
INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

**GABRIEL RESOURCES LTD.
AND GABRIEL RESOURCES (JERSEY) LTD.**

Applicants

v.

ROMANIA

Respondent

ICSID CASE No. ARB/15/31

REQUEST FOR CONTINUATION OF STAY OF ENFORCEMENT

October 9, 2024

WHITE & CASE^{LLP}

Counsel for Applicants

REQUEST FOR CONTINUATION OF STAY OF ENFORCEMENT

TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE COMMITTEE HAS DISCRETION TO CONTINUE THE STAY	2
A. <i>Ad Hoc</i> Committees Consider the Balance of Interests Between the Parties	4
B. The Circumstances of This Case Require Continuation of the Stay	4
C. The Balance of Interests Strongly Support Continuation of the Stay	7
III. REQUEST FOR RELIEF	9

I. INTRODUCTION

1. In the Application for Annulment Gabriel Resources Ltd. (“Gabriel Canada”) and Gabriel Resources (Jersey) Ltd. (“Gabriel Jersey”) (together “Gabriel,” “Claimants,” or “Applicants”) requested a stay of enforcement of the Award in accordance with ICSID Convention Article 52(5) and ICSID Arbitration Rule 54.¹
2. Upon registering the Application for Annulment on July 12, 2024, the Acting Secretary-General therefore informed the parties of the provisional stay of the Award in accordance with ICSID Arbitration Rule 54(2).² Enforcement of the Award has been provisionally stayed since that date.
3. This includes paragraph 1358(2)(b)-(c) of the Award ordering Claimants to reimburse Respondent for costs in the amounts of USD 1,437,574.01, EUR 1,154,774.34, RON 30,284,053.32, and USD 928,641.70, together with simple interest at the rate of interest on a three-month US Treasury bill as from the date of the Award until full payment, which, stated in US dollars, together represents a principal amount of approximately USD 10 million plus interest accruing at a rate of approximately USD 46,000 per month (the “Cost Award”).
4. In accordance with ICSID Convention Article 52(5) and ICSID Arbitration Rule 54(2), Applicants hereby request the Committee to continue the stay of enforcement pending the Committee’s decision on the Application for Annulment.
5. Continuation of the stay is required in this case because Gabriel does not have funds sufficient to satisfy the Cost Award and enforcement of the Award against Gabriel prior to the decision on annulment will jeopardize Gabriel’s ability to pursue this annulment remedy and will cause significant financial hardship resulting in potentially irreparable prejudice to Gabriel and its interests.

¹ Application for Annulment dated July 5, 2024 (“Application for Annulment”) ¶¶ 5, 160-161, 162(a). Unless otherwise stated, all defined terms herein have the same meaning as in the Application for Annulment.

² Notice of Registration of Application for Annulment in *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania* (ICSID Case No. ARB/15/31) dated July 12, 2024.

II. THE COMMITTEE HAS DISCRETION TO CONTINUE THE STAY

6. ICSID Arbitration Rule 54(2) provides that “[a]s soon as the ... Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued....” Neither the ICSID Convention nor the Arbitration Rules specify factors to be considered by the Committee in making its decision, thus leaving the Committee with wide discretion to order continuation of the stay when circumstances warrant.

7. Article 52(5) of the ICSID Convention provides in relevant part simply:

The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

8. Exceptional or unusual circumstances are not needed to justify a stay of enforcement. Decisions of ICSID *ad hoc* committees rather show that while annulment may be an exceptional remedy, “there is no indication that the exceptional character of the application requires that the circumstances requiring the stay must also be exceptional.”³ As the *Caratube* committee explained, “to determine whether to maintain the stay of enforcement of the Award, the Committee must analyze the specific circumstances of this case, which need not necessarily be ‘unusual’ or ‘exceptional.’”⁴

9. Several *ad hoc* committees have emphasized that “recourse to annulment, including the entitlement to request a stay of enforcement, is a legitimate right provided for in Article 52 of the ICSID Convention,”⁵ and that there is no general presumption either in favor of or

³ *Perenco Ecuador Ltd. v. Ecuador*, ICSID Case No. ARB/08/6, Decision on Stay of Enforcement dated Feb. 21, 2020 (AL-27) ¶ 67.

⁴ *Caratube International Oil Company LLP and Devincci Salah Hourani v. Kazakhstan*, ICSID Case No. ARB/13/13, Decision on Stay of Enforcement dated Dec. 12, 2019 (“*Caratube v. Kazakhstan*”) (AL-26) ¶ 73.

⁵ *Masdar Solar & Wind Cooperatief U.A. v. Spain*, ICSID Case No. ARB/14/1, Decision on Stay of Enforcement dated May 20, 2020 (AL-28) ¶ 90; *STEAG GmbH v. Spain*, ICSID Case No. ARB/15/4, Decision on Stay of Enforcement dated Aug. 18, 2022 (“*STEAG v. Spain*”) (AL-30) ¶¶ 82-83.

against granting a continuation of the stay.⁶ Rather, whether circumstances exist requiring continuation of a stay is a matter to be freely considered in the committee’s discretion.⁷

10. *Ad hoc* committees also hold that the review of a stay request “should in no way be based on an assessment or prejudgment of what will be the final outcome of the annulment proceeding.”⁸ Rather, committees have considered only whether the annulment application has been made in good faith and is not manifestly frivolous, *i.e.*, that it was not “brought without any basis under the Convention.”⁹ As the *MTD* committee observed, “it is not for the Committee [considering a request for a stay] to assess as a preliminary matter whether or not [the application for annulment] is likely to succeed.”¹⁰
11. ICSID *ad hoc* committees have ordered continuations of stays of enforcement where the applicants are pursuing rights provided by the ICSID Convention in good faith. Thus, in *Pey Casado*, the committee considered “that it would be inappropriate to reject a request for a stay when the applicant pursues its legitimate right to have the award examined for fundamental institutional and procedural propriety in good faith and absent dilatory intentions.”¹¹
12. Gabriel’s Application for Annulment is made in good faith and is based on serious grounds indicated in Article 52(1) of the ICSID Convention, including that (i) the Tribunal was not properly constituted, (ii) the Tribunal manifestly exceeded its power, (iii) there were serious departures from fundamental rules of procedure, and (iv) the Award in multiple respects failed to state the reasons on which it was based.

⁶ *STEAG v. Spain* (AL-30) ¶ 67.

⁷ *Libananco Holdings Co. Ltd. v. Turkey*, ICSID Case No. ARB/06/8, Decision on Stay of Enforcement dated May 7, 2012 (“*Libananco v. Turkey*”) (AL-23) ¶ 41.

⁸ *Id.* (AL-23) ¶¶ 41, 49.

⁹ *STEAG v. Spain* (AL-30) ¶¶ 73, 77, 80; *Libananco v. Turkey* (AL-23) ¶ 48; *Caratube v. Kazakhstan* (AL-26) ¶ 75.

¹⁰ *MTD Equity Sdn Bhd & MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Decision on Stay of Enforcement dated June 1, 2005 (AL-22) ¶ 28.

¹¹ *Victor Pey Casado and Foundation President Allende v. Chile*, ICSID Case No. ARB/98/2, Decision on Stay of Enforcement dated Mar. 15, 2018 (AL-25) ¶ 72.

A. *Ad Hoc* Committees Consider the Balance of Interests Between the Parties

13. In exercising their discretion as to whether to continue a stay of enforcement, annulment committees weigh the balance of interests between the parties. As the *STEAG* committee described:

The task of the Committee is to balance, on the one hand, the Applicant’s interest in a stay of enforcement of the Award pending the annulment proceeding and, on the other hand, the Respondent on Annulment’s right to the finality and enforceability of the Award under the Convention. In other words, as observed by the committee in *Churchill Mining v. Indonesia*, “[a] *balanced approach between the right of access to justice on the one hand and the right to enforcement on the other must be effectuated by ad hoc committees.*”¹²

14. In this case, the balance of interests weighs in favor of ordering a continuation of the stay.

B. The Circumstances of This Case Require Continuation of the Stay

15. Gabriel Canada is a publicly traded company, currently listed on the Canadian TSX Venture Exchange, whose principal focus since 1997 had been the development in Romania of the Projects in partnership with the Romanian State through RMGC. Gabriel Canada is the 100% shareholder of Gabriel Jersey. Gabriel Jersey is the direct 80.69% shareholder of RMGC, and the Romanian State, through Minvest Roșia Montană S.A., owns the remaining 19.31%.¹³
16. As described in Gabriel’s Application for Annulment,¹⁴ following years during which Gabriel advanced development of the Projects, the Romanian State prevented their implementation, leading Gabriel to commence ICSID arbitration in July 2015. Notwithstanding Gabriel’s enormous investment over many years, as Romania did not permit the Projects to advance, neither RMGC nor Gabriel ever earned any revenue from the Projects. To fund RMGC, Project development, and its own operating needs, Gabriel (which has no revenue generating assets) has relied entirely on its ability to raise capital

¹² *STEAG v. Spain* (AL-30) ¶ 66.

¹³ Application for Annulment ¶ 16.

¹⁴ Application for Annulment ¶¶ 16-34.

from investors seeking to invest in the Projects through Gabriel. For many years Gabriel's sole focus, other than maintaining its interests in RMGC, has been its pursuit of its claims in the ICSID arbitration.

17. Following issuance of the Award, Gabriel announced in March 2024 that it had available funds of USD 2 million, which it expected would be exhausted in the normal course of business by May 2024.¹⁵ As described in its July 8, 2024 press release,¹⁶ while Gabriel was able to raise some additional funds totaling USD 3.25 million, its ability to raise any further funds remained uncertain:

On April 26, 2024, Gabriel announced a fundraising of up to US\$5.575 million (the "Private Placement") and on May 17, 2024, the Company announced closing of an initial tranche of that fundraising with proceeds received of US\$3.25 million.

The remainder of the Private Placement was anticipated to close on or before July 3, 2024, however, this has not transpired as expected. While the Company will progress further discussions with the party that had previously committed to participating in the Private Placement, Gabriel continues to seek and explore alternative financing options.

There can be no assurance that additional financing will be available to the Company at any time or, if available, that it can be obtained on terms and timing satisfactory to the needs of the Company. Assuming a stay of enforcement as noted above and excluding amounts set aside for Annulment Application legal fees, the Company believes that it has sufficient cash to enable the Group to fund general working capital requirements together with other material estimated costs associated with the Company advancing the ICSID annulment proceedings through to September 2024.¹⁷

As Gabriel urgently needs to secure additional funding to maintain its ability to perform its essential activities and to pursue this annulment remedy, it will continue its efforts to raise further funding.

¹⁵ Gabriel Resources Ltd. Press Release dated March 11, 2024 (A-105).

¹⁶ Gabriel Resources Ltd. Press Release dated July 8, 2024 (A-106).

¹⁷ *Id.*

18. At the same time, following issuance of the Award, Romania began to take steps seeking its immediate enforcement. By letter dated March 21, 2024, Romania requested that Gabriel arrange payment of the Cost Award “as a matter of priority” and stated that it will take steps to enforce payment.¹⁸ Thereafter, on March 29, 2024, the Alba County Public Finance Administration (“ANAF”), a division of Romania’s Ministry of Finance, unilaterally issued an administrative decision imposing a so-called precautionary attachment over Gabriel Jersey’s shares in RMGC.¹⁹
19. Romania published the attachment measure in the National Trade Registry.²⁰ ANAF notified Gabriel Jersey of the attachment via regular mail,²¹ and directed RMGC to reflect the attachment in the company’s shareholder registry.²²
20. The enforcement measure was widely reported in the Romanian press, in which ANAF is reported to have stated that the next step will be to inventory RMGC’s properties (*i.e.*, real properties acquired for purposes of Project implementation), and for the State to seize the properties and sell them.²³ Gabriel Jersey has filed judicial challenges against the measures taken by ANAF on the ground that they are unnecessary and inconsistent with applicable legal requirements. Those challenges remain pending.
21. Gabriel will be seriously prejudiced without a continued stay of enforcement due to the size of the Cost Award and Gabriel’s lack of sufficient available funds. While, as noted above, Gabriel was able initially to raise limited funding, it was not able to raise even the modest amounts originally contemplated. There is no basis to assume that additional

¹⁸ Letter from LALIVE and LDDP to White & Case and Țuca Zbârcea dated Mar. 21, 2024 (A-107).

¹⁹ ANAF Decision No. BG-DEX-2323/29.03.2024 and Protocol of Attachment of Property dated Mar. 29, 2024 (A-108).

²⁰ Ministry of Justice, National Trade Register Entry No. 769423 for RMGC (A-109) at 2 (showing attachment of Gabriel Jersey’s shareholding in RMGC).

²¹ See Envelope post-marked April 3, 2024 enclosing ANAF Decision No. BG-DEX-2323/29.03.2024 and Protocol of Attachment of Property dated Mar. 29, 2024 (A-110).

²² See ANAF letter no. ABG-DEX2454 to RMGC dated Apr. 3, 2024 (A-111).

²³ See, e.g., *ANAF seeks to recover the 9.5 million dollars owed to Romania by Gabriel Resources. First step: seizure of the company’s shares. Hundreds of houses in Roșia Montană, targeted for sale* dated Apr. 5, 2024 in www.libertatea.ro (A-112)

funding will be possible and no grounds to equate the Applicants with their shareholders or other investors.²⁴ If enforcement of the Cost Award is permitted to proceed, Gabriel's ability to raise the additional funding, included as needed to pursue this annulment remedy, will be further compromised.

22. Thus, enforcement of the Cost Award risks placing the Applicants into insolvency, which would impose a severe financial and administrative burden on the Applicants and would jeopardize the ability to pursue the annulment remedy.
23. Pushing Gabriel into insolvency also would have catastrophic, immediate, and irreparable effects on RMGC. RMGC maintains legal rights in relation to the Roșia Montană License²⁵ as well as in relation to the Bucium license applications.²⁶ Those rights are conditioned, however, upon RMGC remaining financially solvent, and so risk becoming irreparably lost if Gabriel, RMGC's sole source of funding, becomes insolvent.

C. The Balance of Interests Strongly Support Continuation of the Stay

24. ICSID *ad hoc* committees have recognized the applicant's interest in obtaining a continued stay of enforcement in cases where a cost award had been ordered against a claimant seeking annulment of an award.²⁷ The applicant's interest is especially clear in those cases where the applicant lacks sufficient funds to satisfy the award and enforcement would cause significant financial harm.²⁸

²⁴ *Churchill Mining Plc and Planet Mining Pty Ltd v. Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Decision on Stay of Enforcement dated June 27, 2017 (“*Churchill v. Indonesia*”) (AL-24) ¶ 39 (emphasizing that there is no basis to equate the applicants with their shareholders); *Libananco v. Turkey* (AL-23) ¶¶ 51, 59 (same).

²⁵ While Romania's mining authority issued a decision in June 2024 denying RMGC's application for an extension of the term of the Roșia Montană License, RMGC and Gabriel intend to challenge that decision.

²⁶ See Application for Annulment ¶ 32. Romania has consistently maintained that RMGC's Bucium applications remain pending. See Award ¶¶ 198, 1163, 1165.

²⁷ E.g., *Libananco v. Turkey* (AL-23) ¶ 47 (“given the terms of the *dispostif* of the Award, Applicant has a clear interest in obtaining a continued stay of enforcement of the order on reimbursement and cost compensation”).

²⁸ *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Sri Lanka*, ICSID Case No. ARB/16/25, Decision on Annulment dated Dec. 2, 2020 (AL-29) ¶ 14 (granting continuation of stay given

25. Continuation of the stay of enforcement is needed particularly where, as here, enforcement risks undermining the applicant’s ability to pursue the annulment remedy. ICSID *ad hoc* committees have emphasized that a stay of enforcement should be granted to ensure that the applicants’ access to justice and ability to seek a remedy provided by the ICSID Convention is not frustrated. As the *Churchill* committee observed, in assessing the balance of interests between the parties, the applicants’ “access to justice cannot be frustrated,”²⁹ explaining that “[a]ccess to justice refers here to the right to apply for annulment provided by Article 52 of the Convention.”³⁰
26. A further factor necessitating continuation of a stay is the risk of legal uncertainty for a party having to seek recoupment of sums collected if the award is annulled.³¹ Indeed, continuation of the stay is required to protect the applicants’ interests where there is material risk of non-recoupment of sums collected if the award is annulled.³² ICSID *ad hoc* committees have emphasized that this is a critical factor weighing in favor of a stay:

As pointed out by the committee in *SolEs Bajadoz v. Spain*, a risk that Spain would not be able to recoup the monies paid under the Award if annulled is “a significant, if not decisive, circumstance within the meaning of Article 52(5) of the ICSID Convention, which militates towards the continuation of the stay of enforcement of the Award.”³³

27. In this case, there are no evident means available to the Applicants to recover from Romania monies or assets taken in the event enforcement of the Cost Award is not stayed and the Award thereafter is annulled. That is particularly so once the Romanian State is

applicants’ “non-availability of funds,” where otherwise applicants “would suffer prejudice beyond the inherent or normal effects”).

²⁹ *Churchill v. Indonesia* (AL-24) ¶ 38.

³⁰ *Id.*

³¹ *STEAG v. Spain* (AL-30) ¶ 94 (“The Committee is also mindful of the potential inconvenience for Spain if it were required to pursue a potentially complex process, navigating through STEAG’s corporate structure, in order to recover amounts paid under the Award, if it were to be annulled.”).

³² *Id.* ¶ 72 (quoting ICSID background paper on annulment as listing risk of non-recoupment of sums due under the award if the award is annulled among the factors warranting continuation of the stay).

³³ *Id.* ¶ 85 (citing *SolEs Bajadoz* para. 69); *id.* para. 94 (“The Committee acknowledges, in principle, the relevance of the risk of non-recoupment as a factor that needs to be considered when deciding on the stay of enforcement.”).

permitted to take the further step of enforcement to execute against and seize Gabriel Jersey's shares of RMGC. There is no legal provision under the ICSID Convention to address such a situation and no evident remedies available under Romanian law to reclaim from the State assets taken in such a circumstance. Nor would there be any reliable way to restore losses that RMGC would incur if it becomes insolvent and loses legal rights as a result.

28. By contrast, Romania will not suffer any harm or prejudice from a continued stay, as the Award, if not annulled, will continue to accrue interest in favor of Respondent.³⁴
29. Moreover, maintaining the precautionary attachment over Gabriel Jersey's shares in RMGC, while impairing Gabriel's ability to raise capital, does not in any event provide a benefit to Romania that Romania does not otherwise already enjoy; in other words, it is not needed to preserve any of Romania's rights. RMGC's Articles of Association include significant restrictions on Gabriel's ability to transfer its shares, ensuring both that Romania would be notified in advance of any proposed transfer and that no transfer could occur without its consent.³⁵
30. These factors taken together weigh heavily in favor of continuing the stay of enforcement.³⁶

III. REQUEST FOR RELIEF

31. In view of the above considerations, pursuant to ICSID Convention Article 52(5) and ICSID Arbitration Rule 54(2), Applicants respectfully request that the Committee order continuation of the stay of enforcement of the Award until a decision on annulment is rendered in these proceedings.

³⁴ See *Victor Pey Casado and Foundation President Allende v. Chile*, ICSID Case No. ARB/98/2, Decision on Request for Supplementation of the Annulment Decision dated Sept. 11, 2013 (AL-31) ¶¶ 108-110 (identifying the accrual of interest on the award as a factor supporting continuation of a stay).

³⁵ RMGC Articles of Association (updated Nov. 1, 2013) (C-188) art. 10 (requiring prior notification in advance of any transfer of shares and providing the Romanian State via Minvest Roșia Montană S.A. a preemption right to purchase any shares proposed to be sold).

³⁶ *Libananco v. Turkey* (AL-23) ¶ 60 (observing that where the likelihood of obtaining enforcement would not be reduced as a result of a stay, the stay cannot be expected to place a heavy burden on Respondent).

Respectfully submitted,

White & Case LLP

WHITE & CASE^{LLP}

701 Thirteenth Street NW
Washington, DC 20005
USA

555 South Flower Street, Suite 2700
Los Angeles, CA 90071-2433
USA

October 9, 2024

Counsel for Applicants