

ICSID Case No. ARB/07/5

**ABACLAT AND OTHERS
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC
(RESPONDENT)**

PROCEDURAL ORDER NO. 26

12 MAY 2014

IN VIEW OF

- Procedural Orders No. 3 of 27 January 2010, No. 22 of 31 July 2013 and No. 25 of 28 April 2014;
- The President's letter of 4 November 2013 in relation to Procedural Order No. 22;
- The Arbitral Tribunal's letter of 6 May 2014 in relation to the upcoming hearing;
- Claimants' letter of 25 April 2014 by which Claimants requested the Arbitral Tribunal to (i) authorize Claimants to make the referenced "New Data" updates to the Database, (ii) order discontinuance of the proceedings with regard to all Claimants who have withdrawn since 25 September 2013, (iii) authorize Claimants to remove the withdrawn Claimants from the Database, and (iv) issue its ruling on Claimants' request to file a Sur-Rejoinder;
- Respondent's letter of 5 May 2014 in which it objected to Claimants' request of 25 April 2014;
- Claimants' letter of 7 May 2014, in which Claimants request leave to file a letter concerning alleged breaches by Respondent of Procedural Order No. 3 ('Confidentiality Order');

I. With regard to Claimants' Request of 7 May 2014

CONSIDERING

- that, in its letter of 6 May 2014, the Arbitral Tribunal invited the Parties to refrain from sending any unsolicited correspondence before the hearing without prior leave of the Arbitral Tribunal;
- that, in their letter of 7 May 2014, Claimants request leave to file a letter concerning alleged breaches by Respondent of the Confidentiality Order by submitting together with its Rejoinder expert reports and transcripts of expert hearing testimony from third-party arbitrations and other arguments based on "outside materials";

CONSIDERING FURTHER

- that, in consideration of the principles established in Procedural Order No. 3, the Arbitral Tribunal considers it appropriate to grant Claimants the requested leave;
- that Claimants are therefore invited to file their letter and that Respondent will then be given seven days to respond thereto;

II. With regard to Claimants' Request of 25 April 2014

CONSIDERING

- that Claimants' request regarding the filing of a Sur-Rejoinder has been already dealt with in Procedural Order No. 25 and is therefore moot;

- that Claimants' remaining requests concern the update of the Database with New Data and the discontinuance of the proceedings with regard to individual Claimants having withdrawn from the arbitration since 25 September 2013;
- that Claimants justify these requests with the main argument that Claimants' requests meet the same requirements as established by the Arbitral Tribunal in Procedural Order No. 22 and as applied in the President's letter of 4 November 2013;
- that, in particular, with regard to the update of New Data, Claimants justify their request with the main argument that (i) this New Data is responsive "*to new issues of individual jurisdiction raised by Respondent in its Rejoinder*", (ii) it is limited in scope, concerns only approximately 100 individual Claimants and involved only the uploading of additional new documentary evidence, (iii) Claimants can provide a list of the Claimants files for which new documentation was uploaded, as well as a spreadsheet identifying the New Data corresponding to the new documents uploaded to the Database, and (iv) Claimants would be highly prejudiced if they were not allowed to present the necessary, accurate evidence in support of their claims in a manner which enables them to present their case most effectively;
- that, with regard to the discontinuance of the proceedings and in connection with Claimants having withdrawn since 25 September 2013, Claimants contend that these withdrawals meet the requirements set forth by the Arbitral Tribunal in its Decision on Jurisdiction and in the President's letter of 4 November 2013, and that "*individual Claimants typically do not provide reasons for choosing to withdraw from the arbitration*", and Claimants further propose to submit a list of withdrawing Claimants at the time of the final Database update, or just prior to it;
- that Respondent objects to these requests based on the following main arguments:
 - (i) with regard to the request for update of New Data, Respondent contends that this request is another attempt to impair Respondent's right of defense and due process and Respondent also objects to the database being updated in hard copy;
 - (ii) with regard to the request for discontinuance, Respondent reiterates the conditions for its consent to discontinuance and objects to Claimants' request contending that Claimants must produce (i) the power of attorney revocations by which the agent learnt of Claimants' wish to withdraw from the arbitration, (ii) a list that allows thorough identification of each Claimant that wishes to withdraw from the arbitration, together with the revocation file, and (iii) the reasons for each Claimant withdrawal.

CONSIDERING FURTHER

- that the upcoming Hearing is approaching and the time for Respondent to respond to any new update of the Database is limited;
- that this therefore justifies adopting a more restrictive approach towards updates compared to the approach adopted in the President's letter of 4 November 2013;

- that, with regard to Claimants' request to update the Database with New Data, Claimants have not specified the nature of the Data concerned, i.e., the kind of 'new documentary evidence' concerned and the specific Claimants concerned;
- that, with regard to Claimants' request for discontinuance of the proceedings and individual Claimants having withdrawn since 25 September 2013, Claimants have not submitted any list of the Claimants concerned nor any document establishing the revocation and its modalities;
- that the argument that "*Claimants typically do not provide reasons for their choosing to withdraw from the arbitration*" is not sufficient to justify why Claimants are not in a position to submit documentary evidence of the revocation of powers;
- that, under these circumstances, the Arbitral Tribunal considers that it would not be appropriate to allow further updates of the Database or order further discontinuance until the Hearing;
- that the Arbitral Tribunal however reserves the right to reconsider this decision after the Hearing.

CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

- **Claimants' request dated 7 May 2014 to be granted leave to file a letter concerning an alleged breach by Respondent of the Confidentiality Order is granted, and Respondent will be given seven days to respond thereto. Claimants shall provide Respondent with a Spanish translation of the letter within two days of the issuance of the English letter.**
- **Claimants' request dated 25 April 2014 concerning the update of the Database with New Data and the discontinuance of the proceedings of individual Claimants having withdrawn from the arbitration since 25 September 2013 is rejected. The Arbitral Tribunal reserves the right to reconsider this decision after the Hearing.**

[signed]

*Pierre Tercier,
President
On behalf of the Arbitral Tribunal*