

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**ICSID ARB. No. \_\_\_\_\_**

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**DOMINION MINERALS CORP.**

**Claimant**

**vs.**

**THE REPUBLIC OF PANAMA**

**Respondent**

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**REQUEST FOR ARBITRATION**

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29 March 2016

AKIN GUMP STRAUSS HAUSER & FELD LLP

54 Quai Gustave Ador  
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Switzerland

## **PART I - INTRODUCTION**

1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”), Dominion Minerals Corp. (“Dominion” or “Claimant”) hereby submits its request to the Secretary-General of the International Centre for Settlement of Investment Disputes (the “Centre”) to institute arbitration proceedings against the Republic of Panama (“Panama”). The claims of Claimant in this arbitration arise under the Treaty Between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investments signed on the 27<sup>th</sup> of October 1982 in Washington, D.C., as amended by a Protocol Between the Government of the United States of America and the Government of the Republic of Panama signed on the 1<sup>st</sup> of June 2000 (the “Treaty”).

2. Claimant is a U.S. company focused on the exploration and development of mining projects internationally. In late 2006, Claimant became interested in making a sizeable investment in a Panamanian mining property known as Cerro Chorchá, which is situated about 290 kilometers west of Panama City near the border with Costa Rica (“Cerro Chorchá” or the “Property”). At the time Claimant contemplated its investment, the concession rights for Cerro Chorchá were held by Cuprum Resources Corp. (“Cuprum”), a Panamanian company, pursuant to a certain Contract No. 006 dated 16 February 2006 (the “Contract”) between Cuprum and the Ministry of Commerce and Industries of Panama (“MICI”). Pursuant to the Contract, Cuprum held an exclusive exploration concession on Cerro Chorchá for an initial term of four years, which Cuprum could extend for up to two additional two-year terms. The Contract also gave Cuprum the exclusive right to obtain an extraction concession over any minerals found to exist in commercial quantities on the Property.

3. Relying on the concession rights which had been granted to Cuprum in the Contract, in March of 2007, Claimant signed an Exploration and Development Agreement with Cuprum's sole shareholder, Bellhaven Copper & Gold Inc. ("Bellhaven"), in order to acquire a 65% majority equity stake in Cuprum. Shortly thereafter, Claimant proceeded to make its initial investment into the Property, which included the funding of an extensive exploration drilling campaign on the Property by Cuprum among other activities. In 2008, these exploration efforts led to the discovery of commercial quantities of a high-grade deposit of copper, gold and silver.

4. In April of 2009, Claimant bought out Bellhaven's 100% equity stake in Cuprum, and became its sole shareholder. Following this change in ownership, Claimant planned to continue its exploration efforts on the Property, and in March of 2010, its subsidiary Cuprum applied to extend its exploration concession under the Contract by an additional two years. This extension would allow Claimant to fully complete the exploration work and determine the full extent of the known mineral resources on the Property. Regardless of the extension on exploration, Cuprum had the exclusive right to an extraction concession under the Contract for the commercial quantities of minerals that it had already found.

5. Cuprum's application to extend the exploration concession on Cerro Chorchá was complete and complied with all applicable requirements of Panamanian law and the Contract. As it turned out, this was not the basis on which the Panamanian government would review Cuprum's request. The 2009 national elections had led to the election of Ricardo Martinelli as President of Panama. Once in power, the government was reputed for rampant corruption and the abuse of state resources, and Claimant, as the new owner of Cuprum, found itself a target. In the period following Claimant's acquisition of Cuprum, proxies for the government approached Claimant and demanded a majority stake in Cuprum and other financial benefits in exchange for

Claimant's continued operation of the project. Claimant, however, refused to accede to these demands, believing that its rights to extend the term of the exploration concession and/or enter the extraction phase of the project would be honored in accordance with Panamanian law and the Contract.

6. Ultimately, the desires of persons within the for financial gain overrode any concern for Claimant's rights. On 30 April 2010, MICI, acting at the direction of senior government officials, issued a resolution in which it declared the Property to be a "mineral reserve" area, thereby purporting to reject Cuprum's application to extend the term of its exploration concession and prohibiting all future extraction work on the Property. As will be seen, MICI's decision was little more than the opening move in a gambit aimed at forcing Claimant from the project in order to replace it with another investor who would be more compliant with the government's demands.

7. Panama's actions were effective in forcing Claimant from its investment as they destroyed Claimant's ability to continue exploring the Property, as well as its ability to extract the minerals which Claimant had already discovered in commercial quantities. To this day, Panama has refused even to acknowledge its expropriation of Claimant's investment, much less paid Claimant prompt, adequate and effective compensation as required by the Treaty. Panama also refuses to acknowledge its failure to accord Claimant's investment fair and equitable treatment, or to account for its unjust enrichment.

8. Panama's various breaches of the Treaty resulted in the total loss of Claimant's investment, and caused it tremendous economic harm. Claimant presently estimates that it has suffered damages in an amount not less than USD 268.3 million. Although the quantification of its losses is still ongoing, Claimant considers this amount to be the minimum damage which it

suffered due to Panama's violations of the Treaty. Claimant accordingly requests an award from the Tribunal declaring Panama to be in breach of its Treaty obligations as enumerated below, and ordering Panama to pay damages in an amount not less than USD 268.3 million. Claimant reserves its right to amend and/or supplement its claims at a later stage of the proceedings.

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## **PART II – THE PARTIES**

### **A. Claimant**

9. The Claimant, Dominion Minerals Corp., is a U.S. company incorporated under the laws of the State of Delaware. Its headquarters and principal place of business are located at 410 Park Avenue, 15th Floor, New York, NY 10002. Since 2006, Dominion has been engaged in the acquisition, exploration, development and operation of mineral and natural resource properties and prospects. Dominion's Chairman and CEO has over 15 years of experience in mining. The company's stock was listed on the over-the-counter market in the United States, and traded under the ticker name DMNM.

10. Claimant is represented in these proceedings by Akin Gump Strauss Hauer & Feld LLP. All required notifications should be addressed to:

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### **B. Panama**

11. The Respondent, Panama, is the southernmost country of Central America. Situated on the isthmus connecting North and South America, Panama is bordered by Costa Rica to the west, Colombia to the southeast, the Caribbean to the north and the Pacific Ocean to the south. The country currently has the third-largest economy in Central America. Geological surveys over the last 80 years also attest to the vast mining potential of Panama. In addition to Cerro Chorcha, Cerro Colorado and Cobre Panama, two of the largest untapped copper deposits in the world, also sit in Panama and are yet to be developed.

12. Panama's former President, Ricardo Martinelli, whose government lies at the center of this dispute, was sworn into office on 1 July 2009. Although President Martinelli campaigned on a pro-business platform with the promise of opening Panama to foreign investment, accusations of corruption and abuse of state resources dogged the government throughout President Martinelli's term. In 2011, *The Economist* described foreign investment in Panama as still hurt by "doubts about the rule of law", citing suspected corruption in the bidding for a metro transport contract, as well as the flooding of a wealthy Panama City neighborhood with sewage due to the government's failure to enforce its own planning laws.

13. Government corruption became a key theme of the 2014 national elections, which saw the ruling party ousted from power. President Martinelli himself was constitutionally barred from seeking a second term, but he purportedly had hand-picked his successor and had his wife run on the same ticket for Vice President. The President's chief political opponent, Juan Carlos Varela, used the government's record of consolidating state resources for private gain of those serving it as a key element of his campaign platform, and senior ranking members of President Martinelli's own government – including its first ambassador to the United States, Jaime Alemán – also came forward with public statements to the effect that persons in the government have abused state resources. The elections resulted in a surprise victory for Mr. Varela, who became President on 1 July 2014.

14. Since leaving office, the full scale of the corruption and abuse of state power inside the previous government is still being uncovered, but it is growing clearer by the day. In October of 2014, Justice Alejandro Moncada, a member of the Panamanian Supreme Court appointed at that time, was suspended on corruption charges after documents emerged showing that Moncada paid mostly in cash for two luxury apartments worth in excess of USD 1.7 million,

using funds which he had received from a high-profile businessman close to a senior government official. Moncada later pled guilty and was sentenced to five years in detention. In January of 2015, Panama's public prosecutor opened an investigation against President Martinelli and several senior aides for inflating contracts worth USD 45 million to purchase dehydrated food for a government social program. In April of 2015, former President Martinelli was stripped of executive immunity by Panama's electoral tribunal and left Panama. As of this filing, he is reported to be in Miami, Florida.

15. Investigations into the government's corrupt activities during this period have spread beyond Panama's borders as well. For example, Italian prosecutors are investigating allegations that government officials took bribe money from the Italian aerospace firm Finmeccanica in exchange for lucrative government defense contracts worth some €180 million. The contracts, which were allegedly signed in August of 2010 without an open tender, followed on the heels of an industrial cooperation deal signed that year between Italy and Panama. A central figure to the alleged deal was Valter Lavitola, an Italian journalist and Latin America-based entrepreneur hired by Finmeccanica as a consultant. Lavitola was later convicted on extortion charges relating to another Italian company Impregilo, which complained that Lavitola, acting on behalf of a government official, had demanded payments from Impreglio in order to finance the construction of a pediatric hospital in Veraguas. And in the United States, a former regional director of software giant SAP pled guilty to participating in a scheme to bribe government officials to secure the award to SAP of some USD 14.5 million worth of Panamanian government technology contracts in late 2009. The U.S. Department of Justice's investigation into these matters is ongoing. These are just some of the publicly known investigations into Panamanian government corruption which have come to light to date.



16. Upon information and belief, Panama is represented in these proceedings by:

Sr. Presidente de Panamá  
Juan Carlos Varela  
Presidencia de la República  
Palacio de Las Garzas, San Felipe  
Ciudad de Panamá, República de Panamá

Dr. Dulcidio De La Guardia  
Ministerio de Economía y Finanzas  
Edificio OGAWA, Vía España y Calle 52E,  
Corregimiento de Bella Vista - Provincia de Panamá  
República de Panamá

Sra. Kenia Porcell  
Procurador General de la Nación  
Gobierno de Panamá  
Calidonia, Av. Perú y Calle 33, Edificio Saloon  
Ciudad de Panamá, República de Panamá

### **PART III – STATEMENT OF FACTS**

17. Set forth below is a summary of the facts and circumstances surrounding the Parties' dispute. Each and every allegation hereunder will be fully supported by documentary and witness evidence at an appropriate onward stage of the proceedings.

#### **A. The Initial Investment in the Property**

18. The project at the center of this dispute finds its origins in early 2006. On 16 February 2006, MICI, acting on behalf of Panama and in its capacity as the primary government agency in charge of regulating the mining sector in Panama, awarded a Contract to Cuprum to explore and develop Cerro Chorcha.<sup>1</sup> The Property was defined in the Contract to consist of five zones covering an area of 24,241.91 hectares in the Chiriqui and Bocas Del Toro

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<sup>1</sup> Exhibit C-1.

Provinces of Panama. As documented in the Contract, MICI granted Cuprum several key concession rights to secure any future investment in the development of the Property.

19. Firstly, under Section 1 of the Contract, Panama granted Cuprum an exclusive concession to explore for metallic minerals on the Property. As set forth in Section 2 of the Contract, this exclusive exploration concession was granted for an initial term of four (4) years starting from the date of publication of the Contract in the Official Gazette of the Panamanian government (the “Official Gazette”), but could be extended by up to two additional two-year periods:

*The rights to which this Contract refers are granted for a period of four (4) years, and they shall be in force and effect as from their publication in the Official Gazette. In view of the application and having evidenced just cause in the judgment of the Executive Branch, it may extend the term of the concession for exploration two (2) times, for a period of two (2) years in each case, provided that, in applying for the extension, the Concessionaire accepts the privileges, terms and obligations in force and effect at the time when each is carried out, or in its stead, returns at such time at least fifteen per cent (15%) of each zone being retained under the concession that is to be extended provided that the Concessionaire has performed all of the obligations related to its concession, and provided always that the Executive Branch has not established it as mining reservation areas. (Unofficial translation from Spanish)<sup>2</sup>*

20. Secondly, as set forth in Section 5 of the Contract, Panama also gave Cuprum the right to obtain an exclusive concession for the extraction of any minerals found to exist in commercial quantities on the Property:

*This concession for exploration grants the following powers to the Concessionaire:*

...

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<sup>2</sup> Exhibit C-1 at p. 3.

*c) To obtain, on an exclusive basis, a concession covering the operation of extraction, under the terms and conditions stipulated by the National Government, upon finding a mineral that may be produced in commercial quantities. (Unofficial translation from Spanish)*<sup>3</sup>

21. Interested in the concession rights held by Cuprum, Claimant made a substantial investment into the Property. On 6 March 2007, Claimant (then doing business under the name Empire Minerals Corp.) concluded an Exploration and Development Agreement (the “EDA”) with Cuprum and its wholly-owned parent company at the time, Bellhaven Copper & Gold, Inc. (“Bellhaven”) through which Claimant was to obtain ownership of the majority interest in Cuprum.<sup>4</sup> The EDA provided for Claimant to acquire 65% of the share capital in Cuprum from Bellhaven over a three year period in exchange for (i) payments in cash of USD 2,000,000 in four scheduled increments over that period, (ii) USD 4,000,000 worth of Dominion common stock, and (iii) USD 15,000,000 in cash to fund the exploration and development of the Property to be injected in increments over the same three-year period at the times set forth in the agreement. The EDA further provided for Claimant to acquire an additional 10% of the share capital in Cuprum in exchange for completing a bankable feasibility study on the Property.

22. Following the signature of the EDA in March of 2007, Claimant made the first and second scheduled incremental payments of cash for the Cuprum shares in the amount of USD 1,000,000, issued USD 4,000,000 worth of Dominion stock to Bellhaven as was scheduled in the EDA, and began working with Bellhaven to explore the Property, including the remittance of exploration and development funds to Cuprum pursuant to the EDA.

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<sup>3</sup> Exhibit C-1 at pp. 3-4.

<sup>4</sup> Exhibit C-2.

**B. The Discovery of Commercial Quantities of Minerals on Cerro Chorcha**

23. Financed by Claimant's capital and expertise, Cuprum embarked on an extensive drilling campaign shortly after Claimant concluded the EDA with Bellhaven in March of 2007. The drilling program was closely supervised by Claimant's personnel and included (i) the completion of a base station and drill hole collar survey with respect to the 35 drilling holes that had been completed prior to Claimant's involvement in the project, and (ii) the drilling of 11 new holes to a cumulative depth of 3,610 meters of HQ-NQ coring. Out of the 11 new drill holes, 1,805 samples were then collected and analyzed. Consistent and typically commercial-grade intercepts of mineralization ranging from 0.50% to over 1.0% copper plus associated gold were found in the cores of rocks recovered from the drill holes.

24. On 23 September 2008, Claimant published the discovery in an update to the initial technical report (NI 43-101) which had been prepared prior to Dominion's investment in the Property (the "NI 43-101 Report").<sup>5</sup> The NI 43-101 Report confirmed the commercial nature of the discovery that had been made, and that the Property held tremendous potential for expanding the resource through further exploration work. The NI 43-101 Report showed that Cerro Chorcha contained Indicated Mineral Resources of 1.31 billion pounds of copper, 266,000 ounces of gold, and 6,503,000 ounces of silver. In addition, the NI 43-101 Report also showed Inferred Mineral Resources which it estimated at 84,548,000 tonnes with a grading of 0.461% copper, 0.07 grams/tonne of gold, and 1.87 grams/tonne of silver.

**C. Claimant Acquires Ownership of Cuprum**

25. By the end of March 2009, Claimant had invested approximately USD 5 million through Cuprum into exploration and development work on the Property. At this point, Bellhaven

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<sup>5</sup> Exhibit C-3.

agreed to a full buy-out of its interests in Cuprum, and Claimant became Cuprum's sole shareholder. Claimant and Bellhaven concluded a Stock Purchase Agreement on 14 April 2009 (the "SPA").<sup>6</sup> The SPA provided for Claimant to purchase 100% of Cuprum's share capital from Bellhaven in exchange for an additional USD 1,500,000 in cash plus an additional USD 2,000,000 in Dominion common stock. This transaction closed soon thereafter, and on 1 July 2009, Claimant was registered as Cuprum's sole shareholder in Panama.<sup>7</sup>

**D. Panama's Corrupt Scheme Against Claimant**

26. Just as Claimant took sole ownership of the Cerro Chorchá project through Cuprum, President Martinelli assumed office on 1 July 2009. It was not long thereafter that Claimant became a target of the government. As will be seen, one of the government's proxies in this scheme was Richard Fifer Carles, a person reported to be close to President Martinelli, former Panamanian politician and one of the most senior figures in the Panamanian mining industry.

27. Mr. Fifer became CEO of Petaquilla Minerals Ltd. ("Petaquilla Minerals") in April of 2007. At the time of his promotion to CEO, Petaquilla Minerals operated the country's only gold mine at Molejon, and was in a joint venture with Inmet Mining Corporation ("Inmet") to operate the Petaquilla copper project (later renamed Cobre Panama), in which Petaquilla Minerals held a 52% majority stake. In September 2008, after a hostile takeover battle, Inmet bought out Petaquilla Minerals' stake in the project for USD 350,000,000.

28. In late August 2009, with President Martinelli newly installed in office, Fifer approached Claimant's CEO (and Cuprum's President) to discuss the acquisition of an equity stake in Cerro Chorchá. Fifer explained that he had the full backing and support of the

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<sup>6</sup> Exhibit C-4.

<sup>7</sup> Exhibits C-5 and C-6.

government, and shared private e-mail communications between himself and President Martinelli to prove it. Claimant's principal shareholders and Fifer then held a face-to-face meeting in New York. They discussed a deal whereby a group of investors led by Fifer would invest USD 3,000,000 into the project, with the first USD 500,000 to be paid into Dominion, and the remaining USD 2,500,000 to be paid into a new company that Claimant would form for that purpose and that would be listed on the Toronto Stock Exchange (the "TSX Company"). In return, Fifer's investors would receive a 30% stake in the TSX Company, and Claimant would retain a 70% stake, and Claimant's shares in Cuprum would be transferred to the TSX Company. It was also discussed that Claimant's current management and members of its board would be appointed to the new management team and board of the TSX Company.

29. Shortly after this meeting in New York, Claimant received a written term sheet from Fifer. That term sheet was not the deal that was discussed in New York. Instead the term sheet proposed that the group of investors fronted by Fifer would own 70% of the shares in the TSX Company, leaving Claimant with just a 30% minority stake in the new company, and by extension, in Cuprum. Fifer also proposed that a new management team and board would lead the TSX Company, leaving Claimant's management and board members with no control over the project's future direction. When Claimant's representative questioned the reversal of deal that had been discussed in New York and expressed Claimant's lack of interest in the new proposal, Fifer told him that he had spoken to President Martinelli before making the offer and that if Claimant was not prepared to accept it, he would take 100% of the project.

30. Claimant's representative promptly terminated discussions with Fifer, and resolved to seek other partners who could support Claimant in its further development of Cerro Chorchá.

Unfortunately, as Claimant was soon to find out, the government was ready to make good on the threat that Fifer had delivered, and remove Claimant from the project altogether.

**E. Panama Ejects Claimant from the Project**

31. Having terminated discussions with Fifer, Claimant continued to engage with other potential investors who could help to finance the further development of the project. Among others, Claimant engaged in discussions with Resource Capital Fund V L.P. (“RCF”) a leading U.S.-based private equity mining investor with approximately USD 2 billion in committed capital. In November of 2009, the parties negotiated a term sheet for RCF to provide Claimant with USD 2,000,000 in cash plus a convertible loan facility of up to USD 8,000,000 to finance the further development of Cerro Chorcha. The terms of the deal continued to take shape over the following months, with RCF offering to increase its convertible loan facility up to USD 10,000,000, in addition to the USD 2,000,000 in cash which it would invest.

32. In parallel to these efforts, Claimant began the process to extend the term of Cuprum’s exploration concession under Article 2 of the Contract by two more years, so that it could fully complete its exploration of the Property before moving to obtain an exclusive extraction license under the Contract and enter commercial production. In late February 2010, Claimant’s representatives met with the Minister of Commerce and Industries and the MICI Director of Mineral Resources to discuss the application, at which, among other things, Claimant’s representatives informed the Minister of Commerce and Industries that Claimant was obtaining funding from RCF through which Claimant would be able to complete its exploration of the concession and put it into production. Cuprum promptly filed the application with MICI on 5 March 2010, and obtained an official stamp evidencing MICI’s receipt. In its application,

Cuprum submitted an investment budget of some USD 4,300,000 to complete the next round of exploration.<sup>8</sup>

33. Over the next several weeks, Claimant's representatives met with MICI officials on several occasions to ensure that MICI's file on Cuprum was complete and that Cuprum was in compliance with all of the applicable requirements of the Contract and Panamanian law in order to obtain the extension. In one of these meetings, in or around March 2010, MICI's Director of Mineral Resources met with Claimant's representative at MICI's offices in Panama City to discuss the extension application. During the meeting, MICI's Director of Mineral Resources pointed to the files on her desk, and produced a decision from the National Environmental Authority ("ANAM") which purported to reject Cuprum's Category I Environmental Impact Assessment ("EIA"). The decision came as a complete surprise to Claimant and was of dubious legality. Firstly, the decision was dated September 2009, yet ANAM had never notified Cuprum of the decision as the concession holder in accordance with Panamanian law. Moreover, concession holders were no longer required to obtain ANAM's approval of a Category I EIA in order to conduct exploration activities as opposed to extraction activities. When Claimant's representative asked how MICI could have known about ANAM's decision before Cuprum, MICI's Director of Mineral Resources responded that "*you have done everything you needed to but this comes from above*".

34. Despite its concerns about the pressure being put on it to essentially pay for its ability to continue on the project, Claimant continued to focus on completing its deal with RCF

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<sup>8</sup> Both MICI and Claimant were aware of a third-party lawsuit that had been filed against MICI in September of 2009 challenging MICI's award of the concession Contract to Cuprum in 2006. In December of 2009, the Third Chamber of the Panamanian Supreme Court issued a provisional suspension order in which it suspended the Contract and temporarily prohibited any mining activity on the Property until the Court issued its ruling on the merits of the lawsuit. However, the Court was expected to dismiss the lawsuit, as the plaintiff's claims were based upon frivolous allegations – indeed, the Court had already dismissed similar claims challenging MICI's award of the Contract to Cuprum in 2007. As a result, MICI never questioned Cuprum's ability to file the extension application, nor did it suspend its review of the application in view of the Court's order.



with a view to advancing the project. On 26 March 2010, RCF and Claimant signed a term sheet confirming RCF's offer of an Equity Placement and Contingent Convertible Loan Facility of up to USD 12,000,000.<sup>9</sup> RCF's funding offer was more than adequate to complete the exploration program which Cuprum had presented to MICI as part of its application to extend, as well as to make significant progress towards reaching the commercial production phase of the project. As RCF and Claimant completed due diligence and finalized the legal documentation, Claimant informed the Minister of Commerce and Industries that it had secured the financing needed to complete Cuprum's exploration work and that it would be able to bring the project into commercial production.

35. Claimant expected MICI to act in accordance with the terms of the Contract and Panamanian law, and grant Cuprum's application to extend the exploration concession. Unfortunately, the government of Panama had other plans. Claimant had shown that it would not accept to be bought out of the project, nor was it prepared to be a party to any corrupt activity. The deal with RCF also showed that Claimant was ready and able to bring the project into commercial production based upon the concession rights which its wholly-owned subsidiary Cuprum enjoyed under the Contract.

36. Concerned about Claimant's recalcitrance on cooperating with the government's attempts at extracting illicit gains from the concession, on 21 April 2010, unbeknownst to Claimant at that time, MICI issued a resolution which declared Cerro Chorchá to be a "mineral reserve area" pursuant to Article 31 of the Panamanian Mining Code ("the Mineral Reserve Resolution")<sup>10</sup>. The Mineral Reserve Resolution, which specifically targeted Cerro Chorchá, declared that all applications to explore or extract on the Property (including all concession

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<sup>9</sup> Exhibit C-7.

<sup>10</sup> Exhibit C-8.

extension requests such as the one filed by Cuprum) were “deemed rejected”. This language was significant, as MICI knew that the Contract gave Cuprum the right to an exclusive extraction concession independently of its exploration rights, and that Claimant was in a position to bring the project into commercial production. The Mineral Reserve Resolution was thus tantamount to an expropriation of the concession.

37. Unaware that Cerro Chorcha had purportedly been declared a mineral reserve, on 3 May 2010, Claimant’s representative wrote to the Minister of Commerce and Industries to update MICI on the events that had transpired since their initial meeting on 23 February 2010, and to inform MICI that Claimant was about to close its funding deal with RCF and that Cuprum was prepared to commence the next phase of exploration drilling on the Property immediately.<sup>11</sup> RCF and Claimant then proceeded on 4 and 5 May 2010 to sign their financing agreements and proceed to closing, still unaware that the Mineral Reserve Resolution had been issued.<sup>12</sup>

38. It was only when Claimant saw the Mineral Reserve Resolution published in the Official Gazette that Claimant finally learned of the Resolution’s existence. The Resolution’s existence came as a complete shock to Claimant. On 6 May 2010, Dominion advised RCF that the concession had been revoked, and its funding deal with RCF was immediately terminated.<sup>13</sup>

39. Stunned, Dominion sought out assistance from the U.S. Government and MICI. The Minister of Commerce and Industries at the time would later confirm that the Mineral Reserve Resolution was a tool aimed at removing Claimant from the project. In private discussions between the Minister of Commerce and Industries at that time and U.S. government officials in Panama in the aftermath of MICI’s decision, said that the decision to issue the Mineral

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<sup>11</sup> Exhibit C-9.

<sup>12</sup> Exhibits C-10 and C-11.

<sup>13</sup> Exhibit C-12.

Reserve Resolution and remove Claimant from the project was ordered by a senior government official, and that there was nothing he could do to influence it.

**F. Panama's Failed Attempt to Issue a New Concession over Cerro Chorchá (Laws 8 and 11)**

40. With Claimant's concession for Cerro Chorchá now having been expropriated, the government sought out other mining investors for Cerro Chorchá. Within just weeks of MICI's decision to strip Cuprum of its concession rights under the Contract, the government moved forward with its liberalization plan to open the Panamanian mining sector. In late May of 2010, the South Korean government announced that its President, Lee Myung-Bak, would visit Panama in June, and would meet with President Martinelli to discuss Korea's involvement in the country's mining sector. South Korea's state-owned mining company and one of the world's biggest mining producers, LS-Nikko Copper ("Nikko Copper") had already signed a deal with Inmet giving it an option to acquire up to a 30% minority stake in the Cobre Panama project, and had expressed interest in acquiring the rights to Cerro Colorado as well as to Cerro Chorchá. Cerro Chorchá and Cerro Colorado were contiguous parcels with Cerro Chorchá providing physical access to Cerro Colorado. At the time, only Cerro Chorchá was under concession.

41. Panamanian laws at the time prohibited foreign state-owned companies such as Nikko Copper from receiving any mining concessions in Panama. Yet Panama's government had other ideas. As was reported in the country's leading newspaper *La Prensa*, "[President] Martinelli publicly stated that by request from the Korean Government, they would change Panama's mining laws, as the current regulations impede granting mining concessions to foreign government entities." The government followed through on his public promise to the South Korean government several months later. In February of 2011, the government passed Law 8,

which for the first time in Panama's history allowed foreign state-owned mining companies to invest directly into Panamanian mining projects.

42. The government, however, was ultimately forced to abandon its plan to replace Claimant with another investor. Fearing that Law 8 would allow foreign state-owned companies to undertake large-scale mining projects on indigenous lands, and outraged by the fact that the government had passed Law 8 over their public opposition, the Ngobe-Bugle indigenous people and their supporters staged a series of violent protests and road blockades along the Pan-American Highway and at the University of Panama in opposition to the Law. These protests began immediately after the passage of Law 8 in February of 2011 and continued for over one month.

43. During the course of these protests, various representatives of the Panamanian government tried to persuade the Ngobe-Bugle indigenous people to accept mining in Cerro Chorchá and Cerro Colorado given the economic benefits such activity brought. This position of course was completely at odds with the Mineral Reserve Resolution that MICI had issued on 21 April 2010. Naturally, if the mining moratorium issued on 21 April 2010 was done for legitimate purposes, the government would not have been seeking to persuade the indigenous groups that they would benefit economically from mining in the very same reserve areas.

44. Despite the government's appeal to the economic interests of the indigenous people, and faced with the threat of continuing social unrest over its passage of Law 8, the government repealed Law 8 via Law 313 on 13 March 2011. Then, in early 2012, the government enacted Law 11 of 2012, which placed a moratorium on all mining activity within the semi-autonomous regions inhabited by the Ngobe-Bugle indigenous peoples, which included Cerro

Chorcha. Law 11 also annulled all existing mining concessions located within the reservation areas.

45. Although the previous government left office under a cloud of suspected corruption and suspected abuse of state resources, the new Panamanian government led by President Varela has expressed its willingness to support and foster mining. The Varela government went so far as to refer to the mining industry as one of the key sectors of its strategic plan for the Panamanian economy. As such, it is likely that the Panamanian government will seek to capitalize on the major commercial discovery which Claimant made on Cerro Chorcha at its own great cost and expense.

#### **PART IV – CLAIMANT’S CLAIMS AGAINST PANAMA**

46. Based upon the facts stated above, which will be expanded upon at a subsequent stage of these proceedings, Panama’s actions breached several of its obligations to Claimant under the Treaty, as well as its obligations to Cuprum under the Contract. Claimant also sets forth its claims for damages resulting from these breaches. All of the claims are summarized below and are asserted without prejudice to further claims which may be developed at a later stage of these proceedings.

##### **A. Breach of Article IV of the Treaty (Expropriation)**

47. Article IV of the Treaty expressly provides as follows:

*1. Investment of a national or a company of either Party shall not be expropriated, nationalized, or subjected to any other direct or indirect measure having an effect equivalent to expropriation or nationalization (“expropriation”) in the territory of the other Party, except for a public or social purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in*

*accordance with due process and the general principles of treatment laid down in Article II(2). Such compensation shall amount to the full value of the expropriated investment immediately before the expropriatory action became known; include interest at a commercially reasonable rate; be paid without delay; be effectively realizable; and be freely transferable.*

*2. Consistent with Article I(d), if either Party expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.<sup>14</sup>*

48. Panama's actions amounted to an expropriation of Claimant's investment within the meaning of Article IV(1) of the Treaty as they had the effect of depriving Claimant of all or substantially all of its investment in Cerro Chorchá. The Mineral Reserve Resolution, among other actions, destroyed the economic value of Claimant's investment as it deprived Claimant of its right to extract any of the minerals which it had found in commercial quantities. Moreover, this deprivation was permanent as the Mineral Reserve Resolution destroyed forever any possibility for Claimant to commence extraction work on the Property. Indeed, the facts show that the whole purpose and intent behind the Mineral Reserve Resolution and Panama's other actions was to remove Claimant from the project altogether. As such, Panama's actions were nothing more than a *de facto* expropriation of Claimant's investment.

49. As stated above, Article IV(1) of the Treaty obligated Panama to respect several conditions in the event it chose to effect an expropriation of Claimant's investment, including (i) that the expropriation be done solely for a public or social purpose;

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<sup>14</sup> Exhibit C-13 at pp. 3-4.

(ii) in a non-discriminatory manner; (iii) upon payment of prompt, adequate and effective compensation; and (iv) in accordance with due process and the general principles of treatment laid down in Article II(2). Article IV(1) further obligated Panama to pay compensation equivalent to the full value of the expropriated investment immediately before the expropriatory action became known, which compensation was to include interest at a commercially reasonable rate, which was to be paid without delay, and which was to be effectively realizable and freely transferable. Panama has not complied with any of these requirements. Panama's expropriatory measures were taken in order to eject Claimant from the project, not for any public or social purpose; they discriminated against Dominion as a foreign investor; and they were not accompanied by a single penny of compensation. Indeed, despite Claimant's repeated attempts to engage the Panamanian government, Panama has never even acknowledged that its actions amounted to an expropriation of Claimant's investment in the first place. Panama thus stands in breach of its Article IV obligations to Claimant.

**B. Breach of Article II of the Treaty (Fair and Equitable Treatment)**

50. Article II, paragraph 2 of the Treaty expressly provides as follows:

*Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws and international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operations, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party.<sup>15</sup>*

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<sup>15</sup> Exhibit C-13 at pp. 2-3.

51. Panama's actions breached its obligation to accord fair and equitable treatment to Claimant's investment. As described above, Claimant had a right to be develop the concession its wholly owned subsidiary legitimately had been granted by Panama, free from attempts by the government to extract from Claimant shares in its subsidiary, cash, or other items of value.

52. Even with the actions of Panama viewed in the best light possible, Claimant had a legitimate expectation that it would be allowed to extract any minerals which were found in commercial quantities on the Property. This legitimate expectation was enshrined in the Contract itself. Yet the Mineral Reserve Resolution and Panama's other actions to target Claimant frustrated those legitimate expectations, and were taken in an entirely arbitrary manner. Indeed, the facts show that the Mineral Reserve Resolution itself was nothing more than a tool to force Claimant out of the project so that the government could replace Claimant with another investor. As such, Panama undeniably denied Claimant fair and equitable treatment.

53. Regardless, Panama's actions also denied fair and equitable treatment as they unjustly enriched Panama at Claimant's expense. Having induced Claimant to invest substantial sums into the exploration of the Property based upon its grant of the Contract to Cuprum, and which investment allowed Claimant to make a commercial discovery of mineral resources on the Property, Panama then ejected Claimant from the project in order to grant a concession over the Property to another investor. That this scheme has not yet come to fruition is irrelevant. When Panama next decides to allow mining of Cerro Chorchá, the concession value will be based on the knowledge that Cerro Chorchá possesses remarkable mineral resources which were defined and developed through Claimant's investment. Under general principles of customary international law, Panama is obligated to account to Claimant for its unjust enrichment as the host State. It has failed to do so. This conduct amounts to a separate and further breach of Article II of the Treaty.



**C. Claimant's Claim for Damages**

54. The above breaches of the Treaty caused tremendous damage to Claimant. These damages include without limitation (i) the loss of all acquisition, exploration and development costs which Claimant spent on the project, (ii) the loss of the fair market value of the Claimant's ownership of the project which it could have achieved through the sale of those interests to a third party, and (iii) the loss of the net present value of the future cash flows which Claimant would have realized through its commercial production of the known mineral resources on the concession but for the actions taken by Panama in breach of the Treaty. Based upon a preliminary assessment of these losses, Claimant presently estimates its damages at not less than USD 263.8 million. Claimant will provide a more detailed quantification and substantiation of its losses in due course in these proceedings.

**PART V - ARBITRATION UNDER THE TREATY**

55. Article VII of the Treaty provides for the resolution of investor-State disputes through international arbitration as follows:

*1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of another Party; (b) the interpretation or application of any investment authorization granted by its foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.*

*2. In the event of an investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of the first Party, the parties to the dispute shall initially seek to resolve it by consultation and negotiation. ...*

3. (a) *At any time after six months from the date upon which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute:*

*(i) to the International Centre for the Settlement of Investment Disputes (“Centre”), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 (“ICSID Convention”), for settlement either by conciliation or binding arbitration;*

*(ii) to the Additional Facility of the Centre, if the Centre is not available, for settlement either by conciliation or binding arbitration; or*

*(iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL Rules”), for settlement by binding arbitration.*

*Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre, the Additional Facility or in accordance with the UNCITRAL Rules, provided the dispute has not, for any reason, been submitted for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute, and the national or company concerned has not brought the dispute before the courts of justice, administrative tribunals or agencies of competent jurisdiction of either Party.<sup>16</sup>*

56. As detailed below, all of the conditions for submission of the current dispute to binding arbitration are met.

**A. Presence of an “Investment Dispute”**

57. The first condition for the submission of a dispute to arbitration under the Treaty is the existence of an “investment dispute”. Article VII(1)(c) of the Treaty expressly defines the term “investment dispute” to include “*an alleged breach of any right conferred by this Treaty with*

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<sup>16</sup> Exhibit C-13 at pp. 4-5; Exhibit C-14 at p. 2.

*respect to an investment*". Claimant clearly has an "investment dispute" with Panama as so defined.

58. Firstly, Claimant made an "investment" within the meaning of the Treaty. Article 1(d) of the Treaty in turn defines the term "investment" as "*every kind of investment, owned or controlled directly or indirectly, including equity, debt, and service and investment contracts*", including without limitation the following:

*(i) tangible and intangible property, including rights, such as mortgages, liens and pledges; (ii) a company or shares of stock or other interests in a company or interests in the assets thereof, (iii) a claim to money or a claim to performance having economic value and associated with an investment; ... (v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products; [and] (vi) any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products.*<sup>17</sup>

59. Claimant's investment into Cerro Chorchá clearly qualifies as an "investment" as it easily meets several prongs of this definition. Claimant's investment in the project included without limitation: (i) the shares which it owned in Cuprum, (ii) the concession rights for Cerro Chorchá which it indirectly owned through Cuprum, and (iii) the capital expenditures which it made into exploring the Property and otherwise developing the project.

60. Secondly, as detailed above in **Part IV** and in its Notice of Dispute, Claimant has alleged several breaches of its rights under the Treaty, including without limitation Panama's breaches of its obligations in Articles II and IV of the Treaty. As such, this dispute unquestionably arises out of Panama's alleged breaches of its obligation under the Treaty with respect to Claimant's investment, such that Claimant is entitled to pursue their claims in an arbitration under the Treaty.

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<sup>17</sup> Exhibit C-13 at pp. 1-2.

**B. Panama is a Party to the Treaty**

61. The Treaty was done at Washington on October 27, 1982, and entered into force on 30 May 1991 pursuant to the exchange of ratifications by all Parties in accordance with Article XIII.<sup>18</sup> Article XIII further provides for the Treaty to remain in force for a period of ten years, and to continue to remain in force unless terminated in accordance with the provisions of the Treaty. On 1 June 2000, the United States and Panama signed a Protocol to amend the Treaty, which entered into force on 14 May 2001.<sup>19</sup> The Treaty has never been terminated by either Party, and thus it continues to remain in force and binding upon Panama.<sup>20</sup>

**C. Claimant is a “Company of the other Party” to the Treaty**

62. Article I(c) of the Treaty defines a “company of a Party” in relevant part as:

*a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof in which:*

*(i) natural persons who are nationals of such Party; or*

*(ii) such Party or political subdivision thereof or their agencies or instrumentalities*

*have a substantial interest as determined by such Party.<sup>21</sup>*

63. Claimant clearly qualifies as a company of the United States, the other contracting Party to the Treaty, pursuant to the above definition. Claimant is duly incorporated under the laws

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<sup>18</sup> Exhibit C-15 at p. 226.

<sup>19</sup> Exhibit C-14 at p. 4; Exhibit C-16.

<sup>20</sup> On 31 October 2012, the US-Panama Trade Promotion Agreement (the “TPA”) entered into force. *See* Exhibit C-17. Article 1.3(2) of the TPA suspended Articles VII and VIII of the Treaty, but contained a carve-out at Article 1.3(3) which specifically provides that Articles VII and VIII would **not** be suspended for a period of ten years from the date of entry into force of the TPA with respect to investments which were covered by the Treaty as of the date of entry into force of the TPA on 31 October 2012. As Dominion made its investment in Cerro Chorchá well before the TPA’s entry into force and the Treaty clearly covered that investment up until the entry into force of the TPA, the TPA’s carve-out applies and the Treaty remains in effect and binding on Panama with respect to Dominion’s investment.

<sup>21</sup> Exhibit C-13 at p. 1.

of the State of Delaware, and U.S. citizens hold a substantial interest in Dominion through their majority ownership of the company.<sup>22</sup>

**D. The Parties Have Consented to Arbitration of this Dispute**

64. Finally, both Claimant and Panama have expressed their consent in writing to submit this dispute to arbitration.

65. As for Panama, it expressed its consent to arbitrate in Treaty itself. Article VII of the Treaty provides in relevant part as follows:

*Each Party hereby consents to the submission of an investment dispute in accordance with the choice of the national or company under paragraph 3(a)(i), (ii), and (iii). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:*

*(i) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute; and*

*(ii) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York, June 10, 1958, under the auspices of the United Nations for an “agreement in writing”.<sup>23</sup>*

66. As for Claimant, it has expressed its written consent to arbitrate through the filing of this Request and its choice of ICSID arbitration pursuant to Article VII(3)(a)(i) of the Treaty.

**E. Six Months Have Elapsed Since the Dispute Arose**

67. After its ejection from the Project, Claimant actively pursued an amicable resolution of its dispute with Panama. Panama, however, has refused to acknowledge its expropriation of Claimant’s investment without compensation nor any of its other breaches of the

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<sup>22</sup> Exhibit C-18.

<sup>23</sup> Exhibit C-14 at pp. 2-3.

Treaty. At Claimant's urging, U.S. Under-Secretary of Commerce Francisco Sanchez wrote to the Minister of Commerce and Industries on 4 August 2010, expressing the U.S. government's concerns about Panama's mistreatment of Claimant as a foreign investor. The Minister of Commerce and Industries issued a response on 6 August 2010 in which he attempted to defend MICI's actions based upon factually incorrect statements, which Claimant refuted at length in a subsequent letter dated 30 August 2010.<sup>24</sup>

68. After further efforts to engage Panama failed, on 5 December 2013, Claimant issued a Notice of Dispute under the Treaty in which it requested formal consultations in an attempt to resolve the dispute amicably.<sup>25</sup> In January 2015, representatives of Claimant held a meeting with representatives of Panama in Panama City to discuss an amicable resolution of Dominion's claims, but the parties were unable to settle their dispute. Since then, Panama has ceased all communications with Dominion. Claimant is thus compelled to file this Request for Arbitration to hold Panama responsible for its breaches of the Treaty and seek the relief that is its due.

## **PART VI - ICSID JURISDICTION**

69. In addition to establishing jurisdiction under the Treaty, the conditions are also met for Claimant to submit its claims to ICSID arbitration pursuant to Article VII(3)(a)(i) of the Treaty. Under Article 25 of the ICSID Convention, an investor-State dispute may be submitted to ICSID jurisdiction when the following five elements are met: (a) the dispute in question is a legal dispute, (b) the dispute arises directly out of an investment, (c) the State party is a Contracting State to the ICSID Convention, (d) the other party is a national or company of another

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<sup>24</sup> Exhibits C-19 and C-20.

<sup>25</sup> Exhibit C-21.

Contracting State, and (e) the parties have consented to ICSID jurisdiction.<sup>26</sup> All of these conditions are met in this case.

**A. Claimant and Panama Have a Legal Dispute**

70. The matters at issue are “legal disputes” within the meaning of Article 25(1) of the Convention, as they concern Panama’s violations of Claimant’s legal rights under the Treaty and international law.

**B. The Dispute Arises Directly Out of Claimant’s Investment**

71. Although the ICSID Convention does not contain an express definition of the term “investment”, the term has been interpreted broadly. Claimant’s investment in Cerro Chorchá easily qualifies as an investment.

72. Firstly, as demonstrated above, Claimant’s investment in Cerro Chorchá clearly meets the definition of “investment” contained in the Treaty, which is a standard definition found in many BITs. This fact in and of itself should establish a finding of “investment” for purposes of Article 25 of the Convention.

73. Moreover, the facts show that Claimant made a substantial investment into the development of Cerro Chorchá over a period of several years. Specifically, it invested into the exploration of the Property, which included an extensive drilling program that was funded and supervised by Claimant. Claimant also invested into the development of the local workforce through the Social and Economic Program which was put in place with the Ngobe-Bugle indigenous people. Claimant’s investment also led to the discovery of commercial quantities of copper, gold and silver, and, when Panama chooses to exploit them, will provide significant and

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<sup>26</sup> Exhibit C-22 at p. 18.

lasting benefits to Panama and the Panamanian economy through the collection of mining royalties as well as further opportunities for local employment and other local service providers and suppliers on the mine site. These are all the hallmarks of a foreign direct investment which the ICSID Convention was intended to cover and further merit the treatment of Claimant's investment as a qualified "investment" within the meaning of Article 25 of the ICSID Convention.

**C. Panama is a Contracting State to the ICSID Convention**

74. Article 25(1) of the Convention provides that the jurisdiction of the Centre shall extend to any legal dispute arising "between a Contracting State ... and a national of another Contracting State".<sup>27</sup> Panama signed the ICSID Convention on 22 November 1995 and deposited its instrument of ratification on 8 April 1996. The ICSID Convention entered into force for Panama on 8 May 1996.<sup>28</sup> Thus, Panama is a Contracting State to the ICSID Convention.

**D. Claimants are Nationals of Another Contracting State**

75. Article 25(2)(b) of the ICSID Convention defines the term "national of another Contracting State" to include "any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration."<sup>29</sup>

76. The United States is a Contracting Party to the ICSID Convention. The United States signed the ICSID Convention on 27 August 1965 and deposited its ratification on 10 June 1966. The ICSID Convention entered into force for the United States on 14 October 1966.<sup>30</sup>

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<sup>27</sup> Exhibit C-22 at p. 18.

<sup>28</sup> Exhibit C-23 at p. 3.

<sup>29</sup> Exhibit C-22 at p. 18.

<sup>30</sup> Exhibit C-23 at p. 4.



77. Claimant is a company incorporated under the laws of the State of Delaware, and at all relevant times has had its headquarters in New York, New York. It is therefore a national of the United States within the meaning of Article 25(2)(b). Consequently, Claimant is a “national” of the United States and thus a “national of another Contracting” State within the meaning of Article 25 of the ICSID Convention.

**E. Claimant and Panama Have Both Consented to ICSID Jurisdiction**

78. Finally, both Claimant and Panama have expressed their consent to ICSID jurisdiction.

79. Panama’s consent in writing to ICSID jurisdiction is expressed in the Treaty itself.

Article VII(3)(b) of the Treaty expressly provides in relevant part as follows:

*Each Party hereby consents to the submission of an investment dispute in accordance with the choice of the national or company under paragraph 3(a)(i), (ii), and (iii). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:*

*(i) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties.<sup>31</sup>*

80. As for Claimant, it hereby consents to the jurisdiction of the Centre over the claims in this Request for Arbitration. Accordingly, both parties have given their express written consent to ICSID jurisdiction.

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<sup>31</sup> Exhibit C-14 at pp. 2-3.

## **PART VII – AUTHORIZATION OF THE REQUEST**

81. Pursuant to Rule 2(1)(f) of the Institution Rules, Claimant affirms that it has taken all necessary actions to authorize this Request. It has also duly authorized Akin Gump Strauss Hauer & Feld LLP to submit this Request on its behalf.<sup>32</sup>

## **PART VIII – NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT**

82. The Treaty does not specify the number of arbitrators or the method of appointment of the Arbitral Tribunal. With regard to Article 37 of the ICSID Convention, Claimant proposes that the tribunal consist of three arbitrators, with one appointed by Claimant, one appointed by Panama, and the presiding arbitrator to be appointed by agreement of the two party-appointed arbitrators, failing which the presiding arbitrator shall be appointed by the Chairman of the Administrative Council of ICSID. Claimant proposes that both parties appoint an arbitrator within 14 days of their agreement to this proposal, with the two party-appointed arbitrators to agree upon the presiding arbitrator within 30 days of their appointment, failing which the Chairman of the Administrative Council of ICSID shall be requested to appoint the presiding arbitrator as soon as possible but in no event later than 90 days from the date of notice of registration of the Request. Panama is hereby invited to respond to this proposal within 20 days of the date of this Request in accordance with Rule 2(1)(b) of the ICSID Arbitration Rules.

## **PART IX – PLACE OF ARBITRATION**

83. Pursuant to Article 62 of the ICSID Convention, Claimant desires that the arbitration proceedings be held at the Permanent Court of Arbitration at the Hague, the Netherlands.

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<sup>32</sup> Exhibit C-24; Exhibit C-25.

## **PART X – LANGUAGE**

84. Pursuant to Rule 22(1) of the ICSID Rules of Procedure for Arbitration Proceedings, Claimant selects English as the procedural language for the arbitration.

## **PART XI – REQUEST FOR RELIEF**


85. On the basis of the foregoing, Claimant respectfully requests an award from the Tribunal containing the following relief:

- a) a declaration that the dispute is within the jurisdiction and competence of the Centre and the Tribunal;
- b) a declaration that Panama has violated the Treaty and international law with respect to Claimant's investment;
- c) an order directing Panama to pay damages to Claimant in an amount presently estimated at not less than USD 263.8 million, which amount may be further developed and quantified in the course of this proceeding;
- d) an order directing Panama to pay pre- and post-award interest to Claimant at the applicable rate until the date of Panama's full and effective payment;
- e) an order directing Panama to pay all of Claimant's costs of the present arbitration proceedings inclusive of all of its attorneys' fees and expenses; and
- f) such other relief that the Tribunal may deem just and proper.

**PART XII - RESERVATION OF RIGHTS**

86. Claimant hereby reserves the right to amend or supplement the claims stated here, and to submit such further pleadings, arguments, exhibits and evidentiary materials as may be appropriate or required in connection therewith.

Geneva, Switzerland  
29 March 2016

  
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