

Bolivia agrees to pay ICSID award

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A still from the Government press conference announcing the settlement (Credit: <https://twitter.com/minineriabo>)

Bolivia has agreed to pay US\$42.6 million to satisfy an award from the International Centre for Settlement of Investment Disputes (ICSID) in favour of Chilean company Quiborax, ending a 12-year dispute over the expropriation of mining concessions by a previous administration.

At a press conference on 7 June, Bolivia’s minister of mining, César Navarro Miranda, and attorney general Pablo Menacho [announced](#) that the government had signed a contract agreeing to “full, timely and final” compliance with the award.

Under its terms, Bolivia would “definitely compensate” Quiborax and its Bolivian subsidiary Non-Metallic Minerals in the amount of US\$42.6 million – which the state says represents a significant saving on the US\$151 million the claimants had originally sought in the case.

An ICSID tribunal chaired by Swiss arbitrator Gabrielle Kaufmann-Kohler and including Canada's Marc Lalonde and France's Brigitte Stern [issued](#) the award in 2015, requiring Bolivia to pay US\$48.6 million plus compound interest as well as half the claimants' arbitration costs.

The state says its total liability under the award was US\$57.2 million but that the claimants have agreed to grant a 20% discount on the damages awarded and forgo half the interest and all of the costs owed to them, saving the state US\$14.6 million.

Unlike most other recent treaty cases against Bolivia, the dispute concerned events pre-dating the inauguration of Bolivia's leftist president Evo Morales in 2006. Quiborax, Non-Metallic Minerals and Chilean national Allan Fosk filed for arbitration in the previous year, seeking damages for the expropriation of 11 mining concessions in the Salar de Uyuni region of southern Bolivia by the government of president Carlos Mesa.

The parties reached an oral settlement in 2008 but resumed arbitration after Bolivia initiated criminal proceedings against Non-Metallic Minerals, accusing the company and its shareholders of forging board minutes to include Quiborax and Fosk so that it could have standing to bring the ICSID claim under the Chile-Bolivia bilateral investment treaty.

The tribunal issued a decision on provisional measures in 2010, ordering the state to suspend the criminal proceedings while the arbitration was pending. Bolivia argued that the decision amounted to an infringement of its sovereignty and requested the disqualification of all three arbitrators on grounds of bias. This challenge was later rejected by the chairman of the ICSID administrative council.

A decision on jurisdiction in 2012 allowed Quiborax and Non-Metallic Minerals to proceed with their claims, but refused to hear claims by Fosk. In the final award on liability, which held the state liable for the expropriation, the state's appointee, Stern, [issued](#) a partially dissenting opinion.

Bolivia filed an application to annul the award, alleging that it contained "serious violations of procedural rules" and that the tribunal acted "outside of its powers to the detriment of Bolivia".

An ad hoc committee chaired by Spain's Andrés Rigo Sureda and including Guatemala's Milton Argueta Pinto and Sweden's Christer Söderlund [rejected](#) the application last month, finding that the tribunal's decision to order the suspension of domestic criminal proceedings had not been a manifest excess of powers.

In the annulment and the arbitration proceedings, Quiborax was represented by a team from Chilean firm [Bofill Mir & Alvarez Jana Abogados](#) led by partner Andrés Jana in Santiago. Bolivia instructed a team from Dechert led by Eduardo Silva Romero in Paris for the annulment proceedings. Dechert had initially represented the state in the arbitration, before GST of counsel Diego Brian Gosis took over in 2013.

In the 7 June press conference, the mining minister criticised the "irresponsible way" in which the expropriation of the Salar de Uyuni concessions were conducted, blaming the former government under president Mesa.

On the settlement agreement, Menacho said: "Having promptly, totally and definitively accepted the decision of an international tribunal, Bolivia fully confirms its tradition of being a country that complies with and respects its international commitments and expects the same from other countries."

Bolivia has a good track record of paying out on awards. In 2014, the state [reached](#) a deal with UK electricity company Rurelec for the rapid payment of a US\$35 million investment treaty award, while a year later it agreed to pay Pan American Energy US\$357 million to settle a dispute over the 2009 expropriation of its natural gas unit Chaco – thought to be the highest ever settlement the state had paid to a foreign investor.

Quiborax SA, Non-Metallic Minerals SA & Allan Fosk Kaplún v Plurinational State of Bolivia (ICSID Case No. ARB/06/2)

Ad hoc committee

Andrés Rigo Sureda (Spain) (President)
Milton Argueta Pinto (Guatemala)
Christer Söderlund (Sweden)

Counsel to Quiborax, Allan Fosk and Non-Metallic Minerals

[Bofill Mir & Alvarez Jana Abogados](#)

Partners Andres Jana and Rodrigo Gil, and associates Johanna Klein Kranenberg, Constanza Onetto and Carla Sepulveda in Santiago

Counsel to Bolivia

Procurador General del Estado

Pablo Menacho Diederich, Ernesto Rossell Arteaga and Yovanka Oleden Tapia

Dechert

Partners Eduardo Silva Romero and José Manuel García Represa in Paris; international counsel Alvaro Galindo and special legal consultant Juan Felipe Merizalde Urdaneta in Washington, DC; and associates Audrey Caminades and Luis Miguel Velarde in Paris

Tribunal

Gabrielle Kaufmann-Kohler (Switzerland)

Marc Lalonde (Canada)

Brigitte Stern (France)

Counsel to Quiborax, Allan Fosk and Non Metallic Minerals

[Bofill Mir & Alvarez Jana Abogados](#)

Partners Andres Jana and Rodrigo Gil, and associates Johanna Klein Kranenberg, Constanza Onetto, Carla Sepulveda and María Victoria Demarchi in Santiago

[Guevara & Gutiérrez - Servicios Legales](#)

Partners Ramiro Guevara and Jorge Luis Inchauste in La Paz

Counsel to Bolivia

Gomm & Smith (from September 2013)

Partner Diego Brian Gosis in Miami

Dechert (from March 2010 to 2013)

Partners Eduardo Silva Romero and Pierre Mayer with associate José Manuel García Represa in Paris
Foley Hoag (until December 2009)
Partners Paul Reichler and Ronald Goodman, with counsel Alberto Wray in Washington, DC

Experts for Quiborax, Allan Fosk and Non Metallic Minerals

Partner Juan Pablo de Luca on jurisdiction
Professor Carlos Rosenkrantz from Yale University on jurisdiction
Behre Dolbear & Company on valuation
Navigant Consulting on valuation

Experts for Bolivia

Professor Iván Salame from the Universidad Católica Boliviana on jurisdiction
Econ One Research on valuation

- Practice area : [Arbitration](#), [Mining & metals](#)
- Country : [Bolivia](#), [Chile](#), [International](#)
- Industry : Mining and Metals

https://latinlawyer.com/article/1170630/bolivia-agrees-to-pay-icsid-award?qator_td=nwNVER3nOmnKmGduXc7bifDmLQPqKjHww3iC5V%2fjPsbItJDOWdCI0DfZK%2b1UTnyvmfZL%2bWQbAcRlxZED0dv8Zq6%2byfUIHtb49s%2bn7vawNqE60%2fl6n8boB38%2fFkniACG0qD8eklPJoatfn5644jxaGKijG7zVYeqBmHqW1ZaSq0NftzDlzVkhQ2HdJ9DQSAqLZ8dROXVmi6clASvePnRS211tyuwAfB8XT%2f1KV7KX3TFJIVell%2bU2laqELZ0tclb