

**NOTICE OF ARBITRATION UNDER THE ARBITRATION RULES OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

BETWEEN:

BAY VIEW GROUP, LLC, A UNITED STATES ENTITY, AND THE SPALENA COMPANY
LLC, A UNITED STATES ENTITY

(CLAIMANTS)

-AND-

GOVERNMENT OF RWANDA

(RESPONDENT)

AMENDED NOTICE OF ARBITRATION

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June 12, 2018

I. INTRODUCTION

1. This Notice of Arbitration is submitted on behalf of Bay View Group, LLC, and The Spalena Company LLC (hereinafter collectively “Claimants”) against the Government of Rwanda (hereinafter “Rwanda” and “Respondent”), pursuant to Article 24, Section 3(a) of the Bilateral Investment Treaty (the “Treaty”) between the United States of America (“United States”) and Rwanda and in accordance with the International Centre for Settlement of Investment Disputes (“ICSID”) Convention, the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “Institution Rules”) and the Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”). Claimants and Respondent shall be referred to, collectively, as “the Parties.”
2. At all times pertinent hereto, Bay View Group, LLC and The Spalena Company have been United States entities. Upon information and belief, the Respondent is a Rwandan Entity.
3. This Notice of Arbitration contains information concerning the following:
 - a. The name, description and address of each of the parties;
 - b. The Parties’ contractual relationship and the nature and circumstances of the Parties’ dispute giving rise to Claimant’s claims;
 - c. Claimants’ damages;
 - d. A statement of the relief sought;
 - e. The dispute resolution clause, the proposed governing law, the seat and language of the arbitration; and
 - f. Claimants’ position regarding the composition of the arbitral tribunal.
4. This dispute principally concerns Respondent’s illegal act of taking Claimants’ investment in the acquisition and operation of mining concessions without compensation.
5. Pursuant to Article 25 of the Treaty, the Claimants effectively consented to the jurisdiction of the ICSID Convention by providing notice of their intention to submit their claims to arbitration under the Treaty. At the latest, the Claimants submission of their written Request for Arbitration on May 14, 2018 constituted consent to ICSID arbitration of their claims, pursuant to Article 25(1) of the ICSID Convention. Rwanda consented to submit all claims arising under the Treaty to ICSID arbitration on January 1, 2012, the date the Treaty came into effect. The Claimants and Respondents are organized under the laws of Member States to the ICSID Convention.
6. Claimants aver that, pursuant to Article 24, Section 2 of the Treaty, they provided notice to the Respondents on April 12, 2017, more than 90 days before the initiation of this Arbitration, of the Claimant’s Notice of Intent to arbitrate.

7. Pursuant to Article 26, Paragraph 2 of the Treaty, the Claimants consent to the procedures set out in the Treaty and waive their rights to initiate or start any proceeding before an administrative tribunal or court established under the law of either Party, or other applicable dispute settlement procedure with respect to any alleged breach of the Treaty.

II. The Parties

8. Claimants:

Bay View Group LLC,
c/o Duane Morris, LLP
100 High Street, Suite 2400
Boston, MA 02110

The Spalena Company LLC
c/o Duane Morris, LLP
100 High Street, Suite 2400
Boston, MA 02110

9. Respondent:

Government of Rwanda
Director General
Rwanda Investment and Export Promotion Agency
Kimihurara, Avenue du Lac Muhazi
P.O. Box 6239 Kigali – Rwanda

Ms. Claire Akamanzi
Chief Executive Officer
Rwanda Development Board
KN 5Rd, KG 9 Ave
P.O. Box 6239 Kigali – Rwanda

Mr. Francis Gatare
Chief Executive Officer
Rwanda Mines, Petroleum and Gas Board
Republic of Rwanda
Ministry of Natural Resources
KN 3 Rd
P.O. Box 3502 Kigali – Rwanda

Claimants' representatives, to whom all correspondence should be sent in this arbitration, are:

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III. THE NATURE AND CIRCUMSTANCES OF THE PARTIES' DISPUTE GIVING RISE TO THE CLAIMS

A. Factual Background

10. The Rwandan government, beginning in 2005, sought to privatize its mining industry. Prior to privatization, Rwandan mining law statutorily demarcated 26 separate parcels of land as Large Scale Mining Concessions. Each Concession was held and operated by a Large Scale Concession Holder ("Holder"). To privatize the mining industry, Rwanda selected investors to sign an Acquisition Contract with Rwanda to operate the Large Scale Mining Concessions. Each investor that signed an Acquisition Contract became a Holder. At all relevant times, the Acquisition Contracts were held out by Rwanda as necessarily leading to thirty-five (35) year Long Term Contracts for mining operations at the Large Scale Mining Concessions acquired.
11. The Government of Rwanda ("Rwanda") solicited Roderick Marshall ("Marshall"), and his investor group, Bay View Group, LLC ("BVG") to become the Holder of and invest in one or more of the 26 Concessions. In support of its solicitation efforts, Rwanda made representations concerning: (1) Claimants' investment; (2) the investment market and climate in Rwanda; (3) the procedure for obtaining rights in the Concessions; (4) the requirement and scope of capital required to secure rights in the Concessions; (5) the issuance of Long Term Contracts; and (6) the payment of adequate, fair and just compensation for any expropriation of the investments.
12. In 2006, Rwanda selected a separate investor group, Natural Resources Development Rwanda, Ltd. ("NRD"), as Holder for the Rutsiro, Sebeya, Giciye, Mara, and Nemba Concessions. NRD and Rwanda signed five separate Acquisition Contracts, one for each of these five Concessions.
13. In December 2010, BVG and NRD's ultimate parent company signed a purchase and sale agreement for the sale of NRD's parent to The Spalena Company LLC ("Spalena"), a wholly-owned entity of BVG investors. As part of the purchase of NRD's parent, the BVG investors acquired NRD and thereby obtained and held the beneficial interest in each of the Acquisition Contracts for the Rutsiro, Sebeya, Giciye, Mara, and Nemba

Concessions (the “Concessions”). Claimants have directly and indirectly owned and controlled NRD in its efforts to develop and commercialize the Concessions through their investments.

14. Claimants invested over US\$30 million into the development and operations of the Concessions. Even before BVG investors acquired NRD, BVG was investing more in Rwanda than any other United States based investor. In addition to investing substantial sums of money into the Concessions, Claimants created social programs designed to benefit the miners and their families. In fact, Claimants were the only mining company that had an active Corporate Social Responsibility Policy to ensure the well-being of the miners and their families. The United States Ambassador to Rwanda supported the Claimants’ social programs and requested Claimants to regard themselves as ambassadors of the best of American business practices, to which Claimants readily agreed.
15. When the Claimants acquired the Concessions, there was little or none of the infrastructure or equipment necessary to operate a mine. The Claimants invested substantial amounts of time, money and social capital to build a new processing plant and various other buildings on the Concessions, upgrade processing and transport lines, install water pumps and lines, and establish a medical clinic.
16. Beginning in 2011, Rwanda held discussions with Claimants concerning the terms of the Claimants’ 35-year long term operation of the Concessions.
17. Rwanda made clear to the Claimants that the execution of a long term contract was merely a formality and that the Claimants, like the other Concession Holders in Rwanda, were assured long term contracts to mine the Concessions. Based upon these representations and assurances, the Claimants continued to invest time and money in their Concessions.
18. On or about September 18, 2014, at the request of Rwanda, Claimants completed and submitted an application with the understanding, as represented by Rwanda, that it was a formality for the issuance of Long Term Contracts. The Claimants reasonably expected that the issuance of Long Term Contracts remained assured, and throughout all relevant times Claimants continued mining operations at their Concessions.
19. On or about May 19, 2015, Rwanda reversed its often repeated assurances of the Claimants’ long term Concession ownership and purported to inform the Claimants that their application had been rejected.
20. That letter initiated eight months of negotiations and meetings between the Claimants and various members of the Rwandan government over whether Rwanda would go forward with the issuance of the long term concessions as originally awarded and promised, or hold to the reversal of its position as articulated in the May 19, 2015 letter, and, if so, whether Rwanda would pay compensation to the Claimants for their lost investment. For a number of weeks after the May 19, 2015 letter, NRD continued to operate its mining

facilities, and for approximately a full year after, the Concessions continued to be operated by the contractors and workers put in place by NRD.

21. On or about September 22, 2015, Rwanda told Claimants to go to their offices and collect their files and possessions. Upon entry, Claimants learned that all significant records and files had been stolen, the computer hard drives had been erased and most equipment and machinery was missing. Still, discussions continued between the Claimants and Rwanda about a potential resolution in which the mining concessions would be awarded to NRD and it would pursue its long term commercialization of those concessions or be compensated for giving them up.
22. It was not until January 21, 2016 that the Claimants determined that NRD would not obtain the promised concessions and that Rwanda would not agree to compensate the Claimants for their lost investment. Even then, Rwanda failed to clearly announce that final position. Instead, a Rwandan police official informed the Claimants that death threats had been made against their owner and manager of the operations, Roderick Marshall. Mr. Marshall understood this to mean that members of the Rwandan Government were threatening his life should the Claimants continue to pursue the long term mining concessions or compensation for the lost investment in those concessions and mining operations. Mr. Marshall understood this to be the meaning of the information provided by the Rwandan police official, because, in his experience in Rwanda, people outside of the government did not act in disregard of the government's ability to prevent and/or punish such violent behavior. For a police official to say that Mr. Marshall's life was in danger should he continue was understood to mean that the Government sanctioned, or would not stop, such violence, unless the Claimants walked away from their investment in NRD's mining concessions. As a result, Claimants ended their efforts to negotiate the award of those concessions or payment of compensation in January 2016.
23. In approximately May of 2016, Rwanda took control of NRD's mining operations at the Concessions, effectively seizing the Claimants investments.
24. The Claimants were permitted to remove only a small amount of moveable equipment but not any large mining equipment, vehicles, buildings and other remaining infrastructure.
25. Upon information and belief, Rwanda is currently using the Claimants' equipment, vehicles, buildings and infrastructure without compensating the Claimants for such use. Rwanda's seizure and retention of Claimants' equipment, vehicles, buildings and infrastructure is unlawful.
26. The Claimants have never been compensated for Rwanda's unlawful taking of their Concessions or for the lost investments that the Claimants made in the Concessions and the community. Likewise, the Claimants have never been compensated for Rwanda's unlawful retention and use of their equipment, vehicles, buildings and infrastructure.
27. The Claimants are the only Holders that were deprived of their Concessions.

28. Representatives of Rwanda have repeatedly acknowledged to Claimants and others that Rwanda breached the Treaty and international law with respect to their dealings with Claimants. Government representatives at several Ministries, the Rwanda Development Board and the President's Office have repeatedly expressed their apologies and regrets to Claimants for the bad treatment by the government and the unlawful seizure of the Claimants' businesses. At times, these apologies were made to, or in the presence of, U.S. Embassy officers and personnel.
29. In fact, Francis Gatare, the then CEO of the Rwanda Development Board and current CEO of the Rwanda Mines, Petroleum and Gas Board, apologized directly to the U.S. Ambassador to Rwanda, admitting that the treatment of the Claimants was wrong and less favorable than the treatment of both other foreign investors and Rwandan companies.

B. Legal Basis of Claim

30. The Government of Rwanda and the Government of the United States of America signed a Bilateral Investment Treaty (the "Treaty") on February 19, 2008. The Treaty went into effect on January 1, 2012.
31. The Claimants are controlled and owned by American investors whose interests are represented by Mr. Marshall. Each of the American investors is an individual who has United States of America citizenship, or is a US trust or estate, all of whose beneficiaries are individuals who have United States of America citizenship (the "American Investors"). The American Investors fit within the Treaty's definition of "Investor of a Party" and therefore qualify for protection under the Treaty.
32. Claimants invested in Rwanda in the form of shareholdings, capital assets, personal property, property rights, contractual rights, licenses, concessions rights, authorizations, permits, the Concessions themselves, and other legal rights. As such, Claimants meet the definition of a covered "Investment" as provided Section A, Article 1 of the Treaty.
33. Article 3, National Treatment, requires that Rwanda shall accord to American investors and covered investments "treatment no less favorable" than Rwanda "accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."
34. Rwanda has breached Article 3 by failing to treat Claimants "no less favorabl[y]" than it accords Rwandan investors with respect to Claimants' investments in the Concessions.
35. Article 4, Most-Favored Nation Treatment, requires that Rwanda accord to American investors and covered investments "treatment no less favorable" than Rwanda "accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

36. Rwanda has breached Article 4 by failing to offer Claimants the same favorable treatment that Rwanda accords non-Party investors with regard to Covered Investments under the Treaty.
37. Article 5, Minimum Standard of Treatment, sets out minimum standards of fair and equitable treatment and the requirement that Rwanda must afford full security and protection to Covered Investments.
38. Rwanda has breached Article 5 by not meeting minimum standards of fair and equitable treatment by failing to provide full security and protection to the Covered Investments.
39. Article 6, Expropriation and Compensation, requires “prompt, adequate and effective compensation” in the event that Rwanda (1) directly seizes the Investment (direct expropriation); or (2) takes action which falls within the scope of Annex B of the Treaty, and which interferes in the reasonable investment-backed expectations of the Claimants to such an extent that the action has an effect equivalent to a direct expropriation of the Investment (indirect expropriation).
40. Rwanda has breached Article 6 by effectuating a direct expropriation of Claimants’ investments without process to which Claimants are entitled and without prompt and adequate compensation.

IV. CLAIMANTS’ DAMAGES

41. As a result of Rwanda’s action and purposeful failures to act, Claimants have lost the entire value of their investment and their mining operations in Rwanda, which amounts exceed US\$95,000,000.
42. Claimants seek compensation on the basis of the fair market value of the Claimants’ business, Concessions, assets, licenses, contracts, and rights prior to Rwanda’s breaches of the Treaty.
43. Claimants further seek compensation based on lost profits and all sums invested by the Claimants with respect to the Rwandan businesses as well as for damages measured by interest on those amounts from the date of the expropriation of the Claimants’ property, whether real, personal or intangible.
44. In accordance with the Treaty, damages include amounts that are to be calculated by a discounted cash flow method and analysis of the Claimants’ future profits.
45. In the alternative, Claimants seek compensation for the actual value of their lost investments.

V. RELIEF SOUGHT

46. Claimants respectfully request that the arbitral tribunal provide the following relief:

- a. A declaration that Rwanda has violated the Treaty and related obligations owed to Claimants under international law;
- b. Compensation from Rwanda to Claimants of no less than US\$95 million for all losses and damages incurred, to be developed and quantified during the course of the arbitration proceedings;
- c. Interest on all compensation payable from the date of Rwanda's breaches to the date of the final arbitration award;
- d. All cost and reasonable attorney's fees incurred in pursuit of these proceedings; and
- e. Interest on all sums awarded until the date of Rwanda's final satisfaction of any arbitration award.

VI. DISPUTE RESOLUTION CLAUSE, GOVERNING LAW, SEAT, AND LANGUAGE OF THE ARBITRATION

47. This arbitration is initiated pursuant to the Article 24, Submission of a Claim to Arbitration, of the Treaty. Article 24 provides, in part:

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation: (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Articles 3 through 10, (B) an investment authorization, or (C) an investment agreement; and (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach... 3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1...(a) under the ICSID Convention and the ICSID Rules for Arbitration Proceedings, provided that Both the respondent and the non-disputing Party are parties to the ICSID Convention...

48. Pursuant to Article 28 of the Treaty, Claimants request that the arbitration take place in Washington D.C., United States.

49. Pursuant to Article 30 of the Treaty, this dispute will be governed by the terms of the Treaty and the applicable rules of international law.

50. Claimants request that the arbitration be conducted in the English language.

VII. Arbitral Tribunal

51. Pursuant to Claimants' letter to ICSID dated May 31, 2018, Claimants request that Rwanda agree to the Claimants' appointment of J. Truman Bidwell, Jr., of the law firm of

Sullivan & Worcester LLP, 1633 Broadway, New York City, New York 10019, as the Claimants' appointed arbitrator for a three-arbitrator panel and the process proposed in that letter for the selection of a presiding arbitrator.

52. The Secretary-General of the International Centre for Settlement of Investment Disputes shall serve as appointment authority for this arbitration.

Respectfully Submitted,

[signed]

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