

6 February 2017

By email

Vestey Group Ltd.
c/o Ms. Sylvia Noury
Mr. Jean Paul Dechamps
Ms. Annie Pan
Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS
United Kingdom

Mr. Nigel Blackaby
Freshfields Bruckhaus Deringer US LLP
700 13th Street, NW
10th Floor
Washington, DC 20005-3960
United States of America

Mr. Julio C. Pinto
Travieso Evans Arria Rengel & Paz
Torre Movilnet, Piso 7, Oficina No. 3
Avenida Paseo Cabriales
Valencia, Estado Carabobo
Venezuela

Bolivarian Republic of Venezuela
c/o Dr. Reinaldo Enrique Muñoz Pedroza
*Viceprocurador General de la República
Bolivariana de Venezuela
Procuraduría General de la República
Bolivariana de Venezuela
Coordinación de Juicios Internacionales*
Paseo Los Ilustres c/c Av. Lazo Martí, Santa
Mónica, Caracas
Venezuela

Dr. Osvaldo C. Guglielmino
Ms. Verónica Lavista
Mr. Guillermo Moro
Mr. Pablo Parrilla
Mr. Nicolás Caffo
Mr. Patricio Grané Riera
Mr. Nicolás Bianchi
Mr. Alejandro Vulejser
Guglielmino & Asociados
Cerrito 1320 - Piso 9 (C1010ABB)
Ciudad Autónoma de Buenos Aires
Argentine Republic

Dr. Diego Brian Gosis
Diego Brian Gosis (Of Counsel)
175 SW 7th Street, Suite 2110, Miami, FL
33130
United States of America

Re: Vestey Group Ltd. v. Bolivarian Republic of Venezuela
(ICSID Case No. ARB/06/4) - Annulment Proceeding.

Dear Counsel,

The President of the Committee has asked me to transmit the following to you:

On 30 January 2017, the Secretary-General of ICSID moved that this Committee stay the proceedings in the present case because the Applicant on Annulment had not made the advance payment required by Regulation 14 of the Centre's Administrative and Financial Regulations. As of the date of this letter, the payment still has not been made. For the reasons set forth below, the Committee hereby stays the proceedings and lifts the stay of enforcement of the award rendered

in *Vestey Group Limited v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/06/4) on 15 April 2016 (hereinafter, “the Award”), effective today, 6 February 2017.

Background regarding the advance payment and the stay of enforcement

The Application for Annulment in this case contained a request that enforcement of the Award be stayed until the Committee’s decision on the Application. On 16 August 2016, the Secretary-General registered the Application and notified the Parties that she had provisionally stayed enforcement of the Award pursuant to Rule 54(2).

The Committee was constituted on 8 November 2016 and, on 10 November 2016, the Secretariat requested the Applicant’s first advance payment of US\$200,000, due thirty days later.

On 18 November 2016, the Secretary of the Committee asked the Parties to provide their positions on whether the stay of enforcement of the Award should be continued. However, on 28 November 2016, the Respondent on Annulment informed the Secretary that, to secure expedited resolution of the merits of the annulment proceedings in accordance with a timetable to which the Parties had agreed, the Respondent would forego its right to challenge the continuation of the Secretary-General’s provisional stay of enforcement. On this basis, the Committee did not rule in substance on the question whether a stay of enforcement was warranted in this case, nor did it lift the stay of enforcement that was in place.

As of the Preliminary Procedural Consultation with the Parties and First Session held on 19 December 2016, no advance payment had been made. The Minute of the First Session and Procedural Consultation (hereinafter, “the Minute”) provided as follows in respect of the advance payment:

“The President noted the Committee’s concern that payment had not yet been made and that no specific date had been provided by the Applicant as to when payment should be expected. The President noted that the Committee had nonetheless decided to hold this session in the expectation that payment would soon be made and in order to maintain the schedule agreed by the Parties.

In response to the President’s question, the Applicant confirmed that it had taken steps to make the payment but that it was not possible to determine the date when payment would be made. The Respondent noted its frustration that payment had not yet been made and that no specific date for payment could be provided but confirmed that it wished to proceed with the session and requested that Venezuela provide a specific date by which payment would be made.”

In respect of the stay of enforcement, the Minute stated:

“The President asked the Parties for their views on the stay of enforcement considering the advance payment issue. The Applicant referred to the Parties’ agreement on the stay and indicated that it would be beneficial for the Parties if the proceedings moved forward with the Applicant submitting its Memorial on February 13, 2017, in the expectation that payment would be made as soon as possible. The Respondent confirmed that it would not oppose the stay in the expectation that payment be made shortly and that the date for the

Applicant's submission of its Memorial be maintained. The Respondent reserved its rights concerning the stay of enforcement should a late payment delay the submission of the Applicant's Memorial."

In transmitting the Minute and Procedural Order No. 1 to the Parties on 30 December 2016, the Secretariat conveyed to the Parties the following additional information from the Committee:

"In the course of the preliminary procedural consultation, the President of the Committee recalled that the Applicant was in default of the advance payment that had been due to the Centre on 10 December 2016 (effectively, on 12 December 2016). The President requested that the Applicant provide an update on the status of the payment on 31 December 2016, if no payment has been made by that date. This update should include an indication of the date on which the advance payment is expected to be made. If there has been no advance payment as of 31 December 2016, the Applicant is requested to provide another update no later than 15 January 2017."

The Secretary attached to her 30 December e-mail a letter, issued pursuant to ICSID Administrative and Financial Regulation 14(3)(d), inviting either Party to pay the outstanding amount of US\$ 200,000, to which the Parties were requested to respond by 15 January 2017. Her 30 December e-mail continued as follows:

"As the Parties no doubt are aware, pursuant to Administrative and Financial Regulation 14(3)(d), at any time 15 days after notice to the Parties that there has been a default of the advance payment, the Secretary-General may move that the Committee stay the proceedings. Taking into account the representations made by counsel for Venezuela during the procedural consultation, however, the Committee is hopeful that no such suspension will be necessary in this case. Accordingly, with the objective of maintaining the briefing schedule to which the Parties have agreed, the Committee has issued the First Procedural Order, which is attached, despite the fact that the Applicant has not made the advance payment.

However, it is not appropriate for Centre or the Committee to continue to incur costs associated with this proceeding, in the absence of an advance payment. Until the advance payment has been made, therefore, the Parties should not expect the Committee to act on any request or application made by a Party.

If the Secretary determines that there has been no advance payment as of 23 January 2017, she will invite each Party to inform the Committee, no later than 27 January 2017, of its views on whether the proceedings should be suspended, and the stay of enforcement lifted, as of 31 January 2017."

Neither Party accepted the Secretary's invitation to make the advance payment by 15 January 2017.

On 27 January 2017, the Parties provided their views on the suspension of the proceedings and the lifting of the stay of enforcement, effective 31 January 2017. The Respondent proposed that suspension take place as of 13 February 2017, the due date for the Applicant's Memorial.

According to the Respondent, this date would allow the Applicant two additional weeks to make the payment, while sparing the Respondent the expense of preparing its Counter-Memorial. The Respondent also stated “[a]t that point in time, the Respondent will reconsider whether to request that the stay of enforcement be lifted and therefore reserves its rights in that regard and otherwise.”

The Applicant’s letter of the same date reiterated its commitment to make the required payment, without providing an indication of the date by which such payment would be made. As to the stay of enforcement, the Applicant stated that “the present situation, related to the required advance payment, should not have any impact whatsoever on the Parties’ agreement, including their commitment not to require to lift the stay of enforcement. In relation to the stay of enforcement, it should be understood that the Parties’ agreement on that matter continues as long as the procedural calendar is observed.” The Applicant asked the Committee not to suspend the annulment proceeding and not to make any decision regarding the stay of enforcement.

On 30 January 2017, the Respondent submitted additional observations on the Applicant’s letter of 27 January 2017, re-stating its position that its agreement not to contest the stay of enforcement was contingent on the proceedings advancing in accordance with the timetable established in Annex A to Procedural Order No. 1, and reserving its “right to reconsider the lifting of the stay should the Applicant fail to pay the advance on costs by the deadline for its Memorial of 13 February 2017.”

The suspension of these proceedings and the lifting of the stay of enforcement

An applicant on annulment bears sole responsibility for making advance payments for costs (without prejudice to a later decision by the Committee regarding the allocation of costs as between the parties). Such advance payments are necessary to defray the costs incurred by the Centre and to pay the fees and expenses of Committee members. In the present case, the Committee has periodically asked the Applicant to provide an update regarding the status of the advance payment. The Applicant has repeatedly stated its intention to make the advance payment and the Respondent has expressed an interest in the expedited resolution of the merits of this annulment proceeding. The Committee took account of the views of both Parties when it decided to proceed with the First Session and Procedural Consultation on 19 December 2016 and the issuance of Procedural Order No. 1 on 30 December 2016, notwithstanding the lack of an advance payment. However, the advance payment is now eight weeks overdue, and the Applicant has not given any indication of the date on which a payment can be expected, despite the Committee’s requests that it do so. It is not appropriate for the Centre to continue to incur costs and for the Committee members to continue to accrue fees under these circumstances.

The Committee sees no advantage to delaying the suspension of these proceedings. In particular, the Committee does not consider it appropriate to defer a stay of the proceedings to 13 February 2017, as suggested by the Respondent, in order to allow the filing of the Applicant’s Memorial. However, if the Applicant makes the advance payment, the stay of the proceedings can be lifted quickly. Should that occur, it would be necessary to revise Annex A to Procedural Order No. 1. The Committee notes that Annex A currently includes a period of eleven weeks between the pre-hearing organizational meeting and the hearing. Thus, even with a delay in the briefing schedule, there is a possibility of retaining the hearing date if the proceedings are resumed.

The Respondent has indicated that it seeks to preserve its right to seek the lifting of the stay of enforcement. However, once these proceedings are suspended, the Committee would not be in a position to act on a request to lift the stay, were such a request to be made. For this reason, the Committee has decided to lift the stay of enforcement, simultaneous with the stay of these proceeding. The Committee notes that, in the event that the proceeding are resumed, Rule 54 permits a Party to request a stay of enforcement of the Award.

Your sincerely,



Alicia Martín Blanco
Secretary of the *ad hoc* Committee

cc: (by email):
Ad hoc Committee