

Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM)

v. Burkina Faso

(ICSID Case No.ARB/97/1)

Introductory Note

On September 27, 1991, Société d'Ingénierie et de Réalisations à l'Exportation (SIREX), a company incorporated under the laws of France, and Burkina Faso concluded a joint venture agreement for gold mining operations in Burkina Faso (the Agreement). The Agreement entered into effect on October 24, 1991. Under the Agreement, the parties foresaw the establishment of a Burkinabe company for the purpose of carrying out gold mining operations at two specific sites. To this effect, on November 28, 1991, the parties constituted a joint venture company under the name of Compagnie d'Exploitation de Mines d'Or au Burkina (CEMOB).

The Agreement also provided for SIREX to transfer its rights and obligations under the Agreement to a French company created specifically to carry out the Agreement. In early 1991, before the Agreement entered into effect, SIREX incorporated Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM). On November 26, 1991, one month after the Agreement entered into effect, SIREX transferred to SIREXM its rights and obligations under the Agreement.

During the execution of the Agreement, CEMOB decided to increase its capital in order to conclude together with SIREXM certain cooperation agreements with third parties. Burkina Faso objected to this capital infusion, arguing against the potential dilution of its initial participation in CEMOB. The increase of capital took place without Burkina Faso's participation. As a result, its percentage of ownership in CEMOB decreased.

Burkina Faso placed the company in receivership and sought the termination of the Agreement, arguing violation of the constitution of CEMOB. Burkina Faso based its argument on the fact that SIREXM was created before the Agreement entered into effect.

After the dispute arose between the parties, SIREXM attempted to initiate a conciliation proceeding according to Article 37 of the Agreement, which provided for the amicable settlement of disputes through conciliation, or failing such amicable settlement, by recourse to arbitration under the ICSID Convention. Burkina Faso having refused to engage in such proceeding, SIREXM brought the case to ICSID on the basis of the ICSID clause contained in the Agreement, seeking to avoid the termination of the Agreement, or in the alternative, damages for the termination.

The request was registered on January 27, 1997. The Tribunal in this case consisted of three arbitrators. Mr. Séna Agbayissah, a Togolese national, Professor Pierre

Tercier, a Swiss national, and Professor A.A. Fatouros, a Greek national, who served as the President of the Tribunal.

After SIREXM presented its memorial on the merits, Burkina Faso raised objections to jurisdiction. Burkina Faso argued that the Agreement was invalid and sought its nullification on the basis that an employee of one of the Ministries of Burkina Faso, who later became the general director of CEMOB, was also a shareholder of SIREXM. In accordance with ICSID Arbitration Rule 41 (3) the Tribunal decided to suspend the proceedings on the merits and granted time periods for the parties to submit briefs on the objections to jurisdiction. A session with the parties also took place in order to hear the parties' oral arguments. After the session, the Tribunal decided to join the objections to jurisdiction to the merits of the dispute, according to ICSID Arbitration Rule 41 (4).

The award in this case was rendered in French. According to Article 48 (5) of the ICSID Convention, the Centre shall not publish an award without the consent of the parties involved. However, Rule 48 (4) of the ICSID Arbitration Rules allows ICSID to publish excerpts of the legal rules applied by the Tribunal. The extracts that follow are the legal rules applied by the Tribunal in the present case.

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