

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Clorox Spain S.L.,

Petitioner,

v.

The Bolivarian Republic of Venezuela,

Respondent.

Civil Action No. 1:24-cv-02060-SLS

**RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S PETITION TO ENFORCE ARBITRAL AWARD**

Defendant the Bolivarian Republic of Venezuela (the “Republic”), by and through its undersigned attorneys, hereby file its Answer to Petitioner Clorox Spain S.L.’s (“Petitioner”) Petition to Enforce Arbitral Award (the “Petition”).

THE REPUBLIC’S ORIGINAL ANSWER

The section titles and other organizational headings from the Petition do not require a response. To the extent such section titles and other organizational headings are construed to contain substantive allegations to which a response is required, they are hereby denied. To the extent the Republic uses terms defined in the Petition, such use is not an acknowledgment or admission of any characterization Petitioner may seek to associate with such defined terms. Pursuant to Federal Rule of Civil Procedure 8(b), the Republic provides its specific responses to the allegations of the Petition as follows:

PARTIES

1. Petitioner Clorox Spain is a company constituted and registered under the laws of the Kingdom of Spain (“Spain”).

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 1.

2. Respondent Venezuela is a foreign state within the meaning of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330, 1332, 1391(f), 1602–1611.

Answer: The Republic admits the allegations contained in Paragraph 2.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over this action pursuant to the FSIA, 28 U.S.C. § 1330(a), because this is a “nonjury civil action against a foreign state” on a claim “with respect to which the foreign state is not entitled to immunity from jurisdiction” under the FSIA, 28 U.S.C. § 1605(a)(1), (6).

Answer: The Republic admits the allegations contained in Paragraph 3. This admission is limited solely to this proceeding and shall not be construed as a waiver of any jurisdictional defense or immunity that the Republic may have in any other proceeding or against any other claims.

4. Pursuant to Section 1605(a)(1) of the FSIA, Venezuela is not entitled to immunity from jurisdiction because this is a proceeding to confirm an arbitral award pursuant to the New York Convention, and Venezuela implicitly waived its immunity from jurisdiction over such proceedings by agreeing to that Convention. *See Tatneft v. Ukraine*, 771 F. App’x 9, 9–10 (D.C. Cir. 2019) (per curiam); *Creighton Ltd. v. Gov. of the State of Qatar*, 181 F.3d 118, 123 (D.C. Cir. 1999).

Answer: The Republic admits that Venezuela is not entitled to immunity under the FSIA in this proceeding. This admission is limited solely to this proceeding and shall not be construed as a waiver of any jurisdictional defense or

immunity that the Republic may have in any other proceeding or against any other claims.

5. In addition, pursuant to Section 1605(a)(6) of the FSIA, Venezuela is not entitled to immunity from jurisdiction over this action because this is an action to confirm an arbitral award that is governed by the New York Convention, which is a treaty in force in the United States for the recognition and enforcement of arbitral awards. *See Blue Ridge Investments, L.L.C. v. Republic of Argentina*, 735 F.3d 72, 85 (2d Cir. 2013).

Answer: The Republic admits that Venezuela is not entitled to immunity under the FSIA in this proceeding. This admission is limited solely to this proceeding and shall not be construed as a waiver of any jurisdictional defense or immunity that the Republic may have in any other proceeding or against any other claims.

6. This Court also has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a “proceeding falling under the [New York] Convention,” and is therefore “deemed” by the FAA “to arise under the laws and treaties of the United States,” 9 U.S.C. § 203.

Answer: The Republic admits the allegations contained in Paragraph 6.

7. This Court has personal jurisdiction over Venezuela pursuant to the FSIA. 28 U.S.C. § 1330(b).

Answer: The Republic admits the allegations contained in Paragraph 7.

8. Venue is proper in this Court pursuant to 9 U.S.C. § 204 and 28 U.S.C. § 1391(f)(4).

Answer: The Republic admits the allegations contained in Paragraph 8.

THE UNDERLYING DISPUTE

9. Corporación de Clorox Venezuela S.A. (“Clorox Venezuela”) has operated in Venezuela since 1990. In 2011, Clorox Spain was formed and, in April 2011, it became the sole owner of Clorox Venezuela. At the time of Clorox Spain’s acquisition, Clorox Venezuela was a profitable enterprise, with an average gross margin of 40% and an average operating margin of 20%. Award ¶ 265. That all changed in November 2011, when Venezuela began to destroy, slowly but inexorably, Clorox Venezuela’s operations.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9 with respect to Petitioner. The Republic denies the remaining allegations contained in Paragraph 9.

10. First, Venezuela froze the prices of products representing 73% of Clorox Venezuela’s sales by volume. Award ¶ 461. Then, effective April 1, 2012, Venezuela set maximum prices for those same products, thereby “depriving Clorox Venezuela of the ability to set its own product prices to reflect market conditions, its cost structure and the rampant inflation Venezuela was experiencing at the time.” Award ¶ 265. Before these freezes, just 0.4% of Clorox Venezuela’s sales volume by total units sold was subject to price regulations. *Id.* Once the new maximum prices were put in place that amount increased to 73% of sales volume by total units sold. *Id.* These changes also removed a fundamental protection for producers such as Clorox Venezuela by lifting the requirement that regulated prices “could not be lower than total production costs.” *Id.*

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 10 with respect to Petitioner. The Republic denies the remaining allegations contained in Paragraph 10.

11. Second, Venezuela improperly restricted Clorox Venezuela’s access to foreign currency necessary to import raw materials and other inputs for the production process. Award ¶ 431. Under then-applicable Venezuelan law, all foreign currency purchase requests were to be filed with Venezuela’s Foreign Exchange Administration Commission, known as “CADIVI.” In practice, the approval and payment processes were exceedingly cumbersome. For example, by March 2014, Venezuela was “288 days behind in approving the payment of foreign currencies (which had been previously authorized in 2013).” *Id.* These delays, combined with other actions by Venezuela, resulted in an “exchange rate regime [that] imposed an arbitrary and undue burden” on Clorox Spain by “prevent[ing] Clorox Venezuela from operating as a functional, commercial company that purchased and imported materials, paid royalties and technical assistance fees, and repatriated the proceeds of its investment freely.” Award ¶ 434.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 11 with respect to Petitioner. The Republic denies the remaining allegations contained in Paragraph 11.

12. Third, while Clorox Venezuela was effectively forced to “to act as tax collectors for the [Venezuelan] government,” Award ¶ 426, because, as a designated “special taxpayer” or Valued Added Tax withholding agent under Venezuela law, it was required to collect Value Added Taxes on the price of goods and services it sold while also paying Value Added Taxes on the cost of its production inputs, Award ¶ 424. Under the law at the time, this arrangement entitled Clorox Venezuela to certain tax offsets. Award ¶ 425. And when such offsets were insufficient to fully reimburse Clorox Venezuela for the taxes it paid on behalf of others, the company was entitled to recover the excess payments from Venezuela. Award ¶ 426. In practice, however, Venezuela

repeatedly ignored petitions by Clorox Venezuela to recover excess tax payments, even though compensatory tax credits should have been paid within 30 days. Award ¶ 427.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 12 with respect to Petitioner. The Republic denies the remaining allegations contained in Paragraph 12.

13. Collectively, Venezuela’s “self-proclaimed authority to determine the costs and prices of Clorox Venezuela’s products, . . . the decision to deny Clorox Venezuela’s rightful claim to the recovery of VAT credits, and the restrictive foreign exchange regulations, [caused] Clorox Venezuela [to become] an unsustainable operation,” thus destroying the value of Clorox Spain’s investment. Award ¶ 435.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 13 with respect to Petitioner. The Republic denies the remaining allegations contained in Paragraph 13.

THE AGREEMENT TO ARBITRATE

14. Because Clorox Spain is a Spanish company, its investments in Venezuela are protected by the bilateral investment treaty between Spain and Venezuela—the Agreement Between the Kingdom of Spain and the Bolivarian Republic of Venezuela on the Reciprocal Promotion and Protection of Investments, dated November 2, 1995, Exhibit 3 (Spanish) and Exhibit 4 (English) hereto. The Spain-Venezuela Treaty is intended to “promot[e] and protect[]” “investments” and “intensify” “economic co-operation” between Spain and Venezuela. Spain-Venezuela Treaty, pmbl.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 14 with respect to Petitioner. The Republic admits that the bilateral investment treaty between Spain and Venezuela contains the quoted text, but denies that the Petition provides the full and correct content and context of the treaty.

15. To further economic cooperation, Spain and Venezuela each pledged, among other things, to “provide full protection and security in accordance with international law to investments made in its territory by investors of the other [country],” and not to “obstruct by arbitrary or discriminatory means the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.” Spain-Venezuela Treaty, Art. III, ¶ 1.

Answer: The Republic admits that the bilateral investment treaty between Spain and Venezuela contains the quoted text, but denies that the Petition provides the full and correct content and context of the treaty.

16. Article XI of the Spain-Venezuela Treaty provides that if a dispute between an investor of one contracting state and the other contracting state “cannot be resolved” “by amicable agreement” the dispute may be submitted, at the investor’s choice, “[t]o the International Centre for Settlement of Investment Disputes (ICSID)” provided that both Spain and Venezuela are parties to the ICSID Convention.

Answer: The Republic admits that the bilateral investment treaty between Spain and Venezuela contains the quoted text, but denies that the Petition provides the full and correct content and context of the treaty.

17. As Venezuela had withdrawn from the ICSID Convention by the time the dispute arose, the instant dispute was to be presented to ICSID’s “Additional Facility for the administration

of conciliation, arbitration and factfinding procedures” or such other “ad hoc court of arbitration established in accordance with the arbitration rules of the United Nations Commission on International Trade Law” to which the parties may agree. Spain-Venezuela Treaty, Art. XI, ¶¶ 2(b), 3.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 17. The Republic is represented here by the Consejo de Administración y Protección de Activos (“CAPA”), which was appointed by the democratically-elected government of Venezuela that is recognized by the United States. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

18. Here, Clorox Spain and Venezuela ultimately agreed to the application of the 2010 Arbitration Rules of the United Nations Commission on International Trade Law (the “UNCITRAL Rules”). Award ¶ 5. The Permanent Court of Arbitration was designated as the administering entity of the arbitration on December 4, 2014. Award ¶ 21.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 18. As previously mentioned, the Republic is represented here by CAPA, which was appointed by the democratically-elected government of Venezuela that is recognized by the United States. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás

Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

19. The Spain-Venezuela Treaty remains in full force and effect and serves as a standing offer by Venezuela to arbitrate disputes arising from investments in Venezuela. Clorox Spain accepted that offer in serving its Notice of Arbitration.

Answer: The Republic admits that the treaty remains in effect. The Republic lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 19. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

THE ARBITRATION AND THE AWARD

20. On May 18, 2015, Clorox Spain commenced arbitral proceedings against Venezuela pursuant to Article XI of the Treaty and the UNCITRAL Rules. Award ¶ 4. Under the UNCITRAL Rules, the arbitration was deemed to have commenced on May 18, 2015, the day Venezuela received the Notice of Arbitration. Award ¶ 6.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 20. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

21. An ad hoc arbitral tribunal administered by the Permanent Court of Arbitration (the “Tribunal”) was fully constituted on September 22, 2015, the date on which the Secretary-General of the Permanent Court of Arbitration appointed a presiding arbitrator. Award ¶ 10. The parties agreed that the legal place of arbitration would be Geneva, Switzerland. Award ¶ 23.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 21. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

22. The Tribunal conducted a hearing at the ICC Hearing Centre in Paris, from May 22 through May 26, 2017. Award ¶ 115. Substantial written submissions followed. On May 20, 2019, the Tribunal issued an award finding that it lacked jurisdiction to decide Clorox Spain’s claim because Clorox Spain did not hold a protectible investment under the Spain-Venezuela BIT. Award ¶ 204.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 22. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

23. Clorox Spain sought annulment of that decision from the Swiss Federal Court on June 18, 2019. Award ¶ 206. The Swiss Federal Court found that the Tribunal had applied an

unduly narrow definition of “investment” and, on March 24, 2020, remanded the case back to the Tribunal. Award ¶ 207.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 23. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

24. As explained by the Tribunal:

[T]he Swiss Court stressed that the BIT does not contain requirements beyond the holding by an investor of a contracting party of assets in the territory of the other contracting party and that, by requiring additional conditions for declaring itself lacking jurisdiction, the Arbitral Tribunal had not validly justified its decision. The Swiss Federal Court, however, indicated that the case should be remanded back to the Arbitral Tribunal for a decision on the issue of “abuse of process” and other possible objections to its jurisdiction.

Award ¶ 208.

Answer: The Republic admits that Exhibit 1 to the Petition contains the quoted language, but denies that the Petition provides the full and correct content and context of the quoted document.

25. On remand, the Tribunal directed the parties to prepare further submissions on jurisdiction, and then closed jurisdiction proceedings on June 2, 2021. Award ¶ 233.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 25. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás

Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

26. On June 17, 2021, the Tribunal issued an award dismissing Venezuela's abuse of process objections (the "Second Award"), thereby confirming the Tribunal's jurisdiction and the admissibility of Clorox Spain's claims. Award ¶ 234. Venezuela sought the annulment of the Second Award before the Swiss Federal Court and on May 20, 2022, the court upheld the Second Award's jurisdictional findings. Award ¶ 259.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 26. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

27. Following the issuance of the Second Award, the parties submitted memorials on the merits, damages, and costs. On August 9, 2023, the Tribunal issued its 200-page final Award.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 27. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

28. In the Award, the Tribunal found that Venezuela breached Article V(1) of the Spain-Venezuela BIT. More specifically, the Tribunal found that the Venezuela took a series of

measures between November 22, 2011 and September 4, 2014 that served to “progressively expropriate[]” Clorox Spain’s investment in the country. Award ¶ 699.

Answer: The Republic admits that Exhibit 1 to the Petition contains the quoted language, but denies that the Petition provides the full and correct content and context of the quoted document. The Republic lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 28. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

29. These measures included (1) caps on the prices at which Clorox Venezuela could sell its products, (2) exchange control regulations, and (3) the improper denial of VAT credits. Collectively, these measures made it impossible for Clorox Venezuela, and thereby Clorox Spain, to operate its business at a profit. *Id.*

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 29. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

30. As to the first measure, the Tribunal concluded that “as a result of its implementation of the price regulations, [Venezuela] consciously and rigorously forced Clorox

Venezuela to sell at least 70% of its products at prices below its production costs, as of April 1, 2012, which generated losses that progressively rendered Clorox Venezuela's business unviable." Award ¶ 644; *see also* Award ¶ 687 (explaining that Venezuela set "maximum prices . . . for at least 70% of Clorox Venezuela's products without concern for Clorox Venezuela's production costs, [which] inevitably led over time to the expropriation of Clorox Venezuela").

Answer: The Republic admits that Exhibit 1 to the Petition contains the quoted language, but denies that the Petition provides the full and correct content and context of the quoted document.

31. As to the second measure, the Tribunal concluded "that the devaluation of the Bolivar in February 2013, the shortage of foreign currencies, and the implementation of foreign exchange regulations limited Clorox Venezuela's ability to import the necessary inputs for the production of its products." Award ¶ 655.

Answer: The Republic admits that Exhibit 1 to the Petition contains the quoted language, but denies that the Petition provides the full and correct content and context of the quoted document.

32. As to the third measure, the Tribunal concluded that by "not allowing Clorox Venezuela to recover VAT credits that were indisputably due" Venezuela "aggravat[ed] Clorox Venezuela's precarious economic situation," thereby "affecting the viability of its business." Award ¶ 661.

Answer: The Republic denies that Paragraph 661 of Exhibit 1 to the Petition states "allowing"; Paragraph 661 of Exhibit 1 reads "allow." The Republic admits that Exhibit 1 to the Petition contains the remaining quoted language, but

denies that the Petition provides the full and correct content and context of the quoted document.

33. In addition, the Tribunal concluded that “in having occupied and reactivated Clorox Venezuela’s production units, [Venezuela] was exercising full control over [Clorox Spain’s] investment in Venezuela, and doing so independently of the potential legality of this takeover under Venezuelan or international law.” Award ¶ 665.

Answer: The Republic admits that Exhibit 1 to the Petition contains the quoted language, but denies that the Petition provides the full and correct content and context of the quoted document.

34. The Tribunal’s Award ordered Venezuela to pay Clorox Spain \$104,102,806 in compensation, together with pre-award interest from September 3, 2014, until August 9, 2023, at a rate corresponding to the interest yield rate on ten-year U.S. bonds compounded annually. Award ¶ 836.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 34. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

35. In addition, the Award requires Venezuela to reimburse Clorox Spain \$4,959,729.77 in legal fees and costs. Award ¶ 839.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 35. The Republic

is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

36. The Award further requires Venezuela to pay post-award interest at a rate corresponding to the interest yield rate on ten-year U.S. bonds compounded annually from the date of the award (August 9, 2023) until the date of full payment. Award ¶¶ 836, 839.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 36. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

37. On September 14, 2023, Venezuela filed an appeal in the Swiss Federal Court seeking to annul the final Award as against public policy. The Swiss court rejected that appeal on April 26, 2024.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 37. The Republic is represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

LEGAL BASIS FOR RELIEF

38. The New York Convention is a multilateral international treaty among 172 nations governing “the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought.” New York Convention, art. I(1). The Convention provides that “[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.” *Id.*, art. III.

Answer: The Republic admits that the New York Convention contains the quoted language, but denies that the Petition provides the full and correct content and context of the Convention.

39. The United States is a contracting party to the New York Convention and has agreed to apply the Convention to disputes arising out of a “commercial” relationship. New York Convention, 21 U.S.T. at 2560. Congress codified the New York Convention in the FAA, 9 U.S.C. §§ 201–08.

Answer: The Republic admits the allegations contained in Paragraph 39.

40. In the United States, an award issued pursuant to arbitration conducted in the territory of a party to the Convention falls under the Convention, as implemented in the FAA, if the award “aris[es] out of a legal relationship, whether contractual or not, which is considered as commercial.” 9 U.S.C. § 202. Thus, the FAA applies when ““(1) there is a written agreement; (2) the writing provides for arbitration in the territory of a signatory of the convention; (3) the subject matter is commercial; and (4) the subject matter is not entirely domestic in scope.”” *Africard Co. Ltd. v. Republic of Niger*, 210 F. Supp. 3d 119, 123 (D.D.C. 2016).

Answer: The Republic admits that the FAA and *Africard Co. Ltd.* contain the quoted language, but denies that the Petition provides the full and correct content

and context of the quoted documents, and denies all other allegations contained in Paragraph 40.

41. Enforcement of an arbitral award that is subject to the New York Convention is governed by Section 207 of the FAA, which entitles “any party to the arbitration” to apply “for an order confirming the award as against any other party to the arbitration” within three years after the arbitral award has been issued. 9 U.S.C. § 207. The party seeking to confirm an award must submit the “duly authenticated original award or a duly certified copy thereof” and the “original agreement [to arbitrate] . . . or a duly certified copy thereof.” New York Convention, art. IV(1).

Answer: The Republic admits that the FAA and the New York Convention contain the quoted language, but denies that the Petition provides the full and correct content and context of the quoted documents, and denies all other allegations contained in Paragraph 41.

42. Upon submission of an application for confirmation, the court “shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.” 9 U.S.C. § 207. “Federal courts in the United States have minimal discretion to refuse to confirm an arbitration award under the FAA.” *Tatneft v. Ukraine*, 301 F. Supp. 3d 175, 184 (D.D.C. 2018) (citing 9 U.S.C. § 207). “Confirmation proceedings are generally summary in nature” because the New York Convention “provides only several narrow circumstances where a court may deny confirmation of an arbitral award.” *Int’l Trading & Indus. Inv. Co. v. DynCorp Aerospace Tech.*, 763 F. Supp. 2d 12, 20 (D.D.C. 2011). “[T]he showing required to avoid summary confirmation . . . is high.” *Id.*

Answer: The Republic admits that the FAA and the cited cases contain the quoted language, but denies that the Petition provides the full and correct content

and context of the FAA, and denies all other allegations contained in Paragraph 42.

CAUSE OF ACTION AND REQUEST FOR RELIEF

43. Petitioner repeats and re-alleges the allegations in paragraphs 1 through 42 as if set forth fully herein.

Answer: The Republic repeats and realleges its responses to the allegations set forth above as if fully set forth herein.

44. The Award falls under the New York Convention because it is based on the multi-million dollar investments of Clorox Spain, a Spanish company, in business operations and activities in Venezuela—namely, its ownership of the operations of Clorox Venezuela, which were commercial in nature, were international and not domestic in scope, and are entitled to protection under the Spain-Venezuela BIT, which provides for arbitration of disputes arising thereunder. *See, e.g.,* Award ¶ 234 (“On June 17, 2021, the Tribunal rendered a second award dismissing Respondent’s abuse of process objection, thus confirming the Tribunal’s jurisdiction and that the claim submitted to it by Claimant under the auspices of the Spain-Venezuela BIT is admissible.”).

Answer: Paragraph 44 states a legal conclusion that does not require a response. To the extent a response is required, the Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

45. The Award is the result of an arbitration seated in Switzerland—a party to the New York Convention—between Venezuela and Clorox Spain. The parties’ agreement to arbitrate is found in Article XI of the BIT and in Petitioner’s submission of its claim to arbitration by accepting the standing offer to arbitrate investors’ claims found in the BIT. The Award was made within the past three years, on August 9, 2023.

Answer: The Republic lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 45. The Republic is represented here by CAPA. CAPA manages the Republic’s assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

46. Pursuant to Article IV of the New York Convention, a party applying for recognition and enforcement of an award “shall, at the time of the application, supply: (a) [t]he duly authenticated original award or a duly certified copy thereof; [and] (b) [t]he original agreement [to arbitrate] referred to in article II or a duly certified copy thereof.” A copy of the Award is attached as Myatt Decl. Ex. A. A copy of the documents constituting the agreement to arbitrate, in the form of a copy of the Spain-Venezuela Treaty, and Clorox Spain’s Notice of Arbitration, in English, are attached as Ex. 4 and Myatt Decl. Ex. C.

Answer: The Republic admits that the New York Convention contains the quoted language in Paragraph 46, but denies that the Petition provides the full and correct content and context of the New York Convention. The Republic lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 46. The Republic is

represented here by CAPA. CAPA manages the Republic's assets from the United States and runs parallel to the illegitimate government of Nicolás Maduro, which participated in the underlying Arbitration. The Republic disavows the Maduro regime and lacks any knowledge regarding its actions.

47. Under the FAA, the Court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the New York Convention. 9 U.S.C. § 207. None of the New York Convention grounds for denying recognition and enforcement of an award apply in this case.

Answer: Paragraph 47 states a legal conclusion that does not require a response. To the extent a response is required, the Republic denies that there are no grounds for denying recognition and enforcement of an award in this case.

48. For the foregoing reasons, Clorox Spain is entitled to an order (a) confirming the Award pursuant to the New York Convention, and (b) entering judgment in Clorox Spain's favor in the amount specified in the Award.

WHEREFORE, Clorox Spain requests that the Court enter an order:

- (a) confirming the Award against Venezuela; and
- (b) entering judgment against Venezuela and in Clorox Spain's favor, ordering Venezuela to pay Clorox Spain:
 - (i) \$104,102,806 in principal;
 - (ii) Pre-award interest on that principal at the interest rate on ten-year U.S. bonds compounded annually, calculated from September 3, 2014 until August 9, 2023;

(iii) Post-award interest on that principal at the interest rate on ten-year U.S. bonds compounded annually, calculated from August 9, 2023 until full payment of the Award;

(iv) \$4,959,729.27 in legal costs and expenses incurred by Clorox Spain; and

(v) Post-award interest on those legal costs and expenses at the interest rate on ten-year U.S. bonds compounded annually, calculated from August 9, 2023 until full payment of the Award.

Answer: The Republic denies the allegations in Paragraph 48.

THE REPUBLIC'S DEFENSES

The Republic asserts the following defense with respect to the claims alleged in the Petition, without assuming the burden of proof where Petitioner carries such burden(s):

1. The Award violates public policy under Article V(2)(b) of the New York Convention because the Republic was represented in the underlying arbitration by the illegitimate regime of Nicolás Maduro, rather than by CAPA, which manages the foreign assets of the duly-elected government of the Republic as recognized by the U.S. Government. Recognizing an Award where the Republic was represented by an unrecognized entity would conflict with the U.S. Executive's exclusive power to recognize foreign governments.

The Republic reserves the right to amend and/or supplement its defenses.

Dated: December 10, 2025

/s/ Ephraim "Fry" Wernick

Ephraim "Fry" Wernick

D.C. Bar #497158

VINSON & ELKINS, LLP

2200 Pennsylvania Avenue NW

Suite 500 West Washington, D.C. 20037

Telephone: (202) 639-6500

Email: ewernick@velaw.com

Camilo Cardozo (*pro hac vice forthcoming*)

N.Y. Bar # 3984010

Jose F. Sanchez (*pro hac vice*)

N.Y. Bar # 4819082

Bo Gilbertson (*pro hac vice*)

N.Y. Bar # 5859012

VINSON & ELKINS, LLP

1114 Avenue of the Americas

32nd Floor

New York, New York 10036

Telephone: (212) 237-0000

Email: ccardozo@velaw.com

*Counsel for Respondent the Bolivarian
Republic of Venezuela*