

CARGO

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November 26, 2019



BY HAND AND BY EMAIL

Dirección General de Asuntos de Economía Internacional,
Competencia e Inversión Privada
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú
pherrera@mef.gob.pe

Attn: Pedro Paul Herrera Catalán, Director General de Asuntos de Economía Internacional, Competencia y Productividad

Notice of Intent to Submit Claims to Arbitration under the United States-Peru Trade Promotion Agreement of 2006

Dear Mr. Herrera Catalán:

We write on behalf of Freeport-McMoRan Inc. (“Freeport”) and Sociedad Minera Cerro Verde S.A.A. (“SMCV” or collectively with Freeport “Claimants”).

As you know, in 1998, the Republic of Peru entered into a Stability Agreement with SMCV to ensure that SMCV and its majority owner, Freeport, could confidently invest hundreds of millions of dollars in two concessions at Cerro Verde—one of the world’s most productive copper mines—without the risk that the prevailing tax or royalty regime would change.

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. Peru has derived massive benefits from those investments. A 2018 study of Cerro Verde’s economic impact over the course of the previous decade found that Cerro Verde’s operations and investments generated an average impact amounting to a remarkable 2% of Peru’s entire GDP and 29% of Arequipa’s GDP in 2018. Further, SMCV’s investments have created employment for thousands of workers in Peru.

Pedro Paul Herrera Catalán

November 26, 2019

Yet, despite these clear benefits, the Government has for many years consistently and relentlessly breached the Stability Agreement by imposing on SMCV the very royalties and taxes from which SMCV was exempted from under the terms of the Stability Agreement.

The Government also has consistently breached the United States-Peru Trade Promotion Agreement (“TPA”), including by (i) arbitrarily refusing to waive hundreds of millions of dollars of punitive penalties and interest even though under Peruvian law, the Government *must* waive penalties and interest where, as here, a taxpayer has “reasonable doubt” as to the proper interpretation of the applicable legal provision; (ii) denying Claimants a fair hearing before the Tax Tribunal; and (iii) arbitrarily refusing to fully repay SMCV certain overpayments under President Humala’s GEM Program. These actions have caused, and continue to cause, Claimants significant loss.

In these circumstances, Claimants regrettably have no choice but to provide the Government with the enclosed Notice of Claimants’ intent to submit the dispute to arbitration pursuant to Article 10.16.1(a) (b) and 10.16.2 of the TPA. Electronic copies of the supporting documents cited in the Notice will be provided via a secure file sharing platform and through an encrypted USB drive (the password for which is D&P47813\$).

Claimants remain committed to resolving the ongoing dispute through constructive dialogue with the Government. They firmly hope that a mutually agreeable way forward can be found. Claimants look forward to constructive consultations and negotiations with the Government, without prejudice to their legal rights to have their dispute resolved through international arbitration under the TPA.

We thank you for your consideration and look forward to hearing from you.

Yours sincerely,



Donald Francis Donovan

C.C. Mr. Ricardo Ampuero Llerena
Comisión Especial Controversias Internacionales de Inversión
Ministerio de Economía y Finanzas
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Enclosures

**Debevoise
& Plimpton**

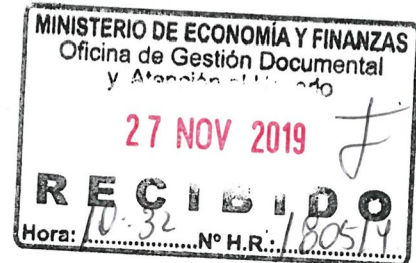
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Yours sincerely,

Donald Francis Donovan

C.C. Mr. Ricardo Ampuero Llerena
Comisión Especial Controversias Internacionales de Inversión
Ministerio de Economía y Finanzas
rampuero@mef.gob.pe

Enclosures

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

Claimants

— v. —

THE REPUBLIC OF PERU

Respondent

**CLAIMANTS' NOTICE OF INTENT TO COMMENCE ARBITRATION
UNDER THE UNITED STATES–PERU TRADE PROMOTION AGREEMENT**

26 November 2019

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Pursuant to Article 10.16.1(a) (b) and 10.16.2 of the United States–Peru Trade Promotion Agreement of 2006 (the “TPA”), Freeport-McMoRan Inc. (“Freeport”) and Freeport on behalf of Sociedad Minera Cerro Verde S.A.A. (“SMCV” or collectively “Claimants”), hereby serve notice (“Notice”) to the Republic of Peru (“Peru” or the “Government”) of their intention to submit to international arbitration 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. PRELIMINARY STATEMENT.

1. This Notice arises from Peru’s violations of the contractual commitments it made more than 20 years ago to induce Freeport and SMCV to invest billions of dollars into the Peruvian economy, and from Peru’s efforts to sanitize its breaches through tainted proceedings before the Tax Tribunal that have trampled Claimants’ due process rights.

2. Having successfully induced Freeport and SMCV to invest, and having long reaped the benefits of those investments, Peru now refuses to provide the fiscal and administrative stability that it promised in return. Instead, it has compounded its contractual breaches by disregarding its legal obligation to waive SUNAT’s extraordinarily punitive penalties and interest; by failing to grant Claimants due process in its proceedings before the Tax Tribunal; and by failing to fully refund GEM payments that SMCV made in the good faith belief that it was exempted from paying royalties while the Stability Agreement remained in force. Peru’s conduct violates Claimants’ rights under Peruvian law, international law, and the TPA.

3. Claimants accordingly hereby serve Notice of their intent to submit to international arbitration the claims that:

- a) Peru has violated the 1998 Stability Agreement by confirming SUNAT’s unlawful assessment of the very royalties and taxes that it promised it would not assess;
- b) Peru has violated Articles 10.4 and 10.5 of the TPA by arbitrarily refusing to waive SUNAT’s extraordinarily punitive penalties and interest, as required by law;
- c) Peru has violated Articles 10.4 and 10.5 of the TPA by denying Claimants a fair hearing before the Tax Tribunal; and
- d) Peru has violated Articles 10.4 and 10.5 of the TPA by arbitrarily refusing to fully repay SMCV the GEM overpayments, as required by law.

A. The Stability Agreement.

4. In 1998, the Republic of Peru entered into a Stability Agreement with SMCV to ensure SMCV and its majority owner, Freeport, that they could confidently invest hundreds

of millions of dollars in two concessions at Cerro Verde—one of the world’s most productive copper mines—without the risk that the prevailing tax or royalty regime would change.

5. That assurance is the very reason that stability agreements exist and are commonplace in international investing: “to promote investment and facilitate the financing of mining projects” by providing investors the predictability and certainty 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 billions of dollars of investments before the revenues from those investments can be recovered, typically many years, or even decades, into the future.

6. Stability agreements are thus equally critical to host countries like Peru to encourage foreign investment, and thereby stimulate economic activity and revenue. Without a predictable and stable regulatory environment—and without a government that can be trusted to stand by its commitments and treat foreign investors fairly—no foreign investor would be willing to pour into the Peruvian economy the enormous amounts of foreign capital that Freeport through SMCV has put to work at Cerro Verde.

B. Claimants’ Reliance on the Stability Agreement and Peru’s Corresponding Benefits.

7. As the Government intended, Freeport and SMCV relied on the Stability Agreement and invested hundreds of millions of dollars to develop the Cerro Verde Mining Concession and its Beneficiation Concession. Specifically, in reliance on the Government’s commitments set forth in the 1998 Stability Agreement, SMCV first invested US\$240 million to expand leaching operations and subsequently invested a further US\$850 million in a new flotation plant. These were precisely the types of investments the Stability Agreement was meant to induce.

8. 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 Gross Domestic Product* and 29% of Arequipa’s GDP. SMCV’s investments have created employment for thousands of workers—11,500 employees on the flotation plant expansion alone—and 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.

9. Moreover, since 2004, SMCV has gone above and beyond its legal obligations by participating at the request of the Government in President Garcia’s Voluntary Contribution Program, pursuant to which SMCV contributed more than US\$130 million directly for the

benefit of the communities in which it operates, and in President Humala's Special Tax (GEM) Program, pursuant to which it ultimately paid more than US\$100 million based on profits from its mining activities that were supposed to be subject to stabilization. In both Programs, SMCV calculated its payments based on the good faith understanding that it was stabilized and not subject to royalties.

C. Peru's Persistent Breaches of the Stability Agreement.

10. Not satisfied with the enormous benefits to the country's economy or even with SMCV's additional voluntary contributions and GEM payments, the Government, acting through SUNAT, the Tax Tribunal, and its contentious administrative courts, has since 2009 consistently and relentlessly breached the Stability Agreement by imposing new royalties and taxes on SMCV based on the 2004 Royalty Law and other "modifications or new rules" that the Government issued while the Stability Agreement remained in force.

11. The Government's only justification for its reversal is the baseless argument that the Stability Agreement applies only to SMCV's leaching facility, and not to its US\$850 million flotation plant that is located in and processes minerals from the very same mining and beneficiation concessions at Cerro Verde. The Stability Agreement makes no such distinction. To the contrary, it 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"—namely, the Mining Concession and the Beneficiation Concession, which include both the leaching facility and the flotation plant.

12. The Government's new position is equally inconsistent with Peruvian law. Neither the Royalty Law nor the Mining Law and Regulations make any distinction between processing facilities within a single concession. Rather, under the Royalty Law, royalties are imposed on the *extraction* of minerals 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." Nothing in these laws (or in the Stability Agreement) suggests that a company is meant to split its activities within the same mining concessions—indeed, with respect to ore mined from the same pit—into stabilized and unstabilized investments, let alone explains how such a split would be administered.

13. The Government's position also defies economic common sense. A mining concession is financed and operated 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 concession as a whole, not to any particular project within

that concession. That is the only interpretation consistent with the text and purpose of the Stability Agreement. Freeport and SMCV would not have invested nearly US\$1 billion in the Cerro Verde Concessions without the Government's promises that SMCV's investments would be stabilized in their entirety.

D. Peru's Arbitrary and Unlawful Decision to Deny SMCV a Waiver of Penalties and Interest.

14. For all these reasons, SUNAT and the Tax Tribunal illegally imposed the royalties and taxes at issue here in violation of the Stability Agreement and Peruvian law. But, the Government's arbitrary and appropriative conduct does not end there. The Government now seeks to more than *double* its windfall by failing to waive hundreds of millions of dollars of punitive penalties and interest that SUNAT imposed on SMCV, even though waiver of those penalties and interest was mandatory in the circumstances of this case. As a result of the usurious interest rate applied, penalties and interest now account for more than 60% of the US\$1 billion that SUNAT claims in total. The arbitrary failure to waive those penalties and interest constitutes an independent violation of international law and the TPA.

15. Under Peruvian law, the Government *must* waive penalties and interest where, as here, a taxpayer has "reasonable doubt" as to the proper interpretation of the applicable legal provision.

16. Plainly, such reasonable doubt exists here: the Government based its Royalty Assessments on a completely novel and restrictive interpretation of the scope of stabilization benefits that 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, prior to the Government's about-face, both the Ministry of Energy and Mines and SUNAT had publicly stated that SMCV *did not* have to pay royalties as a result of a stability agreement. And in 2014, the first instance Contentious Administrative Court agreed with SMCV's interpretation and annulled SUNAT's 2008 Royalty Assessments. Although other courts subsequently reversed that decision, the divergent decisions of Peru's own courts clearly illustrate that the Government position is—at a bare minimum—subject to reasonable doubt.

E. Peru's Violations of Claimants' Right to Due Process and a Fair and Impartial Tribunal.

17. The Government has further violated the TPA through its gross failure to afford a fair and impartial Tax Tribunal to Claimants. At every turn, Claimants' rights to due process have been trampled:

- When SMCV filed its first challenge to SUNAT’s Royalty Assessments, the decision confirming SUNAT’s arguments and ratifying the Assessments was drafted by the Tax Tribunal President’s assistant instead of a Tax Tribunal Chamber consisting of three independent and impartial judges, as required under Peruvian law. The law does not permit the Tax Tribunal President—much less her assistant—to have any role in deciding cases.
- Moreover, that assistant was not even present at the hearing when SMCV presented its arguments, and the case files reveal that she communicated *ex parte* with SUNAT in flagrant violation of the Tax Tribunal’s rules.
- The Chambers hearing SMCV’s other challenges to SUNAT’s Royalty Assessments then simply copy-pasted virtually all or major parts of the decision drafted by the President’s assistant.

18. The due process violations did not end there. In one particularly stunning instance, SMCV’s challenge was heard—and rejected—by a judge who had just joined the Tax Tribunal from SUNAT, and in fact had represented SUNAT as its advocate against SMCV in a prior appeal before the contentious administrative courts. Despite that obviously disqualifying conflict of interest, the full bench of the Tax Tribunal rejected SMCV’s application to remove the judge.

19. Serious questions about the Republic’s system of justice are not new. In July 2018, the Government declared a 90-day state of emergency for the judicial branch noting that the press had revealed “a series of grave and reprehensible acts that hurt the image and autonomy of the Judiciary” and that there was a need to “adopt urgent administrative measures to correct and overcome the critical situation of the judicial system.” Also in July 2018, Peru’s Congress similarly declared a nine-month state of emergency for Peru’s National Magistrates Council, which appoints judges and prosecutors. Following these declarations, Peru’s President Martín Vizcarra admitted publicly that the Peruvian “system for administering justice has collapsed” and that “this problem is not of today, it is structural.”

F. Peru’s Arbitrary and Grossly Unfair Refusal to Reimburse GEM Overpayments.

20. As a result of the SUNAT and Tax Tribunal decisions, SMCV has effectively been triple-taxed. As noted, SMCV has been assessed over US\$1 billion: more than \$400 million in taxes and royalties that it should not have to pay under the 1998 Stability Agreement and Peruvian law, and over \$600 million more in unlawful and arbitrary penalties and interest,

which is effectively double-taxation. In addition, SMCV would have been entitled to offset 64.4% of the payments it made under the Voluntary Contribution Program and 100% of the payments under the Special Tax (GEM) Program if it was deemed subject to royalties. 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 offset those against the contributions it has made through these Programs. Yet, when SMCV requested SUNAT to reimburse it for the excess payments under the GEM Program, SUNAT arbitrarily approved only a partial reimbursement of these overpayments. This effectively constitutes a third tax on SMCV's legitimate mining activities at Cerro Verde.

G. Peru Must Uphold Its Contractual Promises and the Terms of the TPA.

21. Peru's handling of this controversy reflects precisely the kind of broken promises and dubious justice that makes investors think twice before investing capital in cross-border projects—and precisely the kind of unjust treatment that the TPA and the Parties' Stability Agreement were meant to preclude. Freeport and SMCV took the Government of Peru at its word, and on the basis of its promises invested massively, to the clear benefit of Peru.

22. The Parties set up in 1998 the framework for many years of a successful, mutually beneficial partnership—which they renewed in 2012 by signing a new stability agreement. But the Government's conduct in this case, which it has thus far lacked the will to remedy, has driven a wedge into that collaboration and now threatens to derail the decades of mutual benefit that can and should result for both Claimants and Peru.

23. Claimants have long sought and would welcome the opportunity to resolve this matter amicably, with an eye towards future success rather than to past grievances, but in the absence of such resolution cannot permit their rights under Peruvian law and international law to be violated.

24. Freeport and SMCV demand nothing more than the stability that they were promised, and on which they relied in investing hundreds of millions of dollars into the Peruvian economy. The Government of Peru has richly benefited from those investments. It must now uphold its side of the bargain.

II. PARTIES.

25. Claimant Freeport-McMoRan Inc. is an entity incorporated in the State of Delaware. Freeport's address is:

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

26. Freeport indirectly owns 53.56% of the shares of SMCV and controls the company. SMCV is incorporated in Peru and operates the mining complex at Cerro Verde, which is located 30 km southwest of Arequipa, Peru. SMCV's address is:

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

27. Correspondence with Claimants relating to this matter should be sent to the undersigned counsel of record at the address below.

28. Peru is a Party to the TPA. Pursuant to Annex 10-C of the TPA, Peru is to 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. FACTUAL BACKGROUND.

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

29. Cerro Verde is an open-pit copper and molybdenum mining complex located about 30 km south of Arequipa, Peru.¹ 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.²

¹ Ex. CE-133, https://www.fcx.com/operations/south-america#cerro_verde_link.

² *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. As a result of several large capital investments and expansions by Freeport and SMCV's other shareholders, including a multi-billion dollar investment completed in December 2016, the Cerro Verde mine now has an annual output of approximately one billion pounds of copper and 30 million pounds of molybdenum,³ making it one of the most productive and technologically advanced copper mines in the world.

31. SMCV currently employs around 5,000 Peruvian nationals at Cerro Verde, including full time employees and contractors. But SMCV's contribution to the local and national economy goes well beyond employment. A 2018 study of Cerro Verde's economic impact over the course of the previous decade 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.

32. 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.⁴ 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.⁵ SMCV has likewise contributed 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.⁶ 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.⁷

³ **Ex. CE-129**, Jan. 2019 "Boletín Estadístico Minero," 31 ed., Annex 2, p. 16; **Ex. CE-136**, Aug. 2019 "Boletín Estadístico Minero," 31 ed., Annex 2, p. 15.

⁴ **Ex. CE-134**, "Expanding Resources, 2012 Working Toward Sustainable Development Report", Freeport-McMoRan Copper & Gold, June 24, 2019.

⁵ *Id.*

⁶ See **Ex. CE-049**, 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-029**, 2006 Audited Financial Statement (documenting SMCV's agreement to finance the construction of the San José de Uzuña dam); **Ex. CE-036**, 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).

⁷ See **Ex. CE-131**, 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. Claimants Invested in Cerro Verde Relying on the Government’s Obligation to Provide Fiscal and Administrative Stability.

33. 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”);⁸ and (ii) a concession to process the minerals extracted under the Mining Concession called “Planta de Beneficio Cerro Verde” (the “Beneficiation Concession”).⁹ Together, these two concessions form SMCV’s sole Economic Administrative Unit (“EAU”).¹⁰

34. 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 only Mining Concession, and processes all of the minerals either through leaching or flotation under its only Beneficiation Concession.

35. The Government created SMCV more than two decades ago. Specifically, 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 and transferred its Mining and Beneficiation Concessions to SMCV, and offered SMCV for sale.¹¹ 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”).¹² In 1999, Freeport’s predecessor Phelps Dodge Corporation acquired Cyprus and, with it, a majority of SMCV and the Cerro Verde mining operations.¹³

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

⁸ See **Ex. CE-001**, 1976 Mining Concession, Supreme Decree No. 027-76-EM/DGM.

⁹ See **Ex. CE-011**, 1996 Beneficiation Concession, Resolution No. 339-96-EM/DGM.

¹⁰ See **Ex. CE-002**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 44.

¹¹ **Ex. CE-011**, 1996 Beneficiation Concession, Resolution No. 339-96-EM/DGM.

¹² See **Ex. CE-004**, 17 Mar. 1994 Share Purchase Agreement.

¹³ See **Ex. CE-135**, 1 Jul. 2019 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.¹⁴ At the time, SMCV processed mostly leachable ore, but the Mining Concession contained significant primary sulfide deposits that could not be processed through leaching. The potential for processing the primary sulfides had been studied since 1972, including in a 1985 feasibility study commissioned by Minerio Perú.¹⁵ 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 2014.¹⁶

37. 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").¹⁷

38. SMCV also completed studies exploring the feasibility of installing the new mill and flotation facilities for processing primary sulfides.¹⁸ At the time, the studies concluded that installing a mill would not be economically feasible,¹⁹ among other reasons because of the high cost of power in the Arequipa region and the absence of an economic water source.²⁰ SMCV nonetheless committed to conducting additional studies and testing to establish whether it could be economically feasible to process Cerro Verde's primary sulfides.²¹

¹⁴ **Ex. CE-004**, 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.").

¹⁵ **Ex. CE-023**, 2004, Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 4.

¹⁶ *Id.*

¹⁷ *See* **Ex. CE-008**, 1996 Feasibility Study, Executive Summary, Section 2.

¹⁸ *See* **Ex. CE-014**, 1998 Cerro Verde Mill Feasibility Study, Section 1.

¹⁹ *See* **Ex. CE-014**, 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").

²⁰ **Ex. CE-012**, 16 Sep. 1996 Letter from Cyprus to Empresa Minera del Peru, p. 2. *See also* **Ex. CE-023**, 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").

²¹ **Ex. CE-020**, 30 Mar. 2001 Escritura de Transacción Extrajudicial, p. [9].

39. 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.²² 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.”²³

40. The purpose of these stability agreements is “to promote investment and facilitate the financing of mining projects.”²⁴ The stability agreements provide investors with certainty and 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.

41. As evidence of their commitment to make an investment, the Mining Law requires investors to “submit a technical and economic feasibility study” for approval by the General Directorate of Mining.²⁵ SMCV accordingly supported its application for a stability agreement by submitting its 1996 Feasibility Study, which the General Directorate of Mining approved on 6 May 1996.²⁶

42. On 26 February 1998, SMCV and the Government executed the 1998 Stability Agreement.²⁷ The 1998 Stability Agreement stabilized the fiscal regime (including taxes and other administrative obligations) applicable to Cerro Verde for a period of fifteen 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

²² **Ex. CE-009**, 25 January 1996 Solicitud Convenio de Estabilidad, p. [3].

²³ **Ex. CE-002**, 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.”).

²⁴ *Id.*, Art. 82.

²⁵ **Ex. CE-002**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 85.

²⁶ *See Ex. CE-010*, 6 May 1996 Feasibility Study Approval, No. 043-96-EM-DGM-DFM/DFAE.

²⁷ *See Ex. CE-013*, 1998 Stability Agreement.

not affect [SMCV] in any way,” including any changes to the income tax rate, custom duties or municipal taxes.²⁸ The 1998 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.²⁹

43. Clause 1 of the 1998 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.”³⁰ Clause 3 further provided that the stabilization benefits were “circumscribed to the concessions [listed] in Annex I.”³¹ Annex I expressly listed both of SMCV’s concessions, namely the Mining Concession and the Beneficiation Concession.³²

44. On 3 December 1999, the Government confirmed that SMCV had successfully completed construction of the modernized and expanded leaching facilities as set forth in the 1996 Feasibility Study.³³

45. 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.³⁴

46. 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.”³⁵ Fluor evaluated two main technology options for treating the primary sulfide ore, milling and pebble crushing (known as “SABC”) and high pressure grinding rolls and ball mills (known as “HPGR”) followed by flotation concentration.³⁶ The

²⁸ See **Ex. CE-013**, 1998 Stability Agreement, Clause 9.5.

²⁹ *Id.*, Clause 10.1.

³⁰ *Id.*, Clause 1.1.

³¹ *Id.*, Clause 3.

³² *Id.*, Annex I.

³³ See **Ex. CE-015**, 1998 Dictamen Auditec, Fiscal and Accounting Report of SMCV Investments; **Ex. CE-017**, 22 Nov. 1999 Minuta de Ejecución de Estudio de Factibilidad; **Ex. CE-018**, 3 Dec. 1999 Escritura Declarativa de Ejecución de Estudio de Factibilidad.

³⁴ See **Ex. CE-004**, 17 Mar. 1994 Share Purchase Agreement, Appendix G – Description of Project Phases, pp. 145-51; **Ex. CE-020**, 30 March 2001 Escritura de Transacción Extrajudicial, p. [9].

³⁵ **Ex. CE-023**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 1.

³⁶ See *id.*

new HPGR technology presented “financial advantages due to lower operating costs.”³⁷ 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.³⁸ Fluor thus concluded that “[t]he project as currently conceived appears to have sound investment potential”³⁹ and that the expected cost of the new facilities for treating the Cerro Verde primary sulfides would exceed US\$800 million.⁴⁰

47. 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 2004.⁴¹ During the two-year construction of the Flotation Plant, SMCV ultimately invested a total of US\$850 million and employed 11,500 people.⁴²

48. In late 2006, SMCV started the test period for extracting the Cerro Verde primary sulfides and started operating the Flotation Plant.⁴³ On 26 February 2007, the Government issued a Resolution approving the extension of SMCV’s Beneficiation Concession to include the Flotation Plant.⁴⁴ Since the Stability Agreement expressly covered the Beneficiation Concession, the Government’s Resolution extending the Beneficiation Concession to include the Flotation Plant confirmed that the Government itself understood that the stabilization benefits also covered the Flotation Plant.⁴⁵

³⁷ *Id.*

³⁸ *See id.*, pp. 9-11.

³⁹ **Ex. CE-023**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Report Cover Letter, p. [2].

⁴⁰ *Id.*, pp. 40-41.

⁴¹ **Ex. CE-028**, 9 Dec. 2004 Ministry of Energy and Mines, Ministerial Resolution No. 510-2004-MEM/DM (approving SMCV’s proposal). *See* **Ex. CE-026**, 3 Dec. 2004 Ministry of Economy and Finance, Oficio No. 942-2004-EF/10; **Ex. CE-027**, 3 Dec. 2004 Ministry of Economy and Finance, Report No. 209-2004-EF/66.01.

⁴² *See* **Ex. CE-028**, 9 Dec. 2004 Ministry of Energy and Mines, Resolution No. 510-2004-MEM/DM; **Ex. CE-040**, 30 Oct. 2009 Ministry of Energy and Mines, Resolution No. 213-2009-MEM/DM.

⁴³ **Ex. CE-035**, 26 Feb. 2007 Ministry of Energy and Mines, Directorial Resolution No. 056-2007-MEM/DGM, p. 23.

⁴⁴ *See* **Ex. C-035**, 26 Feb. 2007 Ministry of Energy and Mines, Directorial Resolution No. 056-2007-MEM/DGM.

⁴⁵ *See* **Ex. CE-013**, 1998 Stability Agreement, Annex 1.

49. In March 2007, Phelps Dodge merged with Freeport, which became the indirect majority owner of SMCV.⁴⁶

C. Peru Assessed Royalties and Taxes in Breach of the 1998 Stability Agreement.

50. On 24 June 2004, Peru passed the Royalty Law, which 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.”⁴⁷

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

52. In March 2004, for instance, the then-Vice-Minister of Energy and Mines Mr. César Polo stated in a presentation to the Peruvian Congress that “the royalty regime would apply only to a percentage of national mine production” “because of the tax stability agreements entered into by the Peruvian State.”⁴⁸ Mr. Polo’s presentation specifically identified SMCV as one of the companies benefitting from stabilization and noted that SMCV’s relevant “mining unit” for stabilization purposes was “Cerro Verde No. 1, No. 2, and No. 3.”⁴⁹

53. Similarly, in May 2006, SUNAT’s then-National Intendent, Ms. Nahil Hirsh, and the then-Minister of Economy and Finance, Mr. Fernando Zavala, also 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.⁵⁰ 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 Royalties Act and other obligations created after their contracts.”⁵¹

⁴⁶ See **Ex. CE-135**, 1 Jul. 2019 Freeport-McMoRan Inc., Sociedad Minera Cerro Verde S.A.A. Corporate Organizational Chart.

⁴⁷ **Ex. CE-024**, Royalty Law, Law No. 28258, Art. 2.

⁴⁸ **Ex. CE-022**, 11 Mar. 2004 “Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas,” slide 11. See also *id.*, Slide 13 (“El impacto de la regalía en la recaudación no sería el esperado, como consecuencia de los contratos de estabilidad tributaria.”).

⁴⁹ *Id.*, Slide 10.

⁵⁰ See **Ex. CE-031**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” EL COMERCIO.

⁵¹ **Ex. CE-031**, 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.”).

54. In the good-faith belief that it was fully exempted from paying any royalties under the Royalty Law until the 1998 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 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.⁵²

55. Moreover, because SMCV was fully exempted from paying royalties, the Government demanded a higher rate of contribution when SMCV 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 28 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 mining funds.⁵³ SMCV ultimately contributed over US\$130 million to the funds for projects supporting childhood nutrition, primary education, health, and other social goals.

56. After the Voluntary Contribution Agreement expired, SMCV participated in President Humala's Special Tax (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 Agreement⁵⁴ with the Government and once again, the Government demanded a higher rate of contribution because SMCV was fully exempted from paying royalties. Ultimately, SMCV paid more than US\$100 million in GEM payments.⁵⁵ The Government received those payments in full, thereby ratifying SMCV's understanding that

⁵² See **Ex. CE-047**, 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.

⁵³ See **Ex. CE-033**, 18 Jan. 2007 SMCV Voluntary Contribution Agreement, Arts. 2.2, 2.4, 3.1.

⁵⁴ See **Ex. CE-056**, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), approved by Law No. 29790.

⁵⁵ See **Ex. CE-057**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-058**, 31 May 2012 SMCV Gem Payment, 1Q 2012; **Ex. CE-059**, 31 Aug. 2012 SMCV Gem Payment, 2Q 2012; **Ex. CE-061**, 30 Nov. 2012 SMCV Gem Payment, 3Q 2012; **Ex. CE-062**, 28 Feb. 2013 SMCV GEM Payment, 4Q 2012; **Ex. CE-070**, 30 May 2013 SMCV Gem Payment, 1Q 2013; **Ex. CE-077**, 28 Aug. 2013 SMCV Gem Payment, 2Q 2013; **Ex. CE-081**, 28 Nov. 2013 SMCV Gem Payment, 3Q 2013; **Ex. CE-084**, 27 Feb. 2014 SMCV GEM Payment, 4Q 2013.

it was exempted from paying royalties and that it was not entitled to any deductions on account of royalty payments.⁵⁶

57. Yet, after receiving these hundreds of millions of dollars from SMCV in investments, taxes and voluntary contributions, 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 amount of US\$28.8 million⁵⁷ for the minerals processed in the Flotation Plant between December 2006 and December 2007 (the “2006/07 Royalty Assessments”).⁵⁸ In addition, SUNAT also imposed on SMCV penalties and interest accruing at a punitive rate of 14.4% per year, which as of 31 October 2019 accumulated to around US\$77 million, more than *twice* the value of the 2006/07 Royalty Assessments.⁵⁹

58. 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 now took the baseless position that only the minerals processed by the leaching facility were covered by the 1998 Stability Agreement, whereas the minerals processed by the flotation plant within the same Beneficiation Concession were not.⁶⁰

59. 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.⁶¹ Under SUNAT’s novel interpretation, the scope of the 1998 Stability Agreement was therefore allegedly limited to the investments set forth in the 1996 Feasibility Study.⁶²

⁵⁶ *See id.*

⁵⁷ All Assessment values in this Notice are based on an exchange rate of 3.321 Soles to 1 U.S. dollar.

⁵⁸ *See Ex. CE-037*, 17 Aug. 2009 SUNAT Royalty Assessment, 2006-07 Case.

⁵⁹ 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-080*, 10 Oct. 2013 SUNAT Arequipa Regional Office Administrative Decision No. 0510170003363.

⁶⁰ *See Ex. CE-037*, 17 Aug. 2009 SUNAT Royalty Assessment, 2006-07 Case, folio 1/2.

⁶¹ *Id.*

⁶² *Id.*

60. SUNAT's 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.⁶³ 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 *all activities* performed by the "title holder of the mining activity"⁶⁴ within either a particular concession or a particular EAU consisting of multiple related concessions.⁶⁵ 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,"⁶⁶ 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,*"⁶⁷ also without any limitation.

61. 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 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.

62. Accordingly, on 15 September 2009, SMCV requested that SUNAT reconsider the 2006/07 Royalty Assessments.⁶⁸ A few months later, on 31 March 2010, SUNAT rejected SMCV's reconsideration request.⁶⁹

⁶³ See **Ex. CE-025**, 15 Nov. 2004 Royalty Law Regulations, Supreme Decree No. 157-2004-EF, Art. 4; **Ex. CE-002**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 8.

⁶⁴ See **Ex. CE-003**, 1993 Mining Regulations, Supreme Decree No. 024-93-EM, Arts. 1, 2.; **Ex. CE-002**, 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 72.

⁶⁵ *Id.*, Arts. 82, 22.

⁶⁶ *Id.*, Art. 83.

⁶⁷ *Id.*, Art. 22.

⁶⁸ See **Ex. CE-038**, 15 Sep. 2009 SMCV Request for Reconsideration, 2006/07 Royalty Assessment.

63. After the initial 2006/07 Royalty Assessments, SUNAT continued to issue further Royalty and Tax Assessments against SMCV, all of which were premised on the same novel and restrictive interpretation of the scope of stabilization benefits. For each assessment, SMCV requested that SUNAT reconsider its 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 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$76.2 million.⁷⁰ On 15 July 2010, SMCV submitted a reconsideration request, which SUNAT rejected on 31 January 2011.⁷¹
- On 27 June 2011, SUNAT issued royalty assessments for the year 2009 (the “2009 Royalty Assessments”) in the amount of approximately US\$32.2 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$69.9 million.⁷² On 9 August 2011, SMCV submitted a reconsideration request, which SUNAT rejected on 21 December 2011.⁷³
- 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\$78.9 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$128.4 million.⁷⁴ On 11 May 2016, SMCV submitted a reconsideration request, which SUNAT rejected on 29 December 2016.⁷⁵

⁶⁹ See **Ex. CE-042**, 31 Mar. 2010 SUNAT Rejects SMCV Request, 2006/07 Royalty Assessment, notified to SMCV on 22 April 2010.

⁷⁰ See **Ex. CE-043**, 1 Jun. 2010 SUNAT Royalty Assessment, 2008 Royalty Assessment.

⁷¹ See **Ex. CE-046**, 31 Jan. 2011 SUNAT Rejects SMCV Request, 2008 Royalty Assessment, notified to SMCV on 17 February 2011.

⁷² See **Ex. CE-050**, 27 June 2011 SUNAT Royalty Assessment, 2009 Royalty Assessment.

⁷³ See **Ex. CE-051**, 9 Aug. 2011 SMCV Request for Reconsideration, 2009 Royalty Assessment; **Ex. CE-054**, 21 Dec. 2011 SUNAT Rejects SMCV Request, 2009 Royalty Assessment, notified to SMCV on 26 December 2011.

⁷⁴ See **Ex. CE-091**, 13 Apr. 2016 SUNAT Royalty Assessment, 2010/11 Royalty Assessment.

⁷⁵ See **Ex. CE-094**, 11 May 2016 SMCV Request for Reconsideration 2010/11 Royalty Assessment; **Ex. CE-096**, 29 Dec. 2016 SUNAT Rejects SMCV Request 2010/11 Royalty Assessment, notified to SMCV on 1 Mar. 2017.

- On 29 December 2017, SUNAT issued royalty assessments for the fourth quarter of 2011 (the “4Q 2011 Royalty Assessments”) in the amount of approximately US\$7.4 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$9.8 million.⁷⁶ On 15 February 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 12 October 2018.⁷⁷
- On 28 March 2018, SUNAT issued royalty assessments for the year 2012 (the “2012 Royalty Assessments”) in the amount of approximately US\$34.5 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$44.5 million.⁷⁸ On 17 May 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 11 January 2019.⁷⁹
- On 28 September 2018, SUNAT issued royalty assessments for the year 2013 (the “2013 Royalty Assessments”) in the amount of approximately US\$26 million, plus penalties and interest which as of 31 October 2019 accumulated to around US\$28.4 million.⁸⁰ On 7 November 2018, SMCV submitted a reconsideration request, which SUNAT rejected on 28 May 2019.⁸¹

64. In addition to the Royalty Assessments, the Government also imposed on SMCV several Tax Assessments in violation of the 1998 Stability Agreement. For instance, SUNAT and the Tax Tribunal have (i) applied the then current 19% sales tax rate, instead of the stabilized 18% rate; (ii) imposed additional dividend taxes beyond what the Stability Agreement requires; (iii) penalized SMCV for depreciating assets according to the terms of the 1998 Stability Agreement; (iv) imposed a Special Mining Tax that under the 1998 Stability Agreement did not apply to SMCV; and (v) contrary to Article 22 of the Regulations, penalized

⁷⁶ See **Ex. CE-099**, 29 Dec. 2019 SUNAT 4Q 2011 Royalty Assessments.

⁷⁷ See **Ex. CE-100**, 15 Feb. 2018 SMCV Request for Reconsideration 4Q 2011; **Ex. CE-116**, 12 Oct. 2018 SUNAT Rejects SMCV Request 4Q 2011, notified to SMCV on 30 Oct. 2018.

⁷⁸ See **Ex. CE-101**, 28 Mar. 2018 SUNAT Royalty Assessment, 2012 Royalty Assessment.

⁷⁹ See **Ex. CE-103**, 17 May 2018 SMCV Request for Reconsideration, 2012 Royalty Assessment; **Ex. CE-126**, 11 Jan. 2019 SUNAT Rejects SMCV Request, 2012 Royalty Assessment, notified to SMCV on 23 January 2019.

⁸⁰ See **Ex. CE-115**, 28 Sep. 2018 SUNAT Royalty Assessment, 2013 Royalty Assessment.

⁸¹ See **Ex. CE-117**, 7 Nov. 2018 SMCV Request for Reconsideration, 2013 Royalty Assessment; **Ex. CE-132**, 28 May 2019 SUNAT Rejects SMCV Request, 2013 Royalty Assessment, notified to SMCV on 28 May 2019.

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.⁸² The various Tax Assessments that violated the 1998 Stability Agreement and the Mining Law and Regulations are listed in Annex A hereto.

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

65. 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."⁸³

66. 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 raised by SUNAT are assigned to the Tax Tribunal's yearly budget.⁸⁴ Therefore, the higher the Government's tax and custom revenues, the higher the budget for the Tax Tribunal.

67. 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 and 2010/11 Royalty Assessments in violation of SMCV's due process rights.

⁸² See **Ex. CE-013**, 1998 Stability Agreement, Annex 1.

⁸³ See **Ex. CE-016**, 19 Aug. 1999 Peruvian Tax Code, Supreme Decree No. 135-99-EF, Art. 101(1); **Ex. CE-073**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 101(1); **Ex. CE-086**, 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.").

⁸⁴ See **Ex. CE-073**, 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. CE-016**, Peruvian Tax Code, Supreme Decree No. 135-99-EF, Art. 98°(4); see also **Ex. CE-019**, 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).

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

68. SMCV appealed the 2006/07 Royalty Assessments to the Tax Tribunal on 22 June 2010, and the 2008 Royalty Assessments on 10 March 2011.⁸⁵ It has been the Tax Tribunal's long-standing practice to decide cases in the order in which they are filed.⁸⁶ 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.⁸⁷

69. 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.⁸⁸ 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 scheduled an oral hearing for 2 May 2013.⁸⁹ 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.⁹⁰

70. As a review of the Tax Tribunal case files revealed, 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.⁹¹ According to the Tax Tribunal's rules of

⁸⁵ See **Ex. CE-044**, 22 June 2010 SMCV Appeal to Tax Tribunal, 2006/07 Royalty Assessments; **Ex. CE-048**, 10 Mar. 2011 SMCV Appeal to Tax Tribunal, 2008 Royalty Assessment.

⁸⁶ See **Ex. CE-128**, 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.").

⁸⁷ See **Ex. CE-066**, 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-071**, 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).

⁸⁸ See **Ex. CE-063**, 5 Apr. 2013, Record of Oral Hearing No. 0286-2013-EF/TF.

⁸⁹ See **Ex. CE-064**, 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).

⁹⁰ See **Ex. CE-044**, 22 June 2010 SMCV Appeal of 2006/07 Royalty Assessments to Tax Tribunal; **Ex. CE-048**, 10 Mar. 2011 SMCV Appeal of 2008 Royalty Assessments to Tax Tribunal. See also **Ex. CE-128**, Law of Administrative Procedure, No. 27444, Article 159(1) (establishing the practice that cases should be determined in the order filed).

⁹¹ See **Ex. CE-065**, 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-004**, 1994 Share Purchase Agreement, Appendix H, p. 154.

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.⁹² The request also must be made through a formal written communication and not by *ex parte* emails, both of which rules the assistant to the Tax Tribunal President violated.⁹³

71. 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.⁹⁴

72. The Chamber No. 1 decision confirming the 2008 Royalty Assessments bears the initials of Ms. Villanueva in the signature page, which strongly suggests that she, and not a judge or clerk of Chamber No. 1, drafted the decision.⁹⁵ 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.⁹⁶ That role falls exclusively to the judges and clerks of the presiding Chambers.⁹⁷ Indeed, Ms. Villanueva was not even present when Chamber No. 1 heard oral argument on the appeal to the 2008 Royalty Assessment.⁹⁸

73. The Tax Tribunal’s case files further show that in violation of its internal rules of procedure and basic due process, on 27 May 2013, the Tax Tribunal notified SUNAT of its

⁹² See **Ex. CE-016**, 19 Aug. 1999 Peruvian Tax Code, Art. 126, Supreme Decree No. 135-99-EF (“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-073**, 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-045**, 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.”)

⁹³ See **Ex. CE-016**, 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.”).

⁹⁴ See **Ex. CE-066**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013.

⁹⁵ See **Ex. CE-066**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013, p. 24.

⁹⁶ See **Ex. CE-062**, 31 Oct. 2012 Manual of Tax Tribunal Procedures, General Secretariat Resolution No. 017-2012-EF/13, pp. 10-14, 17-18; **Ex. CE-086**, 23 May 2014 Regulation of the Organization and Functions of the Ministry of Economy and Finance, Supreme Decree No. 117-2014-EF, Art. 22.

⁹⁷ See **Ex. CE-062**, 31 Oct. 2012 Manual of Tax Tribunal Procedures, General Secretariat Resolution No. 017-2012-EF/13, pp. 10-14, 17-18.

⁹⁸ See **Ex. CE-064**, 2 May 2013 Record of Oral Hearing No. 0411-2013-EF/TF.

decision confirming SUNAT's 2008 Royalty Assessments and rejecting SMCV's appeal.⁹⁹ The following day, without notifying SMCV of the Tax Tribunal's decision and without copying SMCV on its communication, SUNAT submitted a copy of the decision to Chamber No. 10, which had not yet issued its decision.¹⁰⁰

74. 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.¹⁰¹ 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*.¹⁰² 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 assisted the judges with the drafting.¹⁰³ This is highly unusual and strongly suggests that Chamber No. 10 played no role in preparing the decision.

75. It was not until 20 June 2013, several weeks after both decisions were rendered, that SMCV was finally notified of the decisions.¹⁰⁴

76. 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.¹⁰⁵ 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 a taxpayer has "reasonable doubt" about the proper interpretation of the applicable legal provision.¹⁰⁶ SMCV clearly had such reasonable doubt: the Government

⁹⁹ See **Ex. CE-068**, 27 May 2013 Tax Tribunal Notice No. 007270-2013-EF/40.01.

¹⁰⁰ See **Ex. CE-069**, 28 May 2013 SUNAT Letter to Chamber No. 10.

¹⁰¹ See **Ex. CE-071**, 30 May 2013 Tax Tribunal Decision No. 08997-10-2013.

¹⁰² Compare **Ex. CE-071**, 30 May 2013 Tax Tribunal Decision No. 08997-10-2013, with **Ex. CE-066**, 21 May 2013 Tax Tribunal Decision, No. 08252-1-2013.

¹⁰³ Compare **Ex. CE-067**, 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 realtor, secretaria de la Sala, but not the asesor de la Sala).

¹⁰⁴ See **Ex. CE-072**, 20 Jun. 2013 Acknowledgement of Receipt, Resolution 08252-1-2013.

¹⁰⁵ See **Ex. CE-074**, 26 Jun. 2013 SMCV Letter to the President of Chamber No. 1.

¹⁰⁶ See **Ex. CE-073**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 170; **Ex. CE-034**, 25 Jan. 2007 Law 28969, Article 12 ("No procede la aplicación de intereses ni

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.¹⁰⁷

77. On 15 July 2013, the Tax Tribunal nevertheless denied SMCV's waiver requests.¹⁰⁸ It did so on the pretextual and arbitrary ground that SMCV should have requested a waiver of penalties and interest in its appeals to the Tax Tribunal,¹⁰⁹ even though the Tax Tribunal has accepted waiver requests from other tax payers that were submitted after their corresponding appeal decisions had been issued and under Peruvian law the Tax Tribunal should have waived the penalties and interest on its own, without a prior application by SMCV.¹¹⁰

78. On 18 September 2013, SMCV appealed the Tax Tribunal decision confirming SUNAT's 2008 Royalty Assessments to the Peruvian contentious administrative courts.¹¹¹

79. On 17 December 2014, the first instance Contentious Administrative Court annulled SUNAT's 2008 Royalty Assessments.¹¹² The Court 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"¹¹³ and that "the benefits are granted to the title holder for the activities it performs within its concessions or Economic Administrative Units."¹¹⁴ The Court accordingly concluded that SMCV's

sanciones, tratándose de obligaciones relacionadas a la regalía minera, en los mismos casos y plazo señalado en el Art. 170° del Código Tributario.”)

¹⁰⁷ See **Ex. CE-022**, 11 Mar. 2004 “Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas;” **Ex. CE-031**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” EL COMERCIO.

¹⁰⁸ See **Ex. CE-075**, 15 July 2013 Tax Tribunal Decision No. 11667-10-2013; **Ex. CE-076**, 15 July 2013 Tax Tribunal Decision No. 11669-1-2013.

¹⁰⁹ See **Ex. CE-075**, 15 July 2013 Tax Tribunal Decision No. 11667-10-2013, p. 5; **Ex. CE-076**, 15 July 2013 Tax Tribunal Decision No. 11669-1-2013, p. 5.

¹¹⁰ See **Ex. CE-032**, 26 July 2006 Tax Tribunal Decision No. 04123-1-2006.

¹¹¹ See **Ex. CE-078**, 18 Sep. 2013 SMCV Administrative Court Appeal of the Tax Tribunal Decision, 2008 Royalty Assessment.

¹¹² See **Ex. CE-087**, 17 Dec. 2014 Administrative Court Decision, No. 07650-2013-CA, 2008 Royalty Assessment.

¹¹³ See *id.*, p. 24.

¹¹⁴ See **Ex. CE-087**, *id.*, p. 5.

“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.¹¹⁵

80. 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 arbitrary ground as the Tax Tribunal.¹¹⁶ 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.¹¹⁷

81. 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.¹¹⁸ On 18 August 2017, the Supreme Court dismissed all of SMCV’s claims and upheld the Government’s position that SMCV’s stabilization rights under the 1998 Stability Agreement were limited to the minerals processed in the leaching facilities.¹¹⁹ The Supreme Court also upheld the Appellate Court’s decision to deny SMCV’s entitlement to a waiver of penalties and interest, once again without even considering SMCV’s arguments on the merits.¹²⁰

82. SMCV similarly appealed the Tax Tribunal decision confirming the 2006/07 Royalty Assessments to the contentious administrative courts, including up to the Supreme Court.¹²¹ All courts to date have upheld SUNAT’s arbitrary position. As of the date of this Notice, the Supreme Court has not yet published its decision with respect to the 2006/07 Royalty Assessments, even though the hearing was held one year ago on 20 November 2018.

¹¹⁵ See **Ex. CE-087**, *id.*, p. 25.

¹¹⁶ See **Ex. CE-089**, 29 Jan. 2016 Appellate Court Decision, No. 7650-2013, 2008 Royalty Assessment.

¹¹⁷ See *id.*, pp. 4, 15; **Ex. CE-006**, 15 Aug. 1995 Tax Tribunal Decision, No. 4363-2; **Ex. CE-007**, 3 Nov. 1995 Tax Tribunal Decision, No. 5208-1.

¹¹⁸ See **Ex. CE-090**, 23 Feb. 2016 SMCV Supreme Court Appeal of the Appellate Court Decision No. 7650-2013, 2008 Royalty Assessment.

¹¹⁹ See **Ex. CE-098**, 18 Aug. 2017 Supreme Court Decision, No. 5212-2016, 2008 Royalty Assessment.

¹²⁰ See *id.*, pp. 4-5, 18, 36-37, 40.

¹²¹ See **Ex. CE-079**, 27 Sept. 2013 SMCV Administrative Court Appeal of the Tax Tribunal’s Decision, 2006/07 Royalty Assessment; **Ex. CE-092**, 2 May 2016 SMCV Appellate Court Appeal of the Administrative Court Decision.

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

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

84. On 12 January 2012, SMCV appealed SUNAT's 2009 Royalty Assessments to the Tax Tribunal.¹²² That appeal remained pending for over six years. Several years later, on 22 March 2017, SMCV appealed SUNAT's 2010/11 Royalty Assessments.¹²³

85. 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.¹²⁴ Two of the three judges in Chamber No. 1 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.¹²⁵ 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.¹²⁶ What is more, Judge Mejía Ninacondor had also represented SUNAT in litigating against SMCV before the Appeals Court, specifically in the contentious administrative proceedings regarding the 2006/07 Royalty Assessments.¹²⁷

86. 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.

¹²² See **Ex. CE-055**, 12 Jan. 2012 SMCV Appeal of SUNAT's 2009 Royalty Assessment.

¹²³ See **Ex. CE-097**, 22 Mar. 2017 SMCV Appeal of SUNAT's 2010/2011 Royalty Assessments.

¹²⁴ See **Ex. CE-105**, 20 Jun. 2018 SMCV Submission Requesting Removal of Judge Victor Mejía Ninacondor.

¹²⁵ See **Ex. CE-102**, 4 May 2018 Supreme Resolution, No. 013-2018-EF, Article 1.

¹²⁶ See **Ex. CE-137**, M. Victor Mieja Ninacondor LinkedIn Profile, also available at <https://pe.linkedin.com/in/m-victor-mejia-ninacondor-853b43109>. See also **Ex. CE-021**, 27 Dec. 2001 SUNAT Resolution No. 143-2001 (Victor Mieja Ninacondor held the position of Ejecutor Coactivo, Intendencia Regional Lambayeque); **Ex. CE-039**, 6 Oct. 2009 SUNAT Resolution No. 212-2009 (Victor Mieja Ninacondor held the position of Fedatario Titulare de la Intendencia Regional Ica); **Ex. CE-085**, 18 Mar. 2014 SUNAT Resolution No. 080-2014 (Victor Mieja Ninacondor held the position of Ejecutor Coactivo, Intendencia Lima); **Ex. CE-088**, 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-127**, 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).

¹²⁷ See **Ex. CE-095**, 27 Oct. 2016 Fiscal Opinion No. 1368-2016.

In its submission, SMCV emphasized that Judge Mejía Ninacondor failed to meet the most basic requirements of independence and impartiality.¹²⁸ But despite the obviously disqualifying conflict of interest, the Tax Tribunal nevertheless denied SMCV's application in a plenary vote.¹²⁹

87. 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 quickly scheduled a hearing on the 2010/11 Royalty Assessments within a month of having received SMCV's appeal.¹³⁰

88. 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 the Tax Tribunal decide the appeal of the 2009 Royalty Assessments first since it had been filed first, in accordance with its well-established practice.¹³¹ 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.¹³²

89. 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.¹³³ On 28 August 2018, Chamber No. 1 also confirmed SUNAT's 2010/11 Royalty Assessments and rejected SMCV's waiver request.¹³⁴ Both decisions followed the same reasoning when

¹²⁸ See **Ex. CE-105**, 20 Jun. 2018 SMCV Submission Requesting Removal of Judge Victor Mejía Ninacondor.

¹²⁹ See **Ex. CE-106**, 21 Jun. 2018 Tax Tribunal Rejection of SMCV's Request for Removal, Minutes of Plenary Council Meeting No. 2018-20, pp. 4-10.

¹³⁰ See **Ex. CE-109**, 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).

¹³¹ See **Ex. CE-104**, 20 Jun. 2018 SMCV Submission Requesting Suspension of Procedure.

¹³² See **Ex. CE-109**, 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-107**, 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).

¹³³ See **Ex. CE-112**, 15 Aug. 2018 Tax Court Decision, No. 06141-2-2018, notified to SMCV on 28 Sept. 2018.

¹³⁴ See **Ex. CE-114**, 28 Aug. 2018 Tax Court Decision, No. 06575-1-2018, notified to SMCV on 18 Sept. 2018.

confirming SUNAT’s Assessments and both copied nearly *verbatim* the Chamber No. 1 decision confirming the 2008 Royalty Assessments.¹³⁵

90. Both decisions also followed the same reasoning when confirming that SMCV was not entitled to a waiver of penalties and interest.¹³⁶ Despite there clearly being reasonable doubt 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—and despite the manifest unfairness of charging extraordinarily punitive penalties and interest when SMCV had always acted in good faith in its interpretation of the Mining Law and Regulations, both Chambers arbitrarily determined that SMCV’s “reasonable doubt” was not about the Mining Law and Regulations as required under Article 170 of the Tax Code but simply about the scope of its contractual rights under the 1998 Stability Agreement and ruled on this basis that the penalties and interest could not be waived.¹³⁷

91. 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.¹³⁸ The Legislative Decree effectively concedes that SMCV’s appeal was not heard by independent and impartial Tax Tribunal judges.

92. 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*).¹³⁹ Pursuant to the Tax Code and decisions by the Peruvian Constitutional Tribunal, in calculating the interest owed by a taxpayer, SUNAT must

¹³⁵ Compare **Ex. CE-112**, 15 Aug. 2018 Tax Court Decision, No. 06141-2-2018 pp. 1-33 and **Ex. CE-114**, 28 Aug. 2018 Tax Court Decision, No. 06575-1-2018, pp. 15-40, with **Ex. CE-066**, 21 May 2013 Tax Court Decision, No. 08252-1-2013, pp. 1-21.

¹³⁶ **Ex. CE-112**, 15 Aug. 2018 Tax Court Decision, No. 06141-2-2018, pp. 33-38; **Ex. CE-114**, 28 Aug. 2018 Tax Court Decision, No. 06575-1-2018, pp. 40-42.

¹³⁷ See **Ex. CE-112**, 15 Aug. 2018 Tax Court Decision, No. 06141-2-2018, pp. 37-38; **Ex. CE-114**, 28 Aug. 2018 Tax Court Decision, No. 06575-1-2018, p. 38.

¹³⁸ See **Ex. CE-073**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 100.

¹³⁹ See **Ex. CE-118**, 28 Dec. 2018 SMCV Submission Requesting Recalculation of Interest, 2009 Royalty Assessment; **Ex. CE-123**, 3 Jan. 2019 SMCV Submission Requesting Recalculation of Interest, 2010-11 Royalty Assessments.

take account of any delays of more than 12 months in the taxpayer's proceedings before the Tax Tribunal.¹⁴⁰ After the 12-month threshold, SUNAT must apply the Consumer Price Index ("CPI") instead of the exorbitant penalty interest rate of 14.4% per year.¹⁴¹ Despite the years-long delays in SMCV's cases, SUNAT nonetheless applied the 14.4% penalty interest rate, rather than the CIP, to the 2009 and 2010/11 Royalty Assessments.¹⁴²

93. Within just a few days of receiving SMCV's requests, the Tax Tribunal dismissed them both on the arbitrary and pretextual ground that the Tax Tribunal did not have to consider the merits of SMCV's claims because SMCV had signed (under protest) an installment plan with SUNAT for the payment of the royalties and penalties and interest due to the Government.¹⁴³

IV. PERU'S BREACHES OF ITS TPA OBLIGATIONS.

94. Peru has breached both the 1998 Stability Agreement and the TPA. *First*, Peru breached the 1998 Stability Agreement and its contractual obligation to provide SMCV with fiscal and administrative stability when it imposed royalties and taxes against SMCV based on the Royalty Law and other "modifications or new rules"¹⁴⁴ that the Government issued while the 1998 Stability Agreement remained in force. *Second*, Peru breached the TPA by failing to grant SMCV a fair hearing before the Tax Tribunal and by arbitrarily refusing to waive SUNAT's extraordinarily punitive penalties and interest and fully repay SMCV the GEM overpayments.

A. Peru Breached the 1998 Stability Agreement.

95. 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."¹⁴⁵ Freeport is an investor of the United States and the 1998 Stability Agreement is an "investment agreement" as defined

¹⁴⁰ See **Ex. CE-073**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33; **Ex. CE-093**, 10 May 2016 Constitutional Tribunal Judgment, Docket No. 04082-2012-PA/TC; **Ex. CE-113**, 16 Aug. 2018 Constitutional Tribunal Judgment, Docket No. 04532-2013-PA/TC.

¹⁴¹ See **Ex. CE-073**, 22 Jun. 2013 Peruvian Tax Code, Supreme Decree No. 133-2013-EF, Art. 33.

¹⁴² See **Ex. CE-124**, 4 Jan. 2019 [*sic*] Tax Tribunal Decision, No. 00019-Q-2019; **Ex. CE-125**, 7 Jan. 2019 Tax Tribunal Decision, No. 00036-Q-2019.

¹⁴³ See **Ex. CE-124**, 4 Jan. 2019 Tax Tribunal Complaint Office Decision, No. 00019-Q-2019, 2009 Royalty Assessment; **Ex. CE-125**, 7 Jan. 2019 Tax Tribunal Complaint Office Decision, No. 00036-Q-2019, 2010/11 Royalty Assessment.

¹⁴⁴ **Ex. CE-013**, 1998 Stability Agreement, Clause 9.5.

¹⁴⁵ **Ex. CE-030**, TPA, Arts. 10.16 and 10.28 (defining the terms "Claimant" and "Respondent" used in Art. 10.16).

in Article 10.28 of the TPA because it grants rights to SMCV, a “covered investment” of Freeport, with respect to “the exploration, extraction, refining, transportation, distribution, or sale” of “natural resources.”¹⁴⁶ In turn, Freeport indirectly “owns or controls” SMCV, a Peruvian entity that is party to an investment agreement with the Peruvian Government.¹⁴⁷ Freeport is thus entitled to submit to arbitration Peru’s breaches of the 1998 Stability Agreement both on its own behalf and that of SMCV.¹⁴⁸

96. Peru breached the 1998 Stability Agreement and its contractual obligation to (i) provide fiscal and administrative stability to SMCV;¹⁴⁹ (ii) exempt SMCV from the application of any laws or regulations that “directly or indirectly, denaturalize[d] the guarantees provided” by the Stability Agreement;¹⁵⁰ and (iii) protect SMCV from “any encumbrance or obligation that could represent reduction of its availability of cash”¹⁵¹ through the Supreme Court’s and Appellate Court’s confirmation of the 2006/07 and 2008 Royalty Assessments, the Tax Tribunal’s confirmation of the 2009 and 2010/11 Royalty Assessments, SUNAT’s rejection of SMCV’s reconsideration requests of the 4Q 2011, 2012, and 2013 Royalty Assessments, and the Tax Tribunal’s and SUNAT’s decisions regarding the Tax Assessments listed in Annex A.

97. Peru’s position that stabilization benefits are limited to the investments set forth in the feasibility study submitted to the Government for purposes of obtaining stabilization benefits and that Clause 1 of the 1998 Stability Agreement, which refers to SMCV’s concessions as the “Cerro Verde Leaching Project,” 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 1998 Stability Agreement.

98. *First*, the Royalty Law provides that mining companies shall pay royalties as consideration for the “*exploitation* of metallic and non-metallic mineral resources.”¹⁵² In turn, Article 8 of the Mining Law states that “*exploitation* is the activity of *extracting* minerals”¹⁵³

¹⁴⁶ **Ex. CE-030**, TPA, Art. 10.28.

¹⁴⁷ **Ex. CE-030**, TPA Art. 10.16.

¹⁴⁸ **Ex. CE-030**, TPA, Art. 10.16.

¹⁴⁹ **Ex. CE-013**, 1998 Stability Agreement, Clause 9.5 (tax stability) and Clause 9.6 (administrative stability).

¹⁵⁰ *Id.*, Clause 10.1.

¹⁵¹ *Id.*, Clause 10.2.

¹⁵² **Ex. CE-024**, Royalty Law, Law No. 28258, Art. 2 (emphasis added).

¹⁵³ *See Ex. CE-002*, 3 Jun. 1992 General Mining Law, which was approved by Supreme Decree No. 014-92-EM, Art. 8 (emphasis added).

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.”¹⁵⁴ The Royalty Law thus 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.

99. *Second*, the Mining Law and Regulations provide that stabilization benefits attach to *all 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 types of processing techniques.¹⁵⁵ 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.”¹⁵⁶ And Article 22 of the Mining Regulation on Guarantees and Investment Protection Measures provides that stability benefits apply to a mining company “exclusively for investments it makes *in the concessions or Economic Administrative Units.*”¹⁵⁷

100. *Third*, under the 1998 Stability Agreement, the scope of the stabilization benefits likewise extended to all of SMCV’s activities within its Mining and Beneficiation Concessions without any limitations. Pursuant to Article 86 of the Mining Law, the Stability Agreement was a form contract drafted by the Government that incorporated all the stabilization benefits granted by the Mining Law and Regulations.

101. Clause 1.1 of the 1998 Stability Agreement accordingly provided that SMCV requested stabilization benefits “in relation with the investment in its concession Cerro Verde No. 1, No. 2, and No. 3,”¹⁵⁸ and Clause 3 and Annex I provided that the stabilization benefits were “circumscribed” to SMCV’s Mining and Beneficiation Concessions.¹⁵⁹ In turn, Clauses 9 and 10, which define and describe the stabilization benefits, provide that those benefits are

¹⁵⁴ See **Ex. CE-025**, 15 Nov. 2004 Royalty Law Regulations, Supreme Decree No. 157-2004-EF, Art. 4.

¹⁵⁵ See **Ex. CE-002**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Chapter IV; **Ex. CE-003**, 1993 Mining Regulation, Chapter 9 on Guarantees and Investment Protection Measures, Supreme Decree No. 024-93-EM, Art. 22.

¹⁵⁶ See **Ex. CE-002**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 83.

¹⁵⁷ See **Ex. CE-003**, 1993 Mining Regulation, Chapter 9 on Guarantees and Investment Protection Measures, Supreme Decree No. 024-93-EM, Art. 22. See also *id.*, Article 2 (stating that “[d]entro del Reglamento que se aprueba por el presente Decreto Supremo están comprendidos los alcances a que se refiere la Séptima Disposición Final del Texto Único Ordenado de la Ley General de Minería.”)

¹⁵⁸ See **Ex. CE-013**, 1998 Stability Agreement, Clause 1.1.

¹⁵⁹ *Id.*, Annex I.

granted to “the owner” (*i.e.*, SMCV) without any limitations based on how the minerals would be processed.¹⁶⁰

102. 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;¹⁶¹ 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.¹⁶²

103. *Fourth*, Peru’s 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.¹⁶³

104. *Finally*, Peru’s position simply makes no commercial sense. It results in a single mining concession having multiple fiscal regimes and also flouts the stabilization regime’s purpose, which the Mining Law expressly defines as “promot[ing] investment and facilitat[ing] the financing of mining projects.”¹⁶⁴ 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. 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 they need to invest and attract financing for their 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.

¹⁶⁰ 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)).

¹⁶¹ See **Ex. CE-023**, 2004 Fluor Cerro Verde Primary Sulfide Project Feasibility Study, Executive Summary, p. 4.

¹⁶² See **Ex. CE-004**, 1994 Share Purchase Agreement, Appendix G, p. 148.

¹⁶³ See **Ex. CE-022**, 11 Mar. 2004 “Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas;” **Ex. CE-031**, 4 May 2006 “Congresistas critican contratos de estabilidad y mineras los defienden,” EL COMERCIO.

¹⁶⁴ **Ex. CE-002**, 3 Jun. 1992 General Mining Law, Supreme Decree No. 014-92-EM, Art. 82.

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

105. 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, including by arbitrarily failing to waive extraordinarily punitive penalties and interest despite SMCV being entitled under Peruvian law to such a 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.

106. 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 [...].¹⁶⁵

107. But Claimants here are 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 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.

¹⁶⁵ Ex. CE-030, TPA Art. 10.5.

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.¹⁶⁶

108. By operation of that provision, Claimants are entitled to the more favorable standard set forth in 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.”¹⁶⁷ Accordingly, pursuant to Article 10.4 of the TPA, Peru must provide Claimants with “effective means” to enforce their rights.¹⁶⁸ 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.¹⁶⁹

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

109. Peru grossly 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 2006/07, 2008, 2009, and 2010/11 Royalty Assessments, as well several of the Tax Assessments listed in Annex A.

110. While SMCV was afforded the opportunity to present written and oral submissions to the Tax Tribunal in its appeals of the Royalty Assessments and the Tax Assessments listed in Annex A, it never had a fair chance to persuade the Tax Tribunal judges of its position. As the facts set forth in paragraphs 65-93 above show, the Tax Tribunal judges did not decide SMCV’s cases independently and impartially but rather collaborated with SUNAT to ensure the Government would prevail. This is demonstrated by, among other things, the fact that:

¹⁶⁶ **Ex. CE-030**, TPA, Art. 10.4.

¹⁶⁷ **Ex. CE-005**, Peru-Italy Treaty on the Promotion and Protection of Investments, 5 May 1994, Protocol ¶ 2(c) (unofficial translation).

¹⁶⁸ **Ex. CE-052**, *White Industries Australia Ltd. v. India*, UNCITRAL, Final Award of 30 November 2011, ¶ 11.2.1 (importing the effective means clause from a third-party treaty through the MFN provision).

¹⁶⁹ **Ex. CE-041**, *Chevron v. Ecuador*, UNCITRAL, Partial Award on the Merits of 30 Mar. 2010, ¶ 248. *See also Ex. CE-052*, *White Industries Australia Ltd. v. India*, UNCITRAL, Final Award of 30 November 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 Tax Tribunal’s decision on SMCV’s first challenge to the 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; and
- The assistant’s decision was then copied virtually *verbatim* by the Tax Tribunal Chambers hearing SMCV’s other challenges to SUNAT’s Royalty Assessments.

111. Given that the Tax Tribunal has consistently failed to act independently and impartially with regard to SMCV’s claims, it was entirely futile for SMCV to appeal the 2012 and 2013 Royalty Assessments to the Tax Tribunal, and it is all-but-certain that the Tax Tribunal will reject SMCV’s pending appeal to the 4Q 2011 Royalty Assessments. As a result of the Tax Tribunal’s consistent disregard for the most basic norms of due process, Claimants lacked any effective means to enforce their rights before the Tax Tribunal with regard to the 4Q 2011, 2012, and 2013 Royalty Assessments (or any of the other Royalty and Tax Assessments).

112. The Tax Tribunal’s violations of SMCV’s due process rights carry significant weight in light of the Government’s own recognition that the Peruvian judicial system is permeated by corruption problems. On 16 July 2018, the Government declared a 90-day state of emergency for the judicial branch noting that the press had revealed “a series of grave and reprehensible acts that hurt the image and autonomy of the Judiciary” and that there was a need to “adopt urgent administrative measures to correct and overcome the critical situation of the judicial system.”¹⁷⁰ On 28 July 2018, Peru’s Congress similarly declared a nine-month state of emergency for Peru’s National Magistrates Council, the body that appoints judges and prosecutors.¹⁷¹ Following these state-of-emergency declarations, Peru’s current President, Martín Vizcarra, stated publicly that the Peruvian “system for administering justice has collapsed” and that “this problem is not of today, it is structural.”¹⁷²

¹⁷⁰ **Ex. CE-108**, 16 Jul. 2018 Administrative Resolution No. 203-2018-CE-PJ.

¹⁷¹ **Ex. CE-110**, 28 Jul. 2018 Law No. 30833.

¹⁷² **Ex. CE-111**, 3 Aug. 2018, “Peru: This is what you need to know about the referendum that was announced by Martín Vizcarra,” LATIN AMERICAN POST.

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

113. Peru also violated its obligations under the minimum standard of treatment and effective-means clauses when 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, when the Tax Tribunal arbitrarily refused to waive SUNAT's extraordinarily punitive penalties and interest on the 2009 and 2010/11 Royalty Assessments, and when SUNAT arbitrarily refused to waive its extraordinarily punitive penalties and interest on the 4Q 2011, 2012, and 2013 Royalty Assessments.

114. Under the Peruvian Tax Code and other applicable laws, Cerro Verde was entitled to such a waiver because SMCV's failure to pay royalties was unquestionably made in good faith and based on a "reasonable doubt" about the proper interpretation of the scope of stabilization benefits under the Mining Law and Regulations.

115. The Government has never once disputed that SMCV's decision not to pay royalties was made in good faith. The Government also cannot seriously deny that Cerro Verde had reasonable doubt: (i) the contentious-administrative courts hearing SMCV's appeals reached conflicting results, with the first instance Court hearing the appeal of the 2008 Royalty Assessment upholding SMCV's position that the 1998 Stability Agreement covers the entirety of SMCV's activities in its Mining Concessions;¹⁷³ (ii) 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;¹⁷⁴ (iii) the Tax Tribunal issued a Resolution acknowledging that stabilization benefits extend to all investments within an EAU;¹⁷⁵ and (iv) the Government accepted, or at the very least acquiesced, in SMCV's interpretation of the scope of the stabilization benefits when it accepted full GEM payments in lieu of royalty payments.¹⁷⁶

¹⁷³ **Ex. CE-087**, 17 Dec. 2014 Administrative Court Decision, No. 07650-2013-CA, 2008 Royalty Assessment.

¹⁷⁴ See **Ex. CE-022**, 11 Mar. 2004 "Evaluación de Aplicación de Regalías, Presentación al Congreso Ministerio de Energía y Minas;" **Ex. CE-031**, 4 May 2006 "Congresistas critican contratos de estabilidad y mineras los defienden," EL COMERCIO.

¹⁷⁵ **Ex. CE-053**, 6 Dec. 2011 Tax Tribunal Decision No. 20290-1-2011.

¹⁷⁶ See **Ex. CE-056**, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), Law No. 29790, Art. 2.2; **Ex. CE-057**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-058**, 31 May 2012 SMCV Gem Payment, 1Q 2012; **Ex. CE-059**, 31 Aug. 2012 SMCV Gem Payment, 2Q 2012; **Ex. CE-061**, 30 Nov. 2012 SMCV Gem Payment, 3Q 2012; **Ex. CE-119**, 28 Dec. 2018 SMCV Reimbursement Request, 4Q 2011; **Ex. CE-120**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 1Q 2012; **Ex. CE-121**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 2Q

116. Nor can the Government’s position that “reasonable doubt” only existed over the scope of the Stability Agreement withstand scrutiny, given that the Supreme Court itself based its decision upholding the Assessments, in part, on its interpretation of the Mining Law. Thus, it is arbitrary and grossly unfair for Peru to recover royalties based on SUNAT’s novel and restrictive interpretation of the Mining Law and Regulations, in addition to extraordinarily punitive penalties and interest that have exceeded the amounts due in royalties, simply because SMCV rightfully exercised its right to challenge SUNAT’s Assessments before the Tax Tribunal and contentious administrative courts. Moreover, given that SMCV paid millions of dollars in voluntary contributions and GEM assessments in the good faith belief that it was exempted from the Royalty Law, Peru’s imposition of royalties and penalties and interest essentially gives the Government double—or even triple—recovery.

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

117. 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.

118. Under the GEM Agreement and Peruvian law, SMCV was entitled to make certain deductions from the GEM payments to account for any mining royalty payments.¹⁷⁷ However, since the 1998 Stability Agreement exempted SMCV from royalty payments, SMCV paid the GEM in full to the Government for the time period 4Q 2011 to 4Q 2013, without making any deductions to account for royalty payments.¹⁷⁸ 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 in full and the royalties.¹⁷⁹ SMCV submitted these requests while fully reserving its rights under the 1998 Stability Agreement, the TPA and international law. SUNAT agreed with SMCV and repaid US\$76.1 million, but then arbitrarily refused to repay the remaining overpayments amounting

2012; **Ex. CE-122**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 3Q 2012; **Ex. CE-130**, 4 Mar. 2019 SUNAT Resolution No. 012-180-0018640/SUNAT.

¹⁷⁷ **Ex. CE-056**, 28 Feb. 2012 Gravamen Especial a la Minería (GEM Agreement), Law No. 29790, Art. 2.2.

¹⁷⁸ **Ex. CE-057**, 29 Feb. 2012 SMCV GEM Payment, 4Q 2011; **Ex. CE-58**, 31 May 2012 SMCV Gem Payment, 1Q 2012; **Ex. CE-059**, 31 Aug. 2012 SMCV Gem Payment, 2Q 2012; **Ex. CE-061**, 30 Nov. 2012 SMCV Gem Payment, 3Q 2012.

¹⁷⁹ **Ex. CE-119**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 4Q 2011; **Ex. CE-120**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 1Q 2012; **Ex. CE-121**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 2Q 2012; **Ex. CE-122**, 28 Dec. 2018 SMCV Reimbursement Request, GEM 3Q 2012.

to over US\$45 million plus interest effectively imposing both full GEM payments and royalties on SMCV.¹⁸⁰

V. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED.

119. Peru's conduct has caused, and is continuing to cause, Claimants significant loss and damage. Accordingly, as compensation for the harm resulting from Peru's breaches of the 1998 Stability Agreement and the TPA, Claimants intend to seek damages presently estimated to be in excess of US\$1 billion, plus applicable interest.

* * *

120. Claimants send this Notice reluctantly. Claimants have at all times preferred an amicable solution with the Government and have made considerable efforts to fairly resolve the dispute with the Government, including in numerous meetings with former Presidents, former and current Ministers of Economy and Finance and Ministers of Energy and Mines, as well as other high level Government officials.

121. Claimants remain ready to meet with Government representatives to explore solutions and accordingly request consultations with the Government in accordance with Article 10.15 of the TPA. Claimants look forward to promptly receiving from the Government a proposed date and time for an initial consultation meeting.

122. However, should the Parties prove unable to find an amicable, mutually agreeable solution to the dispute, Claimants will have no choice but to initiate arbitration against Peru alleging breaches of the 1998 Stability Agreement and the TPA. Claimants reserve their rights to amend or supplement this Notice, including the requested relief and the amount claimed, and to seek relief for additional breaches arising from Peru's past, current, or future conduct.

¹⁸⁰ Ex. CE-130, 4 Mar. 2019 SUNAT Resolution No. 012-180-0018640/SUNAT.



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ANNEX A
TAX ASSESSMENTS THAT VIOLATED THE 1998 STABILITY AGREEMENT

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2006		
<p>In the Assessment dated 27 May 2011, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have depreciated the Flotation Plant fixed assets before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.ⁱ ii. SMCV did not have the right to include an additional depreciation of approximately US\$2 million in its Flotation Plant amended tax return. Under the 1998 Stability Agreement, SMCV was entitled to include the additional depreciation.ⁱⁱ <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. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US dollars.ⁱⁱⁱ ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{iv} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession. 	<p>Principal amounts to US\$6.48 million.</p> <p>As of 31 October 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.^{vi}</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 was not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provision as required under Article 170 of the Tax Code.^v However, SMCV clearly was entitled to such a waiver because SMCV had “reasonable doubt” about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter. 		
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 for such payments to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{vii} ii. SMCV should have depreciated the Flotation Plant buildings at a 3% rate. Under the 1998 Stability Agreement, a 20% rate applied.^{viii} iii. SMCV failed to comply with various formal requirements to deduct Flotation Plant expenses from previous fiscal years. Under the 1998 Stability Agreement, these requirements did not apply.^{ix} <p>In the Fine Resolutions dated 28 March 2012, SUNAT determined that:</p>	<p>Principal amounts to US\$2.4 million.</p> <p>As of 31 October 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.^{xiii}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>i. SMCV should have kept the Flotation Plant accounting in Peruvian soles. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US dollars.^x</p> <p>ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{xi} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession.</p> <p>In the Resolution dated 22 August 2018, the Tax Tribunal determined that:</p> <p>i. SMCV was not entitled to a waiver of penalties and interest because there is no "reasonable doubt" about the proper interpretation of the applicable legal provision as required under Article 170 of the Tax Code.^{xii} However, SMCV clearly was entitled to such a waiver because SMCV had "reasonable doubt" about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter.</p>		

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2008		
<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 for such payments to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xiv} ii. SMCV should have depreciated the Flotation Plant buildings at a 3% rate. Under the 1998 Stability Agreement, a 20% rate applied.^{xv} <p>In the Fine Resolutions dated 19 August 19 2013, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US dollars.^{xvi} ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{xvii} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession. 	<p>Principal amounts to US\$6.45 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$1.44 million.</p>	<p>On 1 July 2014, SMCV appealed SUNAT's Assessment and Fine Resolutions before the Tax Tribunal. SMCV's appeal remains pending.^{xviii}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2009		
<p>In the Assessment dated 30 October 2014, SUNAT determined that:</p> <ol style="list-style-type: none"> i. SMCV should have depreciated the Flotation Plant buildings at a 3% rate. Under the 1998 Stability Agreement, a 20% rate applied.^{xix} ii. SMCV should have depreciated the Flotation Plant high - pressure grinding rolls ("HPGR") before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xx} iii. SMCV should have depreciated several other Flotation Plant assets before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxi} iv. SMCV failed to comply with various formal requirements to deduct Flotation Plant expenses from previous fiscal years. Under the 1998 Stability Agreement, this requirement did not apply.^{xxii} v. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return for such payments to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxiii} vi. SMCV failed to comply with various formal requirements to deduct additional expenses from previous years for the Flotation Plant HPGR. Under the 1998 Stability Agreement, this requirement did not apply.^{xxiv} 	<p>Principal amounts to US\$37.7 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$23 million.</p>	<p>On 28 August 2015, SMCV appealed SUNAT's Assessments and Fine Resolutions before the Tax Tribunal. SMCV's appeal remains pending.^{xxix}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>vii. SMCV should have depreciated the Flotation Plant minor fixed assets before filing its tax return for such assets to be deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxv}</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. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US dollars.^{xxvi} ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{xxvii} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession. <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 tax rate of 4.1% on Flotation Plant dividends. Under the 1998 Stability Agreement, this additional tax rate did not apply.^{xxviii} 		

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Income Tax 2010		
<p>In the Assessments dated 13 February 2015, SUNAT determined that:</p> <ol style="list-style-type: none"> i. SMCV should have depreciated the Flotation Plant buildings, other fixed assets and minor assets at a 5% rate. Under the 1998 Stability Agreement, a 20% rate applied.^{xxx} ii. SMCV should have depreciated the Flotation Plant HPGR before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxx} iii. SMCV should have made certain payments to former Flotation Plant workers before filing its tax return for such payments to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxxii} iv. SMCV should have depreciated the Flotation Plant fixed assets (in addition to buildings) and minor assets before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxxiii} v. SMCV is subject to an additional tax rate of 4.1% on Flotation Plant dividends. Under the 1998 Stability Agreement, this additional tax rate did not apply.^{xxxiv} <p>In the Fine Resolutions dated 18 February 2015, SUNAT determined that:</p> <ol style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles. Under the 1998 Stability Agreement, 	<p>Principal amounts to US\$42 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$40.3 million.</p>	<p>On 27 November 2015, SMCV appealed SUNAT's Assessments and Fine Resolutions before the Tax Tribunal. SMCV's appeal remains pending.^{xxxvii}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>SMCV was authorized to keep its accounting in US dollars.^{xxxv}</p> <p>ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{xxxvi} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession.</p>		
Income Tax 2011		
<p>In the Assessments dated 31 October 2017, SUNAT determined that:</p> <p>i. SMCV should have depreciated the Flotation Plant fixed assets before filing its tax return for such assets to be tax deductible. Under the 1998 Stability Agreement, this requirement did not apply.^{xxxviii}</p> <p>ii. SMCV should have depreciated the Flotation Plant buildings at a 5% rate. Under the 1998 Stability Agreement, a 20% rate applied.^{xxxix}</p> <p>iii. SMCV is subject to an additional tax rate of 4.1% on Flotation Plant dividends. Under the 1998 Stability Agreement, this additional tax rate did not apply.^{xl}</p> <p>In the Fine Resolutions dated 31 October 2017, SUNAT determined that:</p> <p>i. SMCV should have kept the Flotation Plant accounting in Peruvian soles. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US</p>	<p>Principal amounts to US\$31.3 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$22 million.</p>	<p>On 12 September 2018, SMCV appealed SUNAT's Assessments and Fine Resolutions before the Tax Tribunal. SMCV's appeal remains pending.^{xlili}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>dollars.^{xli}</p> <p>ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{xlii} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession.</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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{xliv}</p>	<p>Principal amounts to US\$400.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$53,900.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment.^{xlv}</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 Flotation Plant services rendered by non-resident providers. Under the 1998 Stability Agreement, an 18% tax rate applied.^{xlvi}</p>	<p>Principal amounts to US\$687,419.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$644,132.</p>	<p>On 15 November 2010, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending.^{xlvii}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{xlviii} <p>In the Resolution dated 22 August 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV was not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provision as required under Article 170 of the Tax Code.^{xlix} However, SMCV clearly was entitled to such a waiver because SMCV had “reasonable doubt” about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter. 	<p>As of 31 October 2019, penalties and interest accumulated to around US\$38,000.</p>	<p>On 22 August 2018, the Tax Tribunal confirmed SUNAT's Assessment.¹</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 Flotation Plant services rendered by non-residents providers. Under the 1998 Stability Agreement, an 18% tax rate applied.^{li} 	<p>Principal amounts to US\$188,630.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$157,671.</p>	<p>On 21 November 2011, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending.^{lii}</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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{liii} ii. SMCV is subject to an additional tax rate of 4.1% on Flotation Plant dividends. Under the 1998 Stability Agreement, this additional tax rate did not apply.^{liv} <p>In the Resolution dated 30 October 2018, the Tax Tribunal determined that:</p> <ul style="list-style-type: none"> i. SMCV was not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provision as required under Article 170 of the Tax Code.^{lv} However, SMCV clearly was entitled to such a waiver because SMCV had “reasonable doubt” about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter. 	<p>Principal amounts to US\$930,672.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$696,794.</p>	<p>On 30 October 2018, the Tax Tribunal confirmed SUNAT’s Assessment.^{lvi}</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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{lvii} ii. SMCV is subject to an additional tax rate of 4.1% on 	<p>Principal amounts to US\$701,409.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$638,290.</p>	<p>On 25 November 2013, SMCV appealed SUNAT’s Assessment before the Tax Tribunal. SMCV’s appeal remains pending.^{lix}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Flotation Plant dividends. Under the 1998 Stability Agreement, this additional tax rate did not apply. ^{lviii}		
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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{lx} 	As of 31 October 2019, penalties and interest accumulated to around US\$24,400.	On 4 December 2014, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending. ^{lxi}
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 Flotation Plant goods and services. Under the 1998 Stability Agreement, an 18% tax rate applied.^{lxii} <p>In the Fine Resolutions dated 24 June 2014, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV should have kept the Flotation Plant accounting in Peruvian soles. Under the 1998 Stability Agreement, SMCV was authorized to keep its accounting in US dollars.^{lxiii} ii. SMCV should have kept the Flotation Plant and Leaching Facility accounting separate.^{lxiv} Under the 1998 Stability Agreement and the Mining Law and Regulations, SMCV was authorized to have one account for both Facilities because they are part of SMCV's only Beneficiation Concession. 	As of 31 October 2019, penalties and interest accumulated to around US\$172,200.	On 1 July 2015, SMCV appealed SUNAT's Assessment and Fine Resolutions before the Tax Tribunal. SMCV's appeal remains pending. ^{lxv}

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Temporary Tax on Net Assets 2009		
<p>In the Assessment dated 27 December 2013, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return for Temporary Taxes on Net Assets related to the Flotation Plant operations. Under the 1998 Stability Agreement, SMCV was exempt from the Temporary Tax on Net Assets.^{lxvi}</p>	<p>Principal amounts to US\$6.3 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$2.3 million.</p>	<p>On 6 October 2014, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending.^{lxvii}</p>
Temporary Tax on Net Assets 2010		
<p>In the Assessment dated 14 August 2015, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return for Temporary Taxes on Net Assets related to the Flotation Plant operations. Under the 1998 Stability Agreement, SMCV was exempt from the Temporary Tax on Net Assets.^{lxviii}</p>	<p>Principal amounts to US\$5.6 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$3.75 million.</p>	<p>On 8 April 2016, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending.^{lxix}</p>
Temporary Tax on Net Assets 2011		
<p>In the Assessment dated 27 July 2016, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return for Temporary Taxes on Net Assets related to the Flotation Plant operations. Under the 1998 Stability Agreement, SMCV was exempt from the Temporary Tax on Net Assets.^{lxx}</p>	<p>Principal amounts to US\$6.4 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$4.4 million.</p>	<p>On 27 June 2017, SMCV appealed SUNAT's Assessment before the Tax Tribunal. SMCV's appeal remains pending.^{lxxi}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
Temporary Tax on Net Assets 2012		
<p>On 21 December 2017, SMCV submitted and paid its tax return for Temporary Taxes on Net Assets related to the Flotation Plant fixed assets with reservation of rights to avoid incurring penalties and interest. Under the 1998 Stability Agreement, SMCV was exempt from the Temporary Tax on Net Assets.^{lxxii}</p>	<p>Principal amounts to US\$7.5 million.</p> <p>As of 31 October 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 3 October 2017, SUNAT determined that:</p> <p>i. SMCV should have submitted its tax return for Temporary Tax on Net Assets related to Flotation Plant operations. Under the 1998 Stability Agreement, SMCV was exempt from the Temporary Tax on Net Assets.^{lxxiii}</p>	<p>As of 31 October 2019, penalties and interest accumulated to around US\$2,067.</p>	<p>On 14 December 2018, the Tax Tribunal confirmed SUNAT's Assessment.^{lxxiv}</p>
Special Mining Tax 4Q 2011–4Q 2012		
<p>In the Assessment dated 29 December 2017, SUNAT determined that:</p> <p>i. SMCV is subject to the Special Mining Tax on the Flotation Plant operating profits. Under the 1998 Stability Agreement, operating profits were exempt from the Special Mining Tax.^{lxxv}</p> <p>In the Resolution dated 12 October 2018, SUNAT determined that:</p> <p>i. SMCV was not entitled to a waiver of penalties and interest because there is no "reasonable doubt" about the proper interpretation of the applicable legal provision as</p>	<p>Principal amounts to US\$36.5 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$39 million.</p>	<p>On 20 June 2019, the Tax Tribunal confirmed SUNAT's Assessment and Resolution.^{lxxvii}</p>

Government's Violations of the Stability Agreement	Amount (USD)	Procedural Status
<p>required under Article 170 of the Tax Code.^{lxxvi} However, SMCV clearly was entitled to such a waiver because SMCV had “reasonable doubt” about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter.</p>		
Special Mining Tax 2013		
<p>In the Assessment dated 28 September 2018, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV is subject to the Special Mining Tax on the Flotation Plant operating profits. Under the 1998 Stability Agreement, operating profits were exempt from the Special Mining Tax.^{lxxviii} <p>In the Resolution dated 28 May 2019, SUNAT determined that:</p> <ul style="list-style-type: none"> i. SMCV was not entitled to a waiver of penalties and interest because there is no “reasonable doubt” about the proper interpretation of the applicable legal provision as required under Article 170 of the Tax Code.^{lxxix} However, SMCV clearly was entitled to such a waiver because SMCV had “reasonable doubt” about the proper interpretation of the applicable legal provisions, as set forth in paras. 15-16 and 113-116 of the Notice Letter. 	<p>Principal amounts to US\$23.4 million.</p> <p>As of 31 October 2019, penalties and interest accumulated to around US\$21 million.</p>	<p>On 28 May 2019, SUNAT confirmed its prior Assessment and Resolution.^{lxxx}</p>

ⁱ 27 May 2011 SUNAT Assessment No. 052-003-0007147, Annex 2, p. 3; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, pp. 25-26; 30 Mar. 2012 SUNAT Report on Record No. 0550140001556 - No. 326-P-2012-SUNAT/2J0500, pp. 114-15.

ⁱⁱ 30 Mar. 2012 SUNAT Report on Record No. 0550140001556 - No. 326-P-2012-SUNAT/2J0500, p. 118.

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- iii 26 May 2011 SUNAT Fine Resolution No. 052-002-0004614, p. [1]; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 31.
- iv 26 May 2011 SUNAT Fine Resolution No. 052-002-0004616, p. [2]; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 33.
- v 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 27.
- vi 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, notified to SMCV on 16 Nov. 2018.
- vii 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2, p. 4; 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 97; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 24.
- viii 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2; 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 110; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 33.
- ix 28 Mar. 2012 SUNAT Assessment No. 052-003-0008345, Annex 2; 25 Jan. 2013 SUNAT Resolution No. 055-014-0001701, p. 105; 22 Aug. 2018 Tax Tribunal Resolution No. 06367-2-2018, p. 36.
- x 28 Mar. 2012 SUNAT Fine Resolution No. 052-002-0005168; 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 50.
- xi 28 Mar. 2012 SUNAT Fine Resolution No. 052-002-0005167; 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 48.
- xii 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, p. 50.
- xiii 22 Aug. 2018 Tax Tribunal Resolution No. 06369-2-2018, notified to SMCV on 16 Nov. 2018.
- xiv 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; 30 May 2014 SUNAT Resolution No. 0550140001907, p. 93.
- xv 21 Aug. 2013 SUNAT Assessment No. 052-003-0010790, Annex 2, p. [3]; 30 May 2014, SUNAT Resolution No. 0550140001907, p. 97.
- xvi 19 Aug. 2013 SUNAT Fine Resolution No. 052-002-0005882, p. [2].
- xvii 19 Aug. 2013 SUNAT Fine Resolution No. 052-002-0005883, p. [3].
- xviii MEF File Case Access, Docket Number 2633-2016.
- xix 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 220.

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- xx 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, pp. 226-27.
- xxi 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 233.
- xxii 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3, p. [4]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 263.
- xxiii 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 3 and 4, pp. [4-5]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 267.
- xxiv 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, pp. 269-75.
- xxv 30 Oct. 2014 SUNAT Assessment No. 052-003-00011921, Annex 4, p. [5]; 23 Jun. 2015 SUNAT Resolution No. 055-014-0002145, p. 224-25.
- xxvi 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-000672.
- xxvii 26 Nov. 2014 SUNAT Fine Resolution No. 052-002-0006260, p. [1].
- xxviii 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. 052-003-0012008, 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].
- xxix MEF File Case Access, Docket Number 16697-2015.
- xxx 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 211, 215.
- xxxi 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 218.
- xxxii 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 276.
- xxxiii 13 Feb. 2015 SUNAT Assessment No. 052-003-0012411, Annex 2, p. [3]; 4 Nov. 2015 SUNAT Resolution No. 0550140002255, p. 215.
- xxxiv 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].

xxxv 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006356, p. [1].

xxxvi 18 Feb. 2015 SUNAT Fine Resolution No. 052-002-0006355, p. [2].

xxxvii MEF File Case Access, Docket Number 3201-2016.

xxxviii 31 Oct. 2017 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 188; 10 Aug. 2018 SUNAT Resolution No. 0550140014311, pp. 65, 81.

xxxix 31 Oct. 2015 SUNAT Assessment No. 012-003-0090355, Annex 4, p. 196; 10 Aug. 2018 SUNAT Resolution No. 055-014-0014311, p. 64.

xl 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].

xli 31 Oct. 2017 SUNAT Fine Resolution No. 012-002-0030893, p. [3].

xlii 31 Oct. 2017 SUNAT Fine Resolution No. 012-002-0030892, p. [1].

xliii MEF File Case Access, Docket Number 13393-2018.

xliv 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]; 25 Oct. 2010 SUNAT Resolution No. 055-014-0001369, p. 216; 22 Aug. 2018 Tax Tribunal Resolution No. 06365-2-2018, pp. 49-50.

xlv 22 Aug. 2018 Tax Tribunal Resolution No. 06365-2-2018, notified to SMCV on 16 Nov. 2018.

xlvi 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]; 30 Sept. 2010 SUNAT Resolution No. 055-014-0001358, p. 40.

xlvi MEF File Case Access, Docket Number 2382-2011.

xlvi 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]; 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.

xlvi 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, p. 10.

l 22 Aug. 2018 Tax Tribunal Resolution No. 06366-2-2018, notified to SMCV on 16 Nov. 2018.

li 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]; 22 Dec. 2018 SUNAT Assessment No. 052-003-0006760 to 052-003-0006764, Annex 2, p. [14]; 10 Sep. 2011 SUNAT Resolution No. 055-014-0001444, pp. 51-52.

lii MEF File Case Access, Docket Number 1891-2012.

lii 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]; 27 Sept. 2012 SUNAT Resolution No. 055-014-0001662, pp. 55-56; 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 4.

- liv 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]; 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 36.
- lv 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, p. 40.
- lvi 30 Oct. 2018 Tax Tribunal Resolution No. 08470-2-2018, notified to SMCV on 20 Nov. 2018.
- lvii 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]; 24 Oct. 2013 SUNAT Resolution No. 055-014-0001810, pp. 100-02.
- lviii 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]; 24 Oct. 2013 SUNAT Resolution No. 055-014-0001810, pp. 196-97.
- lix MEF File Case Access, Docket Number 4457-2014.
- lx 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]; 27 Oct. 2014 SUNAT Resolution No. 055-014-0001988, pp. 103-05.

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- lxi MEF File Case Access, Docket Number 2929-2015.
- lxii 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]; 27 Apr. 2015 SUNAT Resolution No. 055-014-0002103, p. 96.
- lxiii 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006091, p. [1]; 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006101, p. [3].
- lxiv 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006102, p. [5]; 24 Jun. 2014 SUNAT Fine Resolution No. 052-002-0006090, p. [7].
- lxv MEF File Case Access, Docket Number 16744-2015.
- lxvi 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]; 27 Aug. 2014 SUNAT Resolution No. 055-014-0001946, p. 79.
- lxvii MEF File Case Access, Docket Number 18065-2014.
- lxviii 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]; 29 Feb. 2016 SUNAT Resolution No. 055-014-0002356, p. 83.
- lxix MEF File Case Access, Docket Number 5721-2016].
- lxx 14 Aug. 2015 SUNAT Assessment No. 052-003-0014319, Annex 1, p. [2]; 14 Aug. 2015 SUNAT Assessment No. 052-003-0014319, Annex 2, p. [3].
- lxxi MEF File Case Access, Docket Number 8937-2017.
- lxxii 21 Dec. 2017 Tax Return for Temporary Taxes on Net Assets and Payment Receipt; 12 Jan. 2018 Reservation of Rights Letter to SUNAT; 2018_01_12 2012 ITAN Assessment SMCV Request for reconsideration.
- lxxiii 03 Oct.2017 Fine Resolution No. 011-002-0022011.
- lxxiv 14 Dec. 2018 Tax Tribunal Resolution No. 10372 -9-2018, p. 7, notified to SMCV on 4 Jan. 2019.

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- ^{lxxv} 29 Dec. 2017 Assessment No. 012-003-0092658, p. [1]; 29 Dec. 2017 Assessment No. 012-003-0092961, p. [1]; 29 Dec. 2017 Assessment No. 012-003-0092962, p. [1]; 29 Dec. 2017 Assessment No. 012-003-0092963, p. [1]; 29 Dec. 2017 Assessment No. 012-003-0092964, p. [1].
- ^{lxxvi} 12 October 2018 SUNAT Resolution No. 0150140014441, pp. 39-42; 29 Dec. 2017 Fine Resolution No. 012-002-0031072, p. [1]; 29 Dec. 2017 Fine Resolution No. 012-002-0031093, p. [1]; 29 Dec. 2017 Fine Resolution No. 012-002-0031094, p. [1]; 29 Dec. 2017 Fine Resolution No. 012-002-0031095, p. [1]; 29 Dec. 2017 Fine Resolution No. 012-002-0031096, p. [1].
- ^{lxxvii} 20 June 2019 Tax Tribunal Resolution No. 05634-4-2019, notified to SMCV on 31 July 2019.
- ^{lxxviii} 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.
- ^{lxxix} 28 May 2019 SUNAT Resolution No. 0150140014815, pp. 39-41.
- ^{lxxx} 28 May 2019 SUNAT Resolution No. 0150140014815, p. 42.