

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**BSG Resources Limited, BSG Resources (Guinea) Limited and
BSG Resources (Guinea) SARL**

v.

Republic of Guinea

(ICSID Case No. ARB/14/22)

PROCEDURAL ORDER No. 11

Post-Hearing Matters

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Professor Albert Jan van den Berg, Arbitrator
Professor Pierre Mayer, Arbitrator

Secretary of the Tribunal
Mr. Benjamin Garel

Assistant to the Tribunal
Dr. Magnus Jesko Langer

7 June 2017

1. Background

1. From 22 May to 1 June 2017, the Tribunal held a hearing on preliminary objections and merits in Paris.
2. In their written submissions and during the hearing, the Claimants have alleged that the following documents are forged (the “Disputed Documents”):

Document	Date	Exhibit
(i) Pentler/Ms. Touré Protocol	20 February 2006	R-24
(ii) Engagement Letter N° 1 Pentler/ Ms. Touré	undated, legalized 21 July 2006	R-25
(iii) Engagement Letter N° 2 Pentler/ Ms. Touré	undated, legalized 21 July 2006	R-26
(iv) BSGR Guinea/Matinda Protocol	20 June 2007	R-27
(v) BSGR Guinea/Matinda Protocol	27 February 2008	R-28
(vi) BSGR Guinea/Matinda Protocol	28 February 2008	R-29
(vii) « Attestation de cession d’actions de Mme Touré à BSGR »	2 August 2009	R-269
(viii) Payment Letter Pentler/Ms. Touré	8 July 2010	R-30
(ix) Pentler/Matinda Contract	3 August 2010	R-31
(x) Pentler/Matinda/Ms. Touré Contract	undated	R-32
(xi) Pentler/Matinda Contract	3 August 2010	R-346

3. It has also emerged that the originals of the Disputed Documents are within the custody of the FBI, but for documents (vii) (Exh. R-269) and (xi) (Exh. R-346).
4. In the course of the hearing, the Parties exchanged correspondence on various matters, including the status and chain of custody of the original documents and the circumstances of Mamadie Touré (see in particular, the Claimant's letter of 28 May 2017 and the Respondent's communication of the same date attaching a declaration by FBI Agent Christopher Martinez, admitted into the record as exhibit R-587).
5. On 31 May 2017, the Tribunal requested the Parties' views regarding the advisability of (i) hearing Mamadie Touré as a witness and (ii) conducting a forensic inspection to ascertain the authenticity of disputed documents.
6. Having considered the Parties' views, the Tribunal advised the Parties at the hearing that (i) it would not hear Ms. Touré in light of the due process issues raised by the Claimants and the practical difficulties raised by the Respondent, and (ii) it intended to appoint an expert to conduct a forensic inspection of the originals of the documents listed in para. 2 above (the "Document Inspection").
7. The present order addresses the post-hearing matters discussed at the end of the hearing and the first procedural steps to put in place the Document Inspection.

2. Correction and redaction of the transcript

8. Pursuant to paragraph 22.3 of Procedural Order No. 1 ("PO1"), the Parties shall agree on corrections to the transcripts within **30 days** from the receipt of the sound recordings and of the transcripts, whichever is later.
9. Within that time limit, the Parties shall also seek to agree on the passages of the transcripts which are protected under Procedural Order No. 2 ("PO2") and Article 6(3)(iii) of the consolidated text of the UNCITRAL Rules on Transparency as amended by PO2.
10. In case of disagreement on corrections or redactions, the Tribunal will decide.

11. Once finalized, the redacted version of the transcripts shall be made accessible to the public on the ICSID website, in accordance with Article 12(iii) of PO2.

3. Audio-video recording

12. Pursuant to paragraph 14(i) of PO2, an audio-video recording was made of the hearing. In view of the fact that the video feed which was webcast during the hearing was moderated in conformity with the protocols regarding the protection of confidential documents or information, ICSID will make the audio-video recording accessible to the public on the ICSID website as soon as the Secretariat has finalized the recording.

4. Document Inspection

4.1. Chain of custody and access to Disputed Documents

13. By **16 June 2017**, the Respondent shall provide information on (i) the chain of custody of the originals of the Disputed Documents; and (ii) the method to access these originals for purposes of Document Inspection.

14. The Claimants shall comment on such information by **26 June 2017**.

4.2. Witness statement of Mr. Noy in the LCIA arbitration

15. The Parties shall advise the Tribunal by **16 June 2017** whether they have been able to agree on confidentiality terms upon which Mr. Noy's witness statement in the LCIA arbitration could be filed in this arbitration.

4.3. Identification of a Tribunal-appointed expert

16. In parallel to the foregoing, the Tribunal will seek to identify an independent forensic expert to inspect the Disputed Documents and file a report setting out his or her methodology and findings. It will submit the name and CV of the proposed expert to the Parties for comments.

4.4. Expert's Terms of Reference

17. As soon as practical, the Tribunal will submit to the Parties for their comments the Expert's draft Terms of Reference dealing with the procedure for the inspection and the issuance of the report, costs of the Expert, and any other matters related to the Document Inspection.

5. Post-Hearing Briefs

18. The Parties will file post-hearing briefs following the Document Inspection covering both the evidence gathered at the May-June hearing and the findings deriving from the Document Inspection, according to further directions to be given in due time.

On behalf of the Tribunal

[SIGNED]

Gabrielle Kaufmann-Kohler
President of the Tribunal