

30 April 2024

## ARBITRATION AWARD FOR ANTILLES GOLD'S SUBSIDIARY

**Antilles Gold Limited ("Antilles Gold" or the "Company") (ASX: AAU, OTCQB: ANTMF) advises that an Award has been issued by the Tribunal of the International Centre for Settlement of Investment Disputes ("ICSID") which conducted Arbitration proceedings to determine several Claims by wholly owned subsidiary, EnviroGold (Las Lagunas) Limited ("EVGLL"), against the Government of the Dominican Republic ("the Government", or "the State").**

The Claims relate to the Las Lagunas Gold Tailings Project which involved EVGLL recovering approximately 5.0 million tonnes of 3.5g/t gold tailings stored in a dam at Las Lagunas in the Dominican Republic, which originated from the adjacent Pueblo Viejo mine, and then oxidising the toxic sulphide tailings before producing a gold dore for refining overseas, and the sale of bullion.

The Project operated from July 2012 to December 2019, and was carried out under the terms of a Contract between EVGLL and the State dated 28 April 2004.

ICSID, which is based in Washington DC, and is a Unit of the World Bank, has been conducting the Arbitration through a three-member Tribunal established on 5 August 2020. The Award was issued on 24 April 2024, and received by EVGLL on 25 April 2024 following a final hearing in early June 2023.

EVGLL has been awarded US\$4,070,283.85 (~A\$ 6,308,940 at an exchange rate of A\$1:00 = US\$0.65) including interest to 24 April 2024. Simple interest continues to accrue at 7.3% pa.

The attached "Review Of Arbitration Award" details the Claims made, and the reasons for certain adverse decisions by the Tribunal which are perplexing, and in the Company's view, unreasonable.

The result is disappointing, and is primarily as a result of the Tribunal rejecting EVGLL's principal Claim of US\$15.5 million for additional costs, and reduced gold production that resulted from the State's failure to meet its contractual obligation to provide a site for the construction of a tailings storage facility into which reprocessed tailings could be deposited.

As a consequence, the reprocessed tailings had to be redeposited back into the Las Lagunas Dam behind substantial rock retaining walls at a considerable cost.

The Tribunal found that EVGLL had preferred to redeposit the reprocessed tailings back into the Las Lagunas Dam, and despite acknowledging the State's breach of contract, ruled that EVGLL had effectively waived the State's obligation to provide a site for the construction of a new dam.

In the opinion of the two Executive Directors of EVGLL involved in the Project, the Tribunal failed to take into account, or believe, their sworn Witness Statements, and oral testimony which reinforced EVGLL's rights, and commitment to build a new tailings dam had the site been provided by the State.

A positive element of the Award was the Tribunal ordering the State to compensate EVGLL for the State's breach of EVGLL's entitlement to a special compensatory and fiscal regime, and to lift illegal garnishments that have prevented EVGLL from selling plant and equipment stored at Las Lagunas since October 2019, and to not reimpose them.

This will allow EVGLL to sell approximately A\$3.0 million to A\$4.0 million of surplus assets.

While the State was directed to reimburse EVGLL for the Jurisdictional Phase of the Arbitration settled in EVGLL's favour on 31 March 2022, the Award in relation to legal costs for the Merits Phase of the Arbitration is based on EVGLL having to pay for 86% of the total of both parties legal costs, after winning only 14% of the total amount of its Claims. EVGLL will reimburse the State ~US\$1,500,000 of its legal costs, plus simple interest accruing at 7.3%pa.

The A\$6.3 million awarded to EVGLL is expected to be received in the near term, and will assist the Antilles Gold Group to fund the outstanding US\$2.0 million of its farm-in to a 50% shareholding in Cuban joint venture company, Minera La Victoria, and the development of its first project, the Nueva Sabana gold-copper mine.

The Chairman of Antilles Gold, Mr Brian Johnson, commented that "the Tribunals' reasons for rejecting the main Claim are difficult to comprehend, but there is no right of appeal. The Company would not have expended so much time and money on arbitration of this Claim if the Board, and its legal advisors had not thought it to be both genuine, and justified.

EVGLL will collect its entitlement to A\$6.3M, and the Group will move on with its projects in Cuba."

END

This announcement has been authorised by the Board of Antilles Gold Limited.

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**REVIEW OF ARBITRATION AWARD**

**ENVIROGOLD (LAS LAGUNAS) LIMITED**  
**VS**  
**GOVERNMENT OF DOMINICAN REPUBLIC**

**30 April 2024**

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## **Special Contract for the Evaluation and Exploitation of the Las Lagunas Tailings Dam (“Special Contract”)**

On 28 April 2004, EnviroGold ( Las Lagunas ) Limited (“EVGLL”), a wholly owned subsidiary of Antilles Gold Limited, signed a contract with the Dominican Republic Government (“the Government”, or “the State”) to undertake the reprocessing of approximately 5.0 million tonnes of 3.5g/t gold tailings from the Pueblo Viejo gold mine that were stored in valleys upstream of a dam wall at Las Lagunas (“the Las Lagunas Dam”).

EVGLL committed to participating in what was effectively an environmental remediation project entailing the dredging of the toxic sulphide tailings stored in the Las Lagunas Dam, pumping them to a nearby process plant for oxidation, and extraction of gold and silver in the form of a dore for refining and sale overseas, and the redeposition of reprocessed tailings in either a tailings storage facility proposed to be constructed by a third party, or in a new dam built by EVGLL at a site to be provided by the State (“the Project”)

Negotiations on the terms of the contract resulted in a commitment for EVGLL to pay the State a 25% share of surplus cash flow generated by the Project after the accumulated total cash flow exceeded EVGLL’s costs of developing the Project (“the Recovery Amount”). This obligation was referred to as a royalty and described by the acronym PUN (“Participation of Net Utilities”).

EVGLL also committed to pay a 3.2% royalty on gold and silver sales which was described by the acronym RNF (“Net Founding Return”).

EVGLL was granted a waiver on all taxes other than withholding tax as a consequence of having to pay the PUN.

EVGLL and the State agreed that dispute resolution would be by arbitration conducted by the International Centre for Settlement of Investment Disputes (“ICSID”), a unit of the World Bank located in Washington DC.

All of the above were incorporated in the contract which was titled “Special Contract for the Evaluation and Exploitation of the Las Lagunas Tailings Dam” or “the Special Contract” in its abbreviated form.

EVGLL was selected by the State to undertake the Project after receiving international bids, based primarily on EVGLL proposing to utilise the Albion process to oxidise the tailings. The Albion process was developed in Australia by Mount Isa Mines, and is patented by Xstrata Technology Pty Ltd (now Glencore Technology Pty Ltd).

EVGLL found the State to be a very difficult “partner” in the Project where operations were conducted from July 2012 to December 2019, with a number of disputes that emerged being referred to ICSID for Arbitration.

The results in ICSID’s Award received by EVGLL on 25 April 2024 are extremely disappointing, and a number of its findings are difficult to comprehend.

## **Failure of Government to Provide an Alternative Tailings Dam Site**

The main Claim by EVGLL for ~US\$15.5 million was for compensation related to additional operating costs, and production losses resulting from EVGLL having to redeposit reprocessed tailings back into the Las Lagunas Dam from which they were sourced when the Government failed to meet a contractual obligation to provide a site where EVGLL could build a storage facility for the redeposition of the reprocessed tailings.

As a consequence, EVGLL had to build large rock retaining walls within the live dredging operation being conducted in the Las Lagunas Dam, behind which reprocessed tailings could be stored, and separated from the valuable unprocessed tailings.

In addition, instead of being able to dredge across the surface of the in-situ unprocessed tailings to blend a constant feed for the concentrator to achieve optimal gold recovery, the dredging had to be undertaken in five separate areas flanked by retaining walls to maintain separation of the reprocessed and unprocessed tailings, which prevented blending.

This resulted in reduced gold recovery from areas containing ultra fine tailings that could otherwise have been blended with coarse tailings to optimise recoveries.

The Claim was for the financial impact on EVGLL when it was not able to construct a tailings storage facility at a site to be provided by the State in accordance with its contractual commitment. The Claimed amount was net of the estimated US\$6.0 million cost of constructing a new dam, and associated pipeline for pumping reprocessed tailings to the new dam.

Sworn Witness Statements by EVGLL's two executive directors that were confirmed orally under oath in Tribunal hearings in June 2023 advised the Tribunal that the only reason EVGLL proceeded with the project by redepositing reprocessed tailings within the live Las Lagunas dam was because of the failure of the Government to meet its contractual obligation to expropriate and provide the agreed site within a timely manner.

A particular site was nominated as suitable by EVGLL in 2004 after investigations by geotechnical, and dam design consultants, and agreed as being suitable by the Government, but the Government failed to even commence the process for expropriation of the low value agricultural land involved, because, in EVGLL's opinion, it did not have the political will to disturb, or agitate landowners.

As a result, EVGLL advised the Government in mid-2006 that it would proceed with the Project by redepositing the reprocessed tailings back into the Las Lagunas dam, and in 2008, prior to commencing construction of the Project, also advised that the additional cost of this operation was likely to be around US\$15million over the life of the Project.

However, in the Arbitration proceedings the Tribunal did not accept both Executive Directors' sworn testimony that EVGLL's requests in numerous meetings with the State's Director General of Mines, and repeated written requests to be provided with the agreed site reflected the Company's right, and commitment to building a new dam, and to pump reprocessed tailings to it for storage as a predictable, simple operation, rather than take on the much more risky, and

difficult to assess proposition of an untried concept of redeposition behind expensive and potentially unstable rock retaining walls within the live Las Lagunas Dam.

The prospect of redepositing the reprocessed tailings within the Las Lagunas Dam was suggested as a possible alternative option for storage by a mining consultant in 2005 when the Government was not progressing with the expropriation of the site selected for a new dam.

The consultant did not conduct any financial analysis, or risk analysis of this alternative storage option but suggested how it might be carried out, which in fact was impractical and different from how EVGLL actually approached the storage within the Las Lagunas Dam when it was effectively forced to do so in order to carry out the Project.

The Tribunal found that EVGLL had effectively waived the contractual obligation of the Government to provide a site for the construction of a new dam, based on comments in reports from the mining consultant, and an environmental consultant that redepositing reprocessed tailings into the Las Lagunas Dam was more environmentally and economically attractive than building a new dam, which was not EVGLL's position, and despite neither consultant undertaking any financial forecasts to justify their comments on economic comparisons or benefits.

The Tribunal was advised that in any event the consultant's comments on any economic advantage in using the Las Lagunas Dam for storage, was disregarded by EVGLL.

In fact, EVGLL was able to provide evidence to the Tribunal that based on a cost estimate by an independent experienced dam designer in 2004, the construction cost for a new dam and associated pipeline was expected to be approximately US\$6 million.

The Tribunal also viewed a letter from EVGLL to the Government in 2008 that advised its expectation of the additional cost of US\$15 million to redeposit the reprocessed tailings back into the Las Lagunas Dam.

These documents had been provided by EVGLL to the State, and demonstrated that the additional cost of redeposition in the Las Lagunas Dam was significantly higher than building a new dam.

Both of the Executive Directors of EVGLL advised the Tribunal that they had ignored the consultants' comments on economic benefits as they had no supporting justification, and thereafter EVGLL continued to request the State to provide a site for the construction of a new dam.

The Tribunal did not accept the estimate for the cost of construction of a new dam which was undertaken by an experienced independent designer of tailings dams based on the topography of the selected site, and extensive geotechnical investigations.

The Tribunal also found that two ambiguous letters from EVGLL to the DGM supported their findings, despite the existence of a large number of unambiguous letters from EVGLL requesting the provision of the agreed site for a new dam.

The Tribunal's findings are perplexing because EVGLL, in addition to advising the Tribunal that the comments by consultants on operational economics were not sought, and in fact ignored,

also provided evidence of continued requests for the provision of the site even after it was forced in mid-2006 to make a decision to use the Las Lagunas Dam for storage of reprocessed tailings in order to progress the Project.

The continuing requests to be provided with a site were made in case the unique methodology of building rock retaining walls on top of the unstable oxide tailings that lay below the dredged gold bearing sulphide tailings, failed to be physically achievable, and the Project had to revert to constructing a new dam for storage.

The Tribunal rejected this Claim in its entirety.

### **Legal Costs Defending Tax Assessments when Tax Waived in Special Contract**

Despite the Special Contract specifically waiving the application of taxation, the Government's Directorate General of Internal Taxes ("DGII") assessed EVGLL for Income Tax and Asset Tax together with penalties over a period of five years which required the assessments to be defended in the Dominican Courts to avoid the DGII's assessments from becoming final and binding.

Also, despite the Court's, including the Supreme Court, finding on every assessment defended by EVGLL that these taxes were not applicable to EVGLL, the DGII continued to assess EVGLL for income tax until immediately before the Tribunal hearing in June 2023, where its Counsel confirmed that EVGLL was exempted from taxes.

EVGLL Claimed US\$882,922.05, as at 31 May 2023, and an additional US\$12,650.44 per month for costs incurred after 31 May 2023 in the Arbitration proceedings for legal costs in defending these assessments.

The Government was ordered by the Tribunal to pay damages of US\$835,235 to EVGLL plus interest.

### **Illegal Garnishment of Assets by DGII**

In October 2019, as the Project was nearing completion the DGII arranged a Court Order to garnish EVGLL's plant and equipment based on their representations that taxation was owing to DGII by EVGLL, despite DGII's knowledge at the time that the Supreme Court had confirmed taxation was waived for the Project.

The garnishment was renewed by DGII on numerous occasions for over four years and is still in place. The garnishment prevented EVGLL from selling surplus plant and equipment while its condition deteriorated in an open-air corrosive environment, and the value of the various items reduced.

EVGLL Claimed US\$ 877,149 for the cost of storing, securing, and maintaining the garnished assets and was Awarded this amount as of 30 September 2022 plus US\$32,450 per month from 20 October 2022 to when garnishment is lifted, plus interest.

The Tribunal also Awarded EVGLL US\$283,700 as of 30 September 2022 and US\$8,915 per month from October 2022 to the date of lifting the garnishment plus interest as compensation for overhead costs related to EVGLL's longer stay in the Dominican Republic due to its inability to remove surplus assets from the site, which is a requirement of the Special Contract.

EVGLL also Claimed US\$3,031,000 as compensation for the reduction in value of the stored plant and equipment, and US\$401,200 for the reduced value of two dredges over the four-year period when they could not be sold because of the illegal garnishment. The amounts claimed were based on assessments of individual items in 2019, and again in 2023 by an independent specialist machinery valuer.

This Claim was rejected by the Tribunal based on their opinion that the evidence provided by EVGLL was insufficient to sustain the claim, and they did not acknowledge that the value of assets would reduce over four years, irrespective of the amount.

The Tribunal found the garnishment to be illegal and ordered the Government to lift all garnishments, and not to impose any future garnishments for tax or royalties.

### **NATURE of PUN and RNF**

EVGLL argued that PUN (share of cash flow), and RNF (mining royalties) were royalties as defined in the Special Contract, and not taxes as was determined by the Government, and the DGII.

The Tribunal agreed with EVGLL on the nature of PUN and RNF.

### **PUN CALCULATION**

The calculation of the annual PUN payment is based on a 25% share for the Government of cash flow generated by the Project in each year following the year in which the accumulative cash flow exceeds the Recovery Amount. The Recovery amount is the total amount EVGLL spent on developing the Project.

EVGLL nominated US\$63,164,274 as the total amount spent on developing the Project to establish the Recovery Amount.

After an Audit in 2016, DGII reduced the Recovery Amount when EVGLL was not able to provide copies of all supporting Invoices from creditors in the form required under the Tax Code despite being advised that foreign subcontractors and suppliers used their own form of Invoice, and EVGLL paid local subcontractors through its monthly statements of work undertaken.

Despite EVGLL providing evidence of all payments it made to develop the Project from its Cash Books, Bank Statements, and Audits, it could not locate several invoices from the period 11 to 12 years prior to the DGII Audit, and as a consequence, the Tribunal determined that a deduction of US\$851,125 from the Recovery Amount was justified.

### **ACCUMULATED CASH FLOW**



In calculating the Accumulated Cash Flow, DGII used London Metal Exchange (“LME”) prices for gold which was higher than EVGLL received under a hedging arrangement required by the Project lender, as was permitted under the Special Contract.

DGII justified their approach because the Tax Code determined that this could occur when assessing income, and therefore cash flow if a party’s product was sold repeatedly to the same buyer, which resulted in the buyer being deemed to be a related entity of the seller.

A Swiss gold refining company, MKS, refined and purchased most of the gold produced by the Project on behalf of the project lender at the lower hedged price. MKS was deemed by DGII to be an Affiliate of EVGLL, which it was not, and based on the Tax Code used the higher LME gold price to determine EVGLL’s cash flow and accumulated cashflow.

The Tribunal agreed with DGII’s approach.

As a consequence of the reduced Recovery Amount, and the increased Accumulated Cash Flow, EVGLL’s PUN payment was increased in 2016, 2017, and 2018, but not in 2019, and EVGLL’s approach of having its actual demonstrated payments and receipts used in the calculation of PUN was rejected by the DGII based on its application of the Tax Code in determining these amounts.

DGII’s methodology of calculating Accumulated Cash Flow was supported by the Tribunal.

## **CALCULATION OF RNF**

EVGLL sought a declaration by the Tribunal that it had correctly calculated and paid the RNF (3.2% Royalty) to the Government throughout the course of the Project after DGII determined that the refiner and buyer (MKS on behalf of the Project Lender) was an Affiliate under the Tax Code, and that the RNF payments should be based on higher theoretical LME gold price, and penalties should be applied in accordance with the Tax Code.

Based on the Tribunal’s finding that the RNF is not a Tax, and the Tax Code is not applicable to the calculation of RNF, the Tribunal granted the declaration sought by EVGLL.

## **REPAYMENT OF RNF PENALTIES**

In September 2018, EVGLL incorrectly paid DGII an amount of US\$354,745 as penalties when demanded by DGII after EVGLL had voluntarily notified DGII that an adjustment had to be made to a previous RNF submission due to an error, and had paid the amount of the adjustment.

EVGLL soon thereafter requested the return of the penalties but DGII refused.

The Tribunal has directed DGII to return this amount to EVGLL, with interest applying from 11 March 2020 the date the dispute formally started, which is more than three years later than when the amount should have been returned.

## **INTEREST**

The Tribunal determined that simple interest is to be paid where applicable at 7.3%pa from the Request for Arbitration on 11 March 2020. EnviroGold had requested a higher rate on a compound basis, but this was rejected.

## **COSTS**

### **Jurisdictional Phase**

The Tribunal Awarded EVGLL all of its US\$626,578 legal costs for the initial Jurisdictional Phase of the Arbitration and ordered the State to reimburse these costs to EVGLL. Interest on this amount was only awarded from 24 April 2024 and not from 11 March 2020, when the State was found to be liable for EVGLL's legal costs.

### **Merits Phase**

The Tribunal determined by a majority decision that as EVGLL had only been Awarded 14% of the amounts Claimed mainly because of the rejection of the principal Claim, it was appropriate for EVGLL to bear 86% of the total costs of both EVGLL (US\$2,272,499), and the State (US\$2,839,362) and ordered EVGLL to reimburse the State US\$2,123,701 of its costs plus interest from 24 April 2024.

The fact that the State engaged 9 Counsel and 14 Party Representatives in the Arbitration proceedings, and incurred legal costs 25% higher than EVGLL was found to be reasonable by the Tribunal.

The result of the two decisions on allocation of legal costs is that as at 24 April 2024 EVGLL is obliged to reimburse a net amount of approximately US\$1,500,000 to the State plus interest

## **SUMMARY**

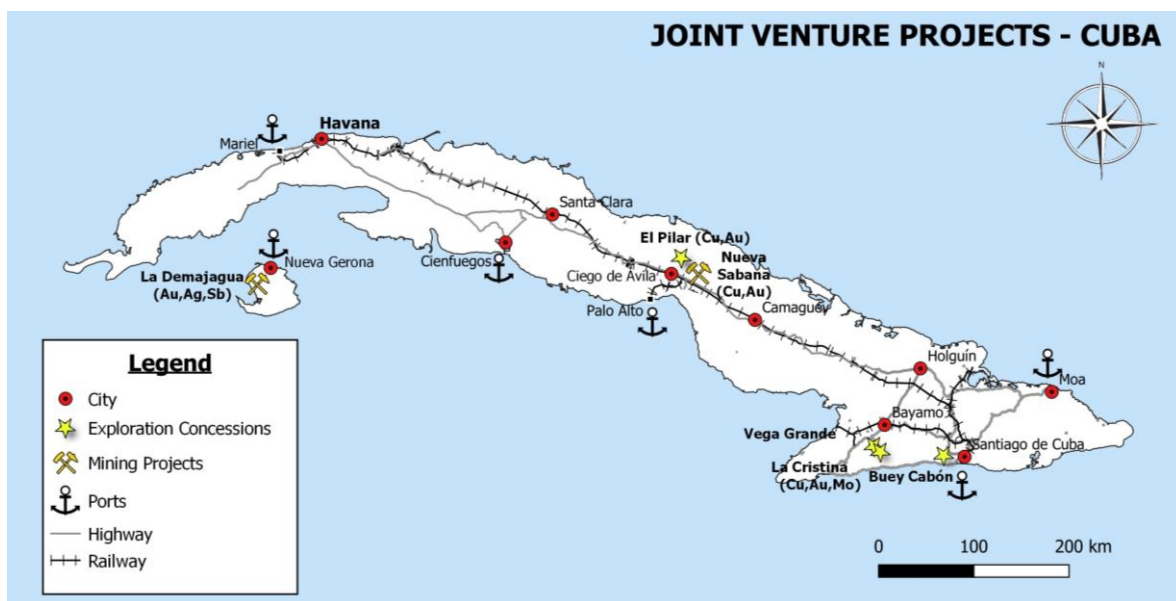
EVGLL have been Awarded a total of US\$3,128,581 plus interest of US\$941,703 (total US\$4,070,284) (A\$6,261,975) as at 24 April 2024, with interest accruing from this date.

In addition, EVGLL has also been awarded a further US\$ 41,365 per month, plus interest, until the illegal garnishment is lifted.

## ABOUT ANTILLES GOLD LIMITED:

Antilles Gold's strategy is to participate in the successive development of previously explored gold, silver, antimony and copper deposits in mineral rich Cuba.

- The Company is at the forefront of the emerging mining sector in Cuba and expects to be involved in the development of several projects through its joint venture with the Cuban Government's mining company, GeoMinera SA.
- The first project expected to be developed by the 50:50 joint venture company, Minera La Victoria SA, is the proposed Nueva Sabana mine based on a gold-copper oxide deposit which overlays the large El Pilar copper-gold porphyry system in central Cuba.



- The second project is expected to be the development of the La Demajagua open pit mine on the Isle of Youth in south-west Cuba to produce gold-arsenopyrite, and gold-silver-antimony concentrates. It is planned to process the high arsenic concentrate at a plant incorporating a two-stage fluidised-bed roaster, CIL circuit, and an antimony recovery circuit to produce gold doré, and maximise antimony production as it is an in-demand strategic metal.
- The joint venture partners intend to invest part of the expected surplus cash flow from the Nueva Sabana mine to fund exploration of major copper targets, including the El Pilar copper-gold porphyry system, and two highly prospective properties within the Sierra Maestra copper belt in south east Cuba.

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- Antilles Gold is comfortable operating under the applicable law on Foreign Investment in Cuba, and the realistic Mining and Environmental regulations, and has been granted a generous fiscal regime by the Government which is supportive of its objectives.
- The existing joint venture agreement includes the requirement for all funds to be held in a foreign Bank account with the only transfers to Cuba being for local expenses, which will obviate Country credit risk for foreign lenders and suppliers.



Drilling - El Pilar

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