

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES  
OF THE LONDON COURT OF INTERNATIONAL ARBITRATION**

**CASE NO 142683**

**BETWEEN**

**VALE S.A.**

**Claimant**

**and**

**BSG RESOURCES LIMITED**

**Respondent**

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**Second Witness Statement**

**SANDRA MERLONI-HOREMANS**

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**I, SANDRA MERLONI-HOREMANS, will say as follows:**

**A. INTRODUCTION**

1. I make this second witness statement in support of the Respondent in the claim issued by Vale SA ("**Vale**") against BSG Resources Limited ("**BSGR**"), and in order to supplement my First Witness Statement of 30 June 2015 ("**Merloni-Horemans-1**").
2. In this Second Witness Statement, I will respond to allegations made against me by Vale in its Statement of Reply and accompanying witness evidence. Rather than commenting on each of Vale's claims, I have sought to limit myself to addressing those allegations and inaccuracies which I understand to be the most central to the issues in this claim. Where I do not comment on a particular aspect of Vale's claim, this should not be construed as an admission on the part of BSGR.



3. Save where I indicate otherwise, the facts and matters set out in this statement are based on my knowledge of the events in question.

**B. 15 FEBRUARY 2006**

4. As I stated in paragraph 20 of Merloni-Horemans-1, Margali Management Corporation (“**Margali**”) resigned as a director of Pentler on 15 February 2006. This was standard procedure. Margali was the default director for each of Onyx’s “off the shelf” entities. Once a company is activated, the new principals would generally appoint their own directors or would ask me to appoint new nominee directors in the BVI. In my email dated 13 February 2006 I asked Mr Noy to provide me with details of:

*“newly to be appointed director (or alternatively, your confirmation that you wish me to arrange for you two nominee directors).”<sup>1</sup>*

5. I have been shown emails from Michael Noy’s secretary dated 15 February 2006 referring to conversations between me and Michael Noy.<sup>2</sup> I do not now recall what we discussed. I am confident that I did not discuss or comment on the substantive terms of the documents which Pentler appeared to be executing with third parties. As far as I was concerned I was helping one of BSGR’s contacts as a matter of courtesy. Pentler’s contractual arrangements with third parties was not my business. The suggestion that I was drafting and commenting on the terms of Pentler’s contracts on behalf of BSGR is totally wrong. I can see that the only change from the draft I was sent by Karine at 03:22 and the draft sent at 16:13 is that Lev Ran has been substituted as signatory for Pentler.
6. Looking at these emails now I believe that our discussions are likely to have focused on the identity of the proper signatory to the agreements. The signature block in the original draft provided for Margali as the signatory. I would have pointed out that Margali could not sign on behalf of Pentler given its resignation. As new directors from the BVI were in the process of being appointed, a power of attorney had to be prepared for Lev Ran. As I stated in paragraph 23 of Merloni-Horemans-1, I believe that I probably printed and filed the documents sent to me by Michael Noy’s secretary, in accordance with our standard policy. I maintained separate files for each of the companies administered by Onyx. I did not consider Pentler to be part of the BSG Group and I did not provide copies of these documents to anyone within the BSG Group. To have done so would have been unprofessional and a breach of the confidentiality obligations which I owed to Pentler. I

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<sup>1</sup> Exhibit R-147.

<sup>2</sup> Exhibits C-341-C-344.

take my professional obligations, and in particular obligations of confidentiality, very seriously.

### **C. PENTLER BUY-OUT**

7. It is important to set out that at the time of the Pentler SPA I had many hundreds of active companies under my administration. I did not get involved in or familiarise myself with the details of each and every asset. I had to rely on the recommendations given to me by the management of the companies who would report back to me and my fellow directors and who would occasionally ask us to sign various documents.
8. I do not sign documents without reading through them first. Accordingly, I would have read the terms of the Pentler SPA before signing the document. I remember discussing the draft Pentler SPA with Yossie Tchelet and David Clark, although I cannot recall the specific content of our discussions. I spoke to David Clark almost daily so it is difficult for me to recall a specific conversation from eight years ago. I do know that they were each in a better position than I was to judge whether the price set out in the SPA was reasonable and I would have deferred to their judgment in this regard. In the context of the BSG Group as a whole the figure of US\$22 million is not extraordinary in the least. I had signed much larger deals for the Group.
9. Given that the SPA was being entered into by a BVI subsidiary of BSGR, for which Margali was the only director, I felt comfortable to sign the SPA on the basis of the recommendation from Yossie, on behalf of BSGR's management. This was not something which needed full board authorisation by the BSGR board. Nonetheless, David Clark wanted to make sure that the transaction was documented at the "Top Co" level and therefore convened a board meeting of BSGR to approve the SPA too.<sup>3</sup>
10. I also signed the Settlement Agreement in July 2009 on the basis of a recommendation from management.<sup>4</sup> At that time the recommendation came from David Barnett, a lawyer within the BSG Group. I also ensured that a written memorandum approving the transaction and authorising me to sign was signed on behalf of Margali.<sup>5</sup>

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<sup>3</sup> Exhibit R-224.

<sup>4</sup> Exhibit R-33.

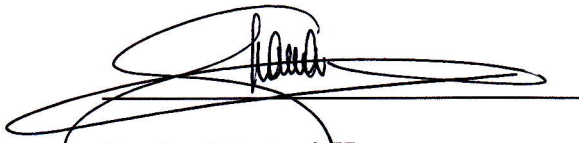
<sup>5</sup> Exhibit C-287.



**D. REORGANISATION OF STRUCTURE OF COMPANIES**

11. As far as I am aware, there was no deliberate policy to delay the dissolution of BSGR Guinea BVI and BSGR Steel following the corporate reorganisation in early 2009. I believe that BSGR Guinea BVI was struck off the register for non-payment of fees. We took no proactive steps. In relation to BSGR Steel, we approved a voluntary strike off. I believe this only occurred in 2011 because BSGR Steel was an interested party in various inter-company loans and investments which had nothing to do with Guinea. Once these other activities were re-structured, BSGR Steel could be closed.

I confirm this statement is true to the best of my knowledge and belief.



**Sandra Merloni-Horemans**  
14 July 2016