

**REDACTED VERSION
FOR PUBLICATION IN ACCORDANCE WITH
APPLICABLE TRANSPARENCY RULES**

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**BSG Resources Limited (In Administration), BSG Resources (Guinea) Limited and
BSG Resources (Guinea) SARL**

v.

Republic of Guinea

(ICSID Case No. ARB/14/22)

PROCEDURAL ORDER No. 22

Objections to Publication

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Professor Albert Jan van den Berg, Arbitrator
Professor Pierre Mayer, Arbitrator

Secretary of the Tribunal
Mr. Benjamin Garel

Assistant to the Tribunal
Dr. Magnus Jesko Langer

22 July 2022

A. Procedural background

1. On 18 May 2022, the Tribunal rendered its Award and stated that it would remain in office until it had resolved any transparency objections that either Party may raise in connection with the Award. Accordingly, the Tribunal invited the Parties to notify within 21 days from the Award whether they seek protection for confidential or protected information pursuant to paragraph 15 of Procedural Order No. 2 (“PO2”) and section C(c) of Procedural Order No. 4, in which case the other side could reply within two weeks.
2. On 3 June 2022, BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL requested a three-week extension to submit their requests for protection of confidential and protected information. On 8 June 2022, the Tribunal agreed to extend the deadline until 17 June 2022.
3. On 17 June 2022, in the form of a Transparency Table, BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL submitted their objections to the publication of certain information contained in the Award pursuant to Article 7(2)(c) of the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration (the “Transparency Rules”). Neither BSG Resources Limited (In Administration), nor the Respondent raised any transparency objections.
4. On 1 July 2022, the Respondent provided its reply to the transparency objections raised by BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL, by inserting its comments in the Transparency Table and adding a separate annex detailing its response for each paragraph or footnote referenced in the Transparency Table.
5. This Order sets out the applicable legal framework (B), the Tribunal’s overall determination for each category of information sought to be protected (C), and directions for the next procedural steps (D).

B. Legal framework

6. The Parties have agreed to the application of the Transparency Rules as set out and adapted in PO2. Accordingly, the Parties have agreed to make available to the public the documents listed in paragraph 12(iii) of PO2, including the Award and procedural orders, subject to the exceptions to transparency provided in Article 7 of the Transparency Rules.

7. Where there is a dispute on whether a certain document or category of documents is confidential or otherwise protected, the Tribunal will make its determination in application of the standards set out in Article 7 of the Transparency Rules. In this context, Article 1(4) of the Transparency Rules specifies that, in the exercise of its discretion, the Tribunal must take into account the public interest in transparency as well as the Parties' interest in a fair and efficient resolution of their dispute. Further, according to Article 1(6) of the Transparency Rules, the Tribunal must ensure that the transparency objectives prevail in the face of any conduct having the effect of undermining such objectives. Finally, in accordance with paragraph 12(ii) of PO2, the Parties agreed to modify Article 1(5) of the Transparency Rules to allow the Tribunal to exercise its authority to promote transparency.

C. Determinations

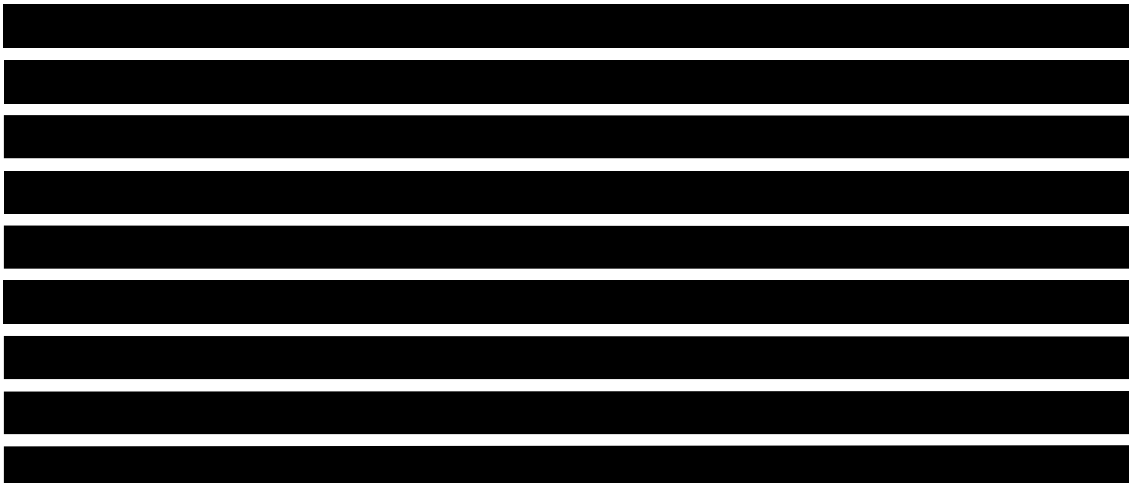
8. The Tribunal's overall determinations concerning the Transparency Table filed by BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL are set out in Annex A, and its specific determinations are set out in Annex B.
9. The two above-mentioned Claimants raise two general categories of objections to transparency. First, they seek the protection of references to the investigations carried out by Swiss authorities and of documents containing direct references or information from those investigations. Second, they seek protection of documents originating from or containing reference and information from the LCIA arbitration between Vale S.A. and BSG Resources Ltd.
10. Regarding the first category, the Tribunal reiterates and refers to its decision in Procedural Orders No. 4, 10 and 19 that ongoing or pending investigations led by the Swiss authorities are protected by secrecy. Accordingly, (i) all references to these investigations and (ii) any testimony obtained in the course of the Swiss investigations would need to be protected. By contrast, the contents of documents which are on record in the arbitration and were obtained from the Swiss proceedings, or information derived from such contents, are not protected, absent further grounds for protection.
11. According to publicly available information, a first instance judgment has been rendered in the Swiss proceedings with the result that the investigations must have ended even if appellate proceedings are pending. The question thus arises whether and to what extent

any secrecy continues to attach to the Swiss proceedings in these circumstances. The Parties have provided no clarification in this respect and the Respondent has not objected to the redaction of references to these investigations and to testimony obtained through them. The Tribunal will thus grant the requests accepted by the Respondent, to the extent that they comply with the standard set out above and subject to exercising its authority in such a manner as to promote transparency.

12. Regarding the second category, the Tribunal reiterates and refers to its decision in its letter of 4 October 2016, as well as in Procedural Orders Nos. 10 and 19, to order the redaction of the references to the LCIA arbitration and to documents originating from the LCIA arbitration, but not of the content of such documents, unless there are other grounds for protection.
13. The Tribunal notes that, although the award in the LCIA arbitration is publicly available, the Respondent does not object to the redaction of references to the LCIA arbitration and references to documents originating from the LCIA arbitration. Therefore, the Tribunal will grant the requests accepted by the Respondent, to the extent that they comply with the standard set out above and subject to exercising its authority so as to promote transparency.
14. Finally, for the same reasons as for the Award, the present Order and the Tribunal's determinations in Annex A and B are drafted in English only.

D. Order

(a) Redaction of the Award

15. 

[REDACTED]

16. The following footnotes in the Award shall be redacted in their entirety: 5, 6, 7, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 225, 299, 928, 931, 936, 937, 942, 943, 954, 956, 957, 964, 967, 969, 970, 976, 982, 984, 985, 989, 990, 998, 1001, 1002, 1003, 1014, 1015, 1016, 1017, 1018, 1019, 1021, 1023, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1044, 1046, 1048, 1051, 1052, 1053, 1057, 1058, 1060, 1061, 1062, 1063, 1064, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1097, 1098, 1099, 1102, 1103, 1106, 1108, 1110, 1112, 1113, 1115, 1116, 1117, 1120, 1121, 1127, 1149, 1150, 1193, 1194, 1195, 1196, 1227, 1228, 1237, 1238, 1241, 1242, 1243, 1244, 1245, 1246, 1251, 1302, 1309, 1314, 1324, 1329, 1335, 1349 (last reference to R-172), 1350, 1359, 1360, 1390, 1400, 1401, 1403, 1404, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1450, 1451, 1452, 1469 and 1515.
17. The following footnotes in the Award shall be redacted in part as specified in Table II of Annex B: 8, 13, 17, 20, 22, 37, 103, 111, 293, 294, 295, 296, 297, 298, 300, 304, 305, 310, 313, 318, 319, 320, 321, 325, 326, 335, 337, 348, 365, 367, 368, 369, 374, 389, 390, 391, 395, 398, 404, 432, 441, 470, 471, 473, 475, 476, 548, 729, 888, 939, 946, 947, 949, 968, 971, 1034, 1043, 1045, 1047, 1049, 1068, 1084, 1085, 1086, 1091, 1095, 1101, 1123, 1180, 1181, 1230, 1240, 1310, 1326, 1327, 1328, 1336, 1383, 1402, 1442 and 1444.
18. In addition, the following footnotes in the Award shall be redacted: 410, 432, 536, 1140 and 1449.
19. All other requests are denied.

(b) Redaction of this Order

20. Paragraph 15 of this Order shall be redacted. In addition, Annexes A and B shall not be published.

(c) Publication of the Award and of this Order

21. The ICSID Secretariat is invited to prepare a redacted version of the Award and of this Order in accordance with the decisions set out above and to publish that version on its website at any time after the issuance of this Order.

On behalf of the Tribunal

[SIGNED]

Gabrielle Kaufmann-Kohler
President of the Tribunal