

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**BSG Resources Limited v. Republic of Guinea**

**(ICSID Case No. ARB/14/22)**

**and**

**BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL v. Republic of Guinea**

**(ICSID Case No. ARB/15/46)**

***After consolidation***

**BSG Resources Limited, BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL  
v. Republic of Guinea**

**(ICSID Case No. ARB/14/22)**

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**PROCEDURAL ORDER NO. 5 (ICSID Case No. ARB/14/22)**

**PROCEDURAL ORDER NO. 1 (ICSID Case No. ARB/15/46)**

**Consolidation**

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

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14 February 2016

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## **Introduction**

The common session was held on 5 February 2016, by telephone conference.

Participating in the telephone conference were:

### **Members of the Tribunal**

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, Legal Counsel

### **Assistant to the Tribunal**

Dr. Magnus Jesko Langer

### **Participating on behalf of Claimants**

Mr Karel Daele, Mishcon de Reya LLP  
Mr Zachary Segal, Mishcon de Reya LLP  
Mr Jack Burstyn, Mishcon de Reya LLP  
Mr Iain Quirck, Essex Court Chambers

### **Participating on behalf of Respondent**

Mr. Michael Ostrove, DLA Piper  
Mr. Théobald Naud, DLA Piper  
Mrs. Sârra-Tilila Bounfour, DLA Piper  
Mr. Laurent Jaeger, Orrick  
Mr. Yann Schneller, Orrick

The President of the Tribunal (President) opened the session at 11:30 (CET) and welcomed the participants. The President introduced the members of the Tribunal, the Secretary of the Tribunal (Secretary) and the Assistant to the Tribunal, and invited the Parties to introduce their respective representatives.

The Tribunal and the Parties considered the following:

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- The Agenda adopted by the Tribunal circulated by the Secretary on 26 January 2016;
- The Draft Procedural Order No. 5 circulated by the Secretary on 26 January 2016;
- The Parties' joint proposal dated 12 January 2016 regarding the modification of the procedural calendar; and
- Procedural Orders No. 1, 2, 3 and 4 rendered in ICSID Case No. ARB/14/22.

The session was adjourned at 12:50pm (CET).

An audio recording of the session was made and deposited in the archive of ICSID. A copy of the recording was subsequently made available to the Members of the Tribunal and the Parties.

Following the session, the Tribunal now issues the present Order:

**Order**

As indicated by the Tribunal in the Centre's letter of 21 January 2016, the purpose of the common session was two-fold: serving as the first session that the Tribunal was to hold in ICSID Case No. ARB/15/46 pursuant to Rule 13 of the ICSID Arbitration Rules; and providing an opportunity to address the practicalities of the consolidation of ICSID Case No. ARB/14/22 and ICSID Case No. ARB/15/46. Pursuant to ICSID Arbitration Rule 19, this Procedural Order records the Parties' agreements and the Tribunal's decisions with respect to consolidation and the procedural rules that will govern these proceedings.

1. **Consolidation**

- 1.1. The Tribunal recalls that BSG Resources Limited ("**BSGR Ltd**"), BSG Resources (Guinea) Limited ("**BSGR (Guinea) Ltd**"), BSG Resources (Guinea) SARL ("**BSGR (Guinea) SARL**"), and the Republic of Guinea ("**Guinea**") have all agreed that the dispute between BSGR Ltd and Guinea, on the one hand, and the dispute between BSGR (Guinea) Ltd, BSGR (Guinea) SARL and Guinea, on the other hand, be adjudicated by the same Tribunal in one consolidated ICSID proceeding (see, *inter alia*, the Parties' joint letter of 24 November 2015).

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- 1.2. In view of the Parties' agreements and comments, it is hereby decided that:
- 1.2.1. There shall be one single consolidated case in which BSGR Ltd, BSGR (Guinea) Ltd, BSGR (Guinea) SARL will all be Claimants and Guinea will be the Respondent.
  - 1.2.2. The consolidated case shall be referred to as BSG Resources Limited, BSG Resources (Guinea) Limited, BSG Resources (Guinea) SARL v. Republic of Guinea (ICSID Case No. ARB/14/22).
  - 1.2.3. BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL v. Republic of Guinea (ICSID Case No. ARB/15/46) shall be discontinued.
  - 1.2.4. The modified procedural calendar set in the Parties' joint proposal dated 12 January 2016 (reproduced in **Annex 1**), shall apply to the consolidated case.
  - 1.2.5. Procedural Orders Nos. 1, 2, 3 and 4 shall continue to apply and be binding on all the Parties to ICSID Case No. ARB/14/22 as consolidated, subject to the modifications set out in this Procedural Order.
  - 1.2.6. The Centre shall maintain only one case account and issue requests for advances on costs to the three Claimants jointly. ICSID's annual administrative fee shall be charged only once (i.e. to the consolidated case).
2. Provisions of Procedural Order No. 1 that continue to apply unchanged
- 2.1. The following provisions of Procedural Order No. 1 shall remain unchanged and continue to apply:
    - Paragraph 1 (Applicable Arbitration Rules);
    - Paragraph 2 (Constitution of the Tribunal and Tribunal Members' Declarations)
    - Paragraph 3 (Fees and Expenses of the Tribunal Members);
    - Paragraph 4 (Presence and Quorum);
    - Paragraph 5 (Decisions and Procedural Rulings of the Tribunal);
    - Paragraph 6 (Power to Fix Time Limits);
    - Paragraph 7 (Secretary of the Tribunal);

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- Paragraph 9 (Representation of the Parties);
- Paragraph 11 (Place of Proceeding);
- Paragraph 13 (Routing of Communications);
- Paragraph 14 (Number of Copies and Method of Filing of Parties’ Pleadings);
- Paragraph 17 (Submission of Documents);
- Paragraph 18 (Witnesses);
- Paragraph 19 (Experts);
- Paragraph 22 (Records of Hearings and Sessions);
- Paragraph 23 (Post-Hearing Memorials and Statements of Costs);
- Paragraph 24 (Publication); and
- Paragraph 25 (Additional Guidance on Evidence)

2.2. The other provisions of Procedural Order No. 1 are addressed below.

3. Constitution of the Tribunal and the Tribunal Members’ Declarations (paragraph 2 in Procedural Order No. 1)  
*Arbitration Rule 6*

Paragraph 2 of Procedural Order No. 1 shall be supplemented as follows:

- 3.1. The Tribunal in ICSID Case No. ARB/15/46 was constituted on 7 December 2015, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.
- 3.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the Secretary on 7 December 2015.
- 3.3. The Parties have no objection against the process of consolidation as it was implemented.

4. Appointment of Assistant to the Tribunal (paragraph 8 in Procedural Order No. 1)

Paragraph 8 of Procedural Order No. 1 is supplemented as follows:

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4.1. The Parties agree to the continuation of Mr. Langer's service as Assistant to the Tribunal in the consolidated Case under the terms set out in Procedural Order No. 1.

5. Apportionment of Costs and Advance Payments to ICSID (paragraph 10 in Procedural Order No. 1)  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

Paragraph 10 is supplemented as follows:

5.1. By communications of 29 January 2016 and 1 February 2016, Guinea and BSGR Ltd each consented to the costs of the common session being covered by funds from the initial advance payments made in ICSID Case No. ARB/14/22.

6. Procedural Languages, Translation and Interpretation (paragraph 12 in Procedural Order No. 1)  
*Articles 30(3) and (4) of the Administrative and Financial Regulation; Articles 20(1)(b) and 22 of the Arbitration Rules*

Paragraph 12.3 is amended as follows, being specified that the other provisions of paragraph 12 continue to apply:

6.1. Except in respect of pleadings already in the record, pleadings drafted in English shall be submitted together with a translation in French, to be filed within two weeks after the time-limit set in the procedural calendar. Expert reports, witness statements and other accompanying documentation shall be submitted in one procedural language without translation, except where the Tribunal, of its own initiative or on request, orders that a translation be produced.

7. References to "Annex A" of Procedural Order No. 1 (paragraphs 15, 16, 20 and 21 of Procedural Order No. 1)  
*Arbitration Rules 13, 20(1)(c), 20(1)(e), 29 and 31*

7.1. All the references to **Annex A** in Procedural Order No. 1 must be read as references to the modified calendar jointly proposed by the Parties on

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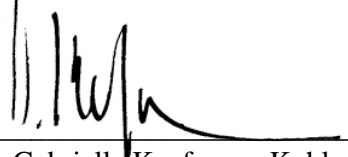
Procedural Order No. 1 (ICSID Case No. ARB/15/46)

12 January 2016, as modified by the Tribunal with the Parties' agreement and reproduced as **Annex 1** to this Procedural Order.

8. Agreement to full consolidation

- 8.1. The Tribunal notes that all Parties agree to the full consolidation of ICSID Cases Nos. ARB/14/22 and ARB/15/46. They accept all procedural steps in ICSID Case No. ARB/14/22 to date, as amended by this Procedural Order, as forming part of the fully consolidated case. They also accept that any decision and award in the consolidated case deal with claims raised in both ICSID Cases Nos. ARB/14/22 and ARB/15/46.

For and on behalf of the Tribunal



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Prof. Gabrielle Kaufmann-Kohler

President of the Tribunal

Date: 14 February 2016



# ANNEX 1

Description	By	Days	Dates
1. First session	All		Thursday, 23 April 2015
2. Memorial setting out factual and legal arguments and attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Claimant	139	Wednesday, 9 September 2015
3. Revised memorial including the factual and legal arguments of BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Claimants	299 (from point 1) 160 (from point 2)	Monday, 29 February 2016
4. Translation of revised memorial	Claimants		Monday 14 March 2016
5. Counter-Memorial (including preliminary objections, if any) setting out factual and legal arguments and attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Respondent	269 (from point 2) 110 (from point 3)	Friday, 17 June 2016
6. Requests for production of documents on preliminary objections and	Claimants and Respondent	17	Monday, 4 July 2016

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Dates</b>
liability			
7. Production of Non-Objected Documents and Objections	Claimants and Respondent	21	Monday, 25 July 2016
8. Responses to Objections	Claimants and Respondent	21	Monday, 8 August 2016
9. Decision on Request	Tribunal	28	Monday, 29 August 2016
10. Production as Ordered	Claimants and Respondent	28	Monday, 26 September 2016
11. Rejoinder (and reply on preliminary objections) attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Claimants	42 157 (from point 4)	Monday, 7 November 2016
12. Translation of Rejoinder	Claimants		Monday 21 November 2016
13. Rejoinder (and reply on preliminary objections) attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Respondent	110	Friday, 24 February 2017
14. Identification of Witnesses and Experts for cross-examination	Claimants and Respondent	7	Friday, 3 March 2017
15. Pre-Hearing Telephone Conference	All	7	Tuesday, 14 March 2017
16. Rejoinder on preliminary objections, if any	Claimants	14 35 (from point 11)	Friday, 24 March 2017
17. Translation of Rejoinder on preliminary objections	Claimants		Friday, 7 April 2017

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Dates</b>
18. Hearing	All		Between 10 and 31 May 2017 (while the entire period is for now reserved, the number of days that will be necessary for the hearing shall be determined at a later stage with the Tribunal's consent).
19. Simultaneous Post-Hearing Memorials	Claimants and Respondent		To be determined at the close of the hearing
20. Simultaneous Cost Submissions	Claimants and Respondent		To be determined at the close of the hearing