

Romania mining: Rosia Montana gold mine arbitration case between Gabriel Resources & Romanian state, White&Case vs Lalive

US firm White & Case LLP will represent Gabriel and Swiss Lalive will lead the Romanian consortium of lawyers in the arbitration case which Gabriel Resources is having against Romanian state.

Gabriel Resources, which controls the RMGC project developer of gold mine in Rosia Montana, wants to attract another 20 million dollars from investors through a private placement of shares intended, inter alia, for financing the costs for the dispute raised against the Romanian state at the International Centre for Settlement of investment Disputes at the World Bank (ICSID) in Washington for blocking RMP.

It would be the second investment of this type, after June 2014, Gabriel has attracted 35 million Canadian dollars from several shareholders who acquired such right including some of the damages that might come from Romania through international arbitration in the case of Rosia Montana gold mine, write local medias and NGOs. According to the prospectus of that investment, each acquired share gave the holder the right, under certain conditions, to up to 5% of the money received by the company following an amicable settlement or an irrevocable decision to arbitration, made up to June 30, 2019 in a proceeding arbitration related to the RMP. Investors will be entitled in total to a maximum of 130 million Canadian dollars (\$ 119.7 million) on account of the value of arbitration rights.

“Despite the stated preference enter into discussions to resolve amicably the dispute, the Romanian authorities have not responded to our offer in this respect. There is no contact with the Romanian authorities for the last 14 months . It is unfortunate that Gabriel was forced to further reduce the number of personnel, support for the community and investments in Romania last year, as a consequence of the failure of the Romanian state to manage the project. Gabriel principal desire remains therefore to reach an amicable solution, to allow the construction and operation of a gold mine world-class Rosia Montana. However, in the absence of such a solution, the company is determined to protect its rights and interests through arbitration proceedings opened at ICSID . To this end, the company plans to attract up to \$ 20 million Canadians through a private placement to finance, among other things, cost of this procedure, “said President and CEO of Gabriel Resources, Jonathan Henry.

Last year, Washington arbitration costed Romania about \$ 6.1 million canadian, although still not even been constituted tribunal that will arbitrate the dispute, among other things because of disagreements between the two parties on the appointment of its President.

Currently 1 Canadian dollar equals 0.77 US dollars, 0.68 euros or 3.01 lei.

Gabriel is represented at ICSID, in the dispute with Romania, by American law firm White & Case LLP . The same firm has represented Ukraine in negotiations on debt restructuring of

Ukrainian state to private creditors on the basis of government securities, of which the largest was Franklin Templeton, the manager of the Fund with exposure sovereign in Ukraine about 7 billion dollars. In the 90s, White & Case lawyers have consulted the authorities in Russia, Poland and the Czech Republic on mass privatization programs in these countries.

Romanian State is represented by the consortium of Romanian law firm Leaua and Associates and the Swiss firm Lalive in Geneva.

Gabriel Resources owns 80.69% stake in Rosia Montana Gold Corporation (RMGC), developer of the Rosia Montana gold mining, the remaining capital being held by the Romanian state, through Minvest Rosia Montana. Last year, RMGC has laid off 70 more employees with dismissal costs total \$ 900,000 Canadian, after restructuring in 2014, who have lost their jobs about 400 employees of the company, the cost of availability of these equaled to 2.6 million Canadian dollars.

On July 21, 2015, Gabriel Resources announced that it claimed the Romanian state to ICSID, alleging violation by Romania bilateral treaties for mutual protection of investments signed by the authorities in Bucharest with Canada and Britain. The complaint was made after, in January 2015 the company issued a notice of dispute to President, Prime Minister and the Romanian Government, inviting the Romanian authorities to discuss finding an amicable solution. Despite new letter from Gabriel in April and May, the Romanian authorities have not given an answer.

“The actions and inactions, Romania has blocked and prevented the implementation of the project, in violation of investors’ rights without fair compensation, depriving effectively Gabriel value of its investments. Treatment of Romania Gabriel Resources and its investments violate obligations under bilateral treaties mutual protection of investments, causing significant losses Gabriel. In its request for arbitration, Gabriel calls for full compensation it deserves according to the treaties because they violated rights to develop the project as a consequence of a breach of by Romania to these treaties “, reads a release of Gabriel at the time, which stated that Gabriel Resources has invested a total of over \$ 700 million in the Rosia Montana.

According to a government document, Government aims to amend legislation to prohibit mining by “dangerous methods” to human health or the environment. Thus, the Bucharest Government intends “to introduce provisions expressly aimed at preventing the exploitation of natural resources by methods dangerous to human health or the environment”.

The Government’s intention is reminiscent of a bill banning the use of cyanide in mining gold and silver, initiated in 2007 in perhaps paradoxically, by former senators Gheorghie

Funar (PRM) and Peter Kovacs Eckstein (UDMR) representatives of some parties that do not agree each other on the circuit legislative project under the Chamber of Deputies.

Banning the use of cyanide in mining is supported by environmental organizations that oppose the Rosia Montana project. In December 2015, the project was sent back for supplementary report from the Commerce Commission of the Chamber of Deputies, the deadline for submission of the report February 11, 2016, already expired.

In the previous report, the Commission recommended the rejection of the legislative initiative, arguing that "a general ban on the use of mining technologies cyanide would involve the closure of mining operations in service, in the absence of alternative technologies, leading to the disappearance of jobs, without benefits additional environmental or human health. " After receiving the additional report from the Commission of Industry, the bill will arrive in the Chamber of Deputies.

Interestingly, over this bill, the government sent in 2007, two views, one in which opposed legislative initiative and one which proposed to give operators a term of 5 years to adapt the processing technologies to requirements of an EU directive in 2006 on the management of waste from extractive industries.

Subsequently, in 2010 the European Parliament adopted a resolution on banning the use of cyanide technologies in mining in the European Union.

Earlier last month, the Ministry of Culture and Ministry of Environment, Water and Forests have communicated to the World Heritage Centre in Paris enrollment cultural landscape Rosia Montana in Romania indicative list of World Heritage. The request comes after the town of Rosia Montana, in a radius of two kilometers, the site was classified as category A in the new List of Historical Monuments. In addition Culture Minister Vlad Alexandrescu, recently announced that the Ministry of Culture has asked the National Anticorruption Directorate (DNA) on the Rosia Montana after several irregularities were noted on this site.
source: Serbia-energy.eu