

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BSG Resources Limited

v.

Republic of Guinea

(ICSID Case No. ARB/14/22)

PROCEDURAL ORDER NO 1

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
Mr. Magnus Jesko Langer

13 May 2015

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Introduction

The first session of the Tribunal was held in person on Thursday, 23 April 2015, at 11:35am CET, in Geneva, Switzerland.

Participating in the first session were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler	President of the Tribunal
Professor Albert Jan van den Berg	Arbitrator
Professor Pierre Mayer	Arbitrator

ICSID Secretariat:

Mr. Paul-Jean Le Cannu, Legal Counsel

Assistant to the Tribunal

Mr. Magnus Jesko Langer

On behalf of the Claimant:

Mr. Karel Daele, Mishcon de Reya
Mr. James Libson, Mishcon de Reya
Mr. Iain Quirk, Essex Court Chambers

On behalf of the Respondent:

Mr. Nava Touré, Secretary General of the Ministry of Mines and Geology of the Republic of Guinea
Mr. Laurent Jaeger, Orrick Herrington & Sutcliffe
Mr. Yann Schneller, Orrick Herrington & Sutcliffe
Mr. Michael Ostrove, DLA Piper
Mr. Theobald Naud, DLA Piper

Interpreters:

Ms. Isabelle Guinebault
Ms. Corinne Bou

The Tribunal and the Parties considered the following:

- The Draft Agenda circulated by the Secretary of the Tribunal on 26 February 2015;
- The Draft Procedural Order circulated by the Secretary of the Tribunal on 26 February 2015; and

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- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on 20 April 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The session was adjourned at 4:00pm (CET).

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

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on 5 February 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.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were transmitted to the Parties by the ICSID Secretariat by letters dated 14 November 2014, 12 December 2014 and on 5 February 2015. At the hearing, the President added that she currently sits on an arbitral tribunal with Mr. Landau.

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3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.1.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred by the Tribunal Members, the ICSID Secretariat, and the Assistant to the Tribunal in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings. Presence for procedural sessions may be by any appropriate means of communication. The pre-hearing telephone conference may be conducted by the President only.
5. Decisions and Procedural Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

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- 5.3. The President is authorized to issue Procedural Orders and procedural decisions on behalf of the Tribunal.
- 5.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal in the form of a letter or email.
6. Power to Fix Time Limits
Arbitration Rule 26(1)
- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
7. Secretary of the Tribunal
Administrative and Financial Regulation 25
- 7.1. The Secretary of the Tribunal is Mr. Benjamin Garel, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:
- Mr. Benjamin Garel
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-1761
Fax: + 1 (202) 522-2615
Email: bgarel@worldbank.org
Paralegal email: aboissaye@worldbank.org

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7.3. For local messenger deliveries, the contact details are:

Mr. Benjamin Garel
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-1761

8. Appointment of Assistant to the Tribunal

8.1. By letter of 26 February 2015, the President of the Tribunal explained to the Parties that she considered that it would assist the overall cost and time efficiency of the proceedings if the Tribunal had an Assistant.

8.2. The President of the Tribunal proposed, with the approval of the other members of the Tribunal, that Mr. Magnus Jesko Langer of LÉVY KAUFMANN-KOHLER be appointed as Assistant to the Tribunal. Mr. Langer’s *curriculum vitae* was distributed to the Parties on that same date.

8.3. The President also set out the tasks which may be assigned to the Assistant and noted that the Assistant is subject to the same confidentiality obligations as the Members of the Tribunal. Mr. Langer has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 20 April 2015.

8.4. The Parties approved the appointment of Mr. Langer as Assistant to the Tribunal on 1 and 17 April 2015. It was also agreed that he would receive US\$ 250 for each hour of work performed in connection with the case or *pro rata*. He would also receive subsistence allowances and be reimbursed for his travel and other expenses in the limits prescribed by ICSID Administrative and Financial Regulation 14.

9. Representation of the Parties
Arbitration Rule 18

9.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such designation.

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For the Claimant

Mr. Karel Daele
Mr. James Libson
Ms. Heidrun Walsh
Mishcon de Reya LLP
Summit House
12 Red Lion Square
London WC1R 4QD
United Kingdom
Tel: +44 20 7440 7060
Fax: +44 20 7404 5982
Emails: Karel.Daele@Mishcon.com
James.Libson@Mishcon.com
Heidrun.Walsh@Mishcon.com
and
Mr. Toby Landau QC
Mr. Paul Key QC
Mr Iain Quirk
Essex Court Chambers
24 Lincoln's Inn Fields
London
WC2A 3EG
England
Tel: +44 207 813 8000
Fax: +44 207 813 8080
Emails: TLandau@essexcourt.net
PKey@essexcourt.net
IQuirk@essexcourt.net

For the Respondent

Mr. Laurent Jaeger
Mr. Pascal Agboyibor
Mr. Noël Chahid-Nourai
Mr. Yann Schneller
Mr. Quirec de Kersauson
Orrick Herrington & Sutcliffe
31, avenue Pierre I^{er} de Serbie
75016 Paris
France
Tel : + 33 1 53 53 75 00
Fax: + 33 1 53 53 75 01
Emails: ljaeger@orrick.com
pagboyibor@orrick.com
nchahidnourai@orrick.com
yschneller@orrick.com
gdekerauson@orrick.com
and
Mr. Michael Ostrove
Mr. Scott Horton
Mr. Theobald Naud
Mrs. Sarra-Tilila Bounfour
DLA Piper France LLP
27, rue Laffitte
75009 Paris
France
Tel: +33 1 40 15 24 00
Fax : +33 1 40 15 24 01
Emails : Michael.Ostrove@dlapiper.com
Scott.Horton@dlapiper.com
Theo.Naud@dlapiper.com
Sarra-Tilila.Bounfour@dlapiper.com

10. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

10.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

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- 10.2. By letter of 23 February 2015, ICSID requested that each Party pay US\$125,000 to defray the initial costs of the proceeding. ICSID received the Claimant's payment on 25 March 2015 and the Respondent's payment on 27 March 2015.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.

11. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 11.1. Paris shall be the place of the proceeding. Hearings shall be held at the Paris office of the World Bank to the extent possible.
- 11.2. After consultation with the Parties, the Tribunal may hold hearings at any other place that it considers appropriate.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 12.1. In accordance with Arbitration Rule 22, English and French shall be the procedural languages of the arbitration.

For correspondence with or through ICSID Secretariat

- 12.2. Routine, administrative, or procedural correspondence, addressed to or sent by the ICSID Secretariat, as well as any written requests may be submitted in either procedural language without translation except where the Tribunal, of its own initiative or on request, orders that a translation be produced.

For Parties' Pleadings

- 12.3. Pleadings, 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.

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- 12.4. If the exhibits or legal authorities drafted in a language other than French or English are lengthy and relevant only in part, it shall be sufficient to translate only the relevant passage(s) and such other parts sufficient to provide necessary context, it being specified that the Tribunal may require a fuller or complete translation on request or of its own initiative.
- 12.5. Translations need not be certified by a sworn translator unless the translation is challenged and the Tribunal requests a certified version.
- 12.6. Documents exchanged between the Parties under §16 below (Production of Documents) need not be translated.

For Hearings

- 12.7. Substantive hearings shall be interpreted simultaneously in their entirety into English and French. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or French shall be interpreted simultaneously into both languages.
- 12.8. The Parties will state whether a witness or expert will require interpretation from a language other than English or French when filing the witness statement or expert report.
- 12.9. The costs of the interpretation will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

For Tribunal's Orders and Decisions

- 12.10. The Tribunal may initially make any order or decision in one procedural language, and subsequently issue that order or decision in the other procedural language, unless the Parties waive such second version. Both versions shall be equally authentic.

For Tribunal's Award

- 12.11. The Tribunal shall render the Award in English and French simultaneously. Both versions shall be equally authentic.

13. Routing of Communications

Administrative and Financial Regulation 24

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Secretary and Assistant to the Tribunal, and the Tribunal.
- 13.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing Party and the Tribunal.
- 13.3. The Secretary of the Tribunal shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 14.1. By 5:00 pm Washington, D.C. time on the relevant filing date, the Parties shall (i) submit by email to the Secretary of the Tribunal, the opposing Party, the Tribunal and its Assistant an electronic version (without exhibits) of the pleading, witness statements, expert reports and a list of exhibits,¹ and (ii) upload the pleading with all the supporting documentation to the folder created by ICSID for this case in the World Bank's file-sharing platform (Box).
 - 14.1.1. The Parties shall courier to the Secretary of the Tribunal within three business days:
 - 14.1.1.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);
 - 14.1.1.2. one hard copy of the pleading in A5 format, and the witness statements, expert reports, and exhibits (but not including legal authorities) in A4/Letter format; and
 - 14.1.1.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

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14.1.2. at the same time, courier to the opposing Party at the addresses indicated at §9.1 above and to each Member of the Tribunal, as well as the Assistant to the Tribunal, at the addresses indicated at §§14.2-14.3 below:

14.1.2.1. one hard copy of the pleading in A5 format (soft cover), and the witness statements, expert reports, and exhibits (but not including legal authorities) in A4/Letter format; and

14.1.2.2. one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits, legal authorities and lists of exhibits.

14.2. The addresses of the Tribunal Members are as follows:

Professor Gabrielle Kaufmann-Kohler Lévy Kaufmann-Kohler 3-5 rue du Conseil Général, P.O. Box 552 CH-1211 Geneva 4 Switzerland Tel : +41 22 809 62 00	Prof. Dr. Albert Jan van den Berg Hanotiau & van den Berg IT Tower, 9 th Floor Avenue Louise 480, B.9 1050 Brussels Belgium Tel : +32 2 290 39 13	Prof. Pierre Mayer 20, rue des Pyramides 75001 Paris France Tel : +33 1 85 09 01 58
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14.3. The address of the Assistant to the Tribunal is as follows:

Mr. Magnus Jesko Langer
Lévy Kaufmann-Kohler
3-5 rue du Conseil Général, P.O. Box 552
CH-1211 Geneva 4
Switzerland
Tel: +41 22 809 62 00

14.4. Electronic versions of a written submissions (also referred to in this Order as “pleadings”), witness statements and expert reports shall be submitted in either .doc (Word) or “non-scanned” and text searchable .pdf format, and, if possible, in “e-brief” version, containing hyperlinks to the evidence cited.

14.5. Written submissions on USB media shall be accompanied by a hyperlinked index of exhibits.

14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal.

15. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 15.1. The Parties shall submit their written submissions (also referred to in this Order as “pleadings”) in accordance with the Procedural Calendar for the Jurisdictional and Liability Phase set out in **Annex A** and with the rules set out below. The type of remedies available and the damages shall be addressed in a subsequent phase of these proceedings, if any.
- 15.2. In the first exchange of submissions within each phase, the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond specifically to all allegations of fact and legal arguments made by the other Party. Together with such submissions, each Party shall produce all evidence upon which it wishes to rely, including factual exhibits and legal authorities, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.
- 15.3. In the second exchange of submissions within each phase, the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase unless new facts have arisen after the first exchange of submissions. Together with this second exchange of submissions, the Parties may file additional factual exhibits and legal authorities, witness statements and expert reports only (i) insofar as they are relevant to respond to the other Party’s preceding submission (including the documents, witness statements and expert reports produced therewith), and to documents produced by the Parties during the document production phase or (ii) insofar as, in spite of the Parties’ best efforts, they were not available or accessible at the time of the first exchange of submissions.
- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.
- 15.5. All written submissions, witness statements, and expert reports shall be divided into consecutively numbered paragraphs.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 16.1. Within the time limit set in **Annex A**, a Party may request another Party to produce documents or categories of documents within the other Party’s possession, custody or control. Such a request for production shall identify each document or category of documents sought with precision, using a Redfern

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Schedule as attached in Annex B hereto, in both Word and .pdf format, specifying why the documents sought are relevant to the case and material to its outcome. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant to the Tribunal.

- 16.2. Within the time limit set in **Annex A**, using the Redfern Schedule provided by the first Party, the other Party shall either produce the requested documents or set forth its objections to the production sought.
 - 16.3. Within the time limit set in **Annex A**, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule. The reply shall be limited to answering specific objections regarding (i) legal impediment, privilege, confidentiality or political sensitivity and/or (ii) unreasonable and/or overburdensome nature of the production and other fairness-related considerations.
 - 16.4. On or around the date set in **Annex A**, the Tribunal will, in its discretion, rule upon the production of the documents or categories of documents sought having regard to the legitimate interests of the other Party and all of the surrounding circumstances.
 - 16.5. Documents shall be produced directly to the requesting Party without copying the Tribunal. Documents so produced shall not be deemed on record unless and until the requesting Party subsequently files them as exhibits in accordance with §17 below.
 - 16.6. In addition, the Tribunal may at any time order a Party to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2). In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be deemed on record.
17. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 17.1. The Memorial and Counter-Memorial shall be accompanied by exhibits and legal authorities, in accordance with §15.2 above. Further exhibits and authorities may be submitted in rebuttal with the Reply and Rejoinder, in accordance with §15.3 above.
 - 17.2. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

17.2.1. Should a Party request leave to file additional or responsive documents,

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that Party may not annex to its request the documents that it seeks to file.

- 17.2.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.
- 17.3. The exhibits and legal authorities shall be submitted in the following form:
 - 17.3.1. They shall be numbered consecutively, in Arabic numerals, throughout these proceedings. The number of each Exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities. Exhibits shall start with the number “C-0001” and “R-0001” (for fact exhibits), and “CL-0001” and “RL-0001” (for legal authorities), respectively.
 - 17.3.2. Fact exhibits shall be submitted in hard copy (in the size set out in §14 above) and electronic format. For hard copies, each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 17.3.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
 - 17.3.4. Electronic versions of exhibits shall be submitted in PDF format and may be scanned, but shall be text searchable.
- 17.4. The Parties shall file all documents only once by attaching them to their written submission. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 17.5. All documents shall either be submitted to the Tribunal in complete form or the Parties shall indicate the respects in which any document is incomplete. All documents, including both originals and copies, submitted to the Tribunal shall be deemed authentic and complete, unless specifically objected to by the other Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.6. PowerPoint-type presentations and demonstrative exhibits (such as charts, tabulations, etc.) may be used at hearings, provided they contain no new evidence and indicate the source in the record for the information shown. Demonstrative exhibits used in opening argument, including those that may be included in a PowerPoint-type presentation, shall be exchanged between the Parties in

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electronic form 24 hours before the start of the hearing. Demonstrative exhibits used in the course of the hearing shall be communicated to the other party in electronic form no later than 6:00 pm Paris time on the day preceding their use. The Parties shall submit their demonstrative exhibits to the other Party, the Tribunal Members, the Secretary of the Tribunal, the Assistant to the Tribunal, the court reporter(s), and interpreter(s) in hard copy at the hearing just before using them and in electronic form thereafter. A hard copy of PowerPoint-type presentations shall be submitted to the other Party, the Tribunal, the Secretary, the Assistant, the court reporters, and the interpreters prior to the start of the presentation. An electronic copy shall be sent thereafter.

- 17.7. The Parties shall use separate document bundles for the examination of witnesses or experts, which are to be handed to the witness or expert at the beginning of his or her examination. One copy shall be provided to each Member of the Tribunal, the Secretary, the Assistant, and two copies to the opposing Party. Bundles for direct examination need only be provided if new developments have occurred after the witness' or expert's last written statement that the Party presenting the witness wishes to introduce on the basis of documents.

18. Witnesses

Convention Article 43(a); Arbitration Rule 24, 35 and 36

- 18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative.
- 18.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal. A witness who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
- 18.3. In accordance with §15 above, each Party shall submit its witness statements together with its written submissions. The Tribunal shall not admit testimony that has not been filed with the written submissions, unless it considers it justified by exceptional circumstances.
- 18.4. Each witness statement shall state the witness's name, date of birth, present address, and involvement in the case. Each witness statement shall be signed and dated by the witness.
- 18.5. Witness statements shall be submitted in one of the official languages of the arbitration. Witness statements from a witness expressing him/herself in a language other than English or French shall be submitted with a translation into

either of these languages.

- 18.6. The first statement of a witness shall be identified as “First Witness Statement,” the second as the “Second Witness Statement,” and so on. In addition, the witness statements submitted by each Party shall be numbered consecutively using the prefixes “CWS-” and “RWS-” (for Claimant and Respondent witness statements, respectively).
- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts or to help prepare the witness statements and examinations.
- 18.8. Each witness shall make him- or herself available for examination, subject to the provisions of this Order. Each Party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. A witness who was not called for cross-examination will not be heard at the hearing, unless the Tribunal makes use of its powers under §18.11.
- 18.9. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party shall not be deemed established by virtue of the fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.10. Each Party shall be responsible for the practical arrangements, costs, and availability of the witnesses it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.11. Of its own motion or on request, the Tribunal may call upon a Party to produce as a witness or invite to appear as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.12. If appropriate, the Tribunal may in its discretion allow a witness to be examined by videoconference and will issue directions to that effect.
- 18.13. If a witness fails to appear at the hearing and provides a valid reason for failing to appear, having regard to all the surrounding circumstances the Tribunal may either consider the written statement of that witness taking into account that the witness was not subject to cross-examination, or fix a new date for his/her examination. The Tribunal shall not consider and shall strike from the record the witness statement of a witness who fails to appear and does not provide a valid reason. For these purposes, it shall be understood that a witness who was not called to testify in person has a valid reason not to appear and that a witness whom the Tribunal has allowed to testify by videoconference has appeared at the hearing.

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- 18.14. As a rule and subject to other arrangements during the pre-hearing telephone conference, fact witnesses shall be examined prior to expert witnesses, and the Claimant's fact (expert) witnesses shall be examined prior to the Respondent's fact (expert) witnesses.
- 18.15. At the hearing, the examination of each witness shall proceed as follows:
- 18.15.1. The witness shall make the declaration specified at Arbitration Rule 35(2).
 - 18.15.2. The Party who presents the witness may briefly examine the witness for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address facts which have arisen after such statement was drafted ("direct examination").
 - 18.15.3. The adverse Party may then cross-examine the witness. The scope of the cross-examination shall be limited to the contents of the witness's written statement and the direct examination ("cross-examination").
 - 18.15.4. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination ("redirect examination").
 - 18.15.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties, without being limited to the contents of that witness's witness statement.
 - 18.15.6. The Tribunal may order two or more witnesses to be examined concurrently ("witness conferencing").
- 18.16. Subject to a different agreement by the Parties or a different ruling by the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read transcripts of oral testimony or argument, prior to his or her examination.
- 18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion refuse to hear a witness when it appears that the facts on which he or she is to testify are already proven by other evidence or are irrelevant. It may also order that a witness be recalled for further examination at any time. Any witness may only be recalled by the Tribunal (of its own motion or on request) if such intention is announced in time to assure the availability of the witness during the hearing.

19. Experts

Convention Article 43(a); Arbitration Rules 24, 35 and 36

- 19.1. Each Party may retain and produce evidence of one or more experts.
- 19.2. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
- 19.3. Each expert report shall state the expert's name, date of birth, present address, professional position, and instructions received for purposes of his or her report. Each expert report shall be signed and dated by the expert.
- 19.4. Expert reports shall be submitted in one of the official languages of the arbitration. Expert reports from an expert expressing him/herself in a language other than English or French shall be submitted with a translation into either of these languages.
- 19.5. The first report of an expert shall be identified as "First Expert Report," the second as the "Second Expert Report," and so on. In addition, the expert reports submitted by each Party shall be numbered consecutively using the prefixes "CER-" and "RER-" (for Claimant and Respondent expert reports, respectively).
- 19.6. Expert reports shall be accompanied by any documents or information upon which they rely unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 19.7. The rules set forth in §§18.15-18.17 above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts, with the following specifications:
 - 19.7.1. Before giving oral evidence, the expert shall make the declaration specified at Arbitration Rule 35(3).
 - 19.7.2. After consultation with the Parties, the Tribunal may request non-legal experts to give a presentation lasting no longer than thirty minutes summarizing their methodology and conclusions in lieu of or in addition to brief direct examination.
 - 19.7.3. Subject to a different agreement by the Parties or a different ruling by the Tribunal, the limitation at §18.16 shall not apply to expert witnesses.

20. Organization of the Hearing
Arbitration Rule 13

- 20.1. On or before the date indicated at **Annex A**, the Parties shall identify the witnesses and experts presented by the other Party whom they wish to cross-examine at the hearing.
- 20.2. A Party's witness or expert who has not been called for cross-examination by the other Party or as a result of an order from the Tribunal shall not testify at the hearing, except upon approval of the Tribunal on the basis of a reasoned request from the relevant Party.
- 20.3. On the date indicated in **Annex A**, a pre-hearing organizational conference will be held by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. Hearings
Arbitration Rules 20(1)(e) and 32

- 21.1. The oral procedure shall consist of a hearing for oral arguments by the Parties and the examination of witnesses and experts, if any.
- 21.2. The hearing shall be held at a place to be determined in accordance with §11 above.
- 21.3. The hearing shall take place on the date indicated in **Annex A**.
- 21.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.5. In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if due process so requires, in particular if there is a significant imbalance in the number of cross-examinations. It is left to each Party to determine how much of its total allotted time it wishes to spend on direct, cross, or redirect examinations, as long as it does not exceed the total time allocated. The Parties may request short extensions of time if necessary and the Tribunal will exercise a limited degree of flexibility in this regard.
- 21.6. The issue whether the hearings shall be open to the public and through what means shall be addressed in a subsequent procedural order, as contemplated at §26.

22. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

22.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

22.3. The Parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

23.1. In consultation with the Parties, the Tribunal will determine at the pre-hearing organizational conference or at the end of the hearing whether there shall be post-hearing briefs. In the affirmative, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No additional evidence may be produced together with the post-hearing briefs, except with leave from or on the request of the Tribunal.

23.2. The Tribunal will issue directions on the Parties’ statements of costs at the appropriate stage.

24. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

24.1. The Parties consent to ICSID publication of any Order, Decision, and Award issued in the present proceeding.

25. Additional Guidance on Evidence

25.1. The Tribunal may seek guidance from, but shall not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration (2010 edition).

26. Other Matters

26.1. Transparency:

It was agreed that this arbitration shall not be confidential. Specifically, the Parties agreed that their submissions, the exhibits and authorities, witness statements, expert reports, transcripts of hearings, orders, decisions and award shall be accessible to the public. The practical arrangements in this respect, including the application of the UNCITRAL Rules on Transparency and whether the hearings shall be open to the public and through which means shall be addressed in a subsequent order. The Parties are invited to state their view on these last two issues by no later than 27 May 2015.

26.2. The Respondent's Request on the Basis of Articles 28(1) and 39(1) of the ICSID Arbitration Rules:

Pursuant to the procedural discussion held at the end of the first session, the Respondent filed its Request on the Basis of Articles 28(1) and 39(1) of the Arbitration Rules ("the Request") on 30 April 2015. On the basis of the agreement of the Parties and having considered the Parties' emails of 5 and 6 May 2015, the Tribunal sets the following calendar: the Claimant shall file its response to the Request no later than 5 June 2015; the Respondent shall file its reply by 12 June 2015; and the Claimant its rejoinder by 19 June 2015. The Claimant shall state its position with respect to the need for a hearing (and, if applicable, the format, i.e. whether in person or by video or telephone link) in its response, and the Respondent in its reply.

On behalf of the Tribunal,

[Signed]

Professor Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 13 May 2015

ANNEX A
PROCEDURAL CALENDAR
FOR THE JURISDICTIONAL AND LIABILITY PHASE OF THE PROCEEDING

Description	By	Days	Dates
First Session	All		Thursday, 23 April 2015
Memorial setting out factual and legal arguments and attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Claimant	134	Friday, 4 September 2015
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	164	Monday, 15 February 2016
Requests for production of documents on preliminary objections and liability	Claimant and Respondent	21	Monday, 7 March 2016
Production of Non-Objected Documents and Objections	Claimant and Respondent	14	Monday, 21 March 2016
Responses to Objections	Claimant and Respondent	14	Monday, 4 April 2016
Decision on Request	Tribunal	21	Monday, 25 April 2016
Production as Ordered	Claimant and Respondent	21	Monday, 16 May 2016
Reply (and answer on preliminary objections) attaching any documentary evidence, legal authorities, fact witness	Claimant	42	Monday, 27 June 2016

BSG Resources Limited. v. Republic of Guinea
(ICSID Case No. ARB/14/22)

Procedural Order No. 1

Description	By	Days	Dates
statements, and expert reports			
Rejoinder (and reply on preliminary objections) attaching any documentary evidence, legal authorities, fact witness statements, and expert reports	Respondent	112	Monday, 17 October 2016
Identification of Witnesses and Experts for cross-examination	Claimant and Respondent	21	Monday, 7 November 2016
Pre-Hearing Telephone Conference	All	3	Thursday, 10 November 2016, 15:00 CET
Rejoinder on preliminary objections, if any	Claimant	11	Monday, 21 November 2016
Hearing	All		Monday, 9 to 20 January 2017, being specified that (i) 14 and 18-20 January are reserve days, (ii) 15 January is a day off, and (iii) the exact number of days to be used will be determined at the pre-hearing telephone conference.
Simultaneous Post-Hearing Memorials	Claimant and Respondent		TBD at the close of the hearing
Simultaneous Cost Submissions	Claimant and Respondent		TBD at the close of the hearing

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BSG Resources Limited

v.

Republic of Guinea

(ICSID Case No. ARB/14/22)

PROCEDURAL ORDER NO. 2

Transparency

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

Mr. Magnus Jesko Langer

September 17, 2015

I. PROCEDURAL BACKGROUND

1. On 27 May 2015, pursuant to paragraph 26.1 of Procedural Order No. 1, the Parties filed their comments on the rules of transparency applicable to the present proceedings, in particular on (i) the applicability of the UNCITRAL Rules on Transparency (the “Transparency Rules”) and (ii) whether and through which means the hearings would be open to the public.
2. On 8 September 2015, the Centre circulated a draft of this procedural order. The Parties provided their comments on the draft on 15 September 2015, after which the Tribunal issues this order in final form.
3. After setting out the positions of the Parties (II), the present order addresses the transparency regime applicable to the present arbitration (III).

II. POSITIONS OF THE PARTIES

4. The Claimant agrees to apply the Transparency Rules, subject to two amendments, namely that (i) the Secretary-General of ICSID or an institution named by ICSID act as repository of published information and that (ii) all exhibits, expert reports, and witness statements be published in addition to the documents referred to in Articles 3(1)-(2) of the Transparency Rules, without prejudice to Article 7.
5. The Claimant further proposes that (iii) the Tribunal be exclusively responsible for submitting documents to the repository; (iv) the Tribunal designate a person of contact between the Tribunal and the repository, absent which the Presiding Arbitrator would assume that role; (v) the Tribunal submit documents to the repository in a format agreed upon with the repository; (vi) the Tribunal communicate with the repository in English or French; (vii) the repository publish information in the form and language in which it receives it; and (viii) the repository refrain from publishing any additional document

from, or relating to, the arbitration once the Tribunal has discharged its function and its mandate is terminated.

6. The Respondent also agrees to apply the Transparency Rules and concurs with the Claimant's proposals (i) to (viii) referred to above. The Respondent further proposes that each Party be granted 45 days to ask the Tribunal to determine prior to publication whether information contained in a document is confidential or protected.
7. The Claimant agrees that the hearings be open to the public, always subject to the exceptions contained in Articles 6(2) and 7 of the Transparency Rules.
8. The Respondent consents to open hearings by way of video transmission, with a time lag of at least 30 minutes so as to allow the suspension of the transmission in the event that confidential or particularly sensitive information for purposes of State interests requires protection.

III. TRANSPARENCY REGIME

9. Although elaborated in the framework of UNCITRAL, the Transparency Rules are available for use in non-UNCITRAL arbitrations such as this ICSID arbitration (Art. 1(9)). Where the Contracting States to an investment treaty have not provided for the application of the Transparency Rules, the disputing parties (in the present case: the "Parties") may agree to apply the Transparency Rules (Art. 1(2)(a) by analogy and combined with Art. 1(9)). The ICSID legal framework allows the Parties to agree on a degree of transparency that is greater than the one required by the ICSID Convention and Arbitration Rules.
10. In the present case, the Parties have agreed on the application of the Transparency Rules, expanded their scope in some respects, and provided for specific rules for their implementation. ICSID has confirmed its willingness to administer this arbitration in

accordance with the rules set forth in this Order and to act as repository as defined in the Transparency Rules and in this Order (the “Repository”).

IV. ORDER

11. On the basis of the foregoing, the Tribunal gives the following directions in respect of the transparency of this arbitration. Unless otherwise specified, references to “Article(s)” designate article(s) of the Transparency Rules.

12. The Transparency Rules shall apply to the present proceedings, subject to the following specifications or amendments:

- (i) Articles 1(1)-(2), 1(3)(a), and 2 are not applicable;
- (ii) Article 1(5) is modified to the extent that the Tribunal may exercise its authority to promote transparency in this case;
- (iii) The following provision replaces Article 3 of the Transparency Rules:

1. Subject to Article 7, the following documents shall be made available to the public: the Claimant’s request for arbitration, the Claimant’s memorial, the Respondent’s counter-memorial and any further written statements or written submissions by any Party, the exhibits, legal authorities, witness statements, expert reports (including any appended exhibits), transcripts of hearings, orders, decisions, and award of the arbitral tribunal.

Legal authorities shall be made available to the public in the form of lists hyperlinked to the relevant documents; if the documents are publicly available online, the hyperlink shall be to the relevant source online and the documents shall not be submitted to the Repository in PDF format.

2. Subject to Article 7, the Tribunal may decide, on its own initiative or upon request from any person, and after consultation with the Parties, whether and how to make available to the public any documents provided to, or issued by, the Tribunal not falling within paragraph 1 above.

3. The documents to be made available to the public pursuant to paragraph 1 shall be communicated by the Tribunal to the Repository, subject to Section 15 below. The documents to be made available pursuant to paragraph 2 may be communicated by the Tribunal to the Repository as they become available and, if applicable, in a redacted form in accordance with Article 7. The Repository shall make all documents available to the public in a timely manner, in the form and in the language in which it receives them.

4. Any administrative costs of making those documents available to a person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the Repository (on the ICSID website), shall fall under ICSID Administrative and Financial Regulation 15.

13. As a result of the foregoing, Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 32(2), 37(2), and 48(4) do not apply to proceedings before this Tribunal.
14. Pursuant to Article 6(3) of the Transparency Rules, the following logistical arrangements will be made to facilitate public access to the hearings:
- (i) The hearings will be broadcast and made publicly accessible by video link on the ICSID website. An audio-video recording will also be made of hearings. For logistical reasons, physical attendance by third persons at hearings shall be subject to the Tribunal's approval.
 - (ii) In order to protect potential confidential or protected information, the broadcast will be delayed by 30 minutes (Articles 6(2) and 7(3)(c)).
 - (iii) At any time during the hearings, a Party may request that a part of the hearing be held in private and that confidential, that the broadcast of the hearing be temporarily suspended or that protected information be excluded from the video transmission. To the extent possible, a Party shall inform the Tribunal before raising topics where confidential or protected information could reasonably be expected to arise. The Tribunal will then consult the Parties.

Such consultations shall be held *in camera* and the transcript shall be marked “confidential”. After consultation with the Parties, the Tribunal will decide whether to exclude the information in question from the broadcast and the relevant portion of the transcript shall be marked “confidential”. The transcript made public by the Repository shall redact those portions of the hearing marked “confidential”.

- (iv) The ICSID Secretariat will make the necessary technical arrangements to broadcast the hearings through video link.
15. Pursuant to Article 7(3)(a), each Party or third person shall give notice within 21 days from the filing of a document that it seeks protection for confidential or protected information in that document. In the absence of such notice, the Tribunal will authorize the publication of any document mentioned in Section 12(iii) above.
16. Pursuant to Article 7(3)(b), any request to protect confidential or protected information made in accordance with the preceding paragraph shall specifically identify the part (or parts) of the document sought to be designated as confidential or protected. After consulting the Parties, the Tribunal will decide whether the identified information is confidential or protected. If the information is found to be confidential or protected, the Party or third person will provide the Tribunal with a redacted version of the document in question. The Tribunal will thereafter transmit that document to the Repository for publication.
17. With reference to Section 10 above, Article 8 is modified to the extent that the Repository of published information shall be ICSID. In addition, the following rules shall apply in connection with the Repository:
- (i) The Tribunal will be responsible for submitting the documents for publication (in redacted form if applicable) to the Repository.

Procedural Order No. 2

- (ii) The Secretary of the Tribunal will receive the documents from the Tribunal and ensure publication in searchable electronic format (.pdf format).
 - (iii) The Repository will publish information and documents in the form and language in which it receives it.
 - (iv) The Tribunal will communicate with the Repository in English or French.
 - (v) The Tribunal will be released of its responsibility under the Transparency Rules and this Order upon completion of its mandate under the ICSID Convention and Arbitration Rules, being specified such mandate extends to any interpretation or revision proceedings.
 - (vi) Upon completion of the case, video recordings of hearings, and all documents referred to in Section 12(iii) above shall continue to be made available to the public on the ICSID website.
18. Pursuant to Section 12(iii) above, this Order which is hereby communicated to the Repository shall be published upon issuance.

On behalf of the Tribunal,

[Signed]

Professor Gabrielle Kaufmann-Kohler
President of the Tribunal