

UPDATE ON ARBITRATION AGAINST CONGO

Tribunal dismisses Congo's counterclaims

Equatorial Resources Limited (**Equatorial** or **Company**) is pleased to advise that the tribunal hearing the arbitration brought by Equatorial's Mauritian subsidiary, EEPL Holdings (**EEPL**), against the Republic of Congo (**Congo**) at the International Centre for Settlement of Investment Disputes (**ICSID**) in Washington, D.C. has dismissed counterclaims brought by Congo against EEPL.

Equatorial, through EEPL, referred its investment dispute with Congo to arbitration at ICSID in 2021. The dispute arose out of unlawful measures taken by Congo against EEPL's investments in two iron ore projects: the Badondo Iron Ore Project (**Badondo**), located in the Sangha region of Congo, and the Mayoko-Moussoundji Iron Ore Project (**Mayoko-Moussoundji**), located in the Niari region of Congo (together, the **Projects**).

EEPL has brought its claims against Congo under the Agreement between the Government of the Republic of the Congo and the Government of the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments (**Congo-Mauritius BIT**), under which EEPL's investments in Congo are protected by virtue of EEPL being a Mauritian company. EEPL's claims include that Congo unlawfully expropriated its investments in the Projects, and failed to accord EEPL fair and equitable treatment, in violation of the treaty.

The measures Congo took against Badondo in December 2020 (which included expropriation) formed part of a wider campaign to dispossess foreign mining companies of their iron ore interests in Congo and grant them to a Chinese-linked company named Sangha Mining Development SASU. The measures that Congo took against Mayoko-Moussoundji came later, in June 2021, when Congo unlawfully revoked the exploitation permit held over that tenement by Congo Mining Limited (**CML**), a company owned by Equatorial until 2015 and in which EEPL continues to participate (including through royalty arrangements).

In March 2023, EEPL filed its Memorial on the Merits, in which EEPL set out its claims against Congo in full, with supporting documentary evidence, witness testimony and expert evidence on issues including the valuation of EEPL's investments and related technical matters. In its Memorial, EEPL claimed compensation from Congo in an amount ranging from US\$394 million to US\$1,134 million plus interest.

In August 2023, Congo filed a Counter-Memorial, which set out Congo's defence to EEPL's claims and also included three counterclaims against EEPL. Congo's counterclaims were based on allegations that EEPL (i) was liable for the payment of certain surface fees in relation to Badondo, (ii) was liable for certain environmental remediation works at the Badondo site, and (iii) had abusively commenced the ICSID arbitration. On the basis of these counterclaims, Congo claimed that it was entitled to be compensated by EEPL.

In September 2023, EEPL filed a preliminary objection to Congo's counterclaims, arguing that the counterclaims fell outside the tribunal's jurisdiction because the Congo-Mauritius BIT does not allow States to bring counterclaims, and that Congo's counterclaims should therefore be dismissed. In November 2023, Congo filed a response to EEPL's preliminary objection, and in December 2023, EEPL filed a reply to Congo's response on the preliminary objection.

In January 2024, the ICSID tribunal confirmed that it has no jurisdiction to hear Congo's counterclaims, which have therefore been dismissed in their entirety. The tribunal will provide a fully reasoned decision in due course.

Equatorial Director, Mr John Welborn, commented on the tribunal's decision:

"The counterclaims brought by the Republic of Congo Government against Equatorial's subsidiary, EEPL, were completely baseless, and we are pleased that the ICSID tribunal has rejected them. We are confident that we in a strong position to achieve a satisfactory outcome to this dispute."

The tribunal's dismissal of the counterclaims submitted by the Republic of Congo against EEPL marks a pivotal moment in the arbitration, reflecting the tribunal's careful consideration and analysis of the legal arguments presented by both EEPL and Congo on the scope and limits of the tribunal's jurisdiction. The dismissal of Congo's counterclaims is a significant victory for Equatorial. The outcome not only streamlines the arbitration process but also reduces the potential legal and financial burdens associated with defending the counterclaims.

Notwithstanding the dispute between EEPL and Congo, Equatorial remains committed to its investments in Congo and continues to be open to a constructive dialogue. Equatorial has expressed the Company's openness to reaching a mutually satisfactory settlement of EEPL's dispute and remains hopeful of a constructive dialogue with Congo to that end.

Badondo sits at the centre of a potentially globally significant new iron ore-producing region. It is located near two other major iron ore tenements in Congo and just across the border from Fortescue Metal Group's (ASX:FMG) Belinga Iron Ore Project in Gabon. As one of the first movers in this important region, Equatorial has long understood the economic possibilities of the iron ore deposits of the Congo craton. The Company will continue to progress efforts to have the Badondo license reinstated and our exploitation licence application granted and/or seek appropriate compensation.

EEPL has until 16 April 2024 to file its Reply Memorial with the final hearing in the ICSID arbitration scheduled to take place in March 2025, and the final award expected to be rendered around six to 12 months thereafter.

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This announcement has been authorised for release by Equatorial Director, Mr John Welborn.