Dear Applicant,

Thank you for your interest in Vis, we are looking forward to meeting you in the coming week. In this document you will find the application instructions and the oral argument guidelines. Due to the limited timeframe we have available to process a large number of applications, please follow the instructions carefully.

**Application Instructions:**

Please submit (1) your application form, (2) your resume, and (3) an analytical writing sample (max 5 pages, double-spaced) by **5 pm Sunday, September 20**. Applications should be submitted to [columbiavis.request@gmail.com](mailto:columbiavis.request@gmail.com).

At **6 pm** on the same day, those who have successfully submitted the documents will receive a scheduling Doodle for interview slots. The time slots work on a first-come, first-serve basis. If you absolutely cannot make one of the existing times work, email us and we will try to find a time that does. The interviews will be held between **Monday September 21 and Saturday September 26**. You will be making an oral argument based on the prompt attached below.

**Oral Argument Instructions:**

What follows is a series of documents chronicling the relationship between a minerals broker, its parent company, and a state-owned mine. Your oral argument will focus on one issue: **Is Global Minerals bound by the contract’s arbitration clause?**

We do not expect you to make your arguments based on legal authorities not provided or for you to conduct any legal research beforehand. Instead, you should focus more on the business realities of the parties and make fact-driven, intuitive, and common-sensical arguments. You are also not expected to use all the information provided. In fact, the ability to use only relevant information is a critical criterion. Finally, you will be interrupted frequently during your presentation, so please be prepared to work with the arbitrators as well as persuade them.

Business formal attire is not required, but please be presentably dressed.

You will be expected to argue both sides during the oral component, according to the following timeframe:

- 5 Minutes for Claimant/Global Minerals
- 5 Minutes for Respondent, and
- 5 Minutes of wrap-up conversation so we can get to know you as a person.

For any questions you might have, please email: [columbiavis.request@gmail.com](mailto:columbiavis.request@gmail.com)

Looking forward to getting to know you all,

Alison, Eli, Hannah, and Rob 2015-2016 Vis Coaches
Statement of Facts

1. CLAIMANT, Vulcan Coltan Ltd (“Vulcan”), is a broker of rare minerals, in particular coltan, based in Equatoriana. It is a 100% subsidiary of Global Minerals Ltd (“Global Minerals”), which brokers rare minerals world-wide and is based in Ruritania. Vulcan has been created by its parent company especially to enter the very difficult competitive market in Equatoriana. Equatoriana has a highly developed electronics industry, which is highly dependent on the often volatile global supply of coltan.

2. RESPONDENT, Mediterraneo Mining SOE, is a state-owned enterprise based in Mediterraneo. It operates all the mines in Mediterraneo including the only coltan mine.

3. In the last ten years Global Minerals, Vulcan’s parent company, has regularly purchased coltan from RESPONDENT. Both parties have had a mutually beneficial relationship.

4. On 23 March 2014 Mr Storm, the Chief Operating Officer of Global Minerals, and Mr Summer, the Chief Operating Officer of CLAIMANT, approached Mr Winter, the general sales manager of RESPONDENT, to enquire about a delivery of 100 metric tons of coltan to CLAIMANT. The CLAIMANT was keen to buy the maximum amount possible. The CLAIMANT, like other participants in the market, assumed that another peak in the need for coltan was imminent in the near future due to impending developments in the electronics industry in Equatoriana. The original proposal was that CLAIMANT would buy the coltan and get the same payment and delivery conditions as Global Minerals. RESPONDENT at that point in time did not want to commit to the sale of 100 metric tons of coltan due to the capacity of the mine and other commitments. The maximum the RESPONDENT was willing to commit to sell to CLAIMANT was 30 metric tons. CLAIMANT agreed to the purchase of 30 metric tons of coltan from RESPONDENT due to the high quality of the RESPONDENT’s coltan and the pressure the CLAIMANT was under to establish a business in Equatoriana. The parties signed the Contract (Exhibit C1) on 28 March 2014. The CLAIMANT received the Notice of Transport (Exhibit C 2) on Wednesday, 25 June 2014 from RESPONDENT by email (Exhibit C 3). In the email, accompanying the Notice of Transport, the RESPONDENT informed the CLAIMANT and Global Minerals that one of its major customers had become bankrupt and had defaulted on a purchase of coltan.

5. On Friday, 27 June 2014 at 15:00 Ruritanian Standard Time (“RST”), CLAIMANT sent a fax to RESPONDENT in which CLAIMANT asked for the delivery of 100 metric tons, as per the earlier negotiations (Exhibit C 4). It based its offer on an earlier offer
made by RESPONDENT during the initial negotiations on 23 March 2014 which at the time did not materialize. CLAIMANT was reacting to RESPONDENT’s notification that RESPONDENT had now a larger quantity of coltan available. CLAIMANT was delighted to be able to stock up on its coltan quantities since it had had considerable interest in coltan. At the same time it was able to do RESPONDENT a favour by taking over much of the coltan from the sale that did not eventuate. CLAIMANT thought to cement the good business relationship with the RESPONDENT by helping out the RESPONDENT which in the past has also shown a considerable flexibility in accommodating the needs of CLAIMANT’s mother company, Global Minerals. CLAIMANT was certain that RESPONDENT would react immediately like on previous occasions in its relationship with Global Minerals.

6. After waiting for some days CLAIMANT asked Global Minerals to instruct its bank in Ruritania, RST Trade Bank Ltd (“Trade Bank”) to issue a Letter of Credit. On 4 July 2014 at 10:00 Trade Bank faxed a Letter of Credit to RESPONDENT (Exhibit C 5). The original was then sent by courier. The Letter of Credit was issued for US$ 4,500,000 relating to 100 metric tons of coltan.

7. At about the same time news leaked out that the world largest producer of electronic game consoles, which has a large manufacturing plant in Equatoria, had developed a new game console. As a consequence the price of coltan increased immediately by nearly 1US$/kg, as an increased demand of coltan was expected.

8. That is probably the true reason why, an hour later around lunch time, Mr Winter, RESPONDENT’s general sales manager, left a voicemail message on Mr Summer’s phone rejecting the Letter of Credit provided as not conforming to the contractual requirements. Those were in his view still determined by the original contract of 28 March 2014. He asked for the correct Letter of Credit to be provided immediately and threatened to terminate the contract. Mr Storm, when being informed of the message by Mr Summer, immediately emailed Mr Winter stating that the Letter of Credit was in line with the changed contract (Exhibit C 6).

9. The CLAIMANT was surprised to receive as a response RESPONDENT’s letter of avoidance of the contract of 28 March 2014 on 7 July 2014 (Exhibit C 7).

10. It was essential for CLAIMANT to receive at least the 30 metric tons of coltan originally agreed in the contract of 28 March 2014. CLAIMANT had already entered into contracts with its customers for these quantities. Notwithstanding its belief that the original contract had been amended to provide for the higher quantity of 100 metric tons, CLAIMANT decided to take precautionary measures to prevent RESPONDENT from walking away from its contractual obligations. For purely precautionary reasons CLAIMANT had Trade Bank issuing within the time limits of the original contract a new guarantee which complied exactly with the contract’s requirements.

11. Trade Bank sent the new Letter of Credit (Exhibit C 8) over US$ 1,350,000 by 24-hour courier on 8 July 2014 to RESPONDENT. In addition, Global Minerals faxed the Letter of Credit to RESPONDENT on 8 July 2014 to ensure that the deadline was adhered to.
12. RESPONDENT, however, apparently determined to try to profit from the market developments and rejected this Letter of Credit as belated. Furthermore, it declared that it considered itself no longer bound to deliver even the 30 metric tons to CLAIMANT as it had allegedly terminated the Contract. Instead RESPONDENT started to talk to other customers about disposing the existing quantities of coltan originally reserved for CLAIMANT. The consequences of these actions necessitate the present Request for Arbitration and the Application for Emergency Measures.

Legal Evaluation

13. Following RESPONDENT’s implicit offer in the email of 25 June 2014 to sell a higher amount, CLAIMANT accepted that offer thereby adding another 70 metric tons of coltan to the contract on 27 June 2014. At the same time, it proposed amending the delivery conditions to those which had originally been offered by RESPONDENT for a contract of that size and which had governed previous contracts of that magnitude between Global Minerals and RESPONDENT. RESPONDENT, which normally replied to requests for changes within a short time, did not state any opposition to either amendments to the contract. CLAIMANT, therefore, reasonably inferred that RESPONDENT had accepted the proposed amendment adding 70 metric tons to the contract and had a letter of credit issued reflecting the amended and enlarged contract. Therefore, CLAIMANT and RESPONDENT concluded a contract for the sale and purchase of 100 metric tons of coltan. Since CLAIMANT has fulfilled to date all the requirements under that contract, RESPONDENT could not avoid the contract.

14. At a minimum, the original contract of 28 March 2014 entitles CLAIMANT to receive delivery of 30 metric tons of coltan. CLAIMANT fulfilled its obligation in regard to the issuance of the Letter of Credit 14 days after receiving the Notice of Transport; the courier’s receipts for the Letter of Credit for US$ 1,350,000 shows that it was signed by Mr Winter, RESPONDENT’s general sales manager, on 8 July 2014 at 19:05 RST.

Statement of Relief Sought

15. In consequence CLAIMANT requests the Arbitral Tribunal to

1) a) order RESPONDENT to deliver to CLAIMANT 100 metric tons of coltan as required by the provisions of the Contract as amended by Global Minerals’ fax of 27 June 2014;

in the alternative to

b) order RESPONDENT to deliver to CLAIMANT 30 metric tons of coltan as required by the provisions of the Contract concluded between CLAIMANT and RESPONDENT on 28 March 2014.

2) order RESPONDENT to reimburse CLAIMANT for all damages it incurred due to the belated delivery of CLAIMANT;

3) order RESPONDENT to bear CLAIMANT’s costs arising out of this arbitration.
EXHIBIT C 1
COLTAN PURCHASE CONTRACT

Art 1: Contracting Parties
Seller: Mediterraneo Mining SOE, 5-6 Mineral Street, Capital City, Mediterraneo
Buyer: Vulcan Coltan Ltd, 21 Magma Street, Oceanside, Equatoriana

Art 3: Quantity & Quality & Price
Quality: TA2O5 30-40%; NB2O5 20-30%; Non-radioactive
Quantity: 30 metric tons
Price: US $45 per kilogram

Art 4: Payment & Letter of Credit
A Letter of Credit in the amount of US$ 1,350,000 shall be established by the Buyer not later than fourteen days after the Buyer received the notice of transport in regard to shipment. The letter of credit shall be in favour of the Seller or its designee, be acceptable in content to Seller, be consistent with the terms of this Contract, be irrevocable and issued at a first class bank of Ruritania, be valid until 15 December 2014. Payment is due 30 days after presentation of the documents under the Letter of Credit.

Art 5: Shipment
CIF (INCOTERMS 2010), Oceanside, Equatoriana, not later than 60 days after receipt of Letter of Credit.

Art 20: Arbitration
All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Vindobona, Danubia, and the language of the arbitration will be English. The contract, including this clause, shall be governed by the law of Danubia.

For the Buyer
(signed)                        (signed)                        (signed)
Mr. Ben Summer
(27.03.2014)               Mr. Willem Winter
(28.03.2014)               Mr. Theo Storm
(27.03.2014)
NOTICE OF TRANSPORT

Dear Madam/Sir

We notify you herewith that 30 metric tons of coltan are ready to be transported.

Destination: Oceanside, Equatoriana

Letter of Credit required before shipment: ☒ yes ☐ no

Payment: 30 days after presentation of the documents under the Letter of Credit

Transport:

☐ rail☑ ship ☐ air

☐ FOB ☐ CIF ☐ FCA ☐ DAT ☐ DDP

Special Instructions: shipment not later than 60 days after receipt of Letter of Credit; 2 20ft container;
Dear Mr Summer

I am delighted to inform you that we are able to fulfil your wish as expressed during the contract negotiation and supply the 30 metric tons of coltan earlier than anticipated. One of our major customers went bankrupt and defaulted on its purchase of 150 metric tons of coltan and 100 tons of copper. That has left us with some surplus which we are keen to dispose of as quickly as possible due to our having limited storage capacity.

I am looking forward to receiving the Letter of Credit at your earliest convenience to be able to authorize shipment.

Yours sincerely

Willem Winter
Dear Mr. Winter,

We are delighted that a greater quantity of coltan from your mine has become available. Herewith we extend the order of our subsidiary Vulcan to 100 metric tons of coltan as per your email of 25 June 2014. Payment modalities as per contract of 28 March 2014 and CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana as per your previous offer. Remaider of the contract remains unchanged. You will receive Letter of Credit from RST Trade Bank Ltd, Ruritania, asap.

Kind regards

Theo Storm

To Mediterraneo Mining

We hereby establish our Irrevocable Letter of Credit No. 145/2014 in your favor for the account of Global Minerals Ltd., Excavation Place 5, Hansetown, Ruritania available by your drafts on us payable at sight for any sum of money not to exceed a total of US$ 4,500,000 when accompanied by this Irrevocable Letter of Credit and the following documents with the content as per contract between you and Vulcan Coltan:

- Transport Document (CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana)
- Packing List (Coltan – not less than 30 metric tons per shipment)
- Examination Certificate

Last day of Shipping 15 November, 2014
Partial Shipment allowed

This Irrevocable Letter of Credit shall be valid until 15 December, 2014.

All drafts drawn under this credit must state: "Drawn under the RST Trade Bank Ltd, Irrevocable Letter of Credit No. 145/2014 dated 4 July, 2014." The original Irrevocable Letter of Credit must be presented with any drawing so that drawing can be endorsed on the reverse thereof.

Except so far as otherwise expressly stated, this Irrevocable Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Brochure No. 600 (UCP 600)"

Sincerely,

BY: [Signature] _______________

TITLE: Head of Trade Finance _______________
Dear Mr Winter

Mr Summer informed me of the voicemail message you left for him on his phone. I am astonished that you want to reject the Letter of Credit relating to 100 metric tons coltan. I took your non-response to my fax of 27 June 2014 to mean that you were delighted that Vulcan Coltan could help to reduce your storage capacity issues. You were aware that Vulcan Coltan needed coltan to establish a presence in the highly competitive Equatoriana market. Vulcan Coltan did have the opportunity to buy 50 metric tons of coltan from another supplier. However, we did not take that option since you are our preferred supplier and due to our long-standing business relationship it was important to us to help you out.

Given that I know you as a loyal business partner I can only assume that you are not happy with the change of the delivery term to CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana. We thought that this would not be a problem since it was a term that was originally offered by you during our negotiations in March and was mentioned in your Notice of Transport. We are, however, happy to agree to CIF Oceanside, Equatoriana as per contract of 28 March 2014.

We are looking forward to receiving the 100 metric tons within the next 2 months.

Yours sincerely

Theo Storm
7 July 2014

BY COURIER

Mr Ben Summer
Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

Dear Mr Summer

We hereby formally avoid the contract of 28 March 2014 between Vulcan Coltan Ltd and Mediterraneo Mining SOE.

The Letter of Credit issued by RST Trade Bank Ltd, Ruritania, received on 4 July 2014 does not conform with the requirements set out in the contract of 28 March 2014, in particular the Letter of Credit relates to 100 metric tons of coltan instead of 30 metric tons. Furthermore, it contains different delivery terms. In trading commodities such as coltan any deviation from the contract is considered to be a fundamental breach of contract.

Yours sincerely

Willem Winter

To Mediterraneo Mining

We hereby establish our Irrevocable Letter of Credit No. 160/2014 in your favor for the account of Global Minerals Ltd., Excavation Place 5, Hansetown, Ruritania available by your drafts on us payable at sight for any sum of money not to exceed a total of US$ 1,350,000 when accompanied by this Irrevocable Letter of Credit and the following documents with the content as per contract between you and Vulcan Coltan:

- Commercial Invoice
- Bill of Lading: CIF Oceanside, Equatoriana
- Packing List: 30 metric tons Coltan
- Examination Certificate

Last day of Shipping 15 November, 2014
Partial Shipment allowed

This Irrevocable Letter of Credit shall be valid until 15 December, 2014.

All drafts drawn under this credit must state: "Drawn under the Trade Bank, Irrevocable Letter of Credit No. 160/2014 dated 8 July, 2014." The original Irrevocable Letter of Credit must be presented with any drawing so that drawing can be endorsed on the reverse thereof.

Except so far as otherwise expressly stated, this Irrevocable Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Brochure No. 600 (UCP 600)"

Sincerely,

BY: [Signature] __________________________________________

TITLE: Head of Trade Finance _____________________________
Dear Mr Winter,

Please find attached a copy of the Letter of Credit issued by RST Trade Bank Ltd over US$ 1,350,000. We trust that you will be satisfied. Vulcan Coltan Ltd is awaiting the shipment of at least 30 metric tons of coltan in accordance with the contract of 28 March 2014.

The issuance of this additional Letter of Credit is merely a precautionary measure. Vulcan Coltan still maintains to be entitled to a delivery of 100 metric tons as per the amendment of 27 June 2014.

For that reason we are keeping the first letter of credit open and request you to deliver 100 metric tons of coltan to Vulcan Coltan as agreed in the amendment. We are determined to enforce our rights in arbitration and ask you to give us an assurance that you refrain in the meantime from any actions, in particular disposing of sufficient quantities of coltan which could prevent you from complying with your contractual obligations.

Theo Storm
Mediterraneo Mining SOE
Answer to Request for Arbitration
Counterclaims
Request for Joinder
8 August 2014

Introduction
1. In its Request for Arbitration, CLAIMANT gave a largely distorted picture of the contractual relationships and the negotiations between the Parties. Neither was the business relationship between RESPONDENT and companies from the Global Minerals Group as smooth as alleged by CLAIMANT nor did CLAIMANT want to do RESPONDENT a favor in enlarging its offer. Contrary to the impression CLAIMANT has tried to create, it was not RESPONDENT but CLAIMANT who wanted to maximize its profits and therefore behaved in an opportunistic way. CLAIMANT tried to use insider information and speculated on market developments and appears to have been surprised when its speculations turned against it.

Statement of Facts

2. RESPONDENT, Mediterraneo Mining SOE (“RESPONDENT”), is a state-owned enterprise based in Mediterraneo. It operates all the mines in Mediterraneo including the country’s only coltan mine.

3. CLAIMANT’s parent company, Global Minerals Ltd, as well as other companies belonging to the Global Minerals Group of Companies, have been fairly regular customers of RESPONDENT for coltan as well as for other minerals. Contrary to CLAIMANT's representations, this relationship has not been problem free. There had on several occasions been last minute requests for changes of ports of destinations, packing requirements or other contractual obligations. RESPONDENT normally tried to accommodate these requests and if possible acted accordingly informing its counterparties then about the changes made.

4. Consequently, RESPONDENT was shocked and outraged when in one of these deals Global Minerals put the subsidiary used into bankruptcy to avoid its payment obligations. Only after lengthy negotiations and in return for improved delivery and payment conditions was Global Minerals in the end willing to pay at least 90% of the price of that transaction. In light of that experience RESPONDENT insisted from then on always that Global Minerals either became a direct party to the deal or at least provided sufficient security for the payment obligations. Only in very few deals, when RESPONDENT was about to reach the limit of its storage capacity, did RESPONDENT not insist on any direct involvement of Global Minerals.

5. On 23 March 2014, Mr Storm, the Chief Operating Officer of Global Minerals, and Mr Summer, the Chief Operating Officer of CLAIMANT, approached Mr Winter, the general sales manager of RESPONDENT, to enquire about a delivery of 100 metric tons of coltan to CLAIMANT. The original proposal was that CLAIMANT would buy the goods and get the same payment and delivery conditions as Global Minerals (Witness Statement by Mr Winter, Exhibit R 1).
6. RESPONDENT was aware that CLAIMANT was a newly formed subsidiary of Global Minerals for the very difficult and competitive Equatorianian market and that it had very few assets apart from the office it had rented. In light of both that and the previous experience RESPONDENT made it clear from the beginning that Global Minerals would have to become a party to the contract or at least guarantee the fulfillment of the payment obligations. In the ensuing negotiations several models were discussed. In the end an agreement was reached that Global Minerals would not only ensure payment by a Letter of Credit but also sign the contract to endorse it. The signing took place on 28 March 2014 and RESPONDENT received the copies of the contract from Global Minerals.

7. During the negotiations a number of other options were discussed and RESPONDENT made an offer for the delivery of 100 metric tons at the price of US$45 per kg to be delivered in several installments before the end of 2014 to CLAIMANT’s premises. The offer was not accepted as CLAIMANT and Global Minerals requested a better price for the higher quantity. At the time of the negotiations RESPONDENT had, however, already problems in delivering the finally agreed 30 metric tons within the agreed time. RESPONDENT had, therefore, asked for an unusually long window for the giving of the Notice of Transport. Consequently, any further quantities, even if delivered before the end of 2014, would have required additional efforts by RESPONDENT. The costs involved with these extra efforts made any price reduction impossible and even the price offered was already meant to be a price to start a long lasting relationship.

8. In early May, another of RESPONDENT’s customer became insolvent after it had contracted inter alia for a delivery of 150 metric tons of coltan in early July. On 21 June 2014 the insolvency administrator informed RESPONDENT that it would rescind the contract. Consequently, RESPONDENT was now in the fortunate position of being able to deliver the coltan earlier than anticipated to CLAIMANT, who had during the discussion always expressed its interest in early delivery.

9. On 25 June 2014 RESPONDENT sent the Notice of Transport to both CLAIMANT and Global Minerals. In its cover mail (Exhibit C 4) RESPONDENT informed CLAIMANT and Global Minerals about the insolvency of the other customer and the additional quantities now available. That was primarily done to explain why RESPONDENT could now deliver much earlier than originally anticipated.

10. At the same time the information about the additional quantities available put CLAIMANT and Global Minerals into the position of investigating whether they could use them and of approaching RESPONDENT for further discussions.

11. No request for any such further discussions of a new contract was received by RESPONDENT. Instead, on 27 June 2014, at 20.05h, RESPONDENT received a fax from Global Minerals in which the latter unilaterally tried to amend the old contract. Global Minerals suggested not only increasing the amount to be delivered to 100 metric tons but also changing the delivery conditions. Since the fax had arrived outside RESPONDENT’s business hours, it only read it on the following Monday. By that time the information of an impending crisis in the coltan-producing state of Xanadu, where Global Minerals has significant political connections, had already become common knowledge. With the announcement of the crisis, the market
started to react nervously and it was very likely that the prices of coltan would rise considerably.

12. On 4 July 2014 at 15:00 MST the RESPONDENT received a Letter of Credit issued by the RST Trade Bank, Ruritania. The Letter of Credit was issued for US $4,500,000 relating to 100 metric tons of coltan.

13. Notwithstanding the fact that the issue of a non-conforming Letter of Credit constituted a fundamental breach of Contract entitling RESPONDENT to avoid it, Mr Winter immediately tried to call Mr Summer to complain about the non-conforming letter. Mr Summer was in a meeting and was unable to answer the phone. Mr Winter left a message complaining about the non-conforming Letter of Credit and asking for the correct Letter of Credit to be provided immediately. In reply to this goodwill gesture, Mr Winter merely received the e-mail by Mr Storm, already submitted as Exhibit C.6. In that e-mail Mr Storm merely alleged that the Letter of Credit provided was in line with – what he called - the changed contract, i.e. his fax of 27 June 2014, and requested delivery of 100 metric tons within the time agreed.

14. That showed RESPONDENT that CLAIMANT and its parent company had no intention to settle the various disputes amicably. Therefore, by letter of 7 July 2014 Mr Winter on behalf of RESPONDENT declared the contract avoided.

15. RESPONDENT was considerably surprised when, in response to its declaration of avoidance it received a second Letter of Credit. In the present case, however, RESPONDENT had already avoided the contract before that Letter of Credit had been issued. Furthermore, that Letter of Credit had not arrived in time which in itself constituted a fundamental breach of contract entitling RESPONDENT to avoid the contract.

Legal Evaluation: Joinder of Global Minerals

16. RESPONDENT requests that Global Minerals is to be joined to this arbitration as an Additional Party.

17. That joinder is necessary to ensure that RESPONDENT’S counterclaim and its claim for costs are not frustrated in the event that it is successful. CLAIMANT is a special purpose vehicle, without any substantial assets, created by Global Minerals to enter the difficult Equatorian market. One of the purposes of creating CLAIMANT was to shield Global Minerals from liability should CLAIMANT not be successful in that market and should damage claims arise from those activities. In such a case it seems very likely that Global Minerals would simply allow CLAIMANT to become insolvent as it has done in the past with another subsidiary. That is exactly the reason why RESPONDENT insisted on the inclusion of Global Minerals into the original contract of 28 March 2014. RESPONDENT wanted to avoid ending up with claims against CLAIMANT which were non-enforceable because of the latter’s insolvency.

18. The arbitral tribunal has jurisdiction over Global Minerals by virtue of the arbitration clause in the contract concluded by RESPONDENT on 28 March 2014 with both CLAIMANT and Global Minerals. RESPONDENT always made it clear that it would not sell the originally requested amount to CLAIMANT due to its limited
financial resources. Instead it required the involvement of the Global Minerals and both signed on the last page of the contract.

Statement of Relief Sought

19. [RESPONDENT seeks to join Global Minerals to this arbitration and files a counterclaim in the amount of US$ 1,000,000 for costs incurred due to an injunction arising out of the arbitration, but not included in these application materials.]
1. My name is Willem Winter, born 25 August 1956. I am responsible for the general organization of the sales department at Mediterraneo Mining and for the relationship with our major customers.

2. In mid-March 2014, I received a phone call from Theo Storm, the COO of Global Minerals. He wanted to meet and to discuss a new coltan deal with me. We agreed to meet on the 23 March 2014 for lunch. As announced Mr Storm was accompanied by his colleague Mr Ben Summer. He is the COO of Vulcan Coltan, a newly formed subsidiary of Global Minerals from Equatoriana with basically no assets. In preparation for the meeting I had done some background research about Vulcan Coltan. It appeared that Vulcan Coltan had been established at the end of 2013 by Global Minerals to coordinate its activities in the difficult and competitive market of Equatoriana. That was confirmed by Mr Storm and Mr Summer at the meeting.

3. What Mr Storm had announced in the telephone conversation as a “closer cooperation for the benefit of all parties involved” turned out to be an interest by them in purchasing greater quantities of coltan for the Equatorian market. The original proposal was that Vulcan Coltan would be the buyer and acquire 100 metric tons on the same delivery and payment conditions we gave to Global Minerals.

4. These fairly flexible and favorable delivery and payment conditions had been agreed as a part of a settlement concluded in 2010. At that time one of the subsidiaries of Global Minerals had become insolvent and had defaulted on paying for minerals delivered. The contract in question had originally been concluded with Global Minerals and had then – at the request of Global Minerals – “formally” been transferred to the subsidiary. Consequently, we insisted on payment by Global Minerals and threatened to refuse any further deliveries. Only after tough negotiations was a settlement reached. The incident seriously undermined our trust in the Global Minerals Group.

5. In the end, Global Minerals agreed to pay 90% of the purchase price. In return we shifted our “standard” delivery terms – relevant for the price calculation - from f- to c- clauses adding only 70% of the normal transport price to the price for the goods. Furthermore, deviating from the prevailing practice in the mineral industry which insists on payment by letter of credit, we offered Global Minerals from 2010 onwards different modes of payment. They varied as to the time and the form of payment and the discounts associated with each mode. In some cases Global Minerals or its subsidiaries even paid up front and in cash. For deals which exceeded one million US dollars we always required some form of security either a letter of credit for at least part of the shipment or a partial down-payment. This security normally required some negotiations but, since we were fairly flexible as to the form of security, in the end we always reached an agreement.

6. That is also what happened in this case. Mr Storm and Mr Summer originally suggested that Vulcan Coltan would purchase 100 metric tons of Coltan to be paid against open account 7 days after delivery. That was the most favorable payment
condition we had agreed with Global Minerals in the past. It had, however, only been applied to smaller quantities and for delivery into certain countries.

7. I made clear that this offer was unacceptable to us. The open account payment mode would only be offered to Global Minerals as a contracting party and that for the size of the deal originally we needed some sort of security. In the end we agreed on a much smaller amount and that Global Minerals – in return for a price reduction of 0,5 % would sign the contract and thereby “endorse” the deal. For me it was clear that they would thereby become a party to the contract or at least a “quasi”-party responsible for the payment. In the end the exact legal status of Global Minerals was of limited concern to me, since our payment claim was largely secured by a letter of credit to be provided by Global Minerals’ bank. ...
Vulcan Coltan Ltd and Global Minerals Ltd. v Mediterraneo Mining SOE
Reply to the Counterclaim
Answer to Request for Joinder
8 September 2014

Statement of Facts
1. In the second half of 2013 Global Minerals, the Additional Party, decided to undertake another attempt to enter the highly competitive and difficult Equatorianian market. To avoid repercussions of an eventual failure on its other business activities, in particular on its reputation, Global Minerals decided to set up a new and largely independent company, i.e. Vulcan Coltan Ltd., the Claimant. The intention was to keep CLAIMANT’s business, wherever possible, completely separate from that of Global Minerals. There had been an internal decision that all business with relation to Equatoriana should be conduct by CLAIMANT. In light of the relatively newness of CLAIMANT to the market, it could not be excluded that counterparties would require additional securities. In such cases, Global Mineral would provide the required financial securities without, however, becoming party to the underlying contracts.

2. That is exactly what happened during the negotiation with RESPONDENT. Given the long lasting business relationship of Global Minerals with RESPONDENT, Mr Storm introduced his colleague from CLAIMANT, Mr Summer, to Mr Winter, the responsible person at RESPONDENT. The first offer made foresaw no involvement of Global Minerals in the contractual relationship at all. Only when RESPONDENT insisted on financial securities, Global Minerals endorsed the contract, to avoid an expensive outside guarantee. Global Minerals had, however, never intended to become a party to the contract by that endorsement. A proposal by RESPONDENT to list Global Minerals in Article 1 of the contract as an additional buyer was explicitly rejected.

Legal Evaluation
3. It follows from the above that Global Minerals never became a party to the contract or its arbitration agreement. Therefore the Tribunal lacks jurisdiction over Global Minerals. It was always clear that only CLAIMANT, but not Global Minerals, would become a party to the contract and the arbitration agreement. ...

Request for Relief
In light of the foregoing, the Arbitral Tribunal is requested to

1) Declare that it has no jurisdiction over Global Minerals Ltd
2) Reject Respondent’s Counterclaim
3) Order Respondent to bear the costs of this arbitration.
What is the exact legal relationship between Vulcan Coltan Ltd and Global Minerals Ltd?

1. Vulcan was set up in December 2013 as a separate legal entity registered in the country of Equatoriana by Global Minerals and is a 100% subsidiary of Global Minerals. Vulcan has its own assets, keeps its own books and has its own personnel, which has in part consists of former employees of Global Minerals. At Global Minerals, Mr Storm is responsible for Vulcan. He has introduced Mr Summer, who had previously been one of his assistants, to all his contacts in the industry. On several occasions Mr Storm has also participated in negotiating the initial contracts with suppliers and customers for the Equatorianian market. In these negotiations, Mr Storm always insisted that Vulcan would become the sole party to the contract while Global Minerals would provide the necessary securities if the other side insisted on those. Mr Storm has no official function in Vulcan and also no authority to act for Vulcan. Irrespective of that Mr Summer regularly seeks his advice and discusses matters with him. That is what happened on 25 June and on 4 July 2014. In both cases, it was agreed that Mr Storm would contact Mr Winter, given that they knew each other much better. The content of the respective e-mails were discussed with and approved by Mr Summer.

What assets does Vulcan have, where are they located and what is their value?

2. Vulcan has been founded in December 2013 with the minimum capital of USD 20.000. It has rented office space in Oceanside and has a line of credit of USD 5 million with a bank in Equatoriana which is guaranteed by its parent company. At the time of contracting with Respondent, Vulcan had already entered into several other contracts with customers and suppliers of other minerals. The proceeds from these contracts were most likely sufficient to ultimately cover the greater part of Vulcan’s costs for 2014 but up to the point of contracting Vulcan was using its credit line.

Which party proposed Article 4 of the contract?

3. The article was developed jointly by Mr Winter, Mr Storm and Mr Summer during their negotiations on 23 March 2014. The issue of providing sufficient security for payment to Respondent at minimal costs has been one of the major points of the negotiations. The solutions discussed included inter alia the provision of a guarantee or a stand-by Letter of Credit by a bank or of a parent guarantee by Global Minerals. In the end the parties agreed on the solution of a commercial Letter of Credit by a first class bank of Ruritania bank plus an “endorsement” by Global Minerals without discussing in detail what this “endorsement” meant. The term “endorsement” had been suggested by Mr Storm and had never been used before in previous contracts.

Are there any provisions in the contract that impose direct obligations on Global Minerals?

4. No. The provision that a letter of credit was to be issued by “a first class bank of Ruritania” was, however, included on the understanding that most likely the letter
of credit would be arranged by Global Minerals with its standard bank, the RST Trade Bank Ltd.

Have there been any further disputes between companies belonging to the Claimant or the Respondent side apart from the two disputes mentioned?

5. There have been no further disputes between the companies belonging to either side and neither of the two disputes has so far resulted in arbitration or court proceedings. The insolvency of Global Minerals’ subsidiary Precious Minerals, referred to in the Answer to the Request for Arbitration at the beginning of 2010 led to lengthy discussion which finally resulted in a settlement in 2010. In that settlement, Global Minerals which – upon its own request – had been replaced as a party to that contract by Precious Minerals two month before the insolvency, agreed to pay 90% of the price in return for better delivery and payment terms in future contracts.
An international arbitration agreement is almost invariably treated as presumptively “separable” or “autonomous” from the commercial or other contract within which it is found. This result is generally referred to as an application of the “separability doctrine,” or, more accurately, the “separability presumption.”

The separability presumption is one of the conceptual and practical cornerstones of international arbitration. In the words of one leading common law authority:

“The[] characteristics of an arbitration agreement…are in one sense independent of the underlying or substantive contract [and] have often led to the characterization of an arbitration agreement as a ‘separate contract.’ [An arbitration agreement] is ancillary to the underlying contract for its only function is to provide machinery to resolve disputes as to the primary and secondary obligations arising under that contract.”

The separability presumption has substantial practical, as well as analytical, importance, and has a number of closely-related consequences relating to issues of choice of law, contractual validity and competence-competence. Specifically, the consequences include: (a) the possible application of a different national law, or a different set of substantive legal rules, to the arbitration agreement than to the underlying contract;\(^{(2)}\) (b) the possible validity of an arbitration agreement, notwithstanding the non-existence, invalidity, illegality, or termination of the parties’ underlying contract;\(^{(3)}\) [and] (c) the possible validity of the underlying contract, notwithstanding the invalidity, illegality, or termination of an associated arbitration clause…

[...]

International commercial arbitration is fundamentally consensual in nature.\(^{(2)}\) As a consequence, the effects of an arbitration agreement extend only to the agreement’s parties, and not to others.\(^{(3)}\) Presumptively, and in most instances, the parties to an arbitration agreement will be its formal signatories...

The principle that the rights and obligations of an arbitration agreement apply only to the agreement’s parties is a straightforward application of the doctrine of privity of contract, recognized in both civil and common law jurisdictions...

In most cases, the parties to an arbitration agreement are – and are only – the entities that formally executed, and expressly assumed the status of parties to, the underlying contract containing the arbitration clause. In the vast majority of cases, the way to determine the parties to the arbitration clause is simply to look
at the signature page, and/or the recitals of a contract, and see what entities are designated there.\(^{(24)}\)

Simply, but correctly, put, it is the signature of an agreement that is the “customary implementation of an agreement to arbitrate.”\(^{(25)}\) It is these “signatories” of an agreement that are the parties to the arbitration agreement, and that are therefore bound by, and able to enforce, the provisions of that agreement; other entities, who are “non-signatories,” are ordinarily not parties to the arbitration agreement and are therefore typically not bound by, or able to enforce, its terms.

Despite the foregoing, the party that executes a contract is not necessarily a party to either that agreement or the arbitration clause associated with it. Under most legal systems, an agent or representative may execute an agreement on behalf of its principal, producing the result that the principal is a party to the agreement (but the agent or representative is not).\(^{(26)}\) The most obvious and frequent application of this rule is when agreements are executed on behalf of corporate or other legal entities by their officers or agents, with the result that the corporate or other legal entity is a party to the agreement, but the officer or agent, in his or her personal capacity, is not a party…

Critically, regardless of the legal basis for application of an arbitration agreement to a non-signatory, analysis must focus on the separable arbitration agreement. Paralleling issues of contract formation and validity,\(^{(40)}\) the decisive question is whether a non-signatory is bound by the arbitration agreement, not by the underlying contract. This is a straightforward application of the separability presumption, discussed in detail above, but it is fundamental to resolution of non-signatory issues.