

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

v.

Republic of Guinea

(ICSID Case No. ARB/14/22)

PROCEDURAL ORDER No. 17

Pre-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

20 March 2018

I. ORGANIZATION OF THE HEARING

A. Purpose

1. The purpose of the Hearing is to address the Claimants' proposal to disqualify the Tribunal-appointed Experts (the "Experts") and to exclude their Report (the "Disqualification & Admissibility Issue"), as well as the authenticity of the Disputed Documents (as defined in Procedural Order No. 14) (the "Authenticity Issue"). To this end, the Tribunal will hear the Experts and the experts retained by the Parties (the "Party-retained experts").

B. Location

2. The Hearing will be held at the following venue:

ICC Hearing Centre (Bosphorus Room)

112, avenue Kléber (main entrance) / 10, avenue Raymond Poincaré (back entrance)

75016 Paris, France.

C. Expert Report of Mr. Robert Radley and examination of Party-retained experts

3. The Tribunal has carefully considered the Respondent's request dated 15 March 2018 to exclude the expert report of Mr. Radley submitted by the Claimants in lieu of their comments on the Tribunal-appointed Experts' Final Report, as well as the Claimants' response dated 19 March 2018.
4. The Tribunal recalls that the Experts' Terms of Reference, which were issued after the discussion at the hearing on the merits to which both sides refer, did not provide for the filing of reports by the Party-retained experts, but only for comments by the Parties themselves (paragraph 21). This said, as the Claimants rightly point out, it was clear that the Parties could be assisted by their experts in preparing the comments to the Experts' Final report. This is in fact what both Parties have done and while the Claimants

submitted a formal expert report, the Respondent conveyed its experts' comments by way of a submission.

5. The Tribunal therefore comes to the conclusion that the content of the expert report of Mr. Radley shall be accepted into the record as part of the Claimants' submissions and not as expert evidence.
6. Furthermore, it was also clear from the Experts' Terms of Reference that the Tribunal could decide to hear the Party-retained Experts on the Experts' Final Report at the Hearing (paragraph 22). Under the circumstances, the Tribunal considers that it may be assisted by the oral testimony of the Party-retained experts, especially by their comments on the Experts' Final Report. The following Hearing schedule thus provides for the examination of the Party-retained experts, being understood that the main purpose of the Hearing is to hear the Experts.

D. Schedule

7. The Hearing is scheduled to take place from 26 to 27 March 2018.
8. The Hearing shall start at 9:30am on Day 1 and at 9:00am on Day 2.
9. The Tribunal considers that it will be better informed on the Disqualification & Admissibility Issue if questions in this connection are asked from the Experts and possibly the Party-retained experts simultaneously with the questions regarding the Authenticity Issue since questions on either issue may be overlapping and questions regarding the Authenticity Issue may also be informative for the Disqualification & Admissibility Issue. That approach is without prejudice to the Tribunal's decision regarding the Disqualification & Admissibility Issue, to which the Parties are invited to devote their closing statements.

10. The schedule for the Hearing is therefore set as follows (times are indicative, unless they represent maximums):

DAY 1	
9:30-9:45	Introductory remarks by Tribunal President
Tribunal-appointed experts (“Experts”)	
9:45-10:45	Presentation by the Experts
<i>10:45-11:00</i>	<i>Break</i>
11:00-12:00	Claimants’ questions to the Experts (60 minutes)
12:00-13:00	Respondent’s questions to Experts (60 minutes)
<i>13:00-14:00</i>	<i>Lunch</i>
14:00-14:30	Questions from Tribunal
14:30-15:15	Follow-up questions from Claimants (45 minutes)
15:15-16:00	Follow-up questions from Respondents (45 minutes)
DAY 2	
9:00-9:15	Introductory matters
Claimants’ expert	
9:15-9:45	Presentation by Claimants’ expert
9:45-10:45	Cross-examination (60 minutes)
10:45-11:00	Re-direct examination (15 minutes)
<i>11:00-11:15</i>	<i>Break</i>
11:15-11:30	Tribunal questions
Respondent’s experts	
11:30-12:00	Presentation by Respondent’s experts
12:00-13:00	Cross-examination (60 minutes)
13:00-13:15	Re-direct examination (15 minutes)
<i>13:15-13:30</i>	<i>Tribunal questions</i>
<i>13:30-14:30</i>	<i>Lunch</i>
14:30-15:00	Concluding remarks by Experts
Closing Statements	
15:00-15:45	Claimants’ Closing Statement (45 minutes)
<i>15:45-16:00</i>	<i>Break</i>
16:00-16:45	Respondent’s Closing Statement (45 minutes)
16:45-17:15	Procedural discussion and Tribunal’s concluding remarks

E. Attendance

11. The Parties have indicated that the following individuals will attend the Hearing:

Claimants

Counsel:

Mr. James Libson	Mishcon de Reya LLP
Mr. Karel Daele	Mishcon de Reya LLP
Ms. Katy Colton	Mishcon de Reya LLP
Mr. Mohammed Nazeer	Mishcon de Reya LLP
Mr. David Barnett	Barnea & Co

Parties:

Mr. Malcolm Cohen	BDO LLP
M. Stephen Peters	BDO LLP

Expert:

Mr. Robert Radley	Radley Forensic Document Laboratory
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Respondent

Conseil :

Mr. Michael Ostrove	DLA Piper
Mr. Scott Horton	DLA Piper
Mr. Théobald Naud	DLA Piper
Ms. Sârra-Tilila Bounfour	DLA Piper
Ms. Andrea Lapunzina Veronelli	DLA Piper
Ms. Clémentine Emery	DLA Piper
Ms. Rachel Ganem	DLA Piper (Stagiaire)
Mr. Laurent Jaeger	Orrick
Mr. Yann Schneller	Orrick
Ms. Agnès Bizard	Orrick
Mr. Noël Chahid-Nouräi	Orrick
Mr. Quirec de Kersauzon	Orrick
Ms. Marie Chereau	Orrick (Stagiaire)
Ms. Lucille Coulon	Orrick (Stagiaire)
Ms. Federica Re Depaolini	Orrick (Stagiaire)

H. Documentation

18. Each Party shall endeavor to provide to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the Assistant to the Tribunal (1 copy), the interpreters (3 copies), the court reporters (2 copies) and the opposing Party (3 copies):
 - An electronic list of confidential and partially confidential (i.e. redacted) documents (pursuant to Procedural Order No. 2) to be used during the Hearing, by 23 March 2018.
 - Examination bundles for Party-retained experts to be provided at the beginning of each expert examination. Confidential and partially confidential (i.e. redacted) Documents shall be highlighted in yellow in the indexes of exhibits provided in the examination bundles.
19. The Experts and the Party-retained experts in their presentations, and the Parties in their closing statements, may use demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record, and (iii) are filed in electronic format by 25 March 2018 at 6:00 pm if to be used during Day 1 and by 7:00 pm on Day 1 if to be used during Day 2. Hard copies shall be handed out in the Hearing room prior to their use (in the number specified in paragraph 18).
20. The Parties, the Party-retained experts, and the Experts may use PowerPoint or other slide presentations for their oral statements and presentations and, subject to the rule on demonstrative exhibits (paragraph 19), shall hand out hard copies (in the number specified in paragraph 18) in the Hearing room prior to the beginning of the statement or presentation. Electronic copies shall be provided to the Tribunal members, the Secretary of the Tribunal and the Assistant to the Tribunal by the end of the day.
21. Documents that do not form part of the record may not be presented at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal.

I. Original Documents

22. The Secretary of the Tribunal will hold custody of the originals of the Disputed Documents which were inspected at the document inspection of 31 October to 3 November 2017. These original documents will be made available during the examination of the Experts.

J. Sequestration

23. The Experts and the Party-retained experts may attend the Hearing at any time.

II. LOGISTICS

K. Languages

24. Languages at the Hearing shall be governed by paragraphs 12.7 to 12.9 of PO1.
25. The ICSID Secretariat has arranged for interpretation services to be provided during the Hearing.

L. Transcripts and Sound Recordings

26. Transcripts and sound recordings shall be governed by paragraphs 22.1 to 22.3 of PO1.
27. The ICSID Secretariat has arranged for sound recording to be made and for court reporting services to be provided, and has liaised with the Parties in that respect.

M. Transparency and Video Recordings

28. In the light of the Parties' agreement and the Tribunal's directions of 25 February 2018 to stay the transparency regime set out in Procedural Order No. 2 ("PO2") and in particular the publication of the Experts' Final Report until the admissibility of that report is decided, transparency at the Hearing shall be governed by the following rules:

- (i) A video recording shall be made of the Hearing.
- (ii) The Hearing shall not be broadcast in real time. The video recording shall not be made publicly accessible by video link on the ICSID website until the

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Tribunal rules on the admissibility of the Experts' Final Report, at which time it will issue necessary directions.

- (iii) Physical attendance by third persons is not permitted.
- (iv) The Protocols regarding the protection of confidential documents or information during the hearing, annexed to this Procedural Order, shall apply.

N. Other logistical aspects

- 29. The ICSID Secretariat has liaised with the Parties on other logistical aspects (set up, catering, etc.).

III. POST-HEARING BRIEFS AND STATEMENTS ON COSTS

- 30. At the conclusion of the Hearing, in consultation with the Parties, the Tribunal will determine the time limits, format, and content of the post-hearing briefs and issue directions on statements on costs.

For and on behalf of the Tribunal

[SIGNATURE]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 20 March 2018

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**Hearing protocols regarding the protection of
confidential documents or information during the hearing.**

These protocols are established so as to ensure:

- 1) The maximum transparency of the hearing, under the transparency regime agreed by the Parties;
- 2) The confidentiality of any document or information that either Party wishes to remove from the transparency regime and the Tribunal, if called upon to decide, considers to be confidential;
- 3) The efficient, smooth and minimally disrupted conduct of the hearing.

In practical terms, confidential documents and information shall be protected by holding relevant parts of the hearing privately, instead of publicly. Privacy of the hearing shall be achieved, when necessary, through the moderation of the video recording, and the redaction of relevant parts of the hearing transcripts, before these are published on the ICSID website. “Moderation” means that the video recording will be muted and will be showing a sign indicating that the hearing is temporarily held privately.

It is also reminded that the Parties have provided the Tribunal with a list and compilation of the documents and information which, whether by agreement of the Parties or decision by the Tribunal, are considered to be confidential (wholly or in part), and which they intend to use at the hearing.

PROTOCOLS

1. The Parties shall endeavor to request moderation of the video recording **BEFORE** confidential documents and information are discussed, addressed or shown at the hearing (whether by counsel or by the experts);
2. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention;
3. The Parties shall request moderation of the video feed either orally or using the **RED** sign provided by the Secretary of the Tribunal before the start of the hearing;
4. The Parties shall request the resumption of the video feed either orally or using the **GREEN** sign provided by the Secretary of the Tribunal before the start of the hearing;
5. When the Parties request the moderation of the video recording, and/or the end of the moderation of the video-recording, the Secretary of the Tribunal shall take note of the request(s) (including the relevant time-marks) in a hearing log;
6. If a Party has an objection to the moderation of the video recording requested by the other Party, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held privately;
7. If the Tribunal decides that documents and information about to be discussed, addressed or shown warrant the hearing to be temporarily held privately, it shall instruct the Secretary of the Tribunal to take note of the moderation in the confidentiality log;
8. Ending the moderation of the video recording shall be requested by the Party which requested and obtained moderation (subject to any objection by the other Party under protocol 6 above)

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- or proposed by the Tribunal; ending the moderation may also be requested by the other Party if it deems it necessary. The Tribunal shall rule on any dispute between the Parties in that respect;
9. In order to minimize the number of interruptions, the Parties are invited to organize the topics addressed during the expert examinations and the closing statements so that those which involve confidential documents and information are grouped together, wherever possible;
 10. The video recording shall, if applicable (subject to the Tribunal's decision regarding the publication of the Final Expert Report), be edited according to the moderation requests recorded in the hearing log, as well as on the basis of the redactions of the transcripts agreed by the Parties or decided by the Tribunal.