

**IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF ARBITRATION OF THE
INTERNATIONAL CENTRE FOR THE SETTLEMENT
OF INVESTMENT DISPUTES**

ICSID Case No. ARB/14/22

**BSG RESOURCES LIMITED
(Claimant)**

v

**THE REPUBLIC OF GUINEA
(Respondent)**

CLAIMANT'S COMMENTS ON EUROGAS DECISION

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1. On 14 August 2015, the Tribunal granted leave to BSGR to file and comment on the Decision on the parties' requests for provisional measures dated 23 June 2015 in ICSID Case No. ARB/14/14 *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic* ("**the EuroGas Decision**").¹ The *Eurogas* Decision fully supports BSGR's position that security for costs should not be ordered.
2. As the Tribunal will recall, BSGR has submitted that security for costs can only be ordered in exceptional, if not in extreme, circumstances.² *Inter alia*, BSGR has referred to and relied on (i) *Maffezini v. Spain*, (ii) *Victor Pey v. Chile*, (iii) *Grynberg v. Granada*, (iv) *Burimi v. Albania* and (v) *Guaracachi v. Bolivia* as supporting BSGR's contentions. The *EuroGas* Decision can now be added to this list, rightly determining that "*as regularly held by ICSID arbitral tribunals, security for costs may only be granted in exceptional circumstances*".³
3. BSGR has also submitted that of the nine ICSID tribunals that have considered whether exceptional circumstances existed to justify the grant of a security, eight have determined that no such circumstances existed.⁴ The *EuroGas* Tribunal was the 10th ICSID tribunal to consider this issue and the ninth to find that no exceptional circumstances existed to justify a security.⁵ This demonstrates again that a Tribunal should not lightly make a finding of exceptional circumstances.
4. BSGR has further submitted that security for costs cannot be granted on the ground of an ICSID claimant's financial hardship.⁶ Once again, the *EuroGas Tribunal* agrees: "[...] *it is not part of the ICSID*

¹ Exhibit CL-30.

² Claimant's Response to the Requests of the Republic of Guinea Under Articles 28(1) and 39(1) of the ICSID Arbitration Rules dated 5 June 2015, para. 75 ("**BSGR's Response**").

³ *EuroGas* Decision, para. 121.

⁴ BSGR's Response, para. 76.

⁵ *EuroGas* Decision, para. 123 ("*Yet, no such exceptional circumstances have been evidenced in the instant case*").

⁶ BSGR's Response, paras. 94 to 99.

*dispute resolution system that an investor's claim should be heard only upon the establishment of a sufficient financial standing of the investor to meet a possible costs award"*⁷ and "*financial difficulties [...] do not necessarily constitute per se exceptional circumstances justifying that the Respondent be granted an order of security for costs"*.⁸

5. Finally, BSGR has submitted that Guinea's assertion that Guinea allegedly has a serious defence on the merits is irrelevant in the consideration of Guinea's provisional measures requests.⁹ The *EuroGas* Tribunal supports BSGR's position. Whereas the Slovak Republic based its request for security *inter alia* on the ground that it had a strong defence on the merits¹⁰, the *EuroGas* Tribunal did not take any "strong defence" argument into consideration when rejecting the requested measure.
6. In summary, the *EuroGas* decision is entirely consistent with and reinforces the position which BSGR took in its earlier submissions.

Signed



Mishcon de Reya

Submitted for and on behalf of BSG Resources Limited

21 August 2015

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⁷ *EuroGas* Decision, para. 120.

⁸ *Ibid.*, para. 123.

⁹ BSGR's Response, para. 48.

¹⁰ *EuroGas* Decision, para. 112 ("*The Respondent contends that it has a plausible defense and that a future claim for cost reimbursement is not evidently excluded*").