

APPLICATION FOR ANNULMENT OF THE AWARD OF 13 SEPTEMBER 2016

Claimants' request for the production of documents

The Claimants request that the Chilean State produce the documents or categories of documents indicated below.

For the avoidance of doubt, each of these requests relates to specific documents or specific categories of documents which exist and are in the Respondent's possession, custody or control.

The following terms are used in relation to this request as defined:

"Respondent" or "State" means the Republic of Chile, including its ministries, departments, agencies and dependent bodies, along with wholly State-owned companies such as the public corporation CODELCO¹ and other firms in which it has holdings,² as well as their representatives and managers.

"Document" means all recorded material of any kind, whether recorded on paper or by electronic means, audio or video recordings or any other mechanical or electronic means of storing or recording data (including but not confined to all communications, letters and emails or fax correspondence), notes, minutes of meetings, transcriptions, talking points, booklets, speeches, financial statements and proposals.

The use of headings below is for convenience and does not limit or alter the nature of the requests as detailed.

¹ **Corporación Nacional del Cobre (CODELCO)** is a wholly State-owned Chilean mining, industrial and trading company set up by a law of constitutional rank of the government of Dr Salvador Allende in 1971, passed unanimously by both chambers of parliament, with its own legal personality and assets, linked to the government through the Ministry of Mining, all of whose earnings are paid to the Chilean Treasury. See Chile: Documents Concerning Nationalization of Copper Companies, *International Legal Materials*, Vol. 10, No. 6 (November 1971), pp. 1235-1253, <https://bit.ly/2LOZncN>

² See **CODELCO Companies Subsidiaries and Associates**: <https://www.codelco.com/memoria2016/en/pdf/mem2016codelco-companies.pdf>

No.	Document/category of documents requested	Relevance and materiality of the documents requested		Responses/ Objections to document requests	Replies to the Objections to document requests	Decisions of the Committee
		Ref. to submissions	Comments			
1.	Any government documents (supreme decree, decree, decision or document of any other kind) issued by the State or one of its dependent bodies , or any contract entered into by the State or one of its dependent bodies, demonstrating the commissioning of legal services, to act in the capacity of counsel, expert, “asesor” or otherwise for the Respondent or one of its dependent bodies, from 3 November 1997 to the present, directly or indirectly, from any of the members of Essex Court Chambers (ECCh), or anyone who has been a member thereof, in particular but	<p>Document C138, of 12 April 2017</p> <p>Order of the 28th Civil Court of Santiago, of 24 July 2018, to the Foreign Ministry for it to produce documents relating to the links which the State acknowledged in document C138. The State has objected on grounds of national interest, until on 20 April 2018 it got the Court to accept this claim. (Documents C110, C191, C210, C212, C242, C242bis, C243, C283, C284, C290, C292)</p> <p>Memorial for annulment of 27 April 2018, §§ 135, 149,</p>	<p>The documents whose production is requested exist:</p> <p>- The purchase of legal services by the Chilean State from members of ECCh since 2005 was acknowledged by Chile in the document submitted in item C138.</p> <p>- Act No. 18,834 of 23 September 1988 (Administrative Statute) provides in its article 11: <i>“Professionals and specialists with higher-level qualifications or experts in particular fields may be hired on a fee basis where occasional work not normally performed by the institution is to be carried out, by decision of the corresponding authority. Likewise, foreign nationals holding the corresponding qualifications in the</i></p>			

	<p>not exclusively Messrs Alan Boyle, Lawrence Collins, Christopher Greenwood, Samuel Wordsworth, Vaughan Lowe, Simon Bryan, Stephen Houseman.</p>	<p>159, 168-202, 231-235, 237-245</p> <p>Hearing of 16 February 2018, transcription, pp 20-23, 163-168, 209-212</p> <p>Application for annulment of 16 September 2016, Grounds III.1 and III.2, in particular §§ 95, 98, 115-123, 157, 159</p> <p>Respondents' communications to the <i>ad hoc</i> Committee of 21 December 2017, 11 and 15 January, 2 February, 16 and 29 March 2018</p> <p>Counter-Memorial, §§ 174, 244, 249, 260, 312, 313, 317, 320, 323-336, 417, 418(d), 441</p>	<p><i>field concerned</i> may be hired on a fee basis.</p> <p><i>Moreover services for specific tasks may be hired on a fee basis in accordance with general regulations.</i></p> <p><i>Persons hired for a fee shall be subject to the rules provided by the respective contract and the provisions of this Statute shall not apply to them.”³</i></p> <p>- Likewise Act No. 19,880 of 23 May 2003 establishing the bases of the administrative procedures governing the acts of national government bodies, whose article 3 provides that the decisions adopted by government bodies are expressed by administrative acts which will take the form of supreme decrees and decisions. A supreme decree is an order issued by the President of the Republic or by a Minister “By order of the</p>			
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³ **Ley N° 18.834, Estatuto Administrativo, de 23 de septiembre de 1988:** Art. 11: “Podrá contratarse sobre la base de honorarios a profesionales y técnicos de educación superior o expertos en determinadas materias, cuando deban realizarse labores accidentales y que no sean las habituales de la institución, mediante resolución de la autoridad correspondiente. Del mismo modo se podrá contratar, sobre la base de honorarios, a extranjeros que posean título correspondiente a la especialidad que se requiera. Además, se podrá contratar sobre la base de honorarios, la prestación de servicios para cometidos específicos, conforme a las normas generales. Las personas contratadas a honorarios se regirán por las reglas que establezca el respectivo contrato y no les serán aplicables las disposiciones de este Estatuto.”

			<p>President of the Republic” on matters coming under their remit.⁴</p> <p>- The existence of these documents is also indicated by Exempt Decision No. 1,485 of 1996 [exempt from review of legality by the Comptroller General’s Office] whose letter b) states that transactions “<i>must be recorded as soon as they arise so that the information remains relevant and of value to the senior staff overseeing operations and taking the relevant decisions</i>”,⁵ as well as by</p> <p>- Exempt Decision No. 1,600 of 2008 providing rules on the legality review process, and in particular its article 6: “<i>Decrees and decisions subject to legality review must be submitted together with their supporting documents, except for</i></p>			
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⁴ **Ley N° 19.880, de 23 de mayo de 2003**, que establece las Bases de los Procedimientos Administrativos que Rigen los Actos de los Órganos de la Administración del Estado, el Artículo 3º, que preceptúa que las decisiones que adopten las entidades de la Administración se manifiestan mediante actos administrativos que tomarán la forma de decretos supremos y resoluciones. El decreto supremo es la orden escrita que dicta el Presidente de la República o un Ministro « *Por orden del Presidente de la República* », sobre asuntos propios de su competencia.

⁵ **Contraloría General de la República. Resolución Exenta N° 1.485, de 1996**, letra b), que dispone que las transacciones “*deben registrarse en el mismo momento en que ocurren a fin de que la información siga siendo relevante y útil para los directivos que controlan las operaciones y adoptan las decisiones pertinentes.*”

			<p><i>those which are electronically accessible through institutional systems. Administrative acts endorsing agreements, including fee-based contracts with individuals, must be transcribed in the body of the decree or decision...</i>"⁶</p> <p>These documents are relevant to the resolution of this case. For as the Claimants state in their Memorial for Annulment, the existence of close, continuous and material ties, not disclosed, between one of the Parties and certain members of the Arbitral Tribunal is such as to create, in the unique circumstances of this case, an apparent objective conflict of interest incompatible with the principles of independence and impartiality which should prevail in any arbitral tribunal, constituting a departure from a fundamental rule of procedure. Documents bearing</p>			
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⁶ **Resolución exenta N° 1.600, de 2008**, de la Contraloría General de la República, que fija Normas sobre Exención del Trámite de Toma de Razón, cuyo artículo 6º dispone: *"Los decretos y resoluciones afectos a toma de razón deberán remitirse conjuntamente con los antecedentes que les sirven de fundamento, salvo aquéllos a los que se pueda acceder electrónicamente a través de sistemas institucionales. Los actos administrativos que aprueben convenios, incluso contratos a honorarios con personas naturales, deberán transcribirlos en el cuerpo del decreto o resolución..."*

			<p>out the factual and legal circumstances that make the tests relating to apparent objective conflicts of interest applied by <i>ad hoc</i> Committees and ICSID Tribunals to arbitrators applicable to Messrs Berman and Veeder.</p> <p>Indeed, Chile acknowledged on 12 April 2017 (document C138) the existence of ties between the State and members of ECCh, albeit without precisely disclosing their identities or how long these ties have existed or the nature thereof, or the amounts of any payments made. Its reply seems to be confined to services provided concerning disputes over the State's borders, whereas information brought to the Claimants' knowledge since 20 September 2016⁷ shows that Chile has used the advice and expertise of ECCh members, or persons who have been its members, in other fields and tribunals, including at ICSID.</p>			
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⁷ See documents C125, C174bis, C132, C133, C135

			So the production of these documents is necessary in order for the Claimants to have the same information as the Chilean State on the commercial and legal ties that have existed or still exist between the State or State bodies and one or more members or ex-members of ECCh, so as to be able to demonstrate the existence of relations between the State and ECCh members that are incompatible with the principles of no apparent objective conflict of interest, independence and impartiality.			
2.	Any correspondence between an external counsel, expert or “asesor” of the State or one of its dependent bodies and a member of ECCh with a view to hiring the latter’s legal services for the benefit of the State or one of its dependent bodies between 3 November 1997 and the present, in particular but not exclusively Messrs Alan Boyle, Lawrence Collins,	See 1 above	See 1 above			

	Christopher Greenwood, Samuel Wordsworth, Vaughan Lowe, Simon Bryan, Stephen Houseman.					
3.	Any government documents or documents of any other kinds issued by the General Treasury or any other State entity (including the Foreign Ministry) or one of its dependent bodies, or any bank transfer, issued by the State or a State body, corresponding to payments made to ECCh or a member of ECCh, or to payments for legal services rendered by one or more members of ECCh, showing the date, the beneficiary and the amounts of any payments thus made between 3 November 1997 and the present.	Memorial for annulment §§ 174-182 and §§ 241 et seq.	<p>The existence of such documents is demonstrated by the following legislation:</p> <p>- Article 100 of the Chilean Constitution, which states: <i>“The State's Treasuries shall make payments only by virtue of a decree or decision issued by a competent authority indicating which law or part of the budget authorises the payout. Payments shall moreover be made according to the established legally chronological order and after budgetary endorsement of the document ordering the payment.”</i>⁸</p> <p>-Decision No. 759 of 2003 on accountability procedures, issued by the Comptroller General’s Office, whose point 3.3 provides as</p>			

⁸ **Constitución, Artículo 100:** *“Las Tesorerías des Estado no podrán efectuar ningún pago sino en virtud de un decreto o resolución expedido por autoridad competente, en que se exprese la ley o la parte des presupuesto que autorice aquel gasto. Los pagos se efectuarán considerando, además, el orden cronológico establecido en ella y previa refrendación presupuestaria del documento que ordene el pago.”*

			<p>follows: “Accounts documentation file. ‘Accounts documentation file’ shall mean an ordered series of documents on paper or in electronic format recording the accounts corresponding to a specific reporting item, as required of the reporting entity by the Comptroller General’s Office, for examination and the issue of the corresponding report in accordance with Act No. 10,336. In the case of an electronic accounts documentation file, the file’s authenticity and integrity, along with the non-repudiation thereof, must be assured by the electronic signature of the reporting official, person or entity in keeping with general regulations.”⁹</p> <p>These documents are relevant in that they will allow us to demonstrate the financial flows</p>			
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⁹ **Resolución N° 759, de 2003**, sobre Procedimientos de Rendición de Cuentas, de la Contraloría General de la República, cuyo numeral 3.3 dispone: “*Expediente de documentación de cuentas. Se entenderá por expediente de documentación de cuentas la serie ordenada de documentos en soporte de papel o electrónico, que comprueban las cuentas correspondientes a una rendición específica, requerido por el fiscalizador de la Contraloría General al cuentadante, para su examen y el correspondiente informe, de acuerdo con lo dispuesto en la ley N°10.336. En el caso de un expediente de documentación de cuentas electrónico, la autenticidad e integridad de éste, como asimismo el no repudio de estas características, deberán estar garantizadas por la firma electrónica del funcionario, persona o entidad responsable de dicha rendición, de conformidad con las reglas generales.*”

			<p>between the Respondent and ECCh and its members, vital to showing that ECCh “<i>derives significant financial income therefrom</i>” and that ECCh has had in the past, and still has currently, “<i>a significant commercial relationship with one of the parties</i>”, which, for the Claimants, “<i>may give rise to doubts as to the arbitrator’s impartiality or independence.</i>”</p> <p>The documents requested concern freelance professionals operating in the framework of ECCh, which involves a proportional sharing of costs and material resources by ECCh members receiving remuneration for the services being provided to a major State client such as Chile and/or its dependent bodies.</p>			
4	Any documents issued by the Secretariat of the International Court of Justice (ICJ), especially certificates from the ICJ Registry issued to the Chilean State recording expenses for pleadings at					

	the ICJ by any ECCh members in a case in which he/she/they represented the Chilean State, for the purposes of settling hearing fees.					
5	Any invoices for fees made out by one or more ECCh members for services rendered to the State or one of its dependent bodies between 3 November 1997 and the present.	See 3) above	See 3) above			