

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic
(ICSID Case No. ARB/13/8)**

PROCEDURAL ORDER NO 3

Eduardo Zuleta, President of the Tribunal
Brigitte Stern, Arbitrator
John M. Townsend, Arbitrator

Secretary of the Tribunal
Martina Polasek

Procedural Order No. 3

1. Pursuant to Section 14.1 of Procedural Order No. 1 Respondent should file its request for production of documents related to the issues of jurisdiction on January 10, 2014 and Claimants should produce documents by January 24, 2014.
2. On January 14, 2014 Respondent submitted a letter informing the Tribunal that the Parties had agreed that Claimants would make any objections to Respondent's requests to produce by January 15, 2014. Respondent would then submit its responses to any such objections to produce by January 17, 2014 in a Redfern Schedule to be filed with the Tribunal that same day for resolution of any remaining disputes between the Parties.
3. On January 17, 2014 Respondent submitted a Redfern Schedule for the production of documents related to the issues of jurisdiction. The Redfern Schedule, comprising 17 categories of documents to produce, included Respondent's initial request, Claimants' objections and Respondent's reply to Claimants' objections. The Redfern Schedule also listed Claimants' general objections to Respondent's request as well as Respondent's general objections to Claimants' objections.
4. Together with the Redfern Schedule, Respondent submitted a letter to the Tribunal indicating that no ruling was necessary in relation to requests 1, 3, 7 and 13 and that the Parties have a dispute over the remaining requests, which is for the Tribunal to decide.
5. The Tribunal notes that in its objections to requests 2, 5, 8, 9, 10, 12, 14, 15 and 16, Claimants offered to produce certain documents, and Respondent replied by narrowing the corresponding request for production of documents.
6. Claimants objected to the production of documents in request 6 and Respondent narrowed the request for production.
7. With respect to request 11, Claimants offered to produce certain documents and Respondent maintained its original request.
8. Claimants objected to the production of documents in requests 4 and 17, and Respondent maintained its requests as originally submitted.
9. On January 21, 2014, Claimants submitted a letter to the Tribunal responding to the narrowed requests for production of documents that had been presented by Respondent on January 17, 2014. Claimants maintained their objections to requests 4, 11 and 17, and presented responses to Respondent's narrowed requests 2, 5, 6, 8, 9, 10, 12, 14, 15 and 16.
10. In response to this letter, Respondent requested an additional opportunity to present replies on Claimants' responses. The Tribunal considered that it already had sufficient information to assess the request for document production on the issues of jurisdiction

and that no further submissions are necessary.

11. In this Procedural Order, the Tribunal addresses the requests for the production of documents with respect to which there is a pending dispute between Claimants and Respondent. The Tribunal will first determine the applicable standards, and then issue its decision on the requests to produce documents relevant to jurisdiction.

The Applicable Standards

12. The Tribunal recalls that this arbitration is governed by (i) the ICSID Convention, (ii) the 2006 ICSID Arbitration Rules (hereinafter the “Arbitration Rules”), and (iii) the Procedural Rules as set out in Procedural Order No. 1. Moreover, paragraph 15.1 of Procedural Order No. 1 states that: *“Production of documents shall be governed by Article 3 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010)” (hereinafter the “IBA Evidence Rules”), except where inconsistent with this Procedural Order or any later order of the Tribunal, in which case the orders of this Tribunal shall prevail.”*

13. Since the Parties have clearly agreed that the production of documents be governed by Article 3 of the IBA Evidence Rules, the Tribunal shall apply these standards.

14. For the purposes of this Order, the following are the relevant provisions of Article 3 of the IBA Evidence Rules:

- (i) Article 3.3:

“A Request to Produce shall contain:

- (a) (i) a description of each requested Document sufficient to identify it, or
- (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
- (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
- (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons

Procedural Order No. 3

why it would be unreasonably burdensome for the requesting Party to produce such Documents, and

(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party”.

(ii) Article 3.5:

“If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Article 9.2 or a failure to satisfy any of the requirements of Article 3.3”.

(iii) Article 3.7:

“Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in consultation with the Parties and in timely fashion, consider the Request to Produce and the objection. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 9.2 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it”.

(iv) Article 9.2

“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

Procedural Order No. 3

- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
 - (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling”.
15. According to Article 3 of the IBA Evidence Rules, the Tribunal shall order the production of documents whenever (i) the issues that the Party wishes to prove are relevant to the case and material to its outcome; (ii) the reasons for objections set forth in Article 9.2 of the IBA Evidence Rules do not apply and (iii) the Request to Produce was made in conformity with the requirements of Article 3.3 of the IBA Evidence Rules.
16. The Tribunal has carefully considered the 17 categories of documents the production of which is sought by Respondent, as well as the objections lodged by Claimants in regards to these requests, Respondent’s replies to such objections and Claimants’ responses to Respondent’s narrowed requests. The Tribunal notes the Parties’ efforts to agree on these requests for document production. Upon request by Respondent and with the interest of adhering to the procedural schedule set forth in Procedural Order No. 1, the Tribunal has conducted this assessment expeditiously. Based on its conclusions, the Tribunal issues the following order.

Order

17. For the reasons set forth in the Redfern Schedule attached as Annex A to this Order, the Tribunal:
- A. Does not make any decision on requests for production 1, 3, 7 and 13, in light of the Parties’ agreement on the scope of these requests.
 - B. Grants Respondent’s requests, as narrowed in the Redfern Schedule submitted on January 17, 2014, in regards to requests 2, 5, and 6, as specified in the Redfern Schedule.
 - C. Grants Respondent’s requests, as narrowed in the Redfern Schedule submitted on January 17, 2014 and considering Claimants’ comments and confirmations, in regards to requests 9, 10, 12, 14 and 15, as specified in the Redfern Schedule.
 - D. Partially grants Respondent’s request 8, as specified in the Redfern Schedule.

- E. Grants Respondent's requests 4, 11, 16 and 17, as specified in the Redfern Schedule.
- F. Production of documents on the issues relative to jurisdiction shall be completed by January 24, 2014, as indicated in section 14.1 of Procedural Order No. 1.

[Signed]

Eduardo Zuleta
President of the Tribunal
Date: January 22, 2014