IN THE MATTER OF A DISPUTE UNDER THE SWAZILAND INVESTMENT PROMOTION ACT (1998) AND THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY PROTOCOL ON FINANCE AND INVESTMENT (2006)

BETWEEN

SOUTHERN AFRICA RESOURCES LTD (REPUBLIC OF SEYCHELLES),

INVESTOR, CLAIMANT

– AND –

THE KINGDOM OF SWAZILAND

RESPONDENT

NOTICE OF INVESTMENT DISPUTE

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1. An investment dispute has arisen between Southern Africa Resources Ltd ("**SARL**" or "**Claimant**" or "**Investor**"), formerly Salgaocar Resources Africa Limited, and the Kingdom of Swaziland ("**Swaziland**" or "**Respondent**"), concerning the expropriation of Claimant's investments in the country.

2. This letter serves as notice that Claimant shall commence arbitration proceedings against Swaziland before the International Centre for Settlement of Investment Disputes (the "**ICSID**"), on the basis of the legal protection afforded by the Swaziland Investment Promotion Act, 1998 ("**SIPA**"). Claimant also hereby reserves its right to bring arbitration proceedings under the 2006 Southern African Development Community Protocol on Finance and Investment ("**SADC Protocol**"), with respect to which it serves as written notice of a claim pursuant to Article 28(1).

3. Claimant is seeking compensation of no less than **USD 141,147,440.17** for its direct losses, plus interest, which were caused by Respondent's acts and omissions in breach of SARL's rights as a foreign investor in Swaziland.

4. Claimant is also entitled to additional damages, calculated on the basis of the market value of its investments in Swaziland which have been confiscated.

I. The Parties

5. Claimant is Southern Africa Resources Limited, formerly Salgaocar Resources Africa Limited, founded and headed by its President, Mr. Shanmuga Rethenam. The Investor is a company registered in accordance with the laws of the Republic of Seychelles, with its registered office at 303 Aarti Chambers, Victoria, Mahe, Republic of Seychelles.

6. Respondent is the Kingdom of Swaziland, an absolute monarchy. His Majesty the King Mswati III ("**HMK**") [1] rules as monarch and has ultimate authority over the cabinet, legislature and judiciary, whilst holding considerable shareholdings in many sectors of the economy. While Swaziland has a parliament consisting of appointed and elected members and a prime minister, political power remains largely with HMK and his advisors.

[1] His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland. For the purposes of the current Notice, the names HMK, King and iNgwenyama are interchangeable.

II. Background to the Investment Dispute

7. This dispute concerns the treatment of Claimant's investments in Swaziland, including but not limited to its 50% shareholding in SG Iron Ore Mining (PTY) Ltd. (formerly Salgaocar Swaziland (PTY) Ltd), a company registered in accordance with the laws of the Kingdom of Swaziland on 30 September 2010 under Certificate of Incorporation No.1196, with its principal business of operations at the Old Ngwenya Mine, Ngwenya, Swaziland, ("**SG IRON**").[2] The remaining 50% stake of SG IRON is held by the Government of the Kingdom of Swaziland and the iNgwenyama in Trust for the Swazi Nation.

8. After reviewing the events leading up to the unlawful expropriation without compensation of Claimant's investments, Claimant will examine the violations of Respondent of its obligations under the SIPA and the SADC Protocol, as well as Claimant's right to commence arbitration before the World Bank's ICSID, before examining the financial compensation to which Claimant is entitled.

A. Events Leading up to the Expropriation of Claimant's Investments In Swaziland

9. Claimant's significant investments in Swaziland should have been beneficial both to Respondent and to Claimant. The goal of SG IRON was to reprocess iron ore dumps left over by the Anglo American Mining Company in the late 1970's, when it ceased mining operations in the area, and to secure the main mine lease for 30 years once the iron ore dumps had been cleared. Due to advancements in technology, it had become scientifically possible to process the dumps and upgrade them into sellable grade ore. This project would create new jobs in Swaziland, while creating a new source of wealth for Swaziland, as well as clearing Swaziland of the dumps left by the Anglo American Mining Corporation and restarting mining activities.

10. Pursuant to a mining lease agreement dated 30 June 2011 between His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland, and SG IRON, the iNgwenyama granted a Mining Lease to SG IRON as Lessee for the exploitation of Iron

[2] SG IRON was previously named Salgaocar Swaziland (PTY) Ltd. For the purposes of the current Notice, the names SG IRON and Salgaocar Swaziland (PTY) Ltd shall be used interchangeably.

Ore in the Mining Area (as such capitalized terms are defined in the Mining Lease), commonly referred to as the Ngwenya Iron Ore mine.

11. The Mining Lease provides that the Lessee is granted a 7 year Mining Lease (Article 3) with the sole and exclusive right to mine iron ore dump in the Mining Area (Article 7.1), and that the Lessee shall pay a royalty of 3% to iNgwenyama, in trust for the Swazi Nation (Article 5). It provides further that the Directors of SG IRON shall ensure that 25% of the issued share capital of SG IRON shall be issued at no cost to the iNgwenyama in trust for the Swazi Nation, 25% free of consideration to the Government of the Kingdom of Swaziland, and that the remaining 50% would be allocated to SARL (i.e. the "Claimant" or "Investor") (Article 6). In addition, as a general undertaking, the Mining Lease provides that each party shall "*act in such manner as shall be necessary in order to give effect to [the] Mining lease*" (Article 17).

12. SARL, being the 50% shareholder of SG IRON, had management control of SG IRON, which was in charge of, and responsible for, day-to-day running of the SG IRON. SARL provided all financial support and technical expertise necessary for SG IRON to succeed.

13. Article 6.7 of the Mining Lease stipulated that the Chairman of the Board of Directors was to "*chair all Board meetings*," and Article 6.8 provided that the Chairman "*shall in addition to the deliberate vote also have a casting vote.*" Mr. Shanmuga Rethenam was appointed as the Executive Chairman of the Board of Directors of SG IRON, and Mr. Sivarama P. Petla was appointed as its Chief Executive Officer. Both Executive Chairman and CEO were nominee and representatives of SARL.

14. Two Directors were also appointed to represent Respondent. Mr. Mbuso C. Dlamini was appointed as the Director for and on behalf of The Government of Swaziland, and Mr. Sihle F. Dlamini was appointed as the Director for and on behalf of the iNgwenyama.

15. SARL invested all amounts required for the commencement of SG IRON and its mining project commonly referred to as the Ngwenya Iron Ore mine, representing a financing need of approximately USD 50 million. These funds were required by SG IRON to commence the mining operations and at subsequent stages of this project. Additional amounts were invested in the logistics operations and chain, without which the project could not have been a success.

16. With the funds injected by the Investor, operations commenced and many important milestones of the Swaziland mining project were achieved, entirely through the financial support and technical expertise provided by SARL:

- On 28 April 2011, SG IRON filed an application for Mining License at the Minerals Management Board ("**MMB**") of the Kingdom of Swaziland.
- On 31 August 2011, a Notarial Mining License was issued to the SG IRON.
- On 29 September 2011, an Environmental Clearance to operate was obtained.
- On 30 September 2011, ground-clearing works on the iron-ore site for construction of a stockyard started.
- On 19 October 2011, MMB issued a Mineral Export Permit to SG IRON.
- On 21 October 2011 occurred the official inauguration of operations and dispatch of product to Maputo Port in Mozambique.
- On 21 December 2011, the first shipment was carried out from Maputo Port in Mozambique.
- On 9 March 2012, rail services from Mpaka to Maputo Port, Mozambique, commenced.

17. Initial operations were successful, and HMK's representative himself, who later engineered the provisional liquidation of SG IRON, has conceded that the project "*has been extremely successful to date and has been a major income earner for the Kingdom of Swaziland*."

18. On 6 April 2012, a request was made by the His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland, through its representative Director, for an advance payment/loan of USD 10 million on its future dividend. It appears to be the desire to avoid the repayment of this advance dividend/loan to HMK that lies at the root of the expropriation of Claimant's investments in Swaziland.

B. The Expropriation of SARL's Investments in SG IRON by Swaziland

19. Despite the continuous support provided by SARL to SG IRON and the satisfactory management of operations, the Director representing His Majesty the King of Swaziland

in SG IRON suddenly stopped the sale of all iron-ore cargoes without consulting the major shareholder, SARL, on 21st August 2014.

20. On 21st August 2014, Mr. Sihle F. Dlamini, HMK's Director at SG IRON and also HMK's Private Secretary and Royal Estate Manager, wrote to the CEO of SG IRON, Mr. Sivarama P. Petla, indicating "*do not sell any cargo*." Since 21st August 2014, all attempts to sell any cargo have been blocked.

21. The events since 21st August 2014 reveal that this instruction was a deliberate attempt to create an artificial cash crisis at SG IRON, in order to gain control of it and to expropriate Claimant of its investments. Contrary to the terms of the Mining Lease, the Board of Directors was not consulted, either via teleconference or via a board meeting, with respect to this decision to stop sales of iron ore. The Chairman, who was to chair all board meetings under Article 6.7 of the Mining Lease, and who also possessed a right of veto, was not even informed of Respondent's decision.

22. Blocking the sale of iron ore cost Claimant many millions of working capital without any accompanying benefits. SG IRON's operating cycle was brought to an abrupt standstill, since financing and investments were contingent on the cash flow expected to be generated by selling cargoes, no sales of which have been allowed to take place since 21st August 2014.

23. Sales could have resumed in order to avoid financial disaster to SG IRON at any time. Indeed, although a considerable amount of iron ore remained at Maputo Port, Mpaka Railway Siding and at the Mine Stockyard, Claimant later learned that Respondent was in fact simply *stockpiling* the cargo, in order to create an artificial cash crisis, where there were no sales but working capital was still required to keep the company running.

24. SARL also requested that His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland should repay the full or part of USD 10 million loan/advance dividend to continue operation for the good of SG IRON's employees and shareholders, as well as Swaziland itself.

25. Rather than working with Claimant, for the good of SG IRON's employees and shareholders, as well as Swaziland itself, Respondent's representatives demanded further capital injections from Claimant, in effect holding Clamant as hostage to Respondent's unilateral decision to stop shipments. Injecting additional funds would have been a lost cause for as long as the cargoes were blocked: without the generation

of cash flow, which could have recommenced at any time through the sale of cargoes, additional funds would have been in vain.

26. Due to this artificial cash crisis, the chain of financing upon which the mine's operations were based quite foreseeably collapsed. The cash crisis soon spread to the logistics chain. Respondent could have stopped the destruction of SG IRON at any time. Yet, in exceedingly bad faith, Respondent accused Claimant of "*repudiating*" the agreement for the joint venture, on the basis that it was not providing enough cash to halt the artificial cash crisis, which Respondent itself had engineered.

27. On 22 September 2014, a board meeting of SG IRON was held in Mbanane. At this meeting the local Directors representing HMK and the Government of Swaziland expressed dissatisfaction in respect of the current status of the Company, alleging that the shareholder dispute at the level of SARL was somehow impacting SG IRON, although this was false – the shareholder dispute at the level of SARL was ancient history and had no material impact to SG IRON.

28. Respondent's representatives provided an ultimatum to Claimant to inject fresh funds into the project by no later than Friday, 26 September 2014, despite the fact that such funds were not required, and if cargoes could simply resume then the necessary cash would be available to continue operations. The Chairman of SG IRON, appointed by SARL, was present at this board meeting, and he requested that management allow the sale of the cargo.

29. SARL again requested that the His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland should repay the full or part of USD 10 million loan/advance dividend to continue operation for the good of SG IRON's employees and shareholders, as well as Swaziland itself.

30. Subsequent to the meeting, the Director representing the His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland asked SARL to wipe out the USD 10 million advance dividend/loan in SG IRON that the His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland had received, and also to reduce the debt of the SG IRON to SARL, which had financed the investment. By a letter dated 29 September 2014, SARL refused to write off out these amounts but indicated that writing of USD 17 million of the USD 57,186,022.53 owned by SG IRON to SARL was a possibility, if a conducive atmosphere to do business was created rather than taking on

an antagonistic position. In response, HMK's Director took a unilateral decision to stop operations and place the company into Judicial Management and then liquidation without any heed of the major shareholder or the voting rights in place at SG IRON.

31. Local Directors representing HMK and the Government of Swaziland called for a board meeting on 3rd October and despite getting a response from the Chairman of the Board, Mr. Shanmuga Rethenam, that he could not attend the meeting, they went ahead with the meeting absent his presence. This was the first Board Meeting that had been held without the Chairman's (Mr. Shanmuga Rethenam) presence in the history of SG IRON, who was to have the casting vote at such meetings. HMK's representative served as the Chairman of the meeting, although he represented only 25% of the share capital and SARL was to have board control.

32. Respondent's representatives, Mr. Sihle F. Dlamini and Mr. Mbuso Dlamani, both resolved to place the company under judicial management, without seeking the Chairman's (Shanmuga Rethenam) consent. Rather than permitting operations and cargo sale to continue, the Directors representing iNgwenyama and the Government of the Kingdom of Swaziland resolved that SG IRON "*shall be placed under Judicial Management and the application to be made on an urgent basis*".

33. As a result, upon wrongful application by SG IRON, SG IRON was placed under provisional judicial management by an Order dated 10 October 2014 of the High Court of Swaziland. This order was based on the founding affidavit of Mr. Dlamini, HMK's representative and a Director of SG IRON, who conceded in his affidavit that "***[a]pplicant is not in an insolvent position in that its assets exceed its liabilities***," implicitly acknowledging the artificial cash crisis Respondent had created.

34. HMK's representative then provided an affidavit to the High Court of Swaziland, whereby he requested "*insolvency protection afforded in Chapter CV of the Companies Act*," which he claimed would shield SG IRON from having to repay the amounts it owed to Claimant. Upon the request of the Judicial Manager appointed by the Court, the Court ordered the provisional liquidation, or winding up, of SG IRON by an Order dated 16 December 2014.

35. The Judicial Manager, controlled by Respondent, informed all creditors/vendors of SG IRON of its provisional liquidation, but failed to inform its largest creditor and primary shareholder, SARL, in writing of the event. He also failed to inform Eltina Limited, a

major creditor of SG IRON, who bought the cargo of SG IRON and had provided USD 10 million as a loan to SG IRON.

36. The Judicial Manager met with the Director representing the King and Government almost every day and took instructions only from them, not Claimant's directors. Although Claimant, as well as Eltina Limited, should have been given the opportunity to put forward their case before the Judicial Manager, since there were numerous alternatives to revive the company, in a violation of their due process rights they have not been allowed to do so by Respondent.

37. Moreover, the Judicial Manager, acting solely on the instructions of Respondent's representatives, wholly failed his duty, and when Claimant and Mr. Shanmuga Rethenam, as Chairman of SG IRON, asked to sell cargo at a higher price even to its own competitor, the Judicial Manager ignored this request. The only possible explanation for his refusal was that Respondent knew that, if a cargo was sold, the company would receive cash flow and SG IRON could not be liquidated.

38. The shutting down of the project resulted in turbulence to the economy of the Kingdom of Swaziland, and as a result of discontinuation of the operation of the iron-ore mine, approximately 700 citizens of the Kingdom of Swaziland have lost their jobs and livelihood. Several hundred jobs were also lost in the logistic chain at the Port of Maputo, Mozambique

39. Claimant has direct evidence that the Mine is currently being guarded by the Umbutfo Swaziland Defense Force. His Majesty King Mswati III, the iNgwenyama of the Kingdom of Swaziland is the Commander-in-Chief of the Umbutfo Swaziland Defense Force, providing further evidence of the wholesale expropriation of Claimant's investment by State organs of Respondent, including the Kings Office, Respondent's judiciary and Respondent's military.

40. In addition to expropriating the investments of Claimant, Respondent has stepped up State-sponsored campaign of harassment against Claimant's President (Shanmuga Rethenam), threatening an Warrant of Arrest in Swaziland as well INTERPOL Red Alert notice to extradite Claimant's President to Swaziland on matters relating to SG IRON.

41. Now that Claimant's investment has been expropriated, and HMK's USD 10 million dividend/loan has been written off by judicial decree, Respondent appears to trying to

press the "*reset*" button. Having expropriated Claimant's investments and avoided the repayment of USD 56 million in loans to finance the investment, it is understood that the Judicial Manager is now attempting to sell SG IRON to third parties for a song. The CEO of SG IRON, who resigned as the Director of SG IRON on 10th October 2014, but who has not been removed from SG IRON's Company register and whose work permit still entitles him to be a Director of the Company, has joined forces with Respondent against the Claimant's Investment. After expropriating Claimant's investment, the aim appears to be to repackage the project, using the resources and know-how that was gained through Claimant's investments.

42. SARL has lost 100% of the value of its investments in Swaziland, due to the acts and omissions of Respondent, and it is entitled to be made whole for the expropriation of its investments.

III. An ICSID Arbitral Tribunal Has Jurisdiction Over the Current Dispute

43. Claimant's right to initiate ICSID arbitration against Swaziland is grounded both on the Swaziland Investment Promotion Act, 1998, and the SADC Protocol.

44. Article 2 of the Swaziland Investment Promotion Act, 1998, which is enclosed, defines a foreign investor as "*any person, natural or juridical, who has made an investment in Swaziland and is registered under section 26 of this act, and where the person is a foreign national*." Claimant is a company registered in accordance with the laws of the Republic of Seychelles, and its investments in Swaziland were registered in accordance with Article 26 of the Swaziland Investment Promotion Act, 1998. It is therefore clearly protected from expropriation without compensation by the Swaziland Investment Promotion Act.

45. Article 2 of the SIPA defines protected investments as "*a contribution of capital, in cash or in kind, made by a person to a new enterprise or to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise*." Claimant has made significant financial contributions, as well as contributions of management expertise in creating a profitable mining operation in Swaziland. Claimant's investments in the Kingdom of Swaziland therefore clearly qualify as investments under the SIPA.

46. Claimant also qualifies as an investor under the terms of the Southern African Development Community's Protocol on Finance and Investment, which entered into force on 16 April 2010 in the Southern African Development Community, and with respect to which the present letter serves as a Notice of Dispute for the purposes of Article 28(1).

47. Article 21 of the SIPA provides Respondent's consent to resolve the current dispute between Claimant and Swaziland via arbitration, either under the Arbitration Act, 1904, of Swaziland, under the Arbitration Rules of the United Nations Commission on International Trade Law or, in the case of a foreign investor, to arbitration under the International Convention for the Settlement of Investment Disputes and Nationals of other States. Article 21 provides:

> *"[I]n the event of a dispute arising between an investor and the government the investor may elect to submit the dispute either —*
> *(a) to the jurisdiction of the High Court of Swaziland; or*
> *(b) to a process of arbitration under the Arbitration Act, 1904; or*
> *(c) to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; or*
> *(d) in the case of a foreign investor, to arbitration under the International Convention for the Settlement of Investment Disputes Between States and Nationals of Other States."*

48. Since Claimant is plainly a foreign investor, it has the right to settle this dispute before the ICSID pursuant to Article 21(d) of the SIPA. Claimant observes that the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**") entered into force in Swaziland on 14 July 1971, and that the consent of Respondent to arbitration before the ICSID is contained in the SIPA itself.

IV. The Kingdom of Swaziland Has Violated Its Obligations to Claimant under the SIPA and the SADC Protocol

49. The SIPA and the SADC Protocol establish a variety of protections for foreign investors, in order to encourage foreign investment in Swaziland. Claimant relies upon these protections in the current Notice, which were designed to prevent precisely the types of acts and omissions for which Respondent is liable with respect to SG IRON.

A. Respondent Has Illegally Expropriated Claimant's Investments in Swaziland

50. Article 20(1) of the SIPA establishes a duty on Swaziland not to compulsorily acquire property, interest in or a right over property of any description except when this is done (1) in accordance with applicable legal procedures, (2) in pursuance of a public purpose, (3) without any form of discrimination on the basis of nationality and (4) upon prompt payment of compensation:

> *"Protection of investment.*
>
> *20. (1) Notwithstanding anything contained in any other law, no property, or any interest in or right over property of any description which forms part of an investment shall be compulsorily acquired or subjected to measures which have similar effect, except where it is done:*
> *(a) in accordance with applicable legal procedures;*
> *(b) in pursuance of a public purpose;*
> *(c) without any form of discrimination on the basis of nationality; and*
> *(d) upon prompt payment of adequate and fair compensation.*"

51. Here, where Respondent's representatives engineered an artificial cash crisis at SG IRON, prior to obtaining its provisional liquidation, Respondent's judiciary then agreed to wind up SG IRON although SG IRON's cash crisis could have been easily averted, and Respondent even used its the military to control the mine and threatened to issue a Warrant of Arrest and Interpol Red Alert against a foreign investor, there can be no doubt that Respondent's shareholding in SG IRON was compulsory acquired or subjected to measures having similar effect to expropriation.

52. The expropriation of Claimant's investments in Swaziland was illegal under the SIPA. Respondent did not expropriate Claimant's investment in accordance with applicable legal procedures, the expropriation was not for a public purpose, and it profited only the Respondent who avoided repayment of an advance on dividends. This invariably led to the avoidance of repayment of an advance dividend by the Respondent and there was no payment of adequate and fair compensation at all to the foreign investor.

53. In such circumstances, Claimant has a right to the immediate payment of adequate and fair compensation which, on the basis of Article 20(2), must be equal to the market value of the property which has been expropriated:

> *"(2) Where all the conditions laid down in subsection (1) are satisfied, the compensation shall be determined on the basis of current market value and shall be fully transferable at the prevailing current exchange rate in the*

currency in which the investment was originally made, without deduction of taxes, levies or other duties except where these had previously accrued."

54. The SADC Protocol protects foreign investors such as Claimant against the expropriation of investments in Swaziland in a similar manner.

B. Other Protections of Foreign Investors in Swaziland

55. Both the SIPA and the SADC Protocol oblige Respondent not to discriminate against investors on the basis of their nationality.

56. The SADC Protocol also explicitly requires Respondent to provide fair and equitable treatment to Claimant's assets in Article 6(1), and Article 2(3) of the SADC Protocol also establishes an obligation of Respondent not to take arbitrary measures which modify the benefits to which Claimant is entitled. Moreover, the SADC Protocol guarantees treatment which is no less favourable than the treatment provided by Respondent to investors of a third State under Article 6(2). This provision ensures Claimant the same substantive rights that Respondent has granted to investors of third Parties, notably by way of bilateral investment treaties signed with Germany and the United Kingdom, which entered into force on 7 August 1995 and 5 May 1998, respectively.

57. The actions of Respondent led Respondent's judiciary to rubber-stamp the taking of Claimant's investment without providing even the appearance of due process to Claimant, Respondent's threats to extradite Claimant's President to Swaziland using the machinery of the State, as well as Respondent's seizure of the mine with the army, constitute multiple violations of the treatment to which foreign investors, such as Claimant, are entitled.

58. Claimant is entitled to significant compensation for the investments it made in Swaziland but has now lost due to Respondent's acts and omissions.

C. Claimant Has Suffered Losses of over USD 141 Million Due to Respondent's Acts and Omissions

59. Swaziland, and notably HMK, has clearly benefited from Claimant's investment in Swaziland, as it restored a mine to the country and created new jobs. HMK himself has unjustly enriched himself in the amount of the USD 10 million dividend/loan, which was never repaid.

60. Claimant, however, has suffered direct harm in the amount of no less than **USD 141,147,440.17**, for the direct financial consequences of Respondent's acts and omissions.

61. Pursuant to Article 20(1) of the SIPA, Claimant is also entitled to compensation determined "*on the basis of current market value*" of its expropriated investments. It is common in investor-State arbitration for an expert to measure the value of an expropriated asset via a Discounted Cash Flow ("**DCF**") analysis. Claimant reserves its right to seek compensation for the harm to its investments in Swaziland on the basis of a DCF valuation, or any other valid model, in due course.

62. Claimant also claims its right to the repayment of **USD 57,186,022.53** for its advance and loan owed by SG IRON to SARL (ZAR 664,815,917 million), which was contractually triggered pursuant to the loan agreements upon the wrongful institution of Judicial Management.[3] Such a claim to payment is a standard form of investment.

63. In addition, Claimant is entitled to interest on the above amounts.

D. Reservation of Rights to Seek Interim Measures to Protect Claimant's Interests

64. Given the nature of Swaziland's absolute monarchy, Claimant will clearly be unable to recover any amounts from Respondent within Swaziland itself. In order to preserve compensation for its seized assets, Claimant therefore reserves the right to freeze the SACU receipts Swaziland receives from Southern Africa Customs Union ("**SACU**"), as well as any other assets of Respondent located in third countries, in order to ensure that sufficient funds are available outside of Swaziland to indemnify Claimant for the losses wrongfully caused by Respondent.

65. Claimant also reserves its right to attach, seize or otherwise execute cargo or goods transported to South Africa or Mozambique, if the mine is sold to a third party, as well as the revenue that is generated by it.

66. Claimant finally reserves all rights to seek any additional interim measures to which it is entitled, both with respect to Respondent and third parties.

[3] Eltina Limited is also owed USD 5,426,954.66, or ZAR 63,091,043.51.

V. Final Attempt at Amicable Settlement

67. Despite the egregious violations of the obligations owed to Claimant as a foreign investor, Claimant is willing to meet with Respondent's representatives, in order to seek an amicable solution to this conflict, rather than via a lengthy and public ICSID arbitration.

68. To aid in the conduct of such amicable negotiations, Claimant grants Respondent fourteen days from today to respond to this letter. Subsequently, Claimant shall alert the ICSID of Swaziland' treatment of Claimant, while filing a Request for Arbitration and instituting interim measures to ensure that sufficient funds are available for Claimant's compensation.

69. Claimant respectfully requests the Prime Minister himself to be a Party to any settlement talks, as it is clear that HMK's representative played a direct role in the expropriation of Claimant's investment.

70. If settlement fails, then Claimant will initiate an investment treaty arbitration to recover in full the amounts owed to it, before the ICSID, which will also serve to warn other foreign investors of the dangers of investing in Swaziland.

71. This said, Claimant trusts that Respondents will be willing to negotiate in good faith an amicable settlement to this dispute.

Yours sincerely,

Paris, 22 January 2015

William Kirtley
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Christophe Dugué
Partner, Dugué & Kirtley AARPI

Encl. - Swaziland Investment Promotion Act
- Southern African Development Community Protocol on Finance and Investment