

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Víctor Pey Casado and Foundation President Allende

v.

Republic of Chile

(ICSID Case No. ARB/98/2 – Resubmission)

PROCEDURAL ORDER NO 2

PRODUCTION OF DOCUMENTS

Sir Frank Berman KCMG QC, President of the Tribunal
Mr. V. V. Veeder QC, Arbitrator
Maître Alexis Mourre, Arbitrator

Secretary of the Tribunal
Mr. Benjamin Garel

Assistant to the President
Dr. Gleider I Hernandez

1. The Tribunal refers to paragraph 16.2 of Procedural Order No. 1 dated 15 May 2014 (“PO1”), the Claimants’ requests for document production dated 10 November 2014, the Respondent’s objections to the Claimants’ requests dated 1 December 2014, the Claimants’ response to the Respondent’s objections dated 3 December 2014 and the Respondent’s reply dated 8 December 2014
2. The Tribunal recalls that, pursuant to paragraph 16.2.5 of PO1, it is to be guided in matters of document production by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (“the IBA Rules”). The Tribunal recalls further that, under Articles 3 and 9 of the IBA Rules, its power to order production of documents and their admission in evidence is conditioned by the documents in question being, to a sufficient degree, relevant to the case and material to its outcome, as well as by the likelihood, on the facts available, that any such document is in the possession of the requested Party and has not been destroyed.
3. The Tribunal recalls further the limited nature of the issues that are before it in the present resubmission proceedings.
4. The Tribunal notes, in connection with the above, that many (though not all) of the documents sought were the subject of document production requests in the original arbitration.
5. The Tribunal recalls finally that nothing in the present decision may be regarded as prejudging in any way any argument of substance that has been or will be put before it by any Party in these proceedings.
6. Having considered in detail, in the light of the above, the Claimants’ requests nos. 1 – 18, and the reasons therefor, as well as the counter-arguments put forward by the Respondent, the Tribunal is of the view that the criteria mentioned above are not met in respect of the documents covered by those requests.

7. As regards the Claimants' request no. 19, it is the Tribunal's understanding, on the basis of the supporting evidence submitted, that the documents in question, which relate to the files on a civil action before the Chilean courts, are available to the public on demand. The Tribunal accordingly sees no need to give further consideration to whether or not to order disclosure of the documents in question.

[Signed]

Sir Franklin Berman
President of the Tribunal
Date: 16 December 2014