FDI Moot Case 2018

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Clarifications

Registered teams may submit requests for clarification of the case, e.g. of factual ambiguities, if the States have ratified a particular convention, etc. Please strictly observe the instructions for clarification requests on the website.

The 2018 case was elaborated by Elis Wendpap, Bernardo Pires, María Pía Alais, Prakshal Jain and Julia Pineda under the supervision of the FDI Moot’s Directors and Advisory Board.

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REQUEST FOR ARBITRATION

Claimant

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Counsel for Claimant

Anda Tuka
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A power of attorney is attached [intentionally not reproduced here].

Respondent

Republic of Kronos
c/o Macuna Ima
55 Procurator of the Treasury, Ministry for Environmental Matters
Suni Street 12
1090 Vasa
Republic of Kronos
T. +41 2930 9400593 299 F. +41 2930 4058392 909 E. mima@kronos.gov.kr
SUBMISSION OF THE DISPUTE TO ARBITRATION

1. Pursuant to Article 11 of the 1995 Ticadia-Kronos BIT (“BIT”), Fenoscadia Limited (“Claimant”), a limited liability company incorporated under the laws of the Republic of Ticadia, hereby submits its request for arbitration against the Republic of Kronos (“Respondent”) in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC Arbitration Institute” and “SCC Rules”). Claimant’s claims arise out of Respondent’s actions that substantially undermined the former’s investment in the latter’s territory. Respondent’s actions breached Article 7 (expropriation) of the BIT.

JURISDICTION AND ARBITRATION AGREEMENT

2. By submitting this Request for Arbitration, Claimant accepts the standing offer made by Respondent to arbitrate investment disputes with Claimant’s investors enshrined in Article 11 of the BIT, which establishes arbitration administered by the SCC Arbitration Institute and in accordance with the SCC Rules:

ARTICLE 11 – DISPUTE SETTLEMENT

1. For purposes of this Article, an investment dispute is a dispute between a Party and an investor of the other Party arising out of or relating to (a) an investment agreement between that Party and such person or enterprise; (b) an investment authorization granted by that Party’s foreign investment authority (if any such authorization exists) to such person or enterprise; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute for resolution: (a) to the courts or administrative tribunals of the Party that is a party to the dispute; or (b) in accordance with any applicable, previously agreed dispute-settlement procedures; or (c) in accordance with the terms of paragraph 3 of this Treaty.

3. Provided that the person or enterprise concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding
arbitration under the Arbitration Institute of the Stockholm Chamber of Commerce and in accordance with its Arbitration Rules.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for an "agreement in writing" for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

3. Claimant and its claims meet all the jurisdictional requirements of the BIT:

3.1 As defined in Article 1 of the BIT, an “investor of a Party” means an enterprise of a Party that has made an investment in the other Party's territory. Claimant was incorporated under the laws of the Republic of Ticadia, and so was its majority shareholder.

3.2 Claimant's operations in Respondent's territory qualify as a covered investment within the meaning of Article 1.1 of the BIT, since the activities Claimant has conducted in Respondent's territory result from a contract entered into with Respondent and whose performance required that Claimant constituted property in Respondent's territory.

3.3. Further, Claimant complied with Article 11, Sections 1 and 3 of the BIT. On 27 April 2017, Claimant notified Respondent’s Ministry for Foreign Affairs of its dispute with Respondent and of its intention to pursue legal remedies under the BIT if the dispute were not resolved through negotiations between the parties. Respondent declined to negotiate and has remained in silence ever since. Therefore, the six-month period provided for in Article 11, Section 3 of the BIT has elapsed, and Claimant is allowed to initiate binding arbitration proceedings against Respondent.

FACTUAL BACKGROUND

4. On 20 April 2000, Claimant, an enterprise with a worldwide reputation for the exploration and exploitation of rare earth metals, won a public auction conducted by Respondent's Government for the acquisition of the rights to exploit an area of 1,071,000 m² nestled in Respondent’s inner territory (“Site”) that is abundant in lindoro, then a recently discovered
rare earth metal.\(^1\) The Site is the only area in Respondent’s territory in which lindoro is known to be present, meaning that, until the facts that gave rise to this dispute, Claimant was the only company allowed to exploit lindoro in Respondent’s territory.

5. On 1 June 2000, Claimant entered into an agreement with Respondent for regulating the rights and obligations of each party in the exploitation of lindoro in the Site ("Agreement").\(^2\) Pursuant to the Agreement, Claimant was granted a concession for the rights to exploit the Site for eighty years. In return, Claimant had to pass to Respondent 22% of the monthly gross revenue relating to the exploitation of lindoro. Prior to the execution of the Agreement, Respondent granted Claimant the necessary licenses for the exploitation of lindoro, which effectively started in August 2008.

6. At the time of the execution of the Agreement, Respondent had neither a framework for the mining industry nor a comprehensive environmental regulation. The exploitation of lindoro in the Site was thus regulated exclusively by the Agreement, which provided for biennial inspections by agents of Respondent’s Ministry for Agriculture, Forestry and Land. In all said inspections, including the latest held in September 2015, Claimant has been found in full compliance with its environment-related obligations under the Agreement. Moreover, Respondent's Government has repeatedly assured, through Presidential statements published on Respondent's official website as well as Presidential speeches\(^3\), that Claimant's investment was welcome and that the lack of a regulatory framework for mining activities was not a risk for Claimant's activities.

7. All of Claimant's activities in Respondent's territory were strictly connected to the exploitation of lindoro. Respondent's Government has strongly supported Claimant in its decision to establish its business structure in Respondent’s territory and has always highlighted how the revenues with the exploitation of lindoro were important for Respondent's economy.

8. Since the inception of the exploitation of lindoro in the Site, Claimant has engaged with local communities as part of its commitment to the development of the area surrounding the Site. In addition to having directly contributed to furthering Kronian economic development nationwide, Claimant has created over two hundred jobs in the communities adjoining the Site. No less than forty of those jobs are connected to Claimant's sustainability goals, which

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\(^1\) Exhibit No. 1.
\(^2\) Exhibit No. 2
\(^3\) Exhibit No. 3.
include, among other measures adopted by Claimant, the correct disposal of waste originating from the exploitation of lindoro.

9. Claimant’s problems started in October 2014, when a center-left political party (“Nationalist Party”) won the Presidential elections for the first time in Respondent's history, promising, among other things, to fiercely protect Respondent's national industries against foreign companies. The Nationalist Party took office on 1 January 2015, and immediately started a crusade against foreign capital. Claimant was one of the five largest foreign companies operating in Respondent’s territory. It thus did not take long before Respondent’s new Government started to take shots at Claimant.

10. Purportedly aiming at filling the legislative gap in the protection of its environment and natural resources, in March 2015 Respondent’s Government sent to Respondent’s Parliament -controlled by the Nationalist Party- a highly protective draft environmental bill. The bill was wilfully drafted with vague wording to leave significant leeway for Respondent’s Government to meddle in the conduct of environmentally sensitive businesses in Respondent’s territory, since the Nationalist Party believed that advancing a protective environmental agenda would please its supporters.

11. On 12 June 2015, Respondent’s Parliament ultimately passed the 2015 Kronian Environmental Act (“KEA”), a verbatim enactment of the draft bill tabled by Respondent’s Government, granting ample powers to Respondent’s President to intervene in the conduct of environmentally sensitive businesses. The abnormal speed with which KEA was passed prompted an outcry from the opposition parties, whom the Speaker of the Kronian House of Representatives – a member of the Nationalist Party – had denied the right to conduct public hearings to discuss the bill, in violation of Respondent’s Constitution.

12. On 15 May 2016, the Kronian Federal University published a study indicating that the exploitation of lindoro may be a trigger to coronary heart disease for the in-site workers as well as for the people in the surrounding areas (“Study”). The Study indicated a correlation but failed to conclusively confirm a causal link between the exploitation of lindoro and the increase of coronary heart diseases in Respondent's population since 20094.

13. On 7 September 2016, Respondent issued Presidential Decree No. 2424 (“Decree”)5 prohibiting exploitation of lindoro in Respondent’s entire territory, revoking Claimant’s licenses, and terminating the Agreement with no compensation to Claimant. Despite being the

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4 Exhibit No. 4.
5 Exhibit No. 5.
only one with rights to exploit lindoro in Respondent’s territory, Claimant was not granted an opportunity to produce evidence contradicting the Study prior to the issuance of the Decree.

14. Only four months elapsed between publication of the Study and the Decree, a time-period clearly insufficient for Respondent to properly analyze the Study’s yet unproven conclusions and reach an informed decision regarding whether to continue with the exploitation of lindoro. Further, the Study was entirely funded by Respondent’s Government.

15. Immediately upon the issuance of the Decree, Claimant sought out Respondent’s Government to negotiate an amicable solution for reinstating the exploitation of lindoro in the Site, its sole activity. However, Respondent was adamant in sustaining its prohibition of exploitation of lindoro and, therefore, declined negotiations.

16. On 8 September 2016, Claimant filed a motion in Respondent's courts seeking to suspend the effects of the Decree on a provisional basis, while negotiations with Respondent's government were pending. Claimant did not request Respondent's courts to rule on the breaches performed by Respondent or on the damages due to Claimant. On 22 February 2017, after receiving an official and final statement from Respondent's government that the Decree would not be revoked, Claimant withdrew its motion. At the time of the withdrawal, no decision had been rendered yet.

17. As of the Decree’s issuance, Claimant has been prevented from exploiting lindoro in the Site, its sole activity. Furthermore, on 14 September 2017, tons of lindoro stored in Claimant’s facilities were confiscated by Respondent's officials, including those that were already prepared for export. Ultimately, due to the sudden cessation of revenues, Claimant had no option but to shut down its state-of-the-art facilities opened in August 2008. As a consequence, since the Decree, Claimant has not been able to honor its contractual obligations with purchasers and suppliers, accumulating significant losses over the period.

18. In August 2017, a news magazine of the mining sector published a story on the creation of a new company resulting of a joint venture between a Kronian state-owned company and an enterprise from the Republic of Ibi for restating the exploitation of lindoro in the Site by as early as 2019 – despite the prohibition imposed by the Decree, which remains in force but can be reversed at Respondent’s convenience through a Presidential decree. Ibi is a state bordering Respondent, whose Government has been known to be linked to the Kronian Nationalist Party due to their ideological affinities.

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6 Exhibit No. 6.
7 Exhibit No. 7.
19. It is thus clear that the Decree is a targeted measure, disguised in the form of a general *bona fide* regulation and aimed at expropriating Claimant’s assets without compensation, in utter violation of the BIT.

20. Claimant’s valuation experts have preliminarily assessed the market value of the expropriated investment to be in excess of USD450M.

**RESPONDENT’S BREACH OF THE BIT**

21. Respondent’s actions in relation to Claimant and its investment in the former’s territory amount to a breach of Article 7 (Expropriation) of the BIT.

22. Claimant reserves the right to invoke additional breaches by Respondent.

**PRAYERS FOR RELIEF**

23. Claimant hereby requests the arbitral tribunal to:

225  (1) Declare that Respondent is liable for violation of the BIT;

(2) Order Respondent to pay damages to Claimant for the losses caused as a consequence of the violation valued at no less than USD 450,000,000;

(3) Find that Claimant is entitled to all costs associated with these proceedings, including all legal and other professional fees and disbursements;

230  (4) Order payment of pre-award interest and post-award interest at a rate to be fixed by the Tribunal; and

(5) Grant such further relief as counsel may advise and that the Tribunal deems appropriate.

**APPOINTMENT OF ARBITRATOR**

24. Claimant appoints as arbitrator Mr. Samuel Komikovski, Konikovski LLP, Neigmagn 12, 1011 Urta, Corinesia; s.komikovski@klaw.com ; +44 0778 8283 9883.

For and on behalf of Claimant,

Anda Tuka
Tuka LLP
The Arbitration Institute of the Stockholm Chamber of Commerce ("the SCC") hereby confirms receipt of your request for arbitration.

The request for arbitration will be sent to the respondent shortly.

In accordance with Article 7 of the SCC Rules, the claimant shall pay a registration fee upon filing the request for arbitration. The registration fee amounts to EUR 3,000.00 plus VAT of EUR 750.

Claimant is hereby requested to pay EUR 3,500.00 to the following account by 29 December 2017.

Bank: Skandinaviska Enskilda Banken AB (publ)
Beneficiary: Stockholms Handelskammarens Service AB

Account No. (IBAN): SE13 5000 0000 0512 3822 5837
BIC: ESSESESS
VAT No. SE556095795201

When effecting the above payment, please indicate ESSESESS as reference and forward a copy of the bank receipt to the SCC. If payment is not made by the due date, the arbitration will be dismissed.
Should any party to the arbitration be subject to any restrictive measures adopted by the European Union, the parties shall inform the SCC without delay.

Yours sincerely,

Hanna Gabriels  
Legal Counsel  
hgabriels@chamber.se

ARBITRATION INSTITUTE OF THE  
STOCKHOLM CHAMBER OF COMMERCE

Encl: SCC Rules 2017 [intentionally not reproduced here]
Fenoscadia Limited
45 Finley Road
TC 1011
Ticadia

Counsel:

Anda Tuka
Tuka LLP
21 Villa Real Lane
TC 1009


The Arbitration Institute of the Stockholm Chamber of Commerce (“the SCC”) hereby confirms receipt of your payment of EUR 3,750.00 as registration fee inclusive of VAT.

The request for arbitration will be served to the respondent shortly.

Yours sincerely,

Hanna Gabriels
Legal Counsel

hgabriels@chamber.se

ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE
REPUBLİC OF KRONOS – PROCURATOR OF THE TREASURY

ANSWER TO REQUEST FOR ARBITRATION

29 January 2018

Claimant

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A power of attorney is attached [intentionally not reproduced here].

Respondent

Republic of Kronos

c/o Macuna Ima
Procurator of the Treasury, Ministry for Environmental Matters
Suni Street 12
1090 Vasa
Republic of Kronos

T. +41 2930 9400593 299 F. +41 2930 4058392 909 E. mima@kronos.gov.kr
DENIAL OF ALL CLAIMS

1. The Republic of Kronos (“Respondent”) respectfully submits that the version of facts presented by Fenoscadia Limited (“Claimant”) in its Request for Arbitration is incomplete, if not wholly incorrect and unsubstantiated. Respondent denies all claims advanced by Claimant in its Request for Arbitration. Furthermore, Respondent contests the jurisdiction of the arbitral tribunal over the dispute.

JURISDICTION AND ADMISSIBILITY

I. THE ARBITRAL TRIBUNAL LACKS JURISDICTION OVER THE DISPUTE

2. First and foremost, Respondent objects to the jurisdiction of the Arbitral Tribunal constituted under the SCC Arbitration Rules and Article 11, Section 3 of the BIT because Claimant is not an investor under the BIT. Claimant does not meet the requirements of Article 1 of the BIT, since it is not an enterprise of Ticadia.

3. Indeed, Kronian nationals are shareholders of a substantial part of Claimant’s voting shares and exercise effective control over Claimant. Claimant's shares are divided between a group of Kronian nationals and a private equity fund from Ticadia, which holds the majority of the voting shares but has delegated the business judgment of the company to the group of Kronian shareholders. Precisely for this reason, Claimant's board has had a majority of Kronian nationals for the past five years.

4. Moreover, as Claimant expressly admitted in its Request for Arbitration, Claimant transferred and concentrated all its operations in Kronos in 2010 and only kept merely formal ties with the Republic of Ticadia. Although Claimant's corporate documents still refer to Ticadia, its nationality factually became Kronian and its economic interest and business decisions are solely based on its activities in Kronos, thus preventing Claimant from filing claims against Respondent based on the BIT.

II. CLAIMANT’S REQUESTS ARE NOT ADMISSIBLE

5. Article 11, Section 2 of the BIT grants investors the option of pursuing a claim against the host State before (I) state courts or administrative courts of the host State, (II) other dispute resolution mechanisms previously agreed upon, when applicable, and (III) before an arbitral tribunal under the auspices of SCC and in accordance with the SCC Rules. Once the choice is made, the same claims are no longer admissible in the other fora. Hence, even if Claimant is
considered as an investor under the BIT, the complaint Claimant filed before Respondent's courts cannot be pursued in this arbitration.

6. Before seeking relief in arbitration, Claimant challenged the Decree before Respondent's courts, directly questioning the Decree's reasoning and the impacts it supposedly caused on Claimant's activities. The grounds on which Claimant argued in that lawsuit are essentially the same submitted in its Request for Arbitration.

7. Even though Claimant indeed withdrew the lawsuit prior to a judgment on its merits, it is unquestionable that Claimant's choice to seek relief before state courts prevents an Arbitral Tribunal from settling the dispute, as determined by Article 11, Section 2 of the BIT.

**MERITS**

**III. FACTUAL BACKGROUND OF THE DISPUTE**

8. Respondent has historically been known as an exporter of agricultural commodities and considered an underdeveloped country under the criteria set forth by the Organization for Economic Co-operation and Development (“OECD”), to which it is not a party.

9. In March 1997, the Kronian Federal University – a public, State-funded institution – published a study indicating the potential occurrence of a large quantity of rare earth metals in the Northern region of Respondent's territory. Demand for rare earth metals was – and continues to be – on the rise, which prompted Respondent’s Government, in August 1997, to enter into a loan with the International Finance Corporation (“IFC”) for funding further research on different rare earth metals in Respondent's territory.

10. In February 1998, funded by the IFC, the Kronian Federal University published research confirming the existence of a large area with lindoro, a high value rare earth metal. Since Respondent itself had no national company with the appropriate expertise, in November 1998 it invited foreign companies to join a bid for the exploitation of lindoro. The criteria set forth in the bidding was two-fold: proven technical expertise and best financial return for Respondent, based on the gross revenue received from the exploitation. Three competitors demonstrated nearly identical technical expertise, but Claimant ultimately emerged victorious by offering the best financial return.

11. On 1 June 2000, upon the conclusion of the bidding and the issuance of the applicable licenses, Claimant and Respondent executed the agreement for regulating the rights to exploit
lindoro granted to the former following the successful auction ("Agreement"). As per the terms thereof, Claimant had to pass to Respondent 22% of the monthly gross revenue arising out of the exploitation of lindoro for eighty years.

12. At the time, mining activities in Respondent’s territory were not at all regulated. Further, the exploitation of lindoro conducted by Claimant was generally perceived as the most significant vehicle for fostering Respondent’s economic development.

13. In March 2015, after several years of lenience with Claimant’s environmentally detrimental practices, from which Claimant has incredibly profited at the expense of the health of Respondent’s population, Respondent’s Government submitted a draft bill to the Kronian House of Representatives to minimize the externalities of environmentally sensitive activities in Respondent’s territory, including, but not limited to, Claimant’s activities. The draft bill, ultimately called Kronian Environmental Act ("KEA"), was passed on 12 June 2015.

14. Among other obligations aimed at protecting Respondent’s environment and human health, KEA requires miners to fully protect the waters of the region where the extraction takes place from toxic mine waste. Failure to comply with said obligation may lead to severe penalties, including fines, the immediate withdrawal of environmental licenses and the forfeiture of facilities, and the obligation to remedy and/or compensate the environmental damage.

15. Since 2011, Respondent’s Government has been closely following the environmental footprint of Claimant’s activities in its territory. Inspection reports made by the Ministry for Agriculture, Forestry and Land have shown that the exploitation of lindoro conducted by Claimant had a significant potential to cause environmental damage. However, in the absence of a statute conferring them authority to impose sanctions on Claimant, inspectors were limited to collecting information over the years.

16. In October 2015, Respondent’s newly created Ministry for Environmental Matters released data indicating that the volume of toxic wastes found in Respondent's rivers appeared to have sharply increased since 2010. This prompted researchers at Kronian Federal University to conduct a comprehensive study to establish whether said potential increase was caused by Claimant’s activities.

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8 Exhibit No. 2.
17. The conclusion reached by the researchers at Kronian Federal University was striking: Claimant’s activities are likely to have caused a 45%-increase in cardiovascular disease (CVD) among Respondent’s population since 2011. The study demonstrates that Claimant has failed to avoid contamination of the Rhea River, which supplies water for the vast majority of the country, with toxic waste.

18. Accordingly, to protect its environment and ultimately its population’s life, Respondent, through Presidential Decree No. 2424 dated 7 September 2016, revoked Claimant’s operating licenses and terminated the Agreement.

IV. PRESIDENTIAL DECREE NO. 2424 IS NOT EXPROPRIATORY IN NATURE

19. By enacting Presidential Decree 2424, Respondent acted within its police powers and, therefore, has not expropriated, directly or indirectly, Claimant’s property. Claimant has blatantly failed to fulfil environment-related obligations, thereby empowering Respondent to, under the KEA, unilaterally revoke Claimant’s operating licenses and terminate the Agreement.

20. Accordingly, Presidential Decree 2424 is a piece of legislation fitting squarely within Respondent’s right to regulate: it aims exclusively at preserving human life and health in Respondent’s territory against Claimant’s intolerable activity. Moreover, as provided in Article 9 of the BIT, by the time Claimant’s activities were identified as a potential cause for environmental damages, Claimant’s activities could no longer be supported by Respondent, meaning that the latter shall not compensate the former for any of the damages it requests.

COUNTERCLAIM

22. Claimant, on the other hand, has caused severe environmental damage in Respondent’s territory, in particular through the contamination of the Rhea River. However, Claimant still refuses to recognize its liability and to compensate Respondent for the costs necessary to restore the equilibrium of the Kronian environment.

23. The Study indicated that the Rhea river might be decontaminated with high-technology treatments, a cost preliminarily estimated to be USD 75,000,000. This procedure is the sole option left to adequately restore the Rhea River, preventing further damages to the river itself, to Respondent’s environment and to the local population. In addition to these costs, Respondent has incurred USD 25,000,000 in the past 12 months to supply clean water to the
population that was dependent on water from the Rhea River in the surroundings of the Site and will continue to incur comparable costs for at least five years (until the Rhea River can be decontaminated). The health costs for treating the population directly affected by the contamination of the Rhea River is also expected to run into tens of millions of USD. Kronos will also incur additional costs compensating those whose health has been damaged (or their surviving dependants) for lost earning ability, pain and suffering.

24. These costs are a direct consequence of Claimant’s breach of Article 9.2 of the BIT. Thus, based on Article 5(1)(iii) of the SCC Rules and Article 11 of the BIT, Respondent requests the Tribunal to order Claimant to pay Respondent compensation for the damages caused by Claimant, of no less than USD 150,000,000, with the final amount to be determined once the full costs can be accurately assessed.

**PRAYERS FOR RELIEF**

25. Respondent respectfully requests this Arbitral Tribunal to:

   a. Declare it lacks jurisdiction over the dispute on the grounds that Claimant is not an investor under the BIT;

   b. Declare that Claimant's requests are not admissible;

   c. Declare that Claimant's claims be entirely rejected; and

   d. Order Claimant to pay USD 150,000,000 for the damage arising out of its operations in Kronos.

**APPOINTMENT OF CO-ARBITRATOR**

26. Respondent appoints as arbitrator Ms. Kristen Webber, Webber Graham LLP, 1129 Pavillon Street, Salet City, Salet with telephone number +789 3223 6573, facsimile +789 3223 6573, and email address kristen@webbergraham.com.

For and on behalf of Respondent,

Macuna Ima
Procurator of the Treasury, Ministry for Environmental Matters
Suni Street 12
1090 Vasa
Republic of Kronos

T. +41 2930 9400593 299 F. +41 2930 4058392 909 E. mima@kronos.gov.kr
Mr. Samuel Komikovski
Konikovski LLP
Neigmagn 12, 1011 Urta
Corinesia


The SCC hereby confirms that you have been appointed as arbitrator by the Claimant in the above arbitration.

You are hereby kindly requested to complete and sign the enclosed confirmation of acceptance form, and return it to us, together with a copy of your CV, by 23 March 2018, if possible, please send the documents by email.

By the same date, please inform us whether your fee will be subject to value-added tax (VAT) and if so, at what percentage.

Please do not hesitate to contact us if you have questions.

Yours sincerely,

ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE
Stockholm, 14 February 2018

Ms. Kristen Webber
Webber Graham LLP
1129 Pavillon Street, Salet City
Salet


The SCC hereby confirms that you have been appointed as arbitrator by the Respondent in the above arbitration.

You are hereby kindly requested to complete and sign the enclosed confirmation of acceptance form, and return it to us, together with a copy of your CV, by 23 March 2018, if possible, please send the documents by email.

By the same date, please inform us whether your fee will be subject to value-added tax (VAT) and if so, at what percentage.

Please do not hesitate to contact us if you have questions.

Yours sincerely,

ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE
CONFIRMATION


540

Confirmation of Acceptance

I hereby confirm that I accept the appointment to serve as arbitrator in the above arbitration. I undertake to follow the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce and accept to be remunerated in accordance therewith.

545

Confirmation of Availability

If I become aware of any circumstance that may give rise to justifiable doubts as to my continued availability, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

550

I confirm that I, throughout the anticipated duration of the case, can and will dispose the time necessary in order for the case to be settled in the most efficient and expeditious manner possible. I am aware that the Arbitral Tribunal promptly shall establish a timetable and that the final award shall be made within six months from the date upon which the arbitration is referred to the Arbitral Tribunal.

555

Confirmation of Independence

If I become aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

560

I hereby confirm that I am impartial and independent in the above arbitration. I am not aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence.

565

Signature: (sgd.) Date: 14 March 2018

Print name: Samuel Komikovski    Place: Corinesia
CONFIRMATION


Confirmation of Acceptance
I hereby confirm that I accept the appointment to serve as arbitrator in the above arbitration. I undertake to follow the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce and accept to be remunerated in accordance therewith.

Confirmation of Availability
If I become aware of any circumstance that may give rise to justifiable doubts as to my continued availability, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

I confirm that I, throughout the anticipated duration of the case, can and will dispose the time necessary in order for the case to be settled in the most efficient and expeditious manner possible. I am aware that the Arbitral Tribunal promptly shall establish a timetable and that the final award shall be made within six months from the date upon which the arbitration is referred to the Arbitral Tribunal.

Confirmation of Independence
If I become aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

I hereby confirm that I am impartial and independent in the above arbitration. I am not aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence.

Signature: (sgd.) Date: 16 March 2018

Print name: Kristen Webber       Place: Salet
Ms. Lyanna Hablado
Stark LLP
1211 Silver Street,
Dornia


The SCC hereby confirms that you have been appointed as Chairperson Arbitrator by the Claimant-appointed arbitrator Mr. Samuel Komikovski and by the Respondent-appointed arbitrator Ms. Kristen Webber.

You are hereby kindly requested to complete and sign the enclosed confirmation of acceptance form, and return it to us, together with a copy of your CV, by 4 April 2018, if possible, please send the documents by email.

By the same date, please inform us whether your fee will be subject to value-added tax (VAT) and if so, at what percentage.

Please do not hesitate to contact us if you have questions.

Yours sincerely,

ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE
CONFIRMATION


Confirmation of Acceptance
I hereby confirm that I accept the appointment to serve as arbitrator in the above arbitration. I undertake to follow the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce and accept to be remunerated in accordance therewith.

Confirmation of Availability
If I become aware of any circumstance that may give rise to justifiable doubts as to my continued availability, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

I confirm that I, throughout the anticipated duration of the case, can and will dispose the time necessary in order for the case to be settled in the most efficient and expeditious manner possible. I am aware that the Arbitral Tribunal promptly shall establish a timetable and that the final award shall be made within six months from the date upon which the arbitration is referred to the Arbitral Tribunal.

Confirmation of Independence
If I become aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence, I undertake to immediately inform, in writing, the parties and the other arbitrators thereof.

I hereby confirm that I am impartial and independent in the above arbitration. I am not aware of any circumstance that may give rise to justifiable doubts as to my impartiality or independence.

Signature: (sgd.) Date: 2 April 2018

Print name: Lyanna Hablado Place: Dornia
Stockholm, 23 April 2018

Fenoscadia Limited

Counsel:
Anda Tuka
Tuka LLP
21 Villa Real Lane, TC 1009
Republic of Ticadia

Republic of Kronos
Counsel:
Macuna Ima
Procurator of the Treasury, Ministry for Environmental Matters

Suni Street 12, 1090 Vasa
Republic of Kronos

Cc:
Lyanna Hablado
Samuel Komikovski
Kristen Webber


The parties have jointly appointed as Chairperson Arbitrator.

Ms. Lyanna Hablado
Stark LLP
1211 Silver Street,
Dornia
Tel: +89 2374 9282 2232
Facsimile: +89 2374 9282 2232
Email: l.hablado@slaw.com

The SCC Board has made the following decisions:

(1) The SCC does not manifestly lack jurisdiction over the dispute.
(2) The case shall be decided under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.
(3) The Arbitral Tribunal shall consist of three arbitrators.
(4) Appointed as Chairperson is:
Ms. Lyanna Hablado  
Stark LLP  
1211 Silver Street,  
Dornia  
Tel: +89 2374 9282 2232  
Facsimile: +89 2374 9282 2232  
Email: l.hablado@slaw.com

(5) Appointed as Arbitrator on behalf of Claimant is:  
Mr. Samuel Komikovski  
Konikovski LLP  
Neigmagn 12, 1011 Urta  
Corinesia  
Tel: +44 0778 8283 9883  
Facsimile: +44 0778 8283 9883  
Email: s.komikovski@klaw.com

(6) Appointed as Arbitrator on behalf of Respondent is:  
Ms. Kristen Webber  
Webber Graham LLP  
1129 Pavillon Street, Salet City  
Salet  
Tel: +789 3223 6573  
Facsimile: +789 3223 6573  
Email: kristen@webbergraham.com

(7) The Seat of the Arbitration is Meraki, Sand.

(8) The Advance on Costs is determined to EUR 483,000.00 and shall be paid by the parties in equal shares. The amount is the sum of the following estimated arbitration costs, inclusive of VAT.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson’s fee</td>
<td>EUR 160,000.00</td>
</tr>
<tr>
<td>Claimant’s arbitrator’s fee</td>
<td>EUR 100,000.00</td>
</tr>
<tr>
<td>Respondent’s arbitrator’s fee</td>
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<tr>
<td>Administrative fee</td>
<td>EUR 60,000.00</td>
</tr>
<tr>
<td>Security for expenses</td>
<td>EUR 63,000.00</td>
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</tbody>
</table>

Fenoscadia Limited shall pay EUR 241,500.00 and Republic of Kronos shall pay EUR 241,500.00. The Registration Fee has been deducted from Claimant’s part. Payment shall be made to the following account by 31 May 2018.

Bank: Skandinaviska Enskilda Banken AB (publ)

BIC: ESSESESS

Beneficiary: Stockholms Handelskammare's Service AB
IBAN: SE13 5000 0000 0512 3822 5837

Fenoscadía Limited shall indicate V2018/003858C and Republic of Kronos shall indicate V2018/003858R as references.

As soon as the advances have been paid, the SCC will refer the case to the arbitral tribunal.

Yours sincerely,

THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

Encl: Arbitrators' CV and Confirmations of Acceptance [intentionally not reproduced here].
Fenoscadia Limited
Counsel:
Anda Tuka
Tuka LLP
21 Villa Real Lane, TC 1009
Republic of Ticadia

Republic of Kronos
Counsel:
Macuna Ima
Procurator of the Treasury, Ministry for Environmental Matters
Suni Street 12, 1090 Vasa
Republic of Kronos


The Arbitration Institute of the Stockholm Chamber of Commerce (the SCC) hereby confirms receipt of the advance on costs made by Fenoscadia Limited and the Republic of Kronos.

The SCC has received EUR 241,500 from Fenoscadia Limited, and EUR 241,500 from the Republic of Kronos.

Yours sincerely,

Hanna Gabriels
Legal Counsel
hgabriels@chamber.se

ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE
PROCEDURAL ORDER NO. 1

Made on 8 June 2018

The seat of arbitration is Meraki, Sand


Claimant:

Fenoscadia Limited
45 Finley Road, TC 1011
Republic of Ticadia

Claimant’s counsel:

Anda Tuka
Tuka LLP
21 Villa Real Lane, TC 1009
Republic of Ticadia

Respondent:

Republic of Kronos
c/o Macuna Ima
Procurator of the Treasury, Ministry for Environmental Matters
Claimant is Fenoscadia Limited and Respondent is the Republic of Kronos (together “the Parties”). After consultation with parties inter alia by a conference call held on 1 June 2018, in accordance with Article 28 of the SCC Rules, the Tribunal adopts the following Order governing the Proceedings:

1. In view of the circumstances of this arbitration, and having given the parties a reasonable opportunity to make written comments, the Court has determined, pursuant to Article 25 of the SCC Arbitration Rules, that the seat of the Arbitration shall be Meraki, Sand.

2. The proceedings shall be governed by the SCC Arbitration Rules 2017 and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In case there is an inconsistency between the two, the latter shall prevail to the extent of the inconsistency.

3. The language of the Proceedings shall be English.

4. The Tribunal and the Parties have agreed that, although jurisdiction, admissibility and liability might be addressed in separate stages, in these proceedings they shall be dealt with together in a “Main Stage” followed by a stage for costs and, as appropriate in accordance with the tribunals findings in the Main Stage, for quantum (“Quantum and Costs Stage”).
5. The Main Stage will address the following questions:

   a) Whether the tribunal has jurisdiction over the dispute;

   b) Whether Claimant’s claims are admissible before the arbitral tribunal in view of the lawsuit filed before the domestic courts of Respondent;

   c) Whether the enactment of Presidential Decree No. 2424 its implementation and other related acts of Respondent amount to expropriation of Claimant’s investment in violation of the BIT; and

   d) Whether Respondent’s counterclaims are admissible before the tribunal.

During the Main Stage, the Tribunal will hold hearings on the issues of jurisdiction, of admissibility of claims and counter claims and of liability, and subsequently render an interim Award.

6. As agreed between the Parties and the Tribunal, the evidence that may be relied on in this arbitration will be limited to (i) facts and assertions contained in the Request for Arbitration and the Answer to it, the “Statement of Uncontested Facts” appended to this Order (with no admission being made by either of the Parties as to correctness of the inferences from facts asserted by the other Party in its respective submission); (ii) publicly available information; and (iii) responses to the questions presented by the Parties’ counsel in accordance with the procedure described below:

   • By 1 June 2018 factual questions that require clarification shall be posted in accordance with the procedure described at http://fdimoot.org/teams/clareqs.php;

   • The Parties shall then confer and seek to agree as soon as practicable on the responses to those questions. The Parties’ agreed responses shall be appended to the case file at http://fdimoot.org/problem.pdf;

   • By 8 August 2018 another set of factual questions may be posted in accordance with the same procedure referenced above. The responses to those questions shall be appended as described above.

7. The provisional timetable for the Proceedings shall be the following:

Main Stage of the Proceedings:

   • Only one round of written submissions shall be made by the Parties. Pursuant to Article 29 of the SCC Rules, the Statement of Claim is to be submitted to the Tribunal no later than 17 September 2018; the Statement of Defence is to be submitted to the
Tribunal no later than 24 September 2018. The Tribunal may direct the Parties to submit Skeleton Briefs if it finds them necessary for the proper consideration of the issues in dispute.

- During the conference call, both parties agreed that Claimant will not submit a statement of Reply to answer the counterclaims made by Respondent. Instead, Claimant will address the counterclaims in its Statement of Claim itself.
- Considering that it is appropriate to hold hearings in the present case, both Parties are invited to attend the hearings scheduled for 8 to 11 November 2018 at Stockholm University, Stockholm, Sweden.

**Quantum and Costs Stage of the Proceedings:**

In its interim Award, the Tribunal will provide instructions on the conduct of the Quantum and Costs Stage of the proceedings in accordance with its findings in the Main Stage.

8 JUNE 2018

/signature/

Ms. Lyanna Hablado (Chairperson)

/signature/ /signature/

Mr. Samuel Komikovski Ms. Kristen Webber


3. In March 1997, the Kronian Federal University (“The University”) – a public, State-funded institution– reported that a mineral reserve of a rare metal had been discovered in the Northern region of Respondent’s territory. In August 1997, the Kronian Government took out a loan from the International Finance Corporation (“IFC”) to fund further research. With the funds of the IFC, Respondent was able to investigate further and confirm the University’s previous report, labelling the mineral resource as a proved ore reserve of lindoro, a high value rare earth metal.

4. Given that there were no national companies in Kronos with the required expertise to extract the metal, in November 1998, Respondent invited foreign companies to participate in public auction for the concession of the rights to extract lindoro from an area of 1,071,000 m² nestled in Respondent’s inner territory (“The Site”). The criteria to be analysed were: technical expertise and financial return for Respondent, based on the net revenue received from the activity.

5. Three competitors participated in the bidding. All demonstrated nearly identical technical expertise, but Fenoscadia Limited (“Fenoscadia” or “Claimant”) offered the highest financial return and thus won the public auction on 20 April 2000.

6. Claimant is a limited liability company that was incorporated under the laws of the Republic of Ticadia in 1993. It has a worldwide reputation for exploration and exploitation of rare earth metals. By the time of its incorporation, Claimant had five Ticadian nationals as its shareholders. However, in 1998, 65% of the shares with voting rights of Claimant were acquired by a private equity fund also organized under the law of Ticadia. Further, in
2012, three Kronian nationals acquired the remaining 35% of Claimant’s shares.

7. Claimant’s management is in the hands of a board of directors elected by its shareholders. For the past five years, the board has comprised of a majority of Kronian nationals. The board also appoints the Chief Executive Officer of the company. The current CEO resides in Ticadia, but often travels to and stays in Kronos for long durations for Claimant’s business. The Kronian shareholders exert considerable influence over Claimant’s decision-making specifically in relation to the operation and management of its mining activities in Kronos, due to their experience and expertise in the mining industry acquired in other countries.

8. On 1 June 2000, upon the conclusion of the bidding, Claimant and Respondent entered into the concession agreement (“The Agreement”) which regulated the rights and obligations of each party in relation to the extraction of lindoro in The Site. By virtue of The Agreement Claimant was granted a concession to exploit lindoro in The Site for eighty years. In return, Claimant had to pay Respondent 22% of the monthly gross revenue relating to the extraction and commercialization of lindoro. Actual exploitation of lindoro started in August 2008.

9. The Agreement also provided, on the one hand, that Claimant owned property in Respondent’s territory and, on the other hand, that every two years agents of Respondent’s Ministry for Agriculture, Forestry and Land would carry out inspections.

10. At the time of the execution of The Agreement, Respondent had neither a regulatory framework for the mining industry nor a comprehensive environmental regulation, except for internal rules of the Ministry for Agriculture, Forestry and Land for the inspections. Said rules were based on Annexes IV and VIII of the Convention on the Transboundary Effects of Industrial Accidents, although Kronos is not a party to this convention. Therefore, The Agreement was virtually the only instrument regulating the exploitation of lindoro in the Site.

11. Since the Site was the only portion of Respondent’s territory where lindoro could be extracted, Claimant effectively was the only company extracting lindoro in Respondent’s territory ever since its discovery. Claimant directly employed 200 people overall, all of them Respondent’s citizens. 40 of these employees were responsible for correctly disposing the waste originated from the extraction of lindoro.

12. In 2010, Claimant decided to transfer and concentrate almost all its mining activities and resources in Kronos and effectively shut down its mining operations in Ticadia.
Nonetheless, Claimant remains incorporated under the laws of Ticadia and all of its business management formalities including most meetings of the board are carried out in Ticadia. However, there was a growing trend in the company that the decisions of the board of directors were favoring its interests in Kronos. Most of these decisions were implemented in Kronos, given the concentration of company’s activities there.

13. At that time, Respondent’s Government strongly supported Claimant in its decision to fully transfer its mining activities to Respondent’s territory. Until the Nationalist Party took office in January 2015, Respondent’s Government had publicly assured both through Presidential statements published on Respondent’s official website and Presidential speeches that the lack of a specific regulatory framework for mining activities was not a risk for Claimant’s activities.\footnote{Exhibit No. 3.}

14. In October 2014, Mr. Curat Bazings, a candidate of the Nationalist Party – a center-left political party with a strong environmentalist and nationalist political agenda – won the Presidential election in Kronos promising to significantly stimulate, through an incentive-oriented policy, the national industry. The Nationalist Party also emerged victorious the general elections for the Kronian House of Representatives ("The House") for the first time in the party’s history, granting it a robust parliamentary majority. On 1 January 2015, Mr. Bazings and the elected congressmen and congresswomen took office for a 5-year term.

15. In March 2015, Mr. Bazings sent to The House a draft bill for regulating environmental-sensitive activities in Respondent’s territory, including mining. The opposition party (i.e., the Liberal Party of Kronos, which had ruled Respondent for 60 years until the Nationalist Party took office) heavily criticized the draft bill for being overly restrictive, unduly affecting mining activities in Respondent’s territory, and negatively impacting the national economy.

16. On 12 June 2015, The House passed the “2015 Kronian Environmental Act” ("KEA"). KEA was verbatim across the draft bill crafted by Mr. Bazings and mostly based on the obligations and definitions set forth at the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Among others, KEA dictated miners to protect the waters of the regions where the extraction took place from toxic mine waste. Otherwise, they could be subject to severe
penalties, fines, the immediate withdrawal of environmental licenses with the forfeiture of facilities, and the obligation to compensate for the environmental damage.

17. KEA was passed significantly quicker than the historical average period for the consideration of draft bills in The House (i.e., 15 months). This was because the Speaker of the House – a congresswoman of the Nationalist Party – waived the public hearing required by Article 59 of the Kronian Constitution whenever a draft bill “may directly affect the national industry of Kronos, as defined by the Speaker of the Kronian House of Representatives”. The Liberal Party of Kronos argued that the decision by the Speaker of the House was a clear signal that Respondent’s Government had put in motion a coordinated scheme to replace Claimant for a domestic enterprise, whereas the Nationalist Party claimed the waiver was a political decision entirely within the constitutional authority of the Speaker of the House.

18. On the day of KEA’s passing, Respondent’s Government created the Ministry for Environmental Matters, in charge of formulating and enforcing Respondent’s environmental-related policies – including KEA itself. Among the missions of the newly created Ministry was the strict supervision of Claimant’s activities, which included the inspections hitherto carried out by the Ministry for Agriculture, Forestry and Land.

19. In September 2015, the Ministry for Environmental Matters conducted its first inspection (e.g., the last one pursuant to The Agreement). As in all former inspections, Claimant was found in full compliance with its environment-related obligations under the Agreement.

20. In October 2015, the Ministry for Environmental Matters in Kronos released data indicating that the concentration of toxic waste found in Respondent’s largest river, the Rhea River, had sharply increased since 2010. The data was largely based on the inspections carried out since 2011 by the Ministry for Agriculture, Forestry and Land (and most recently by the Ministry for Environmental Matters itself).

21. Subsequently, the Federal University submitted a funding request to further investigate the data published by the Ministry for Environmental Matters. The request was granted in November 2015, and the University was awarded USD 250,000 to conduct research on whether the exploitation of lindoro had contaminated the Rhea River waters.

22. On 15 May 2016, The University published a comprehensive study (“The Study”), which concluded “the contamination of the Rhea River is undoubtedly a direct consequence of the exploitation of lindoro”. The Study does not conclusively establish a causal link between the exploitation of lindoro and the rising incidence of specific diseases (e.g.,
cardiovascular disease and microcephaly, both virtually non-existent prior to Claimant’s operations in Respondent’s territory) in the population of the surrounding areas. However, the Study acknowledges the presence of graspel, a toxic component released during the exploitation of lindoro, in the Rhea River waters. At least 10 different studies conducted by top-tier universities and independent researchers across the globe over the last 5 years have demonstrated a connection between water contamination by graspel and an increase in CVD in the population of the surrounding areas, but said connection is not widely accepted.

23. On 7 September 2016, Mr. Bazings issued the Presidential Decree No. 2424 (“The Decree”) which prohibited, with immediate effects, the exploitation of lindoro in all Respondent’s territory, revoked Claimant’s license, and terminated The Agreement. The Decree immediately rendered Claimant’s property in Respondent’s territory, notably its facilities for the exploitation of lindoro, nearly useless. 140 employees, including all 40 in charge of proper waste disposal, were dismissed within a week of the issuance of the Decree.

24. Claimant stated in media press conference that if the Decree were sustained, it would inevitably “become unable to honor contractual obligations with purchasers and suppliers, accumulating unbearable losses”, but that it would “not file for bankruptcy”, since it “remained confident in reaching a negotiated solution” with Respondent’s Government.

25. On 8 September 2016, Claimant applied to the Kronos federal court seeking to suspend the effects of the Decree until negotiations with the Government took place. In a roundtable broadcast by Kronos’s largest television channel, Claimant’s CEO reminded viewers of the benefits Claimant had brought to Kronos and directly attacked the measures taken by Respondent’s current government, claiming they targeted Claimant to take it out of business. Notwithstanding these allegations, Claimant’s CEO stressed the company’s ties to the people of Kronos and its desire to negotiate with the Government.

26. On 22 February 2017, the Government spokesperson announced that the Decree would not be revoked. Claimant withdrew its appeal to Kronos’ Circuit Court.

27. On 27 April 2017, Claimant notified Respondent’s Ministry for Foreign Affairs of the dispute and of its intention to pursue legal remedies under the BIT if an agreement was not reached through negotiations. Respondent declined to negotiate and has not communicated with Claimant since. The cessation of revenues suffered by Claimant led it to completely shut down its facilities in Respondent’s territory. All remaining 60 employees were then
dismissed.

28. In August 2017, a well-known mining sector magazine published a story about the creation of a new company to restart the extraction of lindoro in the Site by 2019. This company would be the result of a joint venture between a Kronian state-owned company and an enterprise from the Republic of Ibi. The latter is an adjoining country to Respondent and its current government is sympathetic to the Kronian Nationalist Party’s ideology. The cited rumours that Kronos’ Government would be willing to revoke the Decree should the negotiations to establish the joint venture succeed.

29. On 10 November 2017, Claimant filed its request for arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce.
AGREEMENT BETWEEN THE REPUBLIC OF TICADIA AND THE REPUBLIC OF KRONOS FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Ticadia and the Republic of Kronos, hereinafter referred to as the “Contracting Parties”;

DESIRING to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between the Contracting Parties, and to the promotion of sustainable development;

HAVING resolved to conclude an Agreement concerning the promotion and reciprocal protection of investment;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

1. The term “investment” means:

   (a) an enterprise;

   (b) a share, stock or other form of equity participation in an enterprise;

   (c) a loan made to an enterprise, or a bond, debenture or other debt instrument of an enterprise, provided that the loan or debt security is treated as regulatory capital by the Contracting Party in whose territory the financial institution is located;

   (d) an interest in an enterprise that entitles the owner thereof to a share in the income or profits of the enterprise;

   (e) an interest in an enterprise that entitles the owner thereof to a share in the assets of that enterprise upon dissolution;
(f) an interest arising from the commitment of capital or other resources to economic activity in the territory of a Contracting Party, such as under:

(i) a contract involving the presence of an investor’s property in the territory of the Contracting Party, including a turnkey or construction contract, or a concession, or

(ii) a contract where remuneration depends substantially on the production, revenues or profits of an enterprise;

(g) intellectual property rights; or

(h) any other tangible or intangible, movable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose.

2. For greater certainty, it is understood that “investment” does not mean:

(a) a claim to money that arises solely from:

(i) a commercial contract for the sale of a good or service by a national or enterprise in the territory of a Contracting Party to a national or an enterprise in the territory of the other Contracting Party;

(ii) an extension of credit in connection with a commercial transaction, such as trade financing; or

(iii) any other claim to money that does not involve the kinds of interests set out in Article 1.1.

3. The term “covered investment” means, with respect to a Contracting Party, an investment:

(i) in its territory; (ii) by an investor of the other Contracting Party; (iii) existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter; and (iv) that has been admitted in accordance with the hosting Contracting Party’s laws and regulations.

4. The term “investor of a Contracting Party” means a Contracting Party, or a person or an enterprise of a Contracting Party, that seeks to make, is making, or has made an investment in the other Contracting Party's territory. For greater certainty, it is understood that an investor seeks to make an investment only when the investor has taken concrete steps necessary to make the investment.
5. The term "return" means an amount derived from or associated with an investment, including profit, dividend, interest, capital gain, royalty payment, management, technical assistance or other fee, or returns in kind;

6. The term "territory" means the territory of the hosting Contracting Party.

7. The term "associated activities" includes the following:
   (a) the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business;
   (b) the making, performance and enforcement of contracts;
   (c) the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and
   (d) the borrowing of funds, the purchase of foreign exchange for imports, and the purchase, issuance, and sale of equity shares and other securities.

ARTICLE 2

SCOPE

1. This Treaty shall apply to measures adopted or maintained by a Party relating to an investor of the other Contracting Party or a covered investment.

2. The obligations in Articles 4 to 9 apply to a person of a Contracting Party when it exercises a regulatory, administrative or other governmental authority delegated to it by that Contracting Party.

ARTICLE 3

PROMOTION OF INVESTMENTS

1. Each Contracting Party shall encourage the creation of favourable conditions for investment in its territory by investors of the other Contracting Party and shall admit such investments in accordance with this Agreement.

2. The Contracting Parties shall encourage the creation of jobs in Ticadia through Kronosian investments and the creation of jobs in the Kronos through Ticadian investments.

ARTICLE 4

NATIONAL TREATMENT
1. Each Contracting Party shall accord to an investor of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

3. The treatment accorded by a Contracting Party under the preceding paragraphs means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

**ARTICLE 5**

**MOST-FAVOURED-NATION TREATMENT**

1. Each Contracting Party shall accord to an investor of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, sale, liquidation, termination or other disposition of an investment in its territory.

2. Each Contracting Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, sale, liquidation, termination or other disposition of an investment in its territory.

3. For greater certainty, the provisions of the preceding paragraphs shall not be construed so as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments the benefits of any treatment under any bilateral or multilateral international agreement in force prior to the date of entry into force of this Agreement.

**ARTICLE 6**

**MINIMUM STANDARD OF TREATMENT**

1. Each Contracting Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.
ARTICLE 7
EXPROPRIATION

1. Neither Contracting Party shall nationalize or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalization or expropriation except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of due compensation in accordance with paragraphs 2 and 3 below.

2. The compensation referred to in the preceding paragraph must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until date of payment.

ARTICLE 8
TRANSPARENCY

1. Each Contracting Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting a matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Contracting Party to become acquainted with them.

2. To the extent possible, each Contracting Party shall (a) publish in advance any measure referred to in the preceding paragraph that it proposes to adopt, and (b) provide interested persons and enterprises and the other Contracting Party a reasonable opportunity to comment on that proposed measure, with due regard to the domestic laws of the concerned Contracting Party. Should such measure impact a covered investment, the concerned Contracting Party shall endeavour its best efforts to provide interested persons and enterprises a fair opportunity to discuss the proposed measure prior to its entry into force.

3. Upon request by a Contracting Party, the other Contracting Party shall provide information on any measure that may have an impact on a covered investment, unless such information
may be confidential in light of the latter’s domestic laws or the latter’s denial of access thereto based on grounds admitted under international law.

**ARTICLE 9**

**HEALTH, SAFETY, AND ENVIRONMENTAL MEASURES, AND CORPORATE SOCIAL RESPONSIBILITY**

1. The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Contracting Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, those measures to encourage the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Contracting Party considers that the other Contracting Party has offered such an encouragement, it may request consultations with the latter, and the two Contracting Parties shall consult with a view to avoiding the encouragement.

2. In pursuit of sustainable development, each Contracting Party shall strive to minimize, in an economically efficient manner, harmful environmental impacts occurring within its territory. In doing so, each Contracting Party shall act in a cost-effective manner. In its policies and actions, each Contracting Party shall strive to take precautionary measures to prevent or minimize environmental degradation. The Contracting Parties agree that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting investment or international trade.

3. Each Contracting Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies. These standards include, but are not limited to, those expressed in statements of principle that have been endorsed or supported by the Contracting Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption.

**ARTICLE 10**

**GENERAL EXCEPTIONS**

1. For the purpose of this Agreement, each of the Contracting Parties may adopt or enforce a measure necessary:

   (a) to protect human, animal or plant life or health;
(b) to ensure compliance with domestic law that is not inconsistent with this Agreement nor with rules and principles of international law; or

(c) for the conservation of living or non-living exhaustible natural resources.

2. However, the measures undertaken pursuant to the preceding paragraph must not be:

(a) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors; or

(b) a disguised restriction on international trade or investment.

ARTICLE 11

DISPUTE SETTLEMENT

1. For purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party arising out of or relating to (a) an investment agreement between that Contracting Party and such person or enterprise; (b) an investment authorization granted by that Contracting Party's foreign investment authority (if any such authorization exists) to such person or enterprise; or (c) an alleged breach of any right conferred or created by this Agreement with respect to an investment.

2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute for resolution: (a) to the domestic courts or administrative tribunals of the Contracting Party that is a party to the dispute; or (b) in accordance with any applicable, previously agreed dispute-settlement procedures; or (c) in accordance with the terms of the third paragraph below.

3. Provided that the national or company concerned has not submitted the dispute for resolution under (a) or (b) of the second paragraph, and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration under the Arbitration Institute of the Stockholm Chamber of Commerce and in accordance with its Arbitration Rules.

4. Each Contracting Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under the third paragraph. Such consent, together with the
written consent of the national or company when given under the third paragraph shall satisfy the requirement for an "agreement in writing" for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.

5. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Kronosland on 30 June 1995, in English language only.

Exhibit 1: Global Mining Publication – The New Gold is Not Golden

The New Gold is Not Golden

The development of high technology has a new ally – lindoro. Since its discovery in 1999, only a few people have had access to this metal. However, this is soon likely to change.

lindoro is truly a rare-earth metal, having been accidentally discovered and identified by Kronosian public officials in one of Kronos’ valleys, during the conduct of a ten-month long search for new sites for extraction of iron-ore.

Technology developers have tested samples of lindoro, and have expressed excitement over the economic advantages lindoro can bring to the industry. It could reduce up to 50% of the current costs of materials applied in the manufacturing the motherboard of high-technology computers and smartphones.

At present, Kronos is under international pressure to liberalize the exploitation of lindoro, however, the country remains hesitant due to the lack of a domestic operators or a regulatory framework for extractive industries.

The rumour in the industry is that the government of Kronos is planning to conduct a public auction, open to foreigners, in 2000.
Exhibit 2: Concession Agreement

CONCESSION AGREEMENT

Between the Republic of Kronos, represented in this instrument by the Federal Ministry for Economics, and Fenoscadia Limited (hereinafter, the “Company”; together with the Republic of Kronos, the “Parties”), a private entity registered under the laws of the Republic of Ticadia, with business address at 45 Finley Road, TC 1011, Republic of Ticadia, represented in this instrument by its Chief Executive Officer, executed to formalize the result of the Public Auction held by the Republic of Kronos in 20 April 2000 for the exploitation of LINDORO at a 1,071,000 m² area (hereinafter, the “Site”) located at the coordinates indicated in the map attached to this Agreement [intentionally not reproduced here] and in accordance with the terms set forth herein.

1. SCOPE OF THE AGREEMENT

1.1. This Agreement establishes the terms for the exploitation of LINDORO at the Site and the rights and obligations to be regarded by each of the Parties throughout the performance of this Agreement.

1.2. With this Agreement, the Company receives the concession right for the exclusive exploitation of LINDORO at the Site, for the duration of this Agreement, with the obligation to pay the fees to the Republic of Kronos, as established herein.

1.3. The date of effective commencement of the exploitation of LINDORO shall be registered in writing by the Parties in the sample form attached to this Agreement (Attachment 3), which shall be considered as part of the Agreement.

2. OBLIGATIONS OF THE COMPANY

2.1. The Company must observe the laws in force in the Republic of Kronos throughout the performance of this Agreement, with the adaptations that may be necessary in light of new laws and regulations.

2.2. The Company commits to comply with good practices for the sustainable exploitation of LINDORO, including the disposal of any waste resulting from the activities directly or indirectly related to the exploitation of LINDORO.

2.2.1. The exploitation of LINDORO is subject to the issuance of the public licenses required by the Ministry for Agriculture, Forestry and Landas described in Attachment 2 of this Agreement. This list may be modified in light of new laws and regulations, which
will be considered as automatic amendments to this Agreement, unless the Parties expressly agree otherwise.

2.2.2. Every two (2) years, starting from the Commencement Date, the Company shall enable and assist agents from the Ministry for Environmental Matters to inspect its activities at the Site and the related disposal activities. Should the inspection result in the approval of the activities undertaken by the Company, the Ministry for Environmental Matters shall issue a certificate valid for another two (2) years.

2.2.3. The Ministry for Agriculture, Forestry and Land is entitled to conduct news inspections at any given moment, with prior notice given to the Company.

 [...]  

3. FEES DUE FOR THE CONCESSION RIGHTS

3.1. As from the Commencement Date and every following month, the Company shall pay to the Republic of Kronos the fees for the concession rights calculated as twenty-two percent (22%) of the gross monthly revenue the Company receives from the exploitation of LINDORO.

 [...]  

4. DURATION

This Agreement and the rights and obligations set forth herein shall remain valid and enforceable for eighty (80) years, from the date of its execution.

5. TERMINATION AND PENALTIES

 [...]  

6. APPLICABLE LAW

This Agreement and the obligations each Party undertakes herein are governed by the laws of the Republic of Kronos, including other international laws and instruments that bind the Republic of Kronos.

7. DISPUTE RESOLUTION

Any dispute arising directly out of this Agreement, including its termination, shall be submitted to the courts of the Republic of Kronos, which hold exclusive jurisdiction.

Executed in Kronos, on 1 June 2000.
Exhibit 3: Presidential statements extracted from Government’s website

Public note from 1 September 2008
The President and the Minister for Agriculture, Forestry and Land joined Fenoscadia’s CEO at the inauguration of the exploitation activities held last week. After the premises were built and the licenses issued, Fenoscadia is now ready to start the exploitation of lindoro in Kronos. The President announced that the fees the Government will be receiving for this activity are crucial for growth of the country’s economy. The President expects that the coming years of this partnership with Fenoscadia will be of great importance to the development of Kronos and the well-being of its people. To quote the President, "Fenoscadia has our full support to increase the efficiency of its activities – the better their results, the better for Kronos!"

Excerpt of Presidential Annual Speech of 2 January 2010
[...] In the past years, Kronos has received ever-growing revenues from the exploitation of lindoro. The investment made by Fenoscadia has enabled a more productive result and with the support of our Government, the exports have grown rapidly. We are glad to have Fenoscadia as one of the pillars of Kronos’ growing economy. We assure our support in the upcoming year in making this profitable relationship even more fruitful for both sides. [...] 

Excerpt of Presidential Annual Speech of 2 January 2013
After the great payoffs of the investments our government made in agricultural innovation, we now turn to the results of the mining sector, which previous administrations have disregarded as the potential catalyst of our economy.

The exploitation of lindoro has proven them wrong! Not only has the income received by the Federal Government grown in the past years, but the local communities surrounding Fenoscadia’s activities have also experienced transformations changing the quality of life for everyone involved.
Exhibit 4: Kronian Federal University Study

Kronian Federal University

School of Environment and Climate Change

STUDY ON EXPLOITATION OF LINDORO IN KRONOS’ TERRITORY

Date of the Study: May 15, 2016

Funded by the Ministry for Environmental Matters of Republic of Kronos

EXECUTIVE SUMMARY

Background and Context

The scope of this study is the assessment of the environmental externalities of the exploitation of lindoro conducted in Kronos’ territory, which effectively began in 2008. This study has focused on analyzing whether the exploitation of lindoro is damaging the environment of the surrounding areas and/or causing health conditions in the population.

This study is based upon independent investigation conducted from March 2015 to February 2016 by the School of Environment and Climate Change of the Kronian Federal University. During the investigation, researchers collected and analyzed water samples from the Rhea River. Researchers also examined eighty men and eighty women (including twenty-four pregnant women), ranging from sixteen to sixty-five years old, as well as eighty newborn infants. All persons examined for this study live in the surrounding areas of the lindoro exploitation.

This study also analyzed the official data collected by the Kronian Government through both the Ministry of Health and the Ministry for Environmental Matters since 2011.

This study was fully funded by the Ministry for Environmental Matters of Republic of Kronos. The School of Environment and Climate Change of the Kronian Federal University is appreciative of the support extended by the Kronian Government, without which this study would not have been possible.

Key Conclusions

Contamination of Rhea River because of the exploitation of lindoro

- The samples revealed an abnormal amount of heavy metals and graspel, a toxic substance released during the exploitation of lindoro, in the waters of Rhea River. The current level of contamination of the waters of the Rhea River places it among the top three most
polluted rivers in the world. The contamination of the Rhea River is undoubtedly a direct consequence of the exploitation of lindoro.

- Decontamination of the Rhea River remains feasible, provided that urgent action is taken by Kronian authorities. The costs for a complete decontamination of the waters of Rhea River is estimated to amount to no less than USD 75 Million. Given the current level of contamination of the waters of the Rhea River, decontamination efforts might take at least five years.

**Cardiovascular disease (CVD)**

- The data collected by the Kronian Government shows that, since 2011, there has been a constant yearly increase in cardiovascular disease (“CVD”) in the population of the areas surrounding of the exploitation of lindoro in Kronos. Incidence of CVD among the Kronian population has risen by 45% since 2011.

- It is not yet possible to conclusively confirm a causal link between the exploitation of lindoro and the rising incidence of CVD in the population of the surrounding areas. However, the study cannot identify any other factor other than exploitation of lindoro that may have caused such sudden increase in CVD over the past six years.

**Microcephaly**

- Of the newborns examined, 88% have shown early symptoms of microcephaly, such as disturbances in motor functions and facial distortions. Microcephaly was virtually non-existent in Kronos until 2012 when the first cases appeared, although sporadically.

- A longer sampling window is required to conclusively confirm that the exploitation of lindoro has triggered microcephaly in Kronos. Nevertheless, as stated above, it is already possible to assert that the exploitation of lindoro is associated with the contamination of the waters of the Rhea River, which may be a cause for microcephaly in newborns of the surrounding areas.
Exhibit 5: Presidential Decree No. 2424

PRESIDENTIAL DECREE NO. 2424

By the authority vested in me as President of the Republic of Kronos by the Constitution and laws of the Republic of Kronos, particularly the Kronian Environmental Act of 12 June 2015,

CONSIDERING

the utmost importance of the protection of the environment, our natural resources, and human life in Kronian territory,

the exploitation of lindoro has recently been found to be potentially harmful for the environment and human life;

the Kronian Environmental Act requires mining and manufacturing industries to take all reasonable precautions to prevent harm to the environment and human health;

the Kronian Environmental Act requires polluters remedy all such harm caused that they cause.

I hereby DECLARE as follows:

Article 1 – Exploitation of lindoro in Kronian territory is hereby prohibited.

Article 2 – All government contracts, licenses, and concessions for the exploitation of lindoro in Kronian territory are immediately and irrevocably terminated with no compensation owed by the Kronian Government.

Article 3 – Companies exploiting lindoro in Kronian territory shall fully compensate all proven environmental damages caused by the exploitation of lindoro.

Article 4 – By way of security for such compensation, all extracted lindoro owned by such companies shall be seized.

Article 5 – This Decree enters into force five days after its publication.

I order that this Decree be published immediately in the Official Gazette of Republic of Kronos.

Kronian City, 7 September 2016

Henry Bazings, President
Exhibit 6: President’s statement of 22 February 2017 extracted from Government’s website

Presidential Annual Speech of 22 February 2017

It is about time for this country to regain the power over the fate of its own people. For the past years, the great people of Kronos have been subjected to the negligent conduct of foreigners. The Fenoscadia’s lindoro exploitation made by Fenoscadia Limited was predatory, causing great damage to our land and our people. The thorough study conducted by the Kronian Federal University links Fenoscadia Limited’s lindoro exploitation to a long list of health and environmental problems faced by the communities surrounding the Rhea River. Overall, Fenoscadia Limited’s activities have economically harmed the country.

While the previous administration refused to admit the gravity of this situation, the scientific evidence prevents us from doing the same. Presidential Decree No. 2424 is Kronos’ message to companies who expect to profit irresponsibly, without any regard to the jeopardy they cause to our people and our environment.

There is no evidence to negate the damages caused by Fenoscadia Limited. We shall not rely on the self-serving allegations made by Fenoscadia Limited denying responsibility. As of this moment, there will be no more lindoro exploitation in Kronos.
Exhibit 7: Global Mining Publication – Lindoro to be back in the markets by early 2019

GLOBAL MINING

[...]

lindoro to be back in the markets by early 2019

After a long-term relationship with the Ticadian company Fenoscadia Limited and a very traumatic end, Kronos’ government is preparing new grounds for the exploitation of lindoro in the country.

Not only has Kronos assumed commitments with international organizations to make the exploitation of lindoro somewhat sustainable, it also appears that a domestic company will undertake the void left by Fenoscadia Limited.

Even though there are no official notes regarding this matter, the local media is asserting that a joint venture between a state-owned company, which itself has the participation of another local company, and private investors from the Republic of Ibi is being negotiated by Kronos’ President.

Unofficial sources confirm that the joint venture is being negotiated and that the agreement should be signed by mid-2018, with revenues expected in 2019.

Technology companies are pressuring Kronos to reestablish the supply of lindoro as soon as possible. In the meantime, the technology companies rely on similar materials as an alternative to lindoro, causing economic impacts unseen in this industry since 2006.
PROCEDURAL ORDER NO. 2

Made on 26 June 2018

The seat of arbitration is Meraki, Sand

SCC Arbitration V2018/003858: Fenoscadia Limited ./ Republic of Kronos

BETWEEN

FENOSCADIA LIMITED

(Claimant)

AND

THE REPUBLIC OF KRONOS

(Respondent)
1. Whereas this second order sets out additional facts agreed by the parties following exchanges of information and consultations between them and supplementing those set out in Procedural Order No 1 dated 8 June 2018.

2. **CLAIMANT’S NATIONALITY**

Claimant complies with its tax obligations in Ticadia. Claimant’s current CEO does not hold citizenship of either Ticadia or Kronos. The Ticadian PE fund holding 65% of Claimant’s shares is composed of nationals from different countries including Ticadia and Kronos. The matters related to the composition (appointment/removal etc.) of the board of directors are decided by way of voting in a general meeting of all the shareholders of the company. In such meetings, the voting right held by each shareholder is in proportion to the shares held by them.

3. **CLAIMANT' LAWSUIT**

Line 1016 (application to Kronos federal Court) and Line 1024 (withdrawal of appeal to Kronos’ circuit court) refer to the same proceedings. In its application before the court, in addition to seeking suspension of the decree, Claimant also sought to declare the decree unconstitutional on grounds of violation of legislative due process.

4. **MINING ACTIVITY**

In Kronos, lindoro is extracted through open pit mining. On average, for every ton of lindoro extracted, 79 tons of waste material must also be removed. The waste material is made up of soil, waste rock and the finely ground tailings. Graspel is a type of heavy metal found, though not exclusively, in lindoro mine tailings. Kronos legislation does not include a protocol for the management of mining waste. Respondent has not been able to adduce evidence of other mining operators eliminating the release of graspel; Claimant has not been able to adduce evidence of other mining operators' tailings release and infiltrate graspel in the environment in Kronos. The exploitation of lindoro is not the only mining industry in Respondent’s territory.

5. **MICROCEPHALY**

Microcephaly can be caused by a variety of genetic and environmental factors. The Study suggests that the appearance of microcephaly in Kronos could be linked to the environmental externalities of the exploitation of lindoro.

6. **COUNTERCLAIMS**

As a pre-requisite for negotiations to re-instate the exploitation of lindoro in the Site, Respondent had demanded that Claimant acknowledge its
responsibility for the environmental pollution and health consequences alleged by Respondent, which Claimant refused.

7. **KEA**
   The KEA requires the safe handling, treatment, storage and disposal of hazardous wastes. It establishes the responsibility of the operators imposing, based on the “polluter-pays” principle, the obligation to remedy and/or compensate the environmental damage, among other penalties. Nonetheless, under the KEA, operators are not to bear the cost of remedial actions or pay compensation if they demonstrate that they were not at fault or negligent. Moreover, the KEA makes no mention to the possibility/conditions under which revoked licenses could be re-issued to sanctioned operators.

8. **RHEA RIVER**
   The Rhea River is enclosed within the territory of Kronos. While it is not transboundary, it is located 60 miles away from the interstate border.

9. **CONFISCATION OF LINDORO**
   The confiscation of the lindoro stored on Claimant’s facilities started on 14 September 2017 and took five days to be completed.

10. **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**
    At the time the investment was placed, Respondent's domestic law did not require the performance of an Environmental Impact Assessment (EIA) prior to the establishment of any business in Respondent's territory. No EIA was thus performed.

11. **CORPORATE SOCIAL RESPONSIBILITY STANDARDS**
    Claimant has never adopted any corporate social responsibility standard in its practices and internal policies.
PROCEDURAL ORDER NO. 3

Made on 30 August 2018

The seat of arbitration is Meraki, Sand


BETWEEN

FENOSCADIA LIMITED
(Claimant)

AND

THE REPUBLIC OF KRONOS
(Respondent)
Whereas this third order sets out additional facts agreed by the parties following exchanges of information and consultations between them and supplementing those set out in Procedural Order No 1 dated 8 June 2018 and Procedural Order No 2 dated 26 June 2018

1. ENVIRONMENT AND PUBLIC HEALTH IN KRONOS

Since the issuance of the Decree, the levels of Microcephaly and Cardiovascular disease among the Kronian population have not significantly decreased.

2. CLAIMANT’S LAWSUIT BEFORE KRONOS’ FEDERAL COURT

Under Kronian law, a presidential decree may be set aside, broadly speaking, if the process of the decree’s adoption violated statutorily or constitutionally mandated procedures, the decree’s content exceeds the statutory or constitutional mandate, or the decree cannot be applied without violating substantive basic rights protected by the Constitution. Proceedings for setting aside a presidential decree may confirm the decree, set aside the decree, or find that the decree has been applied in a manner that is inconsistent with constitutionally protected basic rights and mandate its interpretation and application consistent with such rights; such proceedings do not contemplate any order for compensation, but the judgment may be relied on in separate civil proceedings seeking compensation for breach of contractual or non-contractual obligations. Fenoscadia says it withdrew from the proceedings to invalidate the decree because these were evidently futile.

3. COUNTERCLAIMS

Between the issuance of the Decree and the filing for arbitration, Respondent demanded that Claimant, as a pre-requisite for negotiations to re-instate the exploitation of lindoro, acknowledge its responsibility for the environmental pollution and health consequences alleged by Respondent.

4. OTHER ASPECTS

Fenoscadia is not the only company engaged in open-pit mining in Kronos.

THE TRIBUNAL NOTES that despite extensive consultations Claimant and Respondent have not reached agreement on what measures were actually taken, by Claimant prior to September 2016 and by Respondent after September 2016, to reduce any environmental impacts of the mine tailings (such as removing suspended solids, dissolving metals, neutralizing alkalinity, or performing any other treatments to the tailings before their storage or discard).
PROCEDURAL ORDER NO. 4

Made on 22 October 2018

The seat of arbitration is Meraki, Sand

SCC Arbitration V2018/003858: Fenoscadia Limited ./ Republic of Kronos

BETWEEN

FENOSCADIA LIMITED
(Claimant)

AND

THE REPUBLIC OF KRONOS
(Respondent)

Whereas this fourth order sets out additional information received by the Tribunal supplementing those set out in Procedural Order No 1 dated 8 June 2018, Procedural Order No 2 dated 26 June 2018, and Procedural Order No 3 dated 30 August 2018

1. PREPARATORY MATERIALS FOR THE KRONOS TICADIA BIT
Following receipt of the Parties' written submissions, the Tribunal consulted the Parties regarding preparatory materials relating to the Kronos Ticadia BIT. Kronos informed the Tribunal that a careful search had not led to identification of any such material. The Tribunal then sent a request to Ticadia’s Foreign Ministry asking it to provide to the Tribunal any travaux relating to the Kronos Ticadia BIT in its possession. In response, Ticadia’S Foreign Ministry sent what it explained were the only documents available in the relevant archive:

(1) A note verbale from Kronos forwarding the Kronian Model BIT; and

(2) A note verbale from Ticadia forwarding the Ticadian Model BIT, and suggesting to sign the Ticadia-Kronos BIT during the visit of Ticadia’s Prime Minister to Kronos on 29-30 June 1995.

The note verbale from Ticadia further proposes that a forward team of Ticadian negotiators travel to Kronos to negotiate the BIT on 28 June 1995.

The Tribunal does not find it necessary to reproduce the respective Model BITs in their entirety here, but notes that some parts of the BIT concluded between Ticadia and Kronos reflect each model.

The Tribunal notes that the Ticadian Model defines investor as follows “investor - means any individual or a company incorporated under the laws of a Contracting Party” and that the Kronian Model BIT defines investor using the language of the BIT concluded between Ticadia and Kronos.

2. RESPONDENT’S EVIDENTIARY SUBMISSION R.X1

The Tribunal has also considered and agreed to the Respondent’s request to submit in evidence a series of emails allegedly between Fenoscadia’s former (until 2017) CEO Jacques Clouseau and a Ticadian tax adviser, Charles Dreyfus. Respondent alleges that these support its contention that Claimant is not a national within the meaning of the Ticadia Kronos BIT.

The text of Respondent’s submission (Exhibit R.X1) is reproduced below.

From: Jacques Clouseau [mailto:jc@fenoscadia.co.ti]
Sent: 6 September 2011 09:51
To: charles.l.dreyfus@123tax.co.ti

Subject: Taxes

Dear Charles

It was good seeing you at the golf club last week.

I appreciate your reminder about the tax review and advice you submitted last month.

I appreciate your thoughtful and exhaustive analysis – even though I have not read it yet.

Could you give me the short version in plain language, the executive summary of the executive summary? 😊

Thanks, Jacques
Dear Jacques,

If only you were as diligent with your mail as with golf 😊 ... In plain language,

The changes in Ticadian tax laws and the revised double taxation treaty with Kronos mean that you will incur significant additional exposure to Ticadian tax in respect of the work you do for Fenoscadia in Kronos.

The advice we sent you outlines a couple of strategies to mitigate this.

If you would like I can come by next week to go over them. Their implementation could be time sensitive in respect of the current tax year.

Best, Charles
Charles LaRousse Dreyfus
123 International Tax Advisers

*******************************
Confidentiality Notice
*******************************
From: Charles Dreyfus

Sent: 9 September 2011 15:15

To: Jacques Clouseau

Subject: RE: RE: RE: Taxes

Dear Jacques,

From a tax perspective, the simplest would be for you to abandon your residence in Ticadia and relocate to Kronos.

As far as we can see, Kronos is almost the only source of significant revenues for you. You should have Fensocadia’s legal department (and outside lawyers) consider what other implications that tax strategy might have for Fensocadia, but in terms of your taxes that would be the cleanest solution.

Best wishes, Charles

Charles LaRousse Dreyfus
123 International Tax Advisers

Confidentiality Notice

From: Jacques Clouseau

Sent: 25 September 2011 13:01

To: charles.l.dreyfus@123tax.co.ti

Subject: RE: RE: RE: RE: Taxes

Dear Charles,

I passed this to our legal department and they got back to me this morning. Between babbling on about the Euribean Court of Justice’s decisions in “Daily Wail, Zentros, Überzeering, PerspireArt, Kadbury Schweppes and Kartesio ....” (my head hurts), legal eventually confirmed that it would be OK for an existing Ticadian company to have a non-resident director in Kronos. One lady lawyer cautioned that Fensocadia might no longer qualify as a “foreign investor” in Kronos, but the GC shut that down fast.

So let’s go for it.

Thanks, Jacques

Director

Fensocadia Limited
Torre Fenosca, 1 Calle Mayor
TC 1001 Republic of Ticadia

From: Charles Dreyfus
Dear Jacques,

OK we will start working on it right away.

You do know – as outlined in my original report, which you probably still have not read – that you will have to establish permanent residence in Kronos, i.e. I won’t see you at the club much anymore!

Best wishes, Charles

Charles LaRousse Dreyfus
123 International Tax Advisers

**************************************
Confidentiality Notice
**************************************

From: Jacques Clouseau [mailto: jc@fenoscadia.co.ti]
Sent: 27 September 2011 13:01
To: charles.l.dreyfus@123tax.co.ti
Cc: Cato Fong [mailto: burt.kwouk@gmail.com]

Dear Charles,

Don’t worry, you will still be retained for international tax advice – and you know they have lovely links courses in Kronos!

Maybe I will put the Ticadia house up on AirBnB 😊! Then we can ask Cato, ”Do you have a ruuum?”

Thanks, Jacques

Director
Fenoscadia Limited
Torre Fenosca, 1 Calle Mayor
TC 1001 Republic of Ticadia

THE TRIBUNAL NOTES that Claimant has not taken a position as to the authenticity, admissibility or relevance of R.X1.