

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**  
WASHINGTON, D.C.

In the arbitration proceeding between

**BLUE BANK INTERNATIONAL & TRUST (BARBADOS) LTD.**

Claimant

and

**BOLIVARIAN REPUBLIC OF VENEZUELA**

Respondent

**ICSID CASE NO. ARB/12/20**

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**DECISION ON THE PARTIES' PROPOSALS TO DISQUALIFY  
A MAJORITY OF THE TRIBUNAL**

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*Secretary of the Tribunal*  
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*Date:* November 12, 2013

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**A. THE PARTIES**

1. The Claimant is Blue Bank International & Trust (Barbados) Ltd. (“**Blue Bank**”), a company incorporated under the laws of Barbados. The Respondent is the Bolivarian Republic of Venezuela (“**Venezuela**”).

**B. PROCEDURAL HISTORY**

2. On June 25, 2012, the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) received a Request for Arbitration filed by Blue Bank against Venezuela.
3. In its Request, the Claimant alleged that Venezuela breached the 1994 Agreement between the Government of Barbados and the Government of the Republic of Venezuela for the Promotion and Protection of Investments, in force since 1995.
4. The Secretary-General registered the Request for Arbitration on August 7, 2012.
5. By letter of October 8, 2012, the Claimant appointed Mr. José María Alonso, a national of the Kingdom of Spain, as arbitrator. Mr. Alonso accepted his appointment on October 22, 2012. Copies of Mr. Alonso’s declaration, statement and *curriculum vitae* were circulated to the Parties on October 24, 2013, pursuant to Rule 6(2) of the ICSID Rules of Procedure for Arbitration Proceedings (“**Arbitration Rules**”). Mr. Alonso’s statement indicated as follows:

*“As of March 2012, I have been a Partner at Baker & McKenzie Madrid, S.L.P. in charge of the Dispute Resolution department in Madrid (Spain).*

*Baker & McKenzie Madrid, S.L.P. is a firm belonging to Baker & McKenzie International (Swiss Verein). All the firms that form part of Baker & McKenzie International are independent and the remuneration of Partners therefore depends mainly on the turnover of each particular firm.*

*Neither myself nor Baker & McKenzie Madrid, S.L.P. have or have had any relationship with the parties of the proceedings.*

*Notwithstanding the above, I am aware of arbitration proceedings before the ICSID against the Bolivarian Republic of Venezuela in an unrelated matter initiated by Baker & McKenzie New York and Baker & McKenzie Caracas in 2011, in which they represented a company called Legreef [sic] Investments. As stated above, in spite of belonging to Baker & McKenzie International, both firms are independent from Baker & McKenzie Madrid, S.L.P. and there is no relationship whatsoever between myself or Baker & McKenzie Madrid, S.L.P. and*

*Legreef [sic] International or the aforementioned arbitration proceedings. Therefore I will not be provided with any information, intervene or take part in said proceedings.*

*I therefore consider myself completely independent and impartial to act as an arbitrator in this [sic] proceedings.”*

6. By letter of November 5, 2012, the Respondent appointed Dr. Santiago Torres Bernárdez, a national of the Kingdom of Spain, as arbitrator. Dr. Torres Bernárdez accepted his appointment on November 15, 2012. Copies of his declaration, statement and *curriculum vitae* were circulated to the Parties on November 16, 2012. Dr. Torres Bernárdez’s statement indicated as follows:

*“Por la presente declaro ser en la actualidad árbitro designado por la República Argentina en dos casos CIADI, a saber “Abaclat and others v. Argentine Republic” (caso CIADI No.ARB/07/5) y “Giordano Alpi and others v. Argentine Republic (caso CIADI No.ARB/08/9)”.*

*No he tenido ni tengo ninguna [sic] tipo de relación con el Demandante o la Demandada en el presente caso y ni yo ni mi familia tenemos inversiones u otros intereses económicos en VENEZUELA y/o BARBADOS.”*

7. On November 5, 2012, Respondent submitted a proposal to disqualify Mr. Alonso pursuant to Article 57 of the ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“**Convention**”) and Rule 9 of the ICSID Arbitration Rules (“**Respondent’s November 5 Letter**”). This proposal was filed before the constitution of the Tribunal. The Centre confirmed receipt on November 9, 2012.
8. On May 3, 2013, the Centre reminded the Parties that no steps had been taken towards the constitution of the Tribunal, since the appointment of Dr. Torres Bernárdez.
9. On May 4, 2013, the Claimant requested that the President of the Tribunal be designated by the Chairman of the ICSID Administrative Council (“**Chairman**”). By letter of May 23, 2013, the Secretary-General proposed five candidates to the Parties to be considered as the presiding arbitrator. None of these proposals resulted in a mutually agreeable candidate.
10. On June 12, 2013, and before the Tribunal had been constituted, the Claimant submitted a proposal to disqualify Dr. Torres Bernárdez pursuant to Article 57 of the ICSID Convention and ICSID Arbitration Rule 9 (“**Claimant’s June 12 Letter**”). In this letter, the Claimant indicated that Mr. Alonso and Dr. Torres Bernárdez would be a majority of the members of the tribunal (once constituted) and, accordingly, requested

that the Chairman decide the challenges in accordance with Article 58 of the ICSID Convention and ICSID Arbitration Rule 9.

11. On July 2, 2013, the Centre informed the Parties of its understanding that the intent of both Parties was to treat Respondent's November 5 Letter and Claimant's June 12 Letter as a proposal for disqualification of the majority of the members of the tribunal, which would be decided by the Chairman in accordance with Article 58 of the ICSID Convention and ICSID Arbitration Rule 9. Venezuela confirmed the Centre's understanding by letter of July 3, 2013. No further comments were received from the Claimant.
12. By letter of July 31, 2013, the Centre informed the Parties of its intention to propose to the Chairman the appointment of Mr. Christer Söderlund, a national of the Kingdom of Sweden, as the presiding arbitrator. By letter of August 7, 2013, the Respondent objected to the proposal of Mr. Söderlund as the presiding arbitrator. The Claimant did not submit observations.
13. By letter of August 13, 2013, the Centre transmitted to the Parties Mr. Söderlund's reply to Respondent's objections. Having carefully considered the correspondence exchanged on this matter, the Centre informed the Parties that it would proceed with the appointment of Mr. Söderlund. Mr. Söderlund accepted his appointment on August 15, 2013.
14. The Tribunal was constituted on August 16, 2013 in accordance with Article 37(2)(b) of the ICSID Convention. On the same date, the Centre transmitted the proposals to disqualify Mr. Alonso and Dr. Torres Bernárdez to the three members of the Tribunal, declared the proceeding suspended in accordance with ICSID Arbitration Rule 9(6), and established a procedural calendar for the Parties' submissions on the disqualification proposals.
15. On August 23, 2013, the Respondent submitted additional observations to Respondent's November 5 Letter ("**Respondent's August 23 Observations**"). The Claimant did not submit additional observations.
16. On September 2, 2013, the Parties requested an extension to file their second round of observations until September 12, 2013. The Parties' request was granted on September 3, 2013.
17. On September 2, 2013, Dr. Torres Bernárdez submitted a letter to the Centre (i) furnishing explanations in accordance with ICSID Arbitration Rule 9(3) ("**Dr. Torres Bernárdez's Explanations**") and (ii) submitting his resignation in

accordance with ICSID Arbitration Rule 8(2). The Centre circulated this letter to the Parties, to Mr. Alonso, and to Mr. Söderlund on September 6, 2013.

On September 9, 2013, Mr. Alonso furnished explanations in accordance with ICSID Arbitration Rule 9(3) (“**Mr. Alonso’s Explanations**”). The Centre circulated Mr. Alonso’s explanations to the Parties and to Mr. Söderlund on the same date.

18. On September 9, 2013, the Parties were invited to submit simultaneous observations on any of the documents filed regarding the proposals to disqualify Mr. Alonso and Dr. Torres Bernárdez by September 19, 2013. On September 19, 2013, Respondent submitted its observations (“**Respondent’s September 19 Observations**”). On the same date, the Claimant submitted its observations in two separate documents: one document dealing with the resignation of Dr. Torres Bernárdez and another document relating to the proposed disqualification of Mr. Alonso (“**Claimant’s September 19 Observations**”).
19. On October 4, 2013, the Parties were invited to submit reply observations, including arguments regarding the standard for disqualification under Article 57 of the ICSID Convention and its application to the present case by October 11, 2013.
20. On October 10, 2013, the Claimant requested an extension of time to submit its reply observations. The Centre granted an extension of time to both Parties until October 24, 2013. Respondent submitted its reply observations on October 24, 2013 (“**Respondent’s October 24 Observations**”). No additional comments were received from Claimant.

### **C. POSITIONS OF THE PARTIES AND OBSERVATIONS BY MR. ALONSO AND DR. TORRES BERNÁRDEZ**

21. The facts, arguments and observations presented in relation to Mr. Alonso (I) and Dr. Torres Bernárdez (II) are summarized below.

#### **I. Mr. José María Alonso**

##### **1. Respondent’s arguments**

22. Respondent’s proposed disqualification of Mr. Alonso is based on his position at Baker & McKenzie, a firm that represents the claimant investor in the case *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/5) (“*Longreef v. Venezuela*”) through its offices in New York and Caracas.
23. In particular, Mr. Alonso is (i) a Managing Partner of the Litigation and Arbitration Department of Baker & McKenzie Madrid and (ii) a Member of the Steering Committee

of the Global Arbitration Practice Group and the Steering Committee of the Baker & McKenzie International European Dispute Practice Group. In addition, Respondent alleged that the office of Baker & McKenzie in Caracas represents complainants in administrative proceedings against the State.<sup>1</sup>

25. Respondent noted that Baker & McKenzie is structured and publicized as a global legal practice, and that each office cannot be considered as a separate legal person for the purposes of a challenge application. It argued that this conclusion is reinforced by the facts that Mr. Alonso is a member of international or global committees within the global law firm and that part of his remuneration depends on the global returns of the firm.<sup>2</sup>
26. Respondent argued that the fact that Longreef Investments A.V.V. is a current client of the law firm where Mr. Alonso is a partner is sufficient to give rise to reasonable doubts as to Mr. Alonso's independence and impartiality, even if Mr. Alonso received minimal remuneration from this client.<sup>3</sup> Respondent contended that Mr. Alonso has direct and indirect economic interests in the outcome of these two cases against Venezuela, given that part of his remuneration depends on the results of other firms (including income derived from the *Longreef v. Venezuela* case), and that a favorable result in *Longreef v. Venezuela* in addition to a vote favorable to the Claimant in the present case would contribute to the expansion of the practice of Baker & McKenzie in the investment arbitration community.<sup>4</sup>
27. Respondent argued that Mr. Alonso's interests are adverse to Venezuela's interests ("*relación adversa*") because Baker & McKenzie represents interests against Venezuela, and Mr. Alonso is a partner and co-manager of Baker & McKenzie's global arbitration practice.<sup>5</sup>
28. Respondent noted that in this case Mr. Alonso would be deciding issues similar or identical to those which Baker & McKenzie would be arguing against Venezuela in *Longreef v. Venezuela*.<sup>6</sup>
29. Respondent argued that the potential to challenge judges or arbitrators where there are doubts about their independence or impartiality exists in most legal systems and

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<sup>1</sup> Respondent's November 5 Letter, p. 2

<sup>2</sup> Respondent's September 19 Observations, ¶ 3; Respondent's October 24 Observations, ¶ 7

<sup>3</sup> Respondent's September 19 Observations, ¶ 4

<sup>4</sup> Respondent's October 24 Observations, ¶¶ 3-5

<sup>5</sup> Respondent's August 23 Observations, ¶¶ 7-10

<sup>6</sup> Respondent's August 23 Observations, ¶ 7

constitutes a general principle of law under Article 38 of the Statute of the International Court of Justice.<sup>7</sup>

30. Respondent contended that Articles 14 and 57 of the ICSID Convention establish the conditions for the disqualification of arbitrators. Article 14(1) requires that arbitrators “may be relied upon to exercise independent judgment”.<sup>8</sup>
31. Respondent contended that any reasonable person would have justifiable doubts as to whether an arbitrator that coordinates the global arbitration practice of a firm could sign an award rejecting arguments that are being defended by other partners of the same firm against the same respondent.<sup>9</sup>
32. Accordingly, Respondent requests that Mr. Alonso be disqualified from the Tribunal.

## **2. Observations by the Claimant**

33. The Claimant stated that no principle of law compels the Chairman to disqualify Mr. Alonso.<sup>10</sup> In particular, the Claimant contended that Respondent had mischaracterized the facts and the legal standard.
34. The Claimant submits that Articles 14(1) and 57 of the ICSID Convention provide for an objective standard, “presumably reasonableness”<sup>11</sup>, to establish “manifest lack of impartiality or independence”.<sup>12</sup> However, it is claimed that Venezuela had not established any facts demonstrating that Mr. Alonso manifestly lacked impartiality or independence. In addition, it argued that Venezuela could not meet the standard established by the term “manifest”.
35. According to the Claimant, Venezuela has mischaracterized the structure and functioning of the *Verein* structure of Baker & McKenzie International, Mr. Alonso’s status as a partner, and his title and functions as a member of Baker & McKenzie’s International Arbitration Steering Committee.<sup>13</sup>
36. The Claimant further contends that the legal authorities cited by Venezuela undermine its position because they all emphasize the arbitrator’s direct involvement in cases

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<sup>7</sup> Respondent’s November 5 Letter, p. 8-12; Respondent’s October 24 Observations, ¶ 11

<sup>8</sup> Respondent’s November 5 Letter, p. 4; Respondent’s October 24 Observations, ¶¶ 12-13

<sup>9</sup> Respondent’s November 5 Letter, p. 6; Respondent’s October 24 Observations, ¶¶ 14 and 22

<sup>10</sup> Claimant’s September 19 Observations, p. 1

<sup>11</sup> *Id.*, p. 3

<sup>12</sup> *Id.*, p. 5

<sup>13</sup> *Id.*, p. 9-13

against the State party, whereas no such direct involvement existed or exists with respect to Mr. Alonso.<sup>14</sup>

37. Accordingly, the Claimant requests that the Chairman deny Respondent's proposal to disqualify Mr. Alonso.

**3. Explanations by Mr. Alonso**

38. Mr. Alonso states that there is no reason to disqualify him from serving as an arbitrator in this case. In particular, he notes that the firm where he is a partner, Baker & McKenzie Madrid, and the firms that represent Longreef Investments A.V.V. against Venezuela, Baker & McKenzie New York and Caracas, are separate legal entities that function independently, and that he does not lead the global arbitration practice of Baker & McKenzie. Mr. Alonso states that his partnership in Baker & McKenzie Madrid and his membership in Baker & McKenzie's International Arbitration Steering Committee do not meet the standard for disqualification under the ICSID Convention or the IBA Guidelines.

39. Mr. Alonso states that Baker & McKenzie Madrid, Baker & McKenzie New York and Baker & McKenzie Caracas are members of the Swiss *Verein* Baker & McKenzie International. As explained in the attachment to his declaration, these firms constitute independent legal entities.<sup>15</sup>

40. Moreover, Mr. Alonso states that his income as a partner depends primarily on the results achieved by Baker & McKenzie Madrid, and that the impact on his income of any profit derived by Baker & McKenzie New York and Caracas from the *Longreef v. Venezuela* case would be nonexistent or insignificant.<sup>16</sup>

41. Mr. Alonso further states that Baker & McKenzie Madrid operates with absolute autonomy and does not receive instructions from any other firm.<sup>17</sup>

42. Mr. Alonso explains that he is a member of Baker & McKenzie's International Arbitration Steering Committee. However, he states that he does not co-manage this Committee and that his membership does not mean that he manages Baker & McKenzie's global arbitration practice. Furthermore, this Committee gives no instructions on the management of individual cases.<sup>18</sup>

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<sup>14</sup> *Id.*, p. 13

<sup>15</sup> Mr. Alonso's Explanations, ¶ 1

<sup>16</sup> *Id.*, ¶ 2

<sup>17</sup> *Id.*, ¶ 3

<sup>18</sup> *Id.*, ¶ 3

43. Mr. Alonso states that the standard for disqualification under the ICSID Convention and the IBA Guidelines are different.<sup>19</sup> Whereas the ICSID Convention requires manifest lack of impartiality or independence, the IBA Guidelines require only justifiable doubts. He states that neither of these standards is met in this case.
44. Mr. Alonso concludes that there is no basis to find reasonable doubt as to his capacity to act impartially, especially given that he does not or has never personally represented any of the Parties, he has never acted in any case against the Respondent and he has no economic or other interest in the result of the *Longreef v. Venezuela* case.<sup>20</sup>

## II. Dr. Santiago Torres Bernárdez

### 1. Claimant's arguments

45. The Claimant's proposed disqualification of Dr. Torres Bernárdez is based on (i) repeat appointments by the Argentine Republic, and by Venezuela when represented by the former Attorney General (*Procurador del Tesoro*) of the Argentine Republic; and on (ii) Dr. Torres Bernárdez's alleged systematic findings in favor of States.<sup>21</sup>
46. In particular, the Claimant contends that: (i) in five of the seven investment arbitration cases in which Dr. Torres Bernárdez has been appointed as an arbitrator, current counsel for Venezuela represented the appointing party;<sup>22</sup> (ii) each one of these seven appointments was made by a respondent State;<sup>23</sup> and (iii) there is no published decision on any significant issue in which Dr. Torres Bernárdez has ruled against the party that appointed him.<sup>24</sup>
47. According to the Claimant, the reference to "independent judgment" in Article 14(1) of the ICSID Convention has been interpreted as including a requirement of impartiality, and the term "manifest" in Article 57 of the ICSID Convention is generally acknowledged to mean "obvious" or "evident", and imposing a relatively heavy burden of proof on the challenging party.<sup>25</sup>
48. The Claimant relies on the IBA Guidelines and on several decisions issued by ICSID tribunals to determine whether the facts in the present case could lead a reasonable

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<sup>19</sup> *Id.*, ¶ 5

<sup>20</sup> *Id.*, ¶ 8

<sup>21</sup> Claimant's June 12 Letter, p. 1

<sup>22</sup> *Id.*, p. 17-22

<sup>23</sup> *Id.*, p. 3

<sup>24</sup> *Id.*, p. 3, 22-27

<sup>25</sup> *Id.*, p. 4-7

person to conclude that an arbitrator lacks independence or impartiality.<sup>26</sup> The Claimant contends that the present case differs from the cases it refers to<sup>27</sup> because the facts in the present case demonstrate actual bias as opposed to the appearance of bias that was argued but not substantiated in those other cases.<sup>28</sup>

49. Accordingly, the Claimant requests that Dr. Torres Bernárdez be disqualified from the Tribunal.

## **2. Observations by the Respondent**

50. The Respondent contends that no comments are necessary in light of Dr. Torres Bernárdez's resignation from the Tribunal.<sup>29</sup>

## **3. Explanations by Dr. Torres Bernárdez**

51. Together with his resignation, Dr. Torres Bernárdez submitted explanations to the Claimant's proposal for his disqualification.
52. Regarding repeat decisions in favor of respondent States, Dr. Torres Bernárdez states that most of those decisions and awards were made unanimously with the other members of the Tribunal<sup>30</sup> and that there is no rule that prevents him from issuing dissenting opinions whenever he disagrees with the tribunal.<sup>31</sup>
53. Dr. Torres Bernárdez also states that appointments are made by the parties to the proceedings and not by counsel representing those parties, and that the ICSID Convention and the ICSID Arbitration Rules do not limit the number of times that a party may appoint the same arbitrator.<sup>32</sup> In any case, Dr. Torres Bernárdez states that Mr. Guglielmino was representing the appointing party in only three of the seven cases where Dr. Torres Bernárdez was appointed as an arbitrator.<sup>33</sup>
54. Dr. Torres Bernárdez states that he is independent<sup>34</sup> and that he has never had any personal, professional or other kind of relationship with Respondent's counsel.<sup>35</sup>

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<sup>26</sup> *Id.*, p. 8-10

<sup>27</sup> Respondent's August 23 Observations, ¶¶ 1, 4 and 5; Respondent's September 19 Observations, ¶¶ 6-11; Respondent's October 24 Observations, ¶¶ 16-17

<sup>28</sup> Claimant's June 12 Letter, p. 15

<sup>29</sup> Respondent's September 19 Observations, ¶ 2

<sup>30</sup> Dr. Torres Bernárdez's Explanations, ¶¶ 7-9

<sup>31</sup> *Id.*, ¶¶ 14-15

<sup>32</sup> *Id.*, ¶¶ 21-24

<sup>33</sup> *Id.*, ¶¶ 26-27

<sup>34</sup> *Id.*, ¶¶ 12, 29-30

## D. DECISION BY THE CHAIRMAN

### I. The applicable legal standard

55. Article 57 of the ICSID Convention allows a party to propose the disqualification of any member of a tribunal. It reads as follows:

*“A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.”*

56. The disqualifications proposed in this case allege a manifest “*lack of the qualities required by paragraph (1) of Article 14*” of two of the members of the Tribunal. Accordingly, it is unnecessary to address disqualification “*on the ground that [an arbitrator] was ineligible for appointment to the Tribunal under Section 2 of Chapter IV*”.

57. Article 14(1) of the ICSID Convention provides:

*“Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the field of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.”*

58. While the English version of Article 14 of the ICSID Convention refers to “*independent judgment*,”<sup>36</sup> the Spanish version requires “*imparcialidad de juicio*” (impartiality of judgment). Given that both versions are equally authentic, it is accepted that arbitrators must be both impartial and independent.<sup>37</sup>

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<sup>35</sup> *Id.*, ¶ 26

<sup>36</sup> The French version refers to “*indépendance dans l'exercice de leurs fonctions*”

<sup>37</sup> *Suez, Sociedad General de Aguas de Barcelona S.A. v. Argentine Republic* (ICSID Cases Nos. ARB/03/17 and ARB/03/19), Decision on the Proposal for the Disqualification of a Member of the Arbitral Tribunal (October 22, 2007), ¶ 28 (“*Suez*”); *OPIC Karimum Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/14), Decision on the Proposal to Disqualify Professor Philippe Sands, Arbitrator (May 5, 2011), ¶ 44; *Getma International and others v. Republic of Guinea* (ICSID Case No. ARB/11/29), Decision on the Proposal for Disqualification of Arbitrator Bernardo M. Cremades (June 28, 2012), ¶ 59 (“*Getma*”); *ConocoPhillips Company et al. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30), Decision on the Proposal to

59. Impartiality refers to the absence of bias or predisposition towards a party. Independence is characterized by the absence of external control.<sup>38</sup> Independence and impartiality both “*protect parties against arbitrators being influenced by factors other than those related to the merits of the case*”.<sup>39</sup> Articles 57 and 14(1) of the ICSID Convention do not require proof of actual dependence or bias; rather it is sufficient to establish the appearance of dependence or bias.<sup>40</sup>
60. The applicable legal standard is an “*objective standard based on a reasonable evaluation of the evidence by a third party*”.<sup>41</sup> As a consequence, the subjective belief of the party requesting the disqualification is not enough to satisfy the requirements of the Convention.<sup>42</sup>
61. Finally, regarding the meaning of the word “manifest” in Article 57 of the Convention, a number of decisions have concluded that it means “evident” or “obvious,”<sup>43</sup> and that it relates to the ease with which the alleged lack of the qualities can be perceived.<sup>44</sup>
62. The Chairman notes that the Parties have referred to other sets of rules or guidelines in their arguments, such as the IBA Guidelines. While these rules or guidelines may serve as useful references, the Chairman is bound by the standard set forth in the ICSID Convention. Accordingly, this decision is made in accordance with Articles 57 and 58 of the ICSID Convention.

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Disqualify L. Yves Fortier, Q.C., Arbitrator (February 27, 2012), ¶ 54 (“*ConocoPhillips*”); *Alpha Projektholding GmbH v. Ukraine* (ICSID Case No. ARB/07/16), Decision on Respondent’s Proposal to Disqualify Arbitrator Dr. Yoram Turbowicz, (March 19, 2010) ¶ 36 (“*Alpha*”); *Tidewater Inc. et al. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/5), Decision on Claimant’s Proposal to Disqualify Professor Brigitte Stern, Arbitrator (December 23, 2010), ¶ 37; *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/13), Decision on Claimant’s Proposal to Disqualify Mr. Gabriel Bottini from the Tribunal under Article 57 of the ICSID Convention (February 27, 2013), ¶ 55 (“*Saint-Gobain*”)

<sup>38</sup> *Suez*, supra note 37, ¶ 29; *Getma*, supra note 37, ¶ 59; *ConocoPhillips*, supra note 37, ¶ 54

<sup>39</sup> *ConocoPhillips*, supra note 37, ¶ 55; *Universal Compression International Holdings, S.L.U. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/9), Decision on the Proposal to Disqualify Prof. Brigitte Stern and Prof. Guido Santiago Tawil, Arbitrators (May 20, 2011), ¶ 70 (“*Universal*”); *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic* (ICSID Case No. ARB/07/26), Decision on Claimants’ Proposal to Disqualify Professor Campbell McLachlan, Arbitrator (August 12, 2010), ¶ 43 (“*Urbaser*”)

<sup>40</sup> *Urbaser*, supra note 39, ¶ 43

<sup>41</sup> *Suez*, supra note 37, ¶¶ 39-40

<sup>42</sup> *Id.*

<sup>43</sup> *Suez*, supra note 37, ¶ 34; *Alpha*, supra note 37, ¶ 37; *Universal*, supra note 39, ¶ 71; *Saint-Gobain*, supra note 37, ¶ 59

<sup>44</sup> C. Schreuer, *The ICSID Convention*, Second Edition (2009), p. 1202, ¶¶ 134-154 on the interpretation of manifest in Article 52 of the ICSID Convention

## II. Timeliness

63. ICSID Arbitration Rule 9(1) requires that the party proposing a challenge under Article 57 of the ICSID Convention must do so “*promptly, and in any event before the proceeding is declared closed*”.
64. In a number of ICSID cases, the disputing parties announced their intention to challenge an arbitrator before the tribunal had been constituted. In these instances, the Centre reminded the parties that the tribunal is not constituted, and the proceeding does not begin, until the Secretary-General has notified the parties that all arbitrators have accepted their appointments.<sup>45</sup> A challenge becomes effective only after this notification has been made.
65. In this case, the Parties filed their proposals to disqualify Mr. Alonso and Dr. Torres Bernárdez before the Tribunal was constituted. While these challenges did not become effective until the Tribunal was constituted, there is no doubt that both challenges were filed “*promptly*” in the sense of ICSID Arbitration Rule 9(1).

## III. The challenge of Mr. Alonso

66. The following facts are undisputed: (i) Mr. Alonso is a partner in Baker & McKenzie Madrid; (ii) Baker & McKenzie New York and Baker & McKenzie Caracas represent the claimant in a parallel proceeding against the Respondent (*Longreef v. Venezuela*); (iii) Mr. Alonso has no direct involvement in the parallel *Longreef v. Venezuela* case; and (iv) Mr. Alonso is a member of Baker & McKenzie’s International Arbitration Steering Committee.
67. The sharing of a corporate name, the existence of an international arbitration steering committee at a global level, and Mr. Alonso’s statement that his remuneration depends “*primarily*” but not exclusively on the results achieved by the Madrid firm imply a degree of connection or overall coordination between the different firms comprising Baker & McKenzie International.
68. In addition, given the similarity of issues likely to be discussed in *Longreef v. Venezuela* and the present case and the fact that both cases are ongoing, it is highly probable that Mr. Alonso would be in a position to decide issues that are relevant in *Longreef v. Venezuela* if he remained an arbitrator in this case.
69. In view of the above, the Chairman concludes that it has been demonstrated that a third party would find an evident or obvious appearance of lack of impartiality on a

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<sup>45</sup> ICSID Arbitration Rule 6(1)

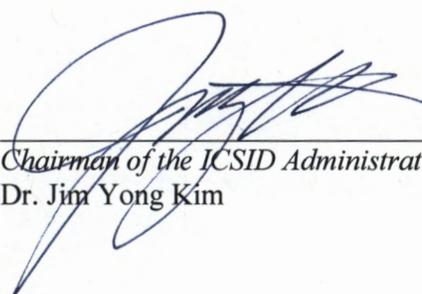
reasonable evaluation of the facts in this case. Accordingly, the Chairman finds that Mr. Alonso manifestly lacks one of the qualities required by Article 14(1) of the ICSID Convention in this particular case.

**IV. The challenge of Dr. Torres Bernárdez**

70. Dr. Torres Bernárdez has resigned from the Tribunal. As a result, it is no longer necessary to address the proposal for his disqualification, which is accordingly dismissed.

**E. CONCLUSIONS**

71. For the reasons above, the Chairman decides as follows:
- i. Respondent's proposal to disqualify Mr. Alonso pursuant to Article 57 of the ICSID Convention is upheld.
  - ii. Claimant's proposal to disqualify Dr. Torres Bernárdez pursuant to Article 57 of the ICSID Convention is dismissed.



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*Chairman of the ICSID Administrative Council*  
Dr. Jim Yong Kim