

# International Centre for Settlement of Investment Disputes

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September 25, 2009

## By E-mail

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## **Re: Piero Foresti, Laura de Carli and others v. Republic of South Africa** **(ICSID Case No. ARB(AF)/07/1)**

Dear Sirs,

Further to our letter of September 11, 2009, the President of the Tribunal asked me to convey to you the following message:

“The Tribunal has fixed the schedule for the involvement of the Non-Disputing Parties (‘NDPs’) in the next stages of the case and given directions for the disclosure of documents to them, having in mind two basic principles:

(1) NDP participation is intended to enable NDPs to give useful information and accompanying submissions to the Tribunal, but is not intended to be a mechanism for enabling NDPs to obtain information from the Parties.

(2) Where there is NDP participation, the Tribunal must ensure that it is both effective and compatible with the rights of the Parties and the fairness and efficiency of the arbitral process.

Accordingly, the Tribunal has taken the view that NDPs must be allowed access to those papers submitted to the Tribunal by the Parties that are necessary to enable the NDPs to focus

their submissions upon the issues arising in the case and to see what positions the Parties have taken on those issues. NDPs must also be given adequate opportunity to prepare and deliver their submissions in sufficient time before the hearing for the Parties to be able to respond to those submissions.

The Tribunal does not at this stage envisage that the NDPs will be permitted to attend or to make oral submissions at the hearing. A final decision on those questions will be taken after March 12, 2010, by which date the Parties will have responded to the NDP submissions.

In view of the novelty of the NDP procedure, after all submissions, written and oral, have been made the Tribunal will invite the parties and the NDPs to offer brief comments on the fairness and effectiveness of the procedures adopted for NDP participation in this case. The Tribunal will then include a section in the award, recording views (both concordant and divergent) on the fairness and efficacy of NDP participation in this case and on any lessons learned from it. In the absence of consent from the Respondent to the publication of the award, the Centre will publish excerpts of the award pursuant to Article 53(3) of the Arbitration (Additional Facility) Rules, including that section, so that others may benefit from this experience.”

Sincerely yours,

.....signed.....

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Eloïse M. Obadia  
Secretary of the Tribunal

cc: Members of the Tribunal