



## Department of Primary Industries and Mines Ministry of Industry

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### PRESS RELEASE

## Statement Regarding Dispute with Kingsgate Consolidated Limited

The Government is concerned that a number of recent statements made by representatives of Kingsgate Consolidated Limited (Kingsgate) regarding the ongoing dispute over the Chatree Mine, operated by Kingsgate's subsidiary Akara Resources (Akara), do not reflect reality and could be misleading to the public. Furthermore, Kingsgate's decision to proceed with the filing of its arbitration claim against Thailand after the Government's lifting of the suspension affecting the Chatree Mine is ill-considered and appears to be distracting the company from taking basic steps towards reactivation of the project.

For example, the Interim Executive Chairman of Kingsgate has publicly stated that negotiations with the Government are ongoing and that Kingsgate filed its Notice of Arbitration against Thailand on 2 November 2017 in order to facilitate a settlement of the dispute. In reality, the Government advised Kingsgate several times during the pre-arbitration consultation period that filing a notice of arbitration would complicate and distract from the settlement discussions, and that is in fact what has happened. Whereas the Government has remained willing to continue to negotiate at all times, Kingsgate appears to have shifted its focus to pursuing the arbitration. The Government is disappointed with Kingsgate's current approach, but remains committed to seeking an amicable settlement of the dispute.

On 14 September 2017, the Department of Primary Industries and Mines (DPIM) informed Akara of certain reasonable and non-burdensome environmental safeguards that Akara would need to put in place in order to renew the Metallurgical Processing Licence (MPL) that is required for resuming operations at the Chatree Mine, the previous MPL having expired at the end of 2016. Even though more than three months have elapsed since its receipt of that notice from the DPIM, Akara to date has not fully satisfied the applicable conditions and it is unclear whether it intends to do so. The Government is concerned that Akara may be intentionally delaying its compliance with the conditions, in order to avoid undermining its allegation in the arbitration that its mining rights have been expropriated.

Kingsgate's Chairman has also made public statements to the effect that Thailand's recently adopted Gold Policy and Minerals Act are hostile to mining. In reality, the adoption of these policies is meant to *facilitate* the issuance of mining licenses, while protecting legitimate economic, social and environmental interests of the people of Thailand. In contrast to Kingsgate, other mining industry participants have expressly affirmed their support for the Gold Policy and Minerals Act, and have confirmed their willingness to pursue mining projects in Thailand.

Contrary to statements made by Kingsgate, the Government is confident that the measures being challenged in the arbitration were not expropriatory and were fully in accordance with Thailand's obligations under TAFTA. Most if not all of the challenged measures were of a temporary nature, and all were taken for legitimate public purposes and were properly balanced to respect the interests of relevant stakeholders, including foreign investors. Thailand was free to adopt such measures without any obligation to pay compensation under TAFTA, particularly given the absence of any specific commitments of stabilization. Thus, Thailand considers Kingsgate's arbitration claims to be entirely unfounded.

The Government has appointed the international law firm Arnold & Porter Kaye Scholer LLP to defend it in the arbitration proceeding. The law firm is one of the most experienced in handling these types of disputes and has a long track record of successfully defending governments against claims by foreign investors. The arbitration proceeding is currently at a very early stage and it is likely to take years before a final decision by the arbitration tribunal is issued.

For its part, the Government believes that a properly managed reactivation of the Chatree Mine would be mutually beneficial to the Mine's owner and to Thailand, and that far more can be achieved through amicable negotiations than through arbitration. The Government has repeatedly indicated its continued willingness to participate in such negotiations, the success of which will depend on Kingsgate's willingness to participate in good faith and to moderate certain extreme positions it has adopted to date.

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