



Meg Kinnear  
Secretary-General  
International Centre for the Settlement of Investment  
Disputes  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

By Email and Post

June 22, 2012

**Commerce Group Corp and San Sebastian Gold Mines Inc v. Republic of El Salvador  
(ICSID Case No. ARB/09/17) - Annulment Proceedings**

Dear Ms Kinnear,

We write on behalf of the Claimants in this matter.

We confirm that the Claimants have been actively pursuing financing options for several months. Unfortunately, the funder with whom the Claimants had spent several months pursuing a financing deal recently withdrew from the negotiations. However, at present, the Claimants are actively pursuing negotiations with three alternative funders and hope to close a financing transaction within the next 60 days.

The additional 60 day extension to the stay of proceedings requested by the Claimants is within the discretion of the Secretary-General pursuant to Administrative and Financial Regulation 13(3)(d) which provides that: "if any proceeding is stayed for non-payment for a consecutive period in excess of six months, the Secretary-General *may* after notice to and as far as possible in consultation with the parties, move that the competent body discontinue the proceeding." In our view, there are compelling reasons to exercise this discretion in the present case.

As you may be aware, the Claimants are family managed businesses whose principal assets were the mining investments at the heart of this dispute. The lack of funds available to the

WASHINGTON  
701 Pennsylvania Avenue NW  
Suite 600  
Washington DC 20004-2692  
T+ 1 202 777 4500  
Direct T+ 1 202 777 4519  
F+ 1 202 777 4555  
Direct F+ 1 202 507 5919  
E nigel.blackaby@freshfields.com  
W freshfields.com  
DOC ID US1286011/2+  
OUR REF NAB/CR  
YOUR REF  
CLIENT MATTER NO. 155087-0001

Claimants is a direct result of the Respondent Government's measures which destroyed the value of the Claimants' investments and which gave rise to these proceedings. It would create a perverse incentive if, by taking such measures, Governments could prevent small and medium sized investors, such as the Claimants, from having access to the legal remedies available to them.

We wholly reject Mr Parada's allegation in his letter of 21 June 2012 that the "Claimants have unjustly forced El Salvador to bear considerable costs to defend a proceeding that never should have been initiated", which is clearly a conclusion on the merits of the Claimants' claim. We note that the Tribunal rejected jurisdiction on technical grounds related to the scope of waiver requirements and the sufficiency of allegations in a Request for Arbitration, and that it made no reference whatsoever to the strength of the underlying merits. In refusing to award costs to the Respondent, the Tribunal highlighted that the Claimants' claims were not frivolous, and that there was "no indication that Claimants were not serious about the claims they asserted in these proceedings, nor that Claimants pursued this matter in bad faith" (Award, para 137).

A refusal to exercise the discretion to further extend the stay of these proceedings would deprive the Claimants of the opportunity to have the decision on jurisdiction reviewed and ultimately to have a tribunal consider the merits of their claim. By contrast, a continuation of the stay of proceedings would not prejudice the Respondent in any way, as it will not incur substantial expenses whilst the proceedings are suspended for a further 60 days.

For the reasons set out above, on behalf of the Claimants, we respectfully request that the request for an extension made in Claimants' letter of 18 June 2012 be granted.

Yours sincerely,



Nigel Blackaby