

**LEXperience | CASESTUDY**



**Case:** Subterranean Treasures

**Event:** Mooting Day

**Date:** 27.11.2015

**Time:** 16:10 h – 17:55 h

**Location:** Alter Senatssaal

## SUBTERRANEAN TREASURES – GENERAL INFORMATION AVAILABLE FOR BOTH PARTIES



SilverMole Inc. has been in the mining industry since 1859 when the first major silver ore deposits in Mediterraneo were discovered at the Comstock Lode in Virginia City. The venture with its seat in Mediterraneo started out as an ambitious idea, evolved into one of the industry leaders and ultimately in one of the country's largest conglomerates. The success of a company is not random - it is the consistency to the

strategic actions. The company used its good strategic, operational and financial position, to also break into the iron ore market. Mining iron ore is complicated and requires a huge amount of capital. Nevertheless, iron is today the world's most commonly used metal - steel, of which iron ore is the key ingredient, representing almost 95 % of all metal used per year. The early entry in the iron ore mining was a major reason that SilverMole is today a prosperous enterprise, which is also still involved in silver and iron mining, though the company was working to divest its precious metal holdings, because of recent political upheavals in its mining areas.

However, everything has changed when the company's representative for Alogna introduced a new idea to the board. He came up with his idea upon returning from a meeting with Alogna's officials, discussing the future of the Country.

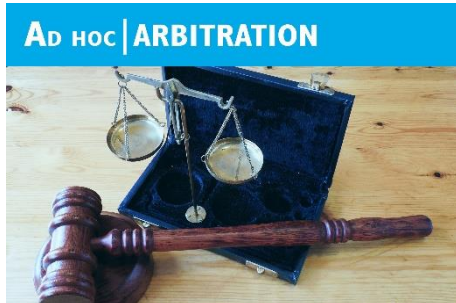
Alogna is one of the poorest countries on this planet. There is little industry and scarce electricity, and also the rest of the country's infrastructure is a long way from western standards. The level of development is equivalent to Congo and Malawi. Despite the poverty, Alogna is politically stable and is endowed with rich as well as diverse natural resources. One of the largest known deposits of untapped iron ore is hidden inside a huge mountain range. Far away from any city, major roads or any railway tracks the Ulakam Mountains stretch for almost 100 km. Experts estimate that the hidden ore can generate yearly profits around US\$ 50,000,000 for at least ten years. The only problem is that Ulakam lies far away from the coast and is surrounded by dense forests, which make the ore very difficult to access.

Due to these circumstances, the government of Alogna was exploring the possibilities of selling the mining rights for Uklama's iron ore to a private investor. In return, it expected a substantial investment in the infrastructure of the region and a certain share of the profits.



SilverMole's representative introduced this investment opportunity to the company's board. Decisions did not take long and negotiations between the government of Alogna and SilverMole followed soon. After agreement had been reached, heavy equipment was

delivered to the region and ore deposits and geologists took soil samples. In the beginning everything seemed to be perfect. However, the situation changed rapidly after SilverMole received a notification of contract termination. The letter also included the expropriation of the mining rights. The justification for the decision was that the development of a better infrastructure had not been quick enough. Some of the milestones set had not been achieved because instalments had not been made punctually and in full.



Being shocked and disappointed by those allegations, SilverMole decided to seek compensation from Alogna, for the expropriation, in the sum of US\$ 500,000,000. For this purpose, the company initiated ad hoc arbitration proceedings in Cologne under the UNCITRAL Arbitration Rules for which the arbitration

clause in the contract provided. Since only Alogna is a signatory of the ICSID Convention and there is no Bilateral Investment Treaty between Alogna and Mediterraneo, SilverMole had no other possibility to pursue their claim. SilverMole claims that there was no delay regarding the development of the infrastructure. All payments to the subcontractors and also the supervision of those contractors were effected duly. Even if there should have been a delay, there was no fault on the part of SilverMole. The company claims that the true reason for the expropriation rather was corruption within the government. According to rumors, the Minister for Economic Affairs' sister was seen on a regular basis with an executive of one of SilverMole's major competitors.

When the commencement of proceedings was made public, there was a national outcry in Alogna. The people were angered by the accusations of corruption and the possibility of an award providing for a huge amount of damages. The Green Party blamed the Department for this disaster and already the Minister for Economic Affairs was forced to resign.

In order to avoid further costs and negative publicity the government of Alogna asked SilverMole to settle the dispute in negotiations. Despite being initially reluctant to enter into negotiations again after what has happened, SilverMole agreed to meet in Cologne before the first hearing in the arbitration proceeding.

This could be the opportunity for both parties to clear the air and make a fresh start. Therefore, the parties have to agree on terms on which to continue the project or on which to abandon it. Alogna will be represented by its new Minister for Economic Affairs and two of his legal advisors. The managing director will attend today's negotiation on behalf of SilverMole. He will be accompanied by his financial and his legal advisor. Both parties are authorized to enter into any agreement they consider suitable according to their needs.

