



DESIGNATION OF APPOINTING AUTHORITY
pursuant to the 1976 Arbitration Rules of the United Nations
Commission on International Trade Law (the “**UNCITRAL Rules**”)

PCA Case No. AA662

CLAIMANTS:

“Presidente Allende” Foundation
Calle Zorrilla n° 11, 1er piso derecha
28014 Madrid
Spain

Mr. Victor Pey Casado
Calle Ronda Manuel Granero n° 13
28014 Madrid
Spain

Ms. Coral Pey Grebe
Calle Zorrilla n° 11, 1er piso derecha
28014 Madrid
Spain

Represented by:

Mr. Juan E. Garcés
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28014 Madrid
Spain
E-mail: 100407.1303@compuserve.com

RESPONDENT:

The Republic of Chile

Represented by:

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Hereinafter collectively referred to as the “**Parties**”

WHEREAS according to the Claimants, a dispute has arisen between the Parties under the Agreement between the Kingdom of Spain and the Republic of Chile for the Mutual Protection and Encouragement of Investment, signed at Santiago on 2 October 1991 (the “**Treaty**”);

WHEREAS by Notice of Arbitration dated 12 April 2017, the Claimants commenced arbitration proceedings against the Respondent pursuant to Article 10 of the Treaty and the UNCITRAL Rules;

WHEREAS Article 10 of the Treaty provides as follows:

1. All disputes concerning investments, as defined by this Treaty, arising between one Contracting Party and an investor of the other Contracting Party shall be, to the extent possible, resolved by amicable negotiations between the disputing parties.

2. If the dispute has not been resolved within six months from the time it is raised by one or the other of the parties, it shall be submitted, at the choice of the investor to:

- Either the national courts of the Contracting Party involved in the dispute;

- Or international arbitration in accordance with paragraph 3.

Once an investor has submitted the dispute to the courts of the Contracting Party which is involved or to international arbitration, the choice of one or the other of these procedures will be final.

3. In case of recourse to international arbitration, the dispute may be submitted to one of the following arbitration fora at the choice of the investor:

- To the International Center for Settlement of Investment Disputes (I.C.S.I.D.) created by the “Convention on the Settlement of Investment Disputes between States and Nationals of other States” opened for signature at Washington on March 18, 1965, provided that both States Parties to this Treaty have acceded to it. As long as the aforementioned condition is not met, each Contracting Party consents to the submission of the dispute to arbitration in accordance to the ICSID Additional Facility Rules.

- To an “ad hoc” arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

WHEREAS in their Notice of Arbitration, the Claimants proposed that the Secretary-General of the Permanent Court of Arbitration (the “**PCA**”) be designated as the appointing authority;

WHEREAS in its response to the Claimants’ Notice of Arbitration dated 12 May 2017, the Respondent asserted that the Notice of Arbitration was inadmissible, as it invokes the same dispute that has been decided in prior ICSID proceedings;

WHEREAS by letter dated 18 May 2017, the Claimants appointed Prof. Dr. Hélène Ruiz Fabri as arbitrator;

WHEREAS by letters dated 9 and 12 June 2017, the Claimants requested that the Secretary-General of the PCA decide their challenge to the arbitrator appointed by the Respondent, Mr. Stephen L. Drymer;

WHEREAS by letter dated 13 June 2017, the PCA invited the Respondent to comment on the Claimants’ request by 23 June 2017;

WHEREAS by letter dated 19 June 2017, the Respondent requested that the Claimants submit an English translation of their request and that its deadline to comment on the request be extended until 14 July 2017;

WHEREAS by letter dated 20 June 2017, the Claimants objected to the Respondent's request to communicate in English and for an extension of the deadline to submit its comments;

WHEREAS by letter dated 20 June 2017, the PCA informed the Parties that it agreed with the Claimants that, at this stage of the proceedings, the Parties were not required to provide their communications in English, but nevertheless granted the Respondent's extension request and advised the Parties that "considering that there is no agreement between [them] with regard to the language of the present proceedings," it would issue its future correspondence in both English and French (and Spanish if requested by any of the Parties);

WHEREAS by letter dated 30 June 2017, the Respondent argued that the PCA should not recognize the Claimants' Notice of Arbitration as giving rise to new arbitral proceedings since the claims advanced therein had already been finally decided in a prior ICSID award. The Respondent further argued that the challenge to Mr. Drymer was premature given that it had not yet appointed him as arbitrator, but only indicated an intention to do so;

WHEREAS by letter dated 1 July 2017, in light of the Respondent's assertion that it had not yet appointed Mr. Drymer, the Claimants withdrew their challenge to Mr. Drymer and requested that the PCA appoint the second arbitrator on behalf of the Respondent;

WHEREAS by letter dated 3 July 2017, the PCA took note of the Claimants' withdrawal of their challenge to Mr. Drymer and invited the Respondent to comment on the Claimants' new request that the Secretary-General of the PCA appoint the second arbitrator under Article 9(2) of the UNCITRAL Rules (2010);

WHEREAS by letter dated 10 July 2017, the Respondent indicated that it had not agreed to the Secretary-General of the PCA acting as appointing authority in this matter and proposed that the Secretary-General of ICSID be designated as the appointing authority. Moreover, it argued that it is the 1976 version of the UNCITRAL Rules, and not the 2010 or 2013 version, which applies and that the Claimants' request for the PCA to appoint a second arbitrator on behalf of the Respondent should be rejected;

WHEREAS by letter dated 11 July 2017, the Claimants asserted that (i) the Respondent had tacitly agreed to the PCA acting as appointing authority, (ii) the Secretary-General of ICSID should not be designated as appointing authority, (iii) the Respondent had failed to appoint the second arbitrator within the required time limit under the UNCITRAL Rules, and (iv) the PCA should therefore proceed to appoint the second arbitrator on behalf of the Respondent;

WHEREAS by letter dated 11 July 2017, the PCA noted that the 1976 version of the UNCITRAL Rules was applicable and that the Parties had not agreed to the Secretary-General of the PCA acting as appointing authority. Therefore, it invited the Claimants to indicate whether they requested that the Secretary-General of the PCA proceed to designate an appointing authority pursuant to Article 7(2)(b) of the UNCITRAL Rules (1976);

WHEREAS by e-mail later the same day, Mr. Drymer took note of his appointment as arbitrator and issued certain disclosures concerning his independence and impartiality;

WHEREAS by letters dated 11, 12, and 13 July 2017, the Claimants accepted Mr. Drymer's late appointment to the Tribunal, but requested that the PCA designate itself as appointing authority, given the Respondent's tacit acceptance of such;

WHEREAS by letter dated 13 July 2017, the PCA took note of the Claimants' withdrawal of their request that the PCA appoint the second arbitrator on behalf of the Respondent and invited the Respondent to comment on the Claimants' new request that the Secretary-General of the PCA designate an appointing authority pursuant to Article 7(2)(b) of the UNCITRAL Rules;

WHEREAS by letter dated 19 July 2017, the Respondent opposed the designation of the PCA as appointing authority and requested that the Secretary General of ICSID be designated instead as appointing authority;

WHEREAS by letter dated 22 July 2017, the Claimants reiterated their request that the PCA designate itself as appointing authority;

NOW THEREFORE I, Hugo H. Siblesz, Secretary-General of the Permanent Court of Arbitration,

- (1) Having sought and considered the Parties' views on the designation of an appointing authority;
- (2) Having had due regard to the provisions of the Treaty and the UNCITRAL Rules;
- (3) Having established to my satisfaction my competence to designate the appointing authority in this matter; and
- (4) Having ascertained from the individual named below that he is available and willing to act in this matter;

HEREBY DESIGNATE as appointing authority in the above-referenced matter for all purposes under the UNCITRAL Rules:

Judge Dominique Hascher
10 Rue du General Bertrand
Paris 75007
France
Tel.: +33 (0)660948250
E-mail: dominique.hascher@networkpresidents.eu

and invite the Parties to furnish Judge Hascher with such information as may be required to enable and facilitate the proper performance of his functions under the UNCITRAL Rules.

Done at The Hague on 11 August 2017.



Hugo H. Siblesz
Secretary-General



Judge Dominique Hascher
10 Rue du General Bertrand
Paris 75007
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BY E-MAIL: DOMINIQUE.HASCHER@NETWORKPRESIDENTS.EU

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11 August 2017

RE: PCA CASE N° AA662 - FONDATION "PRESIDENT ALLENDE" ET AL. (SPAIN) V. THE REPUBLIC OF CHILE

Dear Judge Hascher,

I am pleased to inform you that, by the enclosed "Designation of Appointing Authority," the Secretary-General of the Permanent Court of Arbitration has designated you as the appointing authority in the above-referenced matter.

Copies of relevant prior correspondence in this matter are enclosed for your information.

Should you have any questions concerning this letter, please do not hesitate to contact me or my colleague Ms. Claire de Tassigny Schuetze, Senior Legal Counsel (cdetassigny@pca-cpa.org; +31 70 302 4196).

A copy of this letter in French is enclosed.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "MLD" followed by a flourish.

Martin Doe
Senior Legal Counsel

Encl.: Designation of Appointing Authority
Letter to the Parties
List of Correspondence
French version of the present letter and enclosures
Copies of the correspondence (*by courier for the appointing authority only*)

cc: Mr. Juan E. Garcés (*by e-mail: 100407.1303@compuserve.com*)
Prof. Robert L. Howse (*by e-mail: howserob@gmail.com*)
Me Hernan Garcés (*by e-mail: hernangd@nyu.edu*)
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Prof. H       Ruiz Fabri (*by e-mail*: helene.ruizfabri@mpi.lu)
Mr. Stephen L. Drymer (*by e-mail*: sdrymer@woods.qc.ca)



PCA CASE N° AA662

FONDATION "PRESIDENT ALLENDE" ET AL. (SPAIN)

V.

THE REPUBLIC OF CHILE

LIST OF CORRESPONDENCE

1. Claimants' letter to the PCA dated June 9, 2017, with enclosures
2. Claimants' e-mail to the PCA dated June 12, 2017, with enclosures
3. PCA's letter to the Parties dated June 13, 2017, without enclosures
4. Claimants' letter to the PCA dated June 13, 2017, with enclosures
5. Respondent's letter to the PCA dated June 19, 2017
6. Claimants' letter to the PCA dated June 20, 2017, without enclosure
7. PCA's letter to the Parties dated June 20, 2017
8. Respondent's e-mail to the PCA dated June 30, 2017, with enclosures
9. Claimants' letter to the PCA dated July 1st, 2017
10. PCA's letter to the Parties dated July 3rd, 2017
11. Respondent's e-mail to the PCA dated July 10, 2017, with enclosure
12. Claimants' e-mail to the PCA dated July 11, 2017, with enclosures
13. Claimants' second e-mail to the PCA dated July 11, 2017, with enclosures
14. PCA's letter to the Parties dated July 11, 2017
15. Email from Arbitrator Stephen Drymer to the Parties dated July 11, 2017
16. Claimants' letter to the PCA dated July 11, 2017
17. Respondent's e-mail to Arbitrator Stephen Drymer dated July 12, with enclosure
18. Claimants' letter to the PCA dated July 12, 2017
19. Claimants' letter to the PCA dated July 13, 2017
20. PCA's letter to the Parties dated July 13, 2017
21. Claimants' e-mail to the PCA dated July 17, 2017
22. Respondent's letter to the PCA dated July 19, 2017

23. PCA's letter to the Parties dated July 20, 2017

24. Claimants' e-mail to the PCA dated July 22, 2017, with enclosure