

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ANGLOGOLD ASHANTI (GHANA) LIMITED

Claimant

and

REPUBLIC OF GHANA

Respondent

(ICSID Case No. ARB/16/15)

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

Members of the Tribunal

Dr. Veijo Heiskanen, President of the Tribunal
Prof. Muna B. Ndulo, Arbitrator
Sir David A.R. Williams QC, Arbitrator

Secretary of the Tribunal

Ms. Aurélia Antonietti

Date of dispatch to the Parties: 7 August 2018

REPRESENTATION OF THE PARTIES

Representing AngloGold Ashanti (Ghana) Limited:

AngloGold Ashanti (Ghana) Limited
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and
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1. On 11 April 2016, the International Centre for Settlement of Investment Disputes (“**ICSID**”) received a request for arbitration (the “**Request**”) from AngloGold Ashanti (Ghana) Limited (“**AngloGold**” or the “**Claimant**”) against the Republic of Ghana (“**Ghana**” or the “**Respondent**”). The Request was filed on the basis of the Mining Lease entered into on 5 March 1994 by the Government of Ghana and AngloGold, as amended in March 2007 with retroactive effect to 18 February 2004.
2. On 2 May 2016, the Secretary-General of ICSID registered the Request in accordance with Article 36(3) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”) and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an Arbitral Tribunal as soon as possible in accordance with Rule 7(c) of the Institution Rules.
3. On 3 June 2016, the Claimant filed a Request for provisional measures pursuant to Rule 39(5) of the 2006 ICSID Arbitration Rules.
4. On 6 June 2016, the Secretary-General of ICSID established a briefing schedule on provisional Measures.
5. On 20 June 2016, the Respondent contested the Claimant’s Request for provisional measures filed on the basis of Rule 39(5) of the 2006 Arbitration Rules, and indicated that the Arbitration Rules applicable to these proceedings are the Rules in effect as of 1994, the date of the Mining Lease.
6. On 13 October 2016, the Tribunal was constituted in accordance with Article 37(2)(b) of the ICSID Convention. The Tribunal is composed of Dr. Veijo Heiskanen (Finnish), President, appointed by the Chairman of the Administrative Council in accordance with Article 38 of the ICSID Convention; Sir David A.R. Williams QC (New Zealand) appointed by the Claimant; and Prof. Muna B. Ndulo (Zambian), appointed by the Respondent.
7. On 25 October 2016, the Tribunal issued Procedural Order No. 1 ruling that the ICSID Arbitration Rules in force as of 26 September 1984 apply to the proceedings.

8. On 31 October 2016, the Tribunal informed the Parties that the first session and hearing on provisional measures would be held in Washington D.C., on 12 December 2016, and invited the Parties to confer as to a possible schedule for them.
9. On 4 November 2016, the Respondent filed a response to the Claimant's Request for provisional measures.
10. On 10 November 2016, the Claimant filed a reply to the response on Claimant's Request for provisional measures.
11. On 16 November 2016, the Respondent filed a rejoinder to the Claimant's Request for provisional measures.
12. On 28 November 2016, the Respondent filed a request to address the objections to jurisdiction as a preliminary question.
13. On 6 December 2016, the Claimant informed the Tribunal that it suspended its Request for provisional measures. As a consequence, the Claimant noted that an in-person first session was no longer necessary, and proposed to hold the first session by way of teleconference.
14. On 7 December 2016, the Respondent agreed that an in-person hearing on 12 December 2016 was no longer needed.
15. On 9 December 2016, the Claimant commented on the Respondent's proposal to address the objections to jurisdiction as a preliminary question.
16. On 11 December 2016, the Respondent commented on the Claimant's letter of 9 December 2016 and provided its preliminary response on the issue of whether bifurcation was required.
17. On 12 December 2016, the first session was held by teleconference. At the session, a draft Procedural Order No. 1 was discussed and the Parties presented their respective positions inter alia as to whether the proceedings should be bifurcated.

18. On the same day, the Tribunal informed the Parties that it had decided to suspend the proceedings on the merits pursuant to ICSID 1984 Arbitration Rule 41(3) and fixed the schedule for the next phase of the proceedings, setting deadlines for the Respondent's Memorial on jurisdiction and the Claimant's Counter-Memorial on jurisdiction.
19. On 20 December 2016, the Tribunal issued Procedural Order No. 2 concerning procedural matters further to the first session.
20. On 16 January 2017, the Respondent filed a Memorial on jurisdiction, setting out its preliminary objections to jurisdiction and requesting that these objections be resolved on a preliminary basis.
21. On 13 February 2017, the Claimant filed a Counter-Memorial on jurisdiction, setting out its response to the Respondent's Memorial on jurisdiction.
22. On 17 February 2017, the Tribunal informed the Parties that it had decided to join the Respondent's jurisdictional objections to the merits, and that a reasoned decision would follow in due course.
23. On 9 March 2017, the Tribunal issued Procedural Order No. 3, which set out the reasons for the Tribunal's ruling to join the Respondent's jurisdictional objections to the merits.
24. On 7 April 2017, the Claimant filed a Memorial on the merits.
25. On 3 August 2017, the Claimant informed the Tribunal that the Parties had agreed to suspend the proceedings until 31 December 2017. The Respondent confirmed the agreement on the same date.
26. On 4 August 2017, the Tribunal confirmed the Parties' agreement to suspend the proceedings until 31 December 2017.
27. On 8 January 2018 and 12 March 2018, the Secretary of the Tribunal, on behalf of the Tribunal, requested the Parties to provide updates on the status of the case.
28. On 29 March 2018, the Parties requested an extension of the stay of the proceedings.

29. On 3 April 2018, the Tribunal extended the stay of the proceedings until 30 April 2018.
30. On 23 May 2018, the Tribunal advised the Parties that a telephone conference shall be held to discuss the status of and the next steps in the proceedings.
31. On 31 May 2018, both Parties advised the Tribunal of their positions.
32. On 1 June 2018, the President of the Tribunal held a telephone conference regarding the status of the proceedings. The Claimant participated in the telephone conference, but not the Respondent.
33. On 4 June 2018, the Tribunal confirmed the suspension of the proceedings until 31 July 2018.
34. On 19 July 2018, the Claimant advised the Tribunal that the Parties had resolved their dispute and signed a confidential Settlement Agreement. The Claimant further added that it was thereby withdrawing its claims and requested the proceedings to be discontinued.
35. On 23 July 2018, the Respondent confirmed that the Parties had agreed to discontinue the proceedings.
36. Rule 43(1) of the ICSID Arbitration Rules provides:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

ORDER

37. THEREFORE, in accordance with the Parties' request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.
38. Once the costs of the arbitration are paid, including the fees and expenses of the Tribunal and ICSID's administrative fees and direct expenses, the remaining balance will be reimbursed to the Parties.

[Signed]

Dr. Veijo Heiskanen
President of the Tribunal

Date: 7 August 2018