

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited

v.

Republic of Kenya

(ICSID Case No. ARB/15/29)

Annulment Proceeding

**PROCEDURAL ORDER NO. 4
On Post-Hearing Procedural Matters**

Members of the Committee

Mr. D. Brian King, President of the *ad hoc* Committee
Mr. Cavinder Bull, SC, Member of the *ad hoc* Committee
Ms. Dorothy Udeme Ufot, SAN, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Mr. Paul Jean Le Cannu

18 September 2020

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I. PROCEDURAL BACKGROUND

1. As contemplated in Procedural Order No. 3, and further to the rescheduling of Day 4 of the Hearing as agreed by the parties on 7 and 8 September 2020, the Hearing on the Applicants' Application for Annulment (the *Hearing*) was held on 10, 11, 14 and 16 September 2020.

2. Participating were:

Committee:

Mr. D. Brian King, President of the Committee

Mr. Cavinder Bull, SC, Member of the Committee

Ms. Dorothy Udeme Ufot, SAN, Member of the Committee

ICSID Secretariat:

Mr. Paul Jean Le Cannu, Secretary of the Committee

On behalf of the Applicants:

Mr. Audley Sheppard, Clifford Chance LLP

Dr Sam Luttrell, Clifford Chance LLP

Dr. Romesh Weeramantry, Clifford Chance LLP

Ms. Clementine Packer, Clifford Chance LLP

Ms. Amelia Hirst, Clifford Chance LLP

Dominic Afzali, Harbour Litigation Funding

Chris Lalor, Cortec Mining Kenya

On behalf of the Respondent:

Ms. Njeri Wachira, Deputy Solicitor General

Mr. Emmanuel Bitta, Deputy Chief State Counsel

Ms. Christine Kusa, Principal State Counsel

Mr. Charles Wamwayi, Senior State Counsel

Ms. Sheila Mammet, Senior State Counsel

Mr. Michael Sullivan QC, One Essex Court

Mr. Henry Forbes Smith, One Essex Court

3. On Day 4 of the Hearing, in accordance with paragraphs 39-41 of Procedural Order No. 3, the parties and the Committee discussed the deadline and format for the filing of the

parties' Post-Hearing Memorials (**PHMs**) and Statements of Costs.¹ They also discussed the deadline for corrections to the hearing transcripts.²

II. ORDERS AND DECISIONS

4. The Committee hereby records the agreements reached and directions confirmed at the Hearing.

A. POST-HEARING MEMORIALS

5. The parties shall file simultaneous PHMs by **Friday, 16 October 2020**. The PHMs shall not exceed 25 pages in length, exclusive of the parties' responses to the Committee's questions. Including those responses, each PHM shall not exceed 50 pages.
6. The Committee anticipates circulating a list of questions on or about 25 September 2020.

B. STATEMENTS OF COSTS

7. The parties shall file simultaneous Statements of Costs within 10 days from the filing of their PHMs, *i.e.*, by **Monday, 26 October 2020**. The parties shall confer and seek to agree on the form and content of the Statements of Costs. If agreement cannot be reached, they may present their respective positions to the Committee for decision.

C. CORRECTIONS TO THE TRANSCRIPTS

8. Paragraph 19.3 of Procedural Order No. 1 (**POI**) provides that "[t]he parties shall agree on any corrections to the transcripts within 14 days of the later of the dates of receipt of the sound recordings and transcripts."
9. The sound recordings and transcripts of the Hearing were uploaded to Box in their entirety on Wednesday, 16 September 2020. The parties' corrections to the transcripts

¹ Tr. Day 4, 153:1-157:16.

² Tr. Day 4, 157:18-158:3.

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shall therefore be submitted to the Committee by **Wednesday, 30 September 2020**. As contemplated in paragraph 19.3 of PO1, the parties' agreed corrections may then be entered by the court reporter in the transcripts.

For and on behalf of the Committee,

[*Signed*]

D. Brian King
President of the Committee
Date: 18 September 2020