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3 May 2007

Messrs.
Members of the Tribunal
International Centre for the Settlement of
Investment Disputes
1818 H Street, N.W.
Washington, D.C. 20433

Re: *Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela*
ICSID Case No. ARB(AF)/04/6

Dear Members of the Tribunal:

On behalf of the Bolivarian Republic of Venezuela, we acknowledge receipt of the letter dated 25 April 2007, providing a list of hearing attendees for both Parties, and the letter dated 27 April 2007, with respect to the relationships that the Chairman of this Tribunal, Mr. Veeder, and Judge Brower have had with one of Vannessa's designated hearing attendees and legal counsel, Professor Christopher Greenwood.

It is the Republic's understanding that Vannessa has recently designated Professor Greenwood as a legal representative who presumably will be presenting argument at the upcoming hearing. While it is disconcerting that Vannessa would introduce counsel otherwise unknown to the Parties and these proceedings at this late hour, it is ordinarily within its right to make such a designation, regardless of the nature of its motive.

Having received the communication of 27 April 2007, however, the Republic objects to the participation of Professor Greenwood at the hearing.

As indicated by the President of the Tribunal, Professor Greenwood is a door-tenant of the same Chambers from which Mr. Veeder practices, is a co-arbitrator with Mr. Veeder in a separate ICSID proceeding, and is co-counsel with Mr. Veeder in another ICSID proceeding. Further, Judge Brower submits that Professor Greenwood is also a co-arbitrator in another ICSID

proceeding and is counsel for a party that is defending a unanimous award issued in its favor by an UNICTRAL tribunal of which Judge Brower was a member.

Both Mr. Veeder and Judge Brower understandably attest that these ties to Professor Greenwood do not adversely affect their independence, impartiality or ability to serve on the Tribunal. Nonetheless, the Republic respectfully submits that the totality of circumstances -- Professor Greenwood's sudden appointment as counsel days before the hearing and the subsequent conflict disclosures by Mr. Veeder and Judge Brower demonstrating Professor Greenwood's notable ties to the Tribunal -- is troubling and gives the Republic little time to thoughtfully respond.

The troubling nature of Professor Greenwood's participation in the upcoming hearing is confirmed by the principles underlying the IBA Guidelines on Conflicts of Interest in International Arbitration. Specifically, with respect to Mr. Veeder's ties to Professor Greenwood, the IBA Guidelines provide that an arbitrator sharing membership in the same barristers' chambers with counsel for one of the parties presents circumstances which may give rise to justifiable doubts as to the arbitrator's impartiality or independence.¹ It is also worth noting that while the IBA Guidelines note that no appearance of impropriety exists when an arbitrator and one of the parties' counsel have *previously* served as co-counsel, the circumstances presented by Vanessa's precipitous designation of hearing counsel are distinct: Professor Greenwood and the President of this Tribunal are *currently* serving as co-counsel in a separate arbitration proceeding.²

¹ See IBA Guidelines for Conflicts of Interest in International Arbitration, Practical Application of General Standards ¶ 3 ("The Orange List is a non-exhaustive enumeration of specific situations which (depending on the facts of a given case) in the eyes of the parties may give rise to justifiable doubts as to the arbitrator's impartiality or independence."); *id.*, Orange List, Article 3.3.2 (An Orange List conflict exists when "[t]he arbitrator and . . . the counsel for one of the parties are members of the same barristers' chambers.").

The IBA Working Group appreciated the distinction between barristers' chambers and law firms and noted that barristers within the same barristers' chambers enjoy comparative independence relative to partners within the same law firm. Nonetheless, the Working Group felt it appropriate to categorize this type of relationship as an Orange List conflict. See IBA Working Group, *Background Information on the IBA Guidelines on Conflicts of Interest in International Arbitration*, 15 BUS. LAW INT'L 433, 455-56 (2004).

² In fact, Professor Greenwood's tie to Mr. Veeder would appear to fall within IBA Guideline Article 3.3.3, which provides that an "Orange List" conflict is presented when "[t]he arbitrator was within the past three years . . . otherwise affiliated with . . . any of the counsel in the same arbitration."

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The Republic therefore finds itself again having to defend an issue collateral to those raised by the upcoming jurisdictional hearing on the eve of the hearing itself. The fact that Vanessa waited just days before the hearing to announce its new legal representation and the fact that two of the three Tribunal members also have disclosed ties to Vanessa's newly-appointed legal counsel immediately preceding the hearing creates circumstances prejudicial to the Republic.

The Republic therefore respectfully requests that the Tribunal reject Vanessa's designation of Professor Greenwood as its legal representative and participant in the jurisdictional hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald E.M. Goodman", with a long horizontal flourish extending to the right.

Ronald E.M. Goodman

Paolo Di Rosa (Arnold & Porter LLP)
Gaela K. Gehring Flores (Arnold & Porter LLP)