

**IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF ARBITRATION OF THE
INTERNATIONAL CENTRE FOR THE SETTLEMENT
OF INVESTMENT DISPUTES**

ICSID Case No. ARB/14/22

**BSG RESOURCES LIMITED
(Claimant)**

v

**THE REPUBLIC OF GUINEA
(Respondent)**

**CLAIMANT'S RESPONSE TO
THE REQUESTS OF THE REPUBLIC OF GUINEA
UNDER ARTICLES 28(1) AND 39(1) OF THE
ICSID ARBITRATION RULES**

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I. INTRODUCTION

1. This is the response of the Claimant (“**BSGR**”) to the request of the Respondent (“**Guinea**”) dated 30 April 2015 (“**Request**”), made under Articles 28(1) and 39(1) of the Arbitration Rules of the International Centre for the Settlement of Investment Disputes (“**ICSID Rules**”).
2. Guinea’s Request is wholly misconceived, without merit and a regrettable waste of resources. Guinea is asking the Tribunal to depart from standard ICSID practice and to make the following quite remarkable orders on the flimsiest of grounds:
 - i) First, Guinea requests an order requiring BSGR to pay all cost advances during the pendency of this proceeding pursuant to Article 28(1)(a) of the ICSID Rules.
 - ii) Secondly, Guinea requests a provisional measure requiring BSGR to post security for costs in the form of an irrevocable bank guarantee for USD 3,000,000, pursuant to pursuant to Article 39(1) of the ICSID Rules.
3. In light of the meagre basis for these requests, it appears as if Guinea is front-loading the arbitration in the hope that the picture of distress that it paints in its Request will form a lasting impression on the Tribunal and thereby subconsciously predispose it on the merits.
4. Whilst no-one doubts that Guinea is in desperate need of development, the actions of Guinea against BSGR are exacerbating the suffering of its people. BSGR, with its JV partner Vale, was investing hundreds of millions of dollars, in infrastructure and in preparation for production of the Simandou mining concessions (“**Mining Rights**”) (close to USD 1 billion was invested since February 2006). Guinea was set to receive substantial sums in revenue

from BSGR's extraction and export of iron ore, which would have had (and, it is hoped, still will have) the most profound and beneficial impact on Guinea's economy of any investment in its history. Instead, BSGR's Mining Rights have been unlawfully taken without compensation, and the iron ore remains in the ground.

5. This opportunity for development, won by BSGR lawfully, has been wrested from it by the unlawful conduct of President Alpha Condé, who targeted BSGR for failing to pay hundreds of millions of dollars to him in extortion sums¹ (which other investors did pay²), and with a view to rewarding those who had surreptitiously and unlawfully rigged the presidential elections in his favour,³ to the dismay of the betrayed electorate - some of whom reportedly lost their lives in the riots following the election in 2010.⁴

II. PRELIMINARY REMARKS ON JURISDICTION

6. BSGR accepts that Guinea has not, by bringing the Request, waived its right to contest the Tribunal's jurisdiction on the merits in due course.⁵ BSGR accepts that in principle making requests for

¹ President Condé demanded a payment to him of USD 1.25 billion in early February 2011, which BSGR refused. This represented 50% of the value of the transaction that BSGR and Vale had concluded a few months earlier. According to Mediapart, "*It was when BSGR refused [to make a payment], that investigations into its dealings began...*" (Exhibit C-28). The experience of BSGR mirrors that of Rio Tinto and Chinalco, who similarly were required by President Alpha Condé to pay an extortion fee of USD 700 million (representing 50% of the value of their transaction) (Exhibit C-29).

² See e.g. the payment by Rio Tinto of US\$700 million which remains unaccounted for and appears to have gone to President Condé's family (Exhibit C-30). According to Africa Mining Intelligence, even Rio Tinto demanded that Guinea "*explain how it spent the \$700 million it paid*" (Exhibit C-31) See also the payment of US\$836 million by RusAl in March 2013 (Exhibit C-32).

³ The suggestion at paragraph 43 of the Requests that the elections were "free and fair" is false, and that paragraph ought to be dismissed by the Tribunal as propaganda. In due course, BSGR will adduce evidence that the election was very far removed from the description "free and fair".

⁴ The Carter Center Observing the 2010 Presidential Elections in Guinea Final Report (Exhibit C-33). On 18 November 2010, the military declared a state of emergency as described by *The Guardian* report at (Exhibit C-34).

⁵ See Request, para. 10.

provisional measures can be consistent with the position that an ICSID Tribunal may later make a finding that it lacks jurisdiction.⁶

7. However, if the Tribunal is to address the Request it must be satisfied that it has *prima facie* jurisdiction to establish its power to indicate provisional measures.⁷
8. Consequently, in bringing the requests Guinea has accepted that the Tribunal has *prima facie* jurisdiction, notwithstanding its intention set out at footnote 2 of its Request to object to the Tribunal's jurisdiction in due course. BSGR awaits Guinea's attempts to argue that the Tribunal does not have jurisdiction in this case, particularly since it accepts that the Tribunal has *prima facie* jurisdiction. No such jurisdictional arguments have been mentioned by Guinea to date.

III. ADVANCES ON COSTS

9. Guinea requests an order requiring BSGR to pay all cost advances during the pendency of this proceeding pursuant to Article 28(1)(a) of the ICSID Rules.
10. By doing so, Guinea requests the Tribunal to set aside the standard practice of ICSID tribunals and the presumption contained in Article 14(3)(d) of the ICSID Administrative and Financial Regulations that each party bears half of the advances on costs:

"In connection with every conciliation proceeding, and in connection with every arbitration proceeding unless a different division is provided for in the Arbitration Rules or is decided by the parties or the Tribunal, each party shall pay one half of each advance or supplemental charge, without prejudice to the final decision on the payment of the cost of an arbitration proceeding to be

⁶ See the authorities cited at footnote 3 of the Request.

⁷ See C. Schreuer et al, *The ICSID Convention: A Commentary* (Cambridge, 2009, 2nd edition), paras. 46-57 (Exhibit CL-3); See further *Occidental v Ecuador* Decision on Provisional Measures of 17 August 2007, para. 55 (Exhibit CL-4)

made by the Tribunal pursuant to Article 61(2) of the Convention".

11. Furthermore, Guinea's request flies in the face of its earlier consent to pay half of the advances on costs. Guinea consented a first time when, upon the invitation of the ICSID Secretariat, Guinea paid a first advance of USD 125,000 without making any reservation. Guinea consented a second time when it filed its comments to the Tribunal on the draft Procedural Order No. 1 on 20 April 2015. Without making any qualifications, Guinea accepted Article 10.1 of the draft Procedural Order No. 1 according to which "*the parties shall defray the direct costs of the proceedings in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs*".⁸ It was only in the course of the First Session that Guinea informed the Tribunal and BSGR of its intention to seek an order requiring BSGR to pay all the advances on costs.

12. BSGR accepts that the Tribunal has jurisdiction to apportion the advances on costs as a matter of discretion. However, in over 400 ICSID arbitration cases that have been conducted to date, this discretionary power has only been used once: in *RSM v St Lucia*⁹, in circumstances that were substantially different than those in the present case.

- 3.1 The advances on costs decision in *RSM v St Lucia*

13. In *RSM v. St Lucia*, St Lucia filed a request to order RSM to pay all advances on costs, based on the experience that St Lucia's counsel had had with RSM in two prior ICSID cases (in which St Lucia's counsel had acted for another respondent state and in which it had unsuccessfully applied for a security for costs order).

⁸ Guinea comments on Procedural Order No. 1 dated 20 April 2015 (Exhibit C-35)
⁹ *RSM Production Corporation v. St Lucia*, ICSID No. ARB/12/10, Decision on Saint Lucia's Request for Provisional Measures of 12 December 2013 (Exhibit CL-5).

14. The Tribunal started its analysis by setting out that both the ICSID Arbitration Rules were silent and the parties themselves had been silent on what standard to apply when deciding to allocate advance payments in a ratio different from the half-one ration stated in Article 14 of the ICSID Administrative and Financial Regulations. The Tribunal filled this gap by determining that a showing of a "good cause" was required to alter the presumptive allocation of advance payments. The Tribunal refrained from addressing what sort of circumstances would generally amount to "good cause" for varying the one-half costs advances, but determined that the combination of four circumstances, particular to the case, constituted "good cause" for the variance. The four circumstances were divided in two categories, one relating to RSM's payment record in earlier ICSID arbitrations and one relating to RSM's impecuniousness in the present arbitration.¹⁰

"It is sufficient to state here (1) that Claimant's record concerning payment of these administrative expenses in two prior ICSID proceedings gives rise to substantial doubt about either its willingness or ability (or both) to pay any award of such expenses and (2) that, far from allaying these doubts, the circumstances of this proceeding thus far compound them. It is this combination which, in the Tribunal's view, constitutes "good cause" for the variance".

15. The first circumstance which the Tribunal took into account was RSM's failure to pay the advance on costs in the annulment proceeding in ICSID Case No. ARB/05/14 *RSM Production Corporation v. Grenada*. RSM's record of payment in that proceeding was summarized as follows:¹¹

"The Tribunal draws several inferences from this chronological recitation of RSM's conduct in the

¹⁰ *Ibid.*, para. 50.

¹¹ *Ibid.*, para. 68.

Annulment Proceeding. First, RSM was dilatory in meeting the initial request for advance payment which is was obliged to make under Regulation 14. Of the USD 150,000 requested, USD 31,895 was not paid until more than four months after the request had been made. Second, RSM never complied with the additional call that it pays USD 300,000. It did not even pay the USD 100,000 that it said it was prepared to pay. There is no explanation for this in the Annulment Proceeding decisions or in the record before this Tribunal. Third, because of RSM's failure to pay advances as requested, the Committee discontinued the Annulment Proceeding. Fourth, because of RSM's refusal to meet its regulatory obligations by paying requested advances, ICSID found that it could not even meet actual costs incurred in the Annulment Proceeding. It asked RSM to advance USD 35,000 to allow recovery of costs actually incurred before the discontinuance. RSM did not do so. Instead, Grenada stepped in to pay ICSID USD 31,424.74 to cover these outstanding fees and expenses. No part of this has been recovered"

16. The second circumstance was RSM's failure to pay the costs awarded in ICSID Case No. ARB/10/6, *Rachel S. Grynberg and Others v. Grenada*. The Tribunal summarized RSM's payment record in those proceedings as follows:¹²

"In the Treaty Arbitration, RSM was joined by all three of its shareholders in asserting claims against Grenada under the Grenada-United States Bilateral Investment Treaty ("BIT"). The Request for Arbitration was filed January 15, 2010, the month ICSID was calling for additional advances in the Annulment Proceeding. Although Claimants alleged violations of the BIT, the "investments" which they claimed to have made arose from the contract which was the basis of the Original Proceeding. This was the primary basis for the Tribunal's determination that the doctrine of collateral estoppel precluded Claimants from re-litigating matters actually litigated in the Original Proceeding. The Tribunal thus concluded that the claims were manifestly without legal merit and included in its award an order that "Claimants" reimburse Grenada for the cost advances which Grenada had made to ICSIDF, in the amount of USDF 93,605.62.

¹² *Ibid.*, paras. 69-70.

The significance of the Treaty Proceeding for this Tribunal is that RSM itself did not satisfy any part of the Treaty Award. Instead, Grenada had to sue to reduce the Treaty Award to a judgment of the United States for the Southern District of New York and eventually executed on the assets of one of RSM's shareholders in the United States District Court for the District of Colorado. This was possible there only because the shareholders were Claimants in the Treaty Proceedings. Only RSM is the Claimant in the proceeding before this Tribunal, and its inability or unwillingness to pay ICSID's expenses as ordered in the Treaty Proceedings gives rise to further insecurity concerning its willingness or ability to pay such expenses in this proceeding)."

17. On the basis of these findings, the Tribunal inferred that RSM was either unwilling or unable to pay advances on costs or cost awards and that this state of affairs persisted to the present day:¹³

"The Tribunal concludes from RSM's conduct in the Annulment Proceeding and the Treaty Proceeding that RSM was unwilling or unable to advance the expenses and fee of ICSID as required by ICSID Regulation 14 (in the Annulment Proceeding) or to pay its opponent's part of those same ICSID expenses as awarded by the Tribunal (in the Treaty Proceeding). This gives rise to a reasonable inference that this state of affairs, whether caused by unwillingness or inability to pay, persists to the present day, unless things have changed or unless there is in the current record some basis for the inference that the state of affairs does not persist."

18. The third circumstance that the Tribunal took into consideration was RSM's admission, in the course of the proceedings, that it was impecunious:¹⁴

"The record before the Tribunal, far from allaying apprehensions about RSM's ability or willingness to satisfy the awards for ICSID's expenses and requests for advances in this proceeding, exacerbates the apprehensions. Claimant's submissions to the Tribunal are equivocal, confusing, and contradictory. Claimant

¹³ *Ibid*, para. 71.

¹⁴ *Ibid*, para. 72.

plainly acknowledges that it may not be able to satisfy a monetary award"

19. The fourth and final circumstance that was taken into consideration was the fact that RSM was third party funded. In the Tribunal's opinion, this increased the risk of non-payment of St Lucia:¹⁵

"Further, as Claimant's counsel admitted during the Hearing, it is a fair inference that RSM has third party funding in this matter. This exacerbates the concern engendered by RSM's conduct in the Annulment Proceeding and the Treaty Proceeding. It places an unfunded RSM and the third party funder(s) in the inequitable position of benefitting from any award in their favor yet avoiding responsibility for a contrary award".

20. On the basis of these four circumstances, taken together, the Tribunal ordered RSM to pay all advances on costs:¹⁶

"Thus, unless this Tribunal requires advance payment of ICSID administrative fees and expenses, it is a reasonable inference, based on RSM's conduct in the Annulment Proceeding and the Treaty Proceeding, and its impecuniousness here, that those fees and expenses will never be paid. It is the view of the Tribunal that these circumstances constitute a showing of "good cause" to alter the presumptive allocation of advance payments. Claimant should be required to make all such interim advances, including Respondent's one-half share of advances heretofore ordered, subject to its right to seek reimbursement if required by the Tribunal's final award".

21. None of the circumstances which cumulatively amounted to a "good cause" to order RSM to pay all advances exist in the present case:

- BSGR has no track record of failing to pay advances on costs;
- BSGR has no track record of failing to pay costs awarded against it;
- BSGR is not impecunious; and

¹⁵ *Ibid*, para. 73.

¹⁶ *Ibid*, para. 74.

- BSGR is not third party funded.

22. Furthermore, none of the circumstances on which Guinea relies to justify its request comes even close to the circumstances that justified the advances on costs decision in *RSM v. St Lucia*. Guinea advances three circumstances: (1) BSGR is exploiting these proceedings; (2) the cost of the present proceedings conflict with Guinea's desire to focus on its battle against Ebola; and (3) Guinea has a serious defence to BSGR's claims. In what follows, BSGR will address each of these unmerited points.

3.2 BSGR's alleged exploitation of the present proceedings

23. Guinea strings together a hotchpotch of evidence that fails to support its theory that BSGR has launched these proceedings as an abuse of process to support a media campaign to thwart the unlawful process Guinea intends to take to award BSGR's Mining Rights to a third party.

a. Preserving the status quo and the non-aggravation of the dispute

24. Whereas it is correct that BSGR objects to Guinea awarding the Mining Rights to a third party, there is nothing inappropriate about BSGR's motive. BSGR objects because it seeks the reinstatement of its Mining Rights. Restitution is admissible both under international law and Guinean law.

25. With respect to international law, Article 35 of the International Law Commission's Articles on Responsibility of States for Internationally

Wrongful Acts provides for restitution unless it is materially impossible or wholly disproportionate.¹⁷

26. In *Perenco v Ecuador*, the ICSID Tribunal confirmed the mining company's entitlement to the reinstatement of its unlawfully terminated mining rights:¹⁸

"The Tribunal notes that Perenco amended its original Request for Arbitration to claim, as one of six heads of relief, orders that the Respondents reinstate fully Perenco's rights under the Participation Contracts according to their terms, and do not further derogate from those Contracts by, among other things, unilaterally amending, rescinding, terminating or repudiating the Contracts or any terms thereof. Thus Perenco specified restitution as a form of relief requested. In the Tribunal's judgment, the seizure of Perenco's assets, as described above, would seriously aggravate the dispute between the parties and jeopardise the ability of Perenco to explore for and produce oil in Blocks 7 and 21 pursuant to the Participation Contracts"

27. In *PNG Sustainable Development v. Papua New Guinea*, the investor had initiated an arbitration proceeding following the adoption by the State of Papua New Guinea of legislation purporting to cancel the investor's majority shareholding in a local mining company and to re-issue the shares to the State. Nine months after the filing of its arbitration, the investor requested the Tribunal, by means of provisional measures, to enjoin the state from completing the

¹⁷ Article 35 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts 2001 ("*A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: (a) is not materially impossible; (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation*") (Exhibit CL-6).

¹⁸ *Perenco v. Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures of 8 May 2009, para. 46. (Exhibit CL-7).

imminent transfer of the shares in the mining company to third parties. The Tribunal upheld the request.¹⁹

"In the Tribunal's view, the transfer of shares to third parties – that would potentially qualify as bona fide third party purchasers – would significantly undermine the opportunity for the Claimant to receive 'restatement and return of its shares in OTML' which is the primary relief that the Claimant seeks in this arbitration. In this regard, contrary to Respondent assertions, the Claimant is not required to show "irreparable" harm, rather as noted above, a showing of substantial, serious harm would generally suffice. In the Tribunal's view, such a showing has been made by the Claimant, and confirmed by the Respondent's admission with regard to its intended transfer of OTML shares. The Tribunal therefore considers that an order of provisional measures is necessary to prevent this harm from occurring during the pendency of these proceedings".

28. With respect to Guinean law, Article 1304 of the Guinean Code on Civil, Economic and Administrative Procedures provides that the procedure to be followed in administrative matters is governed by this Code.²⁰ Under Article 850 of the Guinean Code on Civil, Economic and Administrative Procedures, *"such protective measures or measures to restore [the parties] to [their] previous state as required, either to avoid an imminent damage or to stop a manifestly illegal nuisance"* may be ordered.²¹

¹⁹ PNG Sustainable Development Program Ltd v. Papua New Guinea, ICSID Case No. ARB/13/13, Decision on provisional measures of 21 January 2015, para. 155. (Exhibit CL-8).

²⁰ Article 1304 of the Guinean Code on Civil, Economic and Administrative Procedures (*"Sous réserve des dispositions contraires contenues notamment dans la Loi Organique L91/008/du 23 décembre 1991 portant organisation attribution et fonctionnement de la Cour Suprême et le Code Foncier et Domanial, la procédure à suivre en matière administrative est régie par le présent Code"*). (Exhibit CL-9)

²¹ Article 850 of the Guinean Code of Civil, Economic and Administrative Procedures (*"Dans tous les cas d'urgence, le Président du Tribunal de première Instance ou le Juge de paix peut ordonner en référé toutes les mesures qui ne se heurtent à aucune contestation sérieuse. Le Président du Tribunal de première Instance ou le Juge de paix peut toujours prescrire en référé les mesures conservatoires ou de remise en état qui s'imposent, soit pour prévenir un dommage imminent, soit pour faire cesser un trouble manifestement illicite"*). (Exhibit CL-10).

29. To enable the enforcement of an award ordering the restitution of BSGR's Mining Rights, it is paramount that those rights are not awarded in the meantime to a third party. Against this background, BSGR's public announcements are more than legitimate and intend to preserve BSGR's right to the *status quo* and the non-aggravation of the dispute.²²

b. Media storm

30. Guinea complains about BSGR's media campaign. Guinea purports that it is intense, designed to exert inappropriate pressure and interfere with the tender process of the Mining Rights and spreads incorrect or misleading information.

31. First of all, compared to the attention that the media has devoted to this dispute, BSGR's media campaign has been extremely moderate. To give an idea of the media storm in the centre of which BSGR has found itself in the last two years, 271 articles have been published in the international and specialised mining press in relation to the Simandou dispute in a period of just over a year (between 19 October 2012 and 26 November 2013).²³ In that period, BSGR released 12

²² *Holiday Inns v. Kingdom of Morocco*, ICSID Case No. ARB/72/1, Order of 2 July 1972, not public, commented in Pierre Lalive, "The First World Bank Arbitration Holiday Inns v Morocco - Some Legal Problems", BYIL 1980, pages 136-137 ("*Both Parties are invited to abstain from any measure incompatible with upholding of the Contract and to make sure that the action already taken should not result in any consequences in the future which would go against such upholding*") (Exhibit CL-11); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order of 6 September 2005, para. 45 ("*It is a right to maintenance of the status quo, when a change of circumstances threatens the ability of the Arbitral Tribunal to grant the relief which a party seeks and the capability of giving effect to the relief*") (Exhibit CL-12), *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order No. 1 of 1 July 2003, para. 2 ("*The parties to a dispute over which ICSID has jurisdiction must refrain from any measure capable of having a prejudicial effect on the rendering or implementation of an eventual ICSID award or decision, and in general refrain from any action of any kind which might aggravate or extend the dispute or render its resolution more difficult*") (Exhibit RL-2).

²³ Overview of press clippings (Exhibit C-36).

press statements only.²⁴ In the period between 1 January 2014 and 31 July 2014, more than 157 articles have been published in relation to this matter.²⁵ In the same period, BSGR released 3 press statements.²⁶ Since the filing of the Request for Arbitration, BSGR has issued another 3 press statements in total.²⁷

32. Secondly, BSGR's media contacts are not designed to exert pressure. They are designed to tell BSGR's side of the story and to restore BSGR's corporate image.
33. Finally, Guinea interprets the evidence wrongly. For instance, Guinea wrongly argues at paragraph 30 of the Request that BSGR publicised that it had 83 "witnesses". The quotation refers to 83 people "*likely to have discoverable information*". That is not the same as saying they have 83 witnesses, and BSGR cannot be held responsible for the headline.
34. Similarly, at paragraph 31 of the Request, Guinea appears to think that BSGR's announcement that it had "*filed a notice of dispute*" on 7 May 2014 was premature since it did not issue its Request for

²⁴ "BSGR to resist smear campaign to undermine position in Guinea" 28 September 2012 (Exhibit C-37); "Statement in relation to Simandou Project Guinea" 31 January 2013 (Exhibit C-38); "Opportunities available for people of Guinea being destroyed by discredited regime", 25 March 2013 (Exhibit C-39); "Beny Steinmetz and BSG Resources sue FTI Consulting LLP and Lord Malloch-Brown", 11 April 2013 (Exhibit C-40); "Response to press speculations", 9 May 2013 (Exhibit C-41); "BSG Resources protests at illegal detention of its employees in Guinea and pledges to support them", 17 May 2013 (Exhibit C-42); "Press Release Toure and Bangoura File Guinea", 5 June 2013 (Exhibit C-43); "BSG Resources receives compensation and costs from FTI Consulting and Lord Malloch-Brown", 10 June 2013 (Exhibit C-44); "Beny Steinmetz counters smear campaign", 12 September 2013 (Exhibit C-45); "BSGR and Beny Steinmetz sue French publication Le Canard Enchaîné for Libel", 3 October 2013 (Exhibit C-46); "Statement to the Media", 4 October 2013 (Exhibit C-47); "Statement", 6 November 2013 (Exhibit C-48).

²⁵ Press Articles from 1 January 2014 to 31 July 2014 (Exhibit C-49)

²⁶ "Government of Guinea publishes report based on false allegations, 9 April 2014" (Exhibit C-50); "Statement in response to Rio Tinto lawsuit", 30 April 2014 (Exhibit C-51); "BSGR files notice of dispute in relation to mining rights in Guinea", 7 May 2014 (Exhibit C-52).

²⁷ "BSGR files arbitration claim against Guinea – Simandou expropriation linked to election rigging", 10 September 2014 (Exhibit C-53); "BSGR issues claim for judicial review against SFO and Home Office", 12 December 2014 (Exhibit C-54); "BSGR responds to press allegations", 20 March 2015 (Exhibit C-55).

Arbitration until August 2014. Either this is a non-point, or it fails to appreciate the plain distinction between a Notice of Dispute and a Request for Arbitration. BSGR's announcement accurately records the facts.

c. No delay in the proceedings

35. In paragraphs 33 to 39 of its Request Guinea lists a number of examples that seek to establish that BSGR is deliberately trying to delay this arbitration. However, each one of these examples is entirely baseless.
36. Before turning to some of these examples specially, it is worth noting that the timetable currently in place leads to a hearing on jurisdiction and liability on 9 January 2017, that is 889 days (or 2.5 years) after the filing of the Request for Arbitration.²⁸ Taking into account that an ICSID arbitration takes on average 900 days from the filing of the Request for Arbitration to the merits hearing,²⁹ the agreed timetable is more than reasonable and clearly dismisses the allegation that BSGR delays matters.
37. As to the specific examples of alleged delay, BSGR did not wait numerous months before filing its Request for Arbitration. By letter of 24 April 2014, Guinea informed BSGR of the withdrawal of its Mining Rights.³⁰ Four months later, on 4 August 2014, BSGR filed the Request for Arbitration.
38. Guinea's reference to BSGR's letter of 15 March 2013 - in which BSGR expressed its consent to conduct an arbitration under the

²⁸ The timetable proposed to the Tribunal by BSGR on 20 April 2015 suggested a hearing on the merits somewhere in October or November 2016, depending on the availability of the Tribunal. This would have resulted in a duration of about 800 days.

²⁹ Anthony Sinclair, "ICSID Arbitration: how long does it take?", *Global Arbitration Review*, 2009 4(5), 18-21 (Exhibit CL-13).

³⁰ Exhibit C-23.

ICSID Arbitration Rules if an investment dispute were to arise between BSGR and Guinea – is inappropriate.³¹ As the Mining Rights had not been withdrawn at that stage, the filing of a Request for Arbitration would obviously have been premature.

39. As far as the constitution of the Tribunal is concerned, Guinea complains that BSGR only appointed its arbitrator on 7 November 2014 whereas it had initially proposed to appoint its arbitrator 20 days from the registration of the Request of Arbitration, i.e. by 24 August 2014. This point can hardly be taken seriously.
40. BSGR's proposal was part of broader proposal on the method and timing of the constitution of the Tribunal (which also provided, for example, for a 20 day period for Guinea's party appointment). BSGR's proposal was obviously subject to Guinea's acceptance. Guinea rejected BSGR's proposal in its letter to the Tribunal of 29 September 2014 in which it proposed an alternative timetable which would have resulted in BSGR having to make its party appointment only one week later. This in turn was unacceptable to BSGR. Ultimately the parties managed to find an agreement according to which BSGR had to make its party appointment by 7 November 2014. BSGR subsequently made its appointment in accordance with the agreed timetable. In any event, the entire process of constituting the Tribunal took 150 days³² whereas the average is 180 days.³³
41. In relation to BSGR's alleged failure to respond to the proposed dates for the First Session, BSGR responded on Monday 2 April 2015 to Guinea's email of Friday 27 March 2015 (in which it had indicated that it was only available on one of the five proposed dates) and to the Tribunal Secretary's letter of 1 March 2015 informing the parties that (subject to BSGR's availability) the First Session would be held on 12

³¹ Exhibit R-9.

³² From 8 September 2014 (registration) to 5 February 2015 (constitution).

³³ Exhibit CL-13.

March 2015. BSGR responded that it needed to check the availability of its legal team and, two days later, by e-mail of 4 March 2015; BSGR confirmed its unavailability and requested alternative dates.³⁴ On 9 April 2015, the Tribunal's Secretary proposed two new dates, one of which was accepted by BSGR. The First Session was ultimately held on 23 April 2015, i.e. 2.5 months after the constitution of the Tribunal.

42. Finally, in relation to the appointment of Mr Langer, this appointment was included in the draft Procedural Order No. 1 on which the parties had to comment at least five days before the First Session. In light of the ongoing discussions between the parties on Procedural Order No. 1, the parties agreed to extend the deadline for providing their comments on Procedural Order No. 1 to 20 April 2015. The Tribunal's Secretary confirmed this agreement on 19 April 2015. The following day, BSGR filed its comments and agreed to the appointment of Mr Langer. In other words, BSGR responded to the proposed appointment in accordance with the agreed procedure. In addition, the appointment of the Assistant to the Tribunal had no impact on the timing of the arbitration.
43. Summarizing, BSGR is not in any way delaying the arbitration.

3.3 Guinea's budgetary constraints in times of Ebola

44. Guinea submits that its financial means are limited as a result of the Ebola crisis. BSGR fails to see what relevance this has to the request. It is not said that Guinea cannot cover the advances on costs, only that the funds would be “*better used*” to deal with Ebola.³⁵ However, there is no evidence for the preposterous suggestion that Guinea is taking the relatively modest (in the context of Guinea’s national budget)

³⁴ Email from BSGR to the Tribunal of 4 March 2015 (Exhibit C-56).

³⁵ Request paragraph 48.

sums required to meet advances on costs from funds that are or otherwise would be allocated to respond to the Ebola situation.

45. BSGR ought not be required to pay advances on costs to deal with a public health problem exacerbated by Guinea's incompetent handling of the Ebola situation in circumstances where:

- i) Guinea failed to respond to the Ebola crisis for a year, denying that there was a problem to the detriment of its population.³⁶
- ii) Despite the problem caused by Ebola, Guinea is still investing heavily in military camps.³⁷
- iii) Despite its alleged funding priority of dealing with Ebola, Guinea has chosen to instruct not one, but two, expensive global law firms to represent it in these proceedings. This excess is hardly consistent with its claim that the advances on costs would be better spent on the public health response to Ebola.
- iv) In 2014, USD 80 million of the USD 90 million used by Guinea to combat Ebola came from donor nations.³⁸
- v) There are widespread reports that money given by donors to combat Ebola has been siphoned off by corrupt officials and mismanaged.³⁹

³⁶ *New York Times*, 30 November 2014, Adam Nossiter, 'Ebola Now Preoccupies Once-Skeptical Leader in Guinea' (Exhibit C-57).

³⁷ Guinée News: "Guicopress reliance les travaux de reconstructions des camps militaires (Exhibit C-58).

³⁸ UN Economic Commission for Africa, January 2015, 'Socio-Economic Impacts of Ebola on Africa: Revised Edition', p.11, English translation (Exhibit C-59).

³⁹ Bloomberg Business "Guinea Opposition Leader Says Slow Ebola Action Hurts Investment" 27 January 2015 (Exhibit C-60).

- vi) It is expected that Ebola will be contained in the first half of 2015. On 3 June 2015, SOS International reported that "*more than 12 months after the largest ever Ebola outbreak began, the situation appears to be nearing an end. Liberia's outbreak was declared over on 9 May, and transmission continues to decline in Guinea and Sierra Leone*"⁴⁰.
 - vii) The International Monetary Fund expects Guinea's nominal GDP to grow with 27.5% in the course of this arbitration, from GNF 50 billion (USD 6.7 billion) in 2015 to GNF 58 billion (USD 7.8 billion) in 2016 and GNF 68 billion (9.3 billion) in 2017.⁴¹
 - viii) Guinea expects to receive at least USD 600 million from the sale of bauxite blocks in Boffa.⁴²
46. Leaving aside Ebola, Guinea's economic outlook is promising. According to KPMG's Global Mining Institute, Guinea:⁴³
- i) is expected to become the world's fourth-largest bauxite producer by 2017 (at page 2);
 - ii) has received investment of about USD 2.5 billion over the past five years and "*there is growing interest from international mining firms, and the mining sector is set to experience high growth in coming years as further political and infrastructure challenges are overcome*" (page 6);

⁴⁰ Press release International SOS - 3 June 2015 (Exhibit C-61).

⁴¹ IMF Country Report No. 15/108 of April 2015, page 8 (Exhibit C-62).

⁴² IMF Guinea Fifth Supplement to the Memorandum on Economic and Financial Policies, 27 January 2015, page 12 (Exhibit C-63).

⁴³ KPMG Guinea Country Mining Guide 2014 (Exhibit C-64).

iii) has a wealth of mineral resources including cement, gold, salt, diamonds, graphite, iron ore, limestone, manganese, nickel and uranium (page 19).

47. It would set a remarkable and worrying precedent to reallocate the principle of equal payment of advances on costs by the parties on the basis of the funding needs of an alternative “good cause”, even a pressing and urgent cause that a respondent state might prefer to spend the money on. Nothing short of a well proven case that the state could not otherwise pay the advances on costs would justify departing from the general principle. It is difficult to imagine any situation that would justify such a scenario. Certainly one does not exist in this case.

3.4 Guinea has a serious defence

48. Guinea asserts that it has a serious defence on the substance of BSGR’s complaints (it is noteworthy that this section does not advance any case on the seriousness or strength of Guinea’s case as to the Tribunal’s jurisdiction). It is difficult to see how this is relevant. The fact that Guinea has a plausible defence is a very long way from justifying dispensing with the principle of equal allocation of advances on costs.

49. In *Maffezini v. Spain*, the ICSID Tribunal had no difficulty whatsoever in rejecting a security for costs request which had been made on the ground that the respondent state submitted to have a strong defence.⁴⁴

⁴⁴ *Emilio Agustin Maffezini v. Spain*, ICSID Case No. ARB/97/7, Procedural Order No. 2 of 28 October 1999, paras. 19-21. (Exhibit CL-14); See also *Guaracachi America and Rurelec v. Bolivia*, PCA Case No. 2011-17, Procedural Order No. 14 of 11 March 2013, para. 8 (“Nor is it necessary for the Tribunal to analyze – in accordance with Article 26(3) (b) of the UNCITRAL Rules – whether there is a “reasonable possibility that the requesting party will succeed on the merits of the claim.” This can be a difficult hypothetical exercise, even with the benefit of the Parties’ full written submissions. It is also unwise to risk even the most minor prejudgment of the case so close to the date of the final hearings. Such

"Respondent alleges that the Claimant's claim is totally without merit, forcing the Respondent to spend unnecessary money on the costs and expenses incurred in defending against the Claimant's claim.

Expectations of success or failure in an arbitration or judicial case are conjectures. Until this Arbitral Tribunal hands down an award, no one can state with any certainty what its outcome will be. The meritoriousness of the Claimant's case will be decided by the Tribunal based on the law and the evidence presented to it.

A determination at this time which may cast a shadow on either party's ability to present its case is not acceptable. It would be improper for the Tribunal to pre-judge the Claimant's case by recommending provisional measures of this nature"

50. [PROTECTED]
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[REDACTED]
[REDACTED]

51. Furthermore and whereas BSGR will demonstrate in due course and in great detail that Guinea's defence is not serious, Guinea's attempt to paint a different picture at this preliminary stage in the hope of forming a lasting impression on the Tribunal and thereby subconsciously predispose it on the merits, should not work. Therefore, BSGR will point already now to some of the weaknesses in Guinea's allegedly serious defence.

a. Commission contracts

52. Guinea refers to nine contracts allegedly concluded between BSGR or companies affiliated with BSGR and the alleged wife of the former President of Guinea, Mamadie Toure.

determinations are therefore best avoided unless absolutely necessary to come to a decision on the request for interim measures, which is not the case here.") (Exhibit CL-15).

53. Three of these contracts appear to have been entered into by BSGR.⁴⁵ Each one of them is a forgery. In 2010, Mamadie Toure attempted to extort money from BSGR on the back of these contracts.⁴⁶ BSGR immediately responded with a powerful letter indicating that the contracts were false and demanding that Mamadie Toure withdrew her unfounded claims immediately.⁴⁷ By letter of 23 June 2010, Mamadie Toure withdrew her claims, confirming *inter alia* that there had never been any relationship between Matinda or Mamadie Toure and BSGR, the contracts were fraudulent and the allegations malicious and incorrect.⁴⁸
54. The other six alleged contracts appear to have been entered into by a company called Pentler Holdings. Contrary to Guinea's allegation, this company is not controlled, owned or otherwise affiliated with BSGR. Some of these contracts suggest that Pentler Holdings and Mamadie Toure had been conducting a variety of business activities in Guinea together, involving commercial goods, pharmaceutical products and mining. BSGR was absolutely not privy to this commercial relationship, if any. In addition, there are strong indications that also these contracts were forged and that Guinea knew them to be forged when it took away the Mining Rights.

b. Witness statement Mamadie Toure

55. Guinea's witness evidence is extremely flimsy. Its entire case is built on the testimony of one single witness, the above-mentioned Mamadie Toure. Her extortion attempt in 2010 sufficiently demonstrates her unreliability.

⁴⁵ Exhibits R-27 to R-29.

⁴⁶ Letter from bailiff Nassif Moussi to BSGR of 8 June 2010 (Exhibit C-65).

⁴⁷ Letter from BSGR to bailiff Nassif Moussi of 20 June 2010 (Exhibit C-66).

⁴⁸ Letter from bailiff Nassif Moussi on behalf of Mamadie Toure of 23 June 2010 (Exhibit C-67).

56. Her unreliability is compounded by the numerous contradictions and inconsistencies in the witness evidence that she gave to the US authorities on 2 December 2013⁴⁹ ("the US Evidence") and the witness evidence that she had given a few months earlier, in February 2013, to the Guinean authorities (the "Guinea Evidence").⁵⁰
57. She gave the US Evidence under pressure, as a so-called cooperating witness in criminal proceedings against Mr. Frederic Cilins. This pressure probably explains why, compared to the Guinean Evidence Statement, she made over ten additional bribery charges.
58. In her Guinean Evidence she claimed to have received four payments for a total amount USD 2,150,000⁵¹ and "several other payments" the amount of which she could not remember. She had also been promised USD 4,000,000. She did not claim to have received gifts. She did not claim that Guinean officials had been offered or received bribes. She did not claim to have been offered shareholdings in various companies. She did not claim that Beny Steinmetz had offered bribes to the President.
59. In her US Evidence she claimed to have received five payments for a total amount of USD 3,248,000⁵² and "other payments". She also remembered receiving an unidentified car⁵³, two Land Cruisers⁵⁴, a necklace⁵⁵ and white gold chain encrusted with seven diamonds⁵⁶. In addition, she claimed to have been promised USD 12,000,000 (to be shared between herself and unidentified Guinean officials)⁵⁷, rights to 5% of the shares or turnover in BSGR Guinea and a new company

⁴⁹ Exhibit R-35.

⁵⁰ Report of Questioning of Mrs Mamadie Touré, 8 February 2013, (Exhibit C-68).

⁵¹ *Ibid.*, USD 1,000,000; USD 200,000; USD 50,000 and USD 900,000.

⁵² para.15 (USD 200,000), para. 28 (USD 1,000,000); para. 31 (USD 50,000); para. 33 (USD 1,000,000) and para. 34 (USD 998,000). It is telling that in para. 37 of the same statement, she claimed to have received only USD 2.4 million (Exhibit R-35)

⁵³ *Ibid.*, para 22.

⁵⁴ *Ibid.*, para 26.

⁵⁵ *Ibid.*, para 27.

⁵⁶ *Ibid.*, para 27.

⁵⁷ *Ibid.*, para 8.

called Compagnie Miniere de Simandou⁵⁸ and another payment of USD 3.1 million or USD 5 million⁵⁹. She recollected that Minister Souare had received a car⁶⁰ and that Beny Steinmetz had offered money to the late President (which the latter would have refused)⁶¹.

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i) [PROTECTED]
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⁵⁸ *Ibid.*, para 14.

⁵⁹ *Ibid.*, paras 37-38.

⁶⁰ *Ibid.*, para 22.

⁶¹ *Ibid.*, para 23.

⁶² [PROTECTED]
[REDACTED]

ii) [PROTECTED]
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iii) [PROTECTED]
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iv) [PROTECTED]
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63 [PROTECTED]
64 [REDACTED]
65 [REDACTED]
[REDACTED]

[REDACTED]

v)

[REDACTED]

vi)

[REDACTED]

61. Last but not least, Mamadie Touré is a forger of documents, something it is likely Guinea knew, or on proper inquiry, could easily have discovered.

c. Frederic Cilins

66

[REDACTED]

67

[REDACTED]

62. In terms of the evidence against Mr Cilins, Mr Cilins did not work for BSGR, nor has he ever been instructed by BSGR or Mr Beny Steinmetz. Whatever, Mr. Cilins may or may not have done, he did so on his own account and in his own name.

d. The findings of the Technical Committee

63. Guinea purports that the withdrawal of the Mining Rights was based upon a thorough legal and financial audit undertaken by the Comite Technique des Titres et Conventions Miniers de la Republique de Guinee.

64. In due course, will BSGR establish that the entire process before the Technical Committee was nothing but an attempt to justify the forthcoming withdrawal of the Mining Rights. The entire process was in violation of Guinean and international fundamental principles of law. Its outcome was prejudiced by the interests of President Alpha Conde from its very beginning.

e. Other proceedings

65. Guinea refers to criminal proceedings in the US in which Mr Cilins was convicted. However, BSGR was not the subject of those proceedings, nor was Mr Beny Steinmetz, nor was any employee or agent of BSGR. Neither BSGR, nor Mr Steinmetz have ever been indicted, let alone sentenced in those proceedings. Mr. Cilins was released at the beginning of 2015 by the US authorities, which suggests that, contrary to Guinea's allegations, those proceedings are closed. Also Mamadie Toure has left the US.
66. In relation to proceedings in the UK and Switzerland, BSGR has not been indicted, let alone sentenced in those proceedings, nor has Mr Beny Steinmetz, nor has any employee or agent of BSGR.

67. At paragraph 54 of its Requests Guinea purports to understand BSGR's JV partner in respect of its mining rights, stating how it felt about Guinea's very serious allegations against BSGR and claiming that it launched the LCIA proceedings against BSGR because of these conclusions. Far more likely is that it took the action in an attempt to protect its position, a circumstance that demonstrates further the damaging nature of Guinea's unlawful conduct against BSGR.

3.5 Conclusion

68. Guinea concludes its request for re-allocation of the advances on costs by claiming that it has demonstrated "exceptional circumstances" in the present case and "good reason". However, on each of the three points relied upon, Guinea fails.
69. First, BSGR is not abusing these proceedings. It is seeking the genuine vindication of its rights unlawfully taken by Guinea. BSGR's media contacts have been extremely limited in comparison to the media storm at the centre of which it has been and still is since 2012. The information provided in BSGR's public statements has always been correct and accurate. At no point has BSGR delayed the arbitration. On the contrary, it has agreed to a timetable leading to a hearing on jurisdiction and liability in less than 2.5 years after the filing of the Request for Arbitration.
70. Secondly, whilst Ebola is a tragedy for many poor families in Guinea, its presence is a very long way from justifying making BSGR pay Guinea's portion of the advances on costs in these proceedings, particularly where (for example) Guinea still finds the funds to invest in military training camps and pay for two expensive law firms in these proceedings rather than funding the Ebola effort, and the fact that much of the funding to combat Ebola comes from donor countries.

71. Thirdly, BSGR overstates its case at an early stage, claiming its untested evidence is “*irrefutable*”. Plainly it is not, and the evidence must be tested at trial, where it will be found wanting.
72. None of the circumstances presented by Guinea are exceptional, let alone justify departing from the principle that advances on costs are to be borne by parties equally in ICSID proceedings. Were it otherwise, this jurisdiction would be frequently exercised on the basis of bare allegations of foul play by respondent states, or pleas of alternative financial needs, or indeed assertions by a respondent state as to the strength of its own evidence. None of these can constitute sufficient grounds for a request of this nature to be granted.
73. For the foregoing reasons, the Tribunal is requested to reject the request for an order requiring BSGR to pay all advances on costs.

IV. SECURITY FOR COSTS

74. Guinea requests a provisional measure requiring BSGR to post security for costs in the form of an irrevocable bank guarantee for USD 3,000,000, pursuant to Article 39(1) of the ICSID Rules.
75. Whereas BSGR accepts that ICSID Arbitration Rule 39(1) provides the Tribunal jurisdiction to grant security for costs, unanimous ICSID jurisprudence determines that such security can only to be exercised in “*exceptional circumstances*”⁶⁸, if not “*in the most extreme case*”⁶⁹. The same threshold applies in commercial arbitration proceedings.⁷⁰

⁶⁸ *Maffezini v. Spain*, para.10 (“*The imposition of provisional measures is an extraordinary measure which should not be granted lightly by the Arbitral Tribunal*”) (Exhibit CL-14); *Victor Pey v. Chile*, para. 86 (“[...] *la recommandation « d’une caution » pour le paiement d’éventuels dépens ne saurait être admise comme une mesure générale et ordinaire*”) (Exhibit RL-1); *Grynberg v. Grenada*, para. 5.17 (“*It is also beyond doubt that a recommendation of provisional measures is an extraordinary remedy which ought not be granted lightly*”) (Exhibit RL-7); *Burimi S.R.L. and Eagle Games S.H.A. v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 of 3 May 2012,

76. To date, 9 ICSID Tribunals have considered whether such exceptional circumstances existed. In each of these cases (but one) the conclusion was no exceptional circumstances existed and the request for security for costs was rejected.⁷¹

para. 34 ("Provisional measures are "extraordinary measures" which should be recommended only in limited circumstances. Specifically, an order for provisional measures will be made only where such measures are (i) necessary to avoid imminent and irreparable harm and (ii) urgent") (Exhibit C-16); *Guaracachi v. Bolivia*, para. 6 ("Although investment treaty tribunals clearly hold the power to grant provisional measures, an order for the posting of security for costs remains a very rare and exceptional measure") (Exhibit CL-15).

⁶⁹ *Libananco Holdings Co Ltd v Republic of Turkey*, ICSID No ARB/06/08, Decision on Preliminary Issues of 23 June 2008, para. 57 ("It would only be in the most extreme case – one in which an essential interest of either Party stood in danger of irreparable damage – that the possibility of granting security for costs should be entertained at all") (Exhibit CL-17); *Commerce Group. & San Sebastian Gold Mines, Inc v. Republic of El Salvador*, ICSID Case No. ARB/09/07, Decision on El Salvador's Application for Security for Costs of 20 September 2012, para. 45 ("The power to order security for costs should be exercised only in extreme circumstances, for example, where abuse or serious misconduct has been evidenced" and requiring "incontrovertible evidence that the Applicants' conduct threatens the integrity of the proceedings, that their conduct amounts to abuse or that it is pursued in bad faith") (Exhibit CL-18).

⁷⁰ ICC Case No. 12732 of 2006 ("[a security] is very rarely granted, absent exceptional circumstances" (Exhibit CL-19); ICC Case No. 13359 of 2006 ("security for costs is not an ordinary or general measure that should be granted as a matter of course") (Exhibit CL-20); ICC Case No. 13620 of 2006, para. 2.5 ("The grant of security for costs in international commercial arbitration is an extraordinary remedy and should only be granted in clear cases. Rather than starting from a neutral stand point, [...] the Tribunal considers it appropriate to determine the application against this background"), The request for security – made by one of the poorest African states who faced a claim that exceeded 25% of its budget – was rejected) (Exhibit CL-21); ICC Case No. 14433 of 2008, para. 45 ("it was generally agreed that "exceptional circumstances" had to be established before an order for security for costs could be rendered") (Exhibit CL-22).

⁷¹ (Chronologically) *Maffezini v. Spain*, Procedural Order No. 2 of 28 October 1999 (Exhibit CL-14); *Victor Pey v. Chile*, Decision on Provisional Measures of September 25, 2001 (Exhibit RL-1); *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/06, Award of 2 August 2006, paras. 12-13 (Exhibit CL-23); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Procedural Order No. 9 of 28 February 2007, referred to in Award of 27 August 2008, para. 41 (Exhibit CL-24); *Libananco Holdings Co Ltd v Republic of Turkey*, ICSID No ARB/06/08, Decision on Preliminary Issues of 23 June 2008, paras. 57-60 (Exhibit CL-17); *Grynberg & RSM Production Corporation v. Government of Grenada*, ICSID Case No. ARB/10/6, Decision on Respondent's Application for Security for Costs of 14 October 2010, paras. 5.16-5.25 (Exhibit RL-7); *Burimi S.R.L. and Eagle Games S.H.A. v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 of 3 May 2012, paras. 38-41 (Exhibit CL-16); *Commerce Group. & San Sebastian Gold Mines, Inc v. Republic of El Salvador*, ICSID Case No. ARB/09/07, Decision on El Salvador's Application for Security for Costs of 20 September 2012, paras. 45 and 47-54 (Exhibit CL-18).

77. This quasi-unanimous case law allows the Tribunal to draw two preliminary but important conclusions. First of all, the burden of proof as to why security should be ordered is on the party applying for it.⁷² Secondly, the applying party has to produce hard and concrete evidence, mere assertions and speculation do not suffice.⁷³
78. Before turning to the exceptional circumstances that Guinea claims to exist, it is important to take a closer look at the only case so far in which the circumstances were considered so extreme as to justify a security.

⁷² *Maffezini v. Spain*, para.10 ("There is no doubt that the applicant, in this case the Respondent, has the burden to demonstrate why the Tribunal should grant its application") (Exhibit CL-14); *Grynberg v. Grenada*, paras 5.17 ("It is also beyond doubt that the burden to demonstrate why a tribunal should grant such an application is on the applicant" (Exhibit RL-7); *Guaracachi v. Bolivia*, para. 6 ("It is thus clear that this arbitral tribunal has the authority to grant the requested *cautio judicatum solvi* (security for costs), provided that the Respondent, as the requesting party, is able to meet its burden of proof [...]") (Exhibit CL-15). See also ICC Case No. 13359 of 2006 in which the Tribunal noted that the burden of proving that security should be provided was on the party applying for the security with the test being the applying convincingly showing that the other party "[would] almost certainly be unable to meet an award of costs against it" (Exhibit CL-20).

⁷³ *Victor Pey v. Chile*, para. 89 ("[...] Si le danger de non-paiement a bien été allégué d'une façon générale, il n'a pas été démontré ni rendu particulièrement probable ou vraisemblable que ce risque soit présent en l'espèce") (Exhibit RL-1); *Libananco v. Turkey*, para. 59 ("The Tribunal does not find that argument convincing. The state of Libananco's assets is not at this stage the subject of proof, but of mere assertion and counter-assertion") (Exhibit CL-17); *Grynberg v. Grenada*, para 5.25 ("Because Grenada has failed to meet its burden to show insufficient or unavailable assets, that is the end of the matter") (Exhibit RL-7); *Burumi v. Albania*, paras. 39-40 ("The measure is not necessary because the harm it seeks to avoid is not imminent but contingent on future action or inaction by the Claimants, which the Respondent provides no persuasive evidence is likely to occur. Respondent "believes" that because the Claimants are legal persons "with no real activity," and that the funds are "likely not to be their own", "[t]hey could simply organize their bankruptcy when faced with an adverse award." "The Tribunal is unwilling to find imminent danger of harm based on the Respondent's speculation about the Claimants' future conduct. For similar reasons, the matter is not urgent. Because the alleged harm is speculative, there is no basis for finding that the matter cannot await the outcome of an award") (Exhibit CL-16); *Commerce Group v. El Salvador*, para. 53 ("The Committee has not been provided with any incontrovertible evidence [...]") (Exhibit CL-18); See also ICC Case No. 14993 of (2007) ("Security only can be ordered if it is unlikely, if not impossible, that one party can reimburse its costs due to the ill financial situation of the other party which is obligated to reimburse the costs. Respondents have based their request solely on the fact that claimant has generated material losses in the last two business years according to its annual reports. However, this alone cannot be significant since an annual report does not reveal the entire financial situation of an undertaking, for example hidden reserves or possible future business opportunities. Since respondents have not submitted evidences for a clear and present danger that a future costs award would be enforceable, their request as not to be granted") (Exhibit CL-25).

4.1 RSM v. St Lucia

79. As already set out in relation to Guinea's advances on costs request, the exceptional circumstances in *RSM v. St Lucia* which prompted the Tribunal to order the first ever security for costs in an ICSID arbitration were the following.
80. First of all, RSM had repeatedly demonstrated its unwillingness to pay advances of costs⁷⁴ and to pay awarded costs.⁷⁵
81. Secondly, RSM had repeatedly demonstrated its inability to pay costs.⁷⁶
82. Thirdly, RSM was third party funded. In the Tribunal's view this increased the risk for the respondent state:⁷⁷

⁷⁴ Ibid., para. 78 ("*In the Annulment Proceeding, Claimant was dilatory in meeting the initial request for advance payment which is was obliged to make under Regulation 14. Of the USD 150,000 requested, USD 31,895 was not paid until more than four months after the request had been made. Additionally, Claimant never complied with the additional call that it pays USD 300,000. It did not even pay the USD 100,000 that it said it was prepared to pay (whereas it rejected the call for USD 300,000 as "unreasonable"). An explanation for this for this has not been provided, neither in the Annulment Proceeding decisions nor in the record before this Tribunal. Because of this failure by Claimant to pay, the Committee decided to stay the proceeding as of March 29, 2011. The Annulment Proceeding was eventually discontinued. Moreover, because of Claimant's refusal to meet its regulatory obligations by paying requested advances, ICSID found that it could not even meet actual costs incurred in the Annulment Proceeding. It asked Claimant to advance USD 35,000 to allow recovery of costs actually incurred before the discontinuance. Claimant did not do so. Instead, Grenada stepped in to pay ICSID USD 31,424.74 to cover these outstanding fees and expenses. This payment has not been recovered*").

⁷⁵ Ibid., para. 79 ("*In the Treaty Proceeding, the claimants were ordered to reimburse Grenada for the cost advances which Grenada had made to ICSID, in the amount of USD 93,605.62. However, they did not comply with this obligation*").

⁷⁶ Ibid., para. 80 ("*Claimant itself did not satisfy the award. Instead, the award was, in the absence of sufficient assets on the part of Claimant, executed on the assets of one of Claimant's shareholders [...]*") and 82 ("*Thus, contrary to the situation in previous cases where tribunals have denied the application for security for costs because there was no evidence concerning the financial situation of the opposing party, it has been established to the satisfaction of the Tribunal that Claimant does not have sufficient financial resources*").

⁷⁷ Ibid., para. 83.

"Moreover, the admitted third party funding further supports the Tribunal's concern that Claimant will not comply with a cost award rendered against it, since, in the absence of security or guarantees being offered, it is doubtful whether the third party will assume responsibility for honouring such award. Against this background, the Tribunal regards it as unjustified to burden Respondent with the risk emanating from the uncertainty as to whether or not the unknown third party will be willing to comply with a potential costs award in respondent's favour."

83. The cumulative effect of these three circumstances, established by incontrovertible evidence such as RSM's own admissions, led the Tribunal to this stand-alone decision:⁷⁸

"The difference between the present proceeding and previous ICSID arbitration in which the request for security for costs was in every case denied, is that in this case the circumstances which were brought forward in other proceedings occur cumulatively. Those circumstances are, in summary, the proven history where Claimant did not comply with cost orders and award due to its inability or unwillingness, the fact that it admittedly does not have sufficient financial resources itself and the (also admitted) fact that it is funded by an unknown third party which, as the tribunal sees reasons to believe, might not warrant compliance with a possible costs award rendered in favour of Respondent".

84. In his Assenting Reasons attached to the Security for Costs Decision, Dr Gavan Griffith emphasized the truly unique circumstances of the case once more:⁷⁹

"[...] If there were ever a case for such security cost orders to be made, [...] a clear finding of such truly exceptional circumstances should here be made for the reasons canvassed in the decision. On any view, the adverse factors personal to the Claimant here rise to the level of being truly exceptional"

⁷⁸ *Ibid.*, para. 86.

⁷⁹ *Ibid.*, para 10.

4.2 Guinea's alleged exceptional circumstances that would justify a security for costs

85. Guinea identifies three circumstances allegedly justifying a security for costs: (1) the structure of BSGR; (2) the financial situation of BSGR and (3) the actions of Mr. Beny Steinmetz.

a. Structure of BSGR

86. Guinea submits that BSGR is a holding company based in Guernsey and part of a broader group. This is not denied, but in fact, the corporate arrangement of BSGR demonstrates that it is a substantial business with mining and metals businesses and energy business operating with over 6000 people in 12 different countries. Its corporate structure is not in the least unusual or exceptional.

87. The suggestion today that there would be something unusual or unacceptable about BSGR's structure is untenable taking into account that BSGR has been doing business in and with the Guinean Government since 2006, using that same holding structure. For example, in the preamble of the Memorandum of Understanding entered into on 20 February 2006, Guinea acknowledged that.⁸⁰

"BSGR is an international mining group dedicated to the prospecting, development, and trading of mineral resources, and with respect to this project, BSGR has delegated to its subsidiary BSGR Guinea the management of the Simandou Ferrous Project. BSGR holds a majority interest in an engineering company Bateman Engineering [...]"

88. In the Memorandum of Understanding, BSGR and Guinea even agreed to form a new corporate structure together (a so-called "société

⁸⁰ Exhibit C-5, page 1.

anonyme à participation publique") in which Guinea would take a 15% shareholding and BSGR 85%.⁸¹

89. Clearly, if BSGR's corporate structure did not prevent Guinea from granting these Mining Rights to BSGR in the first place, this structure cannot be invoked against BSGR to justify the award of security for costs.
90. Furthermore, the argument that a claimant should post a security for cost because it belongs to a group and would be an empty shell has already been addressed in *Libananco v. Albania*. The Tribunal rejected the argument on the following ground:⁸²

"The Respondent bases its request on the claim that the Claimant is a shell company without assets of its own, and is therefore unlikely to be able to meet an eventual award of costs against [...] The Tribunal does not find that argument convincing.[...] More important to the mind of the Tribunal is that far from this being an unusual exception, it is in practice closer to the norm that the entity appearing as an ICSID Claimant is an investment vehicle created or adapted specially for the purpose of the investment transaction that has in the meanwhile become the subject of dispute."

91. Finally, the suggestion that its structure would allow BSGR to transfer assets to other group companies to frustrate the enforcement of an award issued against it, is mere conjecture. It contains not less than four hypothetical situations. One, Guinea will prevail in the arbitration. Two, BSGR will be ordered to pay Guinea's costs. Three, BSGR will be unwilling to pay these costs. And four, BSGR will place its assets beyond the reach of Guinea.
92. For none of these steps does Guinea offer even the slightest beginning of evidence. There is no evidence that Guinea will prevail in this

⁸¹ *Ibid.*, Article 2.

⁸² *Libananco v. Turkey*, paras. 58-59 (Exhibit CL-17).

arbitration. There is no evidence that the Tribunal will deem BSGR's case to be of such nature as to require it to pay Guinea the costs and expenses it will incur. There is no evidence of BSGR's unwillingness to satisfy a possible award of costs. Finally, there is no evidence of BSGR's intention to hide assets.

b. Financial situation of BSGR

93. Without providing any data in relation to BSGR's finances, Guinea submits that BSGR is suffering severe financial difficulties.
94. It is well established that relying on possible financial hardship of an ICSID claimant is a poor ground for requesting security for costs, particularly where, as in the present case, there are such poor evidential grounds for this assertion.
95. Qualifying a security for costs as "*an additional financial requirement as a condition for the case to proceed*", the Tribunal in *Burimi v. Albania* expressed its reluctance to order security "*even if there were more persuasive evidence than that offered by the Respondent concerning the Claimants' ability or willingness to pay a possible award on costs*".⁸³
96. In *RSM v Grenada*, the Tribunal stated that⁸⁴:

"In an ICSID arbitration, it is also doubtful that a showing of an absence of assets alone, would provide a sufficient basis for such an order. First, as was pointed out in Libananco, it is far from unusual in ICSID proceedings to be faced with a Claimant that is a corporate investment vehicle, with few assets, that was created or adapted specially for the purpose of the investment. Second, as was noted by the Casado Tribunal, it is simply not part of the ICSID dispute resolution system that an investor's claim should be heard only upon the

⁸³ *Burimi v. Albania*, para. 41 (Exhibit CL-16).

⁸⁴ Exhibit RL-7, para. 5.19 and 5.20.

establishment of a sufficient financial standing of the investor to meet a possible costs award. [...] It seems clear to us that more should be required than a simple showing of the likely inability of a claimant to pay a possible costs award."

97. In *Commerce Group v. El Salvador*, a request for security for costs was rejected notwithstanding the fact that the claimant had admitted to experiencing financial difficulties.⁸⁵
98. In *Victor Pey v. Chile*, the Tribunal ruled that "*even if the danger of non-payment had been established [...] it had not been established that the recommendation of [a security for costs] was necessary*".⁸⁶
99. In *RSM v St Lucia*, in his Assenting Opinion, Dr Gavan Griffith QC opined that the fact that "*the claimant does not have funds to meet costs orders if unsuccessful is no reason to make orders for security*".⁸⁷
100. Turning to BSGR's financial situation, the record shows that BSGR has an excellent credit history and has never defaulted on any of its financial obligations. Together with its subsidiaries, associates and joint ventures, it is actively engaged in a wide range of activities which are related to the exploration, development, extraction, refinement, provision of engineering services and marketing of a diversified range of natural resource products in a number of sectors, including iron ore, diamonds, ferronickel, oil and gas, and power including renewable energy. It holds participations in several cash producing projects all over the world, including diamond operations, ferronickel operations and oil and gas operations. BSGR's total equity

⁸⁵ *Commerce Group v. El Salvador* para. 48, (Exhibit CL-18).

⁸⁶ *Victor Pey v. Chile*, para. 89 ("*Si le danger de non-paiement a bien été allégué d'une façon générale, il n'a pas été démontré ni rendu particulièrement probable ou vraisemblable que ce risque soit présent en l'espèce ni, à le supposer établi, qu'il rende nécessaire la recommandation de la mesure conservatoire sollicitée*") (Exhibit RL-1).

⁸⁷ Exhibit RL-4, para. 2.

and total assets are close to USD 700 million, with total liabilities just exceeding 10 USD million.

101. What is more, on 16 December 2009, BSGR and Guinea entered into the Base Convention according to which BSGR was required to invest USD 2.542 billion in the Zogota mining project and another USD 1 billion in the construction of a railway.⁸⁸ In return, BSGR was entitled to conduct mining operations for a period of 25 years. This establishes that Guinea had no doubts whatsoever over the long term financial standing of BSGR and its group.
102. To appreciate what kind of disastrous financial situation is required to order a security (and how different BSGR's financial situation is), it is worth looking at some commercial arbitration proceedings. In each of the four cases that BSGR has identified in which security was ordered, it was ordered on the ground that the claimant was suffering very serious and acute financial difficulties.
- in one case the claimant was in liquidation and a court appointed liquidator in place.⁸⁹
 - in a second case, security was ordered on the combined effect of three circumstances: (1) the respondent was involved in an arbitration against a party other than the party it had initially agreed to arbitrate disputes with; (2) the corporate existence of the claimant was disputed; and (3) at some stage in the arbitration the claimant was in the process of dissolution;⁹⁰
 - in a third case, security was ordered on the ground that there was a real risk that the respondent would be unable to reimburse the claimant's costs. The risky financial situation of

⁸⁸ Exhibit C-10, Article 11.

⁸⁹ ICC Case No. 6697 in which security was ordered but not without ordering the respondent to post a counter-security in exactly the same amount.

⁹⁰ ICC Case No. 14661 (Exhibit CL-26).

the respondent was attested to by (1) the fact that the respondent was undergoing a liquidation process and the liquidators testified that the company was in clear difficulty; (2) the financial statements of the company showed liabilities of €13 million; (3) the fact that the company did not have assets readily available to pay out its creditors and (4) the fact that the most substantial receivables of the company were the claims brought in the arbitration itself (and in another arbitration)⁹¹ and

- finally, in the fourth case, the claimant was manifestly insolvent. This was established by (1) the fact that the company's liabilities exceeded its assets by thirteen times; (2) the company only had US\$ 4,000 in cash; (3) it was not in a position to finance its own costs of the arbitration and (4) under the *lex arbitri*, the company would have been under an obligation to declare itself bankrupt a long time ago.⁹²

103. Furthermore, Guinea refers in vague and general terms to a variety of legal proceedings against BSGR, with a view to asserting without any supporting evidence that the outcome of such litigation is that BSGR will be likely to pay huge sums in damages and thereby become impecunious, e.g. at paragraph 81 of the Request Guinea argues that there is “*a very high probability*” that “*BSGR will be ordered to pay hundreds of millions of dollars*”.

104. Relying on the possible outcome of different on-going proceedings is plainly no basis on which to assert that BSGR is or will be impecunious or to seek security for costs. BSGR is defending other proceedings, and is confident of its position. No evidence can be

⁹¹ ICC Case No. 14993 (Exhibit CL-27).

⁹² ICC Case No. 15218 (Exhibit CL-28).

tendered to suggest that it will lose.⁹³ Nor is there any evidence whatsoever that even if it did lose BSGR would become bankrupt.

c. Mr Beny Steinmetz

105. Guinea seeks to impugn Mr Beny Steinmetz, alleging that he owes nearly a billion dollars in taxes and that he is disposing of elements of his business.
106. First of all, these allegations are plainly irrelevant to Guinea's application. Mr Steinmetz is not a party to these proceedings, and therefore his personal financial affairs have no relevance, beyond an ignoble smear attempt.
107. In *RSM v Grenada*, the Tribunal addressed the argument that security should be granted because RSM's CEO had attempted to place his personal assets beyond the reach of his creditors some 10 years ago. First of all, the Tribunal drew a distinction between the claimant in the arbitration (the corporate entity RSM) and its CEO who was not a party to the arbitration (Mr Jack Grynberg):⁹⁴

"While Mr Grynberg may be CEO of RSM, there is no evidence to suggest that either it or any of the three individual Claimants have sought to avoid previous cost awards or similar obligations".

108. The Tribunal continued that *"the behaviour of Mr Grynberg, more than a decade ago, in unrelated proceedings, simply cannot support the conclusion that Claimants will use every available means to avoid the enforcement of any potential costs award the Tribunal might in the future be minded to make against them in this proceeding"*.

⁹³ In the US RICO proceedings, for example, BSGR has filed jurisdictional objections and it expects a judgment on jurisdiction of the US Court in the near future. If BSGR prevails on jurisdiction, it will avoid any possible financial liability. In the LCIA arbitration, BSGR has filed substantial counter-claims.

⁹⁴ Exhibit RL-7, para. 5.24.

109. Moreover the allegations are false. Mr Steinmetz' dispute with the tax authorities in Israel has been settled to the mutual satisfaction of both sides. Mr Steinmetz did not recently divest certain of his businesses and, even if he did, he did so for proper business or personal purposes completely unrelated to the present arbitration.

d. Conclusion

110. Summarizing, Guinea fails entirely to establish that the present case is a very exceptional, extreme case in which an order of security is warranted.

111. There is nothing exceptional about BSGR's corporate structure and it has never been an issue with Guinea before. On the contrary, at some point, Guinea itself intended to take a participating role in BSGR's group.

112. BSGR's financial standing is solid. It has more than sufficient cash-producing and valuable assets.

113. The assertion that BSGR will place assets away when it is requested to pay costs or that it will face bankruptcy as a result of defeat in various other legal proceedings is nothing but speculation and conjecture without any shred of evidence.

114. There is no material, serious and present risk that BSGR will not comply with a hypothetical cost award. Therefore Guinea's request must be rejected.

4.3 Other considerations

a. No prejudgement of the cost allocation

115. Several Tribunals have determined that security for costs could not be ordered because it was too speculative whether the respondent would be granted costs in the first place.
116. The Tribunal in *Maffezini v Spain* refused to grant security *inter alia* on the ground that no actual right existed which required to be protected:⁹⁵

"The use of the present tense implies that such rights must exist at the time of the request, must not be hypothetical, nor are ones to be created in the future.[...]"

However, in the instant case, we are unable to see what present rights are intended to be preserved. The Respondent alleges that it may be difficult or impossible for it to obtain reimbursement of its legal costs and expenses, if the Claimant does not prevail and if the Tribunal orders the payment of additional costs and expenses to be paid by the Claimant.

This claim contains several hypothetical situations.

One, whether the Respondent will prevail and two, whether the Tribunal will deem the Claimant's case to be of such nature as to require it to pay the Respondent the costs and expenses it will incur.

Obviously, at this point in the proceedings the Tribunal is unable to answer either of these two questions. These must remain, at least for the time being, as hypothetical issues concerning future events. While hypothetical issues are stimulating and academically challenging, they are beyond the ken of an arbitral tribunal determining real issues of fact and law."

117. The Tribunal in *Libananco v. Turkey*, para 59 (Exhibit CL-17), denied security on similar grounds. It explained that it did not want to prejudge its decision on the allocation of costs, a decision which was only due at the end of the proceedings:

⁹⁵ *Maffezini v. Spain*, paras.13 and 15-18 (Exhibit CL-14).

“Nor, moreover, is it in fact standard practice for ICSID Tribunals invariably to make an award of costs against a losing Party. There is no express reference to such an award in the Convention itself, and Rule 47(1)(j) of the Arbitration Rules is cast in broad and flexible terms which in its application entails an exercise of discretion by the individual tribunal in the light of the particular circumstances of the dispute before it. The Tribunal can see no good reason to prejudge at this stage in these proceedings how it might in due course wish to exercise that discretion, the more so as it has not yet (see paragraph 53 above) been apprised of the terms of the Respondent’s arguments on either jurisdiction or merits”

118. In *Burumi v. Albania*, the Tribunal determined⁹⁶:

"In any event, the Tribunal has the discretion to decide how and by whom the expenses of the parties in connection with the proceedings shall be paid pursuant to Article 61(2) of the ICSID Convention. Such decision shall from part of the award. Therefore, the Tribunal finds that the measures requested by the Claimants are unwarranted at this stage of the proceeding".

119. Also this Tribunal should not prejudice its decision on how it will allocate the costs of the proceedings, in particular where the parties have not even filed their first submissions yet and the allegations from both sides are so disputed.

b. Inherent risk in investment arbitration

120. Several Tribunals have highlighted the inherent and systemic risk for respondent state parties of becoming involved in arbitration proceedings with investors that may ultimately be unwilling or unable to pay costs awards.

121. In *Burumi v. Albania*, the Tribunal saw no reason to ameliorate that systematic risk by ordering security:⁹⁷

⁹⁶ *Burimi v. Albania*, para. 47 (Exhibit CL-16).

⁹⁷ *Ibid.*, para 49

"The Tribunal acknowledges that non-payment of awards of damages or costs by respondents and claimants poses a systemic risk to the arbitration of international investment disputes. Too often, the rendering of an award results not in prompt payment but rather the beginning of a negotiation, or in some notable cases a willful refusal to honor the terms of the award and the provisions of the Convention. However, the Tribunal finds no reason in the circumstances of this case and at the present stage of this proceeding to intervene to ameliorate that systemic risk for the benefit of either party"

122. In *RSM v St Lucia*, in his separate Assenting Opinion, Dr Gavan Griffith QC opined that:⁹⁸

"In a real sense, the risk to a State of a self-identifying investor claimant under a BIT having no funds to meet costs orders is inherent in BIT regimes. As a general proposition it may be said that a State party to a BIT has prospectively agreed to take claimant foreign investors as it finds them. [...] It follows that save in truly exceptional circumstances there is little scope for security for costs orders being made against a claimant simpliciter under a BIT claim"

123. The inherent risk that applies to treaty based arbitrations equally applies to proceedings based on domestic legislation in which the home state expresses its consent to prospectively arbitrate disputes with self-identifying foreign investors and mining investors. Guinea has expressed its consent to international arbitration in Article 184 of the 1995 Mining Code and in Article 28(2) of the Investment Code. Guinea therefore has to take foreign investors such as BSGR as it finds them.

4.4 Quantum

124. Guinea claims that the sums requested by way of advance are reasonable. €3 million to defend an ICSID claim is not unheard of,

⁹⁸ Exhibit RL-4, paras. 2-3 of Gavan Griffith's Assenting Reasons.

but nor can it be described as reasonable. In circumstances where Guinea has chosen to instruct two of the most expensive law firms in the world, there can be no suggestion that these costs are reasonable. It is noteworthy that Guinea has sought security in respect of the entire estimated fees, not a sensible proportion (e.g. half), nor has there been any explanation as to how those costs are alleged to have been estimated. Moreover, there is no sensible suggestion that security be provided in stages at different points on the procedural calendar.

V. COSTS OF THESE PROCEEDINGS

125. In light of the weakness of Guinea's arguments and the inadequacy of its evidence in support of both of the requests, BSGR invites the Tribunal to conclude that this Request is without merit. Indeed the request is an expensive and discreditable waste of BSGR's and the Tribunal's time and resources.
126. In these circumstances, Guinea ought to pay BSGR's costs of responding to the Request in full now, which should be awarded to it irrespective of the final outcome of the proceedings. BSGR will submit details of its costs with its Rejoinder.
127. If the Tribunal disagrees that costs should be awarded to BSGR in respect of the Request, there can nevertheless be no basis to award costs against BSGR for them, even if Guinea were to be granted its requests. Instead the costs ought to be reserved to the Final Award.

VI. CONCLUSION

128. For the foregoing reasons, BSGR asks the Tribunal to reject both the requests, and to award its costs of responding to the requests.

129. In accordance with paragraph 26.2 of Procedural Order No.1, BSGR's position as to whether a hearing is needed to respond to the Requests is as follows: the Requests are straightforward,⁹⁹ and can be dealt with by the Tribunal on paper, although BSGR would be more than happy to present its case orally to the Tribunal if that would be of assistance, whether at a telephone hearing or by attending in person at the Tribunal's convenience.

Signed



Mishcon de Reya

Submitted for and on behalf of BSG Resources Limited

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⁹⁹ As was also the conclusion of the Tribunal in *Libananco* in respect of the application for security for costs at para. 56: “*This is the most straightforward of the applications, and can be dealt with briefly*”.