Preliminary observations
concerning the juridical aspects
of the BSGR file

Heenan Blaikie

December 20 2011

Heenan Blaikie AARPI / Lawyer at the Tribunal of Paris
Correspondent of Heenan Blaikie S.E.N.C.R.L, SRL
Paris, Montreal, Toronto, Vancouver, Quebec, Calgary
Sherbrooke, Ottawa, Trois-Rivières, Victoria,
Singapour
Heenan Blaikie

TABLE OF CONTENTS

1. Synthesis of the analysis

2. Memorandum
   
   Appendix 1 – History of the facts
   Appendix 2 – List of documents received
   Appendix 3 – List of documents still to be received
SYNTHESIS OF THE ANALYSIS

ADDRESSEE  His Excellency Mister Professor Alpha Condé
President of the Republic of Guinea

EXPEDITOR  Jean-Francois Mercadier
Partner

DATE  December 20 2011

SUBJECT  Preliminary observations about the juridical aspects of the BSGR file

At this stage of the works, the main conclusions of our analysis may be resumed as follows:

1. The conditions (essentially regarding the competences of the concessionaire and the conclusions of the feasibility study) in which the Mining Concession for the iron ore of Zogota was accorded to the BSGR Companies, would justify alone the reconsideration of this concession. However, a revocation of the Mining Concession is a delicate action of implementation and might lead to the involvement of the State's responsibility.

2. The non-performance of their obligations by the BSGR Companies holding the Mining Concession and the Basic Agreement are of nature to justify the revocation of the Concession and the termination of the Basic Agreement. Such a revocation and such a termination based on the non-performance of the BSGR Companies would be easier to realize but require analyzing the eventual breaches of the State to its own obligations or the events of force majeure that might be opposed by the BSGR Companies.

3. The breach of the BSGR Companies' obligations regarding the reconstruction of the Conakry – Kankan railway is, in this regard, very important when taking into consideration the essential role taken by this reconstruction in the stability of the Project, since it constitutes the counterpart of the right provided for by the State to the BSGR Companies to evacuate the iron ore extracted through Liberia. In other words, could the BSGR Companies invoke
the State's breaches to justify their own failure to carry out the works? In addition, could the BSGR Companies invoke the State's failures or cases of force majeure in order to justify the delays in the realization of the Zogota mine exploitation that – according to the Basic Agreement – was supposed to begin in May 2012, at the latest?

4. The conditions in which the control of the BSGR Companies was transferred to VALE, while being opposed to the spirit of the Mining Code – which is opposed to any assignment of a mining concession without previous authorization by the State and that forbids any assignment of prospecting permit – do not necessarily violate its very terms. Two lectures of the Mining Code may be carried out: one is a strict lecture that would submit to prior authorization or interdiction, according to the nature of the mining right, only the direct assignments of these rights. The other lecture is extensive and would allow to control or forbid any indirect assignment, like, for instance, as a consequence of the assignment of the majority of the capital of the mother-society holding the mining titles. The debate this interpretation of the Mining Code with certainly open before the arbitraries, does not lead us, for now, to privilege the conditions of the assignment to VALE as reason for revocation of the mining titles granted to the BSGR Companies.

5. The revocation by the State of the Mining titles and the termination of the Basic Agreement following the breach of obligation by the BSGR Companies, which we privilege at this stage of our analysis, might justify an action in responsibility so that the State might obtain reparation for the prejudices caused by the delay in the realization of the Project, and, in particular, the reconstruction of the Conakry- Kankan railway. The analysis of this action in damages and interest requires the confirmation of the lack of wrong doing by the State in the realization of its own obligations as well as a more detailed and in-depth survey regarding the nature and the extent of the breaches by the BSGR Companies.

6. As previously mentioned, if our works, at this stage, have allowed to identify some basis that would justify the reconsideration of the rights of the BSGR Companies regarding the project, it is also necessary, before reaching definite conclusions and the definition of a strategy that might be adopted by the State in order to secure the realization of the Project, to complete our analysis about several elements mentioned in Appendix 3 of this report. We will also need a local lawyer to confirm our conclusions.

*   *

*
MEMORANDUM

ADDRESSEE  His Excellency Mister Professor Alpha Condé
            President of the Republic of Guinea

EXPEDITOR  Jean-Francois Mercadier
            Partner

DATE       December 20 2011

SUBJECT    Preliminary observations about the juridical aspects of the BSGR file

In the framework of the revision of the partnerships concluded by the Republic of Guinea with private companies for the prospecting and exploitation of mining ores, we were asked to reconsider the mining titles granted to the companies of the BSGR group and the agreements concluded with this group regarding the exploitation of iron ore deposits at Zagota/N’Zérékoré ("The Project") as well as the conditions in which the control of the project was transferred to the Vale group.

The goal of this memorandum is to determine:

(i) Whether the above-mentioned rights, agreements and transfer have been granted, concluded and implemented according to the law, and more particularly, to the clauses of the Mining Code providing from the Law L/95/036/CTRN of June 30 1995 and
(ii) If not, the juridical measures to be undertaken in order to insure the protection of the rights of the Republic of Guinea, while recommending the framework that would best allow for the realization of the Project as soon as possible.

The current framework upon which our analysis in based is summarized in Appendix 1 of this memorandum. This summary has been established upon the basis of the documents we have managed to collect during our two sojourns in Conakry (respectively from September 1 to 3 2011 and from November 1 to November 10 2011) as well as on the basis of data we have received during our meetings with the Minister of Mines and Geology, Mister Mohamed Lamine Fofana, the Delegated Minister of Transports, Mister Cheick Touré and Counselor Minister for the Mines for President Condé and General Director of the SOGIPAMI, Mister Ahmed Kanté.
These documents and data have been complemented with documents obtained at the Register of Commerce and Companies of Conakry after our travels to the Republic of Guinea. The list of documents we have been able to analyze figure in Appendix 2 of this memorandum (the "Documents").

A list of documents still to be received figures in Appendix 3 of this memorandum.

For the needs of this memorandum, the following definitions will be used:

"BSG Resources BVI" designates the BSG Resources (Guinea) Limited company, a lawful company domiciled in the British Virgin Islands, in Akara Building, 24 de Castro Street, Wickhams Cay 1, Road Town;

"BSG Resources Group" designates the BSG Resources (Guinea) company, as appears in the Documents, whom we understand it detains either directly or indirectly companies of the same name and for which we have no information;

"BSG Resources Limited" designates the BSG Resources (Guinea) Limited company, a lawful company of Guernsey, whom official office is located at Guernsey;

"BSG Resources SARL" designates the BSG Resources (Guinea) Limited company, a lawful single-member company of limited responsibility OHADA, with a capital of 5,000,000 GNF, registered at the Register of Commerce and Personal Property (Registre du Commerce et du Credit Mobilier = RCCM) at Conakry, under the number RCCM/GC-KAL/013.755 A/2006, located at Villa Andrée, Coleah Neighborhood in the City of Matam in Conakry, PB 6389 and having as only partner the BSG Resources Limited company;

"Mining Code" designates the Mining Code providing from the Law L/95/036/CTRN of June 30 1995;

"Mining Concessions" designates the mining concession granted by decree No D2010/024/PRG/CNDD/SGG of the President of the Republic on March 9 2010, to the company named "BSG Resources (Guinea) Limited" for a period of twenty five years, covering a surface of 1024 square kilometers in the prefectures of N’Zérékoré, Macenta, Beyla and Yomou;

"Basic Agreement" designates the mining agreement of December 16 2009 concluded between the Republic of Guinea, BSG Resources Limited and BSG Resources SARL, whom objective is to define the rights and obligations of the parties in relation with the exploitation of iron ore deposits in Zogota and N’Zérékoré;

"Feasibility Study" designates the feasibility study of November 16 2009 handed out by the BSG Resources (Guinea) Limited company (we do not know which one) to the Ministry of Mines;
"Joint-Venture" designates the agreement of co-enterprise between Vale and BSG Resources Groups according to which Vale holds a participation of 51% in BSG Resources Limited;

"Project" designates the mining projects and infrastructure works related to them, including the reconstruction of the Conakry – Kankan railway, objects of the Basic Agreement and Mining Holdings;

"PR 706" designates the Decree N° A2006/706/MMG/SGG dated February 6 2006, granting the BSGR Guinea Limited company four permits of exploration for iron covering a surface of 2047 square kilometers in the prefecture of Kérouané – South Simandou;

"PR 707" designates the Decree N° A2006/707/MMG/SGG dated February 6 2006, granting the BSGR Guinea Limited company three permits of exploration for iron covering a surface of 2047 square kilometers in the prefecture of Kérouané – South Simandou;

"PR Blocks 1 and 2" designates the Decree N° A2008/4980/MMG/SGG dated December 9 2008, granting the BSGR Guinea Limited company one permit of exploration for iron covering a surface of 369 square kilometers in the prefecture of Kérouané;

"Protocol of Agreement" designates the protocol of agreement in relation with the development of the iron ore deposits of Simandou concluded on February 2006 by the BSG Resources BVI Company and the Republic of Guinea;

"BSGR Companies" designates the BSG Resources Limited and/or BSG Resources SARL Companies according to the context;

"Mining titles" designates the Mining Concession and the PR Blocks 1 and 2.

"Vale" designates the Vale S.A. Company registered in Brazil.

I. PRELIMINARY COMMENTS

The analyses of the Documents reveals cases of non-compliance to the law that might justify alone, the reconsideration of the rights granted to BSG Resources SARL for the Project. However, a nullification based on the non-compliance to the law, and in particular, to the clauses of the Mining Code, may appear to be a delicate procedure, when, on one side, the representatives of the State who intervened then, might be blamed for having had a perfect knowledge of the circumstances in which the rights were granted to BSG Resources SARL and, on the other side, the Basic Agreement closed between BSG Resources SARL, BSG Resources Limited and the
Republic of Guinea includes several clauses leading to a guarantee to the State regarding the compliance of the rights granted to this company to the law.

Moreover, the rights granted to BSG Resources SARL might also be reconsidered following the non-realization of their obligations both in relation with the contractual agreements concluded and with the mining titles they were granted. If this channel appears to be of easier utilization, we must insure that BSG Resources SARL cannot take refuge in the non-execution by the State of its own obligations or in events of force majeure to justify its own non-executions.

Regarding the assignment of the control of the Project by Vale, realized through the assignment of the majority of the capital and the rights of vote of the foreign holding company owning the lawful Guinean company responsible for the Project, while against the spirit of the Guinean legislation, it appears to us – as such – difficult to evoke as a legitimate reason for the reconsideration of the rights granted to BSG Resources SARL.

Considering the applicability of the Guinean law in the contractual framework in force between the parties, the juridical analysis hereinafter developed will have to be reviewed and validated by a local committee.

II. REGARDING THE ACTION FOR NULLIFICATION BASED ON NON-COMPLIANCE WITH THE LAW

2.1. Non-compliance with the Law for Mining Concession and with the Basic Agreement

The Mining Code outlines, in substance, two criteria that are necessary to the attribution of a mining concession. The applicant of a mining concession must (1) demonstrate the discovery of one or more ore deposits that is (are) commercially operational and (2) having technical and financial capacities necessary to undertake the sought-after exploitation.

Finally, (3) the mining convention (in this case, the Basic Agreement) becomes enforceable between the parties after been ratified\(^1\).

\(^1\) The authority having power of ratification is not identified, see 2.1.3. hereinafter.
2.1.1. Regarding the discovery of an ore deposit which is commercially operational

By virtue of article 41 of the Mining Code, "a concession may only be issued where one or more deposits are discovered upon evidence duly constituted by a feasibility study [..]". In addition, article 43 requires the applicant of a mining agreement to supply "proof of the existence of commercially operational deposit(s) within the area defined in their prospecting permit".

In application of both texts, the applicant of a mining concession must demonstrate, within the framework of a feasibility study, (i) the existence of one or more deposits whom potential has been clearly evaluated, as well as (ii) the feasibility of a commercial operation of the deposit; while it is understood that the feasibility must, among others, take into account the quality of the deposit, the presence and/or the condition of the infrastructures (electrical network, transportation channels, etc.), the means used in order to respect the legislation relative to the protection of the environment as well as, if necessary, the dispositions to undertake for the respect of the rights of the autochthonous populations.

The analysis of the Documents reveals that the above-mentioned elements were missing at time of the granting of the Mining Concession.

Indeed, the decree granting the mining Concession includes in its corpus the very ground of its non-conformity. It provides that:

"Since the evaluation of the potential of an operational deposit of the Concession was not achieved at time of signature of the current Decree, the holder, BSG Resources (Guinea) Limited company, must go into deeper prospection works allowing to carry out an evaluation of this potential that will be as complete as possible, and this within the two first years following the effective date of the current Decree," (Article 4).

This condition clearly outlines the fact that the Feasibility Study did not allow the conceding authority to evaluate the potential of iron ore deposit of Zogota at the time the Mining Concession was granted. To its best, the delivery of this study should eventually have led to the renewal of the PR 706 and the PR 707, necessarily implying the division of half of the surfaces implied.
In addition, the Inter-ministerial Commission that was in charge to examine the Feasibility Study outlines - in its report to the Minister of Mines, on December 14 2009 - that:

- The study mentions "resources" and not "operational reserves";
- The data of the study will be refined by prospection works (that are apparently continuing at the date of the report) in order to exactly determine the reserves;
- The exploitation of the magnetite ore does not figure in the study;
- The questions relative to the protection of the environment are only briefly treated;
- The study does not include any mention of the aspect relative to the community development that the Commission considers as a fundamental issue in the harmonious development of any project.

In other words, the Commission has considered that the data requested in the framework of a feasibility study, in order to establish the existence of a commercially operational deposit and justify the attribution of a mining concession, are either incomplete or lacking.

Despite the favorable opinion of the Commission (which is in total contradiction with its conclusions), it is reasonable to consider that the legal conditions necessary to the granting of the Mining Concessions have not been respected and, that, therefore, this granting might be cancelled on the basis of articles 41 and 43 of the Mining Code.

However, the circumstances in which the Commission has given a favorable opinion at the signature of the Basic Agreement, the granting of the Mining Concession and the ratification of the Basic Agreement through presidential ordinance, must be clarified.

In case such an action should prosper, the Basic Agreement, along with the Mining Concession, would be meaningless and could be cancelled as well.

2.1.2 Regarding the capacities of BSG Resources SARL as holder of the Mining Concession

In virtue of article 8 of the Mining Code:

"Subject to the provisions of this Act, mine or quarry substances may be developed by any natural person or legal person constituted as a public or private corporation under Guinean law, supplying proof of the technical and financial capacity to undertake the proposed operation".
First, it must be outlined that the Documents under analysis do not allow us to identify with certainty the exact identity of the Mining Concession holder. The reason is that the Mining Concession designates the "BSG Resources (Guinea) Limited Company" as holder, without stating if this is BSG Resources Limited or BSG Resources SARL.

Therefore, the identity of the holder in the file of application for Mining Concession must be checked out (as part of the documents requested).

Supposing that the applicant is BSG Resources Limited, the Mining Concession might go through an action for cancellation for having been granted to a non-Guinean company.

Assuming that the Mining Concession has indeed been granted to BSG Resources SARL, it appears, according to the Documents (among others, a letter from BSGR dated March 14 2011), that the Joint-Venture closed between BSG Resources Group and Vale "will allow to respect the engagements taken in the Basic Agreement regarding both phases of the project as described in article 10". Therefore, BSG Resources Group has turned to Vale, "the most competent and appropriate firm for the successful realization of this project".

When reading the terms used by BSG Resources Group, we may express some doubts regarding their ability to lead the project alone; this is the reason why it was forced to join forces with a society having a financial surface and a technical ability, which are superior to theirs. This "confession" of incapacity is even more remarkable due to the fact that it comes after having been granted the Mining Concession.

Therefore, it might be argued that the BSGR Companies could not engage to carry out the Project mentioned in the Basic Agreement. Due to the fact they did not have the technical and financial abilities requested for the exploitation mentioned in article 8 aforementioned, the Mining Concession should not have been granted to this company.

An action for the cancellation of the Basic Agreement could also be considered on the ground of the mistake, or maybe the willful misrepresentation, at the time of the redaction of the contract, due to the fact that the BSGR might have allegedly concealed the fact they did not have the technical and financial aptitudes necessary to carry out the Project.

___

2 For instance, with the only goal to resell the Project to a company capable to carry it out
But the bases for such a procedure of cancellation could be weakened by the possibility that was provided to the BSGR Companies to complete their feasibility study within two years, expiring March the 9 2012 (see article 4 of the Mining Concession).

In the same line, it must be reminded that the State has declared in the Basic Agreement that "it has made sure that the Company owns all the necessary qualifications, as defined in the Mining Code, and that there is no reason not to grant a Concession and the signature of the current Agreement" (article 29 (c ). Therefore, the BSGR Companies might invoke either real or supposed knowledge, by the Guinean side, of the specificities of their co-contracting parties in order to block the procedure of cancellation.

2.1.3. Regarding the ratification of the Basic Agreement

The Basic Agreement has been ratified on [unreadable] 2010, through presidential ordinance No [unreadable] /PRG/CNDD/SGG/2010.

Article 11 paragraph 5 of the Mining Code stipulates that "the mining concession [...] is enforceable and binds the parties after ratification [...]". This clause does not define the authority having power to ratify the mining agreements.

If the power of ratification belongs to the Parliament, we must question the validity of ratification by presidential ordinance.

However, we understand that at the date of ratification of the Basic Agreement, the Constitution had been suspended and the Government was dissolved. Therefore, the validity of the ratification is subject to the determination of the authority having this power during the period of transition. Since this question belongs to the domain of Guinean public law, it will have to be analyzed in collaboration with a local counselor.

2.2. The risks of a procedure for cancellation of the Concession

In order to be able to plead the cancellation of the Mining Concession upon one of the basis aforementioned, the State will have to bring legal action of invalidity before the relevant jurisdictions, since the claim of invalidity does not take place by virtue of the law itself and, therefore, it must be pronounced by a judge.
This nullity (which may be either absolute or relative\(^3\) depending upon its bases) should be claimed within the legal time of prescription applicable.

In such a case, the action would be proceeded before the arbitral jurisdictions, according to the clause of settlement of disputes set in article 38 of the Basic Agreement.

However, this clause subdues the remedy of arbitration to the preliminary respect of a phase of mutual consent settlement of 120 days from reception of an advance notice to the co-contracting party of the dispute by the party who claims nullity.

2.2.1 Nullity accepted

Should the nullity of the Mining Concession be accepted by an arbitral tribunal, it would lead to a retroactive cancellation of the mining title granted according to the clauses of the decree of March 9 2010; this cancellation would imply the replacement of the parties in the anterior condition of this title granting, which would suppose reciprocal restitutions by the parties, of the benefits each one of the parties has received from the other party during this period.

Thus, the State would have to restitute to BSG Resources SARL the sums it has received, among others, according to article 9 of the Mining Concession (proceeding fees, right of stamp, superficies annual fee etc.), and would also compensate the company for the expenses invested in the carrying out of the project, until the date of decision of nullity.

In addition to the consequences of retroactive cancellation of the Mining Concession, BSG Resources SARL might attempt to seek for the extra-contractual responsibility of the State due to bad faith (to be proven), among others, on one side, due to the recommendation provided by the inter-ministerial commission in favor of the granting of a mining title to the investor (despite the failings of the feasibility study noted in its report) and, on the other side, due to the granting by the State of a "period of grace" of two years in order to go into deeper works of prospection which are necessary for the evaluation of the potential of the deposit (article 4 of the Mining Concession).

\(^3\) The granting of the Mining Concessions based on a feasibility study that does not respect the legal criteria is subject to absolute nullity, as well as the lack of qualification of the signatory of the ordinance ratifying the Basic Agreement. However, a mistake regarding the co-contracting party (due to lack of financial or technical abilities) belongs to the regime of relative nullities.
In addition, an analysis of the risk should be considered from the administrative viewpoint, in case the nullity of the Concessions is judged as resulting from a fault committed by the State. In such hypotheses, BSG Resources SARL might claim indemnities for the lack of benefits the realization of the contract would have provided them with. This question is one of the most important issues of the analyses of the risk that requires verification of the Guinean law.

2.2.2 Nullity wrongly raised / not accepted

If, on the contrary, the nullity of the Mining Concession was to be rejected by the arbitral tribunal, the Mining Concession would remain in force.

In this hypothesis, the State would then be committed to provide remedy to the prejudice suffered by BSG Resources SARL due to the action of nullity (among others, legal costs, eventually – morale prejudice).

III. REGARDING THE REVOCATION OF THE MINING TITLES LEADING TO A TERMINATION OF THE BASIC AGREEMENT

3.1. Non-execution by the BSGR Companies of their obligations as resulting from the Basic Agreement and the Mining Titles

The analyses of the facts based on the Documents and the data we have obtained prove that BSGR has not fulfilled their obligations in terms of the Basic Agreement and in terms of the Mining Titles.

Such a situation might justify not only the revocation of the Mining Titles but also the termination of the Basic Agreement due to the non-execution of the contractual obligations.

On this issue, article 36.2 of the Basic Agreement stipulates that:

"Accordingly to the Mining Code, the State may withdraw the Concession granted to BSG Resources SARL, and this would lead to the termination of the current Agreement".

Therefore, the incidence of one of the grounds provided for by article 60 of the Mining Code might lead to the revocation of the Mining Concession and thus, to the termination of the Basic Agreement.
In the course of our investigations, we have found, for instance:

- That several financial reports have not been produced by BSG Resources Limited, in violation with article 130 of the Mining Concession and the provisions of the decrees granting the PR 706 and 707;
- That BSG Resources Limited has not paid the superficies fees for two years charged for the PR 706 and 707 to the sub-prefectures of Kobéla, Boola and N’Zébélé, respectively for the sums of 176,700 USDF, 86,000 USD and 29,640 USD (a total of 292,340 USD);
- The breach of obligations related to the reconstruction of the Conakry – Kankan railway.
- According to data collected during our meeting in our visits in Conakry, it appears that concerning the execution of the Project, BSG Resources SARL will not be able to respect their engagement to begin the exploitation works on May 31 2012 the latest.

In the absence of the documentation we asked for, we may not, in this stage, precisely list all the failures to the legal provisions (in violation of the clauses of the Mining Code), to the statutory clauses (in violation of the clauses of the Mining Titles) or to the contractual clauses (in violation of the clauses of the Basic Agreement) committed by the BSGR Companies.

The failures imputable to the BSGR Companies will have to be specifically noted and established by the State who will have to warn the BSGR Companies to remedy to their failures within a period of time that may not be less than 3 months (article 60 of the Mining Code).

The Documents and data collected on the grounds have not allowed us to reveal serious failures by the Republic of Guinea to its contractual obligations that might be evoked by the BSGR Companies to justify their own non-executions (for instance, on the ground of an exception of non-execution).

In addition, the Republic of Guinea has submitted the Agreement of Transit concluded on July 14 1973 with the Republic of Liberia, actualized on October 26 1989, upon which BSG Resources SARL may evacuate the iron ore from Zogota through Liberia whom infrastructures are more adequate and in a better shape.

---

4 As shown in a document dated June 3 2011 from the CPDM
In exchange of this "advantage offered by the political authority\(^5\), BSG Resources SARL "has committed itself (in the framework of the Basic Agreement) to reconstruct the Conakry – Kankan railway beginning with the first stage and to extend the itinerary to Kérouané during the second phase of the project in order to carry out the useful Transguinean the Guineans wish for in order to open up the deep country while building large economical centers in this part [...]."

Despite this commitment, the Ministry of State for Public Works and Transportations has commented regarding the construction of a railway line in a memorandum (not dated and incomplete), referring to the Basic Agreement, addressed to the President of the Republic:

"It has been noted that the reconstruction of this line (Conakry – Kankan) as planned by BSGR/Vale does not meet the actual standards and does not allow Guinea to have a modern and efficient railway. To these deficiencies, adds up the lack of study allowing having a better readability of the nature of the investments, their costs and the timelines of realization of the works. Faced with these deficiencies, the Government has decided to suspend the works and to wait for a clear definition of all the technical aspects conditioning the good execution of the project".

Such a failure to such essential obligation like the reconstruction of the Conakry – Kankan railway must be brought in order to support the revocation of the Mining Concession leading to the termination of the Basic Agreement for non-realization of the contractual obligations (and also in order to put in a perspective the risk of an eventual action regarding the responsibility of the State).

However, the legal principles of the contracts as well as the provisions of the Mining Code require that the side in default has the opportunity to remedy to its deficiencies after having been warned; nevertheless, we do understand that such a formal warning has not been carried out as for today.

\(^5\) Extract from the document of March 14 2011 in which the BSG Resources Limited Company presents before the President of the Republic the Joint-Venture agreement signed with Vale.
3.2. **Exception of non-execution and case of force majeure that the BSGR Companies might opposed to the State**

In order to justify the lack of execution of their obligation according to the Basic Agreement and to the Mining Titles, the BSGR Companies might attempt to claim that the Guinean side has failed to carry out its duty.

According to the data obtained during our visits in Conakry, the State has not failed in carrying out any of its duties according to the Basic Agreement and to the Mining Titles and has carried out all its obligations (under reserve of confirmation, among others, of the communication to BSG Resources SARL of the "fiscal appendix" and "the infrastructures appendix" within the schedule in the project of chronogram that was communicated to us).

In addition, the BSGR Companies might eventually plead a case of force majeure leading to the suspension of the realization of any of their obligations during the event that generated the case of force majeure. The political crisis the Republic of Guinea has suffered from during the recent history of the state might eventually constitute such a case (see article 41.1 (a) of the Basic Agreement).

However, the BSGR Companies should have notified the incidence of such a case of force majeure in the State, according of the clauses provided for by article 41.4 of the Basic Agreement; which is not the case to the best of our knowledge.

3.3. **Risk for the State related to the revocation of the Mining Concession for non-execution of the obligations by BSG Resources SARL**

The revocation of the Mining Concession by the State would lead to the termination of the Basic Agreement (prospective effect).

In case the State withdraws the Mining Concession according to article 60 of the Mining Code or to article 10 of the Mining Concession, BSG Resources SARL might appeal within 60 days from the notification of the decision of revocation, and this might suspend this decision (article 61§5).

However, while the kind of jurisdiction for such appeal is not mentioned, it appears that the Administrative Tribunal should be qualified in virtue of article 171 of the Mining Code (for "any dispute arising out of an administrative act issued under this Code falls under the jurisdiction of the Administrative Tribunal").
Regarding the suspensive effect of such appeal, article 61§5 provides that the decision of revocation might subordinate such effect to the constitution of a "caution of warranty" by the claimant which maximal amount should allow him to satisfy to his obligations.

The carrying out of such an article seems arguable since it leaves to the solely discretion of the authority of revocation, the power to submit or not the suspensive effect of appeal to the constitution of a warranty, and to determine its amount. The potentially arbitrary character of the power so granted to the claimant is one of the issues we will have to examine with a local counselor.

Assuming the Administrative Tribunal rejects the appeal filed by the holder, BSG Resources SARL might try to introduce a procedure of arbitrage in the conditions provided for in article 38.2 of the Basic Agreement.

3.3.1. Valid revocation of the Mining Concession leading to the termination of the Basic Agreement

In such a case, only the holder is responsible for the consequences of such a revocation, among others, following his own misconducts (article 61§4). On this issue, a compensation for the prejudice caused to the State, in particular, the delay in the realization of the Project might be considered.

Regarding the remaining installations and construction of public utility intended to the exploitation of the holder, the State has a right of option of acquisition at a price that is equivalent to the audited residual value according to accounting principles, to be exerted within one month following the revocation (article 56 of the Mining Code).

3.3.2. Irregular revocation of the Mining Concession

The irregular revocation of the Mining Concession might intervene either in case it would be carried out on the ground of article 60 of the Mining Code or article 10 of the Mining Concession, or in case the State would proceed to the revocation without using these grounds.

6 Article 38.2 of the Basic Agreement lacks clarity when it provides that the dispute might be submitted either to the International Court of Arbitrage of the CCI, or to the CIRDI "according to the case". When reading the article 184 of the Mining Code, it seems that this option exists in order to allow the parties to submit their disputes to the International Court of Arbitrage of the CCI in case the CIRDI would appear not to be qualified.
In both cases, this revocation might be assimilated to a measure that is equivalent to an illegal expropriation\(^7\), as this notion is understood in usual international law.

Under these circumstances, BSG Resources SARL might try to ask for the enforcement of the Mining Concession (out of the Basic Agreement), whenever this enforcement is possible. However, the arbitral jurisprudence relative to the irregular revocation of the concession seems, in its large majority, to opt for compensation by equivalent of such a lack of execution (this may be justified concerning the sovereignty of the State over its natural resources).

The compensation through equivalent depends upon the whole prejudice suffered by the holder who is victim of the irregular revocation. The compensation would, in particular, be based not only upon the value of the investment expenses on the date of irregular revocation, but also on the loss of benefit in the future for the period of the Mining Concession; however, the arbitral jurisprudence takes into consideration such parameters as those related, among others, to political and economical risks in the country of investment in order to moderate down the sum of calculated compensation.

A request of moral prejudice (such as prejudice to reputation) might eventually be added, as well as the prejudice directly resulting of the consequences of the illegal revocation (such as the amount of the "guarantee" provided for in article 60§6 of the Mining Code, that would have been granted to the State in case of rejection of the administrative appeal of the holder against the decision of revocation).

IV. ANALYSES OF THE CONDITIONS IN WHICH THE ASSIGNMENT TO VALE OF THE CONTROL OF THE PROJECT HAS INTERVENED AS A POSSIBLE BASIS FOR THE RECONSIDERATION OF THE MINING RIGHTS GRANTED TO THE BSGR COMPANIES

Like notified in Appendix 1, according to the clauses of the Joint-Venture agreement, Vale has bought from the BSGR Resources Group a participation of 51% of the capitals of BSGR Resources Limited. In virtue of this majority participation, Vale holds the indirect control of the BSG Resources SARL Company that bears the Project.

\(^7\) As opposed to article 31 of the Basic Agreement that provides for the modalities of compensation for legal expropriation (for cause of public use), even if this article does not precise it expressly.
BSG Resources Limited has sought for\(^8\) the formal agreement of the Government for the implementation of the Joint-Venture while mentioning that the Joint-Venture does not necessitate (i) the previous agreement of the State and (ii) does not generate the right of preemption provided for by article 37 of the Basic Agreement.

When reading the article 37 of the Basic Agreement, the issue of the previous authorization by the State and of the right of preemption from which it benefits opens a discussion regarding its interpretation.

1. First, the first paragraph mentions that:

"any assignment or transfer by the Company (that is - BSG Resources SARL) of all or part of their rights and obligations resulting from the Concession, as well as any direct assignment of over 50% of the Company's shares, through sale or any procedure leading to a transfer of the effective control of the Company, is assimilated to an assignment and is subordinated to the prior approbation of the State that has a right of preemption to be exerted for the clauses and conditions offered by the favorite purchaser".

Two interpretations of the underlined segment are possible:

a. According to a strict interpretation, the prior authorization of the State and the right of preemption do not apply but only in case of direct assignment of over 50% of the BSG Resources SARL shares, whatever the mode or realization of the assignment (either through sale or any other procedure leading to a transfer of the effective control of the Company);

b. According to a broader interpretation, the prior authorization of the State and their right of preemption are applicable whenever the cession, whatever the procedure been used, has led to a transfer of the effective control of the Company);

In the later hypotheses, the transfer of majority participation of Vale in BSG Resources Limited necessarily leads to "a transfer of the effective control of the Company". This is precisely the position taken by BSG Resources Limited in their letter dated April 16 2010, since it mentions that the participation of 51% held by Vale in BSG Resources Limited implies "an indirect participation in the BSG Resources (Guinea) Limited SARL Company". That is, the process provided for in article 37 should have been respected, meaning:

---

\(^8\) See letter by BSGR date April 16 2010
• The notification to the State of the project of assignment while stating all the data necessary regarding the assignment, and, among others, the name of the concessionaire, the price and the conditions of the payment of the price;

• Starting from the date of communication of this notification, the State has a period of thirty day to:
  - Either refuse its agreement to the assignment and exert its right of preemption to the clauses and conditions of the project of initial assignment that has been notified;
  - or agree with the assignment.

In addition, in the letter sent by BSG Resources Limited on April 2010, BSG Resources Limited has asked for the prior authorization of the State, based on article 27 of the Basic Agreement, while stating that this article did not apply. Moreover, in their letter dated March 14 2011 (see hereinafter). BSG Resources Limited refers to article 62, paragraph 4, considering this article does apply.

2. However, in a second phase, article 37 paragraph 36 expressly stipulates that "no approbation will be necessary for the direct or indirect transfer operations regarding the actions of a company holding shares in the Company".

If this clause can close the discussion regarding the interpretation of article 37, the precautions taken by BSG Resources (Group and Limited) to avoid and submit to a regime of prior authorization let to believe that there is a doubt regarding this issue, at least regarding BSG Resources.

3. Regarding the authorization itself, it was granted (in the form of non-objection) by the Minister of Mines, Mister Mahmoud Thiam, through apposition of his signature and a stamp of the Ministry of Mines on the bottom of a paragraph pre-prepared by BSG Resources Limited.

As previously mentioned, on March 14 2011, in a letter to the President of the Republic in which the company reacts to the blames received regarding the validity of their titles, BSG Resources Limited mentioned that they respected the clauses of article 62, paragraph 4 of the Mining Code that requires prior approval from the Minister of Mines, for any partial or total transaction regarding the obligations resulting from a mining title of any kind.
However, article 62, paragraph 4 aimed at by BSG Resources Limited also provides for the fact that "such authorization is issued by decree when concessions are involved", which has not been the case in the present issue, since no presidential decree has intervened.

Following the extensive interpretation of article 62, paragraph 4 made by BSG Resources Limited, that leads to the application of the regime of prior authorization provided for by this article, BSG Resources SARL might have their Mining Titles revoked by virtues of article 60, since the authorization was not granted according to the legal forms.

To conclude, the extensive interpretation of article 62, paragraph 4 – that leads to assimilation of the assignment to Vale for the control of the Project to an assignment of Mining Titles – must be reduced, while an arbitral tribunal might prefer a strict interpretation of the above-mentioned article that seems to be aimed only to direct assignments of titles.

However, if the extensive interpretation was to be accepted by an arbitral tribunal, (1) the assignment of the Mining Concession should have received a prior authorization through presidential decree, and (ii) the assignment of PR Blocks 1 and 2 (that constitutes the Phase II of the Project), would be simply invalidated since the permits of explorations are not assignable (article 26 of the Mining Code).

V. RECOMMENDATIONS REGARDING THE STRATEGY THE STATE MUST FOLLOW

In the actual stage of the works, it appears that the Mining Titles and the Basic Agreement from which the BS GR Companies benefit may be questioned, either due to the conditions in which they have been approved or concluded, or due to the non-compliance of their beneficiaries in the framework of the realization of their obligations as stipulated in those titles and agreement.

At this stage of our survey, it also appears that the revocation of the Mining Titles and the termination of the Basic Agreement based on the non—execution by the BS GR Companies of their obligations should be preferred, on one hand, because a simpler implementation of the action in nullity (since a breach of article 60 of the Mining Code leads, without necessity of any judiciary procedure, to the revocation of the title, under reserve of the respect of the rules of summons) and, on the other hand, the arguments of defense by the BS GR Companies would be less easy to oppose to the State, because the State has respected its obligations and because force majeure, as a reason of non-compliance to the obligations, may not be alleged.
In any case, it is necessary to finalize our analyses based on complementary documents that were required (see Appendix 3) and to proceed to the verification of our conclusions according to the Guinean law, in order to definitively confirm that preference should be given to the revocation of the Mining Titles and the termination of the Basic Agreement due to the breach of obligations by the BSGR Companies.

Once the more conducive grounds for the reconsideration of the rights of the BSGR Companies has so been determined, it will be necessary to determine, along with the representatives of the State, the best strategy to adopt in order to make sure that the Mining Titles are granted on a valid ground to a legal Guinean company capable to assure the realization of the Project to the best of the interests of the Republic of Guinea and of the investors on the company responsible of the Project.
The mining project under analyses for the development of iron in Guinea is located in two distinct geographical zones within the region of N'Zérékoré: in the city of Zogota (South of Simandou), on one hand, and in the East and Southeast of Kérouané, on Blocks 1 and 2 of Simandou, on the other hand.

Therefore, for purpose of clarity, the facts hereinafter recounted are presented while taking this geographical distinction into account.

**Zogota**

- By Decree N° A2006/706/MMG/SGG of February 6 2006, the Ministry of Mines granted the BSGR Guinea Limited company four permits of exploration for iron covering a surface of 2047 square kilometers in the prefecture of Kérouané – South Simandou ("PR 706").

- By Decree N° A2006/706/MMG/SGG of the same day, the Ministry of Mines granted the BSGR Guinea Limited company three permits of exploration for iron covering a surface of 1286 square kilometers in the prefecture of Kérouané – North Simandou "PR 707").

- In virtue of each one of the PR 706 and PR 707, the BSGR Guinea company must, under penalty of revocation of the above-mentioned permits of exploration:
  - Carry out its program of works and budget within 6 months following the date of emission of the permits of exploration (the latest on August 6 2006);
  - Conduct, for the whole permit, a strategic survey covering the relevant surface and write down the results of this survey in the quarterly reports to be submitted to the Center of Mining Promotion and Development (CPDM);
  - Take responsibility for the "Directors of supervision and follow-up of the activities on the ground" provided to the company by the administration;
- Declare to the National Direction of the Mines (DNG), the opening of the works one month before their beginning and three months before their closure;

- Submit to the CPDM the monthly reports of activity and the quarterly financial reports;

- Signal to the CPDM the discovery of any other substance during the explorations.

- Have the works of explorations followed up by the Geological Control Division of the DNG;

- Ensure compliance to the regulations of hygiene and the security of the workers as well as preservation of the environment and the restoration of the zones affected by the works;

- Pay the taxes and fees relative to the permits.

Subsequently to the granting of these permits, the Republic of Guinea concluded with the BSG Resources (Guinea) Limited, a legal company from the British Virgin Islands, a protocol of agreement relative to the development of the iron deposits in Simandou signed on February 20 2006 (the "Protocol of Agreement").

The Protocol of Agreement was signed while considering the supposed status of the "BSGR Group" as an "international mining group specializing in the exploration, the exploitation and the commercialization of mineral resources". On this issue, the Protocol of Agreement outlines that "BSGR has the desire, the technical competences and the financial capacity to collaborate with the Republic of Guinea necessary to take commercial initiatives".

Among others, the Protocol of Agreement provides for the following engagements:

- The realization, by the BSG Resources (Guinea) Limited Company, of a feasibility study regarding the project of iron mines of Simandou during a period of 30 months beginning with the date of granting of the permit of exploration;
- The signature of an agreement related to the implementation of the project of iron mines of Simandou within 6 months following the end of the feasibility study.
- The creation of an anonymous company with public participation named **Mining Company of Simandou** in which the Republic of Guinea will have to hold a participation in the capital of 15%;
- The designation of an independent operator, chosen by the BSG Resources (Guinea) Limited following consultation with the Republic of Guinea;
- The reduction of the fiscal and customs regime applicable to the BSG Resources (Guinea) Limited and to any entity created for the needs of the operation of the project, in reason of the "importance and the heaviness of the investments considered".

- The duration of the Protocol of Agreement is of three years beginning with the date of granting of the permits of exploration.

- To our knowledge, the Mining Company of Simandou has never been created.

- It must be outlined that some of the data of the zone of exploration appearing in Appendix A of the Protocol of Agreement correspond to those of the PR 706 despite the fact that they were delivered before the signature of the Protocol of Agreement. Therefore, we will suppose that the timeline of 30 months, as defined in the Protocol of Agreement for the carrying out of the feasibility study, has began running retroactively starting from the date of the PR 706, that is, from February 6 and ended on August 6 2008.

- The documents we hold reveal that the BSG Resources (Guinea) Limited company, whom statutes are dated September 15 2006, was registered on [November 24 2006 (or November 21 2007)] in the form of a lawful single-member company of limited responsibility OHADA, with a capital of [5,00,000] GNF, registered at the Register of Commerce and Personal Property (Registre du Commerce et du Credit Mobilier = RCCM) at Conakry, under the number RCCM/GC-KAL/013.755 A/2006, located at Villa Andrée, Coleah Neighborhood in the City of Matam in Conakry, **PB 6389** and having as only partner the BSG Resources (Guinea) Limited legal company in Guernsey.
Since the BSG Resources (Guinea) Limited SARL company had been created subsequently to the granting of the P 706 and 707, those PR could only be granted to the legal company in Guernsey or in the legal company in the British Virgin Islands (all the three companies named "BSG Resources (Guinea) Limited").

Through Decree No A 2009/1327/PR/MMEH/SGG dated June 10, 2009, the PR 706 and 707 have been renewed for duration of two years, that is — until June 10 2011. The renewal granted to the BSG Resources Guinea is for a total surface of 1667 square kilometers.

The above-mentioned decision of renewal include the same obligations that those provided for and above-mentioned in the PR 706 and 707.

We understand that the BSG Resources (Guinea) Limited SARL Company (we ignore which one of them) has later asked for the granting of a mining concession for the operation of the iron ore deposits in Zagota. In this framework, the Minister of Mines created an inter-ministerial commission that was charged, between December 2 and 12 2009 (i) to examine, the feasibility study presented by the BSG Resources (Guinea) Limited SARL company and (ii) to elaborate a project of agreement for the operation of the iron ore deposits in Zagota.

This feasibility study (for which we still have not received a copy) was submitted on November 16 2009.

On December 14 2009, the inter-ministerial commission presented its report to the Minister of Mines. This report reveals, among others, that:

- The study mentions "resources" and not "operational reserves";
- The data of the study will be refined by prospection works (that are apparently continuing at the date of the report) in order to exactly determined the reserves;
- The exploitation of the magnetite ore does not figure in the study;

---

We observe that, regarding the decision renewing the PR 707 for North Simandou, the data appearing under points A and B are not mentioned in the PR 707. Therefore, the rights of exploration for these zones could not be duly renewed since they had not been accorded in the first place.
- The questions relative to the protection of the environment are only briefly treated in the study;
- The study does not include any mention on the aspect relative to the community development whom the Commission considers as a fundamental issue in the harmonious development of any project.

- Despite the shortcomings found, notably regarding the demonstration of the existence of a deposit that is economically and commercially exploitable, the commission recommended to the Minister of Mines:
  - To bring the mining agreement to the Council of Ministers for ratification of the signature;
  - To submit the granting of the mining concession to the authorization of the President of the Republic;
  - to recommend the ratification and the promulgation of the agreement through presidential ordinance.

- On December 16 2009, the Republic of Guinea, the BSG Resources (Guinea) Limited Company and the BSG Resources (Guinea) SARL company signed an agreement aimed to define the rights and obligations of the parties in relation with the exploitation of the iron ores in Zogota (the "Basic Agreement").

- After the conclusion of the Basic Agreement, through decree of the President of the Republic dated March 9 2010, N°D2010/024/PRG/CNDD/SGG, the BSG Resources (Guinea) Limited company was granted a mining concession for a duration of twenty-five years, covering a surface of 1025 square kilometers in the in the prefectures of N’Zérékoré, Macenta, Beyla and Yomou (the "Mining Concession").

In article 4, the Mining Concession stipulates that: "since the evaluation of the potential of a operational deposit of the Concession was not achieved at time of the signature of the current Decree, the holder, BSG Resources (Guinea) Limited company, must go into deeper details, within the two first years following the effective date of the current Decree, prospection works allowing to carry out an evaluation of this potential that will be as complete as possible ".

28
In addition, also according to the clauses of the provisions of the Mining Concession, and under penalty of revocation, the BSG Resources (Guinea) Limited company must:

- Supply, in the framework of the strategic plan for the economical development of the feasibility study, the plans and chronograms for the realization of the Conakry – Kankan railway in the shortest deadlines;
- Insure the respect of the regulations of hygiene and the security of the workers as well as the preservation of the environment and the restoration of the zones affected by the works;
- Pay the taxes and fees relative to the Mining Concession.

The Basic Agreement has been ratified on [unreadable] 2010, through presidential ordinance No [unreadable] /PRG/CNDD/SGG/2010. In this regard, it must be outlined that the ordinance provides for the ratification of the "Basic Agreement closed on December 16 2009 between the Republic of Guinea and the BSG Resources (Guinea) Limited Company". From a formal aspect, the BSG Resources (Guinea) Limited company is therefore (i) holder of the Mining Concession and (ii) beneficiary of the Basic Agreement. The ordinance of ratification does not specifically refer to the BSG Resources (Guinea) SARL Company, despite the fact that this company signed the Basic Agreement as a legal Guinean company holding rights relative to the mining project.

Despite this confusion, the BSG Resources (Guinea) SARL Company is in charge of the realization of the project provided for by the Basic Agreement (article 10) and which is divided into two phases:

- **Phase I: Zogota**

  The BSG Resources (Guinea) SARL Company must carry out:

  - A mine of iron ore in open sky in Zogota
  - An industrial zone
  - A port zone located in Buchanan in the Republic of Liberia
  - The Conakry – Kankan railway (50% of the line must be carried out during this phase).
- **Phase II: Blocks 1 and 2 Simandou Kérouané**

The BSG Resources (Guinea) SARL Company is committed to carry out:

- Two mines of iron ore
- Two industrial installations and equipments
- The appropriate railroad infrastructures necessary to the evacuation of the railroad.
- A residential neighborhood in Kérouané
- The extension of equipments and installation to the Buchanan port.

- According to the clauses of the Basic Agreement (article 15.2), the BSG Resources (Guinea) SARL Company is committed to begin the mining exploitation on **May 31 2012** the latest. In case of non-compliance to this schedule, the BSG Resources (Guinea) SARL Company must provide the State with the necessary justifications that will justify a prorogation of six months of this schedule. Otherwise, the State is entitled to revoke the Mining Concession according to the clauses provided for in the Mining Code.

- In addition, according to the Article 21.2.2 of the Basic Agreement, the BSG Resources (Guinea) SARL Company is committed to carry out - according to the chronogram agreed upon by the parties and that must be enclosed in appendix to the agreement - an open sky mine as well as the infrastructures and the associated equipments that are necessary to the extraction of the mining product, for a capacity of 30 million tons a year, at the latest within 24 months following the date of validity of the entry into force of the Basic Agreement and the Mining Concession, that is, **March 9 2012** the latest, according to the date of the Mining Concession.

- According to data gathered during our meetings in our visits to Conakry, we understand that, regarding the condition of progression of the implementation of the project, the BSG Resources (Guinea) SARL Company will not be able to respect its engagement, because, according to our interlocutors, the construction of the mine has not yet began.

- In addition, we note that several appendixes that are necessary to the implementation of the project were supposed to be enclosed to the Basic Agreement but do not appear and, according to the data we received, have never been communicated by the BSG Resources (Guinea) SARL Company.
On this issue, a project of chronogram for the elaboration of the appendixes to the Basic Agreement was established. According to this chronogram, the parties of the Basic Agreement must produce the following documents.

<table>
<thead>
<tr>
<th>Document</th>
<th>Party responsible for production of the document</th>
<th>Date of delivery</th>
<th>Has the document been delivered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governmental approval</td>
<td>Republic of Guinea</td>
<td>March 2010</td>
<td>Yes</td>
</tr>
<tr>
<td>Fiscal appendix</td>
<td>Republic of Guinea</td>
<td>March 2010</td>
<td>No information</td>
</tr>
<tr>
<td>Infrastructure agreement</td>
<td>Republic of Guinea</td>
<td>April – May 2010</td>
<td></td>
</tr>
<tr>
<td>Study of impact on the environment, presentation, examination and approval</td>
<td>BSG Resources (Guinea) SARL Company</td>
<td>March – April – May 2010</td>
<td>No information</td>
</tr>
<tr>
<td>Planning of management of the environment, presentation and approval</td>
<td>BSG Resources (Guinea) SARL Company</td>
<td>June 2010</td>
<td>No information</td>
</tr>
<tr>
<td>Local development plan</td>
<td>BSG Resources (Guinea) SARL Company</td>
<td>June – July 2010</td>
<td>Yes</td>
</tr>
<tr>
<td>Agreement for community development</td>
<td>BSG Resources (Guinea) SARL Company</td>
<td>July 2010</td>
<td>No information</td>
</tr>
<tr>
<td>Declaration of the beginning of the works</td>
<td>BSG Resources (Guinea) SARL Company</td>
<td>August 2010</td>
<td>No information</td>
</tr>
</tbody>
</table>

For its part, the Republic of Guinea has produced the Accord of Transit closed on July 14 1973 with the Republic of Liberia, actualized on October 26 1989. In virtue of the agreement, the BSG Resources (Guinea) SARL Company can evacuate the Zogota iron ore through Liberia that has more appropriate infrastructures.
In exchange to this "advantage offered by the political authority"\textsuperscript{10}, BSG Resources SARL Company "has committed itself to reconstruct the Conakry – Kankan railway beginning with the first stage and to extend the itinerary to Kérouané during the second phase of the project in order to carry out the useful Transguinean the Guineans wish for, in order to open up the deep country while building large economical centers [...]

Despite this commitment, the Ministry of State for Public Works and Transportations has commented regarding the construction of a railway line in a memorandum (not dated and incomplete), referring to the Basic Agreement, addressed to the President of the Republic: "It has been noted that the reconstruction of this line (Conakry – Kankan) as planned by BSGR/Vale does not meet the actual standards and does not allow Guinea to have a modern and efficient railway [...]. To these deficiencies, adds up the lack of study allowing having a better readability of the nature of the investments, their costs and the timelines of realization of the works. Faced with these deficiencies, the Government has decided to suspend the works and to wait for the clear definition of all the technical aspects conditioning the good execution of the project".

The same memorandum outlines that the works had been entrusted by BSGR/Vale to the Zagope enterprise and states that the Rio Tinto that was sought after, "had outlined its agreement of principle for the financing of the actualization of the preliminary studies conducted by the Cofinter office in 2008". This memorandum also outlines that at the end of the working meetings held between September 12 and 22 2011, Rio Tinto engaged to finance (i) the elaboration of the documents necessary to the preparation and the calls for bids for the conception and realization of the Pk0-Pk40 section, (ii) the elaboration of the documents necessary to the call for bids for the realization of the APS and PAD of the complete Conakry-Kankan-Kérouané line and (iii) the elaboration of the documents necessary for the preparation and the call for bids for assistance to the project management of the Pk0-Pk40 section, all this with the help of the Cofinter company. From the explanations that have been provided to us

\textsuperscript{10} Extract from the document of March 14 2011 in which the BSG Resources Limited Company presents before the President of the Republic the Joint-Venture agreement signed with Vale.
in Conakry, we understand that the realization of the Pk0-Pk40 section is a priority for the Guinean authorities in order to generate the release of the traffic congestion of the town of Conakry.

- Through decree of the Prime Minister N° 5368 of October 4 2011, a Steering Committee for the Project of Construction of the Conakry-Kankan-Kérouané Railway with extension to Mali, was created. In this regard, the decree refers to the Protocol of Agreement signed between the Republic of Guinea and the Republic of Mali, on July 29 2011, dealing with the construction of a Conakry-Kankan-Barnako railway.

- In April 15 2010, that is a little later that one month following the granting of the Mining Concession, the BSG Resources (Guinea) Limited Company (as well as the social denomination appearing on the header of the document), informed the Minister of the Mines about negotiations taking place about a project of co-enterprise (the "Joint-Venture") between Vale S.A. – a company registered in Brazil ("Vale") and BSG Resources Group, in which Vale will hold a participation of 51% in the BSG Resources (Guinea) Limited Company, and, consequently, an indirect participation in the "BSG Resources (Guinea) Limited SARL Company". For this purpose, the BSG Resources Limited Company required formal approval of the government for the realization of the Joint-Venture.

- The BSG Resources Limited Company stated that the agreement of the Government had only a formal value and considered that the Joint-Venture project did not necessitate (i) the prior approval of the State and that (ii) it did not trigger the right of preemption provided for by the article 37 of the Basic Agreement.

- From a formal aspect, the approval was granted at the end of the document date April 16 2010, at the bottom of a paragraph pre-prepared by BSG Resources Limited on the name of the signatory of the authorization. Therefore, the authorization was granted on the very same day by the Minister of Mines, Mister Mahmoud Thiam, through apposition of his signature and a stamp of the Ministry of Mines.
The Joint-Venture was set up in April 30 2010 by assignment of 51% of the BSG Resources Limited Company (Guernsey) in Vale, for the sum of 2,500,000,000 USD. According to the information provided by Vale at the market at time of the transaction, Vale had immediately paid the sum of 500 million USD out of the global amount of 2,500,000,000 USD, while the balance was to be paid according to the objectives to be reached in the project. The documents relative to this Joint Venture, and notably the agreements closed between the BSG Resources Limited Company (Guernsey) and Vale, have never been communicated to the Guinean authorities.

In June 14 2010, the "BSG Resources Limited SARL Company" modified their social denomination and became "VGB – Vale BSGR Guinea", after their amending declaration to the Register of Commerce and Personal Property (Registre du Commerce et du Credit Mobilier = RCCM). The Ministry of Mines acknowledged this modification through a letter addressed to BSG Resources Guinea in November 1 2010.

In March 14 2011, in reaction to the critics made regarding the validity of the titles they hold (as mentioned in their letter), the BSG Resources Limited Company (from Guernsey) sent the President of the Republic a letter aimed to present the Joint Venture closed with Vale. The BSG Resources Limited Company explained, "The establishment of a co-enterprise will allow respecting the engagements undertaken in the Basic Agreement in both phases of the project as described in article 10". It also indicated that it might have to "raise capitals from the stock market" but preferred "turning to Vale, the most competent and qualified enterprise for the successful implementation of this project".

It must be outlined that the BSG Resources Limited Company stated in this letter, that they had respected the clauses of article 62, paragraph 4 of the Mining Code that requires the prior approbation of the Government for any partial or total transaction regarding the rights and obligations resulting from a mining title of any nature.

A document from the CPDM dated June 2 2011, in relation with the situation of the mining titles held by the BSG Resources Limited Company indicates that, regarding the Simandou –South (PR 706) zone, this company is active on the ground.
At this stage of our study, the project is halted.

**Simandou – Blocks 1 and 2**

Through decree N° A 2008/4980/MMG/SGG dated December 9 2008, the BSG Resources Limited Company is granted a permit of exploration for iron covering a surface of 369 square kilometers in the prefecture of Kéranoué for a duration of three years. It must be reminded that Blocks 1 and 2 of South Simandou, object of the permit of explorations thus granted to the BSG Resources Limited Company, had initially been granted to the Rio Tinto company, as well as Blocks 3 and 4. The decision of the State to withdraw the Blocks 1 and 2 from Rio Tinto would have been justified by the fact that Rio Tinto had not respected their obligations relative to the corresponding permits of exploration.

The permit of exploration will expire on December 8 2011.

The BSG Resources Limited Company must, under penalty of revocation of the above-mentioned permit of exploration:

- Carry out their program of works and budget within 6 months following the date of emission of the permits of exploration (the latest on June 9 2009);

- Conduct, on the whole permit, a strategic survey covering the relevant surface and write down the results of this survey in the quarterly reports to be submitted to the Center of Mining Promotion and Development (CPDM);

- Take responsibility for the "Directors of supervision and follow-up of the activities on the ground" provided to the company by the administration;

- Declare to the National Direction of the Mines (DNG), the opening of the works one month before their beginning and three months before their closure;

- Submit to the CPDM the monthly reports of activity and the quarterly financial reports;

- Signal to the CPDM the discovery of any other substance during the explorations;
- Have the works of explorations followed up by the Geological Control Division of the DNG;

- ensure compliance to the regulations of hygiene and the security of the workers as well as preservation of the environment and the restoration of the zones affected by the works;

- Pay the taxes and fees relative to the permits.

- A document of the CPDM dated June 2 2011, in relation with the situation of the mining titles held BSG Resources Limited Company, indicated that regarding the Simandou – South zone (PR 706), this company is active on the ground.

- At this stage of our study, the project is halted

**Simandou – Blocks 1 and 2**

- Through decree N° A 2008/4980/MMG/SGG dated December 9 2008, the BSG Resources Limited Company is granted a permit of exploration for iron covering a surface of 369 square kilometers in the prefecture of Kéranoué for a duration of three years. It must be reminded that Blocks 1 and 2 of South Simandou, object of the permit of explorations thus granted to the BSG Resources Limited Company, had initially been granted to the Rio Tinto company, as well as Blocks 3 and 4. The decision of the State to withdraw the Blocks 1 and 2 from Rio Tinto would have been justified by the fact that Rio Tinto had not respected their obligations relative to the corresponding permits of explorations.

- The permit of exploration will expire on December 8 2011.

- The BSG Resources Limited Company must, under penalty of revocation of the above-mentioned permit of exploration:

  - Carry out their program of works and budget within 6 months following the date of emission of the permits of exploration (the latest on June 9 2009);
- Conduct, on the whole permit, a strategic survey covering the relevant surface and write down the results of this survey in the quarterly reports to be submitted to the Center of Mining Promotion and Development (CPDM);

- Take responsibility for the "Directors of supervision and follow-up of the activities on the ground" provided to the company by the administration;

- Declare to the National Direction of the Mines (DNG), the opening of the works one month before their beginning and three months before their closure;

- Submit to the CPDM the monthly reports of activity and the quarterly financial reports;

- Signal to the CPDM the discovery of any other substance during the explorations;

- Have the works of explorations been followed up by the Geological Control Division of the DNG;

- ensure compliance to the regulations of hygiene and the security of the workers as well as preservation of the environment and the restoration of the zones affected by the works;

- Pay the taxes and fees relative to the permits.

➢ The Basic Agreement provides for the fact that Phase II of the project will be carried out on blocks 1 and 2 of Simandou (whom data do not appear in the Basic Agreement). For the needs of Phase II, the BSG Resources (Guinea) SARL Company must, according to the provisions of the Basic Agreement, present a feasibility study to the State within 24 months from the date of signature of the Agreement (that is – on December 16 2011 the latest).

➢ A feasibility study, bearing the names "VALE BSGR", named "Simandou Project – Blocks 1 and 2", was established in September 2011. This study, according to their words, "relates to a zone of 369 square kilometers, located in the prefecture of Kérouané and covered by a permit of mining explorations for iron - Decree No A2008/4980/MMG/SGG delivered by the Ministry of Mines and Geology to the BSG Resources (Guinea) Limited Company on December 9 2008". A rapid lecture of the feasibility study concludes:
- The existence of reserves of 925,000,000 tons of ore with average iron content of 65.2%;
- CAPEX necessary to the implementation of the project up to its pre-exploitation phase will represent 3.72 billion US$ (net of taxes);
- To the viability of the project taking into account a rate of internal profitability of 19.5%, holding an average price of 80.00 US% per ton at long range;
- To fiscal revenues (tax on benefits, royalties and tax for the development of the community) for the State of around 500 million US$ a year, for about 10 billion US$ for the 20 years of operation.

- During our meeting in Conakry with the Minister of Mines and Geology, he mentioned that Vale had been informed that the State did not acknowledge the study that was submitted to him, since it was produced by the company named VALE BSGR which he does not know in the framework of the project since he had not been notified on any no assignment duly realized of this company.

- Except for the feasibility study, we know of only one single report of activities (for the period from January to March 2011) submitted on April 14 2011 to CPDM.

- Until now, we have no knowledge of any request of renewal of this permit (that will soon come to expiration) or of a request of transformation of the exploration permit (or mining concession).

December 20 2011
APPENDIX 2

LIST OF THE DOCUMENTS RECEIVED


3. Decree N° A 2006/707/MMG/SGG dated February 6 2006 from the Minister of Mines and Geology, granting the Company BSGR GUINEA three permits of exploration (Prefecture of Kerouané – North Simandou) for a period of 3 years

4. Memorandum of understanding between the Republic of Guinea and BSG RESOURCES (GUINEA) LIMITED, dated February 20 2006, referring to the project of Simandou iron mines


6. Declaration of company establishment dated November 24 2006 to the trade register and credit estate at the Court of First Instance at Conakry, presented by BSG RESOURCES GUINEA, for the establishment of BSG RESOURCES GUINEA-SARL

7. BSGR - BSG RESOURCES GUINEA report from the end of April 2007

8. BSGR - BSG RESOURCES GUINEA report, submitted on July 26 2007 (DGM/DSD/CPDM), for the second quarter 2007 referring to the exploration and evaluation of resources (bauxite and iron)

9. BSGR report of activities, for the third quarter 2007 referring to the evaluation of the resources of iron ore for the permits of the BSG in GUINEA Company, Phase 2006-2007
10. BSGR - BSG RESOURCES GUINEA report, submitted on July 21 2008 (DGM/DSD/CPDM), for the second quarter of 2008 referring to the permit of exploration PR706

11. BSGR - BSG RESOURCES GUINEA report, submitted on April 2 2008 (DGM/DSD/CPDM), for the first quarter of 2008

12. Decree N° A 2008/4980/MMG/SGG from the Minister of Mines and Geology dated December 9 2008, granting a permit of exploration of iron to the BSGR Guinea Limited Company in the prefecture of Kérouané

13. Recovery notice of CPDM n° 130/CPDM/2008/IKS/ms/MMG/CAB, addressed on December 10 2008 to the General Director of the BSGR GUINEA company for the sum of 6,035 USD as royalties and fees of permit of exploration in the prefecture of Kérouané

14. Receipt of CPDM n° 22, dated December 11 2008, for the sum of 150 USD paid in cash by the BSGR Company for administration costs

15. Receipt of CPDM n° 22, dated December 11 2008, for the sum of 3875 USD paid in cash by BSGR Company for royalties

16. Receipt of CPDM n° 23, dated December 11 2008, for the sum of 1160 USD paid in cash by the BSGR Company for the Mining Funds

17. Amending declaration to the trade register and credit estate dated February 20 2009, presented by BSG RESOURCES GUINEA – SARL, for modification of the trade name (new name: BSG RESOURCES (GUINEA) LIMITED), the change of head office, and the modification of the management

18. Amending declaration to the trade register and credit estate dated May 18 2009, presented by BSG RESOURCES (GUINEA) LIMITED - SARL for the appointment of new managers

20. Receipt of MME dated August 19, 2009 and a copy of the check from the LTD BSG RESOURCES n° AA9971155 dated August 12 2009, for the sum of 221,069,681 GNF to the order of the Public Treasury in payment of the exploitation fee

21. Receipt N° 00000097 dated August 15 2009 from the Center of Mining Promotion and Development (CDPM) and a copy of the check from the LTD BSG RESOURCES n° AA9971156 dated August 12, 2009, for the sum of 94,744,149 GNF to the order of the Mining Funds

22. Receipt N° 0000388 dated August 15 2009 from the CPDM and a copy of the check from the LTD BSG RESOURCES n° AA9971157 dated August 12, 2009, for the sum of 9,472,520 GNF to the order of the CPDM.

23. Invoice in lieu of notice of recovery, addressed by the Regional management of Mines and Geology on August 24 2009 to the BSG RESOURCES GUINEA Company, for the total sum of 78,520,320 GNF, for the different sections of the mines and quarries of N’Zérékoré, Beyla, Macenta as superficies royalties

24. Receipt N° 0922771, dated September 7 2009, for the payment to the BSGR GUINEA N’Zérékoré for the sum of 47,545,000 GNF as the tax of superficies at N’Zérékoré

25. Receipt N° 0932414 for the payment by the BSGR GUINEA Company for the sum of 23,004,000 GNF as the tax of superficies at Beyla

26. Receipt N° 0911588 for the payment by the BSGR GUINEA Company for the sum of 7,974,720 GNF as the tax of superficies at Macenta


29. Basic Agreement between the Republic of Guinea and BSG RESOURCES dated December 16 2009 for the exploitation of iron ore deposits at Zogota/ N’Zérékoré
30. Decree N° D2010/024/PRG/CNDD/SGG the President of the Republic (General S. Konaté, Vice President of CNDD, temporary President of the Republic) dated March 9 2010, granting a mining concession to the BSG Resources (Guinea) Limited Company, for the prospection and the exploitation of the iron ore at Zogota, for a period of 25 years.

31. Recovery notice of the Center of Mining Promotion and Development of the Ministry of Mines and Geology, addressed on April 14 2010 to the BSG RESOURCES (GUINEA) LIMITED Company, for the sum of 5,123,000 USD

32. Letter from BSG RESOURCES LIMITED to the Minister of Mines and Geology, dated April 16 2010, on the Joint Venture project between the companies VALE SA and BSG RESOURCES GROUP

33. Receipt dated April 29 2010 for the payment of the sum of 3000 USD by the BSG RESOURCES SARL Company

34. Receipt N° 00000614 from the CPDM, dated April 29 2010 and a copy of the check n° AA5100507/28/04/2010 from the BSGR GUINEA Company for the sum of 8,663,887,565 GNF to the order of the Public Treasury

35. Receipt dated April 29 2010 and a copy of the check n° AA5100508 dated April 28, 2010, for the sum of 20,215,737,651 GNF from the SARL BSG RESOURCES GUINEA to the order of the Public Treasury

36. Minutes of the Extraordinary General Assembly of the BSG RESOURCES (GUINEA) LIMITED Company, dated May 17 2010 regarding modification of the corporate name of the Company

37. Amending declaration to the Trade Register and to the Credit Estate of the Court of First Instance at Conakry dated June 14 2010, concerning the amendment of BSG RESOURCES (GUINEA) LIMITED trade name to VBG-VALE BSGR GUINEA.

38. Invoice N° 002/2010 in lieu of notice of recovery, for the sum of 3,690 USD, addressed on June 18 2010 by the Section of the Mines and Quarries of the Prefecture of Kérouané to the BSGR GUINEA Company.
39. Invoice N° 23/RAZ/DRMG/2010, in lieu of notice of recovery, for the sum of 92,160,000 GNF, addressed by the Regional management of Mines and Geology of the Administrative Region to the BSG RESOURCES GUINEA Company

40. Receipt N° 4708045, dated August 19 2010, for the payment in cash by the BSGR Company for the sum of 55,800,000 GNF as the royalty of superficies for iron exploration

41. Receipt N° 0546196, dated August 19 2010, for the payment in cash by the BSGR Company for the sum of 27,000,000 GNF as the royalty of superficies 2010

42. Receipt N° 4648837, dated August 20 2010, for the payment in cash by the Company BSGR for the sum of 9,360,000 GNF as the royalty of superficies 2010

43. Notification of payment of the Mines and Geology Regional Direction N° 24/RAZ/DRMG/2010, dated August 24 2010, for the sum of 92,160,000 GNF paid by the BSGR Company

44. Notification of approval of the Ministry of Mines and Geology, cabinet of the Minister N° 1262/MMG/CAB/2010, dated November 1 2010, for the modification of the name of the company - VBG-VALE

45. BSGR-BSG RESOURCES GUINEA report, dated December 2010, on the geological explorations works of Simandou South in the zone of Zogota during the period of October 2009-December 2010

46. Report of BSGR-BSG RESOURCES GUINEA, dated December 2010, on the geological explorations works of blocs I and II in the zone of Simandou North during the period of March 2009-December 2010

47. Letter from the President of BSGR Group (header BSGR RESOURCES LIMITED) to the President of the Republic of Guinea dated March 14 2011 about the establishment of a joint venture BSGR/VALE SA for the mining project of Zogota and the blocs I and II at Simandou.
48. Invoice N° 001/2011 for the sum of 3,690 USD in lieu of notice of recovery, emitted on March 14 2011 by the Section of the Mines and Quarries of the Prefecture of Kérouané and addressed to the VBG Company.

49. Recovery notice N° 13/MMG/CPDM/2011 from the Ministry of Mines and Geology, addressed on April 6 2011 to the BSG RESOURCES GUINEA Company, for the sum of 292,340 USD for the cost of the mining concession in the prefectures of N'Zérékoré, Macenta, Beyla and Yomou

50. VBG quarterly report, presented on April 13 2011, on Simandou – Zogota project for the period of January-March 2011

51. VBG quarterly report, presented on April 13 2011, on Simandou – Zogota project 1 and 2 for the period of January-March 2011

52. Receipt N° [unreadable], dated May 1 2011, for the payment by check N° AA0553293 by the SARL VGB-VALE BSGR GUINEA Company for the sum of 196,444,017 GNF as the tax of superficies 2010-2011

53. Receipt N° 4651802, dated May 2 2011, for the payment by check N° AA0553282 by the VBG-VALE BSGR GUINEA Company for the sum of 566,665,434 GNF as the tax of superficies 2010-2011

54. Receipt N° 0952334, dated May 3 2011, for the payment by check N° AA0553284 by the VBG-VALE BSGR GUINEA Company for the sum of 534,735,636 GNF as the tax of superficies 2010-2011

55. Receipt N° 0952335, dated May 3 2011, for the payment by check N° AA0553284 by the VBG-VALE BSGR GUINEA Company for the sum of 616,372,929 GNF as the tax of superficies 2010-2011

56. Report of activities by Vale, dated June 2 2011, on the works of geological research – iron project.

57. CPDM Table dated June 2 2011 on the BSG RESOURCES (GUINEA) LIMITED Company (situation of the mining titles)

58. CPDM table dated June 3 2011 on the BSG RESOURCES (GUINEA) LIMITED Company (situation of the mining titles and deposit of the activity reports)
59. Simandou Project – feasibility study of Blocs 1 and 2, by VALE BSGR, dated September 2011

60. Letter from the Director of the Project of Simandou VBG – VALE BSGR (Guinea), M.Ricardo SAAD, to the Minister of Mines and Geology, dated October 12 2011, in response to the letter of the Minister N° 1586/MMG/CAB/DNM/2011 from October 7 2011, regarding the detention of the mining concession

61. Internal notice from the Ministry of Mines relating to the project of the elaboration program of the appendices at the Basic Agreement

62. Recovery notice from the CPDM, N°[unreadable]/MMG/CPDM/2011, addressed on [unreadable] to the representative of VBG-VALE BSGR GUINEA, for the sum of 292,340 USD
ANNEX 3

LIST OF DOCUMENTS STILL TO BE RECEIVED


2. A copy of the Decree A/2009/1566/MMG/SGG (relative to the renewal of four permits of exploration of iron mining in the prefectures of Macenta, N’Zérékoré, Yomou, Beyla and Kérouané to BSGR.

3. A copy of all the documents submitted by BSG Resources (Guinea) SARL and BSG Resources (Guinea) Limited at time of deposit of the requests for permits of iron and mining concessions in the Ministry of Mines (probably at the CPDM) that have justified the granting of the mining titles.


5. The declarations of beginning of works for the permits of exploration and the concession stemming from the following administrative documents:
   - Decree N° A2006/706/MMG/SGG dated February 6 2006
   - Decree N° A2006/707/MMG/SGG dated February 6 2006
   - Decree N° A/2009/1327/PR/MMEH/SGG dated June 10, 2009 (renewing the above-mentioned permits)
   - Decree No D2010/024/PRG/CNDD/SGG dated March 9 2010

6. The documents mentioned in the program of elaboration of the appendixes of the Basic Agreement and that are supposedly been submitted by BSGR:
   - Fiscal appendix
   - Agreements of infrastructures
   - Study of impact on the environment
   - Planning of management of the environment
   - Convention of the community development
7. A copy of all the reports (financial reports and reports of activities) handed in by BSG Resources (Guinea) SARL and BSG Resources (Guinea) Limited in the framework of their obligations in virtue of the mining titles they hold.

8. A copy of all the payment calls for the taxes, charges, fees and due rights from BSG Resources (Guinea) SARL and BSG Resources (Guinea) Limited in relation with the mining titles they hold as well as proofs of payment of these payments.