



TANTALUM INTERNATIONAL LIMITED
ACN 086 594 498

Tantalum International Ltd. prevails on key question of jurisdiction in international arbitration against the Arab Republic of Egypt

Media Statement 12 October 2020

Tantalum International Ltd. (TIL) is pleased to provide the following update concerning its claims against the Arab Republic of Egypt for the expropriation of (and other measures taken against) its gold, tantalum and tin assets in Egypt. These claims are being heard by an arbitral tribunal under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) in Washington, DC.

As Australian companies with investments in Egypt, TIL and co-claimant Emerge Gaming Ltd. (formerly Gippsland Ltd.) (Emerge) are covered by the 2002 Bilateral Investment Treaty (BIT) between Egypt and Australia which provides that disputes between Australian investors and the government of Egypt may be referred to ICSID arbitration. Exercising their rights under the BIT, TIL and Emerge filed a Request for Arbitration at ICSID on 29 May 2018, represented by international law firm, Clifford Chance and supported financially through a third-party litigation funding facility. TIL is managing the arbitration process on behalf of both Claimants.

Egypt subsequently objected to ICSID's jurisdiction. This required the Tribunal to first decide whether it has jurisdiction to hear this dispute. Egypt's main jurisdictional objection concerned whether the investor-State arbitration clause of the Australia-Egypt BIT contains Egypt's advance consent to ICSID arbitration with Australian investors (a dispute can only be resolved by ICSID arbitration if the claimant investors and respondent State agree).

In a landmark ruling on 8 October 2020, the Tribunal unanimously dismissed Egypt's jurisdictional objection regarding consent to arbitration. In legal terms, this is a significant decision because, like many Australian BITs, the arbitration clause of the Australia-Egypt BIT provides that the respondent State "*shall consent*" to ICSID arbitration with the claimant investor. In a previous case under the Australia-Indonesia BIT, an ICSID tribunal found that these words do not constitute advance consent to ICSID arbitration by the host State and that a further act of consent is required from the host State before it can be sued by an investor at ICSID. One of the key reasons the Tribunal in TIL and Emerge's case reached a different decision was that new evidence came to light proving that these words in the Australia-Egypt BIT were intended to convey the State's advance consent to ICSID arbitration.

This decision represents a pivotal step for TIL and Emerge, because if the Tribunal had agreed with Egypt and found that the Australia-Egypt BIT does not contain Egypt's advance consent to ICSID arbitration, the case would have been at an end. The Tribunal's decision clears the way for it to now hear and decide the rest of the dispute – including the merits of TIL and Emerge's expropriation claims against Egypt and the quantum of compensation payable if the BIT has been breached.

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The Tribunal has ordered the parties to confer on the procedural timetable for the balance of the arbitration. Following conferral, the Tribunal will make a procedural order setting out the timetable. Though the future timetable remains to be fixed, TIL expects that the hearing on the remainder of the dispute will take place in Q3 or Q4 2021, and that the Tribunal's final award will be issued 9-12 months thereafter.

TIL and Emerge remain confident in the legal merit of their claims against Egypt and their entitlement to the significant monetary compensation they have requested (which is supported by independent expert evidence). TIL notes that Egypt is currently defending approximately 29 international disputes, with a recent run of adverse decisions against it (with large compensation figures).

The Company is open to discussing opportunities for a negotiated settlement with Egypt for the mutual benefit of all parties. An expedited, agreed settlement would remove encumbrances to enable Egypt to secure a new partner, receive millions of dollars of technical data and finally develop this world-class project at a time when global focus is on supply of critical materials. For TIL and (original) Emerge shareholders – whilst prepared to be patient – an amicable settlement would bring forward financial redress for their loss of these assets.

TIL's Chairman, Mike Rosenstreich commented:

"On behalf of TIL and Emerge shareholders we thank Clifford Chance for their skill and professionalism in achieving this important legal precedent and the dedication with which they continue to work with TIL to prosecute our claims against Egypt. We look forward to engaging in the next phase of the arbitration process and will keep all stakeholders informed of developments."

The Clifford Chance team representing TIL and Emerge comprises Dr Sam Luttrell, Audley Sheppard QC, Dr Romesh Weeramantry, Sean Marriott, Nathan Eastwood, Matthew Di Marco and Ishbel McLachlan. On matters of Egyptian law, Clifford Chance is being assisted by Girgis Abd El Shahid and Inji Fathalla of Shahid Law Firm in Cairo.

Further background on the case is available on the TIL website at
<https://tantalumint.wixsite.com/tantalumint/arbitration-with-republic-of-egypt>

Procedural details for the case are available on the ICSID website at
<https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/18/22>

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