

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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

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**PROCEDURAL ORDER NO. 1**

Professor Azzedine Kettani, President of the *ad hoc* Committee  
Sir David Edward, Member of the *ad hoc* Committee  
Professor Hi-Taek Shin, Member of the *ad hoc* Committee

**Secretary of the *ad hoc* Committee**  
Ms. Martina Polasek

**November 4, 2015**

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**Introduction**

The first session of the *ad hoc* Committee was held by telephone conference on October 29, 2015 at 9 a.m. (New York and Washington, D.C.) / 1:00 p.m. (Casablanca, Edinburgh, London and Paris) / 3:00 p.m. (Athens) / 10:00 p.m. (Seoul).

Participating in the conference were:

Members of the *ad hoc* Committee

Professor Azzedine Kettani, President of the *ad hoc* Committee  
Sir David Edward, Member of the *ad hoc* Committee  
Professor Hi-Taek Shin, Member of the *ad hoc* Committee

ICSID Secretariat

Ms. Martina Polasek, Secretary of the Committee  
Ms. Celeste Mowatt, Legal Associate (Assistant Secretary of the Committee)

Participating on behalf of Poštová banka, a.s. (the “**Applicant**”)

Mr. Filip Lukac, Poštová banka, a.s.  
Mr. David W. Rivkin, Debevoise & Plimpton LLP  
Ms. Samantha J. Rowe, Debevoise & Plimpton LLP  
Ms. Z.J. Jennifer Lim, Debevoise & Plimpton LLP

Participating on behalf of the Hellenic Republic (the “**Respondent**”)

Ms. Styliani Charitaki, Member of the Legal Council of the State  
Ms. Emmanouela Panopoulou, Member of the Legal Council of the State  
Ms. Maria Vlassi, Member of the Legal Council of the State  
Dr. Claudia Annacker, Cleary Gottlieb Steen & Hamilton LLP  
Mr. Christopher Moore, Cleary Gottlieb Steen & Hamilton LLP  
Ms. Laurie Achtouk-Spivak, Cleary Gottlieb Steen & Hamilton LLP  
Dr. Enikő Horváth, Cleary Gottlieb Steen & Hamilton LLP

The President of the Committee (President) opened the session at 9.05 a.m. EDT and welcomed the participants. The President introduced the Committee, the Secretary of the Committee (Secretary) and the Assistant Secretary asked the parties to introduce their respective teams.

The Committee and the parties considered the following:

- The Agenda adopted by the Committee that includes the items proposed by the parties in addition to the ones listed in the Draft Agenda circulated by the Secretary on September 17, 2015;

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- The Draft Procedural Order circulated by the Secretary on September 17, 2015; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on October 13, 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The Committee and the parties discussed the items on the Agenda.

The parties' agreements and the Committee's decisions are reflected in the Procedural Order below.

An audio recording of the session was made and deposited in the archives of the Centre. The recording was subsequently uploaded to the World Bank file sharing folder established for the case for access by the Members of the Committee and the parties.

### **Order**

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the parties have agreed and the Committee has determined shall govern this annulment proceeding.

1. **Applicable Arbitration Rules**

*Convention Article 44 and Arbitration Rule 53*

- 1.1. These proceedings will be conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. **Constitution of the Committee and the Members' Declarations**

*Arbitration Rule 6*

- 2.1. The Committee was constituted on September 2, 2015 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that they had no objection to the appointment of any Member of the Committee.
- 2.2. The Members of the Committee timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary-General on September 2, 2015.

3. **Fees and Expenses of the Committee Members**

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

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- 3.1. The fees and expenses of each Member of the Committee shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
  - 3.2. Under the current Schedule of Fees, each Member of the Committee receives:
    - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and
    - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to Regulation 14 of the ICSID Administrative and Financial Regulations.
  - 3.3. The Members of the Committee shall submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
4. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*
- 4.1. The presence of all Members of the Committee constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Decisions of the Committee  
*Arbitration Rule 16*
- 5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.
  - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to reconsideration of such decision by the full Committee if time permits.
  - 5.3. The Committee's rulings on procedural matters may be communicated to the parties by the Secretary in the form of a letter or email.
6. Delegation of Power to Fix Time Limits  
*Arbitration Rule 26(1)*
- 6.1. The President has the power to fix and extend time limits for the completion of the various steps in the proceeding.

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6.2. In exercising this power, the President shall consult with all Members of the Committee except that where the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to reconsideration of such decision by the full Committee if time permits.

7. Representation of the Parties  
*Arbitration Rule 18*

7.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the ICSID Secretariat of such designation.

For Poštová banka, a.s.

Mr. David W. Rivkin  
Ms. Samantha J. Rowe  
Ms. Z. J. Jennifer Lim  
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919 Third Avenue  
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For the Hellenic Republic

Ms. Styliani Charitaki  
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8. Apportionment of Costs and Advance Payments to the Centre  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*
- 8.1. By letter of September 3, 2015, the Centre requested the applicant to make an advance payment of US\$ 200,000 to cover the initial costs of the proceeding. The Centre confirmed receipt of such payment on September 29, 2015.
- 8.2. In accordance with Administrative and Financial Regulation 14(3)(e), when an annulment application is registered, the applicant shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the costs following the Committee’s constitution. This is without prejudice to the Committee’s final decision as to the allocation of costs.
- 8.3. The Centre shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all Members of the Committee. At the end of the case, the financial statement will include a breakdown of each Member of the Committee’s fees and expenses.
9. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*
- 9.1. Washington, D.C. shall be the place of the proceeding. The Committee can hold hearings at any other place that it deems appropriate after consulting with the parties. The Committee may deliberate at any place it deems convenient.
10. Procedural Language(s)  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
- 10.1. English shall be the language of the proceeding.
- 10.2. Any document that is not in English shall be accompanied by a translation into English.
- 10.3. If the translation is contested, the submitting party must submit a certified translation. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts, which must be precisely specified, are translated. The Committee may require a fuller or a complete translation at the request of any party or on its own initiative.

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10.4. Oral testimony before the Committee shall be in English or in the principal language of the witness or expert, at the option of such witness or expert. If the witness or expert gives evidence in a language other than English, advance notice shall be given as soon as possible, and no later than 25 days before the hearing, so that simultaneous interpretation can be provided at the request of either party or as ordered by the Committee. The costs of such interpretation shall be paid from the advances to ICSID, without prejudice to the decision of the Committee as to which party shall ultimately bear those costs.

11. Means of Communication and Copies of Instruments

*Administrative and Financial Regulations 24 and 30; Arbitration Rules 20(1)(d) and 23*

a) Routing of Communications:

11.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Committee. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Secretary, who shall send them to the Committee. The Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Committee.

b) Number of Copies and Method of Filing of Parties' Pleadings:

11.2. By the relevant filing date, the parties shall submit by email to the Committee Secretary and the opposing party an electronic version of pleading, with witness statements, expert reports, and a list of supporting documents, and upload the pleading with the supporting documentation to the World Bank file sharing folder created for this case;

11.2.1. The parties shall courier to the ICSID Secretariat within three business days:

11.2.1.1. one unbound hard copy in A4/Letter format<sup>1</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);

11.2.1.2. one hard copy in A4/ A5/ or Letter format of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities); and

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<sup>1</sup> The A4/Letter format is required for ICSID's archiving.

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11.2.1.3. two USB drives, CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, exhibits and legal authorities.

11.2.2. at the same time, courier to the opposing party at the addresses indicated at §7.1 above:

11.2.2.1. one hard copy in A4/ Letter format of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities); and

11.2.2.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits and legal authorities.

11.2.3. and to each Member of the Committee at the addresses indicated at §11.2.4 below:

11.2.3.1. one hard copy in A5 (reasonably thick) format, spiral bound, of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities); and

11.2.3.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits and legal authorities.

11.2.4. The addresses of the Committee Members are as follows:

**Professor Azzedine Kettani**

8, Rue Lahcen El Basri  
20000 Casablanca  
Morocco  
Tel.: +(212) 5 22 438 900

**Sir David Edward**

32 Heriot Row  
Edinburgh EH3 6ES  
United Kingdom  
Tel.: +44 (0) 131 225 7153

**Professor Hi-Taek Shin**

599 Gwanak-ro, Gwanak-gu,  
Seoul 151-743  
Korea  
Tel.: +82 2 880 9139

11.3. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Martina Polasek  
Ms. Celeste Mowatt  
ICSID  
MSN J2-200  
3301 Pennsy Dr.  
Landover, MD 20785-1606  
USA

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Tel.: + 1 (202) 458-0419

Fax: + 1 (202) 522-2615

Email: [mpolasek@worldbank.org](mailto:mpolasek@worldbank.org)

[cmowatt@worldbank.org](mailto:cmowatt@worldbank.org)

Paralegal email: [noconnor@worldbank.org](mailto:noconnor@worldbank.org)

11.4. For local messenger deliveries, the contact details are:

Ms. Martina Polasek

Ms. Celeste Mowatt

701 18th Street, N.W.

(known within the World Bank as the “J Building”)

2nd Floor

Washington, D.C. 20006

Tel.: + 1 (202) 458-4567

11.5. Legal authorities shall be submitted in electronic version only, unless a hard copy is specifically requested by the Committee. The Committee may request hard copies of any document submitted electronically at any time.

11.6. Electronic versions of pleadings and exhibits shall be text searchable (i.e., OCR PDF, or Word).

11.7. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary.

11.8. A filing shall be deemed timely if sent by a party by midnight (Washington, D.C. time) on the relevant date.

12. Written and Oral Procedures

*Arbitration Rules 20(1)(e) and 29*

12.1. The proceeding shall consist of a written phase followed by an oral phase.

13. Schedule for Submission of Pleadings

*Arbitration Rules 20(1)(c) and 31*

13.1. The schedule shall be as follows:

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<b>ACTION</b>	<b>DATES</b>
Applicant’s Memorial on Annulment	November 20, 2015
Respondent’s Counter-Memorial on Annulment	February 5, 2016 (+ 11 weeks)
Applicant’s Reply on Annulment	March 18, 2016 (+ 6 weeks)
Respondent’s Rejoinder on Annulment	April 28, 2016 (+ 6 weeks)
Hearing on Annulment	Wednesday, June 1, 2016 in London

13.2. The Committee will make its best efforts to deliberate immediately following the Hearing on Annulment and to issue a Decision on Annulment as soon as possible after the conclusion of the written and oral phase of the proceeding.

14. Document Production

*(Convention Article 43(a); Arbitration Rule 34)*

14.1. Power Point slides, demonstrative exhibits and charts or other similar materials in aid of argument may be used by either party during any oral hearing, provided that such slides or materials reflect evidence on the record and do not introduce any new evidence, whether directly or indirectly. The party submitting such materials shall provide them in hard copy to the opposing party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing.

14.2. The Committee may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

15. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

15.1. Given the nature of an annulment proceeding, the Committee expects that the parties will primarily refer to the evidentiary record of the arbitration proceeding.

15.2. In this regard, the record of the witness or expert testimony given during the original arbitral proceeding shall stand as the testimony of that witness or expert for purposes of the annulment proceeding, without the need to re-submit the witness or expert for examination or cross-examination.

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- 15.3. In principle, no new evidence shall be admitted in this proceeding. Should either party wish to introduce new documents or other evidence, other than legal authorities or expert reports, that party shall file a request to the Committee to that effect. The Committee will promptly decide on the admissibility of the new documents and/or evidence, after hearing from the other party.
- 15.4. When referring to evidence from the original arbitration proceeding, the parties shall reproduce the original exhibit or document and shall refer to such exhibits using their original exhibit numbers. Any documents introduced as exhibits for the first time in this annulment proceeding shall be labelled with numbers, and shall be organized in a clear order. Applicant's exhibits shall be preceded by the letter "C-" for factual exhibits and "CL-" for legal exhibits containing authorities etc. Respondent's exhibits shall be preceded by the letter "R-" for factual exhibits and "RL-" for legal exhibits containing authorities etc. New exhibit and legal authority numbering shall continue from the numbering used in the underlying arbitration. Each party shall number the accompanying documentation consecutively throughout the entire annulment proceeding and shall number the paragraphs of each of its written pleadings.
- 15.5. The parties shall include all of the evidence on which they intend to rely, including documents, legal authorities, written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.
- 15.6. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Committee deems the certification necessary.
16. Hearings (including Pre-Hearing Organizational Meetings)  
*Arbitration Rule 13(2)*
  - 16.1. A pre-hearing organizational meeting may be held at the request of either party or if the Committee so decides at the appropriate juncture. The pre-hearing organizational meeting may be held by telephone or video conference.
  - 16.2. The oral procedure shall consist of a hearing for oral arguments (and examination of witnesses and experts, if any).
  - 16.3. The hearing on annulment shall take place in London on June 1, 2016.
  - 16.4. In principle, the parties shall be allocated equal time during any hearing unless otherwise agreed or directed in advance of any hearing. The principle of equal time shall be observed at the hearing through the use of a "chess-clock" procedure, with the Secretary responsible for keeping time.

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17. Records of Hearings

*Arbitration Rule 20(1)(g)*

- 17.1. Sound recordings shall be made of all sessions. The sound recordings shall be provided to the parties and the Committee Members.
- 17.2. The Secretary may prepare summary minutes of hearings or sessions upon prior request.
- 17.3. Verbatim transcripts in English shall be made of any sessions other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Committee, the verbatim transcripts shall be maintained using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Committee on a same-day basis.
- 17.4. The parties shall attempt to agree on any proposed corrections to the transcripts within 15 days of the receipt of both the sound recordings and transcripts. In case of disagreement between the parties, the Committee shall decide.

18. Post-Hearing Memorials and Statements of Costs

*Convention Article 44; Arbitration Rule 28(2)*

- 18.1. Whether there will be post-hearing briefs, and if so, their content and format, will be addressed at the close of hearing.
- 18.2. No additional documentary evidence may be produced together with the post-hearing briefs, except with leave from or at the request of the Committee.

19. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

- 19.1. The parties consent to ICSID publication of any order or decision issued in the present proceeding.

Signed

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Professor Azzedine Kettani  
President of the *ad hoc* Committee  
Date: November 4, 2015