

October 18, 2017

By email

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

Dear Counsel,

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

Following the non-payment of the second advance payment request, on October 14, 2017, the Secretary-General moved that the Committee stay the proceeding pursuant to Regulation 14 of the Centre's Administrative and Financial Regulations. As of the date of this letter the payment is still outstanding. For the reasons set forth below, the Committee hereby stays the proceeding and lifts the stay of enforcement of the Award rendered in this case effective today, October 18, 2017.

Background relating to the second advance payment and to the stay of enforcement

On April 6, 2017, the Committee informed the Parties that, following receipt of the first advance payment, the proceeding was resumed. In this communication, the Committee invited the Parties to try to reach an agreement on the revised schedule.

On April 13, 2013, the Parties submitted their agreement on the revised schedule. Pursuant to this agreement, Vestey agreed not to oppose a request to reinstate the stay of enforcement of the award in exchange for the Applicant's agreement to a schedule that maintained the originally-agreed hearing dates. In the same communication, Venezuela requested that the Committee reinstate the stay of enforcement of the Award.

On April 27, 2017, the Committee stayed the enforcement of the Award. In so doing the Committee considered that the circumstances in this case called for a stay of enforcement of the Award. Specifically, the Committee referred to the terms of the Parties' agreement.

By letter of July 12, 2017, a second advance payment in the amount of US\$300,000 was requested from the Applicant pursuant to Administrative and Financial Regulation 14(3)(d) and (e). This payment was required to cover the costs of the hearing and might have been sufficient to cover the costs of the remainder of the proceeding.

On August 21, 2017, the Committee noted that payment had not been received and invited the Applicant to indicate the steps taken for this purpose as well as the date when payment might be expected. The Committee further informed the Parties of its intention to continue to plan for the hearing until 7 working days prior to it, and that the hearing dates would be cancelled should payment not have been received on that date.

On August 24, 2017, the Applicant confirmed that the domestic mechanisms to effect payment had been triggered immediately after the Centre's request of July 12 and were proceeding to its conclusion. The Republic trusted that payment would be verified in the coming days and, in any event, the Republic expressed its wish to assure the Committee that payment would be made before the deadline set by the Committee in its August 21 communication expired.

On September 6, 2017, the Centre informed the Parties that the payment was still outstanding and invited either Party to pay it pursuant to Administrative and Financial Regulation 14(3)(d) and (e).

On September 15, 2017, Vestey confirmed that it did not intend to pay on Venezuela's behalf "as the Applicant, is solely responsible for such payments" pursuant to Administrative and Financial Regulation 14(3)(e). Vestey stated that Venezuela had yet to pay despite the assurances made in its August 24 letter and claimed that the ongoing default risked "substantial prejudice to Vestey, which expressly agreed not to challenge Venezuela's request to stay enforcement of the Award in exchange for an expedited procedural timetable, culminating in the Hearing in October 2017." Vestey reserved all its rights.

On September 22, 2017, Venezuela informed the Committee that means had been put in place to ensure that the funds would be assigned to the indicated account shortly. The Applicant

estimated that confirmation that the requested funds had been deposited would be made in the next 48 working hours.

On September 29, 2017, the seventh working day before the hearing, the Committee informed the Parties that ICSID had not received a notification from the World Bank's financial services that the funds corresponding to the second advance payment request had been received. The Committee referred to Venezuela's communication of September 22 and noted that the Applicant had not provided proof that said deposit had been made. Pursuant to its communication of August 21, the Committee informed the Parties that the hearing dates would be cancelled by 5 pm that day unless by that time ICSID had received a notification from the World Bank's financial services that the funds had been received. This notification not having been received by the indicated time, the Committee informed the Parties that the hearing dates had been cancelled.

On October 5, 2017, Vestey submitted a communication requesting the suspension of the proceeding in accordance with Regulation 14(3)(d) and that the stay of enforcement be lifted, both effective immediately, the latter "in order to avoid further prejudice to Vestey arising out of Venezuela's revocation of the parties' bargain." Vestey again reserved all its rights.

On October 14, 2017, the Secretary-General moved that the Committee stay the proceeding for lack of payment pursuant to Regulation 14(3)(d) and (e). On the same date, the Committee invited the Applicant to submit any comments it wished to make regarding the suspension of the proceeding and the lifting of the stay of enforcement.

The Applicant's comments were received on October 17, 2017. In its communication, the Applicant confirmed its intention to effect payment as soon as possible and stated that it would keep the Secretariat apprised of the developments in this process.

The suspension of the proceeding and the lifting of the stay of enforcement

The Committee has decided to follow the Secretary-General's recommendation that the hearing be suspended for lack of payment pursuant to Regulation 14(3)(d) and (e). As stated in the Committee's letter of February 6, 2017, the Applicant bears the sole responsibility for financing the proceeding without prejudice to the final allocation of costs. The Committee notes Venezuela's repeated assurances that payment would be made before the deadline set by the Committee for the cancellation of the hearing dates, as well as the fact that cancellation costs were incurred following the cancellation of the hearing dates when payment was not received on the required date.

The Committee further notes that the proceeding cannot continue without the referred payment because there are insufficient funds to cover the next step in the proceeding, namely the hearing. Accordingly, the Committee has decided to suspend the proceeding.

At the same time, the Committee has decided to lift the stay of enforcement of the Award. The Committee had originally found that the circumstance that required the stay of enforcement of the Award was the Respondent's agreement not to object a request for the stay of enforcement in exchange for an expedited schedule culminating in the October hearing dates. The cancellation of these dates and the suspension of the proceeding as a result of the Applicant's failure to make

the requested payment has now prevented compliance with the expedited schedule agreed as a condition not to oppose the stay of enforcement. Since this condition is no longer met, the Committee understands that there is no longer an agreement by the Respondent not to oppose Venezuela's request for a stay of enforcement, which Vestey confirmed in its communication of October 5, 2017.

In the absence of this agreement, which constituted the circumstance requiring the stay of enforcement of the Award, the Committee must conclude that the circumstances no longer require that the enforcement of the Award be stayed. Accordingly, the stay of enforcement of the Award is hereby lifted.

Your sincerely,



Alicia Martín Blanco
Secretary of the *ad hoc* Committee

cc: (by email):
Ad hoc Committee