

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Venezuela Holdings, B.V., *et al.*
v.
Bolivarian Republic of Venezuela

(ICSID Case No. ARB/07/27) – Annulment Proceeding

COMMITTEE’S DECISION

STAY OF ENFORCEMENT OF THE AWARD

Sir Franklin Berman, President of the Committee
Tan Sri Cecil Abraham, Member of the Committee
Professor Dr. Rolf Knieper, Member of the Committee

Secretary of the Committee
Ms. Alicia Martín Blanco

Date: 17 September 2015

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1. In paragraph 10 of Procedural Order No. 2 of 28 July 2015, the Committee ordered as follows:-

a. The enforcement of the Award of the Tribunal dated 9 October 2014 (ICSID Case No. ARB/07/27) is stayed pending the Committee’s decision on Venezuela’s application of 2 February 2015 for its annulment.

b. The continued effect of Paragraph a. above is conditional on the receipt, within 30 days of the date of this Order, of an official undertaking in writing, by a Minister or other senior officer empowered to commit the Government of Venezuela, that, if the Committee decides not to annul the Award, or to annul it only in part, Venezuela will promptly comply with any or all parts of the Award that have not been annulled. The written undertaking will be addressed to the Committee and copied to each of the Mobil Parties.

c. If no undertaking satisfying the terms of Paragraph b. above has been received at the end of the time limit specified in that paragraph, the stay will automatically be lifted 15 days later, but only if there has by then been received an official undertaking or undertakings in writing, by a senior officer or officers empowered to commit each of the Mobil Parties, that no attempt will be made to enforce any part of the Award in a manner that does not take full account of the requirement set forth in the above-cited paragraphs of the Award to avoid double recovery. In the absence of an undertaking or undertakings to that effect, the stay will continue in effect until such time as the requisite undertaking or undertakings have been received. The written undertaking or undertakings will be addressed to the Committee and copied to each of the other Parties to the present annulment proceedings.

d. It is open to any Party to apply at any time for a modification or termination of the above in accordance with the provisions of Arbitration Rule 54.

e. Any Party may apply to the Committee, if the need arises, to certify whether the conditions laid down in Paragraphs b. or c. above have been duly complied with.

2. On 18 August 2015, within the period laid down in sub-paragraph b. above, the Committee received a letter from the Viceprocurador General de la República of Venezuela, which, in relevant part, read as follows (in translation):-

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The Bolivarian Republic of Venezuela has always recognized the principle of compensation in case of nationalization, and has acted accordingly. We are convinced that our Application for Annulment of the Award dated 9 October 2014 in the previously referenced case has solid legal grounds. However, this communication is for the purposes of confirming that, should the Application for Annulment not be successful, in whole or in part, the Republic, in accordance with the terms of the ICSID Convention, will recognize the binding character of the part of the Arbitral Tribunal’s award in the proceeding that is not annulled and will recognize and enforce, within its territory, the pecuniary obligations imposed by it.

3. On 20 August 2015, the Committee received a letter from the Mobil Parties denying that the Venezuelan letter met the requirements of sub-paragraph b.; and indicating that the stay ordered by the Committee should be lifted unless Venezuela provided a more ample undertaking by the end of the period specified in sub-paragraph c. or alternatively provided a bank guarantee covering a specified portion of the Award.

4. On 24 August 2015, the Secretary to the Committee informed the Parties by e-mail as follows:-

“The Committee acknowledges receipt of the letters of 18 August 2015 from the Viceprocurador de la República Bolivariana de Venezuela and 20 August 2015 from the Mobil Parties in connection with Procedural Order No. 2 of 28 July 2015. The Committee draws the attention of the Parties to paragraph 10 of that Order, and in particular to the terms of sub-paragraphs b., d. and e. In sub-paragraphs 10.d. and 10.e. the Committee has laid down the procedure to be followed in certain specified circumstances.

The Committee now invites Venezuela to confirm in writing, at Ministerial level, not later than 31 August 2015, that the above letter from the Viceprocurador de la República does constitute a formal and binding undertaking on the part of the Government of Venezuela, in the words of sub-paragraph 10.b., “that, if the Committee decides not to annul the Award, or to annul it only in part, Venezuela will promptly comply with any or all parts of the Award that have not been annulled”.

The Mobil Parties are at liberty thereafter, if they consider it necessary, to avail themselves of the procedure specified in sub-paragraph 10.e.

The time limits specified in paragraph 10 are for the time being suspended.”

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5. On 27 August 2015, the Committee received a letter from the Minister of Petroleum and Minerals of Venezuela, which, in relevant part, reads as follows (in translation):-

In reference to the Annulment Committee's communication dated

August 24, 2015 ..., this letter is to confirm that the letter sent by the Deputy Attorney General of the Bolivarian Republic of Venezuela ..., to this Committee on August 18, 2015, constitutes a formal and binding commitment on behalf of the Bolivarian Republic of Venezuela. In the event that the Annulment Application of the Bolivarian Republic of Venezuela is unsuccessful, in whole or in part, the Republic will promptly comply with any or all parts of the Award dated October 9, 2014 that have not been annulled.

6. By letter dated 1 September 2015, the Mobil Parties applied to the Committee under the terms of sub-paragraph 10 e. of Procedural Order No. 2 to “confirm that Venezuela has not complied with paragraph 10(b) of PO 2” and to “order that the stay will be lifted immediately upon provision by the Mobil Parties of the undertaking referred to in paragraph 10(c) of PO 2.” In support of this application, the Mobil Parties invoked defects in: the authority of the Minister of Petroleum and Minerals or the Deputy Attorney General to bind the Government; the reach and scope of the Minister’s undertaking; the time element in the Minister’s undertaking.
7. On 2 September 2015, the Committee invited the Applicant to respond to the Mobil Parties’ application by 16 September 2015 while indicating that the time limits under paragraph 10 of Procedural Order No. 2 remained suspended.
8. On 4 September 2015, counsel for Venezuela wrote to the Committee submitting that the statement from the Minister complies with the Committee's communication set out in paragraph 5 above.
9. The Committee is thus in a position to proceed to a decision on the Mobil Parties’ application described in paragraph 6 above.

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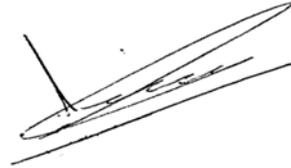
10. Sub-paragraph e. of Procedural Order No. 2 was deliberately inserted by the Committee, in the light of the complex nature of the conditional stay order contained in sub-paragraphs a., b., and c., taken together, in case questions might arise as to compliance with the conditions laid down in those sub-paragraphs. So it has proved. The Committee's purpose was to provide a simple and definitive procedure to determine any such question. The Committee observes that it is not its function under that procedure to confirm (or otherwise) the position of one or other Party, but to rule autonomously on the matter. Having examined all of the submissions and supporting documents, the Committee is in no doubt that the two communications made on behalf of Venezuela correspond to the precise requirements laid down in Procedural Order No. 2, notably as regards the scope of the undertaking and its operation in time. The Mobil Parties' objections to the Minister's competence miss the distinction between a Minister's individual power of decision, and the position of a minister as the spokesperson to convey an official undertaking by the Government. The Committee is accordingly satisfied that the Government of Venezuela has formally engaged itself, in the event that the Committee decides not to annul the Award, or to annul it only in part, promptly to comply with any or all parts of the Award that have not been annulled. That being so, and as laid down in sub-paragraph 10 a. of Procedural Order No. 2, the enforcement of the Award of the Tribunal dated 9 October 2014 (ICSID Case No. ARB/07/27) is stayed pending the Committee's decision on Venezuela's application of 2 February 2015 for its annulment.

11. In consequence of the above, sub-paragraphs 10 b., c., and e. of Procedural Order No. 2 cease to have effect.

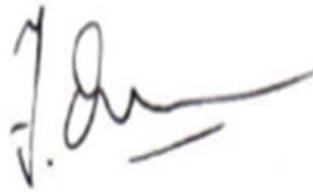
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