

ICSID Case No. ARB/07/5

**ABACLAT AND OTHERS
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC
(RESPONDENT)**

PROCEDURAL ORDER NO. 19

8 APRIL 2013

IN VIEW OF

1. Claimants' letter of 15 March 2013 in which it informed the Arbitral Tribunal that they had produced and would continue to produce to Respondent updated bank certification letters pursuant to Respondent's Request No. 8, and that "Claimants have made corresponding updates to the data reflected in the Database for some of these Claimants to ensure consistency in the record".

CONSIDERING

2. According to Procedural Order No. 13 (para. 66), "*the version of the Database as admitted into the record with the Arbitral Tribunal's Decision on Jurisdiction and Admissibility is the current version in force for these proceedings*".
3. Furthermore, the Arbitral Tribunal ruled that "*Claimants may amend the content of the Database in accordance with the principles set out in paras 592-641 of the Decision on Jurisdiction and Admissibility and may submit it in the form of computer-searchable spreadsheets, it being understood that the current Database as admitted into the record by the Arbitral Tribunal's Decision on Jurisdiction and Admissibility remains in the record and the amended Database shall be such that it can be compared with the current Database*" (Procedural Order No. 13, decisional part, lit. B(ii)).
4. It is on this basis that the Expert has been entrusted to verify the Database, i.e. his verification concerns the Database as admitted into the record on the date of his appointment.
5. Based on Claimants' letter of 15 March 2013 regarding the Database, it appears that after providing Respondent with the requested bank certification letters, Claimants have "*made corresponding updates to the data reflected in the Database for some of these Claimants to ensure consistency in the record*". It further appears that Claimants have also provided an "*updated Access Database file reflecting the updates*" and requested that such updated file be provided to the Expert.
6. This update by Claimants was made without informing the Arbitral Tribunal or Respondent beforehand.
7. Such update does not fall within the scope of authorized updates as contemplated in paras. 592-641 of the Decision on Jurisdiction and Admissibility or within the scope of documents to be submitted to the Expert under paras. 29-32 of the Procedural Order No. 15.
8. Thus, this update was unannounced, unauthorized and is further in breach of para. 40 of the Procedural Order No. 15 to the extent that the updated information were 'directly' submitted to the Expert via the Database.
9. The Arbitral Tribunal therefore needs to consider whether to accept this update into the record.

CONSIDERING FURTHER

10. The following circumstances:
 - (i) this update was already made;
 - (ii) the Expert and his team are already fully engaged in the verification of the Database;
 - (iii) it is unclear whether it is technically possible to ‘undo’ this update;
 - (iv) and, even if possible, it would be even more confusing for the Experts’ team and would lead to further loss of time and efficiency.
11. That, nevertheless and in accordance with the decision that was made in Procedural Order No. 13, Claimants are requested to provide a document, which clearly shows the changes made to the Database and which easily provides for comparing the previous and the current version of it. It may be that the “updated Access Database” already fulfills this purpose.
12. In any case, and from now on, Claimants are strictly forbidden to make any update to the database without filing a prior request with the Arbitral Tribunal indicating (i) the reasons for the update; (ii) the nature of the update; (iii) the consequences on the content of the Database; and (iv) what measures Claimants intend to take to ensure traceability of the changes made to the Database.
13. Claimants are invited to provide the Arbitral Tribunal **by 11 April 2013** with the information mentioned in para. 12 above, and in particular whether the “updated Access Database” allows to easily trace the changes made or whether any other action is necessary in this regard.
14. The Arbitral Tribunal will then give Respondent an opportunity to comment thereon, and will in due time decide what weight to give to such updated information.

CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

- 1. From now on, Claimants are strictly forbidden to make any update to the database without filing a prior request with the Arbitral Tribunal indicating (i) the reasons for the update; (ii) the nature of the update; (iii) the consequences on the content of the Database; and (iv) what measures Claimants intend to take to ensure traceability of the changes made to the Database.**
- 2. Claimants are invited to provide the Arbitral Tribunal by 11 April 2013 with the information mentioned in paras. 1 of the dispositif and 12 above, and in particular whether the “updated Access Database” allows to easily trace the changes made or whether any other action is necessary in this regard.**
- 3. Respondent will then be invited to comment thereon, and the Arbitral Tribunal will in due time decide what weight to give to such updated information**

[signed]

*Pierre Tercier,
President*

On behalf of the Arbitral Tribunal