

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

**Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic
(ICSID Case No. ARB/13/8)**

PROCEDURAL ORDER NO. 5

May 27, 2014

Eduardo Zuleta, President of the Tribunal
Brigitte Stern, Arbitrator
John M. Townsend, Arbitrator

Secretary of the Tribunal
Martina Polasek

1. The Tribunal has received and reviewed the submissions by Claimants dated April 30, May 8, and May 21, 2014, requesting the Tribunal to: (a) order Respondent to immediately return or destroy all hard and electronic copies of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (b) to reject the requests for document production made by Respondent on the basis of [REDACTED] [REDACTED] [REDACTED] and (c) to reject the request for documentation made by Respondent with respect to documents that, according to Claimants, refer to the legal advice and strategy of Poštová's in-house lawyers, which are covered by attorney-client privilege.
2. Likewise, the Tribunal received and reviewed the submissions by Respondent dated May 1, 2014, May 7, 2014, and May 14, 2014, opposing the return of [REDACTED] and requesting the Tribunal to order Claimants to (a) produce the documents referred to in Respondent's letter to Claimants dated March 20, 2014 and related to [REDACTED] and (b) order Claimants to disclose the documents referred to in Respondent's letter dated May 14, 2014, which, in Claimants' views are covered by attorney-client privilege.
3. The Tribunal notes that Respondent filed its Memorial on Jurisdiction on May 1, 2014, even though the debate on the disclosure of the documents was still in its early stages, and that Respondent expressly indicated in its communication dated May 1, 2014 that it would refrain from submitting or relying upon [REDACTED] [REDACTED] in its Memorial on Jurisdiction:

"Contrary to Claimants' assertion, the matters raised in their April 30, 2014 letter do not require "immediate" attention. Although Respondent is required to – and accordingly will – file its Memorial on Jurisdiction today, May 1, 2014, in order to avoid unnecessarily burdening the Tribunal and the parties with expedited briefing concerning this matter, Respondent will refrain from submitting or relying upon the documents identified in Claimants' letter in connection with its submission of today." ¹
4. The Tribunal also notes that Claimants will file their Memorial on the Merits and Counter-Memorial on Jurisdiction by June 17, 2014 and that, thereafter, a stage for the production of supplementary documents will take place, all in accordance with Procedural Order No. 4, which amends the procedural schedule on jurisdiction set forth in section 14 of Procedural Order No.1.

¹ Letter from Respondent to Tribunal, May 1, 2014, pg.1

5. Based on the above, the Tribunal considers that it does not need to receive additional submissions or take a decision on the matter at this stage, and that the Memorial on the Merits and Counter-Memorial on Jurisdiction and the request for production of supplementary documentation, if Respondent insists in requesting the disputed documents at that time, should give the Tribunal sufficient elements to decide this particular dispute.
6. In the second request for the production of documents and before filing its Reply on Jurisdiction, Respondent will have sufficient time to insist, if it considers it necessary, on the disclosure of the disputed documents. If the disclosure of such documents is eventually agreed to by the Parties or ordered by the Tribunal, Respondent will be in a position to review such documents and file them, if it considers it appropriate, with its Reply on Jurisdiction.
7. The Tribunal, therefore, defers a decision on the disputed documents, i.e., [REDACTED], and the documents requested by Respondent in its communication dated May 14, 2014 with respect to which Claimants allege attorney-client privilege, until after the filing of Claimants' Memorial on Merits and Counter-Memorial on Jurisdiction, if and when Respondent insists in the disclosure of the disputed documents during the second request for the production of documents.
8. In the meantime, *ad cautelam*, Respondent shall return [REDACTED] to Claimant no later than May 30, 2014, without prejudice to the possibility of Respondent requesting the disclosure of [REDACTED] and the other disputed documents, if it considers it necessary to do so, on occasion of the second request for the production of documents.
9. In accordance with Arbitration Rule 34 (2) (a), the Tribunal may at any stage of the proceedings, if it considers that the disputed documents are relevant and material, order the disclosure thereof by Claimant.

[signed]

Eduardo Zuleta

President of the Tribunal

Date: May 27, 2014