Anglo American plc confirms that, on 18 January 2019, an award was issued in its arbitration against Venezuela brought under the UK-Venezuela Bilateral Investment Treaty (“the Treaty”) (ICSID Case No. ARB(AF)/14/1). The case related to Anglo American’s investment in Minera Loma de Níquel, C.A. (“Loma”), its nickel mining subsidiary in Venezuela. The dispute concerned certain ferronickel processing assets and related inventory at the mine site at the end of Loma’s concession in November 2012, and certain changes in practices concerning VAT credits. Venezuela objected to the jurisdiction of the tribunal to adjudicate the dispute and submitted a counterclaim in respect of the alleged failure of Loma to pay certain taxes.

The Tribunal unanimously dismissed Venezuela’s jurisdictional objections and its counterclaims. On the merits of Anglo American’s claims, by a majority of 2 to 1,  the Tribunal held:

* As a matter of Venezuelan law, the ferronickel processing assets and related inventory reverted to Venezuela on expiry of the mining concessions. As a result, there was no breach of the Treaty for the taking of those assets; and
* The change in practice of Venezuela’s tax authorities regarding VAT credits was not a breach of the Treaty.

The dissenting arbitrator held that Venezuela had breached the Treaty in respect of both of Anglo American’s claims.

The Tribunal further ordered that each party bear its own costs and expenses incurred during the arbitration.