



ICSID (INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)

ICSID Case No. ARB/11/19

KOCH MINERALS SÀRL AND KOCH NITROGEN INTERNATIONAL SÀRL V. BOLIVARIAN
REPUBLIC OF VENEZUELA

PROCEDURAL ORDER NO. 1 (ANNULMENT PROCEEDING)

01 April 2019

Tribunal:

[Milton Estuardo Argueta Pinto](#) (Member)

[Inka Hanefeld](#) (Member)

[Dominique T. Hascher](#) (President of the Ad Hoc Committee)

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Procedural Order No. 1 (Annulment Proceeding)

I. PROCEDURAL BACKGROUND

1. On 8 August 2018, the Bolivarian Republic of Venezuela (the "Applicant" or "Venezuela") filed with the Secretary-General of the International Centre for Settlement of Investment Disputes ("ICSID") an application for annulment of the Award rendered on 30 October 2017 and rectified on 11 April 2018 by a tribunal composed of Messrs. V. V. Veeder (President), Marc Lalonde and Zachary Douglas in ICSID Case No. ARB/11/19 (the "Application for Annulment"). The Award concerned a dispute between Venezuela and Koch Minerals Sarl and Koch Nitrogen International Sarl (the "Respondents on Annulment" and, together with the Applicant, the "Parties").
2. The Application for Annulment included a request to stay the enforcement of the Award until the *ad hoc* committee issued its decision on the Application for Annulment pursuant to [Article 52 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States](#) and Rule 54 of the Rules of Procedure for Arbitration Proceedings ("ICSID Arbitration Rules").
3. On 17 August 2018, the Acting Secretary-General registered the Application for Annulment and notified the Parties that enforcement of the Award was provisionally stayed pursuant to ICSID Arbitration Rule 54(2).
4. On 1 October 2018, the Secretary-General notified the Parties of the constitution of the *ad hoc* Committee (the "Committee") in accordance with ICSID Arbitration Rule 52(2). In addition, the Parties were informed that the annulment proceeding was deemed to have begun in accordance with ICSID Arbitration Rules 6 and 53, and that Mrs. Ana Conover, ICSID Legal Counsel, would serve as Secretary of the Committee.
5. On the same date, the Respondents on Annulment requested the Committee to rule within 30 days on whether the provisional stay of enforcement of the Award should be continued, pursuant to ICSID Arbitration Rule 54. The Respondents on Annulment indicated that they objected to the continuation of the stay and requested an opportunity to present their observations should the Applicant submit a reasoned request for the continuation of the stay.
6. On 4 October 2018, the ICSID Secretariat requested the Applicant to make a first advance payment of US\$300,000.00 (three hundred thousand United States dollars) due thirty days later, in accordance with ICSID Administrative and Financial Regulation 14(3)(e).
7. On 5 October 2018, the Committee set out a schedule for the Parties to submit written observations on the issue of the stay of enforcement of the Award. In accordance with the schedule, the Applicant would submit its observations by 15 October 2018, followed by observations from the Respondents on Annulment by 25 October 2018. Thereafter, the Committee indicated that its preference would be to hear oral arguments from the Parties on the issue of the stay of enforcement of the Award

upon concluding the first session with the Parties via telephone conference, on a date to be determined in consultation with the Parties.

8. On 11 October 2018, the Secretariat received a letter from Venezuela dated 10 October 2018 stating that it faced financial restrictions which prevented it from making the requested payments to ICSID. The Applicant requested, *inter alia*, that any remaining balance in its favor from the underlying proceeding be transferred and applied to these proceedings as partial payment of the estimated expenses.
9. On 15 October 2018, Venezuela filed a request to continue the stay of enforcement of the Award, with legal authorities RLA-001 through RLA-012.
10. On 24 October 2018, ICSID transmitted the Applicant's letter of 11 October 2018 to opposing counsel and the Committee and confirmed that a balance of USD 11,234.12 (eleven thousand two hundred and thirty-four United States dollars and twelve cents) pending reimbursement to Venezuela corresponding to the original arbitration, would be transferred to the account established for this annulment proceeding. Additionally, the Secretariat asked Venezuela to provide further information on the circumstances limiting its ability to make the requested payment.
11. On the same date, further to communications received from the Parties on 8 and 11 October 2018, the Committee confirmed that a first session would be held by telephone conference on 27 November 2018. The Committee noted that holding the first session was subject to the Secretariat's receipt, in advance of the first session, of the payment requested on 4 October 2018.
12. On 25 October 2018, the Respondents on Annulment filed observations on the Applicant's request to continue the provisional stay of enforcement of the Award, with exhibits K-001 to K-034 and legal authorities KLA-001 to KLA-043.
13. On 31 October 2018, the Committee informed the Parties that the provisional stay of enforcement of the Award would continue until the Committee issued a determination on the request for a continued stay of enforcement of the Award.
14. On 2 November 2018, the Respondents on Annulment submitted observations on Venezuela's letter dated 10 October 2018, and on the Committee's communication of 31 October 2018.
15. On 7 November 2018, Venezuela submitted observations in response to ICSID's letter of 24 October 2018.
16. On 15 November 2018, the Committee invited Venezuela to inform the Centre on the steps it had taken to initiate the payment requested in this case and to provide specific information on any financial restriction it may have encountered in relation thereto.
17. On the same date, the Parties were informed that, due to the lack of payment, the first session scheduled for 27 November 2018 was postponed to a later date.
18. On 28 November 2018, Venezuela requested the Secretariat to send an updated copy of the call for

funds letter of 4 October 2018, which the Centre did on 29 November 2019.

19. On 4 December 2018, the Applicant requested the Centre to provide a bank certification confirming ICSID's payment information.
20. On 4 and 7 December 2018, the Respondents on Annulment submitted observations on the Applicant's lack of payment and requested that the Committee order the discontinuation of the stay of enforcement of the Award and the subsequent suspension of the proceedings.
21. By letter of 13 December 2018, ICSID confirmed the banking information mentioned in its letters of 4 October and 29 November 2018.
22. On 18 December 2018, Venezuela reiterated its request for the Centre to provide a bank certification confirming ICSID's payment information.
23. On 4 March 2019, the Respondents on Annulment reiterated their request for the Committee to lift the stay of enforcement of the Award.
24. By letter of 12 March 2019, the Applicant requested the Committee to grant a temporary suspension of the proceeding for a period of 45 business days (the "Request for Suspension"), and to reject the Respondents on Annulment's request to lift the stay of enforcement of the Award.¹
25. On 18 March 2019, in addition to the instructions provided by the Secretariat on 4 October, 29 November and 13 December 2018, the Centre provided the Applicant with a letter from the commercial bank entrusted with receiving the payments, certifying the payment information previously provided by the Secretariat.
26. On 20 March 2019, the Respondents on Annulment submitted observations on the Applicant's letter of 12 March 2019.
27. Further observations regarding the case finances, the stay of enforcement of the Award, and the Applicant's Request for Suspension were received on 25 March 2019 from the Applicant and on 28 March 2019 from the Respondents on Annulment.
28. Pursuant to ICSID Arbitration Rules 19 and 53, this Procedural Order addresses the stay of enforcement of the Award and the suspension of the proceedings.

II. STAY OF ENFORCEMENT OF THE AWARD

29. Having reviewed and deliberated on the Parties' arguments on the continuation of the provisional stay of enforcement of the Award, the Committee concludes that there are no circumstances that require the stay of enforcement of the Award. Accordingly, the stay of enforcement of the Award is

¹ The Applicant based its Request for Suspension on the potential scope and legal effects of an Executive Order issued by the President of the United States of America on 28 January 2018 concerning the Government of Venezuela. The Applicant claimed, *inter alia*, that the Executive Order "raise[d] additional concerns regarding payments originating from the Republic".

hereby lifted.

30. The Committee will provide the reasons in writing after payment of the advance requested by ICSID is received.

III. SUSPENSION OF THE ANNULMENT PROCEEDINGS

31. The Applicant has requested a temporary suspension of the proceeding for forty-five (45) business days, and the Respondents on Annulment have requested the suspension of the proceeding for lack of payment in accordance with ICSID's Administrative and Financial Regulations 14(3)(d) and (e).
32. Pursuant to Administrative and Financial Regulation 14(3)(e), the Applicant is solely responsible for making the advance payments requested by ICSID in this case.
33. While the Committee understands that the Applicant may have encountered financial restrictions to fulfil its payment obligations with the Centre, it also notes that almost six (6) months have passed since the Centre issued the first request for funds in this case. To date, the payment of the first advance is still outstanding and the Applicant has provided no clear indication as to whether or when payment can be expected.
34. Accordingly, the Parties are informed that if the Secretary-General were to move the Committee to stay the proceeding, it would be the Committee's intention to suspend the annulment proceeding for lack of payment under Administrative and Financial Regulations 14(3)(d) and 14(3)(e) upon receipt of such proposal, if the requested advance is still outstanding by then.
35. Finally, in view of the circumstances and having considered the Parties' positions in this regard, the Committee dismisses the Applicant's Request for Suspension.

IV. ORDER

36. Based on the above, the Committee decides:
 - a) To lift the provisional stay of enforcement of the Award, effective today.
 - b) To reject the Applicant's Request for Suspension.
 - c) To reserve its decision on costs.