

**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)**

---

**PROCEDURAL ORDER NO. 2 ON THE PROCEDURAL CALENDAR**

***Members of the Tribunal***

The Honourable Ian Binnie CC, QC, President  
Mr. Kanaga Dharmananda SC, Arbitrator  
Professor Brigitte Stern, Arbitrator

***Secretary of the Tribunal***

Ms. Aïssatou Diop

***Assistant Secretary of the Tribunal***

Ms. Kendra Magraw

---

6 May 2016

WHEREAS

1. On 29 March 2016, the Tribunal issued Procedural Order No. 1 in the above-referenced case. Procedural Order No. 1 was accompanied by Annex A containing the Procedural Timetable and Annex B providing reasons for the decisions made in Annex A, particularly in light of the parties' submissions regarding the 2017 General Election in the Republic of Kenya.
2. On 5 April 2016, the Respondent submitted a request that the Tribunal reconsider the timetable contained in Annex A to Procedural Order No. 1 due to concerns that Scenario One of Annex A was not, from its point of view, workable, and that Scenario Two of Annex A would unfairly prejudice the Respondent.
3. On 15 April 2016, the Claimants submitted a response opposing the Respondent's arguments. On 21 April 2016, the Respondent replied to the Claimants' response.

Having considered the above-referenced submissions, the Tribunal hereby orders as follows:

4. While the Tribunal is of the view that the procedural timetable set out in its order of 29 March 2016 is manageable, the Tribunal is also sensitive to the concerns raised on behalf of the Respondent related in particular to the "hiatus" which counsel for the Respondent anticipates may extend from 8 June 2017 until the end of September 2017.
5. At the same time, the Tribunal is also sensitive to the fact that the Claimants have been attempting to pursue this dispute in the Courts of the Republic of Kenya for a number of years, and that their desire to proceed with a resolution of the dispute is understandable.
6. In addition, if the hearing on the merits commences on 28 November 2017, it would not be possible for the Members of the Tribunal to continue into the following week to complete the evidence and submissions. If the hearing is not completed in the contemplated four days, there would have to be an adjournment of an uncertain duration until a later date, which would not be in the interest of either party.
7. Accordingly, taking into consideration the submissions of both parties, the Tribunal has set aside two weeks for a hearing commencing Monday, 15 January 2018, and concluding at the latest Friday, 26 January 2018. In light of this additional period of almost seven weeks it becomes quite feasible to extend the post-election deadlines of concern to the Respondent. The Tribunal expects this rearrangement will also be acceptable to the Claimants, given their desire to move ahead with the hearing as expeditiously as circumstances permit.

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

---

Procedural Order No. 2

8. As a result, the Tribunal has revised the procedural calendar, as contained in the attached Annex A.

On behalf of the Tribunal:

[signed]

---

The Honourable Ian Binnie CC, QC  
President of the Tribunal  
Date: 6 May 2016

**Annex A – Procedural Timetables**

<b>No.</b>	<b>Description</b>	<b>Party / Tribunal</b>	<b>Time Period / Date</b>	<b>Comments</b>
1.	Memorial on the Merits	CLAIMANTS	5 May 2016	
2.	Notice of Preliminary Grounds for Objection to Jurisdiction and, if desired, Request for Bifurcation	RESPONDENT	5 July 2016	
3.	Counter-Memorial on the Merits and Memorial on Objections to Jurisdiction (if any) including fact witness statements, legal expert reports, and any supporting documentary evidence	RESPONDENT	5 October 2016	Respondent has 5 months from Claimants' Memorial on the Merits to respond
4.	Claimant's Response on Request for Bifurcation	CLAIMANTS	10 November 2016	Claimants have 5 weeks to respond
5.	Consideration by Tribunal of Application for Bifurcation in writing unless teleconference is requested by either of the parties	TRIBUNAL AND PARTIES	18 November 2016	
6.	Tribunal Decision on the Request for Bifurcation	TRIBUNAL	8 December 2016	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya  
(ICSID Case No. ARB/15/29)*

Procedural Order No. 2

**SCENARIO ONE: PROCEEDING IS BIFURCATED**

The following calendar shall apply if the Respondent raises objections under Arbitration Rule 41(1) and the proceedings are bifurcated.

No.	Description	Party / Tribunal	Time Period / Date	Comments
7.	Claimants' Counter-Memorial limited to jurisdiction, including fact witnesses, statements, legal expert reports, and any supporting documentary evidence	CLAIMANTS	25 January 2017	Agreed by the parties
8.	Parties to file any requests for document production in form of Redfern Schedule	PARTIES	8 February 2017	
9.	Producing/Objecting parties to produce non-contentious documents and file objections concerning contentious document requests	PARTIES	1 March 2017	
10.	Requesting parties to reply to objections concerning contentious document requests	PARTIES	8 March 2017	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

<b>No.</b>	<b>Description</b>	<b>Party / Tribunal</b>	<b>Time Period / Date</b>	<b>Comments</b>
11.	Teleconference on document production requests and Decision shortly thereafter	TRIBUNAL	10 March 2017	
12.	Parties to produce documents according to Tribunal's Decision	PARTIES	22 March 2017	
13.	State's Reply Memorial on Jurisdiction, including fact witness statements, legal expert reports, and any supporting documentary evidence	RESPONDENT	12 April 2017	Respondent has 11 weeks from 25 January 2017 for Reply
14.	Claimants' Rejoinder Memorial on Jurisdiction, including fact witness statements, legal expert reports, and any supporting documentary evidence	CLAIMANTS	12 May 2017	Claimants have 4 weeks, 2 days for Rejoinder
15.	Pre-hearing organizational meeting by telephone conference call or, at the request of either party, in person	TRIBUNAL AND PARTIES	24 May 2017	
16.	Oral hearing on Jurisdiction	ALL	14 June 2017	
17.	Decision on Jurisdiction	TRIBUNAL	on or before 14 July 2017	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

No.	Description	Party / Tribunal	Time Period / Date	Comments
<b>IF JURISDICTION UPHELD:</b>				
18.	Parties to file any Requests for Document Production in form of Redfern Schedule	PARTIES	29 July 2017	
19.	Producing/Objecting parties to produce non-contentious documents and file objections concerning contentious document requests	PARTIES	26 August 2017	
20.	Requesting parties to reply to objections concerning contentious document requests	PARTIES	8 September 2017	
21.	Hearing (if so ordered) and Decision on Document Production Requests	TRIBUNAL	15 September 2017	
22.	Parties to produce documents according to Tribunal's decision	PARTIES	22 September 2017	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya  
(ICSID Case No. ARB/15/29)*

Procedural Order No. 2

<b>No.</b>	<b>Description</b>	<b>Party / Tribunal</b>	<b>Time Period / Date</b>	<b>Comments</b>
23.	Claimants' Reply Memorial on the Merits, including fact witness statements, legal expert reports, and any supporting documentary evidence <sup>1</sup>	CLAIMANTS	20 October 2017	Claimants have 4 weeks from document production to prepare Reply
24.	State's Rejoinder Memorial on the Merits, including fact witness statements, legal expert reports, and any supporting documentary evidence <sup>2</sup>	RESPONDENT	1 December 2017	Respondent has 6 weeks from Claimants' Reply to prepare Rejoinder

<sup>1</sup> Note: If the Respondent seeks additional documents related to new issues raised in the Reply, the request is to be made promptly, responded to by the Claimants and disposed of promptly in writing by the Tribunal.

<sup>2</sup> Note: If the Claimants seek additional documents related to new issues raised in the Rejoinder, the request is to be made promptly, responded to by the Respondent and disposed of promptly in writing by the Tribunal.



*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

No.	Description	Party / Tribunal	Time Period / Date	Comments
25.	<p>Pre-hearing organizational meeting in person or (if Tribunal so directs) by teleconference including:</p> <ul style="list-style-type: none"> <li>-Tribunal to deal with new document requests or related issues;</li> <li>-Parties to identify the witnesses and experts of the opposing party (having filed witness statements and expert reports) who it intends to cross-examine;</li> <li>- Tribunal to indicate any witnesses or experts not called by the parties who it wishes to question, if any;</li> <li>- Settle List of Issues.</li> </ul>	TRIBUNAL AND PARTIES	15 December 2017	
26.	Delivery of Hearing Bundles	PARTIES	5 January 2018	
27.	Oral Hearing on the Merits	TRIBUNAL AND PARTIES	15 January to 26 January 2018 (if necessary)	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

No.	Description	Party / Tribunal	Time Period / Date	Comments
28.	Post-hearing submissions on law and evidence if requested by Tribunal	PARTIES	TBD	
29.	Award on the Merits	TRIBUNAL	TBD	

**SCENARIO TWO: THERE IS NO REQUEST FOR BIFURCATION; OR BIFURCATION IS REQUESTED, BUT NOT GRANTED<sup>3</sup>**

No.	Description	Party / Tribunal	Time Period / Date	Comments
30.	Claimants' Counter-Memorial on Preliminary Objections	CLAIMANTS	25 January 2017	
31.	Request for production of documents	PARTIES	9 February 2017	
32.	Objections to production of contentious documents and any production of non-contentious documents	PARTIES	9 March 2017	
33.	Reply to Objections	PARTIES	6 April 2017	

<sup>3</sup> Tribunal's Decision to be rendered on or before 15 December 2016.

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

No.	Description	Party / Tribunal	Time Period / Date	Comments
34.	Hearing by teleconference of Objections to production of documents	TRIBUNAL	20 April 2017	
35.	Decision shortly thereafter	TRIBUNAL	5 May 2017	
36.	Production of documents as ordered by the Tribunal	PARTIES	26 May 2017	
37.	Reply on the Merits and Counter-Memorial on Preliminary Objections (if any) <sup>4</sup>	CLAIMANTS	21 July 2017	Claimants have 2 months from end of document production to prepare Reply
38.	Rejoinder on the Merits and Reply on Preliminary Objections (if any) <sup>5</sup>	RESPONDENT	20 October 2017	Respondent will have 3 months following Claimants' Reply
39.	Rejoinder on Preliminary Objections (if any) <sup>6</sup>	CLAIMANTS	10 November 2017	

<sup>4</sup> Note: If the Respondent seeks additional documents related to new issues raised in the Reply, the request is to be made promptly, responded to by the Claimants and disposed of promptly in writing by the Tribunal.

<sup>5</sup> Note: If the Claimants seek additional documents related to new issues raised in the Respondent's pleading, the request is to be made promptly, responded to by the Respondent and disposed of promptly in writing by the Tribunal.

<sup>6</sup> Note: If the Respondent seeks additional documents related to new issues raised in the Claimants' pleading, the request is to be made promptly, responded to by the Respondent and disposed of promptly in writing by the Tribunal.

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya*  
(ICSID Case No. ARB/15/29)

Procedural Order No. 2

No.	Description	Party / Tribunal	Time Period / Date	Comments
40.	Identification of witnesses/experts for cross-examination	PARTIES	24 November 2017	
41.	<p>Pre-hearing organizational meeting in person or (if Tribunal so directs) by teleconference including:</p> <ul style="list-style-type: none"> <li>-Tribunal to deal with new document requests or related issues;</li> <li>-Parties to confirm the witnesses and experts of the opposing party (having filed witness statements and expert reports) who it intends to cross-examine;</li> <li>- Tribunal to indicate any witnesses or experts not called by the parties who it wishes to question, if any;</li> <li>- Settle List of Issues.</li> </ul>	ALL	15 December 2017	As in PO No. 1
42.	Delivery of Hearing Bundles	PARTIES	5 January 2018	

*Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited  
v. Republic of Kenya  
(ICSID Case No. ARB/15/29)*

Procedural Order No. 2

<b>No.</b>	<b>Description</b>	<b>Party / Tribunal</b>	<b>Time Period / Date</b>	<b>Comments</b>
43.	Hearing on the merits	TRIBUNAL AND PARTIES	15 to 29 (if required) January 2018	
44.	Post-hearing briefs, if ordered by Tribunal	CLAIMANTS AND RESPONDENT	TBD	
45.	Award	TRIBUNAL	TBD	