

**In The Arbitration under the Convention on the Settlement of Investment Disputes
Between States and Nationals of Other States and the Agreement between Australia and the Islamic
Republic of Pakistan on the Promotion and Protection of Investments**

TETHYAN COPPER COMPANY PTY LIMITED,

Claimant

— v. —

THE ISLAMIC REPUBLIC OF PAKISTAN,

Respondent

REQUEST FOR ARBITRATION

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I

REQUEST FOR ARBITRATION

1. In accord with Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “Convention”) and Rule 1 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “Institution Rules”), Claimant Tethyan Copper Company Pty Limited (“TCCA”) respectfully requests that the Secretary-General of the International Centre for Settlement of Investment Disputes (the “Centre”) register this arbitration against the Islamic Republic of Pakistan (“Pakistan” or “Respondent”).

2. The dispute arises out of Pakistan’s arbitrary and unlawful denial of a Mining Lease to Tethyan Copper Company Pakistan (Private) Limited (“TCCP”), TCCA’s wholly owned Pakistan subsidiary, and other actions attributable to Pakistan that deprived TCCA of the value of its substantial investments in Pakistan. For convenience, TCCA and TCCP are together referred to as “TCC,” except where the context requires greater specificity.

3. In 2006, TCC acquired at total costs exceeding US\$ 211 million a 75% majority interest in the Chagai Hills Exploration Joint Venture (the “Joint Venture”) with the Government of Balochistan to explore deposits of gold, copper, and other minerals in the Reko Diq area located in the Chagai District in the Province of Balochistan, Pakistan. Under the Chagai Hills Exploration Joint Venture Agreement (the “CHEJVA”) between TCC and the Government of Balochistan, TCC agreed to carry out at its own costs an extensive exploration program in the Reko Diq area, and if it determined to go forward with mining activities, TCC was entitled to receive a mining license so long as it complied with routine requirements. In reliance on its rights under the CHEJVA, as well as the legal regime reflected in the 2002 Balochistan Mineral Rules (“BM Rules”), TCC has invested since 2006 more than US\$ 214 million in exploration activities and the preparation of a Feasibility Study for a mining project. The Government of Balochistan, as TCC’s Joint Venture partner, approved and monitored the exploration activities and, as Licensing Authority, further encouraged TCC’s continued investment by twice renewing TCC’s exploration license.

4. The technical portion of the Feasibility Study alone cost TCC US\$ 65 million, consisted of 21 volumes of data and analysis based on nearly 200 studies involving drilling

and mapping in the relevant area, and exceeded all applicable contractual and regulatory requirements and fully comported with industry standards. It presented a planned initial capital investment in the Reko Diq mining project of US\$ 3.3 billion and projected TCC's involvement in mineral development at Reko Diq for more than half a century. On 26 August 2010, TCC presented the full Feasibility Study for the mining project to the Government of Balochistan.

5. On 15 February 2011, TCC submitted to the Directorate General of Mines and Minerals of Balochistan (the "Licensing Authority") an Application for a Mining Lease at the Reko Diq area, which included the Feasibility Study. At that point, having completed all of its exploration work to the satisfaction of all "routine" Government requirements, TCC was legally entitled to the Mining Lease. On 21 September 2011, however, the Licensing Authority issued a Notice of its intent to reject TCC's Application as "unsatisfactory" on the basis of ten vague and spurious grounds. The Licensing Authority then refused TCC's request to meet to discuss the Notice or even to grant TCC a modest extension of the 30-day time period to reply.

6. On 19 October 2011, TCC timely submitted a detailed and comprehensive Response to each of the alleged grounds listed in the Notice, conclusively demonstrating that it was entitled to the Mining Lease and that none of the grounds set forth in the Notice provided a basis for denying it. On 15 November 2011, however, the Licensing Authority summarily rejected TCC's Mining Lease Application. The three-sentence Rejection offers no reasons for the Licensing Authority's decision and provides no indication that the Licensing Authority even took TCC's Response into account, as it was required to do under the BM Rules.

7. As it turns out, as long ago as 2009, the Government of Balochistan had secretly decided that it would take over the Reko Diq project. In other words, the Government continued to encourage TCC's investment even after having decided that, at the most opportune time, it would deprive TCC of the fruits of the investment and take those fruits for itself. Now that the project has reached the point at which development and exploitation can begin on the basis of the Feasibility Study, that time has come.

8. By arbitrarily and unlawfully denying TCC the Mining Lease to which it is entitled, and by its other actions against TCC, Pakistan has breached the Agreement between

Australia and the Islamic Republic of Pakistan on the Promotion and Protection of Investments, dated 7 February 1998 (the “Australia-Pakistan Treaty” or “Treaty”).

9. By this proceeding, TCCA seeks relief for these breaches, including specific performance or, if that is not available, compensation for all damages and losses suffered, including lost profits.

II

THE PARTIES

10. Claimant TCCA is a company constituted under the laws of Australia. It was incorporated in 2000 and, since 2006, has been wholly owned in equal shares by Antofagasta plc, a company incorporated in the United Kingdom with headquarters in Chile, and Barrick Gold Corporation, a company incorporated in Canada. TCCA is domiciled in Australia with its registered office at Level 9, The Quadrant, 1 William Street, Perth, Australia.

11. In accord with Rule 18 of the Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”), TCCA designates as agents, counsel, and advocates:

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12. For purposes of these proceedings, TCCA’s address of record shall be deemed to be that of its agents, counsel, and advocates designated in the preceding paragraph, and all communications shall be served on TCCA through those designees.

13. The Respondent is Pakistan, a sovereign State and a Contracting Party to the Convention. Claimant will serve copies of this Request for Arbitration on:

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III

CONSENT TO JURISDICTION

14. The Australia-Pakistan Treaty entered into force on 14 October 1998 and remains in force at the date of filing of this Request. **Ex. CE-4.** Pursuant to Article 13(3)(a) of the Treaty, Pakistan agreed to “consent in writing to the submission of the dispute to the Centre within thirty days” of receiving the Request for Arbitration.

15. TCCA is an Australian “investor” for purposes of the Treaty. Article 1(1)(c) and (d) of the Treaty defines “investor” to include, “any corporation, association, partnership, trust or other legally recognized entity that is duly incorporated, constituted, set up, or otherwise duly organised” under Australian law. TCCA is and at all relevant times has been duly organized under Australian law. **Ex. CE-13.**

16. TCCA has undertaken all necessary internal actions to authorize its agents, counsel, and advocates to file this Request for Arbitration. **Ex. CE-33.** TCCA hereby consents to submit to the Centre the dispute that is the subject of this Request for Arbitration.

17. Hence, pursuant to Rule 2(3) of the Institution Rules, both Pakistan and TCCA have consented to submit this dispute to the jurisdiction of the Centre in accordance with Article 25(1) of the Washington Convention and Article 13 of the Australia-Pakistan Treaty as of the date of this filing or, at the latest, 30 days after receipt of the Request for Arbitration.

IV

TCCA SUBMITS A LEGAL DISPUTE ARISING DIRECTLY OUT OF AN INVESTMENT

18. The dispute submitted by this Request for Arbitration arises directly out of TCC's substantial investments in Pakistan. By arbitrarily and unlawfully rejecting TCC's Application for a Mining Lease and taking other actions against TCC's investments, Pakistan has frustrated TCC's legitimate expectations and deprived TCC of the value of its investments without compensation.

A. Facts

1. Balochistan and TCCA Became Parties to the CHEJVA

19. On 29 July 1993 the Balochistan Development Authority ("BDA"), a statutory corporation of the Province of Balochistan, entered into the CHEJVA with BHP Minerals International Exploration Inc. ("BHP"). **Ex. CE-1.**

20. Pursuant to Clause 3.1 of the CHEJVA, BDA and BHP established an unincorporated contractual joint venture (the "Joint Venture") to explore deposits of gold, copper, and other minerals in an exploration area in the Chagai district of Balochistan (the "Exploration Area") and to conduct feasibility studies in accordance with the provisions of the CHEJVA so as to evaluate the economic viability of relevant mineral deposits. Pursuant to Clauses 3.4 and 7.1 of the CHEJVA, BDA held a 25% ownership interest in the Joint Venture, and BHP a 75% interest in return for agreeing to fund the entire exploration costs and the costs of any feasibility studies to be conducted in accordance with the terms of the CHEJVA.

21. Pursuant to Clause 10 of the CHEJVA, BHP acted as the Manager of the Joint Venture. In this function, BHP had day-to-day responsibility for the conduct of Joint Venture activities subject, among other things, to the direction, supervision, and control of an operating committee (the "Operating Committee") consisting of representatives of BDA and BHP. The Operating Committee was entitled to take decisions in respect of the management of all joint venture activities, that is, activities with the object of searching for mineral deposits in the Exploration Area and conducting feasibility studies so as to evaluate the economic viability of the relevant mineral deposits.

22. Pursuant to Clauses 5.7.1 and 5.7.2 of the CHEJVA, BDA agreed to “liais[e] with . . . local government authorities” in furtherance of the Joint Venture’s activities and to assist in the procurement of requisite licenses and permits, including Mining Leases. Pursuant to Clause 24.6.2, the Parties agreed “to be just and faithful to one another” and not to “do or omit to be done anything whereby the interests of the Joint Venture contemplated herein are prejudiced.” Pursuant to Clause 24.6.3, BDA agreed to “execute all necessary additional documents and do all such acts as shall be reasonably required to give effect to the purposes of [the] Agreement.”

23. Clause 11.8.2 of the CHEJVA provides that, if BHP elected to develop a mine, “it shall be entitled to convert the relevant Prospecting License(s) held by it into Mining Licenses so as to give secure title over the required Mining Area.” The right was “subject only to compliance with routine Government requirements.” *Id.*

24. On 4 March 2000, the Government of Balochistan, BHP and BDA entered into Addendum No. 1 to the CHEJVA pursuant to which the Government of Balochistan and BHP “confirmed their intention” that all references to BDA in the CHEJVA shall be deemed to refer to the Government of Balochistan. **Ex. CE-2.**

**2. With the Encouragement of the Government,
TCC Conducted Extensive Exploration Activities**

25. In June 2000, TCCA took over exploration activities in the Chagai Hills Exploration Area pursuant to an Option Agreement and an Alliance Agreement with BHP. **Exs. CE-12, CE-15.** Pursuant to the Alliance Agreement, TCCA would acquire a share of BHP’s 75% interest in the Joint Venture upon completing certain agreed exploration works in the Exploration Area. On 30 November 2000, to comply with Pakistani law, TCCA established TCCP as its wholly owned Pakistani subsidiary for the purpose of undertaking the exploration works. **Ex. CE-14.**

26. In May 2002, the Licensing Authority granted the Joint Venture Exploration Licence EL-5 over an area of 973.75 sq. km. in the Reko Diq area (“Licence EL-5”). **Ex. CE-16.** Licence EL-5 was granted for a period of three years commencing from 21 February 2002 through 20 February 2005, and was subsequently renewed on two occasions through 19 February 2011. **Exs. CE-17, CE-20.**

27. On 1 April 2006, the Government of Balochistan, BHP and TCCA executed a Novation Agreement, which was approved by the Licensing Authority, pursuant to which TCCA replaced BHP as a party to the CHEJVA and as Manager of the Joint Venture. **Ex. CE-3.** On 8 April 2006, the Licensing Authority approved the assignment of BHP's 75% interest in Licence EL-5 to TCC. **Ex. CE-18.**

28. On 11 April 2008, with the consent of the Government of Balochistan and pursuant to an Order of the Lahore High Court, TCCA transferred its mining rights, including its 75% interest in Licence EL-5 and certain other assets and liabilities, to TCCP. **Ex. CE-21.**

29. From 2006, when TCC assumed its interest in the Joint Venture, through 2010, TCC undertook extensive exploration activities at a cost of over US\$ 214 million. From the inception of exploration activities through to the delivery of the Feasibility Study, the Government of Balochistan has been aware of and approved the relevant exploration work.

30. In its capacity as a member of the Operating Committee of the Joint Venture, the Government of Balochistan has attended bi-annual meetings and approved the nature, extent, and timing of TCC's exploration work.

31. In its capacity as Licensing Authority, the Government of Balochistan twice extended Licence EL-5 to permit TCC to continue its work, including completion of the Feasibility Study submitted in support of the Mining Lease Application. **Exs. CE-17, CE-20.**

32. In this dual capacity, the Government of Balochistan, as it explained in submissions to the Balochistan High Court, "[has] been very closely monitoring the progress of the subject project and receive[d] Quarterly Reports which detail the progress that is being made, local employment that has been provided and investments made in each quarter." **Ex. CE-19, at 9.**

3. TCC Submitted a Mining Lease Application

33. Encouraged by the results of pre-feasibility studies and the continued involvement and support of the Government of Balochistan, TCC commissioned an extensive mine development feasibility study (the "Feasibility Study").

34. The Feasibility Study was completed in August 2010 at a total cost exceeding US\$ 65 million for the technical portion of the Study alone. It was based on nearly 200 studies involving drilling and mapping in the relevant area and comprised 21 volumes of data and analysis that met or exceeded all the requirements of the CHEJVA and the BM Rules and fully comported with industry standards. The Feasibility Study presented a planned initial capital investment in the Reko Diq mining project of US\$ 3.3 billion and projected TCC's involvement in mineral development at Reko Diq for half a century.

35. On 26 August 2010, acting in its capacity as Manager, TCC submitted the Feasibility Study to its Joint Venture partner the Government of Balochistan. **Ex. CE-22.** Pursuant to Clause 11.3.1 of the CHEJVA, each party had 90 days after submission of the Feasibility Study to notify the Manager of the CHEJVA in writing whether it intended to participate in the development of the Reko Diq mining project outlined in the Study.

36. Based on the extensive exploratory and preparatory activities and resulting conclusions in the Feasibility Study, TCC elected to participate in the development of the Reko Diq project. Accordingly, on 8 November 2010, it provided notice to the Government of Balochistan of its election. **Ex. CE-23.** The Government of Balochistan did not make an election within the prescribed time period, and it did not respond to TCC's request to file a joint Mining Lease Application. **Ex. CE-24.** Pursuant to Clause 11.3.3 of the CHEJVA, by failing to provide notice within the specified period of its intention to participate, the Government became a Non-participating Party. In light of the Government's position, TCC determined to exercise its right under the CHEJVA to proceed to mine development as the sole Participating Party.

37. On 15 February 2011, as directed by TCCA, TCCP submitted to the Licensing Authority an Application for a Mining Lease in respect of the Reko Diq area covered by Exploration Licence EL-5. **Ex. CE-6.** The Mining Lease Application included the complete 21-volume Feasibility Study that TCC had submitted to the Government on 26 August 2010, nearly six months before.

38. On 3 March 2011, pursuant to Clause 11.5.1 of the CHEJVA, TCC notified the Government of TCC's intention to purchase the Government's 25% interest in the Reko Diq project. **Ex. CE-25; see Ex. CE-2** (Clause 8.2). As a result, TCC now has the right to

acquire that interest, subject only to determination of the price through the contractually agreed process, and thereby own 100% of the project.

4. The Government of Balochistan Rejected the Mining Lease Application

39. On 21 September 2011, the Licensing Authority served TCC with a Notice stating that its Mining Lease Application was “unsatisfactory,” indicating that it intended to refuse the Application. **Ex. CE-7.** The grounds set forth in the Notice were vague or, where possible to discern, factually incorrect or based on inapplicable provisions of the BM Rules. *See Ex. CE-5* (BM Rules). The Notice granted TCC only 30 days in which to reply.

40. By letter dated 30 September 2011, TCC requested an extension to the 30-day deadline for submitting its Response to the Notice to respond to the broad allegations set forth in the Notice. **Ex. CE-27.** In addition, TCC requested a meeting with the Licensing Authority to discuss the content of the Notice. By letter dated 7 October 2011, the Licensing Authority rejected TCC’s requests. **Ex. CE-28.** By letter dated 14 October 2011, TCC reiterated its request for a meeting. **Ex. CE-29.**

41. By letter dated 17 October 2011, the Licensing Authority insisted that TCC had to respond within 30 days from receipt of the Notice. **Ex. CE-30.** When on 18 October 2011 TCC finally met with the Secretary of the Mines and Minerals Development Department (“MMDD”) of the Government of Balochistan, TCC was informed that no meeting to discuss the Notice could be scheduled before the date on which TCC had to submit its Response to the Notice.

42. On 19 October 2011, TCC submitted a comprehensive Response to the Licensing Authority’s Notice. **Ex. CE-8.** TCC’s Response explained that by having successfully carried out extensive exploration activities, TCC was entitled to a Mining Lease by virtue of both the specific promise of a mining lease contained in Clause 11.8.2 of the CHEJVA and the general presumption to grant mining leases following exploration work contained in Rule 48(1)(b) of the BM Rules.

43. TCC’s Response also demonstrated that there was no merit to any of the ten grounds stated in the Notice for denying the Mining Lease Application. For example, the Licensing Authority had asserted that the Application would be denied because TCCP was

not locally incorporated, even though it plainly and openly was and had always been locally incorporated, as its foundational document demonstrated. **Ex. CE-14.** Similarly, the Notice contained vague and general allegations about TCC's exploration and feasibility work, even though a 21-volume Feasibility Study, whose technical portion alone cost more than US\$ 65 million, had been carried out with the Government of Balochistan's knowledge and approval as to its scope, and met or exceeded all requirements under the CHEJVA, BM Rule 48(3), and industry standards. The Notice even threatened to reject the Application because it was made by TCC without the Government of Balochistan's participation, even though (i) TCC had repeatedly encouraged the Government's participation – such as in TCC's 3 March 2011 letter stating that it was “still the sincere wish of TCC and its shareholders to have the GOB as a 25% partner in the Reko Diq project,” **Ex. CE-25** – but had been rebuffed, and (ii) Clause 11.4.2 of the CHEJVA expressly contemplated this very situation by providing that, even if the Government chose not to participate in a mining venture, TCC would be “entitled to undertake sole risk investment . . . in a mining development within any of the relevant Prospecting Licences” as a Participating Party, and that TCC's entitlement was subject only to obtaining “routine Government approvals.”

44. Hence, TCC's Response demonstrated that none of the Licensing Authority's ten grounds provided any legitimate basis for finding TCC's Mining Lease Application “unsatisfactory,” much less for overriding TCC's entitlement to the Mining Lease.

45. Also on 19 October 2011, TCC served the Government of Balochistan with a Notice of Dispute under the CHEJVA in which it invited the Government to enter into consultations to reach an amicable resolution of the dispute. **Ex. CE-9.** Despite that invitation and persistent additional efforts to engage the Government in discussions of an amicable resolution, the Government refused to meet or otherwise confer with TCC representatives on the matter.

46. On 15 November 2011, the Licensing Authority sent a cursory Rejection of TCC's Mining Lease Application (the “Rejection Notice”). **Ex. CE-11.** In full, the Rejection Notice stated:

This is with reference to your letter No.02-CE0/11 dated February 8th 2011 on the above cited subject, our Notice No. DG (MM)/EL-5/4572-75 dated 21-09-2011 and interim response to the same submitted by yourself dated 19-10-2011 in respect of Mining Lease application.

You are hereby informed that your reply was found unsatisfactory under Rules 10, 29(2) (c) (iii) 47,48, 52 etc of Balochistan Mineral Rules 2002.

Your application for the grant of Mining Lease over an area of 99.473 Square Kilometers is therefore rejected.

In other words, the Licensing Authority did not provide any reasons at all for its conclusion that TCC's response was "unsatisfactory," and it suggested by its use of the term "etc." that TCC had failed to comply with provisions of the Mineral Rules that the Licensing Authority had not even bothered to identify.

47. On 28 November 2011, the same day as the filing of this Request, TCC once again called upon the Government to comply with its obligations under the CHEJVA and BM Rules by filing an appeal against the Rejection Notice with the Secretary of the MMDD pursuant to BM Rule 70. **Ex. CE-36.**

5. The Government of Balochistan Had Long Planned to Take Over the Project

48. As TCC belatedly came to know, the Government of Balochistan's rejection of the Mining License Application was part of a plan hatched more than two years earlier to take the Reko Diq project from TCC.

49. At a cabinet meeting on 24 December 2009, the Government of Balochistan discussed the "Taking over of Rekodiq Copper & Gold Project from TCCP by the Government of Balochistan." **Ex. CE-31, at 16.** The official minutes from that meeting reflect that the Government decided "in principle" not to negotiate and conclude a mining agreement with TCC for the Reko Diq project. *Id.* According to the minutes, "further course of action was to be decided by the Chief Minister of Balochistan." *Id.*

50. In a memorandum dated 31 December 2009, Balochistan's MMDD proposed establishing a camp office at the Reko Diq site to "closely monitor the project till proper taking / handing-over" by the Government of Balochistan. **Ex. CE-31, at 20.** In a memorandum dated 11 February 2010, the MMDD proposed engaging legal advisers "before issuing legal notice to TCC for cancellation of Exploration Agreement." **Ex. CE-31, at 21.**

51. The Government of Balochistan's plan to take over the Reko Diq project remains unchanged, and that plan explains its treatment to date of TCC's Mining Lease

Application. According to reports in *The Wall Street Journal* of 15 September 2011 and *The Asia Times* of 18 November 2011, a Chinese mining company made an offer to the Government of Balochistan to take over the Reko Diq project. **Exs. CE-26, CE-32.** As recently as 22 November 2011, *The Pakistan Tribune* reported that the Balochistan government had cancelled TCC's license and "decided to run the project itself." **Ex. CE-34.** The article quoted the Secretary of the Licensing Authority, who will determine TCC's appeal against the Rejection Notice, as stating that "[u]nder the law, the provincial government can cancel the contract of a company that does not meet the criterion," and that the Government of Balochistan had now decided to take the Reko Diq project forward with its own resources.

6. TCC's Efforts to Consult and Negotiate Have Failed

52. As the dispute with the Government of Balochistan and hence with Pakistan arose, TCC sought "initially to resolve the dispute by consultations and negotiations" in accord with Article 13(1) of the Treaty.

53. On 28 September 2011, one week after receiving the Licensing Authority's 21 September 2011 Notice, TCC met twice with federal officials and sought assistance regarding the Licensing Authority's apparent intention to reject TCC's Mining Lease Application. In particular, TCC expressed concern over the lack of feedback it had been able to obtain from Balochistan.

54. By letter dated 20 October 2011, TCC provided the Government of Pakistan with a notice that a denial of the Mining Lease would deprive TCC of its investment in Pakistan in violation of the Australia-Pakistan Treaty and requested negotiations to resolve the dispute amicably. **Ex. CE-10.** With this notice, TCC forwarded copies of (i) the Licensing Authority's 21 September 2011 Notice; (ii) TCC's 19 October 2011 Response to the Licensing Authority; and (iii) TCC's 19 October 2011 Notice of Dispute to the Government of Balochistan.

55. At meetings held on 28 and 31 October 2011 with officials from the Pakistan Ministry of Petroleum and National Resources, TCC executives expressed their concerns about the actions of the Government of Balochistan and conveyed the hope that the dispute could be settled amicably. The Ministry officials informed TCC that they could not provide

assistance. And they in fact provided no assistance, as the Licensing Authority issued its summary denial of the Lease Application on 15 November 2011.

56. Finally, on 23 November 2011, with nothing to show for its attempts to engage the Government of Pakistan, TCC again reached out. By a letter delivered on that date, TCC referred to the Licensing Authority's denial of the Application and urgently requested Pakistan to "meet to discuss the situation and present whatever proposals [Pakistan] may have to resolve [the dispute] amicably." **Ex. CE-35**. As of the date of this filing, TCC has received no response.

B. Issues In Dispute

57. By failing to grant TCC the Mining Lease and taking other actions against TCC's investments in the Reko Diq project, Pakistan has breached various of its obligations under Articles 3(2), 3(3) and 7 of the Australia-Pakistan Treaty.

58. *First*, TCC had the legitimate expectation that, if it successfully completed the exploration activities, it would be awarded a Mining Lease. TCC's expectation was based both on the express terms of the CHEJVA and the BM Rules, and on the express statements and encouragement of Government authorities.

59. Clause 11.8.2 of the CHEJVA provides that if TCC elects to develop a mine, "it *shall be entitled* to convert the relevant Prospecting Licence(s) held by it into Mining Licences so as to give secure title over the required Mining Area." (emphasis added). This contractual right is "subject only to compliance with routine Government requirements," all of which have been duly fulfilled. Clause 11.4.2 of the CHEJVA likewise affirms that even if the Government chooses not to participate in a mining venture, TCC "*shall be entitled* to undertake sole risk investment . . . in a mining development within any of the relevant Prospecting Licences" as a Participating Party and reiterates that TCC's entitlement is subject only to obtaining "routine Government approvals." (emphasis added).

60. Further, the Government of Balochistan is contractually obliged to facilitate the approval process. Under Clauses 5.7.1, 24.6.2, and 24.6.3 of the CHEJVA, the Government must assist in the procurement of requisite licenses and permits, including Mining Leases; "be just and faithful" to TCC, its Joint Venture partner; "not do or omit to be done anything whereby the interests of the Joint Venture . . . are prejudiced;" and "execute all

necessary additional documents and do all such acts as shall be reasonably required to give effect to the purposes of [the] Agreement.”

61. Yet even without the express terms of the CHEJVA, TCC would have been entitled to receive the Mining Lease for which it applied under the BM Rules. TCC is the joint holder of an exploration license for the area in question, and BM Rule 48(1)(b) envisages that where such an entity makes an application in respect of the area and minerals covered by its license, and has fulfilled the requirements of BM Rule 48(3), “the licensing authority *shall* grant the mining lease.” (emphasis added). At this point, as explained in TCC’s Response to the Licensing Authority’s 21 September 2011 Notice, TCC is entitled to a Mining Lease also under BM Rule 48(1)(b) because it has completely satisfied all of the specific requirements of BM Rule 48(3).

62. In reliance on its legitimate expectations that it would receive a Mining Lease in accordance with the terms of the CHEJVA and the BM Rules, TCC has made very substantial investments in the Reko Diq project, including in exploration activities and the preparation of a Feasibility Study. However, TCC’s legitimate expectations were frustrated when the Government of Balochistan developed a secret plan to take over the Reko Diq project, erected hurdles to completion of the work, and after lengthy delays arbitrarily denied TCC a mining license through a rigged and political process.

63. None of the vague, erroneous, and pretextual grounds set forth in the 21 September 2011 Notice provided any reasonable basis for finding the Mining Lease Application “unsatisfactory.” A more complete rebuttal of these alleged deficiencies can be found in TCC’s attached 19 October 2011 Response. **Ex. CE-8.** The Licensing Authority’s formal rejection of the Application in its three-sentence 15 November 2011 letter did not even acknowledge TCC’s rebuttal and provided no reasons whatsoever for the denial. **Ex. CE-11.**

64. Pakistan has thereby breached its obligations under Article 3(2) of the Australia-Pakistan Treaty to ensure fair and equitable treatment in its territory to TCC’s investments. As the Government of Balochistan explained to the Balochistan High Court at a time when it was encouraging TCC’s investment, the presumption reflected in BM Rule 48(1)(b) in favor of the holder of an exploration license is intended to encourage precisely the sort of investment that TCC and its shareholders have made:

Needless to state that if the said [CHEJVA] and Addendum No. 1 had not been executed these mineral deposits would have remained hidden in the soil of Chagai and without anyone knowing about them and the same not deriving any benefit for the people of Balochistan. It seems that the Petitioners have not bothered to read the law and the Rules because if they had they would not have made statements about inviting bids after the copper/gold had been discovered as the discoverer is entitled to retain the benefit thereof. It is submitted that if this was not so then no one would come forward to invest millions of dollars in exploration/prospecting

Ex. CE-19, at 17. The legal regime described by the Government of Balochistan in its submissions to the Balochistan High Court created the legitimate expectation on the part of TCC that it would be able to enjoy the fruits of its exploration and investment and rendered the denial of the Mining Lease the clearest form of unfair and inequitable treatment.

65. *Second*, the Government of Balochistan’s arbitrary and unlawful rejection of the Mining Lease Application and the Government’s other actions have impaired TCC’s use and enjoyment of its investments in the Reko Diq project. Pakistan has thereby breached its obligation under Article 3(3) of the Australia-Pakistan Treaty to “not impair the management, maintenance, use, enjoyment or disposal of investments.”

66. *Finally*, the Government of Balochistan’s arbitrary and unlawful rejection of the Mining Lease Application and the Government’s other actions have deprived TCC of the value of its investments in the Reko Diq project by, among other things, depriving TCC of the profits it would receive from mining activities in Reko Diq over the next half-century as a result of the substantial capital investments TCC has made and would make in the project. Pakistan has consequently violated Article 7 of the Australia-Pakistan Treaty by expropriating TCC’s investment without paying prompt, adequate and effective compensation.

C. The Dispute Arises Directly from an Investment

67. As Article 25 of the Convention contemplates, this Request for Arbitration submits to the jurisdiction of the Centre a “legal dispute arising directly out of [TCCA’s] investment” in Pakistan.

68. The Convention contains no definition of the term “investment.” However, the Contracting States to the Australia-Pakistan Treaty have defined the term in that instrument. Article 1(1)(a) of the Treaty defines “investment” as “every kind of asset, owned

or controlled by investors of one Party and admitted by the other Party subject to its law and investment policies applicable from time to time,” including “(ii) shares, stocks . . . and any other form of participation in a company;” “(v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including rights . . . to search for, extract or exploit natural resources;” and “(vi) activities associated with investments.” In addition, Article 2(3) extends coverage of the Treaty to “any investments in [a locally-incorporated] company by investors of that other Party.”

69. TCC has made substantial “investments” covered by Article 1(1)(a) of the Australia-Pakistan Treaty by, among other things, investing more than US\$ 211 million in acquiring BHP’s majority interest in the Joint Venture and making capital investments in the Reko Diq project exceeding US\$ 214 million for exploration activities and the preparation of the Feasibility Study for the mining project. The Government of Balochistan expressly agreed in Clause 15.4.7 of the CHEJVA that “the transactions to which this Agreement relates constitute an investment within the meaning of Article 25(1) of the ICSID Convention.”

V

NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT

70. The Australia-Pakistan Treaty does not specify any method of appointment of the Arbitral Tribunal. Having regard to Article 37 of the Convention, Rule 3 of the Institution Rules, and Rule 2 of the Rules of Arbitration, TCCA proposes that the Tribunal consist of three arbitrators, one appointed by Claimant TCCA, one appointed by Respondent Pakistan, and the Presiding Arbitrator appointed by agreement of the Parties.

71. TCCA further proposes that each party shall appoint an arbitrator within 30 days from the Registration of this Request. The Parties will then have 30 days mutually to appoint a President of the Tribunal. In the event that one of the Parties fails to appoint an arbitrator within the allowed time limit, or the Parties fail to agree on a President within the allowed time limit, either Party may petition the Centre to make the default appointment(s).

VI

RELIEF REQUESTED

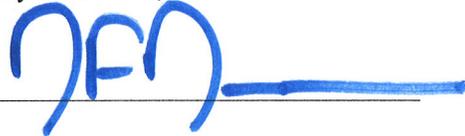
72. TCCA respectfully requests an award:
- (a) declaring that Pakistan has breached its obligations under the Australia-Pakistan Treaty and general international law by arbitrarily and unlawfully denying TCC's Mining Lease application and taking other measures against TCC's investments;
 - (b) ordering Pakistan to cease all efforts to have the Mining Area developed by Balochistan or with third parties, or to sell, transfer, authorize or otherwise dispose of the Reko Diq project to any third party;
 - (c) ordering Pakistan to take all steps necessary to grant TCC's 15 February 2011 Mining Lease Application and all related permits, approvals and authorizations required for TCC to develop the mineral deposits subject to the Mining Lease Application;
 - (d) awarding TCC compensation for all damages resulting from the delay in granting the Mining Lease Application;
 - (e) in the alternative to (b), (c), and (d), awarding TCC full compensation for all damages and losses suffered as a result of Balochistan's failure to grant TCC's Mining Lease Application, including future lost profits, in an amount to be determined in the course of this proceeding;
 - (f) awarding TCC compensation for any and all further damages resulting from Pakistan's breaches of the Australia-Pakistan Treaty or general international law, in an amount to be determined in the course of this proceeding;

- (g) awarding TCC interest on all sums awarded, in an amount to be determined in the course of this proceeding;
- (h) awarding TCC its costs and expenses of this proceeding, including attorneys' fees, in an amount to be determined by such means as the Tribunal may direct; and
- (i) ordering such other and further relief as may be just and appropriate in the circumstances.

73. TCCA intends to seek provisional measures in order to preserve its rights under the CHEJVA and in the Reko Diq project until the Tribunal has rendered an award on the merits.

Respectfully submitted,

By: _____



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