

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

A.D. TRADE BELGIUM S.P.R.L.,

Plaintiff/Judgment Creditor,

v.

REPUBLIC OF GUINEA,

Defendant/Judgment Debtor.

Civil Action No. 1:23-mc-00358-UNA

**PLAINTIFF/JUDGMENT CREDITOR'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION FOR AN ORDER AUTHORIZING  
THE ISSUANCE OF A WRIT OF ATTACHMENT FIERI FACIAS**

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A.D. TRADE Belgium S.P.R.L. (“A.D. Trade”), as plaintiff and judgment creditor, by and through its undersigned counsel, respectfully submits this brief in support of its motion, pursuant to Federal Rule of Civil Procedure 69, the Delaware Code, and Section 1610(c) of the Foreign Sovereign Immunities Act (“FSIA”), for an order authorizing the issuance of a writ of *fi fa* (*fi fa* writ) directed at garnishee Delaware corporation Compagnie des Bauxites de Guinee (“CBG” or “Garnishee”) in aid of enforcing A.D. Trade’s judgment against the Republic of Guinea (“Guinea”) entered by the U.S. District Court for the District of Columbia (“D.C. District Court” and “D.C. District Court Judgment”) that has been registered in this District (“Judgment”) under 28 U.S.C. § 1963. *See* ECF 1 & 1-1.

### **PRELIMINARY STATEMENT**

A.D. Trade seeks to execute on a judgment of the D.C. District Court in the amount of US \$59,774,993.40, plus interest, which has now been registered as a judgment of this Court. *See* ECF 1 & 1-1. The Judgment confirms two separate and final arbitration awards in favor of A.D. Trade against Guinea that were issued by the International Chamber of Commerce’s International Court of Arbitration (“ICC”) in Paris, France.

Because Guinea has failed to pay its debts to A.D. Trade—despite having had several years to do so voluntarily—A.D. Trade respectfully requests this Court’s assistance to enforce the Judgment.

Guinea has property in this District that is amenable to attachment and execution in satisfaction of the Judgment: shares in the Delaware corporation Compagnie des Bauxites de Guinee (“CBG”), which is a major producer of bauxite, the raw material for aluminum. Those shares are subject to execution in this District. Under 8 *Del. C.* § 324, made applicable here by operation of Federal Rule of Civil Procedure 69(a)(1), this Court may issue a *fi fa* writ to attach the shares of a Delaware corporation, like CBG, that are owned by a judgment debtor like Guinea.

The same is true for any other property of Guinea that CBG might hold in Delaware, such as any debts owed by CBG to Guinea. *See* 10 *Del. C.* § 3508; Fed R. Civ. P. 69(a)(1).

Guinea's shares in CBG are not immune from execution under the FSIA because one of the statutory exceptions to immunity applies: the shares are property used for commercial activity in the United States, and the Judgment is based on an order confirming an arbitral award rendered against the foreign state. *See* 28 U.S.C. § 1610(a)(6). Further, this Court may order execution against those shares because a reasonable time has elapsed since the entry and service of the D.C. District Court Judgment, and it is clear that Guinea will not pay its debt voluntarily. 28 U.S.C. § 1610(c). Accordingly, A.D. Trade respectfully requests that the Court issue a *fi fa* writ so that those shares, and any other property of Guinea held by CBG, may be used to satisfy the Judgment.

### **FACTUAL BACKGROUND**

#### **A. The Judgment Against Guinea.**

Guinea breached two commercial agreements with A.D. Trade, each of which included an arbitration clause, and two arbitral tribunals were convened by the ICC that both found Guinea liable to A.D. Trade. *See* Declaration of Jacob R. Kirkham ("Kirkham Decl."), Ex. G at 1–4 ("Default Judgment Opinion").

Under the first agreement, concluded in 2011, Guinea had hired A.D. Trade to create a new intelligence unit for the country's newly elected President, and to provide support and training for that unit. *Id.* at 1. When Guinea failed to make the payments required by the agreement, A.D. Trade referred the dispute to arbitration before the ICC. *Id.* at 2. Guinea participated in the arbitration. Kirkham Decl., Ex. B ¶¶ 5–6 ("2017 Award"). In an award dated November 22, 2017, the ICC tribunal found Guinea liable to A.D. Trade for a total of EUR 45,689,344, plus US \$157,402.50 in arbitration costs and EUR 385,119 in attorneys' fees. *Id.* at 68–69; *see also* Default Judgment Opinion at 2. On December 8, 2017, the President of the Tribunal de Grande Instance

of Paris, France, a French court, issued an order of recognition, or “*exequatur*,” for the 2017 Award, resulting in an enforceable French judgment. Default Judgment Opinion at 2; *see also* Kirkham Decl., Ex. C (“2017 Judgment”).

Under the second agreement, concluded in 2011 and superseded in 2015, Guinea had hired A.D. Trade to acquire and deliver a transport aircraft, along with ground assistance equipment, and to train pilots and other personnel. Default Judgment Opinion at 2. Again, Guinea failed to make the payments required by the agreement. *Id.* After A.D. Trade and Guinea negotiated and entered into a superseding agreement—and Guinea once more failed to make the required payments—A.D. Trade referred this dispute to arbitration before the ICC as well. *Id.* at 3. Guinea again participated in the arbitration. Kirkham Decl., Ex. E ¶¶ 7, 18 (“2020 Award”). An ICC tribunal issued an award, dated February 3, 2020, finding Guinea liable to A.D. Trade for another US \$5,061,864, plus US \$232,000 in arbitration costs. *Id.* at 57–58; *see also* Default Judgment Opinion at 3.

Because Guinea did not pay what it owed under either of the two arbitration awards or the French judgment, A.D. Trade applied to the D.C. District Court for recognition of the 2017 Award, the 2017 Judgment, and the 2020 Award on January 31, 2022. Kirkham Decl., Ex. F. Although A.D. Trade served Guinea in accordance with the FSIA’s service requirements, Guinea failed to appear or answer the Complaint. Default Judgment Opinion at 3.

On March 31, 2023, upon A.D. Trade’s motion for a default judgment, the D.C. District Court entered a written Memorandum Opinion and Order confirming both the 2017 and 2020 Awards and recognizing the 2017 Judgment. *See generally* Default Judgment Opinion; Kirkham Decl., Ex. H (March 31, 2023 Order).

On May 5, 2023, the D.C. District Court entered the D.C. District Court Judgment against Guinea in the amount of US \$59,774,993.40, plus post-judgment interest at the rate of 4.46%, along with costs. Kirkham Decl., Ex. I (Judgment).

On June 7, 2023, A.D. Trade served the Judgment on Guinea in accordance with the service requirements of the FSIA. Kirkham Decl., Ex. J (Return of Service). To date, Guinea has not paid any portion of the Judgment. Declaration of Idan Peretz ¶ 9 (“Peretz Decl.”).

On July 31, 2023, A.D. Trade registered the D.C. District Court Judgment in this Court pursuant to 28 U.S.C. § 1963. *See* ECF 1 & 1-1. This motion follows.

**B. Guinea Has Refused To Pay Its Debt, and the Judgment Remains Entirely Unsatisfied.**

To date, Guinea has not voluntarily paid A.D. Trade any amount owed under the 2017 Award, the 2017 Judgment, or the 2020 Award, even though Guinea participated in the arbitrations and has been aware of the awards against it for years. *See* Peretz Decl. ¶ 9. Nor has Guinea paid any amount owed under the D.C. District Court Judgment, even though it is aware of that judgment too as evidenced by A.D. Trade’s mailing of the judgment to the head of Guinea’s ministry of foreign affairs. *See* Kirkham Decl., Ex. J (Return of Service, noting delivery on June 7, 2023). To A.D. Trade’s knowledge, Guinea has not taken any steps to try to pay A.D. Trade; indeed, A.D. Trade has received no communications from Guinea in relation to the D.C. District Court Judgment, let alone any communications evidencing an intent to pay. Peretz Decl. ¶ 9.

Recent events involving A.D. Trade’s enforcement of the 2017 Judgment in France demonstrate that Guinea is aware of, but has no intention of paying, its debts to A.D. Trade. On October 15, 2021, A.D. Trade applied for and obtained from the Enforcement Court of Paris an authorization for execution on a parcel of real property located in Paris, France. Declaration of Emmanuel Kaspereit ¶ 4 (“Kaspereit Decl.”). In June 2022, A.D. Trade summoned Guinea for a



hearing to set an auction date for that property. Kaspereit Decl. ¶ 6. On the day that the auction was scheduled to occur on April 6, 2023, Guinea’s ambassador to France and Guinea’s French counsel told A.D. Trade they would pay EUR 2.5 million in return for A.D. Trade’s lifting its attachment of the property. Peretz Decl. ¶ 7. This did not reflect an intention by Guinea to settle its debt with A.D. Trade but rather an attempt to stave off execution on a particular piece of property by offering A.D. Trade a relatively modest sum that is only a small percentage of the total debt owed by Guinea. Even though Guinea’s French counsel stated that he had been instructed by Guinea to transfer EUR 2.5 million to A.D. Trade “without delay” upon his “receipt of the said funds” from Guinea, A.D. Trade never did receive those funds, and therefore did not lift its attachment. Kaspereit Decl. ¶¶ 8–9 & Ex. A (Guinea’s Email and Letter); *see also* Peretz Decl. ¶ 8.

Consequently, the auction took place as scheduled, yielding EUR 2,890,000, in partial satisfaction of the 2017 Judgment. Kaspereit Decl. ¶ 9 & Ex. B (Auction Judgment From the Enforcement Court of Paris).

The full amount of the Judgment remains outstanding because the execution sale has not reduced the amount owed by Guinea under the D.C. District Court Judgment. Under Article 1343-1 of the French Civil Code, recoveries are first applied to reduce the interest owed under the 2017 Judgment. Kaspereit Decl. ¶ 10. On June 14, 2023, at the time of the escrow of the proceeds from the auction, EUR 43,551,783.29 and US \$48,361.90 of interest had accrued on the 2017 Judgment. Kaspereit Decl. ¶¶ 11–12. This means that under French law the recovery reduced the amount of accrued interest in Euros by only 6%: from EUR 43,551,783.29 to EUR 40,661,783.29. Kaspereit Decl. ¶ 12. The principal owed under the 2017 Judgment remains unchanged. Kaspereit Decl. ¶ 12. As relevant here, the reduction in interest that accrued under French law does not affect the debt owed by Guinea under the D.C. District Court Judgment because the D.C. District Court did not

award (as pre-judgment interest) any of the interest that had accrued under French law based on the 2017 Award or the 2017 Judgment. *See* Default Judgment Opinion at 9–10.

Since the discussions before the execution sale, A.D. Trade has not received any communication from Guinea suggesting that it is taking steps to pay its debt. *See* Peretz Decl. ¶ 9. Guinea has had more than three months to pay the D.C. District Court Judgment voluntarily but has not done so. Based on its conduct, A.D. Trade has reason to believe that Guinea has no intention of paying.

**C. Guinea Owns 49% of the Shares in CBG.**

CBG has been incorporated in Delaware since 1964, as evidenced by its amended and restated certificate of incorporation. Kirkham Decl., Ex. K (CBG Amended and Restated Certificate of Incorporation). The rest of CBG’s shares are owned by Boké Investment Company. Kirkham Decl., Exs. L at 4 (Alcoa Corporation 2022 SEC Form 10-K) & M at 4 (Alcoa Corporation 2023 SEC Form 10-K). Boké Investment Company, in turn, is indirectly owned by major aluminum and mining companies including Alcoa Corporation. Kirkham Decl., Ex. L at 4.

Guinea’s ownership of 49% of CBG is amply documented in public records, including in public SEC Form 10-Ks filed by Alcoa Corporation, one of CBG’s indirect corporate parents. *Id.* Alcoa Corporation’s most recent 2023 10-K states that “CBG is a joint venture between Boké Investment Company (51%) and the Government of Guinea (49%) for the operation of a bauxite mine in the Boké region of Guinea.” *Id.* In addition, Guinea’s interest in CBG is reflected on the websites of CBG itself and a Guinean government ministry. Kirkham Decl., Exs. N (CBG’s website) & O (Report of République de Guinée Ministère des Mines et de la Géologie). Indeed, CBG itself confirmed Guinea’s 49% ownership interest in a public court filing that CBG made in this District last year, which it made in response to a *fi fa* writ served on CBG by another judgment

creditor of Guinea. Kirkham Decl., Ex. P ¶ 4(B) (Verified Answer of CBG, *Compagnie Sahelienne D'Enterprise v. Republic of Guinea*, C.A. No. 21-mc-530 (D. Del. Mar. 4, 2022)).

### **ARGUMENT**

Because the Judgment remains outstanding, A.D. Trade seeks a *fi fa* writ under Rule 69 of the Federal Rules of Civil Procedure and Section 324(a) of the Delaware Corporate Code to collect on its Judgment of US \$59,774,993.40 plus interest.

Rule 69 provides that the “procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located . . . .” Fed. R. Civ. P. 69(a). Under applicable Delaware law, a creditor may attach a debtor’s shares in a Delaware corporation to satisfy a judgment debt. 8 *Del. C.* § 324(a).

#### **A. Guinea Owns Property in Delaware Subject to Execution Under Delaware Law.**

There is clear evidence that Guinea owns 49% of the CBG Shares, including CBG’s own acknowledgement in a 2022 judgment-enforcement proceeding similar to this one. *See* Kirkham Decl., Ex. P ¶ 4(B) (Verified Answer of CBG); *see also* Kirkham Decl., Exs. L at 4 (Alcoa Corporation 2022 SEC Form 10-K) & M at 4 (Alcoa Corporation 2023 SEC Form 10-K). The CBG Shares are legally located in this District because, as a matter of Delaware law, “the situs of the ownership of capital stock of all corporations existing under the laws of this State . . . shall be regarded as in this State.” *See* 8 *Del. C.* § 169; *see also* *Alberta Sec. Comm’n v. Ryckman*, 2015 WL 2265473, at \*10 (Del. Super. Ct. May 5, 2015) (“For attachment and garnishment purposes, the situs of ownership in a Delaware corporation is Delaware.”), *aff’d*, 127 A.3d 399 (Del. 2015).

Delaware law expressly permits the attachment of a defendant’s property in the hands of a third party, such as CBG here. *See* 10 *Del. C.* § 5031 (judgment creditors “may cause an attachment, as well as any other execution . . . containing an order for the summoning of garnishees, to be

proceeded upon and returned as in cases of foreign attachment”); *see also Wilmington Tr. Co. v. Barron*, 470 A.2d 257, 263 (Del. 1983) (“The authority for [attachment on property not in a debtor’s possession] is founded upon 10 *Del. C.* § 5031.”). Property subject to attachment includes the debtor’s shares in a Delaware corporation, which are attached through a *fi fa* writ directed at the corporation. *See* 8 *Del. C.* § 324(b) (requiring service of process for attachment on a director, officer, or registered agent of the corporation). Attachable property also includes any payables that a third party may owe to the debtor, like any debt CBG may owe to Guinea. *See LNC Invests., Inc. v. Democratic Republic of Congo*, 69 F. Supp. 2d 607, 611 (D. Del. 1999) (“By its reference to cases of foreign judgment, [10 *Del. C.*] § 5031 incorporates Chapter 35 of Title 10 of the Delaware Code. Under those provisions, ‘[g]oods, chattels, rights credits, moneys, effects, lands and tenements’ may be attached. This includes debts owed the judgment debtors by the garnishee.” (citing 10 *Del. C.* § 3508)).

Accordingly, this Court can issue a *fi fa* writ to attach and execute on Guinea’s shares of CBG, as another court in this District has done in a prior case. Kirkham Decl., Ex. Q at 1 (Order, *Compagnie Sahelienne D’Enterprise v. Republic of Guinea*, C.A. No. 21-mc-530 (D. Del. Feb. 2, 2022)) (granting motion for a *fi fa* writ on shares of CBG “in aid of [a creditor’s] execution of an underlying judgment against [Guinea]”).<sup>1</sup>

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<sup>1</sup> In 2021, A.D. Trade applied to this Court to intervene in the *Sahelienne* proceeding because it wanted to ensure that, if any attached property of Guinea were sold in an execution sale, A.D. Trade could be heard on the setting of sale procedures in order to maximize the sale proceeds (so that as much property of Guinea would remain with CBG for A.D. Trade to execute upon once it had obtained its own judgment). However, after the creditor Sahelienne and CBG reached a confidential settlement, the court denied the intervention motion as moot. *See Sahelienne*, No. 21-mc-530 (D. Del.) [ECF 19 (motion) & ECF 29 (order denying intervention)].

## **B. Guinea's Property Is Amenable To Execution.**

Because Guinea's shares in CBG are property of a foreign state, the issuance of the *fi fa* writ here must accord with the requirements of the FSIA. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380, 389–90 (D. Del. 2018), *aff'd and remanded*, 932 F.3d 126 (3d Cir. 2019); *see also Conn. Bank of Commerce v. Republic of Congo*, 440 F. Supp. 2d 346, 349 n.3 (D. Del. 2006) (“[T]he order directing the Prothonotary to issue the writ of garnishment was issued in accordance with 28 U.S.C. § 1610(c).”).

Both requirements of the FSIA for attachment or execution are easily satisfied here: (i) the property is not immune, because one of the enumerated exceptions to immunity applies (28 U.S.C. § 1610(a)); and (ii) “a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter” (28 U.S.C. § 1610(c)). *See Crystallex*, 333 F. Supp. 3d at 389–90 & n.7.

As discussed below, the first requirement is met because the property of Guinea is used for commercial activity in the United States, and the second requirement is met because eleven weeks—nearly three months—have passed since A.D. Trade gave notice of the D.C. District Court Judgment on June 7, 2023, in accordance with 28 U.S.C. § 1608(e). Yet Guinea has given no indication that it intends to pay the D.C. District Court Judgment, and thus the requisite elements under the FSIA for the issuance of the *fi fa* writ are satisfied.

### 1. Guinea's CBG Shares Are Not Immune From Execution.

Guinea's CBG shares are not immune from execution under Section 1610(a) of the FSIA because (i) they are “property in the United States of a foreign state . . . used for a commercial activity in the United States,” and (ii) the Judgment “is based on an order confirming an arbitral award rendered against [Guinea],” and its “execution[] would not be inconsistent with any provision in the arbitral agreement.” 28 U.S.C. § 1610(a).

Here, Guinea’s shares in CBG are property used for commercial activity in the United States because the shares reflect Guinea’s ownership of and investment in a Delaware company that produces bauxite. Therefore, Guinea is acting in the same manner as “a private party engages in trade and traffic or commerce.” *See Crystallex*, 333 F. Supp. 3d at 417 (quoting *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992)). This is underscored by the fact that the other shares (51%) in CBG are owned by a private commercial party, Boké Investment Company, which is itself a consortium of other commercial parties such as Alcoa, a publicly traded corporation. By owning shares and investing in the company CBG, Guinea is engaged in commerce in the United States through the ownership of CBG shares in the same way as private investors.

Further, as another Court in this District has concluded, a foreign state’s shares in a Delaware corporation are used for commercial activity in the United States—and therefore are not immune from execution—where the foreign state uses its ownership interest in the corporation to, among other things, “approve contracts.” *OI Eur. Grp. B.V. v. Bolivarian Republic of Venezuela*, No. MC 19-290-LPS, 2023 WL 2609248, at \*18 (D. Del. Mar. 23, 2023), *aff’d*, No. 23-1647, 2023 WL 4385930 (3d Cir. July 7, 2023). Here, Guinea uses its ownership interest in CBG to award shipping contracts for bauxite: a federal district court previously found that Guinea used its ownership in CBG to “authorize[] Nanko Shipping to exercise Guinea’s shipping rights under Article 9 of the CBG Convention.” *Nanko Shipping, Guinea v. Alcoa, Inc.*, 330 F. Supp. 3d 439, 443 (D.D.C. 2018) (referencing a contract exhibited to the plaintiff’s amended complaint).<sup>2</sup> This

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<sup>2</sup> The *Nanko* case was remanded to the district court after the D.C. Circuit held that Guinea was not immune under the FSIA and reversed the dismissal of the action. The D.C. Circuit concluded that the action was based on commercial activity carried out in the United States by the foreign state, and the action therefore fell within one of the statutory immunity exceptions because the complaint alleged that “the CBG Board—of which Guinea is a member—hosted a 2011

(cont'd)

underscores that Guinea’s shares in CBG are “used for commercial activity in the United States” for purposes of 28 U.S.C. § 1610(a). *See also Crystallex*, 932 F.3d at 151 (shares are commercial by definition because they allow the shareholder to “run its business as an owner, to appoint directors, approve contracts, and to pledge [the company’s] debts for its own short-term debt”).

While Section 1610(a)(6) applies and therefore satisfies the Court’s inquiry into whether the assets are immune from execution, Guinea also waived any immunity over execution on its assets in one of the underlying contracts giving rise to the Judgment, which provides an alternative basis for allowing execution here. *See* 28 U.S.C. § 1610(a)(1) (providing an exception to immunity where “the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication . . .”). In the contract giving rise to the 2020 Award, Guinea agreed to a “waiver of privilege and immunity from jurisdiction” in which it “expressly and definitively” waived “any immunity from jurisdiction and execution on all of its assets.” Kirkham Decl., Ex. D ¶¶ 6 & 6.2; *see also Walker Int’l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 234 (5th Cir. 2004) (finding sovereign explicitly waived immunity from execution under Section 1610(a)(1) by “sign[ing] an agreement that waives sovereign immunity defenses”). Although the ICC arbitral tribunal concluded that the contract was invalid for other reasons, *see* Kirkham Decl., Ex. E ¶¶ 252–299, the fact remains that Guinea expressly waived immunity from execution over its assets.

Therefore, Guinea’s shares in CBG are not immune from execution because they fall within two of the FSIA’s exceptions immunity. Not only did Guinea waive immunity, the shares are used for a commercial activity in the United States; the Judgment is based on two arbitral awards; and

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meeting in New York City at which Guinea announced its authorization and contract award to [Nanko] regarding shipment of bauxite.” *Nanko Shipping, USA v. Alcoa, Inc.*, 850 F.3d 461, 466 (D.C. Cir. 2017) (citing 28 U.S.C. § 1605(a)(2)).

the *fi fa* writ is not inconsistent with any provision of the underlying arbitral agreements. *See* Kirkham Decl., Exs. A at Article 9.1 (agreement leading to the 2017 Award and 2017 Judgment) & D ¶¶ 6, 6.2 (agreement leading to the 2020 Award).<sup>3</sup>

2. A.D. Trade Gave Guinea Notice of the D.C. District Court Judgment As Required Under Section 1608(e).

On June 7, 2023 A.D. Trade served Guinea with all relevant papers in connection with the D.C. District Court Judgment as the FSIA requires. Kirkham Decl., Ex. J (Return of Service). When A.D. Trade commenced the D.C. District Court action, it duly served Guinea with the summons and complaint pursuant to Section 1608(a)(3). Default Judgment Opinion at 6–7 (“A.D. Trade . . . caus[ed] the Clerk of the Court to send th[e] documents” required by Section 1608(a)(3) “to the head of Guinea’s ministry of foreign affairs via FedEx, at four different addresses.”).

After the D.C. District Court entered a default judgment, A.D. Trade duly served notice of that default judgment on Guinea pursuant to Section 1608(e) of the FSIA, which requires that “[a] copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.” 28 U.S.C. § 1608(e). A.D. Trade thus served Guinea with the default judgment in the same manner that it had served the summons and complaint, which the D.C. District Court had approved. Default Judgment Opinion at 6–7. Specifically, because there was no “special arrangement for service” between Guinea and A.D. Trade, and because

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<sup>3</sup> In addition, the D.C. District Court has already held that Guinea is not immune from suit under the FSIA’s arbitration exception at Section 1605(a)(6). Default Judgment Opinion at 4–6. Under the arbitration exception, Guinea is not immune from jurisdiction in an action to “enforce an agreement” to arbitrate or “confirm an award made pursuant to such an agreement to arbitrate” if that arbitration agreement is governed by “a treaty or other international agreement” calling for the enforcement of such awards, such as the New York Convention. 28 U.S.C. § 1605(a)(6). The D.C. District Court found that A.D. Trade had established each of “the existence of an arbitration agreement, an arbitration award, and a treaty governing the award,” as well as a “legal relationship” between A.D. Trade and Guinea that was “commercial” and “not domestic in scope.” Default Judgment Opinion at 4–6.



Guinea is not a signatory to any “applicable international convention on service,” such as the Hague Service Convention, A.D. Trade served the default judgment “by sending a copy of the summons and complaint and a notice of suit together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.” *See* 28 U.S.C. § 1608(a)(1)–(4); *see also* Default Judgment Opinion at 6–7.

As required by Section 1608, A.D. Trade served the D.C. District Court Judgment on Guinea by sending the head of the Ministry of Foreign Affairs for the Republic of Guinea a packet containing all relevant papers in connection with the D.C. District Court Judgment. Kirkham Decl., Ex. J (Return of Service). Proof of service was filed with the D.C. District Court on July 31, 2023. *Id.* A.D. Trade has thus given the notice pursuant to Section 1608(e) that is required by Section 1610(c) of the FSIA.<sup>4</sup>

3. A Reasonable Period of Time Has Elapsed Following the Entry of the D.C. District Court Judgment and the Giving of Notice to Guinea.

The D.C. District Court entered the Judgment more than three months ago, and Guinea received notice of the Judgment more than two months ago, which is when the Judgment was first delivered by FedEx to the head of Guinea’s Ministry of Foreign Affairs in accordance with the service requirements of 28 U.S.C. § 1608. Kirkham Decl., Ex. J (Return of Service).

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<sup>4</sup> There is no requirement under Section 1610(c) of the FSIA that A.D. Trade serve post-judgment execution papers such as this motion on Guinea. *See* 28 U.S.C. § 1610(c) (not addressing notice for attachment in aid of execution); *see also Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010) (“The FSIA is quite clear what a plaintiff must serve on a foreign state before a court may enforce a default judgment against that state: the default judgment. Service of post-judgment motions is not required.”). Further, a garnishee like CBG here will be served with the *fi fa* writ upon its issuance by a sheriff (in state court, under Delaware Superior Court Civil Rule 4(a)) or by the United States Marshal (in federal court, as here).

On that basis, this Court can determine “that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e)” so that it may authorize execution. 28 U.S.C. § 1610(c).

When deciding whether a “reasonable period” has elapsed, courts have considered “the procedures necessary for the foreign state to pay the judgment (such as the passage of legislation), evidence that the foreign state is actively taking steps to pay the judgment, and evidence that the foreign state is attempting to evade payment of the judgment.” *Ned Chartering & Trading, Inc. v. Republic of Pakistan*, 130 F. Supp. 2d 64, 67 (D.D.C. 2001) (citing H.R. Rep. No. 94-1487 (1976)); *see also Owens v. Republic of Sudan*, 141 F. Supp. 3d 1, 10 (D.D.C. 2015) (explaining that “case law and legislative history suggest that the purpose of § 1610(c)’s reasonable-period requirement is to allow foreign states the opportunity to make arrangements for voluntary payment, while still allowing for more immediate enforcement efforts when necessary”).

Where, as with Guinea here, the foreign state’s inaction demonstrates that no voluntary payment is forthcoming, a period of only a few weeks to a few months has been found to be “reasonable” under 28 U.S.C. § 1610(c). *See Ned Chartering*, 130 F. Supp. 2d at 67 (six weeks was reasonable where because “there [wa]s no evidence that the defendant ha[d] taken any steps towards the payment of its debt”); *see also Red Tree Invs., LLC v. Petroleos de Venezuela, S.A.*, No. MC 22-68-LPS, 2022 WL 1265516, at \*2 (D. Del. Apr. 28, 2022) (“period as short as ten days may be reasonable” (citing *Elliott Assocs., L.P. v. Banco De La Nacion*, No. 96 CIV. 7916 RWS, 2000 WL 1449862, at \*4 (S.D.N.Y. Sept. 29, 2000)); *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, No. CV 17-102 (RDM), 2020 WL 2934951, at \*2 (D.D.C. June 2, 2020) (two months); *Warmbier v. Democratic People’s Republic of Korea*, No. CV 18-977 (BAH), 2019 WL 11276677, at \*2 (D.D.C. Apr. 9, 2019) (two months); *Crystallex Int’l Corp. v. Bolivarian Republic*

*of Venezuela*, No. CV 16-0661 (RC), 2017 WL 6349729, at \*1 (D.D.C. June 9, 2017) (two months); *Owens*, 141 F. Supp. 3d at 9 (three months).

Here, it has already been more than three months since the D.C. District Court entered the Judgment and more than two months since A.D. Trade served the D.C. District Court Judgment on Guinea pursuant to 28 U.S.C. § 1608. Further, it has been six years since the first arbitral tribunal issued the 2017 Award in favor of A.D. Trade, but Guinea has *not voluntarily paid any* of its debt of US \$59,774,993.40 to A.D. Trade. Guinea is well aware of the 2017 Award and the 2020 Award, given that it was represented by counsel in both arbitrations, but it has demonstrated no intent to pay those awards voluntarily.

In fact, earlier this year, Guinea told A.D. Trade it would pay a small portion of the debt if A.D. Trade would lift an attachment on a parcel of real property in Paris, France, but Guinea never did make that payment. *See* Peretz Decl. ¶¶ 7–8; *see also* Kaspereit Decl. ¶¶ 8–9. This underscores that Guinea is well aware of its debt to A.D. Trade but has taken no steps, and has exhibited no intent, to pay its debt.

Under these circumstances, it is appropriate for the Court to find that a “reasonable period of time” has elapsed under Section 1610(c) of the FSIA.

### **CONCLUSION**

For all the foregoing reasons, A.D. Trade respectfully requests that this Court enter an order in a form substantially similar to the one attached hereto, directing the clerk to issue a writ of attachment *feri facias* upon CBG.

Respectfully submitted,

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