

THE NETWORK FOR INTERNATIONAL LAW STUDENTS



**II EDITION OF THE NILS BUSINESS & HUMAN RIGHTS
MOOT COURT COMPETITION, 2019**

2018-19

ORGANISED BY

nils

THE NETWORK FOR INTERNATIONAL LAW STUDENTS

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2019

PROBLEM STATEMENT DOCKET

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PROBLEM STATEMENT

IN THE INTERNATIONAL ARBITRATION COURT OF GREAT BRITAIN

PROCEEDINGS TO DATE

1. This arbitration was commenced on January 9, 2018, when The Coalition to Protect the Rain Forest People (the Coalition), a nongovernmental organization organized as a charitable corporation under the laws of Panuva, delivered an application for arbitration under Chapter 1 of the Arbitration Rules of this Court, naming as respondent Cronson International, Ltd., a company incorporated in the United Kingdom (CI). Copies of such application were delivered to the respondent on November 1, 2017. The Coalition purports: (a) to represent all adults and children belonging to the Yamaleyos community of the Amadolian region of Panuva (the Community); and (b) to be the trustee of a certain trust created under a contract dated June 15, 2015 (the Agreement) between CI, the Coalition and such community.
2. The Coalition accompanied its application with a list of 111 names. Thirty-five of such names were those of individual members of the Community who, on May 22, 2017 had been unlawfully shot and either killed outright by members of the Army of Panuva or later died of wounds. The remaining 76 names were those of members of the Community who had been unlawfully shot and wounded on such date by members of the Army of Panuva.
3. The application proposed the appointment of three arbitrators and the appointment of Arbitrator One to act as one of the arbitrators.
4. The application requested that the arbitration take place in Liquipa, Panuva.
5. The application contained a brief statement of the claims involved: The Coalition, in its capacity as representative of individual members of the Community, is seeking damages from CI for breach of the terms of the Agreement. The Coalition claims

that under the terms of the Agreement, CI should have had a security plan in place that would have prevented the action of the Army. Failure to have such a plan led to the intervention of the Army of Panuva and the overreaction that led to the deaths and injuries. The Coalition demands that CI should be ordered to pay damages, including actual damages, pain and suffering and damages for wrongful deaths stemming from the shootings mentioned above. The Coalition asks this Court to impose damages under the laws of England and Wales, and in amounts based on the decisions of the courts of England and Wales.

6. The Coalition, in its capacity as trustee under the Agreement, demands that CI pay to the trust the sum of £5,000,000, with interest, being the amount by which CI is in arrears in two quarterly payments to such trust under the terms of the Agreement.

7. CI filed its response to the application on November 12, 2017.

8. The response joined in the Coalition's request for the appointment of three arbitrators and proposed the appointment of Arbitrator Two to act as one of the arbitrators.

9. The response joined in the Coalitions's request that the arbitration take place in Liquipa, Panuva.

10. In its response, CI claims that the arrearage in the payments sought by the Coalition is not owing, due to the fact that the operations of the Panuva 1 Mine (as described in the following Findings of Fact) were interrupted for six months and thus were not generated during the "life of the mine," as contemplated by the Agreement. Further, CI claims that the arrearages are not owing because the mine operations were interrupted due to the unlawful acts of the Community. CI point out that, when the "life of the mine" is ended, all payments contemplated to be paid under the Agreement will have been made.

11. CI claims that it is not responsible for the deaths and injuries in question and that it does not owe any damages on account thereof; that it neither sought nor agreed to the intervention of the Army of Panuva and that the Army of Panuva acted entirely outside of its control. Further, it states that, if it were to be held responsible, that the damages should be calculated according to the laws and practices of Panuva, where the action took

place, rather than the laws and customs of the England and Wales. CI states that the clause in the Agreement referring to the “laws of England and Wales” relates only to the interpretation of the language of the contract and not to the calculation of damages.

12. This Court appointed the two arbitrators proposed by the parties. The two arbitrators were unable to agree on a third arbitrator. Consequently, on December 12, 2017, the Secretary-General of the International Arbitration Court of Great Britain, acting as appointing authority pursuant to Rule 10.3 of the Rules, appointed Arbitrator Three to act as the third arbitrator and the President of this Court, whereupon this Court was formed. In doing so, the Secretary-General observed that, in view of the various claims, the appointment of such a panel would establish a reasonable balance between the parties.

13. The parties submitted various requests for documents to this Court. On January 15, 2018, this Court ordered the production of the same by April 14, 2018. No party has claimed non-receipt of the requested documents.

14. This Court conducted a hearing on this matter held from June 15, 2018 through June 30, 2018, for the purpose of gathering additional factual information, including the examination of witnesses. Its resulting Findings of Fact appear below.

FINDINGS OF FACT

The Court hereby makes the following findings of fact:

1. CI is a diverse multinational business enterprise, with subsidiaries operating in various parts of the world that conduct mining, trading, manufacturing and transportation activities.
2. The Ministry of Mines (Ministry) of Panuva is the agency within the government of Panuva that is responsible for permitting the planning, development, construction and operation of minerals extraction activities in that country.
3. The Coalition is duly authorized by the Community to represent it collectively and all individual members thereof, in this proceeding.

4. The Coalition is the trustee of the trust established under the Agreement.
5. The 111 individual victims named in the application are members of the Community, which is indigenous to the Amadolian region of Panuva. The list of members of the Community who were either killed or wounded by the Army of Panuva, contained in the Coalition's application, has not been contested by CI and therefore is accepted as true and correct.
6. At some point in 2014, CI received an offer from GoldExplorer, a Panuvan company, to sell CI the rights to develop a gold mine called "the Panuva 1 Mine" situated deep in the Amadolian interior in Panuva. At that time, the price of gold had peaked at nearly \$1600 per ounce. GoldExplorer's experts projected recoverable reserves to be in excess of 5 million ounces and that the cost of extracting and processing the gold would be under US\$300 per ounce.
7. The projected process for extracting the gold involved the "heap leach method," a method whereby gold-containing rocks are crushed into small pieces and then poured onto "heaps," essentially piles of rocks built over an impermeable membrane that is used to collect liquids below the "heap." A cyanide solution is then sprayed onto the top of the "heap." Cyanide drains down through the "heap" and dissolves the gold from the rock. The gold-laden cyanide solution is then collected and pumped into an extraction process where the gold and the cyanide are separated. The gold is then melted into ingots for market; the cyanide solution is pumped back into an open reservoir to be re-used.
8. The "heap leach method" has various significant environmental impacts. The process of extracting gold-bearing rock from the ground requires frequent use of dynamite, large excavator machines, crushing machines and trucks. High-volume noise results from the blasting and machine operations.
9. Additionally, there is a significant amount of rock and earth that must be removed before the gold-bearing rock can be reached. This "overburden" is generally deposited in mounds adjacent to the growing rock pit. Further, the "heaps" of rock from which the gold has been dissolved are generally left in place, creating high (50- to 75-foot) mounds of crushed rock in various locations near the pit. The residual "heaps" and mounds of "overburden" remain after the recoverable gold deposit has been exhausted and the mine is closed.

10. The use of cyanide can have its own impact stemming from infrequent episodes of spills and leaks that could pollute surface water and groundwater.
11. As a consequence of the above, the area around the mine is rendered permanently uninhabitable. The collective impacts require that all people who have been living on or near a gold deposit be relocated to points substantially distant from the mine area.
12. Additionally, it was necessary to carve a 145-mile access road through the Amadolian rain forest (the "Road") to connect the mine to the Panuvan highway network. This would allow for fuel, food, people, equipment and other supplies to move to the Panuva 1 Mine and for the gold to be shipped out. The Road would cross the lands occupied by indigenous people, who would be impacted not only by its construction and operation, but also by allowing outside influences into their communities, such as logging operations, artisanal gold mining and tourism.
13. CI made an investigation into the Panuva 1 Mine in order to assess its commercial value. It concluded that GoldExplorer's proposition could lead to a highly profitable mining venture for CI.
14. CI also made a preliminary assessment of the environmental and social impacts of the proposed mine. It was acutely aware of how other mining operations in Panuva and various other parts of the world had encountered opposition from local inhabitants and had, in some cases, resulted in violent confrontations and even the interruption or cessation of mining operations.
15. CI's board of directors authorized its executives to pursue the GoldExplorer proposition, but only on the condition that they could assure the board that the Panuvan government would be supportive of CI's development of the Panuva 1 Mine and that the local inhabitants would accept both the mine and the Road.
16. CI's board authorized its executives to seek financing for the mine from the International Finance Corporation (IFC).
17. CI engaged a consulting firm with experience in Panuva to prepare a report on the likelihood of success with both the Panuvan government and the local inhabitants.

18. The consulting firm ultimately reported that preliminary discussions with the Ministry indicated that CI would likely be accepted as the developer of the Panuva 1 Mine.

19. The consultants pointed out that Panuva had adopted its domestic version of Convention 169 of the International Labor Organization, which called for projects affecting indigenous people to obtain the “free, informed consent” of such people and that it would likely be necessary to provide alternate housing, moving costs, grazing areas, schools, recreational facilities and various other inducements in order to obtain their free, informed consent.”

20. The consultants also pointed out that the IFC’s Performance Standards, which would need to be met in order to obtain IFC financing, would likely require a considerable effort to ensure that the environmental impacts of the mine were mitigated and that the indigenous community had consented to the mine.

21. The consultants reported that the indigenous community would likely to be supported by the Coalition, known to be a highly active nongovernmental organization with both local and foreign funding sources that offered legal and other assistance to indigenous people throughout Panuva.

22. The consultants described the atmosphere in Panuva as being “tense.” Several mines had recently been shut down by the local inhabitants due to opposition to their environmental impacts and other causes. The Army of Panuva had been called in to deal with disturbances at three mines and had shot dozens of protesters at each mine. In the consultants’ opinion, it would be challenging to obtain the consent of the local community, but this could be done if the process were properly managed.

23. The consultants recommended that CI engage a team of experts, including mining engineers, anthropologists, experts on indigenous people, including those speaking the local languages, architects and others who would be tasked with approaching the indigenous community and working out an acceptable arrangement.

24. The consultants projected that the cost of satisfying the local inhabitants and getting their “buy-in” to the project would likely exceed US\$50 million. Of this amount, approximately US\$10 million would be needed just to engage the local community in the necessary discussions. This meant, of course, that this amount would be written off if the negotiations were unacceptable.

25. CI’s board authorized its executives to purchase an option to buy the Panuva 1 Mine from GoldExplorer and to put into effect the consultants’ recommendations for dealing with the indigenous community. The option agreement was signed and CI engaged a team of experts to pursue matters in Panuva.

26. CI applied for and was granted a provisional license from the Ministry to develop and operate the Panuva 1 Mine, conditioned upon presenting satisfactory evidence to the Ministry that CI had obtained the “free, prior, informed consent” of the indigenous people to be impacted and that the Ministry had approved a plan for the closure of the mine once operations had ceased.

27. CI filed its application for a development loan with the IFC on December 1, 2014.

28. The CI team in Panuva began by sending a small group of anthropologists and native-language-speaking social workers into the Panuva 1 area. The team was first met with suspicion and hostility, but they managed to overcome this by small gifts and social efforts and soon had established a dialogue with the leaders of the Community.

29. The CI team also approached the Coalition in Liquipa and discovered that the Coalition had already been contacted by representatives of the Community, who had sought its help in dealing with the mining companies. The Coalition had applied for, and received, funding from the International Human Rights Trust, to assist the Yamaleyos and any other affected people in negotiating a deal.

30. From this point forward, the Coalition was involved in all discussions between CI and the Community.

31. The CI team, working with the Coalition, discovered that the Community was a traditional society wherein the elders made all major decisions. The negotiations involved the elders of the Community in the vicinity of the Panuva 1 Mine and the Road,

although elders of groupings elsewhere throughout the Amadolia region were consulted from time to time by the Coalition. The usual process was for the local elders to assemble and discuss a particular matter, then engage in further discussions with others, until a consensus had formed.

32. Over the course of a year and a half, CI and the Coalition argued over what a “fair deal” would be. The CI team furnished models of the mine and drawings depicting each of the environmental impacts that would occur. CI even arranged for a delegation of elders to travel to another operating “heap leach” mine in Panuva to get a first-hand impression of a working mine’s impacts. The Coalition assisted in this process. Eventually, CI and the Community, acting through the Coalition, reached agreement.

33. The CI team assured CI’s executives that the entire Community had reached a consensus that was reflected in the agreement.

34. On June 15, 2015, the parties entered into the Agreement, which covered a wide range of issues. The terms of the Agreement (a copy of which is attached to these Findings of Fact as Attachment A) provided that the Community would agree to the development and operation of the Panuva 1 Mine and the Road, in return for a variety of actions, including payments of money, intended to prevent, mitigate and remediate the environmental and social impacts of the project. It also contained an escalation clause providing for the informal resolution of disputes arising under the Agreement, ending, should prior efforts fail, with binding arbitration.

35. On June 30, 2015, the Ministry issued an operating permit to CI for the Panuva 1 Mine and the Road. It included a plan for the ultimate closure of the mine when the gold-bearing deposit had been reduced to the point at which it was no longer commercially worth operating.

36. On July 7, 2015, the IFC granted CI a development loan in the amount of £200,000,000. Among the terms of the loan agreement was a covenant that CI must adhere to the IFC’s Performance Standards and other requirements.

37. Once the Agreement was signed, CI began work setting up the mine facilities, building the houses and the school and carving out the road. Within six months, the

construction phase was over, the people were all moved into their new houses, the school and hospital opened and the first overburden was removed from the ore body.

38. The Panuva 1 Mine operated without incident for two years. Some 30 Yamaleyos men were ultimately trained and hired to work at the mine.

39. On May 22, 2017, an empty fuel truck being driven at high speed was returning from the mine along the Road. An old woman was walking across the Road with her five year old granddaughter. They did not see or hear the truck coming. Both were hit and killed. The truck did not stop.

40. The elders of the village held a meeting to grieve the loss and to discuss what should be done. They made a decision to put up barriers across the Road in protest.

41. The blockage of the Road was soon felt at the Panuva 1 Mine. New supplies, such as food, fuel, cyanide, spare parts and workers, could not come in and the refined gold could not move out.

42. The manager at the Panuva 1 Mine used his satellite phone to call the CI team to ask them to immediately proceed to the village and assure the people that CI was very sorry for the accident, arrange for appropriate compensation of the aggrieved family and persuade the elders to remove the barrier.

43. The manager then called the Ministry to describe the situation.

44. The Assistant Minister of Mines said that he would get back to the manager. Then, without letting the manager know of his intention, he immediately called the Panuvan Army to ask them to reopen the Road. On May 25, the Army sent a platoon of heavily armed soldiers along the Road. When they came to the blockade, they demanded that the people remove it immediately. The people refused. Words were exchanged, rocks were thrown and soon the soldiers started firing indiscriminately at the people, including those who were simply standing by. Before the shooting stopped, some 35 people were dead and another 76 injured. Many women and children were among the dead and wounded.

45. The CI team arrived on May 25 shortly after this event, reported what had happened to the mine manager, and immediately began to assist the wounded and attempt to console the bereaved families.

46. When the manager of the Panuva 1 Mine learned what had happened, he immediately radioed the Ministry to protest this action. The Assistant Minister explained that he had been concerned about the cessation of royalty payments to the Ministry. He immediately telephoned the Army to protest. The Army recalled the soldiers and commenced disciplinary proceedings.

47. Up to this point in time, neither CI nor the CI team had had any contact with the Army of Panuva.

48. The mine manager and the CI team did what they could to bring the wounded to the hospital at the mine site. Several severely wounded were taken by helicopter to a hospital in Liquipa. An additional ten individuals eventually died of their wounds.

49. The Community buried its dead, tended to its wounded and reconstructed a new barrier, this time with the assistance of hundreds of fellow members of the Community who assembled from villages within many kilometres of the site.

50. The Road remained closed for six months.

51. Owing to the closure of the Road, the Panuva 1 Mine stopped operations.

52. When the mine ceased operating, CI stopped paying its quarterly contribution to the Coalition. However, it continued to pay the school and hospital expenses.

53. The CI team attempted to work out a settlement with the Community, following the terms of the Agreement. In the informal discussions, CI took the position that it would be willing to pay the actual costs of treating the wounded and the amount of £15,000 to the family of every dead victim. CI pointed out two principal considerations: (a) that CI had not caused the deaths and injuries—that was the fault of the Army; and (b) that the courts of Panuva had never awarded damages for pain and suffering to victims and they had never granted wrongful death damages in excess of £15,000 per victim.

54. The Coalition took the position that: (a) CI had failed its duty under international law and the Agreement to ensure that any security forces were to operate under international standards; (b) CI should have known that a call to the Ministry might involve the Army and; and (c) the damages should be determined according to the laws of England and Wales, which governed the Agreement, asserting that English courts often award damages for pain and suffering and also award wrongful death damages sometimes as high as £15,000,000 per individual victim. The Coalition demanded £5,000,000 per dead victim for wrongful deaths and £100,000 per wounded victim for pain and suffering, plus actual damages. It also demanded the payment of £5,000,000 on account of the arrearage in two quarterly payments.

55. Although the parties failed to achieve a final settlement, an interim settlement was reached whereby the Road would be opened pending the outcome of the binding arbitration. The parties elected to forego the use of mediation.

ATTACHMENT A
DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into as of June 15, 2015 by and between Cronson International, Ltd., a corporation organized under the laws of the United Kingdom (CI), and The Coalition for the Protection of the Rain Forest People, a charitable corporation organized under the laws of Panuva (the Coalition), acting on its own behalf and as representative of the Yamaleyos community (the Community) of the Amadolian region of Panuva.

PREAMBLE

WHEREAS: CI has been granted a permit by the Ministry of Mines of Panuva to develop and operate a mine in the Amadolian region of Panuva (the Panuva 1 Mine) that is situated on the traditional lands of the Community;

WHEREAS: The Community is agreeable to the development and operation of the Panuva 1 Mine, subject to the conditions contained in this Agreement;

WHEREAS: The operation of the Panuva 1 Mine will require the construction and operation of approximately 145 miles of all-weather road (the Road) on other traditional lands of the Community lying between the Panuva 1 Mine and Outpost 5, Panuva;

WHEREAS: Whereas the construction and operation of the Panuva 1 Mine and the Road will have various significant environmental and social impacts, that will affect the Community;

WHEREAS: CI has agreed to take certain steps and to make certain commitments, as described below, to prevent, mitigate and remediate such impacts;

WHEREAS: CI has agreed to make certain quarterly payments to a trust for the benefit of the Community in order to compensate the Community for such impacts;

WHEREAS: The parties believe that all disputes should be resolved by informal means; and

WHEREAS: the Community has authorized the Coalition to act as its representative in all matters concerning the Panuva 1 Mine and the Road, and all other matters that are the subject of this Agreement;

NOW, THEREFORE, the parties to this Agreement hereby covenant and agree as follows:

Section 1. The Project

- A. It is understood that members of the Community have for centuries occupied certain lands located in the Amadolian region of Panuva and thus claim the right to determine what activities shall take place on such lands.
- B. It is understood that a certain deposit of gold-bearing rock is located on the site at the Longitude and Latitude measurements indicated on the master map (the Map) included in the Project Proposal dated June 15, 2015 presented by CI to the Community, and that CI wishes to establish the Panuva 1 Mine at such site, all as depicted on the Map;
- C. It is understood that the environmental and social impacts of the Panuva 1 Mine will be significant, thereby requiring the Community to move all of its members away from such site and to sustain other consequences.

Section 2. Permission to Operate the Panuva 1 Mine. The Community, acting through certain of its elders and through the Coalition, hereby grants to CI the right to build, operate and maintain the Panuva 1 Mine and to construct and operate the Road on the land indicated on the Map, subject to the terms and conditions contained in this Agreement.

Section 3. Commitments by CI: CI hereby agrees to observe the following commitments:

- A. Relocation of Community Members. CI shall, commencing no later than six months following the execution of this Agreement and finishing prior to the commencement of commercial operation of the Panuva 1 Mine, construct

houses and outbuildings sufficient to accommodate all members of the Community that currently live within five (5) kilometers of the center of the proposed Panuva 1 Mine, such area being depicted on the Map. Such houses shall be constructed according to the various building plans included in the Project Proposal. It is understood that individual members of the Community may select from among the six (6) designs shown in the Project Proposal. CI shall pay for the costs of constructing paths and roadways and for clearing and fencing farming and grazing lands adjacent to such new houses as shown in the Project Proposal. CI shall pay each identified household within the Community the sum of £1000 to cover the expenses of moving and furnishing its house(s), all as set forth in detail in the Project Proposal.

- B. Construction and Financing of Operations of Elementary School. CI shall construct and pay for the operating expenses of an elementary school (grades 1 through 8) (the School), all as set forth in a further description of the School and its proposed plan of operations set forth in the Project Proposal.
- C. Construction and Financing of Operations of Clinic. CI shall construct and pay for the operating expenses of a medical clinic, all as set forth in a further description of the Clinic and its proposed plan of operations set forth in the Project Proposal.
- D. Establishment of a Trust for the Community. Concurrently with the execution of this Agreement, CI and the Coalition shall execute a trust agreement in the form attached to this Agreement as Attachment 1 (the Trust Agreement) and make effective a trust (the Trust) for the benefit of the Community. CI shall contribute the sum of £10,000,000 to the Trust within 30 days following the first commercial delivery of a gold ingot from the Panuva 1 Mine. CI shall make a payment of £2,500,000 into the Trust on the last day of each quarter during which any such delivery is made.
- E. Period of Time for Payments by CI. CI shall continue the payments described in this Section 3 for the operating life of the Panuva 1 Mine, plus a period of three years projected for the closure of the Panuva 1 Mine.

F. Training of Community Members to Work at the Panuva 1 Mine. CI shall establish and conduct a training program designed to teach adult members of the Community how to perform tasks at the Panuva 1 Mine, including how to operate the machinery used to extract and process the gold. Those members of the Community that complete the training program and demonstrate adequate proficiency to perform tasks at the Panuva 1 Mine shall be hired and paid wages (all to be determined by CI in the exercise of its reasonable discretion).

G. Commitments to Comply with Various Requirements.

- i. Operating Permit Issued by Ministry of Mines. CI shall fully comply with all conditions imposed on it in its operating permit for the Panuva 1 Mine issued by the Ministry of Mines of Panuva. Such permit is incorporated into this Agreement by reference.
- ii. Loan Agreement with International Finance Corporation. CI shall fully comply with all conditions imposed on it in its loan agreement with the International Finance Corporation (IFC), including, without limitation, all applicable requirements contained in: (a) the IFC's Performance Standards; and (b) the IFC's Good Practice Handbook--Use of Security Forces: Assessing and Managing Risks and Impacts Guidance for the Private Sector in Emerging Markets; Voluntary Principles on Security and Human Rights.
- iii. International Laws. CI shall at all times while developing, operating or closing the Panuva 1 Mine, conform to all obligations contained in international law or other international norms that are applicable to it, including, without limitation, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Section 4. Representation by the Coalition. The Coalition hereby represents and warrants that: (A) it was duly authorized by the Community to conduct the negotiations

between CI and the Community that have led to the drafting and execution of this Agreement; (B) it is duly authorized to serve as the trustee under the Trust; and (C) that it is duly authorized to represent the Community in any future dealings with CI, including in connection with any disputes that may arise hereunder.

Section 5. Payment to The Coalition. CI shall, immediately following the execution of this Agreement pay the sum of £125,000 to the Coalition as fees and expenses incurred during the negotiations.

Section 6. **Disputes.**

A. Should a dispute arise between the parties to this Agreement, the party raising such dispute shall notify the other party to this Agreement by delivering a notice in writing setting forth the grounds for such dispute. The parties shall then, for a period of 60 days following delivery of such notice, engage in discussions of such dispute with the object of reaching a settlement of the same. If such dispute is not resolved within such 60-day period, the parties to such dispute shall have an additional period of 30 days to discuss whether to engage in mediation of such dispute. Should the parties agree to mediate, the parties may, in writing, agree to extend such 30-day period for an additional period of time that the parties deem necessary to conduct such mediation. If the parties have not reached agreement as to the resolution of such dispute prior to the expiration of the time period agreed upon, then any party may submit a notice of arbitration pursuant to the Rules referenced in Subsection B, below.

B. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, not having been successfully resolved pursuant to Subsection A above, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, provided that, for the purposes of any proceedings arising out of this Agreement:

- i. Article 28.3 of said Rules shall not apply and shall be superseded by the following:

[Article 28] 3. Hearings shall *not* be held in camera unless the parties agree otherwise. The arbitral tribunal, *if the*

parties so agree may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

ii. Article 34.5 of said Rules shall not apply and shall be superseded by the following:

[Article 34] 5. An award shall be made public *unless all parties agree that it shall not be made public.*

iii. The appointing authority shall be the International Arbitration Court of Great Britain.

iv. Such arbitration shall take place in Liquipa, Panuva, or such other location as all parties to the arbitration shall otherwise agree upon.

Section 7. **Governing law.** The substantive laws (as distinguished from the choice of law rules) of England and Wales applicable to contracts made and performed entirely in such jurisdiction(s) shall govern: (A) the validity and interpretation of this Agreement; (B) the performance by the parties of their respective obligations hereunder, and (C) all other causes of action (whether sounding in contract or in tort) arising out of or relating to this Agreement or the termination of this Agreement.

[THE REMAINING PARTS OF THE AGREEMENT, SUCH AS THE REQUIREMENTS FOR THE DELIVERY OF NOTICES AND OTHER DOCUMENTS, SAVINGS CLAUSE, SIGNATURE BLOCK, ETC. ARE NOT PERTINENT TO THE ARBITRATION.]

ATTACHMENT B
TRUST AGREEMENT

THIS TRUST AGREEMENT, made this fifteenth day of June, 2015, by and between Cronson International, Ltd., a company incorporated under the laws of England (in its general corporate capacity, “CI”, and in its capacity as the grantor hereunder, the “Grantor”), and The Coalition to Protect the Rain Forest People, a charitable corporation organized under the laws of Panuva (in its general corporate capacity, “the Coalition”, and in its capacity as trustee hereunder, the “Trustee”);

WITNESSETH THAT:

WHEREAS CI and the Coalition have entered into a Development Agreement of even date herewith (the “Agreement”), relating to the development and operation of the Panuva 1 Mine and the Road (each as defined herein);

WHEREAS the Grantor and the Trustee have committed under the Agreement to establish the Trust set forth herein to remediate for the Community (as defined herein) certain impacts of the development and operation of the Panuva 1 Mine and the Road; and

WHEREAS the Grantor has committed, pursuant to the Agreement, to contribute Monies (as defined herein) to such Trust pursuant to the terms of this Trust Agreement;

NOW THEREFORE, the Trustee hereby agrees that it will hold, manage, invest and reinvest the Monies contributed to the Trust, as required by the Agreement, together with any other property hereafter conveyed, assigned, transferred or paid to it, as Trustee, in trust, subject to the terms, provisions and conditions hereinafter set forth:

1. Definitions.

As used in this Trust Agreement:

- 1.1. The term "Agreement" shall mean the Development Agreement, referenced above, entered into as of June 15, 2015 by and between Cronson International,

Ltd. and The Coalition for the Protection of the Rain Forest People, acting on its own behalf and as representative of the Community.

1.2. The term “Community” shall mean the Yamaleos community of the Amadolian region of Panuva.

1.3. The term “Ministry” means the Ministry of Mines of Panuva, which is the agency within the government of Panuva that is responsible for permitting the planning, development, construction and operation of minerals extraction activities in Panuva.

1.4. The term "Monies" shall mean all cash amounts contributed by the Grantor pursuant to Section 3.D of the Agreement, together with all other cash, instruments, and other property contributed to the Trust.

1.5. The term "Panuva 1 Mine " shall mean the gold mine developed by CI at the Panuva 1 site in the Amadolian interior of Panuva, which is the subject of a provisional license from the Ministry, and for which (following the execution and delivery of this Trust Agreement) the Ministry is anticipated to issue an operating permit.

1.6. The term “Project Proposal” shall mean the Project Proposal dated June 15, 2015 presented by CI to the Community, and referenced in Section 1.B of the Agreement.

1.7. The term "Road" shall mean the all-weather road to be constructed by CI, of approximately 145 miles in length, between the Panuva 1 Mine and Outpost 5, Panuva, pursuant to the Agreement.

1.8. The term "Trust" shall mean the Panuva 1 Mine Trust established pursuant to section 2 of this Trust Agreement, below.

2. Name and Purpose of the Trust.

This Trust shall be known as the Panuva 1 Mine Trust (the "Trust "). The sole purpose of the Trust is to remediate the environmental and social impacts of the development and operation of the Panuva 1 Mine and the Road, each as pursuant to the Agreement, and to receive, hold, invest and disburse funds necessary to fulfill this purpose under the

Agreement. To fulfill this purpose, the Trustee shall thoroughly familiarize itself with the terms of the Agreement and the Project Proposal, and will take all actions within its powers necessary to ensure that the Agreement is fully effectuated with respect to the funding and operation of the Trust.

3. Contributions to the Trust.

3.1. Initial Payment by Grantors into the Trust. Pursuant to Section 3.D of the Agreement, the Grantor shall contribute the sum of £10,000,000 to the Trust within 30 days following the first commercial delivery of a gold ingot from the Panuva 1 Mine.

3.2. Additional Payments to the Trust. Also pursuant to Section 3.D of the Agreement, the Grantor shall remain obligated to make a payment of £2,500,000 into the Trust on the last day of each quarter during which any delivery of any gold ingot is made from the Panuva 1 Mine. The Trustee shall make demand in writing upon the Grantor for the total amount of interest owed from time to time on any shortfall pursuant to Section 3.4 of this Trust Agreement, below.

3.3. Continuing Obligations & Payments During Closure Period. Pursuant to Section 3.E of the Agreement, the Grantor shall continue to make payments described in Section 3.2 of this Trust Agreement, above, for the operating life of the Panuva 1 Mine, plus a period of three years projected for the closure of the Panuva 1 Mine.

3.4. Shortfall. In the event that the Grantor fails to make any contribution in a timely fashion in accordance with the Agreement and this Trust Agreement, the Trustee shall promptly demand that the Grantor pay such shortfall. The Grantor shall pay into the Trust interest on the amount of any such shortfall at prevailing LIBOR, from day to day, attributable to the days during which such payment is in arrears. The payment of such interest shall be construed to be complete satisfaction of the Grantor's obligation with regard to any such shortfall.

3.5. Nature of Contributions by Grantor. All contributions by the Grantor to the Trustee for the Trust shall be made in immediately available funds. All such contributions, together with the earnings thereon, shall be held as a trust fund for

making the payments herein prescribed. Contributions made by Grantor shall not be construed as fines, penalties or monetary sanctions.

3.6. No Transferability of Interest. The interest of the Grantor herein, and its obligations to provide funds under this Section, is not transferable, except to a successor corporation or corporations, and any such transferee corporation shall assume the obligations of the Grantor by executing such documents as the Trustee may require.

4. Dispositive Provisions.

4.1. Payment of Income and Principal. During the term of this Trust, the Trustee shall pay or apply such part (or all) of the income and principal of the Trust necessary to remediate the environmental and social impacts of the development and operation of the Panuva 1 Mine and the Road, each as pursuant to the Agreement. The Trustee shall make no payments from the Trust except to remediate the environmental and social impacts referenced herein.

4.2. No Authority to Conduct Business. The purpose of the Trust is limited to the matters set forth in Sections 2 and 3 hereof above, and this Trust Agreement shall not be construed to confer upon the Trustee any authority to carry on any business or activity for profit or its own enrichment.

4.3. Time of Termination of Trust. This Trust shall terminate when all of its funds have been expended and no further funds are owing from the Panuva 1 Mine.

4.4. Alterations, Amendments, and Renovation. This Trust Agreement may be altered, amended, or revoked from time to time by an instrument in writing executed by the Trustee and the Grantor; provided, however, that no such alteration, amendment, or revocation may conflict with or modify in any respect the obligations of the Grantor under the Agreement.

5. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. All investments shall be made so as to at all times provide sufficient liquidity to meet the anticipated cash needs of the Trust. In

investing, reinvesting, exchanging, selling and managing the Trust, the Trustee shall discharge their duties with respect to the Fund solely in the interest of the accomplishment of the purposes and objectives of this Trust Agreement, and for no other purpose.

6. Express Powers Of Trustee.

The Trustee is expressly authorized and empowered:

6.1. Payment of Expenses of Administration. To incur and pay any and all charges, taxes, and expenses upon or connected with the Trust in the discharge of its fiduciary obligations under this Trust Agreement. All such payments shall be made using the assets of the Trust.

6.2. Retention of Property. To hold and retain all or any part of the Trust in the form in which the same may be at the time of the receipt by the Trustee, as long as they it deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.3. Preservation of Principal. Notwithstanding any other provision in this Trust Agreement, to at all times hold, manage, invest, and reinvest the assets of the Trust in a manner designed to preserve the accrued income and principal of the Trust for the purposes of the Trust, and for no other purpose.

6.4. Execution of Documents of Transfer. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

6.5. Litigation. To institute and defend litigation in the name of the Trust on behalf of or in the name of the Community.

6.6. Execution of Contracts and Agreements. To make, execute, acknowledge and deliver any and all contracts or agreements in furtherance of the purposes of the Trust, and for no other purposes.

6.7. Discretion in Exercise of Powers. To do any and all other acts which they shall deem proper to effectuate the purposes herein stated and to exercise the powers specifically conferred upon them by this Trust Agreement.

7. Trustee Compensation.

The Trustee shall receive no compensation for its services as a Trustee under this Trust Agreement.

8. Interpretation.

As used in this Trust Agreement, words in the singular include the plural and words in the plural include the singular; and the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The descriptive heading for each Section and Subsection of this Trust Agreement shall not affect the interpretation or the legal efficacy of this Trust Agreement. It is agreed that neither the act of entering into this Trust Agreement nor any contribution to the Trust nor any action taken under this Trust Agreement shall be deemed to constitute an admission of any liability or fault on the part of the Grantor with respect to the Panuva 1 Mine or the Road, either expressed or implied.

9. Separate Documents.

This Trust Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE BLOCK DELETED AS NOT PERTINENT TO THE ARBITRATION]