

June 24 2014

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**Confidential****By Email**

Mercedes Cordido-Freytes de Kurowski  
Legal Counsel  
ICSID Secretariat  
1818 H Street, NW  
Washington, DC 20433

**Re: Request for Arbitration of Corona Materials LLC**

Dear Ms. Cordido-Freytes de Kurowski:

We represent Claimant Corona Materials, LLC (“**Corona Materials**”). We write in response to your letter dated June 16, 2014 to: (1) request that the Secretary-General approve the arbitration agreement between Corona Materials and the Dominican Republic; and (2) clarify and supplement points set forth in Corona Materials’ Request for Arbitration dated June 10, 2014 (“**Request for Arbitration**”).

**A. Request for the Secretary-General to Approve the Parties’ Arbitration Agreement**

Article 4(1) of the Additional Facility Rules requires the Secretary-General to approve any agreement to resolve existing or future disputes under the Additional Facility Rules. The agreement to arbitrate in this case is set forth in Article 10.16.3(b) of Section B of Chapter 10 of the Dominican Republic-Central America-United States Free Trade Agreement (“**CAFTA**”), and Corona Materials hereby requests that the Secretary General approve that arbitration agreement.<sup>1</sup>

Article 10.16.3(b) of the CAFTA provides in relevant part that claimants may submit legal claims arising out of investments against host states under the Additional Facility Rules if “*the*

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<sup>1</sup> A copy of Chapter 10 of the CAFTA is enclosed with this letter.

*Party of the claimant is a party to the ICSID Convention.*” The CAFTA entered into force in the Dominican Republic on March 1, 2007.

As Corona Materials explains in paragraphs 3 through 5 of the Request for arbitration, it is a juridical person that was formed under the laws of the U.S. State of Florida in 2005. For purposes of Article 10.16.3 the CAFTA, Corona Materials is therefore a juridical person of the United States, where the ICSID Convention entered into force on October 14, 1966.<sup>2</sup>

Accordingly, there is an existing arbitration agreement between the Dominican Republic and Corona Materials in Article 10.16.3 of the CAFTA. Alternatively, the Dominican Republic has offered to arbitrate investment claims under the Additional Facility Rules by ratifying the CAFTA and Corona Materials has accepted that offer by filing the Request for Arbitration. Consequently, a valid arbitration agreement exists, and pursuant to Article 4.1 of the Additional Facility Rules, Corona Materials hereby requests that the Secretary General approve that arbitration agreement.

#### **B. The Requirements of Article 4(2) of the Additional Facility Rules**

Article 4(2) of the Additional Facility Rules requires the Secretary-General to consider the following when applications are based on Article 2(a) of the Additional Facility Rules:

1. Confirmation that the application is based upon Article 2(a) of the Additional Facility Rules at the time of the application; and
2. *“Both parties giv[ing] their consent to the jurisdiction of the Centre under Article 25 of the Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements racione personae of that Article shall have been met at the time when proceedings are instituted.”*<sup>3</sup>

Both conditions are satisfied in this matter.

First, Corona Materials’ application is based upon Article 2(a) of the Additional Facility Rules because the Request for Arbitration concerns a legal dispute - namely, the Dominican Republic’s violation of legal rights accorded to Corona Materials under Section A of Chapter 10

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<sup>2</sup> See List of Contracting States and Other Signatories of the Convention (as of April 11, 2014).

<sup>3</sup> This condition requires the parties to have “conditionally consented to jurisdiction under the Convention in the event the non-Contracting State parties does become a party to the Convention by the time arbitration proceedings are actually instituted (Article 4(2), Additional Facility Rules).” Lucy Reed, Jan Paulsson & Nigel Blackaby, *Guide to ICSID Arbitration*, pg. 129 (Kluwer Law International, 2nd Ed. 2010).

of the CAFTA - that arises directly out of Corona Materials' investment in the Dominican Republic, which is not a Contracting State to the Convention.<sup>4</sup>

Second, both the Dominican Republic and United States have given conditional consent in Articles 10.17.1 and 10.17.2(a) of the CAFTA to the Convention's jurisdiction under Article 25 of the Convention by stating that "[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement" and further agreeing that "[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of: . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent for the parties to the dispute."

For the avoidance of doubt, through this letter, Corona Materials, which satisfies the *ratione personae* requirements of Article 25 of the Convention as set forth in Section A above, expressly consents to the Centre's jurisdiction over this dispute if the Convention enters into force in the Dominican Republic at any point in the future.

We thank the Secretariat for its attention to this matter and are available to address any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Duffy IV", enclosed within a large, loopy scribble.

James P. Duffy IV

Enclosure

cc: Ambassador Aníbal de Castro  
Hon. Francisco Domínguez Brito

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<sup>4</sup> While the Dominican Republic is a signatory to the Convention, the Convention has never entered into force in the Dominican Republic because it has never deposited the instrument of ratification. *See List of Contracting States and Other Signatories of the Convention (as of April 11, 2014)*. Accordingly, this dispute is not within the jurisdiction of the Centre.