

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gabriel Resources Ltd. and Gabriel Resources (Jersey)
Applicants on Annulment

v.

Romania
Respondent on Annulment

(ICSID Case No. ARB/15/31)
Annulment Proceeding

DECISION ON STAY OF ENFORCEMENT OF THE AWARD

Members of the ad hoc Committee

Dr. Eduardo Zuleta Jaramillo, President of the *ad hoc* Committee
Prof. Lawrence Boo, Member of the *ad hoc* Committee
Prof. Dr. Maxi Scherer, Member of the *ad hoc* Committee

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21 January 2025

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I. THE PARTIES

1. The Applicants on Annulment are Gabriel Resources Ltd. (“**Gabriel Canada**”) and Gabriel Resources (Jersey) (“**Gabriel Jersey**”) (together, “**Gabriel**”, “**Claimants**” or the “**Applicants**”). In this proceeding the Applicants are represented by:

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USA

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2. The Respondent on Annulment is Romania (the “**Respondent on Annulment**” or the “**Respondent**”). In this proceeding the Respondent on Annulment is represented by:

Mr. Matthias Scherer
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3. The Applicants and the Respondent on Annulment are collectively referred to as the “**Parties**” and individually as a “**Party**”.

II. PROCEDURAL HISTORY

4. On 5 July 2024, the Applicants filed an Application for Annulment (the “**Application**”) of the award dated 8 March 2024, issued in ICSID Case No. ARB/15/31 between Gabriel Resources Ltd. and Gabriel Resources (Jersey), and Romania (the “**Award**”). In accordance with Article 52(5) of the ICSID Convention and ICSID Arbitration Rule 54(2), the Applicants requested that the ICSID Secretary-General provisionally stay the enforcement of the Award until the *ad hoc* Committee rules on such request.
5. On 12 July 2024, the Acting ICSID Secretary-General registered the Application and notified the Parties that, in accordance with ICSID Arbitration Rule 54(2), the enforcement of the Award was provisionally stayed.
6. On 8 October 2024, the *ad hoc* Committee was constituted under ICSID Arbitration Rules 6 and 52. Its members are Dr. Eduardo Zuleta (President), Prof. Lawrence Boo, and Prof. Dr. Maxi Scherer (the “**Committee**”).
7. On 9 October 2024, the Applicants submitted a request that the Committee order the continuation of the stay of enforcement of the Award until a decision on annulment is rendered in these proceedings (the “**Stay Request**” or the “**Request**”).
8. On 22 October 2024, the Committee decided to maintain the provisional stay of the enforcement of the Award until it has had an opportunity to review the Parties’ written submissions and to issue a further decision on the matter, as contemplated by Arbitration Rule 54(2).
9. On 23 October 2024, Prof. Dr. Scherer made a disclosure to the Parties regarding her connections with Ms. Isabel San Martín, an associate at LALIVE and part of the legal team representing the Respondent. Prof. Dr. Scherer indicated that her disclosure was done out of abundance of caution and that she did not consider that it affected her impartiality or independence.
10. By letter of 30 October 2024, the Applicants submitted that Prof. Dr. Scherer’s disclosure and “the social media posts from the last several weeks” raised justifiable doubts about her impartiality and independence in this case and invited Prof. Dr. Scherer to step down from the Committee.

11. In accordance with the agreed schedule, on 1 November 2024, the Respondent submitted its comments in response to the Stay Request (the “**Response**”).
12. On 8 November 2024, at the Tribunal’s invitation, the Respondent submitted its comments on the Applicants’ invitation for Prof. Dr. Scherer to step down.
13. On 11 November 2024, the Applicants submitted their reply to the Respondent’s comments on the Stay Request (the “**Reply**”).
14. On 12 November 2024, Prof. Dr. Scherer responded to the Applicant’s invitation to step down reaffirming that she “will judge fairly as between the Parties, according to the applicable law, and that no circumstances exist that affect [her] impartiality and independence.”
15. On 16 November 2024, the Applicants submitted a proposal to disqualify Prof. Dr. Scherer (the “**Proposal to Disqualify**”).
16. On 18 November 2024, the proceeding was suspended until a decision was taken on the Proposal to Disqualify, in accordance with ICSID Arbitration Rules 9(6) and 53.
17. On 25 November 2024, the Respondent submitted its response to the Proposal to Disqualify.
18. On 2 December 2024, the Centre transmitted Prof. Dr. Scherer’s explanations on the Proposal to Disqualify.
19. On 6 December 2024, the Applicants withdrew their Proposal to Disqualify.
20. On 18 December 2024, the Respondent submitted its rejoinder comments on the Stay Request (the “**Rejoinder**”).
21. The Committee has considered all the submissions and arguments put forward by the Parties. The fact that certain arguments, documents, or legal authorities are not mentioned in the following sections does not mean that the Committee has not considered them.

III. THE PARTIES’ POSITIONS

A. THE APPLICANTS’ POSITION

22. The Applicants request that the Committee continue the stay of enforcement pending its

decision on the Application, without imposing any conditions.¹ They claim they lack the funds to satisfy the Award, and that enforcing it before the annulment decision is rendered would undermine their pursuit of this remedy and cause significant financial hardship, resulting in potentially irreparable harm.²

23. The Applicants argue that *ad hoc* committees have broad discretion to order a continuation of the stay when warranted by the circumstances.³ They assert that exceptional circumstances are not required to justify a stay of enforcement and that there is no presumption for or against a stay.⁴ The Applicants also contend that the review of a stay request should not assess the potential outcome of the annulment proceedings, but only whether it was made in good faith and is not manifestly frivolous.⁵
24. The Applicants add that in deciding whether to continue a stay of enforcement, *ad hoc* committees balance the applicant's interest in the stay with the respondent's right to the finality and enforceability of the award. In the Applicants' view, the balance of interests in this case favors continuing the stay.
25. First, the Applicants assert that they lack the financial resources to meet their ongoing working capital needs, let alone satisfy the Award, and that enforcement would cause significant financial harm and impede their ability to pursue annulment.⁶ They argue that Gabriel lacks revenue-generating assets and has relied on raising capital from investors interested in the Roşia Montană and Bucium mining projects (the "**Projects**").⁷ Since the Award was issued, Gabriel has continued efforts to secure funding but has fallen short of initial expectations, and there is no indication that additional funding is feasible.⁸ In these circumstances, "the prejudice to the Applicants is greater than merely having to meet an adverse payment obligation."⁹
26. Furthermore, the Applicants state that Gabriel cannot be equated with its shareholders or other investors,¹⁰ and argue that the Respondent's speculation about the continued support

¹ Applicants' Request for Continuation of Stay of Enforcement dated 9 October 2024 ("**Request**"), para. 4; Applicants' Reply on Request for Stay dated 11 November 2024 ("**Reply**"), para. 30.

² Request, para. 5.

³ Request, paras. 6-7.

⁴ Request, paras. 8-9.

⁵ Request, para. 10-12.

⁶ Request, paras. 24-25; Reply, paras. 11-13.

⁷ Request, para. 16.

⁸ Request, paras. 17 and 21.

⁹ Reply, para. 19.

¹⁰ Request, para. 21.

of the same financing sources that funded Gabriel during the arbitration is both unfounded and factually incorrect.¹¹

27. The Applicants claim that the Respondent has already initiated enforcement of the Award with a precautionary attachment of Gabriel Jersey's shares in RMGC (the Romanian joint venture established to develop the Projects), and has announced that the seizure and sale of RMGC's properties will follow.¹² Enforcement of the Award would further hinder Gabriel's ability to raise funds, including for annulment, and could drive Gabriel into insolvency, irreparably affecting RMGC's rights in the Projects, as Gabriel is RMGC's sole funding source.¹³
28. Second, the Applicants argue that the continuation of the stay is necessary due to the material risk they face of being unable to recover funds if the Award is annulled.¹⁴ The Applicants claims there is no clear means under the ICISD Convention or Romanian law for them to recover money or assets from Romania if the Award is enforced and then annulled, particularly if the State is allowed to continue seizing Gabriel's shares in RMGC.¹⁵ Additionally, the Applicants contend that there is no reliable way to restore losses if RMGC becomes insolvent and loses legal rights as a result.¹⁶ They argue that even if the provisions cited by Romania apply, they would not mitigate the risk of irreparable harm and would likely result in costly, lengthy, and complex litigation.¹⁷
29. Third, the Applicants argue that the Respondent bears the burden of proving that a stay would cause it prejudice, and there is no basis to presume such prejudice.¹⁸ On the contrary, the Applicants contend that the Respondent would not suffer harm or prejudice from a continued stay if the Award is not annulled, as the Award would continue to accrue interest in its favor.¹⁹ Furthermore, they assert that RMGC's assets remain sufficient to satisfy the Award,²⁰ and maintaining the precautionary attachment is unnecessary as RMGC's Articles of Association impose significant restrictions on Gabriel Jersey's

¹¹ Reply, para. 13.

¹² Request, paras. 18-20.

¹³ Request, paras. 21-23.

¹⁴ Request, para. 26.

¹⁵ Request, para. 27.

¹⁶ Request, para. 27.

¹⁷ Reply, paras. 16-18.

¹⁸ Reply, para. 8.

¹⁹ Request, para. 28.

²⁰ Reply, para. 23.

ability to transfer its shares.²¹ They also dispute the Respondent's claims regarding Gabriel's intention to pay the Award if it is not annulled, emphasizing that Gabriel clearly lacks the means to do so.²²

30. Finally, in response to the Respondent's alternative request to condition any further stay of enforcement on the posting of security equivalent to the amount of the Award plus interest, the Applicants argue that Romania has not met its burden of proving that the stay should be conditioned or that it would suffer prejudice if security is not ordered.²³ They contend that they lack the financial capacity to post security, whether in the form of a bond or a bank guarantee, and that requiring security would impose additional unrecoverable costs, thereby frustrating their ability to pursue annulment.²⁴ Furthermore, they assert that escrowing the funds would result in the same irreparable harm as lifting the stay.²⁵ They also maintain that financial security is unnecessary to protect Romania's rights, as RMGC's assets remain sufficient to satisfy the Award, and there is no basis to assume that enforcement prospects will be undermined during these proceedings.²⁶ Finally, they argue that requiring security would unjustifiably place the Respondent in a better position than it would have been if annulment had not been sought.²⁷

B. THE RESPONDENT ON ANNULMENT'S POSITION

31. The Respondent requests that the Committee "[d]ismiss the Stay Request and terminate the provisional stay of enforcement;"²⁸ or, in the alternative, "condition any further stay of enforcement on the posting of security in the amount of the Award, plus interest (...); [and] hold that, should the Applicants not comply with this condition within 30 days of the Committee's decision, the stay on enforcement will be automatically terminated;"²⁹ and "[o]rder the Applicants to bear the costs related to the Stay Request, including the legal fees Romania incurred to defend it."³⁰

²¹ Request, para. 29.

²² Reply, para. 22.

²³ Reply, para. 25.

²⁴ Reply, para. 26.

²⁵ Reply, para. 27.

²⁶ Reply, para. 28.

²⁷ Reply, para. 29.

²⁸ Respondent's Comments on Applicants' Request for Continuation of Stay of Enforcement dated 1 November 2024 ("Response"), para. 58(i).

²⁹ Response, para. 58(ii).

³⁰ Response, para. 58(iii).

32. In connection with its alternative request, the Respondent adds the following in its Rejoinder:

Romania requests the posting of a security through payment into an escrow account or in the form of a guarantee, as described in paragraph 3030 [sic] above, or another form of security to be discussed with the Committee. In any event, the Committee should order Gabriel Jersey not to take any measure and/or action which may lead to diminishing the value of its shares in RMGC.³¹

33. The Respondent agrees that the Committee has broad discretion to determine whether there are circumstances warranting a stay of enforcement of the Award.³² However, it contends that the ICSID Convention holds a pro-enforcement policy, and a stay should only be granted in exceptional circumstances, which the requesting party bears the burden of proving.³³
34. The Respondent further asserts that *ad hoc* committees have considered three cumulative factors when deciding whether to grant or lift a stay: (i) the risk of non-payment if the annulment application is rejected; (ii) the risk of non-recovery if the stay is lifted and the award is annulled, and (iii) the balance of hardship between the parties.³⁴
35. With respect to the first factor, the Respondent highlights the Applicants' public statements and statements made during these proceedings, which it argues confirm a high risk of non-payment if the Application is rejected.³⁵ It also notes that the Applicants failed to comply voluntarily with the Award, which compelled the Respondent to take precautionary measures pursuant to the Romanian Fiscal Procedure Code.³⁶ In this regard, the Respondent asserts:

Romania is [] faced with self-described and unproven impecunious award debtors with seemingly unlimited resources to challenge the Award and prevent its enforcement, which have never given any

³¹ Rejoinder, para. 31

³² Response, para. 8.

³³ Response, paras. 11-14.

³⁴ Response, para. 15.

³⁵ Response, paras. 20-22.

³⁶ Response, paras. 23-24.

assurance that they will ultimately comply with the Award. If anything, they seem to have measures to avoid payment.³⁷

36. Regarding the second factor, the Respondent argues that the Applicants have not substantiated their claim that the Respondent would not reconstitute funds if the stay were lifted and the Award subsequently annulled.³⁸ On the contrary, the Applicants face no such risk, as domestic enforcement laws entitle them to seek full restitution from the enforcement court if the Award is annulled.³⁹ Additionally, the Respondent clarifies that it has neither the intention nor any legal basis to liquidate RMGC's assets, and the Applicants' statements in this regard are unfounded.⁴⁰
37. As to the third factor, the Respondent contends that the balance of hardships favors lifting the stay, as it is the Respondent who would suffer greater prejudice.⁴¹ It argues that the proper test is whether enforcement would cause prejudice beyond the inherent effects of an adverse ICSID award pending annulment.⁴² In this case, the Applicants' claims of financial hardship do not meet this threshold.⁴³
38. On the one hand, the Applicants' argument that enforcement undermines their ability to pursue annulment and access justice is unsubstantiated.⁴⁴ The Applicants have already paid the ICSID advance fees, set aside funds for legal expenses, and made these payments before the stay was granted, which demonstrates that the stay is unnecessary.⁴⁵ Furthermore, the same financial sources that funded the Applicants during arbitration remain available.⁴⁶ The Applicants also acknowledge their ability to raise additional funds but fail to explain how enforcement actions would impede their annulment efforts.⁴⁷
39. On the other hand, the Applicants' assertion that enforcement risks insolvency and would cause irreparable harm to RMGC lacks merit.⁴⁸ First, under Romanian law, RMGC would

³⁷ Response, para. 25. *See also*, Respondent's Rejoinder Comments on Applicants' Request for Continuation of Stay of Enforcement dated 18 December 2024 ("**Rejoinder**"), paras. 3 and 12-17.

³⁸ Response, para. 27.

³⁹ Response, paras. 28-32.

⁴⁰ Rejoinder, para. 20.

⁴¹ Response, para. 34.

⁴² Response, para. 35.

⁴³ Response, para. 36.

⁴⁴ *See*, Response, paras. 38-42

⁴⁵ Response, para. 39.

⁴⁶ Response, para. 39.

⁴⁷ Response, paras. 41-42.

⁴⁸ *See*, Response, paras. 43-47.

not be affected by the insolvency of Gabriel, as they are separate legal entities.⁴⁹ The Applicants have failed to provide reasons to question RMGC's financial stability or to suggest that Gabriel is its sole source of funding.⁵⁰ Second, the Applicants' own statements confirm that Gabriel is not currently able to fund RMGC, which means that no funding exist that could be irreparably lost.⁵¹ Finally, the risk that Gabriel becomes insolvent exists regardless of any attempt to enforce the Award, as Gabriel Canada has stated that it has "no source of revenue."⁵²

40. The Respondent argues that its entitlement to interest provides little reassurance, especially considering the costs it will incur during these annulment proceedings.⁵³ It further asserts that maintaining the stay would unfairly advantage the Applicants by postponing their payment obligations while the Respondent incurs costs defending against the Application without clear prospects for enforcing the Award.⁵⁴ Contrary to the Applicants' suggestion, there is no legal basis for RMGC's assets to be used to satisfy the Award.⁵⁵
41. Finally, the Respondent points out that the Applicants have failed to explain their non-compliance with the Award or to commit to prompt, voluntary payment if the Award is upheld.⁵⁶ If the stay is maintained, there is a risk that the Applicants raise funds for the annulment proceeding without ensuring enough remains to comply with the Award, effectively making the Respondent the funder of the annulment.⁵⁷ This underscores that the balance of hardships favors lifting the stay.⁵⁸
42. Alternatively, the Respondent argues that, if the stay is maintained, it should be conditioned on the posting of security for the full amount of the Award plus interest.⁵⁹ Specifically, Romania requests that the Applicants be ordered to deposit the amount of the Award, plus interest, into an escrow account or, alternatively, "to post a security issued by a third party, as debtor guarantor, which waives the benefit of discussion and division,

⁴⁹ Response, para. 44.

⁵⁰ Response, para. 44.

⁵¹ Response, para. 45.

⁵² Rejoinder, para. 22.

⁵³ Response, para. 46.

⁵⁴ Response, para. 47.

⁵⁵ Rejoinder, para. 25.

⁵⁶ Response, para. 48.

⁵⁷ Rejoinder, para. 25.

⁵⁸ Response, para. 49.

⁵⁹ Response, paras. 50 and 56.

through a payment undertaking, or other undertaking in authentic form, accompanied by a real guarantee.”⁶⁰

43. The Respondent notes that *ad hoc* committees typically consider two factors when deciding whether to condition a stay: the risk of non-enforcement of the award and the applicant’s access to justice.⁶¹ It further asserts that security is particularly justified when there is a significant risk the applicant will not comply with the award, as in this case.⁶²
44. Finally, the Respondent disputes the claim that posting security would place it in a better position for three reasons: (i) without the Application, Gabriel would not have benefited from the extended provisional stay and Romania could have already sought to enforce the Award; (ii) even if Gabriel posted security, Romania would not have access to those funds; and (iii) Romania’s rights are not secured through RMGC’s assets.⁶³

IV. THE COMMITTEE’S CONSIDERATIONS

45. There is no dispute that the Committee has the authority to stay the enforcement of the Award “if the circumstances so require” and has broad discretion to determine such circumstances.
46. In this regard, Article 52(5) of the ICSID Convention states:

The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

47. The practice of *ad hoc* committees in deciding whether to continue a stay of enforcement is not uniform. However, *ad hoc* committees generally agree that a party to an award issued under the ICSID Convention has the right to apply for annulment and to request the continuation of the stay.⁶⁴ There is, however, no automatic right to a stay of

⁶⁰ Rejoinder, para. 30.

⁶¹ Response, para. 53.

⁶² Response, para. 55.

⁶³ Rejoinder, para. 29.

⁶⁴ Exhibit AL-0027, *Perenco Ecuador Ltd. v. Ecuador*, ICSID Case No. ARB/08/6, Decision on Stay of Enforcement dated 21 February 2020, para. 39.

enforcement, nor any presumption in favor of or against granting the stay.⁶⁵

48. The Parties appear to agree that, in deciding on the stay, this Committee should consider: (i) the risk of non-payment if the Application is rejected; (ii) the risk of non-recovery of funds paid if the stay is lifted and the Award is later annulled, and (iii) the balance of hardship between the Parties.⁶⁶ They also broadly agree that the likelihood of success of the annulment application should in principle not weigh in its decision on the continuation of the stay.⁶⁷
49. The Committee agrees that the three factors outlined above are relevant in determining whether to order the continuation of the stay and will carefully consider them in making its decision.
50. Regarding the first factor, the record shows that the Applicants are facing an extremely challenging financial situation and have not expressed any intent to pay the Award if it is not annulled. On the contrary, the Applicants have repeatedly stated that they lack sufficient funds to satisfy the Award and that the prospect of funds becoming available is uncertain.⁶⁸ These statements are consistent with press releases from Gabriel Canada—a publicly traded company—issued both before and after the commencement of these annulment proceedings, regarding the limitations on its available funds and funding possibilities.⁶⁹ Furthermore, it appears undisputed that Gabriel has no revenue-generating assets and relies on funding from investors.⁷⁰ The record shows that the Applicants have not raised the anticipated amount of funding, and there is no indication that funds will be available in the future.⁷¹
51. Additionally, the Committee notes that while the Applicants attribute their inability to pay the Award to the current unavailability of funds, they have not indicated that they undertake to pay the Award promptly once funds become available.
52. The Applicants also claim that lifting the stay would impede their ability to pursue annulment, but so far, the Applicants have taken all the steps required to seek annulment,

⁶⁵ Exhibit AL-0027, *Perenco Ecuador Ltd. v. Ecuador*, ICSID Case No. ARB/08/6, Decision on Stay of Enforcement dated 21 February 2020, para. 39.

⁶⁶ See, e.g.: Request, paras. 13 and 26; Response, para. 15.

⁶⁷ Request, para. 10; Rejoinder, para. 8.

⁶⁸ See, e.g., Request, paras. 5, 17, and 21; Reply, paras. 10 and 12.

⁶⁹ Exhibit A-105, Gabriel Resources Ltd. Press Release dated March 11, 2024, p. 1; Exhibit A-106, Gabriel Resources Ltd. Press Release dated July 8, 2024, p. 2.

⁷⁰ Request, para. 16.

⁷¹ Exhibit A-106, Gabriel Resources Ltd. Press Release dated July 8, 2024, p. 2.

including the hiring of counsel, and have not explained how lifting the stay will impede the continuation of the annulment proceedings.

53. Under these circumstances, the Committee concludes that there is a high risk that the Respondent will not receive payment of the Award if it is not annulled.
54. With respect to the second factor, the Applicants have not convincingly explained why they would be unable to recover funds from Romania if the stay is lifted and the Award is subsequently annulled. Romania has explained, and the Applicants have not persuasively rebutted, why under Romanian law the Applicants would be able to recover the amounts paid to Romania if the stay is lifted and the Award annulled. The risk of non-recoupment if the stay is lifted and the Award annulled is, therefore, low or nonexistent. However, given the Applicants' current financial situation, as reflected in Gabriel Canada's press releases, which the Committee finds reliable,⁷² it appears clear that if the stay is lifted and the Respondent enforces the Award, the Applicants' ability to raise funds may be severely impacted, leading to a significant deterioration in their financial condition.
55. The third factor, i.e., the balance of hardship between the Parties, is informed by the two factors discussed above. The Committee found a high risk of non-payment and a low risk of non-recoupment. It also found that lifting the stay and enforcing the Award would significantly aggravate the Applicants' financial situation. Given these circumstances, the Committee concludes that the continuation of the stay should be conditioned upon the Applicants providing some form of security or guarantee.
56. The Respondent requested that the Applicants be ordered to deposit the amount of the Award, plus interest, into an escrow account controlled by the Committee pending the annulment proceedings.⁷³ However, the Committee is of the view that such an order would place the Applicants in the same financial situation as if the stay were unconditionally lifted.
57. Alternatively, in their Rejoinder, the Respondent requested that the Applicants be ordered "to post a security issued by a third party, as debtor guarantor, which waives the benefit of discussion and division, through a payment undertaking, or other undertaking in authentic form, accompanied by a real guarantee."⁷⁴
58. The Applicants have stated they "do not have the financial capacity to post security in the

⁷² See, *supra* para. 49.

⁷³ Response, para. 56.

⁷⁴ Rejoinder, para. 30 [emphasis eliminated].

form of either a security bond or a bank guarantee [...] as both would require funds in the stated amount, which Applicants do not have.”⁷⁵ However, they have not explicitly addressed the Respondent’s alternative request referenced in paragraph 57 above, which was introduced for the first time in the Rejoinder, or proposed any alternative form of security.

59. As previously stated, the Committee finds that conditioning the continuation of the stay on the provision of security is appropriate.⁷⁶ The Committee invites the Parties to confer and agree on a form of security to be provided by the Applicants and on the term within which such security must be provided. If the Applicants do not comply within the time limit agreed by the Parties, the Committee will lift the stay.
60. If the Parties cannot agree on a form of security within two weeks from this Decision, they shall inform the Committee of the types of security discussed and the reasons each Party believes it is appropriate or not. The Committee will determine whether a form of security proposed by a Party is acceptable or identify another form of security that the Committee considers appropriate and order its provision within a specified time limit. If the Applicants do not comply within the time limit set, the Committee will lift the stay.
61. Finally, the Committee notes that the Respondent submitted a request in its Rejoinder, stating that “[i]n any event, the Committee should order Gabriel Jersey not to take any measure and/or action which may lead to diminishing the value of its shares in RMGC.”⁷⁷ The Committee considers this request untimely, as it was raised only in the Rejoinder, leaving the Applicants without an opportunity to respond. Additionally, the request lacks substantiation. For these reasons, the Committee denies the request.

V. DECISION

62. The Committee, based on the above considerations, orders as follows:
- (i) The Parties shall confer and agree on a form of security, to be provided by the Applicants, and on the term within which such security must be provided. If the Applicants do not comply within the time limit agreed by the Parties, the Committee will lift the stay.
 - (ii) If the Parties cannot agree on a form of security within two weeks from this

⁷⁵ Reply, para. 26.

⁷⁶ *Supra*, para. 54.

⁷⁷ Rejoinder, para. 31

Decision, i.e., by **4 February 2025**, they shall inform the Committee of the types of security discussed and the reasons each Party believes it is appropriate or not. The Committee will determine whether a form of security proposed by a Party is acceptable or identify another form of security that the Committee considers appropriate and order its provision within a specified time limit. If the Applicants do not comply within the time limit set, the Committee will lift the stay.

- (iii) The decision on costs associated with the Stay Request is deferred to a later stage of the proceedings.

[signed]

Prof. Dr. Maxi Scherer
Member of the *ad hoc* Committee
Date: 21 January 2025

[signed]

Prof. Lawrence Boo
Member of the *ad hoc* Committee
Date: 21 January 2025

[signed]

Dr. Eduardo Zuleta
President of the *ad hoc* Committee
Date: 21 January 2025