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VIA E-MAIL

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The Renco Group, Inc. v. Republic of Peru
The Renco Group, Inc. and Doe Run Resources Corp. v. Republic of Peru and Activos Mineros S.A.C.

Dear Members of the Tribunal:

The Parties to the referenced proceedings have agreed to hold a procedural session on January 14, 2020, with respect to (1) *The Renco Group, Inc. v. Republic of Peru* (the “Treaty Case”), and (2) *The Renco Group, Inc. and Doe Run Resources Corp. v. Republic of Peru and Activos Mineros S.A.C.* (the “Contract Case”) (collectively, the “Cases” or the “Arbitrations”). The Parties, through counsel, are engaged in discussions related to comprehensive procedural agreements. In this context, Respondents, as applicable, hereby give notice regarding certain objections, and will continue discussions regarding procedural matters, including with respect to such objections.

A. Treaty Case

With respect to the Treaty Case, in its initial Response dated January 14, 2019, although under no obligation to do so and subject to a reservation of rights, Respondent referenced various jurisdictional objections, including without limitation that the claims were precluded because they do not meet temporal requirements. Respondent hereby notifies its request for the Tribunal to decide on an expedited basis certain objections that the dispute is not within the Tribunal’s competence, pursuant to the Peru-United States Trade Promotion Agreement (the “Treaty”).

Article 10.20.5 of the Treaty provides as follows:

In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal’s competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

Respondent’s objections directly relate to the Tribunal’s competence, which is subject to rigid temporal requirements. Pursuant to Article 10.1.3, “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.” Here, the Treaty entered into force on February 1, 2009. In addition, pursuant to Article 10.18.1, “[n]o claim may be submitted to arbitration under the Section if more than three years have elapsed from the date

on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.” Here, Claimant filed its Notice of Arbitration and Statement of Claim in the Treaty Case (the “Treaty Statement of Claim”) on October 23, 2018. The Parties also have entered into certain relevant agreements.¹

Taking into account the foregoing, as Respondent will plead in further detail, Claimant’s claims do not meet the Treaty’s temporal requirements. As set forth in the Treaty Statement of Claim, the measures that Claimant alleges to have breached the Treaty occurred either before the Treaty’s entry into force and Claimant first acquired or should have first acquired, knowledge concerning a breach and loss or damage arising therefrom before the relevant prescription period. To the extent that the Treaty Statement of Claim references allegations that arose after the relevant time period, claims based thereon appear to be impermissible as well for related reasons. To the extent that Claimant argues, despite the Treaty, that Respondent should not be allowed to make such objections, Respondent will address such argument at the appropriate time.

B. Contract Case

With respect to the Contract Case, in the initial Response to the Notice of Arbitration and Statement of Claim in the Contract Arbitration dated January 14, 2019, although under no obligation to do so and subject to a reservation of rights, Respondents referenced deficiencies and set forth certain threshold objections, including without limitation with respect to the relevant parties and scope of the agreement to arbitrate. Respondents seek to be heard on such issue as a preliminary matter in the Contract Case in order to resolve or define the scope of the proceeding.

C. Procedural Implications

Counsel to the Parties have been engaged in discussions regarding procedural matters and have agreed to continue such discussions with respect to the foregoing in the days ahead. Respondents will continue to endeavor to advance on procedural matters before the anticipated procedural session. For the avoidance of doubt, Respondents reserve the right to articulate and expand upon the issues set forth herein at the appropriate time in accordance with applicable instruments, laws and rules, and reserve all rights with respect to these proceedings.

Respectfully,



Jonathan C. Hamilton

cc: Counsel to Claimants

¹ See, e.g., Framework Agreement (as Amended), March 14, 2017 (Doc. R-10).