

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius

v.

Portuguese Republic

(ICSID Case No. ARB/22/28)

PROCEDURAL ORDER NO. 7

Decision on the Claimants' Objections to the Respondent's Exhibits to Post-Hearing Brief

Members of the Tribunal

Mr. Jeremy K. Sharpe, President of the Tribunal

Prof. Brigitte Stern, Arbitrator

Prof. Dr. Stephan Schill, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

April 28, 2025

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I. PROCEDURAL BACKGROUND

1. This Procedural Order relates to exhibits RL-0253 to RL-0283, which the Respondent submitted with its Post-Hearing Brief, and whether, following the Claimants' objection, they should be admitted into the record.
2. On February 12, 2025, the Tribunal invited the Parties to exchange a single round of Post-Hearing Briefs, simultaneously, by March 14, 2025. The Tribunal also invited the Parties to answer six questions arising from the Hearing on Jurisdiction held on January 20-23, 2025. The Parties' Post-Hearing Briefs were not to exceed 35 pages.
3. On February 13, 2025, following a request from the Claimants, the Tribunal clarified that the page limit for the Parties' Post-Hearing Briefs included the Parties' answers to the Tribunal's questions.
4. On February 27, 2025, following a request from the Respondent, the Tribunal extended until March 27, 2025, the Parties' deadline to submit their Post-Hearing Briefs.
5. On March 27, 2025, the Parties filed their respective Post-Hearing Briefs. The Respondent submitted exhibits RL-0253 to RL-0283 with its Post-Hearing Brief.
6. In a letter to the Tribunal dated April 1, 2025, the Claimants objected to the Respondent's submission of additional legal authorities with its Post-Hearing Brief, "in contravention of Procedural Order Nos. 1 and 5."
7. On April 2, 2025, the Tribunal invited the Respondent to make any observations on the Claimants' objections by April 9, 2025.
8. In a letter dated April 9, 2025, the Respondent replied to the Claimants' objections, asserting that it "did not contravene the procedural orders when it filed new legal authorities in support of its post-Hearing Brief."

II. PARTIES' ARGUMENTS AND TRIBUNAL'S ANALYSIS

A. CLAIMANTS' REQUEST

9. In their letter of April 1, 2025, the Claimants object to the Respondent's new legal authorities on the basis of Procedural Order No. 1 (**PO1**) and Procedural Order No. 5 (**PO5**).
10. The Claimants argue that PO1 "makes clear that no new documents were permitted to be filed with the Parties' respective Post-Hearing Briefs." Paragraph 16.3 of PO1 provides:

Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.

11. The Claimants further argue that PO5 "reinforces the point." That order provides, in relevant part:

49. Paragraph 16.3 of Procedural Order No. 1 continues to apply during and after the Hearing.

50. The Parties agree that no new factual evidence, new exhibits, or new legal authorities shall be admitted into the record unless in accordance with the process described in paragraph 16.3 of Procedural Order No. 1.

12. The Claimants contend that the Respondent submitted no fewer than 30 new legal authorities with its Post-Hearing Brief, "without any application for permission from the Tribunal," in clear violation of PO1 and PO5. The Claimants, on the other hand, "adhered to the wording of PO1 and PO5 in good faith" and refrained from submitting any new documents with their Post-Hearing Submission. Instead, the Claimants offered to submit additional legal authorities regarding certain topics, if the Tribunal deemed it useful to receive them.
13. The Claimants ask that the Tribunal "(1) strike from the record exhibits RL-0253 to RL-0283, and (2) order the Respondent to resubmit its Post-Hearing Brief, with all references to RL-0253 to RL-0283 removed."

B. RESPONDENT'S RESPONSE

14. The Respondent denies that its submission of additional legal authorities contravened PO1 or PO5.
15. The Respondent observes that the Parties' Post-Hearing Briefs are not "standard" submissions. Rather, "they are answers to the Tribunal's questions dealing with topics that had not been addressed, in these terms, by the parties," requiring additional support under Portuguese and international law.
16. The Respondent adds that the new evidence is "necessary to properly and efficiently answer the Tribunal's questions," the absence of which would impede the Tribunal's ability "to fully and accurately comprehend the Parties' arguments."
17. The Respondent suggests that, in any event, the need for additional authorities to respond comprehensively and accurately to new topics introduced by the Tribunal constitute "exceptional circumstances" within the meaning of paragraph 16.3 of PO1, justifying their admission.
18. The Respondent asks the Tribunal to "allow the new legal authorities (exhibits RL-0253 to RL-0283) filed with the Respondent's Post-Hearing Brief to remain on the record."

C. TRIBUNAL'S ANALYSIS

19. The Tribunal understands that both Parties looked to additional legal authorities to answer the six written questions posed by the Tribunal following the Hearing on Jurisdiction. The Claimants opted not to submit additional authorities with their Post-Hearing Brief, but indicated their willingness to submit such authorities if the Tribunal wished to receive them.
20. The Respondent, by contrast, produced with its Post-Hearing Brief some 30 additional legal authorities, RL-0253 to RL-0283, without seeking leave of the Tribunal in accordance with paragraph 16.3 of PO1.
21. The Tribunal appreciates the Parties' efforts to provide complete answers to the Tribunal's questions following the Hearing on Jurisdiction. The Tribunal, however, does not consider that the

answers provided require additional legal authority. As far as issues of international law are concerned, the Tribunal is aware of the relevant precedent and other authorities and is not in need of any additional sources in support of the Parties' arguments. As far as matters of domestic and European law are concerned, the Tribunal is equally able to appreciate the Parties' answers to its questions without the submission of additional authorities into the record. Therefore, consistent with PO1 and PO5, the Tribunal declines the Claimants' offer to submit additional authorities and rejects the Respondent's submission of additional authorities (RL-0253 to RL-0283).

22. The Tribunal thus does not accept exhibits RL-0253 to RL-0283 into the record of the proceeding, and will not read or consider them. In the circumstances, the Tribunal does not deem it necessary for the Respondent to resubmit its Post-Hearing Brief with references to exhibits RL-0253 to RL-0283 removed.

III. ORDER

23. The Tribunal decides to:

- (1) Grant the Claimants' request not to admit into the record of the proceeding exhibits RL-0253 to RL-0283; and
- (2) Reject, as unnecessary, the Claimants' request for the Respondent to resubmit its Post-Hearing Brief with references to RL-0253 to RL-0283 removed.

For and on behalf of the Tribunal,

[signature]

Jeremy K. Sharpe
President of the Tribunal
Date: April 28, 2025