BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

REQUEST FOR ARBITRATION

1. Liberia Global Mining Company ("LGMC") and Global Steel Holdings Limited ("GSHL") ("Claimants") hereby submit this Request for Arbitration pursuant to:

(i) the Mineral Development Joint Venture Agreement of LGMC and GSHL (formerly known as Global Infrastructure Holdings Limited, or "GIHL") with the Government of the Republic of Liberia (Exhibit 1);

(ii) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") (575 UNTS 159, ICSID Basic Documents, ICSID/15/Rev.1, January 2003); and

(iii) the Institution Rules and the Arbitration Rules of the International Centre for Settlement of Investment Disputes ("ICSID Institution Rules" and "ICSID Arbitration Rules") (ICSID Basic Documents, ICSID/15/Rev.1, January 2003).

2. This is a dispute arising out of a twenty-five year concession contract for exclusive rights to the development and mining of iron ore deposits in portions of Nimba and Grand Bassa counties in the Republic of Liberia. The contract runs between the Republic of Liberia (the "Republic" or "Respondent"), on the one hand, and GSHL, a United Kingdom-incorporated global mining and steel company, and LGMC, GSHL's 70%-owned Liberian joint venture which under the contract is deemed also to be a United Kingdom company, on the other hand.

3. The Republic has breached this contract by, *inter alia*, depriving Claimants of their rights to the concession and taking steps to award the same concession to a competitor. Immediately upon constitution of the Tribunal, Claimants will request provisional measures to halt Respondent's acts in breach of the contract. Ultimately, Claimants will seek an award declaring that the contract is valid and binding, and ordering Respondent to perform its obligations under the contract, plus damages for delays and disruptions caused by Respondent's breaches. Should such specific performance be rendered unavailable by intervening events, Claimants would seek, in the alternative, an award of the value of the concession in an amount in excess of US $650 million plus damages in compensation for the Republic's breach and repudiation of the contract.

I. PARTIES TO THE ARBITRATION

4. LGMC, one of the Claimants in this arbitration, is a company established and organized under the laws of Liberia with its principal place of business at the following address:

Liberia Global Mining Company
Attn: Rakesh Dikshit, Registered Agent
First Merchant Bank Building
Broad Street
Monrovia
Liberia

LGMC's duly registered Articles of Incorporation are attached hereto (Exhibit 2).

5. GSHL, the other Claimant in this arbitration, is a company established and organized under the laws of the Isle of Man, United Kingdom. GSHL's registered address is as follows:

Global Steel Holdings Limited
Murdock House, 1st floor
North Shore Road
Ramsey
Isle of Man IM8 3DY
United Kingdom

An Isle of Man Financial Supervision Commission certificate of incorporation and good standing for GSHL is attached hereto (Exhibit 3).

6. GSHL was formerly known as Global Infrastructure Holdings Limited. The company recently executed a change of corporate name from GIHL to GSHL, which was registered with the Financial Supervision Commission of the Isle of Man on March 4, 2005 (Exhibit 4).

7. For the purposes of this case, all communications to Claimants should be addressed to Messrs. Daniel M. Price and Stanimir A. Alexandrov of Sidley Austin Brown & Wood LLP, counsel for Claimants (*see* Exhibits 5, 6), and sent to the following address:

Daniel M. Price
Stanimir A. Alexandrov
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
U.S.A.
Tel: (202) 736-8000
Fax: (202) 736-8711

8. Respondent is the Republic of Liberia. For the purposes of this case, Claimants understand the address of the Respondent to be:

The Minister of Lands, Mines and Energy
Ministry of Lands, Mines and Energy
Monrovia
Liberia

The foregoing is the address specified for notices to the Republic under Article XXXII, Section 3(b) of the parties' Mineral Development Joint Venture Agreement ("MDA"). That provision also specifies that communications should be copied to:

The Minister of Finance
Ministry of Finance
Broad Street
Monrovia
Liberia

and

The Chairman
National Investment Commission
Tubman Boulevard
Monrovia
Liberia

II. FACTUAL BACKGROUND

A. Background to Claimants' Investment in Liberia

9. The Republic relatively recently emerged from decades of domestic civil unrest and armed conflict with the end of the regime of Charles Taylor and the August 18, 2003 conclusion of a Comprehensive Peace Agreement ("CPA") brokered by the United States and ECOWAS, the Economic Community of West African States. Under the terms of the CPA, the Republic is to be governed for two years by a National Transitional

Government of Liberia, with Mr. Gyude Bryant as its Chairman, until the winners of elections in October 2005 take office in January 2006.

10. One of the most pressing tasks before the newly-peaceful Republic is the revitalization of the Liberian economy. To that end, it was critical to restart the development of Liberia's natural resources—many prior operations for which, including foreign direct investments, had been abandoned—and the rehabilitation of infrastructure such as ports and railways. A key opportunity for such development was the iron ore resources in Nimba and Grand Bassa counties, in an area encompassed by a previous concession granted in the 1950s to the Liberian-American-Swedish Mining Company ("LAMCO"). Although the concession was abandoned in the 1980s and reverted to the Republic, the area is still known as "the LAMCO Concession area." Presently, the Liberian Mining Corporation ("LIMINCO"), a parastatal enterprise owned and controlled by the Republic, is responsible for the management of iron ore mining rights in the LAMCO Concession area for the benefit of the Republic.

11. Despite Liberia's recent political history, as early as August 2003 the former LAMCO Concession area attracted the interest of potential foreign investors. Consistent with the governing Minerals and Mining Law of Liberia, GIHL submitted to the Republic an application for the rehabilitation and development of the LAMCO Concession area's iron ore deposits.

12. An inter-ministerial Mineral Technical Committee ("Committee") determined to work with GIHL to explore the prospects for developing the LAMCO Concession area. GIHL (since renamed Global Steel Holdings Limited, as noted above) is a global

corporation operating and managing iron- and steelmaking, mining, metals and minerals, energy and infrastructure businesses around the world, in countries ranging from India to Nigeria to the Philippines. The company's businesses presently produce over 14 million metric tons of steel production annually.

13. On November 28, 2003, the Republic and LIMINCO entered into a Memorandum of Understanding ("MOU") with GIHL and an introducing broker called Provider Limited (Exhibit 7). The MOU provided for a 160-day period of exclusivity, during which GIHL would conduct pre-feasibility studies of the iron ore deposits and existing infrastructure (*e.g.*, railway lines and the Port of Buchanan). The MOU anticipated that, based on such studies, the parties would then determine whether to proceed to enter into a detailed agreement under which a Republic-GIHL joint venture as concessionaire would develop those resources. The term of the MOU was extended by agreement for three additional months, and the parties successfully carried out the obligations set forth in that agreement. GIHL engaged international consultants and carried out a scoping (*i.e.* pre-feasibility) study of the mines and infrastructure, reviewed the former LAMCO Concession archives in Sweden, and decided to move forward with the project. On August 4, 2004, GIHL and Provider by letter notified LIMINCO that they wished to move forward with a joint venture agreement as anticipated in the MOU and attached a corresponding proposal.

14. The Republic's inter-ministerial Mineral Technical Committee, which included, *inter alia,* representatives of the Ministry of Land, Mines and Energy, the Ministry of Finance, the Ministry of Labor, and the Ministry of Justice, convened in August 2004 to consider GIHL's proposal. By that time, four other multinational companies—LNM

Holdings, WATCO/Rio Tinto, Shandong International Trading Group, and BHP Billiton—had also submitted written indications of interest in developing the LAMCO Concession area. After careful consideration and ten days of deliberations, the Committee recommended to LIMINCO's Board of Directors that it should pursue negotiations for a concession agreement with GIHL. On August 30, 2004, the Minister of Lands, Mines and Energy by letter (Exhibit 8) advised GIHL that, on August 27, 2004, the LIMINCO Board of Directors had adopted that recommendation and had authorized the Committee to negotiate a Mineral Development Agreement with GIHL.

B. The Mineral Development Agreement

15. On October 4, 2004, the Mineral Technical Committee and GIHL successfully concluded a Mineral Development Joint Venture Agreement ("the MDA") (Exhibit 1). The MDA identifies the Government and GIHL as "the Parties hereto" and specifies detailed contractual obligations for each of them. The MDA obligates GIHL and the Government to form LGMC as a joint venture, 70% owned by GIHL and 30% owned by the Republic, to operate the concession. LGMC is the "Concessionaire" mentioned throughout the contract and in its arbitration clause. The MDA is therefore also framed as an agreement between the Government and LGMC.

16. The MDA has an initial term of twenty-five years, renewable on request of LGMC with the agreement of the Government for two additional terms of twenty-five years each. Of principal importance here, the MDA confers exclusive rights for the exploration, development, production, and marketing of iron ore from the former LAMCO Concession area. The MDA also provides that disputes "arising out of, in relation to or in connection with this Agreement or its formation, or the validity,

interpretation, performance, termination, enforceability or breach of this Agreement" shall be resolved through arbitration before ICSID.

17. For reasons of the intervening events described in Section II.C below, the parties have not yet carried out the administrative formalities of signature and ratification of the MDA. However, the MDA nevertheless may be (and Claimants maintain it is) effective and binding on the parties under Liberian law. Attached hereto is an Opinion of the Hon. George Henries, Esq., a former Solicitor General and Attorney General of Liberia and a former Associate Justice of the Supreme Court of Liberia, and now the senior partner of the Henries Law Firm in Monrovia, Liberia (Exhibit 9). As the Opinion explains with reference to supporting authorities, under Liberian law a contract can be binding and enforceable notwithstanding the absence of signatures and other administrative acts such as ratification. This can occur where the parties have performed obligations under the contract as if it were in force, or where one party has induced another to perform and is thereby estopped from denying the contract's validity:

> Under Liberian law, lack of signature and ratification does not automatically or invariably preclude the conclusion that a contract is valid, binding and enforceable. To the contrary, the doctrines of part performance and estoppel can lead to the conclusion, under Liberian law, that an unsigned and unratified contract is in fact binding and enforceable...

For example, the Opinion explains that "[w]here a party in reliance on a contract, and particularly in reliance on the representation and inducement of those with actual and apparent authority, performs his part, the counter-party must be equitably estopped from contesting the validity of that contract whether on grounds of lack of signature or otherwise." Thus, the MDA may be in effect, including with respect to the arbitration agreement contained therein, even without signature and ratification. This is also

consistent with Article 25(1) of the ICSID Convention, which requires written consent to the arbitration of disputes but does not specify that the writing must be signed. In this respect, in turn, Article 25(1) is consistent with contemporary international arbitration practice. As Redfern and Hunter explain, "[i]n the modern laws of arbitration this requirement [of a signed agreement] has largely disappeared. All that is required is some *written* evidence of an agreement to arbitrate."[1]

18. Here, the Government has repeatedly confirmed in writing its agreement to the MDA and has directed GIHL to proceed with performance under it. On October 14, 2004, the Chairman of the Republic's National Investment Commission wrote to GIHL and LGMC, directing them to commence work. He stated that, while the MDA was still to be formally executed, "[o]n behalf of the Government of the Republic of Liberia and its agencies and instrumentalities, this communication constitutes approval and consent to execution of the Mineral Development Agreement as negotiated with the Technical Committee of Liberia" and "[t]his approval and authorization also constitutes permission to GIHL or its nominee as Operator to proceed with the performance of the works and obligations envisaged in the draft agreement pending formal signing of the Mineral Development Agreement" (Exhibit 10).

19. On December 15, 2004, the National Investment Commission Chairman sent another letter to GIHL, Provider and LGMC, noting that the MDA was to be signed before January 14, 2005, but nevertheless stating that this letter "constitutes the re-affirmation, approval and consent to the execution of the [MDA] as negotiated with the

[1] Alan Redfern & Martin Hunter (with Nigel Blackaby & Constantine Partasides), LAW AND PRACTICE OF INT'L COMMERCIAL ARBITRATION 136 (4th ed. 2004) (emphasis in original).

Technical Committee of Liberia" and again provides "permission to GIHL…to proceed with the performance of the works and obligations envisaged" in the MDA (Exhibit 11).

20. Consistent with these communications, the parties to the MDA have proceeded to act on the basis that the MDA is in effect. In the first instance, Respondent has performed obligations imposed on it by the MDA. As provided in Article XVI, Section 1 of the MDA, the Minister of Justice and Attorney General took action to incorporate LGMC by executing the LGMC Articles of Incorporation on October 5, 2004 and by filing them with the Minister of Foreign Affairs on October 7, 2004. As required under Article IX of the MDA, authorities of the Republic assisted GIHL representatives in obtaining access to the concession area for on-site visits and work, and, as provided under Article XII, the Republic granted permits for GIHL expatriates to travel to Liberia for the project. The Republic authorized GIHL to employ local workers to provide security, pursuant to Article X, Section 3 of the MDA.

21. GIHL also performed its obligations under the MDA. As anticipated in Article V, Section 1 of the MDA, GIHL on LGMC's behalf lined up experts and consultants to undertake advanced exploration and feasibility studies. To carry out its various obligations under Articles V and XX of the MDA, GIHL deployed a number of its in-house experts to Monrovia, including mining, geology, railway, and port handling managers. Pursuant to Article X, Section 3 of the MDA, GIHL contractors hired some 150 workers in the area of the mine to provide security and to begin clearing the railway lines, port, and mining facilities. All in all, GIHL has expended well over US $465,000 since October 2004 in carrying out the MDA.

22. As the Opinion concludes, in light of these facts and Liberian law on partial performance and estoppel, "there are compelling arguments under applicable standards of Liberian law that the MDA, though unsigned and unratified, is valid, binding and enforceable."

C. Respondent's Breach of the MDA

23. Despite repeatedly affirming the MDA and directing Claimants to proceed to perform under it, Respondent has breached that contract. Shortly after the conclusion of the MDA negotiations between GIHL and the inter-ministerial Mineral Technical Committee, Mr. Bryant, the Chairman of the Republic's National Transitional Government, began pressing LIMINCO, the Ministry of Lands, Mines and Energy, and the Mineral Technical Committee to initiate a new, alternative process for awarding iron ore mining rights. The Chairman's intercession, which met with vigorous protest from the Mineral Technical Committee, came after an intervention by the United States Ambassador to Liberia, apparently in support of a competitor of GIHL that was one of the unsuccessful original applicants for the former LAMCO Concession area in August 2004.

24. In response to that pressure, in December 2004 the Ministry of Lands, Mines and Energy published a general Request for Proposals ("RFP") for mining projects in Liberia. Concerned that the Republic was potentially pursuing a course of action in violation of the MDA's grant of rights to it, GIHL sought clarification from the Ministry of its position with respect to the former LAMCO Concession area covered by the MDA. Minister Mason responded by letter on December 22, 2004, reassuring GIHL that "[t]he recent Request for Proposals…is mainly for public awareness as mining contracts are not

awarded by tender. GIHL is required to submit its original proposal together with a progress report for compliance purposes only and will be awarded the Mineral Development Agreement (MDA) based upon its compliance with the new Minerals and Mining Law approved April 2000 being the legal process" (Exhibit 12).

25. In reliance on the Minister's letter, GIHL followed the Minister's advice and submitted documentation under the RFP on December 30, 2004. Recognizing the political pressure being exerted on the Ministry, GIHL went further: while taking pains to make clear that its letter "should not be construed to constitute a departure from the binding nature of the Mineral Development Agreement concluded in October 2004," GIHL offered to amend certain terms of the MDA (*e.g.* royalties paid to the Government) in the Republic's favor (Exhibit 13). Reports from confidential sources, later made public in the Liberian press, indicated that GIHL's terms for the former LAMCO Concession area were still the most favorable, and that the inter-ministerial Mineral Technical Committee had ranked GIHL's terms highest in a meeting on March 29, 2005 (Exhibit 14).

26. The public announcement of the Committee's assessment was unaccountably delayed—until April 6, 2005, when the Ministry of Lands, Mines and Energy informed Chairman Bryant that the U.S.-supported competitor of GIHL, instead of GIHL, was "the company selected [to receive the concession] based on the evaluation criteria as established by the members of the Technical Committee" and that "the Committee awaits your further instruction to commence negotiation" with that competitor for the same concession area already covered by GIHL and LGMC's MDA (Exhibit 15).

27. This announcement followed yet another intervention by the United States Ambassador to Liberia criticizing the concession review process under which GIHL had previously prevailed, as well as pronouncements by Chairman Bryant that the Mineral Technical Committee's assessment would be subjected to additional scrutiny by his office. In addition, multiple members of the Mineral Technical Committee have provided sworn testimony to the effect that they were asked to change the results of their assessment in favor of GIHL's competitor (Exhibits 16, 17, 18). In the words of one Committee member, this occurred "because Chairman Bryant and the US Embassy want [the competitor] to be the successful bidder for the award of a Mineral Development Agreement" (Exhibit 16), and another explained that "[t]he Minister [of Lands, Mines and Energy]...advised that the Americans would waive 80% of its Liberian debt if [GIHL's competitor] was given the project" (Exhibit 17).

28. On April 11, 2005, Chairman Bryant instructed the Minister of Lands, Mines and Energy to proceed with negotiations with GIHL's competitor. When the Liberian courts thereafter issued emergency orders purporting to stay any action by the Republic to reach such an agreement, negotiations proceeded in open defiance of those injunctions. Reports from Liberia indicate that the Republic may conclude an MDA with GIHL's competitor at any moment.

29. The Republic is thus proceeding to award the same iron ore concession governed by the MDA to a GIHL competitor and depriving LGMC and GIHL of their rights under the MDA to that concession. The Republic not only has breached but has outright repudiated the MDA.

III. JURISDICTION

30. Jurisdiction over this dispute is established by the ICSID Convention and Article XXXI of the MDA. Article 25(1) of the Convention states:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State…and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

31. Respondent, the Republic of Liberia, is a Contracting State to the ICSID Convention, effective July 16, 1970. The acts and omissions of the agencies and individuals described above, such as the various Ministries, the National Investment Commission, the Mineral Technical Committee, LIMINCO, and Chairman Bryant, were all taken on behalf of, and are all attributable to, Respondent.

32. Claimants are both "nationals of another Contracting State"—namely, the United Kingdom of Great Britain and Northern Ireland, which is a Contracting State to the ICSID Convention, effective January 18, 1967.

33. Although LGMC is incorporated in Liberia, by agreement of the parties memorialized in Article XXXI, Section 2 of the MDA, LGMC "shall be treated for purposes of arbitration under this Article XXXI as nationals of the United Kingdom of Great Britain for purposes of the [ICSID Convention]." LGMC is thus a

> juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention

under Article 25(2)(b) of the Convention.

34. GSHL is incorporated in the Isle of Man, a territory for whose international relations the United Kingdom is responsible, within the meaning of Article 70 of the Convention. By notice to the Centre dated November 17, 1983, the United Kingdom extended the application of the Convention to the Isle of Man as of November 1, 1983.[2] GSHL is thus a "juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration," under Article 25(2)(b) of the Convention.

35. Claimants have an investment within the meaning of Article 25(1) of the Convention. Although Article 25 does not itself supply a definition of "investment," a concession contract for the exploitation of natural resources is understood to constitute an investment under any reasonable definition, as regularly acknowledged in ICSID decisions. Moreover, Article XXXI, Section 1 of the MDA expressly states that "[t]he Parties hereto agree that this Agreement and CONCESSIONAIRE's Operations pursuant thereto constitute an 'investment' by reason of the expenditure of a considerable amount of money in the Republic."

36. It should be noted that the circumstances here are clearly different from those in *Mihaly Int'l Corp. v. Democratic Socialist Republic of Sri Lanka*, where an ICSID tribunal declined jurisdiction because the parties had executed preliminary agreements but never concluded a final investment agreement giving rise to an investment.[3] Here, by

[2] *See* Part B: Exclusions of Territories by Contracting States, *Contracting States and Measures Taken by them for the Purposes of the Convention*, available online at http://www.worldbank.org/icsid/pubs/icsid-8/icsid-8-b.htm.

[3] *See Mihaly Int'l Corp. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award of March 15, 2002, 17 ICSID REVIEW—FOR. INV. L. J. 143 (2002) at paras. 48, 50-51.

contrast, the parties *have* concluded the investment agreement (the MDA) contemplated in their preliminary agreement (the MOU). The circumstances here also differ from *Mihaly* and those in *Zhinvali Dev. Ltd. v. Republic of Georgia*, with respect to Claimants' expenditures. In *Zhinvali,* claimants incurred development costs while engaged in negotiations for "a definitive set of agreements to finance and implement the [project]" that "never came to fruition."[4] Here, the negotiations between Claimants and Respondent did come to fruition in the MDA, and Claimants incurred expenses not during the negotiations for, but in performance of, the contract after it was finalized. The parties' actions described in paragraphs 20 and 21 above constitute performance of their respective obligations under the MDA. They are not merely preparatory, pre-investment activities carried out in anticipation of the MDA. Such preparatory actions—site surveys, pre-feasibility studies, review of archives, etc.—were carried out by GIHL and the Republic under the MOU of November 28, 2003. But it is under the specific terms and obligations of the MDA that the parties proceeded as described above, giving rise to an "investment" for purposes of Article 25(1), both in the form of the MDA itself (as provided in Article XXXI, Section 1 thereof) and in the form of Claimants' expenditures pursuant to the MDA.

37. Furthermore, as required under Article 25(1) of the ICSID Convention, there exists a legal dispute relating to and arising out of the Claimants' investment in the MDA and operations thereunder. Were there any doubt on that point, Article XXXI, Section 1 of the MDA further provides expressly that "for purposes of Article 25(1) of the

[4] *See Zhinvali Development Ltd. v. Republic of Georgia*, ICSID Case No. ARB/00/1, Award of January 24, 2003, at paras. 2, 160, 254; *see also Mihaly* at paras. 48, 51 (declining to treat as "investment" development phase activities of power project that never left negotiating table).

Convention, any dispute subject to this Article XXXI is a legal dispute arising directly out of an investment."

38. The parties to the dispute have consented in writing in the MDA to submit this dispute to arbitration before the Centre. Article XXXI, Section 1 of the MDA provides that

> [a]ny dispute between GOVERNMENT and CONCESSIONAIRE arising out of, in relation to or in connection with this Agreement or its formation, or the validity, interpretation, performance, termination, enforceability or breach of this Agreement (including any dispute concerning whether GOVERNMENT or CONCESSIONAIRE has violated or is in breach of this Agreement)...shall be exclusively and finally settled by binding arbitration pursuant to the [ICSID] Convention...

As set out in Section II above, there exists here a dispute arising out of, in relation to and in connection with the (lack of) "performance" and the "breach of this Agreement" by Respondent. If Respondent contests the binding and effective status of the MDA, then there would also exist a dispute under the MDA as to "its formation, or the validity...of this Agreement." Respondent and Claimants are parties to the MDA and have thus consented in writing to the arbitration of this dispute before the Centre.

39. Accordingly, all requirements are met for the Centre's jurisdiction over this dispute.

40. In addition, all procedural requirements of the Centre and of the MDA have been met. Claimants have provided in this Request the information and materials specified in ICSID Institution Rules 2 and 3. Pursuant to ICSID Institution Rule 2(1)(f), the Claimants affirm that they have taken all internal actions necessary to authorize this Request. Attached as Exhibits 5 and 6 are a board resolution of GSHL and a resolution

adopted by the majority of the board of directors of LGMC. Claimants have also complied with the notice requirements of Article XXXI, Section 1 of the MDA by, simultaneously with this filing, dispatching to Respondent via registered mail copies of this Request at the addresses specified in Article XXXII of the MDA.

IV. CLAIMS

41. Respondent has breached its obligations under the MDA. Moreover, by proceeding to award the concession to another party, Respondent has repudiated its core contractual commitment to confer on Claimants the exclusive right and license to explore, develop, produce, and market iron ore in the former LAMCO Concession area.

V. RELIEF REQUESTED

42. Immediately upon the constitution of the Tribunal, Claimants will seek provisional measures, in the form of an order directing Respondent to refrain from any and all actions inconsistent with the validity and enforceability of the MDA, including but not limited to any steps by Respondent to divest Claimants of their rights under the MDA or to award rights to the LAMCO Concession area to GIHL's competitor. Absent such interim relief, Claimants will be irreparably harmed, and the Tribunal will be deprived of the ability to give meaningful consideration to Claimants' request for declaratory relief and specific performance of the MDA. Although the urgency of the situation initially prompted resort to emergency litigation in Liberia, there is no realistic prospect for relief there.

43. As to final relief, Claimants will seek a declaratory judgment that the MDA is valid and binding on Respondent.

44. Claimants will also ask the Tribunal to enforce their rights and obligations under the MDA and to compel Respondent's performance under the contract. In connection with such an award, Claimants will also seek damages associated with Respondent's delay and disruption of the parties' performance under the MDA.

45. In the alternative, if actions by Respondent in the interim should render specific performance impossible, Claimants would seek compensation in excess of US $650 million for the value of the concession and any damages caused by Respondent's contractual default, including compound interest from the date of such default.

46. Finally, as provided in Article XXXI, Section 6 of the MDA, Claimants will be entitled to receive interest on any monetary award at the rate of LIBOR plus 1% from the date of the award until the date of payment.

VI. REGISTRATION

47. Claimants respectfully note that Article 36(3) of the ICSID Convention requires the Secretary-General to register a request for arbitration unless he finds "on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre." As the Executive Directors of the World Bank noted in their 1965 report on the ICSID Convention, the power to refuse registration "is so narrowly defined as not to encroach on the prerogative of...Tribunals to determine their own competence."[5]

48. Thus, the scope of the Centre's pre-registration review is exceedingly narrow. Aron Broches, former Secretary-General of ICSID and the principal drafter of the ICSID

[5] *Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, March 18, 1965, at para. 38.

Convention, has stated that "in case of the slightest doubt [the Secretary-General] should...register the request and leave the decision as to jurisdiction to the arbitral tribunal."[6] As explained in Note C to ICSID Institution Rule 6, a dispute can be deemed manifestly outside the jurisdiction of the Centre only if it is "beyond reasonable doubt whatever evidence or argument might be produced subsequently" that jurisdiction is lacking.[7] Mr. Broches was even more express during the negotiations for the Convention, stating that the power to deny registration "would apply where there was not the slightest doubt that the party was in bad faith or misinformed," such as when the party submitting the request was a "national of a country that was not a party to the Convention."[8] Mr. Broches emphatically reassured the parties that "it was unfounded...to fear that the Secretary-General would prevent an investor from having access to the Centre merely because the Secretary-General thought that it was not a good case."[9]

49. Claimants anticipate that Respondent may attempt to resist registration. Claimants submit, with all due respect, that no credible argument could be advanced that the dispute is manifestly outside the jurisdiction of the Centre. If, for example, Respondent were to contest the validity or formation of the MDA as the basis for its consent to arbitration, Claimants have advanced evidence under Liberian law that that

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[6] Aron Broches, "A Guide for Users of the ICSID Convention," 8(1) *News from ICSID* 7 (1991); *see also* Antonio Parra, "The Screening Power of the ICSID Secretary-General," 2(2) *News from ICSID* 12 (1985) ("If there is doubt, the Secretary-General must register the request....The narrow definition of the powers of the Secretary-General...to filter applications to institute proceedings is meant to avoid encroachments on the role of tribunals to decide on jurisdiction after a proper hearing.").

[7] Note C to ICSID Institution Rule 6, ICSID/4/Rev.1 (reprinted May 1975) at 34.

[8] ICSID, II(2) HISTORY OF THE CONVENTION: DOCUMENTS CONCERNING THE ORIGIN AND FORMULATION OF THE CONVENTION 772 (1968).

[9] ICSID, II(2) HISTORY OF THE CONVENTION: DOCUMENTS CONCERNING THE ORIGIN AND FORMULATION OF THE CONVENTION 772 (1968).

contract is valid and binding on the parties to it, even without the formality of signature, and that the MDA itself provides for ICSID arbitration of disputes concerning its validity and formation. Any "doubt" that Respondent may seek to raise on this point will be an issue for decision by the Tribunal, in its exercise of *kompetenz-kompetenz*. Claimants' request for arbitration should be registered promptly.

VII. CONSTITUTION OF THE TRIBUNAL

50. The Claimants request that a Tribunal be constituted in accordance with ICSID's Arbitration Rules, including in particular ICSID Arbitration Rule 2, which provides for the constitution of the Tribunal as specified in any agreement of the parties. Article XXXI, Section 3 of the MDA sets forth the parties' agreement on the number of arbitrators and the method of their appointment. Article XXXI, Section 3 provides:

> [a]ny arbitration tribunal constituted pursuant to this Agreement shall consist of one (1) arbitrator to be appointed by GOVERNMENT, one (1) arbitrator to be appointed by CONCESSIONAIRE and one (1) arbitrator, who shall be the president of the tribunal and shall be a citizen neither of the Republic nor of a national of the United States of America (or of any other state of which a party is a national under Article XXXI, Section 2) to be appointed by the Secretary-General of the Centre…

51. Accordingly, Claimants stand ready to name the arbitrator appointed by LGMC immediately upon the Centre's registration of this Request and look to Respondent to likewise appoint its arbitrator. Claimants respectfully request that the Secretary-General also be prepared upon registration to appoint the Tribunal's President, who shall not be a

national of the Republic, the United States of America, or the United Kingdom of Great Britain and Northern Ireland.

Respectfully submitted,

Daniel M. Price
Stanimir A. Alexandrov
Counsel for Claimants

July 1, 2005