

Executive Summary of Final Award

On September 22, 2014, Gold Reserve received the final award in its arbitration against Venezuela (*Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1). Gold Reserve initiated the case in October 2009 under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank to seek compensation for the losses caused by Venezuela's violations of the Treaty between the Government of Canada and the Government of Venezuela for the Promotion and Protection of Investments (the "Canada-Venezuela" BIT). The three-member Arbitral Tribunal was composed of Professor Piero Bernardini of Italy, Professor Pierre-Marie Dupuy of France, and Professor David A.R. Williams of New Zealand.

The Tribunal's 226-page award summarizes the parties' positions and explains the Tribunal's decisions regarding the following key aspects of the case: (i) the Tribunal's jurisdiction to decide the dispute under the Canada-Venezuela BIT; (ii) the nature and extent of Gold Reserve's rights to develop the Brisas Project; (iii) Venezuela's alleged violations of the Canada-Venezuela BIT; and (iv) the damages awarded to Gold Reserve.

Tribunal's Jurisdiction

The Tribunal rejected Venezuela's jurisdictional objections in their entirety, including its arguments that Gold Reserve was not a Canadian investor and had not made an investment in Venezuela under the Canada-Venezuela BIT.

The Tribunal concluded that, absent some form of abuse, which was not present in Gold Reserve's case, the proper test under the Canada-Venezuela BIT for whether Gold Reserve was a Canadian investor is "incorporation." Gold Reserve's incorporation in Canada satisfies that standard.

The Tribunal also found that the Company was the undisputed indirect owner of the Venezuelan entity which held the mining rights to the Brisas Project. Venezuela argued that the fact that Gold Reserve obtained ownership of the mining rights as a result of Gold Reserve's 1999 corporate restructuring could not be considered as making an investment in Venezuela. The Tribunal rejected that argument.

Gold Reserve's Mining Rights

Venezuela contested the nature and extent of Gold Reserve's rights to develop the Brisas Project. Venezuela challenged Gold Reserve's entitlement to develop the Brisas and Unicornio Concessions and twelve adjoining parcels as a single mining project, as well as the Company's rights to each individual concession and parcel.

Noting that Venezuela repeatedly had referenced the concept of the Brisas Project in official documents, the Tribunal found that Venezuela's "position denying any value to the concept of [a] 'Brisas Project' is unwarranted." The Tribunal therefore concluded that Gold Reserve had a reasonable expectation that it would be permitted to use adjoining parcels to exploit the Brisas and Unicornio Concessions as a single Brisas Project.

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The Tribunal likewise found that Gold Reserve held valid rights to all of the concessions and parcels required to develop the Brisas Project, with the exception of a 16.6 hectare strip of land located between the Brisas and Unicornio Concessions and the neighboring Cristina IV parcel (the so-called “North Parcel”). Despite evidence that the North Parcel was intended to be part of the Brisas and Unicornio Concessions and that came into existence due to a surveying error, that Gold Reserve had worked with the Ministry of Mines to correct that error, that the North Parcel was included in Gold Reserve’s Feasibility Study that was approved by the Ministry of Mines, that the North Parcel was included in Gold Reserve’s Venezuelan Environmental and Socio-Cultural Impact Assessment which had been accepted by the Ministry of Environment, and that the Ministry of Environment authorized Gold Reserve to undertake works on the North Parcel in a Construction Permit issued on March 27, 2007, the Tribunal concluded that Gold Reserve’s rights in relation to the North Parcel were never perfected because the State never acted on an “alfarjeta” application in regard to that property. The Tribunal found that the absence of rights to the North Parcel would have prevented Gold Reserve from implementing an agreement to extend its mine pit onto the Cristina IV parcel (a practice commonly referred to in the mining industry as a “layback”).

With respect to the Choco 5 Concession, the Tribunal concluded that Venezuela had not taken actions specific to that property that would justify Gold Reserve’s suspension of works on that concession. The Tribunal therefore declined to consider Choco 5 in its liability analysis. Gold Reserve had claimed damages for Choco 5 in the amount of the US\$ 1.5 million invested in that property.

Violations of the Canada-Venezuela BIT

The Tribunal determined that by its conduct Venezuela had breached the obligation to accord Gold Reserve’s investment in the Brisas Project fair and equitable treatment as required by the Canada-Venezuela BIT. In particular, the Tribunal referenced the Administration’s evident “change of political priorities” regarding the Brisas Project, which led to the cancellation of Gold Reserve’s mining rights. According to the Tribunal, “[t]he number, variety and seriousness of the breaches make the [fair and equitable treatment] violation by [Venezuela] particularly egregious.”

Acknowledging that it was “not a straight-forward issue” and that it had “considered the issue at length,” the Tribunal concluded that Venezuela had not violated the Canada-Venezuela BIT’s separate expropriation standard. Nevertheless, the existence of the fair and equitable treatment violation allowed the Tribunal to award damages. The Tribunal specifically noted that “[t]he seriousness of the breach shall be duly taken into account when determining the amount of the compensation due to [Gold Reserve] in that regard.”

Damages Awarded to Gold Reserve

Gold Reserve had sought damages for Venezuela’s violations of the Canada-Venezuela BIT with interest from April 14, 2008 (*i.e.* the date on which Venezuela revoked Gold Reserve’s March 27, 2007 Construction Permit) through the date of the award at the US Prime Rate of interest plus 2%, compounded annually.

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Following its conclusion that Gold Reserve lacked rights to the North Parcel and thus the ability to obtain a layback on the Cristina IV parcel, the Tribunal based its award of damages on an assumed smaller Brisas Project in which Gold Reserve's mine pit was located entirely within the boundaries of the Brisas and Unicornio Concessions, *i.e.*, the "no-layback scenario." With respect to that scenario, the Tribunal stated that it "did not find [Venezuela's expert's] negative valuation, resulting in no compensation, convincing." Instead, the Tribunal accepted Gold Reserve's expert's US\$ 1,325,532,000 Discounted Cash Flow valuation of the fair market value of the hypothetically smaller Brisas Project development rights as of April 14, 2008, *i.e.*, without the North Parcel and without the layback. The Tribunal then made the following deductions from that figure:

- US\$ 162 million to account for additional mineral resources that the Tribunal believed were too speculative to have been ascribed value by a hypothetical willing buyer of the Brisas Project development rights in April 2008.
- US\$ 101 million to account for what the Tribunal assumed would be the changed performance of the processing plant in the no layback scenario, including reduced metal recovery rates and concentrate grades.
- US\$ 80 million for what the Tribunal assumed would be costs related to the management of the hard rock ore stockpiles that would be needed in the no layback scenario.
- US\$ 108.5 million to account for a one-year delay that the Tribunal believed reasonably would have been required for Gold Reserve to adjust its mine plan in any hypothetical sale of the project rights without the North Parcel and without a layback agreement.
- US\$ 31 million to account for the Brisas Project's silver resources, the rights to which the Tribunal concluded had never been legally perfected due to the State's failure to act on Gold Reserve's silver application.
- US\$ 130 million to account for a 4% country risk premium for Venezuela in 2008. Although the Tribunal agreed with Gold Reserve's expert that the country risk premium should not reflect the market's perception that Venezuela might expropriate the Company's investment, it found that a 4% country risk premium reasonably accounted for other risks, including political risk other than expropriation.

Based on the above, the Tribunal ordered Venezuela to pay Gold Reserve US\$ 713,032,000, plus pre-award interest from April 14, 2008 through the date of the award at the U.S. Government Treasury Bill Rate, compounded annually. Such pre-award interest amounts to US\$ 22,299,576.

The amount awarded, plus pre-award interest, accrues post-award interest at a rate of LIBOR plus 2%, compounded annually, which comes to approximately US\$ 51,412 per day. The Tribunal also ordered Venezuela to pay US\$ 5 million towards Gold Reserve's legal costs and

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expenses, for a total award, as of September 22, 2014, of US\$ 740,331,576. The Tribunal's award is one of the largest rendered by an ICSID tribunal to date.