNAT Fine Resolution No. 012-002-0030892, p. [2].
- ⁶³ **CE-158** 31 Oct. 2017 SUNAT Assessments No. 012-003-0090355 to 012-003-0090367; **CE-160** Fine Resolutions 012-002-0030879 to 012-002-0030893; and **CE-187** 10 Aug. 2018 SUNAT Resolution No. 0550140014311, p. 96-8.
- ⁶⁴ **CE-251** 27 Feb. 2020, Partial Withdrawal, Income Tax 2011, Docket No. 13393-2018.
- ⁶⁵ **CE-35** 28 Dec. 2009 SUNAT Assessment No. 052-003-0005626, Annex 2, p. [1]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005627, Annex 2, p. [2]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005628, Annex 2, p. [3]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005629, Annex 2, p. [4]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005630, Annex 2, p. [5]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005631, Annex 2, p. [6]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005632, Annex 2, p. [7]; 28 Dec. 2009 SUNAT Assessments No. 052-003-0005633, Annex 2, p. [8]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005634, Annex 2, p. [9]; 28 Dec. 2009 SUNAT Assessments No. 052-003-0005635, Annex 2, p. [10]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005636, Annex 2, p. [11]; 28 Dec. 2009 SUNAT Assessments No. 052-003-0005637, Annex 2, p. [12]; **CE-42** 25 Oct. 2010 SUNAT Resolution No. 055-014-0001369, p. 216; **CE-193** 22 Aug. 2018 Tax Tribunal Resolution No. 06365-2-2018, pp. 49-50.
- ⁶⁶ **CE-37** 28 Dec. 2009 SUNAT Fine Resolutions No. 052-002-0003816 to 052-002-0003827; **CE-204** 6 Dec. 2018 SUNAT Resolution 0150150001825, pp. 12-5; **CE-193** 22 Aug. 2018 Tax Tribunal Resolution No. 06365-2-2018, p. 52.
- ⁶⁷ **CE-193** 22 Aug. 2018 Tax Tribunal Resolution No. 06365-2-2018, notified to SMCV on 16 Nov. 2018.
- ⁶⁸ **CE-36** 28 Dec. 2009 SUNAT Assessment No. 052-003-0005642, Annex 2, p. [1]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005643, Annex 2, p. [2]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005644, Annex 2, p. [3]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005645, Annex 2, p. [4]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005646, Annex 2, p. [5]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005647, Annex 2, p. [6]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005648, Annex 2, p. [7]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005649, Annex 2, p. [8]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005650, Annex 2, p. [9]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005651, Annex 2, p. [10]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005652, Annex 2, p. [11]; 28 Dec. 2009 SUNAT Assessment No. 052-003-0005653, Annex 2, p. [12]; **CE-41** 30 Sept. 2010 SUNAT Resolution No. 055-014-0001358, p. 40.
- ⁶⁹ **CE-41** 30 Sept. 2010 SUNAT Resolution No. 055-014-0001358, pp. 45-7.
- ⁷⁰ **CE-246** 27 Feb. 2020, Partial Withdrawal, General Sales Tax on Non-Residents 2005, Docket No. 2382-2011.
- ⁷¹ **CE-43** 29 Dec. 2010 SUNAT Assessment No. 052-003-006737, p. [1]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006738, p. [2]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006739, p. [3]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006740, p. [4]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006741, p. [5]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006742, p. [6]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006743, p. [7]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006744, p. [15]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006777, p. [11]; 29 Dec. 2010 SUNAT Assessment No. 052-003-00678, p. [12]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006779, p. [13]; 29 Dec. 2010 SUNAT Assessment No. 052-003-006780, p. [14]; **CE-69** 27 Jul. 2011 SUNAT Report on Record No. 0550140001556–No. 326-P-2012-SUNAT/2J0500, p. 70; 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, p. 9.
- ⁷² **CE-44** 29 Dec. 2010 SUNAT Fine Resolutions 052-002-0004402 to 052-002-0004413; **CE-190** 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, p. 25.
- ⁷³ **CE-190** 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, p. 10.
- ⁷⁴ **CE-190** 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, notified to SMCV on 16 Nov. 2018.

- ⁷⁵ **CE-206** 22 Dec. 2018 SUNAT Assessment No. 052-003-0006753, p. [1]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006754, p. [2]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006755, p. [3]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006756, p. [4]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006757, p. [5]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006758, p. [6]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006753 to 052-003-0006759, Annex 1, p. [7]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006753 to 052-003-0006759, Annex 2, p. [8]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006760, p. [9]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006761, p. [10]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006762, p. [11]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006763, p. [12]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006764, p. [13]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006760 to 052-003-0006764, Annex 1, p. [15]; **CE-206** 22 Dec. 2018 SUNAT Assessment No. 052-003-0006760 to 052-003-0006764, Annex 2, p. [14]; **CE-56** 10 Sep. 2011 SUNAT Resolution No. 055-014-0001444, pp. 51-52.
- ⁷⁶ **CE-56** 10 Sep. 2011 SUNAT Resolution No. 055-014-0001444, pp. 90-3.
- ⁷⁷ **CE-247** 27 Feb. 2020, Partial Withdrawal, General Sales Tax on Non-Residents 2006, Docket No. 1891-2012.
- ⁷⁸ **CE-60** 27 Dec. 2011 SUNAT Assessment No. 052-003-0008024, Annex 3, p. [1]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008025, Annex 3, p. [3]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008026, Annex 3, p. [4]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008027, Annex 3, p. [5]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008028, Annex 3, p. [6]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008029, Annex 3, p. [7]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008030, Annex 3, p. [8]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008031, Annex 3, p. [9]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008032, Annex 3, p. [10]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008033, Annex 3, p. [11]; 27 Dec. 2011 SUNAT Assessments No. 052-003-0008034, Annex 3, p. [12]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008035, Annex 3, p. [13]; **CE-72** 27 Sept. 2012 SUNAT Resolution No. 055-014-0001662, pp. 55-56; **CE-202** 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 4.
- ⁷⁹ **CE-61** 27 Dec. 2011 SUNAT Assessment No. 052-003-0008036, Annex 1, p. [1]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008037, Annex 1, p. [3]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008038, Annex 1, p. [4]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008039, Annex 1, p. [5]; 27 Dec. 2011 SUNAT Assessments No. 052-003-0008040, Annex 1, p. [5]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008041, Annex 1, p. [7]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008042, Annex 1, p. [8]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008043, Annex 1, p. [9]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008044, Annex 1, p. [10]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008045, Annex 1, p. [11]; 27 Dec. 2011 SUNAT Assessment No. 052-003-0008046, Annex 1, p. [12]; **CE-202** 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 36.
- ⁸⁰ **CE-59** 27 Dec. 2011 SUNAT Fine Resolutions No. 052-002-0005053; **CE-202** 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 38.
- ⁸¹ **CE-202** 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 40.
- ⁸² **CE-202** 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, notified to SMCV on 20 Nov. 2018.
- ⁸³ **CE-75** 20 Dec. 2012 SUNAT Assessment No. 052-003-0009549, p. [1]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009591, p. [2]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009592, p. [3]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009593, p. [4]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009595, p. [5]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009596, p. [6]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009597, p. [7]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009598, p. [8]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009599, p. [9]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009600, p. [10]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009601, p. [11]; 20 Dec. 2012 SUNAT Assessment No. 052-003-0009602, p. [12]; 20 Dec. 2012 SUNAT Assessment, Annex 2, p. [14]; **CE-100** 24 Oct. 2013 SUNAT Resolution No. 055-014-0001810, pp. 100-02.
- ⁸⁴ **CE-76** 20 Dec. 2012 SUNAT Assessment No. 052-003-009550, p. [4]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009551, p. [5]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009552, p. [6]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009553, p. [7]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009554, p. [8]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009562, p. [1]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009563, p. [3]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009564,

- p. [10]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009580, p. [9]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009581, p. [11]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009589, p. [2]; 20 Dec. 2012 SUNAT Assessment No. 052-003-009594, p. [12]; **CE-100** 24 Oct. 2013 SUNAT Resolution No. 055-014-0001810, pp. 196-97.
- ⁸⁵ **CE-74** 20 Dec. 2012 SUNAT Fine Resolutions No. 052-002-0005664, 052-002-0005679, 052-002-0005680, 052-002-0005682 to 052-002-0005687, 052-002-0005691 to 052-002-0005693.
- ⁸⁶ **CE-253** 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2008 and Additional Income Tax, Docket No. 4457-2014.
- ⁸⁷ **CE-102** 27 Dec. 2013 SUNAT Assessment No. 052-003-0011235, p. [1]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011236, p. [2]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011237, p. [3]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011238, p. [4]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011239, p. [5]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011240, p. [6]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011241, p. [7]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011242, p. [8]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011243, p. [9]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011244, p. [10]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011245, p. [11]; **CE-114** 27 Oct. 2014 SUNAT Resolution No. 055-014-0001988, pp. 103-05, 112-6.
- ⁸⁸ **CE-105** 27 Dec. 2013 SUNAT Fine Resolutions No. 052-002-0006017 to 052-002-0006027.
- ⁸⁹ **CE-243** 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2009, Docket No. 2929-2015.
- ⁹⁰ **CE-110** 24 Jun. 2014 SUNAT Assessment No. 052-003-0011478, p. [1]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011479, p. [2]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011480, p. [3]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011481, p. [4]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011482, p. [5]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011482, p. [6]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011485, p. [7]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011486, p. [8]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011487, p. [9]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011488, p. [10]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011489, p. [11]; 24 Jun. 2014 SUNAT Assessment No. 052-003-0011490, p. [12]; 24 Jun. 2014 SUNAT Assessment, Annex 2, p. [14]; **CE-130** 27 Apr. 2015 SUNAT Resolution No. 055-014-0002103, p. 96, pp. 104-8.
- ⁹¹ **CE-111** 24 Jun. 2014 SUNAT Fine Resolutions No. 052-002-0006087 to 052-002-0006089, 052-002-0006092 to 052-002-0006100.
- ⁹² **CE-112** 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006091, p. [1]; 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006101, p. [3].
- ⁹³ **CE-112** 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006102, p. [5]; 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006090, p. [7].
- ⁹⁴ **CE-244** 27 Feb. 2020, Partial Withdrawal, General Sales Tax 2010, Docket No. 16744-2015.
- ⁹⁵ **CE-154** 29 Sep. 2017 Fine Resolution No. 012-002-0030759.
- ⁹⁶ **CE-155** 29 Sep. 2017 Fine Resolutions No. 012-002-0030760 to 012-002-0030770; **CE-182** 27 June 2018 SUNAT Resolution No. 0150140014204, pp. 60-2.
- ⁹⁷ **CE-245** 27 Feb. 2020, Partial Withdrawal, General Sales and Other Taxes 2011, Docket No. 13002-2018.
- ⁹⁸ **CE-103** 27 Dec. 2013 SUNAT Assessment No. 052-003-0011208, Annex 1, p. [2]; 27 Dec. 2013 SUNAT Assessment No. 052-003-0011208, Annex 3, p. [3]; **CE-113** 27 Aug. 2014 SUNAT Resolution No. 055-014-0001946, p. 79.
- ⁹⁹ **CE-104** 27 Dec. 2013 SUNAT Fine Resolution No. 052-002-0006004.
- ¹⁰⁰ **CE-255** 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2009, Docket No. 18065-2014.

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- ¹⁰¹ **CE-132** 14 Aug. 2015 SUNAT Assessment No. 052-003-0012908, Annex 1, p. [2]; 14 Aug. 2015 SUNAT Assessment No. 052-003-0012908, Annex 2, p. [3]; **CE-140** 29 Feb. 2016 SUNAT Resolution No. 055-014-0002356, p. 83.
- ¹⁰² **CE-133** 14 Aug. 2015 SUNAT Fine Resolution No. 052-002-0006448.
- ¹⁰³ **CE-256** 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2010, Docket No. 5721-2016.
- ¹⁰⁴ **CE-147** 27 July 2016 Assessment No. 052-003-0014319.
- ¹⁰⁵ **CE-148** 27 July 2016 Fine Resolution No. 052-002-0006693.
- ¹⁰⁶ **CE-257** 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2011, Docket No. 8937-2017.
- ¹⁰⁷ **CE-156** 03 Oct. 2017 Fine Resolution No. 011-002-0022011.
- ¹⁰⁸ **CE-205** 14 Dec. 2018 Tax Tribunal Resolution No. 10372 -9-2018, p. 7, notified to SMCV on 4 Jan. 2019.
- ¹⁰⁹ **CE-163** 29 Dec. 2017 Assessment No. 012-003-0092658, p. [1]; **CE-164** 29 Dec. 2017 Assessment No. 012-003-0092961, p. [1]; **CE-165** 29 Dec. 2017 Assessment No. 012-003-0092962, p. [1]; **CE-166** 29 Dec. 2017 Assessment No. 012-003-0092963, p. [1]; **CE-167** 29 Dec. 2017 Assessment No. 012-003-0092964, p. [1].
- ¹¹⁰ **CE-171** 29 Dec. 2017 Fine Resolution No. 012-002-0031072, p. [1]; **CE-169** 29 Dec. 2017 Fine Resolution No. 012-002-0031093, p. [1]; **CE-170** 29 Dec. 2017 Fine Resolution No. 012-002-0031094, p. [1]; **CE-171** 29 Dec. 2017 Fine Resolution No. 012-002-0031095, p. [1]; **CE-172** 29 Dec. 2017 Fine Resolution No. 012-002-0031096, p. [1].
- ¹¹¹ **CE-198** 12 October 2018 SUNAT Resolution No. 0150140014441, pp. 39-42; **CE-168** 29 Dec. 2017 Fine Resolution No. 012-002-0031072, p. [1]; **CE-169** 29 Dec. 2017 Fine Resolution No. 012-002-0031093, p. [1]; **CE-170** 29 Dec. 2017 Fine Resolution No. 012-002-0031094, p. [1]; **CE-171** 29 Dec. 2017 Fine Resolution No. 012-002-0031095, p. [1]; **CE-172** 29 Dec. 2017 Fine Resolution No. 012-002-0031096, p. [1].
- ¹¹² **CE-223** 20 June 2019 Tax Tribunal Resolution No. 05634-4-2019, notified to SMCV on 31 July 2019.

Annex B
TAX ASSESSMENTS RELATING TO THE STABILITY AGREEMENT THAT SMCV CHALLENGED BEFORE SUNAT

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2012		
<p>In the Assessments dated 26 November 2019, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have not deducted the Special Mining Tax paid for the Flotation Plant.¹ Under the 1998 Stability Agreement SMCV had the right to deduct the Special Mining Tax paid for both the Flotation Plant and the Leaching Facility. ii. SMCV should have not deducted as an expense the payments made to suppliers from the Flotation Plant considered as "Missing Taxpayer."² Under the 1998 Stability Agreement such deductions were valid. iii. SMCV should have provided proof of payment made to former Flotation Plant workers in order to make it tax deductible.³ Under the 1998 Stability Agreement this requirement did not apply. iv. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return on such payments to make them tax deductible.⁴ Under the 1998 Stability Agreement this requirement did not apply. v. SMCV should have depreciated the buildings of the Flotation Plant at a 5% rate.⁵ Under the 1998 Stability Agreement a 20% rate applied. vi. SMCV should not have deducted the depreciation of fixed assets of the Flotation Plant.⁶ Under the 1998 Stability Agreement SMCV had the right to deduct the depreciation of fixed assets of the Flotation Plant and Leaching Facility. vii. SMCV should not have depreciated fixed assets of the Flotation Plant which book value had been fully depreciated in previous years.⁷ Under the 1998 Stability Agreement SMCV had the right to such depreciations. 	<p>As of 31 December 2019, penalties and interest accumulated to around US\$5.5 million.</p>	<p>On 26 December 2019 SMCV filed a reconsideration request to SUNAT. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹³</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>viii. SMCV failed to comply with formal requirements to deduct the depreciation of the HPGR of the Flotation Plant.⁸ Under the 1998 Stability Agreement these requirements did not apply.</p> <p>In the Fine Resolution dated 26 November 2019, SUNAT determined that:</p> <p>i. SMCV failed to report income in its tax return based on SUNAT's findings in the Assessment of the same date.⁹ Under the 1998 Stability Agreement SMCV would have not been subject to such fine.</p> <p>In the Fine Resolution dated 26 November 2019, SUNAT determined that:</p> <p>i. The interest rate for tax liabilities in Peruvian soles applied.¹⁰ Under the 1998 Stability Agreement the interest rate for US dollars applied.</p> <p>In the Fine Resolutions dated 26 November 2019, SUNAT determined that:</p> <p>i. SMCV should have kept the Flotation Plant accounting in Peruvian soles.¹¹ Under the 1998 Stability Agreement SMCV was authorized to keep its accounting in US dollars.</p> <p>ii. SMCV should have kept separate accounting for the Flotation Plant and the Leaching Facility.¹² Under the 1998 Stability Agreement SMCV was not required to have separate accounting for each investment because both are part of SMCV's only Beneficiation Concession.</p>		

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Additional Income Tax 2012		
<p>In the Assessment dated 26 November 2019, SUNAT determined that:</p> <p>i. SMCV is subject to an additional income tax of 4.1% on non-deductible expenses (deemed dividends) from the Flotation Plant.¹⁴ Under the 1998 Stability Agreement this additional tax did not apply.</p>	<p>Principal amounts to approximately US\$929,487.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$944,359.</p>	<p>On 26 December 2019, SMCV filed a reconsideration request to SUNAT. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹⁵</p>
Temporary Tax on Net Assets 2012		
<p>On 21 December 2017, SMCV submitted and paid its tax return on Temporary Taxes on Net Assets for the Flotation Plant with reservation of rights to avoid incurring penalties and interest.¹⁶ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p>	<p>Principal amounts to approximately US\$7.5 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$3.1 million.</p>	<p>SUNAT accepted SMCV's tax return and payment.</p>
Temporary Tax on Net Assets 2013		
<p>In the Assessment dated 20 November 2019, SUNAT determined that:</p> <p>i. SMCV should have paid the Temporary Tax on Net Assets for the Flotation Plant.¹⁷ Under the 1998 Stability Agreement SMCV was exempt from the Temporary Tax on Net Assets.</p>	<p>Principal amounts to approximately US\$10.8 million,</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$10.5 million.</p>	<p>On 18 December 2019, SMCV filed a reconsideration request to SUNAT. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.¹⁸</p>
Special Mining Tax 2013		
<p>In the Assessment dated 28 September 2018, SUNAT determined that:</p> <p>i. SMCV should have paid the Special Mining Tax for the Flotation Plant.¹⁹ Under the 1998 Stability Agreement SMCV was exempt from the Special Mining Tax.</p>	<p>Principal amounts to approximately US\$23.5 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$22.1 million.</p>	<p>On 28 May 2019, SUNAT confirmed its prior Assessment and Resolution.²²</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>In the Fine Resolutions dated 28 September 2018, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have submitted its tax return on Special Mining Tax for the Flotation Plant.²⁰ Under the 1998 Stability Agreement SMCV was exempt from the Special Mining Tax. <p>In the Resolution dated 28 May 2019, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV is not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provisions as required under Article 170 of the Tax Code.²¹ But SMCV is clearly entitled to such waiver because there was a “reasonable doubt” about the proper interpretation of the applicable legal provisions, as explained in paras. 12 and 127-133 of the Notice for Arbitration. 		
Complementary Mining Pension Fund Tax 2013		
<p>In the Assessment dated 20 December 2019, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have paid the Complementary Mining Pension Fund Tax for the Flotation Plant. SUNAT determined SMCV's tax liability based on the entirety of its net income because SUNAT was unable to determine SMCV's tax liability based only on its Flotation Plant-related income.²³ Under the 1998 Stability Agreement SMCV was exempt from the Complementary Mining Pension Fund Tax. 	<p>Principal amounts to approximately US\$3.8 million.</p> <p>As of 31 December 2019, penalties and interest accumulated to around US\$3.2 million.</p>	<p>On 22 January 2020, SMCV filed a reconsideration request to SUNAT. As an abundance of caution, on 27 February 2020, SMCV withdrew these stability-related claims for purposes of complying with Article 10.18.2(b) of the TPA.²⁴</p>

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- ¹ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-229** 18 Nov. 2019 Item 2 of Requirement Result No.0122190002346, p. 15-7.
- ² **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-229** 18 Nov. 2019 Item 3 of Requirement Result No.0122190002346, p. 17-9.
- ³ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-229** 18 Nov. 2019 Item 4 of Requirement Result No.0122190002346, p. 19-25.
- ⁴ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-229** 18 Nov. 2019 Item 5 of Requirement Result No. 0122190002346, p. 25-6; *id.*, Item 32, p. 117.
- ⁵ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-228** 4 Nov. 2019 Item 11 of Requirement Result No.0122190001430, p. 88-92.
- ⁶ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-228** 4 Nov. 2019 Item 13 of Requirement Result No.0122190001430, p. 94-102.
- ⁷ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-228** 4 Nov. 2019 Item 14 of Requirement Result No.0122190001430, p. 102-09.
- ⁸ **CE-232** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108051; **CE-228** 4 Nov. 2019 Item 18 of Requirement Result No.0122190001430, p. 116-22.
- ⁹ **CE-235** 26 Nov. 2019 SUNAT Fine Resolution 0120020033157.
- ¹⁰ **CE-235** 26 Nov. 2019 SUNAT Fine Resolution 0120020033157.
- ¹¹ **CE-234** 26 Nov. 2019 SUNAT Fine Resolution No. 012-002-0033156, p. [2].
- ¹² **CE-233** 26 Nov. 2019 SUNAT Fine Resolution No. 012-002-0033155, p. [2].
- ¹³ **CE-252** 27 Feb. 2020, Partial Withdrawal, Income Tax 2012, Docket No. 0150340017563.
- ¹⁴ **CE-231** 26 Nov. 2019 SUNAT Assessment No. 012-003-0108050, p. [2].
- ¹⁵ **CE-259** 27 Feb. 2020, Withdrawal, Additional Income Tax 2012, Docket No. 0150340017566.
- ¹⁶ **CE-162** 21 Dec. 2017 Tax Return on Temporary Taxes on Net Assets and Payment Receipt; **CE-173** 12 Jan. 2018 Reservation of Rights Letter to SUNAT; 2018_01_12 2012 ITAN Assessment SMCV Request for reconsideration.
- ¹⁷ **CE-230** 20 Nov. 2019 Assessment Resolution No. 012-003-0107987.
- ¹⁸ **CE-258** 27 Feb. 2020, Withdrawal, Temporary Tax on Net Assets 2013, Docket No. 0150340017533.
- ¹⁹ **CE-196** 28 Sept. 2018 Assessments No. 012-003-0099078; 28 Sept. 2018 Assessments No. 012-003-0099079; 28 Sept. 2018 Assessments No. 012-003-0099080; 28 Sept. 2018 Assessments No. 012-003-0099081.
- ²⁰ **CE-197** 28 Sept. 2018 Fine Resolution No. 012-002-0031706 p. [1]; 28 Sept. 2018 Fine Resolution No. 012-002-0031707 p. [1]; 28 Sept. 2018 Fine Resolution No. 012-002-0031708 p. [1]; 28 Sept. 2018 Fine Resolution No. 012-002-0031709 p. [1].
- ²¹ **CE-221** 28 May 2019 SUNAT Resolution No. 0150140014815, pp. 39-41.

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- ²² **CE-221** 28 May 2019 SUNAT Resolution No. 0150140014815, p. 42.
- ²³ **CE-237** 20 Dec. 2019 Assessment Resolution No. 012-003-0109172.
- ²⁴ **CE-254** 27 Feb. 2020, Withdrawal, Complementary Mining Pension Fund Tax 2013, Docket No. 0150340017649.