

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

BA Desarrollos LLC

v.

Argentine Republic

(ICSID Case No. ARB/23/32)

PROCEDURAL ORDER No. 12
(Date of the Hearing, Closing Statements & Post-Hearing Briefs)

Members of the Tribunal

Ms. Deva Villanúa, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Mr. Luis Alberto González García, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Assistant to the Tribunal

Mr. Ethan Shannon-Craven

18 August 2025

WHEREAS

1. On 15 March 2024 the Tribunal issued Procedural Order [“**PO**”] No. 1 recording, *inter alia*, the Parties’ agreement to hold a hybrid or in-person hearing on the merits and jurisdictional objections in Washington, D.C. [the “**Hearing**”]. The PO contained a procedural calendar setting out the Hearing dates in three different scenarios, depending on whether a request for bifurcation was: not presented, accepted or rejected [“**Procedural Calendar**”].
2. On 28 June 2024 Respondent presented its Request for Bifurcation.
3. On 9 September 2024 the Tribunal issued PO No. 7 containing its decision on the Request for Bifurcation, ultimately deciding to reject the Request. As per the Procedural Calendar, the Pre-Hearing Organisational Meeting [“**PHC**”] was scheduled for 11 August 2025 and the Hearing between 20 October 2025 and 24 October 2025, with 27 and 28 October 2025 in reserve.
4. On 20 June 2025 the Tribunal contacted the Parties seeking their confirmation that their counsel had a valid US visa in order to be able to attend an in-person Hearing in Washington, D.C.¹. This was later confirmed by the Parties to be the case².
5. On 3 July 2025 the Tribunal confirmed that the Hearing would be held in Washington, D.C.³.
6. On 17 July 2025 the Tribunal circulated a draft PO to the Parties regarding the organisation of the Hearing [“**Hearing PO**”], inviting them to discuss and confer, and to revert to the Tribunal, with their comments. The Tribunal also sought the Parties’ agreement to postpone the PHC for the first week of September.
7. Also on 17 July 2025, the Tribunal floated the possibility of increasing the Assistant to the Tribunal’s spending allowance to the price of the cheapest room at the hotel in which the President of the Tribunal will be staying, plus an additional maximum daily allowance of \$50 to cover other expenses⁴. The Parties ultimately accepted such proposal⁵.
8. On 23 July 2025 the Tribunal rescheduled the PHC for 3 September 2025⁶.
9. On 24 July 2025 the Parties confirmed the experts and factual witnesses that they would be calling for examination at the Hearing⁷.

¹ Secretariat’s communication of 20 June 2025.

² Claimant’s communications of 1 and 18 July 2025; Respondent’s communication of 1 July 2025.

³ Secretariat’s communication of 3 July 2025.

⁴ Secretariat’s communication of 17 July 2025.

⁵ Claimant’s communication of 17 July 2025; Respondent’s communication of 30 July 2025.

⁶ Secretariat’s letter of 23 July 2025.

⁷ Parties’ communications of 24 July 2025.

Procedural Order No. 12

10. On 30 July 2025 the Parties were asked to consider the possibility of carrying out a four-day hearing between 20 October 2025 and 23 October 2025 [**“Hearing Length Proposal”**]⁸; on the same date this was accepted by Claimant⁹.
11. On 1 August 2025 the Tribunal received an e-mail from Argentina requesting that the Tribunal reschedule the Hearing on account of its counsel’s involvement in the appeal in the cases *Petersen Energía Inversora, S.A.U. et al v. Argentine Republic et al* and *Eton Park Capital Management, L.P., et al v. Argentine Republic et al* [**“Petersen Case”** or **“Case”**], scheduled for the week commencing 27 October 2025 [**“Postponement Petition”**]. Argentina also accepted the Hearing Length Proposal on the condition that it was agreed that no closing statements would take place during the Hearing itself, with post-hearing briefs [**“PHBs”**] instead being produced by the Parties by 12 December 2025¹⁰.
12. On 6 August 2025 the Tribunal requested Claimant’s views on the Postponement Petition and whether it would agree to PHBs in place of closing statements. The Tribunal also informed the Parties of its availability for a Hearing between 3 and 6 December 2025 and asked for their availability on these dates¹¹.
13. Also on 6 August 2025 Claimant provided its comments, seeking the rejection of the Postponement Petition and that the issue of the closing statements and PHBs be agreed by the Parties in the context of the negotiations regarding the content of the Hearing PO. It also made it known that, in any case, it was unavailable between 3 and 6 December 2025¹².
14. On 8 August 2025, following an invitation from the Tribunal, Argentina provided additional justification for the Postponement Petition and the other issues raised in Claimant’s communication *supra*. It also confirmed its availability between 3 and 6 December 2025¹³.
15. On 11 August 2025 Claimant expressed its agreement that PHBs be presented instead of closing statements at the Hearing in order to ensure that the current Hearing dates be maintained¹⁴.

⁸ Secretariat’s communication of 30 July 2025.

⁹ Claimant’s communication of 30 July 2025.

¹⁰ Respondent’s communication of 1 August 2025.

¹¹ Secretariat’s communication of 6 August 2025.

¹² Claimant’s letter of 6 August 2025.

¹³ Respondent’s letter of 8 August 2025.

¹⁴ Claimant’s communication of 11 August 2025.

PROCEDURAL ORDER NO. 12

16. The Tribunal will begin by setting out the Parties' positions in relation to the Postponement Petition (1.) before making a decision regarding the Hearing dates and on whether there will be closing statements at the Hearing and/or PHBs (2.).

1. PARTIES' POSITIONS

17. The Tribunal notes that the debate between the Parties regarding the Postponement Petition is primarily focused on the following areas of dispute:

- Whether the Postponement Petition is a mere pretext (A.);
- The degree of involvement of the *Procuración* in the Petersen Case (B.); and
- Whether Argentina requested the postponement of the appeal in the Petersen Case ["Appeal"] (C.).

A. Alleged mere pretext

18. Argentina makes its Postponement Petition due to the fact that the appeal in the Petersen Case will be taking place the week commencing 27 October 2025 – a mere four days after the end of the Hearing under the Hearing Length Proposal. Respondent is at pains to stress the more than USD 16 billion value of the Case, rendering it unprecedented in both Argentinian judicial history and for the District Court which issued the decision¹⁵.
19. Although Claimant does not dispute the Case's importance for Argentina, seeing as Respondent has outsourced its defence in the Case to high calibre External Counsel; Claimant does not believe that the quick succession between the Hearing and the Appeal will have a bearing on the handling of the Case. Instead, Claimant alleges, the Postponement Petition is merely a pretext to delay the proceedings – something proved by Respondent contacting Claimant seeking the Hearing's deferral prior to the date of the Appeal being set¹⁶.
20. Argentina vehemently rejects Claimants' allegations, suggesting that it being concerned about a Case of such importance and public interest, which will require the *Procuración* to invest considerable time and resources, is not a mere pretext. In any case, Argentina's seemingly premature request to postpone the Hearing, as explained to Claimant at the time, would also have given margin to the Parties to negotiate a possible end to the proceedings on account of recent developments regarding the process of registering the plots in dispute¹⁷.

¹⁵ Respondent's communication of 1 August 2025; Respondent's letter of 8 August 2025, p. 1.

¹⁶ Claimant's letter of 6 August 2025, p. 4.

¹⁷ Respondent's letter of 8 August 2025, pp. 4 – 5.

B. Degree of *Procuración*'s involvement

21. According to Argentina, the *Procuración* will be significantly involved in the Case, as confirmed by it being officially assigned to the Case by the *Procurador del Tesoro de la Nación*¹⁸ and the fact that the incorrect application of Argentine law is at the heart of the dispute¹⁹. Therefore, if the Hearing is not postponed Respondent could see its right to defence impeded²⁰.
22. Claimant disputes the *Procuración*'s involvement in the case, alleging that the case primarily concerns questions of US law – issues that Respondent's External Counsel will be well-equipped to deal with. Given that no "factual issues" are in dispute, and that no one from the *Procuración* forms part of the counsel of record, there will be a limited need for Respondent's representatives to be involved²¹.

C. Whether Appeal's postponement sought

23. According to Argentina, it inquired into whether it was possible to postpone the Appeal and was ultimately informed that it would not be possible²². Claimant denies that this is the case, based on the fact that, according to the case docket²³, the lead partner of the External Counsel failed to mention the Hearing dates when asked for his availability in mid-July. Nor did he do so when the dates on which the Appeal would be carried out were announced by the court in question. It therefore seems, Claimant suggests, that Argentina failed to make the relevant inquiries²⁴.
24. Respondent disputes the suggestion that it did not pursue the postponement of the Appeal. Providing a statement by the External Counsel²⁵, Argentina claims that it addressed the matter with Sullivan & Cromwell, who informed it that the court in question would only consider the attorney contesting the Appeal's availability when arranging its scheduling; therefore, any attempt to seek its postponement either prior to or after its scheduling would be futile. In any case, now that the Appeal dates have been set a change to the date of the Appeal would only be considered in "extraordinary circumstances", with requests often being denied even when the counsel of record has other commitments the week of the trial²⁶.
25. Claimant disputes the notion that it would not be possible to reschedule the Appeal, suggesting that given that, as can be gleaned from the case docket²⁷, the scheduled dates are merely "PROPOSED". Moreover, it is standard practice of the Court of Appeals to reschedule oral arguments upon the request of a party²⁸.

¹⁸ Respondent's letter of 8 August 2025, Annex B.

¹⁹ Respondent's letter of 8 August 2025, pp. 3 – 4.

²⁰ Respondent's communication of 1 August 2025.

²¹ Claimant's letter of 6 August 2025, p. 4.

²² Respondent's communication of 1 August 2025.

²³ Claimant's letter of 6 August 2025, Annex B.

²⁴ Claimant's letter of 6 August 2025, pp. 3 – 4.

²⁵ Respondent's letter of 8 August 2025, Annex A.

²⁶ Respondent's letter of 8 August 2025, p. 2.

²⁷ Claimant's letter of 6 August 2025, Annex A.

²⁸ Claimant's letter of 6 August 2025, p. 2.

2. DECISION

26. As the Tribunal has already made clear in its previous correspondence²⁹, the Tribunal is sympathetic to Argentina's concerns given the gravity of the Petersen Case. This would, as a matter of principle, make it inclined to accept the Postponement Petition. Nevertheless, as a matter of practicality, the Tribunal believes that rescheduling the Hearing will not be possible.
27. The Tribunal notes that, due to availability constraints, it would not be possible to reschedule the Hearing until February 2026 at the earliest; Claimant is not available between 3 and 6 December 2025 and both Parties' counsel are going to be involved in the hearing in the case *Abertis Infraestructuras, S.A. v. Argentine Republic* (ICSID Case No. ARB/23/39) [*"Abertis"*] in late-January. If the Tribunal were to schedule the Hearing after the first week of December 2025, in an attempt to ensure both Parties' right to a defence, it may have the unintended consequence of impacting both Parties' right in the *Abertis* proceedings. Therefore, the Hearing would have to be rescheduled for after the *Abertis* hearing had concluded.
28. Such a postponement, amounting to a four-month delay to these proceedings, would result in a significant disruption, which may be disproportionate. This seems particularly so as, although the *Procuración* will be involved in the preparation of the Case, it will not be serving as the counsel of record in the Appeal – which in any case will commence at some point during the week following the Hearing.
29. In any case, the Tribunal notes that Claimant has agreed to there being no closing statements at the Hearing and that the PHBs be produced by 12 December 2025. As acknowledged by Argentina³⁰, this will reduce the preparatory burden for the Hearing.

²⁹ Secretariat's communication of 6 August 2025.

³⁰ Respondent's letter of 8 August 2025, p. 5.

Procedural Order No. 12

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30. In light of the above, the Tribunal decides that:

- The Hearing will be carried out between **20 and 23 October 2025**;
- No closing arguments will take place during the Hearing itself; and
- The Parties will produce PHBs by **12 December 2025**. As set out in PO No. 1, further details related to the PHBs' content will be discussed during the Hearing.

On behalf of the Arbitral Tribunal,

[Signed]

Ms. Deva Villanúa
President of the Tribunal
Date: 18 August 2025

³¹ PO No. 1, para. 25.1.