

**ARBITRATION UNDER
THE RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES**

REQUEST FOR ARBITRATION

EUROGAS INC.

AND

BELMONT RESOURCES INC.

(CLAIMANTS)

v.

SLOVAK REPUBLIC

(RESPONDENT)

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June 25, 2014

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INTRODUCTION

1. In 1998, exclusive rights for mining activities at the Gemerská Poloma deposit in the Slovak Republic, one of the world's largest talc deposits, were awarded to Rozmin sro ("Rozmin"), a Slovak Republic-incorporated company in which EuroGas Inc. ("EuroGas"), a United States-incorporated company, and Belmont Resources Inc. ("Belmont"), a Canada-incorporated company, hold a 90% shareholding interest. In addition to their contribution in geological know-how, expertise, management, and business contacts with potential talc purchasers, EuroGas and Belmont invested approximately USD 10 million in the Gemerská Poloma deposit to prepare it for its commercial development.
2. Nevertheless, in early 2005, once the quality and reserves of talc at the deposit had been confirmed by Rozmin in accordance with the highest Western industry standards, works at the site for its preparation towards excavation and commercial development were well underway, talc prices had reached record heights, and negotiations of agreements for the sale of talc to be extracted from the mine had even been initiated by Rozmin, the Slovak Republic unexpectedly and discriminatorily stripped Rozmin of its rights. The Slovak Republic did so abruptly, by revoking Rozmin's mining rights without warning or justification, let alone a valid one, thus depriving EuroGas and Belmont of the benefits of their investment, including but not limited to future revenues from the operation of the mine. The Slovak Republic moreover deprived Rozmin of its rights without paying any compensation, let alone the prompt, adequate, and effective compensation due under international law.
3. When Rozmin sought the reinstatement of its mining rights in local proceedings, the Supreme Court of the Slovak Republic, namely this country's own highest judicial authority, declared, in no less than three decisions, that the revocation of Rozmin's rights and the allocation of the Gemerská Poloma area to another entity was in breach of Slovak law and of Rozmin's vested rights. Even these Supreme Court decisions were, however, disregarded by Slovak mining authorities and local proceedings remained stale. Indeed, the Slovak Republic failed to remedy the situation and never reinstated Rozmin's mining rights. Instead, mining rights over the Gemerská Poloma deposit were repeatedly awarded to third entities.

4. Given that the revocation of Rozmin's mining rights also amounts to blatant breaches of the Slovak Republic's international obligations, EuroGas and Belmont (jointly "Claimants") hereby request the institution of arbitration proceedings against the Slovak Republic ("Slovakia" or "Respondent"), through which they will seek compensation for losses sustained as a result of Slovakia's breaches under international law.
5. This request is submitted in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated March 18, 1965 (the "ICSID Convention"), the 1991 Treaty between the United States of America and the Czech and Slovak Federal Republic Concerning the Reciprocal Encouragement and Protection of Investment (the "US-Slovak Republic BIT"), which entered into force on December 19, 1992,¹ and the 2010 Agreement between Canada and the Slovak Republic for the Promotion and Protection of Investments (the "Canada-Slovak Republic BIT"), which entered into force on March 14, 2012² (collectively the "BITs"). Both of these BITs are currently still in force.³ This Request for Arbitration is filed together with Exhibits C-1 to C-42.
6. The present Request for Arbitration is divided into the following seven sections:
 - Presentation of the Parties (I);
 - Facts and description of the dispute (II);
 - ICSID's jurisdiction over the dispute (III);
 - Respondent's obligations under the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law (IV);
 - Respondent's breaches of the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law (V);
 - Damages sustained by Claimants (VI); and
 - Relief sought (VII).

¹ **Exhibit C-1**, Treaty between the United States of America and the Czech and Slovak Federal Republic Concerning the Reciprocal Encouragement and Protection of Investment, dated October 22, 1991. After the breakup of Czechoslovakia in 1993, this Treaty remained in effect for the successor States, namely the Slovak Republic and the Czech Republic.

² **Exhibit C-2**, Agreement between Canada and the Slovak Republic for the Promotion and Protection of Investments, dated July 20, 2010.

³ See <http://www.state.gov/documents/organization/218912.pdf>; <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/index.aspx?lang=eng>.

I. PARTIES

A. CLAIMANTS

7. **EuroGas** was legally constituted under the laws of the United States on October 7, 1985, first under the name Northampton, Inc.⁴ It was renamed EuroGas Inc. in 1994.⁵ EuroGas' registered office is located at 3098 South Highland Drive, Suite 323, Salt Lake City, Utah, 84106-6001, USA.⁶ Until March 2011, EuroGas was listed and its Common Shares traded on the Over-The-Counter Market in the United States, as well as on various German Stock Exchanges, including the Frankfurt and Berlin Stock Exchanges. In April 2011, EuroGas transferred its European assets to its wholly-owned subsidiary EuroGas AG (Zurich), and voluntarily withdrew its 1933 Registration with the Securities and Exchange Commission in Washington D.C. EuroGas however continued to operate in the United States, notably in the mining industry, its core field of expertise.
8. On March 16, 1998, EuroGas became an indirect shareholder of Rozmin, when EuroGas GmbH, a wholly-owned subsidiary of EuroGas incorporated in Austria, purchased a 55% shareholding interest in Ríma Muráň sro ("Ríma Muráň").⁷ The latter was one of Rozmin's three initial shareholders, with a 43% shareholding in Rozmin. In 2002, several agreements were entered into whereby EuroGas GmbH transferred back its 55% shareholding interest in Ríma Muráň to the latter's shareholders,⁸ and Ríma Muráň transferred its 43% shareholding interest in Rozmin to EuroGas GmbH.⁹ Eventually, a 10% shareholding interest was transferred by EuroGas GmbH to a third party, EuroGas GmbH remaining the legal owner of a 33% shareholding interest in Rozmin. This 33%

⁴ **Exhibit C-3**, Articles of Incorporation of Northampton, Inc., dated October 3, 1985.

⁵ **Exhibit C-4**, Articles of Amendment to the Articles of Incorporation of Northampton, Inc., dated August 29, 1994.

⁶ **Exhibit C-5**, Excerpt from Utah Business Search – Utah.gov regarding EuroGas Inc., retrieved on June 17, 2014.

⁷ **Exhibit C-6**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Viliam Komora, dated March 16, 1998; **Exhibit C-7**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between Eurogas GmbH and Mr. Peter Čorej, dated March 16, 1998; **Exhibit C-8**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Pavol Krajec, dated March 16, 1998; **Exhibit C-9**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Ján Baláž, dated March 16, 1998.

⁸ **Exhibit C-10**, Contract on Transfer of a Business Share between EuroGas GmbH and Mr. Viliam Komora, dated March 25, 2002; **Exhibit C-11**, Contract on the Transfer of a Business Share between EuroGas GmbH and Mr. Peter Čorej, dated March 25, 2002; **Exhibit C-12**, Contract on the Transfer of a Business Share between EuroGas GmbH and Mr. Pavol Krajec, dated March 25, 2002; **Exhibit C-13**, Contract on the Transfer of a Business Share between EuroGas GmbH and Mr. Ján Baláž, dated March 25, 2002.

⁹ **Exhibit C-14**, Agreement on the Transfer of Business Share between Ríma Muráň sro and EuroGas GmbH, dated March 25, 2002.

interest is indirectly held by EuroGas, given that, as mentioned above, the latter wholly owns EuroGas GmbH.

9. **Belmont** is a company that was legally constituted under the laws of Canada in 1978. Its registered office is located at 400 Burrard Street, Suite 1780, Vancouver BC V6C 3A6, Canada.¹⁰ Belmont is listed on the Canadian TSX Venture Exchange and the Frankfurt Stock Exchange in Germany. Belmont deals with the acquisition, exploration, and development of mineral resources in Canada and abroad.
10. On February 24, 2000, Belmont acquired a 57% interest in Rozmin, when it purchased the interest of the other two initial shareholders of Rozmin, namely Östu Industriemineral Consult GmbH, which held a 24.5% participation in Rozmin,¹¹ and Gebrüder Dorfner GmbH, which held a 32.5% participation in Rozmin.¹²
11. Claimants have mandated and taken all internal actions to authorize the law firm Derains & Gharavi to file this Request for Arbitration and to represent them in the arbitration.¹³ All correspondence should be sent to:

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¹⁰ **Exhibit C-15**, BC Registry Services, Notice of Change of Address for Belmont Resources Inc., effective on February 4, 2014.

¹¹ **Exhibit C-16**, Agreement on the Transfer of Business Shares in the Company Rozmin sro between Östu Industriemineral Consult GmbH and Belmont Resources Inc., dated February 24, 2000.

¹² **Exhibit C-17**, Agreement on the Assignment of Company Shares in the Rozmin sro Corp. between Gebrüder Dorfner GmbH & Co. Kaolin- und Kristallquarzsand-Werke KG and Belmont Resources Inc., dated February 24, 2000.

¹³ **Exhibit C-18**, Power of Attorney from Mr. Wolfgang Rauball on behalf of EuroGas Inc. in favor of Dr. Hamid Gharavi, Derains & Gharavi, dated January 23, 2014; **Exhibit C-19**, Power of Attorney from Mr. Vojtech Agyagos on behalf of Belmont Resources Inc. in favor of Dr. Hamid Gharavi, Derains & Gharavi, dated January 23, 2014.

B. RESPONDENT

12. Respondent is the **Slovak Republic**. As set forth below, Respondent has acted in breach of its international obligations towards Claimants, *inter alia*, through acts and omissions of the District Mining Office in Spišská Nová Ves (the “District Mining Office” or “DMO”), Slovakia’s Main Mining Office (“MMO”), the Office of the President of the Slovak Republic, the Office of the Prime Minister of the Slovak Republic, as well as various ministries including the Ministry of Economy. These entities are all organs of Respondent under international law, and all references in this arbitration to them shall accordingly be deemed to be references to Respondent.
13. This Request for Arbitration, as well as all correspondence in this arbitration, should be sent to:

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II. FACTS AND DESCRIPTION OF THE DISPUTE

A. CLAIMANTS' MINING RIGHTS AND INVESTMENTS IN THE GEMERSKÁ POLOMA DEPOSIT

14. In the mid-eighties, a State-sponsored exploration program in search for highly-thermal mineralization, in particular tin and tungsten, was initiated in Eastern Slovakia, north of Gemerská Poloma, Rožňava district.
15. On July 25, 1996, the DMO assigned the "Gemerská Poloma mining area" to a State-owned entity of the Slovak Republic, namely Slovenská geológia, š.p. Spišská Nová Ves ("Geological Survey"), in accordance with Article 27(1) of Act No. 44/1988 on Protection and Utilization of Mineral Resources.¹⁴
16. In the course of the exploration carried out in the Gemerská Poloma area, the presence of talc mineralization was sporadically detected in the Košice region, in addition to magnesite, dolomite, quartz, chloritic shale, and graphite. Talc is a mineral used in many industries, including paper-making, plastic, paint and coatings, rubber, food, electric cables, pharmaceuticals, cosmetics, and ceramics. Up to the mid-nineties, however, talc

¹⁴ Exhibit C-20, Decision on the Assignment of the Gemerská Poloma Mining Area, dated July 25, 1996.

prices were low. The Slovak Republic had no specific interest in this mineral and therefore never designed or invested in a talc-exploration program.

17. Rozmin was legally constituted under the laws of Slovakia on May 7, 1997, for purposes of carrying out mining activities.¹⁵ On May 14, 1997, pursuant to Article 4a of Act No. 51/1988 on Mining Activities, Explosives and on State Mining Administration (the “Act on Mining Activities”), the DMO issued Rozmin a general mining authorization (the “General Mining Authorization”), for an indefinite period of time. This authorization encompassed, *inter alia*, the “*opening, development and mining of exclusive deposits.*”¹⁶
18. On June 11, 1997, Geological Survey and Rozmin entered into an “Agreement for the Transfer of the Gemerská Poloma Mining Area” to Rozmin.¹⁷ This agreement stipulated, *inter alia*, that:

*“As of the day of concluding this Agreement, all rights and obligations concerning this mining area shall be transferred on to the acquirer, mainly the right to mine the exclusive deposit, the right to handle with mined minerals in the scope and under conditions determined by the decision about the mining area designation or determined at the time of its re-registration.”*¹⁸

19. On June 24, 1997, the transfer of the Gemerská Poloma mining area to Rozmin was certified by the DMO.¹⁹ The certificate confirmed that “*ROZMÍN, s.r.o., domiciled in Rožňava, ha[d] acquired [...] all rights under Sec. 24 of Act No. 44/1988 on Protection and Utilization of Mineral Resources (Mining Act), as amended by Slovak National Council Act 498/1991.*”²⁰ One of the said rights was the right to “*mine the exclusive deposit in the determined mining area,*” provided that Rozmin be granted by the DMO an authorization for mining activity, in accordance with Article 10 of the Act on Mining Activities.²¹

¹⁵ **Exhibit C-21**, Memorandum of Association on the Establishment of the Company Rozmin sro, dated May 7, 1997. Rozmin’s registered seat and main office are located at Karadžičova 8/A, 821 08 Bratislava, Slovak Republic.

¹⁶ **Exhibit C-22**, Mining Authorisation issued by the District Mining Office, dated May 14, 1997.

¹⁷ **Exhibit C-23**, Agreement on the Transfer of the Gemerská Poloma Mining Area, dated June 11, 1997.

¹⁸ *Id.*, Section IV(2); emphasis added.

¹⁹ **Exhibit C-24**, Certificate of Acquisition of Rights to a Mining Area, dated June 24, 1997.

²⁰ *Ibid.*

²¹ See Article 24(4) of Act No. 44/1988 on Protection and Utilization of Mineral Resources.

20. Rozmin carried out geological surveying and drilling works at Gemerská Poloma, through which it established the presence of large quantities of talc. On January 15, 1998, Rozmin therefore submitted its application and proposed a plan for the opening, preparation, development, and exploitation of the Gemerská Poloma mining area (the “POPD”). Rozmin also secured official statements of approval from public entities – such as, for instance, the Environmental Department of the District Offices of Košice and Rožňava, the Water Management Companies of Revúca and of the Hron River Basin, and the Department of Lands, Agriculture and Forestry of Rožňava – which were necessary before Rozmin’s POPD could be approved by the DMO.
21. On May 29, 1998, that is, after EuroGas had acquired an interest in Rozmin via its participation in Rima Muráň, the DMO approved Rozmin’s POPD and issued, in accordance with Article 10 of the Act on Mining Activities, an “Authorization of mining activities under the ‘Plan for the opening, development and mining of an exclusive soapstone deposit in the Gemerská Poloma mining area (registration number 74/e) for the 1998 – 2002 period’”²² (the “Authorization on Mining Activities at Gemerská Poloma”).
22. Following the approval of its POPD, Rozmin secured from another organ of the Slovak Republic, namely the Environmental Department in the District Office of Rožňava, permits necessary for the construction of the above-ground structures and of temporary water management structures, as well as for the relocation of a forest road and the construction of a bridge over the Dhlý brook. Given the location of the deposit, Rozmin also entered into a lease agreement with the State Forest Company over land parcels where construction works would take place. Finally, Rozmin secured an exemption, from the State Forest Company, from the ban on the use of vehicles in forest areas as well as an authorization for the storage and use of explosives.
23. As of 1998, Rozmin commissioned and financed further critical drilling at the Gemerská Poloma talc deposit for the purpose of locating the presence of high-grade talc, as well as multiple technical studies prepared by world-renowned specialized companies. These studies allowed Rozmin to confirm the deposit’s reserves and assess the quality of talc to be extracted, in accordance with the highest Western industry standards.

²² **Exhibit C-25**, Authorization of Mining Activities under the “Plan for the Opening, Development and Mining of an Exclusive Soapstone Deposit in the Gemerská Poloma Mining Area (Registration Number 74/e) for the 1998 – 2002 Period,” dated May 29, 1998.

24. In addition to their contribution in geological know-how, expertise, management, and business contacts with potential talc purchasers, EuroGas and Belmont also invested substantial amounts of capital in the deposit, directly or through Rozmin. Claimants indeed invested approximately USD 10 million not only to confirm the deposit's reserves, but also to subscribe shares in Rozmin, to cover the company's needs in working capital, and to directly pay off invoices related to the works carried out at the deposit, discussed hereafter.

B. AUTHORIZATION TO CARRY OUT MINING ACTIVITIES UNTIL NOVEMBER 2006

25. Following the approval of the POPD on May 29, 1998 and having applied for and obtained all required permits and authorizations for the initiation of works at the Gemerská Poloma talc deposit in accordance with the DMO's Authorization on Mining Activities at Gemerská Poloma, Rozmin commissioned and financed works carried out at the deposit with a view to preparing it for its commercial development. These works were to be completed prior to the November 13, 2006 deadline agreed by the Slovak Republic, as set forth below at paragraph 29.
26. Preparatory works included, *inter alia*, the drawing of tectonic, geodetics, and topographical maps of the deposit, the completion of cross-sections to delineate the exploration and mining area, as well as hydro-geological works. Actual works at the Gemerská Poloma talc deposit were initially carried out by Ríma Muráň, which acted as Rozmin's first main contractor. On September 22, 2000, Rozmin and Rima Muráň indeed entered into an "Agreement on Giving the Contract for Works on 'Opening of Talc Deposit Gemerská Poloma'." The scope of this contract was essentially twofold. Its main object was the performance of mining works under the POPD, that is to say, the construction of an entrance portal, the excavation of the adit (a horizontal shaft into the deposit used for access and drainage), and the excavation of an underground explosive storage. But the contract also covered auxiliary – yet necessary – works. The latter encompassed, *inter alia*, the preparation of the construction area; the establishment of the construction site; the construction of a bridge over the Dlhá Dolina creek in the area of the construction; the preparation and maintenance of the landfill and the heap; the relocation of a forest road in the area of the portal of the adit; the management and treatment of waste water; and the erection of an administration building, a maintenance workshop and a compressor room.

27. In October 2001, the works at the deposit were temporarily suspended, due primarily to the fact that Rozmin's contractor, Ríma Muráň, was seeking the payment of additional, extra-contractual, amounts. On October 15, 2001, Rozmin accordingly notified the DMO of the suspension of mining activities. Thereafter, on November 30, 2001, Rozmin notified the DMO of the suspension of mining activities for a period exceeding 30 days, in accordance with Decree No. 89/1988 of the Slovak Mining Office dated May 20, 1988.²³ The DMO did not react to, let alone dispute, the suspension of works at Gemerská Poloma deposit.
28. The 2001 suspension of mining activities did not bring Claimants' investments to a standstill. To the contrary, during this suspension, Rozmin settled outstanding issues with its contractor, Ríma Muráň, and prepared a new tender for mining activities at the deposit. In addition, both EuroGas and Belmont continued to provide the working capital Rozmin needed for the project. Furthermore, Rozmin undertook all necessary steps to ensure that the project would remain in compliance with Slovak laws and to secure the permits that would allow it to resume works as soon as possible, to the full knowledge and satisfaction of the competent Slovak authorities. In particular and among other things, Rozmin renewed the lease agreement with the State Forest Company regarding land parcels required for mining works, was granted an extension of its permit to use vehicles in forest areas, and entered into a new agreement for the common use and maintenance of forest roads. In order to resume works as soon as possible, Rozmin also applied for amendments to its construction permits and sought extensions of the construction completion dates. Finally, as of 2002, EuroGas entered into negotiations with potential purchasers of talc to be extracted from the deposit, including the Mondo Minerals group, which is the world's second largest talc producer.
29. Upon request, on May 31, 2004, Rozmin was authorized by the DMO to resume mining activities, pursuant to Article 10 of the Act on Mining Activities. This official authorization to carry out works was valid until November 13, 2006.²⁴ Rozmin therefore organized a tender for the award to a new contractor of construction and development works at the Gemerská Poloma deposit. The project was awarded to Siderit sro ("Siderit"), which immediately began works on the above-ground structures, pursuant to individual orders. Mining activities per se were resumed on November 9, 2004, following the

²³ Exhibit C-26, Letter from Rozmin sro to the District Mining Office, dated November 30, 2001 (Ref. 2304).

²⁴ Exhibit C-27, Authorisation of Mining Activity in the Mining Area "Gemerská Poloma," dated May 31, 2004 (Ref. 1023/511/2004).

signature, on November 5, 2004, of a contract for the development of the deposit between Rozmin and Siderit.

30. On December 8, 2004, the Director of the District Mining Office, Mr. Antonín Baffi, carried out an inspection at the Gemerská Poloma talc deposit. This inspection resulted in Minutes of Meetings drafted and signed by Mr. Baffi himself, in which the latter recorded the work in progress, concluded that Rozmin's activities were in compliance with all legal regulations in force, and confirmed that Rozmin was entitled to carry out mining activities until November 13, 2006.²⁵
31. On December 30, 2004, however, that is, no more than 22 days after the December 8, 2004 inspection, the Republic of Slovakia announced, by way of a publication in the Business Journal, that it was initiating a new tender procedure for the assignment of the deposit.²⁶ In other words, Slovakia simply decided to take away Rozmin's rights once the deposit's reserves had been confirmed and the works were in progress. Slovakia did so not only without justification, let alone a valid one, but also without any prior notice to Rozmin.
32. The prices of talc, which had been rising steadily since 2000, had, by that time, reached a record, and were expected to continue to rise significantly. This explains why, as noted below, so many investors, including two of the world's largest talc producers, namely Mondo Minerals Oy ("Mondo Minerals") and IMI Fabi llc ("IMI Fabi"), bid for the rights over Gemerská Poloma following the revocation of Rozmin's mining rights. In fact, to the best of Claimants' knowledge, the Slovak Republic was, prior to the revocation of Claimants' rights, already in discussion with these or other mining companies for the allocation of Claimants' mining rights over the Gemerská Poloma deposit.

C. UNLAWFUL REVOCATION OF ROZMIN'S MINING RIGHTS IN JANUARY 2005

33. On January 3, 2005, once the decision of revocation of Rozmin's mining rights had, in fact, already been taken and a new tender publicly announced, the Slovak Republic wrote to Rozmin, ironically by way of a letter signed by Mr. Baffi himself (namely, the Director of the DMO who had carried out the above-mentioned site inspection less than a month earlier, acknowledged and recorded Rozmin's full compliance of its obligations, and

²⁵ Exhibit C-28, Minutes of the December 8, 2004 inspection by the District Mining Office.

²⁶ Exhibit C-29, Initiation of the Selection Procedure for the Determination and Assignment of the Extraction Area, Business Journal No. 253/2004, dated December 30, 2004, p. 99.

reiterated Rozmin's right to carry out mining activities until November 13, 2006), to announce *post facto* that Rozmin's rights had *de facto* been revoked and were to be awarded to a new organization.²⁷

34. The explanation offered by the DMO to justify the initiation of a new tender was that more than three years had elapsed between the suspension of the works on site (October 1, 2001) and their resumption (November 18, 2004). This purported justification was based on Act No. 558/2001, amending Act No. 44/1988 on Protection and Utilization of Mineral Resources (the "2002 Amendment"), which had come in effect on January 1, 2002 and allowed the revocation of mining rights by the DMO in the event of an interruption of activities for a period exceeding three years.²⁸ In reality, this sudden revocation, justified *post facto* by Slovakia, was incongruous from all conceivable angles, as explained below.
35. First, the 2002 Amendment entered into force after Rozmin was awarded mining rights (and after the suspension of works in 2001) and, as confirmed by a decision handed down by the Supreme Court on May 18, 2011 (discussed below at paragraphs 52 *et seq.*), did not have retroactive effect. In other words, even if the three-year period had applied to Rozmin, it would only have started running on January 1, 2002.
36. Second, upon receipt of Rozmin's notice of work resumption, dated November 9, 2004, the DMO did not protest. Rather, it conducted a site inspection on December 8, 2004, following which it expressed its full satisfaction and confirmed that Rozmin was entitled to carry out mining activities until November 13, 2006, as confirmed by the above-referenced Minutes of Meetings prepared and signed by the DMO's Director himself.
37. Third, even if one were to assume, for the sake of argument, that the three-year period applied retroactively and notwithstanding the deadline of November 13, 2006, it is undisputable that well before the expiration of the three-year period, Rozmin was in a position to resume works and that it did communicate its readiness to do so to the mining authorities. Rozmin formally requested the authorization to resume works on January 8

²⁷ **Exhibit C-30**, Letter from the District Mining Office to Rozmin sro, dated January 3, 2005 (Ref. 2450/451.14/2004-I).

²⁸ See Article 27(12) of Act No. 44/1988 on Protection and Utilization of Mineral Resources, as amended by Act No. 558/2001.

2004, and it is precisely this request that was granted by decision dated May 31, 2004,²⁹ in which the DMO did not raise any issue, let alone any timing issue.

38. Fourth, even if one were to assume, for the sake of argument, that the three-year period applied retroactively and notwithstanding the November 13, 2006 deadline, and that development works *per se* were suspended for more than three years, one would be compelled to acknowledge that Claimants remained fully committed to the project during the suspension and were never inactive. As explained above in paragraph 28, EuroGas and Belmont continued to inject working capital in Rozmin. Furthermore, among other steps undertaken towards the resumption of mining activities, Rozmin applied for new permits and authorizations or extensions of existing ones, conducted works related to the water treatment facilities, organized a new tender and hired a new development contractor, and engaged in negotiations for the sale and distribution of talc to be extracted from the deposit.
39. The purpose of the 2002 Amendment was to ensure that genuine investors committed to the development of mines, as opposed to speculative investors, would be awarded mining projects. In this respect, the record – namely the nature and extent of Rozmin’s investments, the many authorizations and permits issued by the Slovak Republic before, during, and after the suspension, the works contracted and carried out, the actual cause of the works suspension (namely the interruption of works by the development contractor) – confirms that Rozmin was a *bona fide* investor, genuinely committed to the development of the Gemerská Poloma deposit, and that the Republic of Slovakia was perfectly aware of this. In fact, the purpose of the 2002 Amendment and the fact that Rozmin did not fall within the scope of this Amendment, were confirmed by the May 18, 2011 decision of the Supreme Court, discussed below at paragraphs 52 *et seq.*
40. Fifth, the very DMO that revoked Rozmin’s rights by decision dated January 3, 2005, had issued a prior decision, on May 31, 2004 – that is, well after the suspension of works and well after the entry into effect of the 2002 Amendment – by which it had explicitly authorized Rozmin to resume and pursue mining activities at the Gemerská Poloma talc deposit until November 13, 2006 (see paragraph 29 above).

²⁹ **Exhibit C-27**, Authorisation of Mining Activity in the Mining Area “Gemerská Poloma,” dated May 31, 2004 (Ref. 1023/511/2004).

41. Rozmin initiated local proceedings to seek the reinstatement of its rights under Slovak law. As explained in greater detail below, these proceedings led to three Slovak Supreme Court decisions, which unequivocally confirmed that the revocation of Rozmin's mining rights was in breach of Slovak procedural and substantive laws. Notwithstanding these Supreme Court judgments, the DMO failed to reinstate Rozmin's rights, and instead awarded these rights to other entities.
42. On January 13, 2005, Rozmin challenged the DMO's notification of January 3, 2005, by which the DMO had announced that it had requested a new tender for the allocation to another company of mining rights over the Gemerská Poloma deposit. This challenge remained unanswered.
43. On February 16, 2005, in the presence of representatives of the MMO, Rozmin executives met with Mr. Pavol Rusko, then Minister of Economy of the Slovak Republic, in order to discuss the revocation of Rozmin's mining rights. In the course of this meeting, instead of trying to remedy Slovakia's breaches, Mr. Rusko attempted to discourage Rozmin from undertaking any legal action. He opined that a legal action would be lengthy and stated that the DMO was determined to go through with the new tender procedure. In other words, Mr. Rusko asked Claimants to simply let go of the project and forgo their mining rights. And as explained below, Claimants were eventually deprived of these rights despite having prevailed before the Slovak Supreme Court. Indeed, the DMO refused to reinstate Claimant's mining rights and, instead, awarded them to another entity.
44. On April 21, 2005, the DMO held a tender procedure and, on April 22, 2005, assigned the Gemerská Poloma deposit to Economy Agency RV sro ("Economy Agency"),³⁰ a Slovak-incorporated company with little if any expertise at all in the mining sector. Economy Agency was incorporated on January 8, 2005, a few days after the publication of the new tender on December 30, 2004. It was essentially a shell company, founded and owned by Ms. Zdenka Čorejová, Rozmin's former accountant and spouse of Mr. Peter Čorej, CEO and shareholder of Ríma Muráň. Nothing suggests that Ms. Čorejová had any expertise in the field of talc mining, or that Economy Agency had the technical or the financial capacity to carry through the project. Mondo Minerals and IMI Fabi, two of the world's largest talc

³⁰ Exhibit C-31, Report on the Course and Results of the Selection Procedure for the Designation of the MA GP to Another Organisation Performed on April 21, 2005.

producers, were ranked fourth and sixth in the bidding results.³¹ Companies that ranked second and third had, just like Economy Agency, far less experience but were Slovak-owned companies.³² Rozmin, itself embroiled in the process of actively challenging the unlawful withdrawal of its rights over the Gemerská Poloma deposit, was merely informed of the outcome of the tender process on May 3, 2005.³³

45. On September 27, 2005, Rozmin initiated legal proceedings before the Slovak judiciary, namely before the Regional Court in Košice, seeking a revision of the DMO's decision of April 22, 2005, on the ground that the procedure by which mining rights over the Gemerská Poloma deposit had been assigned to Economy Agency was unlawful under Slovak law.
46. By decision dated February 7, 2007, the Regional Court in Košice rejected Rozmin's complaint on the ground that Rozmin did not have standing to bring an action as it was not and should not have been a party to the procedure that had led to the DMO's decision of April 22, 2005.
47. The Regional Court's decision was appealed successfully by Rozmin. Indeed, on February 27, 2008, the Supreme Court of the Republic of Slovakia revoked the decision of the Regional Court in Košice dated February 7, 2007, confirming the decision to assign the Gemerská Poloma talc deposit to Economy Agency, and remanded the case to the DMO for further proceedings.³⁴ The Supreme Court reached its decision principally on the ground that Rozmin had not received any notification of the revocation of its mining rights but rather a mere notification of a new tender, and that its due process right had thus been violated.
48. On July 2, 2008, despite the Supreme Court's finding that the April 21, 2005 tender was unlawful, the DMO nevertheless awarded the rights over the deposit to a company that had succeeded in the rights of Economy Agency, namely VSK Mining sro ("VSK Mining").³⁵ VSK Mining was another Slovak-owned company which had indeed acquired equity

³¹ *Id.*

³² *Id.*

³³ **Exhibit C-32**, Letter from the District Mining Office to Rozmin sro, dated May 3, 2005 (Ref. 887/465/2005 – VII.).

³⁴ **Exhibit C-33**, Decision of the Supreme Court of the Slovak Republic, dated February 27, 2008 (Ref. 6Sžo/61/2007-121).

³⁵ **Exhibit C-34**, Decision of the District Mining Office on the Assignment of the Gemerská Poloma Mining Area to VSK Mining sro, dated July 2, 2008 (Ref. 329-1506/2008).

capital in Economy Agency on June 18, 2005, before becoming this company's sole shareholder on December 10, 2005, and eventually absorbing it on February 3, 2006.

49. On August 12, 2008, the District Mining Office also revoked Rozmin's General Mining Authorization, which had been delivered on May 14, 1997.³⁶
50. On January 12, 2009, the MMO of the Slovak Republic confirmed the above decision of the DMO dated July 2, 2008 awarding the rights over the Gemerská Poloma deposit to VSK Mining, as well as the decision of the DMO dated August 12, 2008, revoking Rozmin's General Mining Authorization.
51. On March 12, 2009, Rozmin filed an action before the Regional Court in Košice, challenging both the January 12, 2009 decision of the MMO and the August 12, 2008 decision of the DMO.
52. On February 3, 2010, the Regional Court in Košice confirmed the DMO's decision of July 2, 2008 (which had been confirmed by the MMO on January 12, 2009, as mentioned above) assigning the deposit to VSK Mining. This decision was appealed successfully by Rozmin. On May 18, 2011, the Supreme Court of the Slovak Republic indeed rescinded the February 3, 2010 decision of the Regional Court in Košice.³⁷
53. In its May 18, 2011 decision, the Supreme Court stated that the 2002 Amendment – on which the District Mining Office had relied to revoke Rozmin's mining authorization, on the alleged ground that Rozmin had suspended the works at the site for a period that exceeded three years – had, in fact, no retroactive effect. In other words, the three-year period could only have started running on the date upon which the amendment had taken effect, that is, on January 1, 2002.
54. The Supreme Court also found that the decision to revoke Rozmin's rights under the 2002 Amendment was incorrect, considering the following. As explained by the Supreme Court, the purpose of this Amendment was to avoid mining areas being left unexploited for speculative purposes. Clearly, this was not the case of Rozmin's suspension of works at the Gemerská Poloma talc deposit. Indeed, as noted by the Supreme Court, approximately

³⁶ **Exhibit C-35**, Decision on the Revocation of the Authorization for Mining, dated August 12, 2008 (Ref. 104-1620/2008).

³⁷ **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010).

SKK 120 million had already been invested by Rozmin and, during the December 8, 2004 inspection, the DMO had observed and recorded that Rozmin was working towards reaching the extraction phase and was acting in compliance with all of its legal obligations.

55. On January 19, 2012, the Regional Court in Košice rendered a decision dismissing Rozmin's petition against the revocation of its General Mining Authorization, decided by the DMO on August 12, 2008 and confirmed by the MMO on January 12, 2009.
56. Notwithstanding the Supreme Court's decision of May 18, 2011, which found the July 2, 2008 tender to be unlawful, the DMO re-assigned exclusive mining rights, on March 30, 2012, to VSK Mining.³⁸ On appeal, the DMO's decision was confirmed by the MMO on August 1, 2012. Rozmin did not challenge the latter decision of the MMO before the Slovak judiciary. Under the circumstances, indeed, Rozmin's unrelenting efforts to secure specific performance under Slovak law in the Slovak Republic had clearly become futile. By then, considering the Respondent's breaches of its international obligation, Claimants had rather taken the decision to seek compensation under the BITs.
57. Finally, with respect to the revocation of Rozmin's General Mining Authorization, on January 31, 2013, the Supreme Court rescinded the Regional Court's decision of January 19, 2012 and remanded the case for further proceedings.³⁹ On September 26, 2013, the Regional Court in Košice however yet again refused to reinstate Rozmin's General Mining Authorization. Rozmin did not challenge this last decision either, for the same reasons as those set out above.

III. JURISDICTION

58. This arbitration is within the jurisdiction of the International Centre for Settlement of Investment Disputes ("ICSID") in accordance with the ICSID Convention, the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings ("ICSID Institution Rules"), the US-Slovak Republic BIT, and the Canada-Slovak Republic BIT, as set out in the seven points below.

³⁸ **Exhibit C-37**, Decision of the District Mining Office, dated March 30, 2012 (Ref. 157-920/2012).

³⁹ **Exhibit C-38**, Decision of the Supreme Court of the Slovak Republic, dated January 31, 2013 (Ref. 5Sžp/10/2012).

59. First, the United States of America, Canada, and the Republic of Slovakia are Contracting States to the ICSID Convention.
60. The United States of America signed and ratified the ICSID Convention on August 27, 1965 and June 10, 1966, respectively, and this Convention entered into force in the United States of America on October 14, 1966.⁴⁰ Canada signed and ratified the ICSID Convention on December 15, 2006 and November 1, 2013, respectively, and this Convention entered into force in Canada on December 1, 2013.⁴¹ The Slovak Republic signed and ratified the ICSID Convention on September 27, 1993 and May 27, 1994, respectively, and this Convention entered into force in the Slovak Republic on June 26, 1994.⁴²
61. Second, EuroGas is a company legally constituted in accordance with the laws of the United States of America and thus a “*national of another contracting State*,” within the meaning of Article 25 of the ICSID Convention, and a “*company of a Party*,” within the meaning of Article I(1)(b) of the US-Slovak Republic BIT. Belmont, in turn, is a company legally constituted in accordance with the laws of Canada and thus also a “*national of another contracting State*,” within the meaning of Article 25 of the ICSID Convention, and an “*investor[...] of the other Contracting Party*,” within the meaning of Articles I(e)(ii) and II of the Canada-Slovak Republic BIT.
62. Third, Respondent, namely the Slovak Republic, is a Party to the ICSID Convention and to both BITs. As set forth in Section II above, Slovakia has acted against Claimants *inter alia* through actions and omissions of the District Mining Office in Spišská Nová Ves, Slovakia’s Main Mining Office, the Office of the President of the Slovak Republic, the Office of the Prime Minister of the Slovak Republic, and various ministries including the Ministry of Economy. These are all organs of Respondent under international law.⁴³

⁴⁰ See <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English>.

⁴¹ See <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English>.

⁴² See <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English>.

⁴³ See, e.g., Article 4 of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted in 2001 (“ILC Articles”), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf. ILC Article 4.1 provides that under international law, is attributable to the State the conduct of any “*State organ [...] whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.*”

Accordingly, any reference in this arbitration to any one of them shall be deemed a reference to Respondent.

63. Fourth, all Parties have consented to ICSID jurisdiction as required by Article 25 of the ICSID Convention and Rule 2(1)(c) of the ICSID Institution Rules, as well as by Article VI of the US-Slovak Republic BIT and Article X of the Canada-Slovak Republic BIT. Claimants have consented to ICSID jurisdiction in their Notices of Dispute dated October 31, 2011 and December 23, 2013, and hereby reiterate their consent to the jurisdiction of ICSID in accordance with the ICSID arbitration clause contained in Article VI of the US-Slovak Republic BIT and Article X of the Canada-Slovak Republic BIT. Respondent consented to ICSID jurisdiction on the date of entry into force in Slovakia of each one of these BITs, namely on November 19, 1992 and March 14, 2012, respectively.
64. Fifth, the investment requirement has been met as per Article 25 of the ICSID Convention, Article 1(1)(a) of the US-Slovak Republic BIT, and Article I(d) of the Canada-Slovak Republic BIT.
65. Indeed, Claimants have made investments in Slovakia within the meaning of Article 1(1)(a) of the US-Slovak Republic BIT and Article I(d) of the Canada-Slovak Republic BIT. These investments consist of:
- (i) movable and immovable property, as well as rights, such as mortgages, liens and pledges⁴⁴ (Claimants commissioned and financed, *inter alia*, the construction of a bridge over the Dlhá Dolina creek in the area of the construction at the Gemerská Poloma talc deposit, the construction of a ramp (or shaft) for drainage and excavation purposes, the installation of a high-power line, and the construction of an underground warehouse to store explosives, as well as of auxiliary facilities, including an administration building, maintenance workshop and compressor room, waste mining water treatment facility, transformer sub-station, and a potable water inlet; Claimants also purchased equipment, furniture, materials and software, used expertise and high-quality work, and entered into business contracts for exploration, development, and sales purposes);

⁴⁴ See **Exhibit C-1**, Article I(1)(a)(i) of the US-Slovak Republic BIT and **Exhibit C-2**, Article I(d)(i) of the Canada-Slovak Republic BIT.

- (ii) shares or any other form of participation in a company⁴⁵ (Claimants hold a 90% shareholding in Rozmin);
- (iii) a claim to money (Claimants have invested about USD 10 million dollars in the Gemerská Poloma project and have a claim against the Slovak Republic arising out of this investment, mainly in the form of lost profits);
- (iv) intellectual property rights including, *inter alia*, industrial designs, know-how, and confidential business information (Claimants commissioned and financed feasibility studies for the exploration and development of the Gemerská Poloma deposit, confirmed the deposit's reserves, and provided Respondent with confidential business information, including information concerning potential talc purchasers);
- (v) “any right conferred by law or contract, and any licenses and permits pursuant to law,”⁴⁶ and “rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources”⁴⁷ (Claimants applied for and were awarded all required permits – including, *inter alia*, permits necessary for the construction of the above-ground structures and of temporary water management structures, permits for the relocation of a forest road and the construction of a bridge, and permits to use vehicles in forest areas – as well as exclusive mining rights to carry out mining activities at the Gemerská Poloma deposit).

66. The above individually, let alone collectively, meet the requirements of an investment within the meaning of Article 1(1)(a) of the US-Slovak Republic BIT and Article I(d) of the Canada-Slovak Republic BIT.

67. Belmont's investment in Rozmin is direct (Belmont holds a 57% shareholding interest in Rozmin). As to EuroGas, although its interest in Rozmin is indirect (EuroGas wholly owns EuroGas GmbH, which holds a 33% shareholding in Rozmin), it constitutes an investment within the meaning of the US-Slovak Republic BIT. Indeed, the US-Slovak Republic BIT's definition of investment includes indirect investments. In fact, Article I(1)(a) of the US-Slovak Republic BIT defines an “investment” as “every kind of

⁴⁵ See **Exhibit C-1**, Article I(1)(a)(ii) of the US-Slovak Republic BIT and **Exhibit C-2**, Article I(d)(ii) of the Canada-Slovak Republic BIT.

⁴⁶ **Exhibit C-1**, Article I(1)(a)(v) of the US-Slovak Republic BIT.

⁴⁷ **Exhibit C-2**, Article I(d)(v) of the Canada-Slovak Republic BIT.

investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts” (emphasis added).

68. Moreover and in any event, even in instances in which no explicit reference is made, under a given bilateral investment treaty, to (direct or) indirect investments, the term “investments” has consistently been interpreted as encompassing indirect investments. Indeed, in all decisions and awards addressing this question, tribunals have held that “investments” included indirect investments and that indirect investors accordingly had standing to bring claims under the bilateral investment treaty in question.⁴⁸
69. In conclusion, EuroGas has standing to bring a claim against the Republic of Slovakia under the US-Slovak Republic BIT, notwithstanding the fact that EuroGas has an indirect interest in Rozmin, the investment vehicle.
70. Sixth, as Claimants have made investments within the meaning of Article 1(1)(a) of the US-Slovak Republic BIT and Article I(d) of the Canada-Slovak Republic BIT, their investments also satisfy the requirements of Article 25 of the ICSID Convention.⁴⁹ However, even if one were to assume, for the sake of argument, that Article 25 of the ICSID Convention contains separate investment requirements for purposes of ICSID

⁴⁸ *Franz Sedelmayer v The Russian Federation*, Ad hoc arbitration rules, Award, July 7, 1998, ¶ 227, available at <http://www.italaw.com/sites/default/files/case-documents/ita0757.pdf>; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Decision on Jurisdiction, August 3, 2004, ¶ 137, available at <http://italaw.com/sites/default/files/case-documents/ita0788.pdf>; *Gas Natural SDG, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/10, Decision of the Tribunal on Preliminary Questions on Jurisdiction, June 17, 2005, ¶ 35, available at <http://www.italaw.com/sites/default/files/case-documents/ita0354.pdf>; *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, July 6, 2007, ¶ 124, available at <http://italaw.com/sites/default/files/case-documents/ita0444.pdf>; *Oxus Gold plc v. The Kyrgyz Republic*, LCIA Case No. UN 6825, Award on Preliminary Objections to Jurisdiction and Admissibility, March 15, 2008, ¶ 112; *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Decision on Jurisdiction, June 19, 2009, ¶ 106, available at <http://www.italaw.com/sites/default/files/case-documents/ita0880.pdf>; *Mobil Corporation et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, June 10, 2010, ¶ 165, available at <http://italaw.com/sites/default/files/case-documents/ita0538.pdf>; *CEMEX Caracas Investments B.V. et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on Jurisdiction, December 30, 2010, ¶ 156, available at <http://www.italaw.com/sites/default/files/case-documents/ita0142.pdf>; *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, March 8, 2010, ¶ 97, footnote 109, available at <http://www.italaw.com/sites/default/files/case-documents/ita0427.pdf>.

⁴⁹ *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, January 29, 2004, ¶¶ 99-112, available at <http://www.italaw.com/sites/default/files/case-documents/ita0782.pdf>.

jurisdiction, namely those laid down in the doctrine and transposed into ICSID case-law,⁵⁰ Claimants' investments would still constitute investments under those requirements. It is unanimously recognized that an investment implies contributions, a certain duration of performance of the contract, a participation in the risks of the transaction, and possibly also a contribution to the economic development of the State hosting the investment.

71. In the present case, Claimants' investments were: (i) substantial (approximately USD 10 million in capital and significant contribution in know-how, training, and management); (ii) made for a significant duration (investments took place between 1998 and 2005 and were thereafter to be made during the entire preparation and development of the deposit, which was expected to have a lifetime of several decades); (iii) involved exploration and construction works, the assessment and confirmation of talc reserves, as well as the negotiation of sale-purchase agreements with potential talc purchasers, without guarantee, at the outset, on profits that the project would generate; and (iv) of strategic importance to the development of Slovakia's natural resources and economy, considering in particular that the Gemerská Poloma deposit was the first talc deposit in Slovakia, and of a particularly large size (one of the world's most significant talc deposit) .
72. In conclusion, Claimants have made investments that meet the requirements of Article 1(1)(a) of the US-Slovak Republic BIT, Article I(d) of the Canada-Slovak Republic BIT, and Article 25 of the ICSID Convention.
73. Seventh, the dispute is covered by the US-Slovak Republic BIT as well as by the Canada-Slovak Republic BIT. Indeed, Article VI(1)(c) of the US-Slovak Republic BIT defines an "investment dispute" *inter alia* as "*a dispute between a Party and a national or company of the other Party arising out of or relating to [...] an alleged breach of any right conferred or created by this Treaty with respect to an investment.*" As to Article X(1) of the Canada-Slovak Republic BIT, which deals with the settlement of disputes between an investor and the host Contracting Party, it pertains to "[a]ny dispute between one Contracting Party and an investor of the other Contracting Party relating to the effects of a measure taken by the former Contracting Party on the management, use, enjoyment or disposal of an investment made by the investor, and in particular, but not exclusively,

⁵⁰ *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, July 23, 2001, ¶ 52, available at <http://www.italaw.com/sites/default/files/case-documents/ita0738.pdf>.

relating to expropriation referred to in Article VI (Expropriation) of this Agreement or to the transfer of funds referred to in Article VII (Transfer of Funds) of this Agreement.”

74. Pursuant to Article VI(2) of the US-Slovak Republic BIT and Article X(1) of the Canada-Slovak Republic BIT, the Parties shall endeavor to settle all disputes amicably. If, however, such disputes cannot be settled amicably within six months from the date on which the dispute arose, the dispute can be submitted to ICSID arbitration.

75. Article VI(2) and (3) of the US-Slovak Republic BIT indeed provides:

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third party procedures. Subject to paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures, including those relating to expropriation, specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws and applicable international agreements regarding enforcement of arbitral awards.

3. (a) At any time after six months 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 conciliation or binding arbitration to the International Centre for the Settlement of Investment Disputes (“Centre”) or to the Additional Facility of the Centre of pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (“UNICTRAL”) [sic] or pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute. [...]

76. In turn, Article X(1), (2), and (3) of the Canada-Slovak Republic BIT provides:

1. Any dispute between one Contracting Party and an investor of the other Contracting Party relating to the effects of a measure taken by the former Contracting Party on the management, use, enjoyment or disposal of an investment made by the investor, and in particular, but not exclusively, relating to expropriation referred to in Article VI (Expropriation) of this Agreement or to the transfer of funds referred to in Article VII (Transfer of

Funds) of this Agreement, shall, to the extent possible, be settled amicably between them.

2. If the dispute has not been settled amicably within a period of six months from the date on which the dispute was initiated, it may be submitted by the investor to arbitration.

3. In that case, the dispute shall then be settled in conformity with either:

(a) the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as adopted in Resolution 31/98 of the United Nations General Assembly on 15 December 1976;

(b) the rules of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965 (hereinafter referred to as the "ICSID Convention"), when both Contracting Parties are bound by it; or

(c) the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention.

77. It has been recognized that such provisions are not mandatory, but constitute a mere recommendation.⁵¹ In any event, in the present instance, Claimants have tried on several occasions, to no avail, to settle the dispute amicably with Respondent, including by way of letters sent to Respondent on October 31, 2011 and December 23, 2013.
78. On October 31, 2011, indeed, EuroGas notified the Republic of Slovakia of the existence of an investment dispute, under the US-Slovak Republic BIT, arising out of its investment in the Gemerská Poloma talc deposit.⁵² Following this letter, the Republic of Slovakia did not, however, display any intention to engage in discussions towards an amicable settlement of the dispute. On the contrary, on May 2, 2012, Mr. Kažimír, Deputy Prime Minister and Minister of Finance of the Slovak Republic, stated that the dispute could not be settled amicably as long as an administrative procedure before Slovak mining offices was pending.⁵³ In other words, Respondent argued that the dispute was not yet ripe.

⁵¹ *Victor Pey Casado & Fondation Président Allente v. Republic of Chili*, ICSID Case No. ARB/98/2, Decision on Jurisdiction, May 8, 2002, ¶ 130, available at <http://www.italaw.com/sites/default/files/case-documents/ita0631.pdf>.

⁵² **Exhibit C-39**, Letter from EuroGas Inc. to the Government of the Slovak Republic, dated October 31, 2011.

⁵³ **Exhibit C-40**, Letter from the Slovak Republic, dated May 2, 2012.

Thereafter, eight months later, by letter dated December 21, 2012, Mr. Kažimír suddenly informed EuroGas of the Slovak Republic's decision to exercise the right to deny this company the benefits of the US-Slovak Republic BIT, including the right to arbitration.⁵⁴ In this respect, even if the objection could be raised for the first time at such a very late stage after Slovakia's acts and omissions in breach of the BITs and after the investors consented to arbitrate the dispute, it would still be inapposite, given that the Republic of Slovakia failed to discharge its burden of proof that the conditions of Article I(2) of the US-Slovak Republic BIT,⁵⁵ on which it was attempting to rely, were met. In any event, neither one of the cumulative conditions of this provision is satisfied.

79. The six-month amicable settlement period, provided for under Article VI(3) of the US-Slovak Republic BIT, which started running when the Republic of Slovakia was given notice of the present dispute October 31, 2011, had by then elapsed without any amicable settlement having been reached. Rather, as noted above, the Republic of Slovakia had expressly rejected on two occasions EuroGas' claims. Given that Belmont's claims are the very same as those of EuroGas, the six-month amicable settlement requirement under Article X(2) of the Canada-Slovak Republic BIT must also be considered to have elapsed at the expiration of a six-month period which started on October 31, 2011. Nonetheless, as an ultimate attempt at an amicable settlement of the dispute with the Slovak Republic, Claimants jointly sent Respondent a letter dated December 23, 2013, in which Claimants reiterated their consent to submit the dispute to ICSID arbitration under the Washington Convention of 1965, and granted Slovakia more than another month to engage in good faith in settlement negotiations towards an agreement on compensation.⁵⁶ Respondent took this opportunity to argue that the cooling off period had only started running from the date of Belmont's first notice and to call for settlement meetings so as to gain time and obtain information to manufacture new defenses. In any event, exchanges and a meeting followed, to no avail. Six more months were wasted. In other words, no amicable settlement has been reached. The only benefit of these further exchanges is that the Slovak

⁵⁴ **Exhibit C-41**, Letter from the Slovak Republic, dated December 21, 2012.

⁵⁵ Article I(2) of the US-Slovak Republic BIT reads as follows: "*Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations*" (**Exhibit C-1**).

⁵⁶ **Exhibit C-42**, Letter from EuroGas Inc. and Belmont Resources Inc. to the Government of the Slovak Republic, dated December 23, 2013.

Republic can no longer allege that the six-month cooling off period has not been complied with.

80. In conclusion, the recommendation to settle the dispute amicably, provided for in Article VI(3) of the US-Slovak Republic BIT and Article X(2) of the Canada-Slovak Republic BIT, has been complied with, and Claimants are convinced that an amicable solution to the dispute cannot be envisaged. Claimants thus have no alternative but to initiate ICSID proceedings for the settlement of this dispute.
81. All conditions set forth in Article VI of the US-Slovak Republic BIT and Article X of the Canada-Slovak Republic BIT are met, including, by way of the filing of the present Request, any waiver obligation set out in Article X(5) of the Canada-Slovak Republic BIT. Claimants therefore submit this Request for Arbitration.

IV. RESPONDENT'S OBLIGATIONS

82. The US-Slovak Republic BIT and the Canada-Slovak Republic BIT are both designed to promote and protect investments of nationals and companies of one of the Contracting Parties to each one of these BITs, in the territory of the other.⁵⁷ To that end, the US-Slovak Republic BIT and the Canada-Slovak Republic BIT create – directly and indirectly by way of the most-favored-nation clauses found in both BITs – obligations on the part of the Slovak Republic towards United States and Canadian investors.
83. The following non-exhaustive BIT obligations are particularly relevant to the Parties' dispute:
- the obligation to treat Claimants' investments in a way no less favorable than that offered to Slovakia's companies;⁵⁸
 - the obligation to treat Claimants' investments in a way no less favorable than that offered to companies of any third country;⁵⁹

⁵⁷ Exhibit C-1, US-Slovak Republic BIT, preamble; Exhibit C-2, Canada-Slovak Republic BIT, preamble.

⁵⁸ Exhibit C-1, Article II(1) of the US-Slovak Republic BIT; Exhibit C-2, Article III(4) of the Canada-Slovak Republic BIT.

⁵⁹ Exhibit C-1, Article II(1) of the US-Slovak Republic BIT; Exhibit C-2, Article III(2) and (3) of the Canada-Slovak Republic BIT.

- the obligation to ensure, at all times, fair and equitable treatment to Claimants' investments;⁶⁰
- the obligation to ensure, at all times, full protection and security to Claimants' investments;⁶¹
- the obligation to accord to Claimants' investments a treatment that is no less than that required by international law;⁶²
- the obligation not to employ arbitrary or discriminatory measures with regard to Claimants' investments;⁶³
- the obligation not to expropriate Claimants' investments, be it directly or indirectly, and not to take measures tantamount to an expropriation of Claimants' investments, except for a public purpose, in a nondiscriminatory manner, upon payment of prompt, adequate, and effective compensation, and in accordance with due process of law,⁶⁴ and
- the obligation to observe any specific commitment Slovakia may have entered into with regard to Claimants' investments.⁶⁵

84. Respondent's actions, detailed in Section II above, are in breach of the foregoing international obligations, as set forth below.

⁶⁰ **Exhibit C-1**, Article II(2)(a) of the US-Slovak Republic BIT; **Exhibit C-2**, Article III(1)(a) of the Canada-Slovak Republic BIT.

⁶¹ **Exhibit C-1**, Article II(2)(a) of the US-Slovak Republic BIT; **Exhibit C-2**, Article III(1)(a) of the Canada-Slovak Republic BIT.

⁶² **Exhibit C-1**, Article II(2)(a) of the US-Slovak Republic BIT; **Exhibit C-2**, Article III(1)(a) of the Canada-Slovak Republic BIT. See also Article 42(1) of the ICSID Convention which reads as follows: "*The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable,*" available at http://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf. The rules of international law, by virtue of the application of the ICSID Convention and the BITs, include customary international law. As Schreuer explains, "[t]he mandatory rules of international law, which provide an international minimum standard of protection for aliens, exist independently of any choice of law made for a specific transaction [and] constitute a framework of public order within which such transactions operate" (Christoph H. Schreuer, *The ICSID Convention: A Commentary* (2nd ed.), 2009, at p. 587, ¶115).

⁶³ **Exhibit C-1**, Article II(2)(b) of the US-Slovak Republic BIT, which provides that "[n]either Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of Claimants' investments. For purposes of dispute resolutions under Articles VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a Party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party."

⁶⁴ **Exhibit C-1**, Article III(1) of the US-Slovak Republic BIT; **Exhibit C-2**, Article VI(1) of the Canada-Slovak Republic BIT.

⁶⁵ **Exhibit C-1**, Article II(2)(c) of the US-Slovak Republic BIT.

V. RESPONDENT'S BREACHES OF ITS OBLIGATIONS

85. Through the actions and omissions of the District Mining Office in Spišská Nová Ves and of Slovakia's Main Mining Office, among other entities, Respondent has breached its obligations under the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law. Each of these acts and omissions constitutes a violation of Claimants' rights under the BITs and gives rise to Claimants' well-founded claim for compensation, set out below in Sections VI and VII.
86. Hereafter is a non-exhaustive list of Respondent's acts and omissions that amount to breaches of Slovakia's obligations towards Claimants, under the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law in general including, but not limited to, Respondent's obligation to protect Claimants against expropriations, against unfair and inequitable treatment, against insecurity, and against arbitrary and discriminatory measures.
87. First, Rozmin's mining rights have been unlawfully expropriated by the Republic of Slovakia, in breach of this country's obligations under both the US-Slovak Republic BIT and the Canada-Slovak Republic BIT.
88. Indeed, the abrupt revocation of Rozmin's mining rights, justified *post facto* by the 2002 Amendment, amounted to a prohibited expropriation under both BITs.⁶⁶ It constituted a taking of Belmont's and EuroGas' investment, which was not justified by any public purpose and, in any event, not accompanied by any prompt, adequate, and effective compensation, and not operated in accordance with due process of law. In other words, even if one were to assume, for the sake of argument, that the expropriation of Claimants' rights was justified (which is hereby denied), this expropriation would still constitute a violation of international law as it was not accompanied by any compensation, let alone a prompt, adequate, and effective one, to which Claimants would be entitled under international law. In sum, heads or tails, the expropriation calls for the payment of damages to compensate for the losses sustained by Claimants.
89. Furthermore, irrespective of the revocation, *per se*, of Rozmin's mining rights, Slovakia's subsequent disregard of the decisions of its own Supreme Court (dated February 27, 2008

⁶⁶ Exhibit C-1, Article III(1) of the US-Slovak Republic BIT; Exhibit C-2, Article VI(1) of the Canada-Slovak Republic BIT.

and May 18, 2011), by way of the DMO's assignment of these mining rights, first in July 2008 and then again in March 2012, to VSK Mining, in itself also constituted an expropriation of Claimants' rights under international law. Again, this expropriation was not justified by any public purpose and, even if it had been so justified, it would have had to be accompanied by a prompt, adequate, and effective compensation, which the Slovak Republic failed to pay. Claimants are therefore entitled to compensation for the expropriation of their mining rights when these were awarded by the DMO to VSK Mining in total disregard of two judgments handed down by Slovakia's highest judicial authority.

90. Second, given its procedural and substantive flaws, the Slovak Republic's revocation of Rozmin's mining rights also amounted to multiple other violations of Slovakia's obligation under both BITs, notably the obligation to protect Claimants from measures violating the full protection and security standard;⁶⁷ the obligation to protect Claimants against discriminatory and arbitrary measures;⁶⁸ and the obligation to afford Claimants fair and equitable treatment,⁶⁹ which includes the obligation to protect Claimants' legitimate expectations and their reliance on the legal framework in place at the time of the investment. The legal framework on which Claimants justifiably relied to carry out their investment encompassed not only the General Mining Authorization issued by the DMO on May 14, 1997, the certificate issued by this Office on June 24, 1997, its decision of May 29, 1998 authorizing mining activities under the POPD, and its decision of May 31, 2004 extending this authorization to November 13, 2006, but also all the relevant laws of the Slovak Republic in force when the investments were made in the Gemerská Poloma talc deposit, prior to the 2002 Amendment. As stated by the Supreme Court, this Amendment did not have any retroactive effect and therefore did not constitute a valid ground to revoke Rozmin's mining rights.

91. Even assuming that the 2002 Amendment did validly apply retroactively and that Rozmin's mining rights had accordingly expired by the time a new tender was released, this would not be opposable to EuroGas and Belmont, and the revocation of Rozmin's mining rights would still have to be deemed unfair and inequitable, as well as arbitrary and discriminatory, given the State's inconsistent behavior. A State may not rely on its own

⁶⁷ See **Exhibit C-1**, Article II(2)(a) of the US-Slovak Republic BIT and **Exhibit C-2**, Article III(1)(a) of the Canada-Slovak Republic BIT.

⁶⁸ See **Exhibit C-1**, Article II(2)(b) of the US-Slovak Republic BIT.

⁶⁹ See **Exhibit C-1**, Article II(2)(a) of the US-Slovak Republic BIT and **Exhibit C-2**, Article III(1)(a) of the Canada-Slovak Republic BIT.

laws to invalidate its undertakings,⁷⁰ and a State's actions may be in breach of its international obligations even if they are valid under national law. This principle is set out in the International Law Commission's Articles on State Responsibility,⁷¹ and has been confirmed in international case-law.⁷²

92. In the case at hand, as noted above, the DMO authorized Rozmin to carry out mining activities until November 2006 and nevertheless released a new tender in December 2004, only to award the very same rights to carry out mining activities at Gemerská Poloma to a domestic entity in January 2005. Based on the foregoing, it is clear that the revocation of Rozmin's mining rights amounted to multiple violations of international law and that these violations could not be justified by amendments to Slovak domestic law.
93. Furthermore, on its own, Slovakia's disregard of the decisions of its Supreme Court dated February 27, 2008 and May 18, 2011, by way of the assignment of mining rights over the Gemerská Poloma tale deposit to VSK Mining, first in July 2008 and then again in March 2012, also constituted a breach of Claimants' above-mentioned rights, including the right to fair and equitable treatment, to full protection and security, and to protection against discriminatory and arbitrary measures.
94. Finally, through the Minister of Economy's attempt to convince Rozmin to forgo its mining rights, and through the failure of the Office of the President, the Office of the Prime Minister, and of various ministries to ensure the protection of Claimants' investments, in total disregard of the Supreme Court's decisions of February 2008 and May 2011, Slovakia also breached its obligation to insure Claimants fair and equitable treatment and full protection and security.

⁷⁰ See *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, July 29, 2008, ¶ 616, available at <http://italaw.com/sites/default/files/case-documents/ita0728.pdf>.

⁷¹ The International Law Commission's Articles on State Responsibility, James Crawford (Cambridge University Press, 2003), 86-90: Article 3: "*The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. [...] An act of a State must be characterized as internationally wrongful if it constitutes a breach of an international obligation, even if the act does not contravene the State's internal law – even if, under that law, the State was actually bound to act in that way. [...] That conformity with the provisions of internal law in no way precludes conduct being characterized as internationally wrongful is equally well settled.*"

⁷² See, e.g., *Treatment of Polish Nationals, 1932*, P.C.I.J., Series A/B No. 44, pp. 4 *et seq.*, at p. 24: "[...] a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force," available at http://www.icj-cij.org/pcij/serie_AB/AB_44/01_Traitement_nationaux_polonais_Avis_consultatif.pdf; *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003, ¶ 120, available at <http://www.italaw.com/sites/default/files/case-documents/ita0854.pdf>.

95. Third, the revocation of Rozmin's mining rights constituted a breach by the Republic of Slovakia of its specific undertakings.⁷³ Indeed, Rozmin's rights were revoked in January 2005 notwithstanding the DMO's decision of May 31, 2004, which explicitly authorized Rozmin to carry out works at the Gemerská Poloma talc deposit until November 13, 2006.⁷⁴ The DMO's decision followed, by more than two years, the 2002 Amendment, and was confirmed in writing, on December 8, 2004, by the head of the DMO, Mr. Baffi, following an on-site inspection of the works carried out by Rozmin at the Gemerská Poloma talc deposit.

VI. DAMAGES

96. As a result of Respondent's breaches of the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law, Claimants have sustained losses, including loss of profits and loss of enterprise value, for which Claimants shall seek compensation in the arbitration. In other words, in these proceedings, Claimants shall not seek the reinstatement of Rozmin's mining rights, which was the object of local proceedings, but a declaration that Slovakia breached its obligations under international law and the award of damages sustained as a result thereof.
97. These losses sustained by Claimants are summarized in Section VII below. They shall easily be substantiated and quantified in due course, based on proven reserves which were confirmed by Rozmin in accordance with Western industry standards, and on talc prices. Ever since Claimants' first investments, in 1998, the prices of talc have been rising significantly. They had reached a record by the time Rozmin's mining rights were abruptly revoked in 2005, and were expected to continue rising steadily, which they in fact did.

⁷³ See **Exhibit C-1**, Article II(2)(c) of the US-Slovak Republic BIT.

⁷⁴ **Exhibit C-27**, Authorisation of Mining Activity in the Mining Area "Gemerská Poloma," dated May 31, 2004 (Ref. 1023/511/2004).

VII. RELIEF SOUGHT

98. Slovakia's above-mentioned breaches of the US-Slovak Republic BIT, the Canada-Slovak Republic BIT, and international law have caused and continue to cause Claimants considerable damages, for which Respondent must be held accountable. Without prejudice to any other/further claims Claimants might be entitled to raise in this Arbitration, Claimants hereby respectfully request the Arbitral Tribunal to:

- declare that Slovakia has breached its obligations towards EuroGas and Belmont under the US-Slovakia BIT, the Canada-Slovakia BIT, and international law;
- order Slovakia to pay damages in favor of EuroGas and Belmont, in an amount to be quantified in due course, representing the fair market value of the Gemerská Poloma talc deposit, for the loss of profits consequent to the revocation of Rozmin's mining rights and the loss of shareholder value, as well as damages for any alternative or supplementary claims that Claimants may wish to raise out of an abundance of caution, such as damages for loss of an opportunity;
- order Slovakia to pay the costs of this arbitration, including all expenses that EuroGas and Belmont have incurred, fees and expenses of the arbitrators, ICSID, legal counsel, experts and consultants, as well as their internal costs;
- order Slovakia to pay, on the above amounts, pre- and post-award interest at a rate of LIBOR + 2%, compounded semi-annually as of the date that these amounts are determined to have been due to Claimants; and
- order any other relief that the Tribunal deems appropriate.

99. Claimants reserve the right to amend and/or supplement the present Request for Arbitration and Exhibits attached thereto, to make additional claims, and to request such alternative or additional relief as may be appropriate, including conservatory, injunctive or other interim relief.

* * *

100. One original and eleven copies of this Request for Arbitration, together with Exhibits C-1 to C-42, have been sent to the Secretary-General of ICSID.

Respectfully submitted,

[Signed]

Hamid G. Gharavi