

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.**

**v.**

**Romania**

**(ICSID Case No. ARB/15/31)**

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**PROCEDURAL ORDER No. 27**

***Members of the Tribunal***

Prof. Pierre Tercier, President of the Tribunal  
Prof. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal Yetano

***Assistant to the Tribunal***

Ms. Maria Athanasiou

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10 March 2020

**I. PROCEDURE**

1. Between 2 and 13 December 2019, a Hearing was held at the premises of the ICSID in Washington DC. During the Hearing, the Tribunal and the Parties discussed the question of post-hearing briefs and closing arguments (Tr. 13.12.19, 3417:3-3429:22).
2. On 17 December 2019, the Tribunal sent a letter to the Parties concerning the next steps in the proceedings. In said letter, the Tribunal noted its decision that it would, at this point, submit to the Parties a list of questions. It further noted that its decision would not deprive the Parties of an opportunity to file post-hearing arguments following the second hearing, which may deal also with the questions raised in the first hearing and that this would take place in the form of written post-hearing briefs.
3. On 9 January 2020, Respondent sent a letter to the Tribunal, requesting that the Tribunal set a page limit for the responses to the questions it intends to provide the Parties. According to Respondent, the page limit will ensure that the Parties' submissions are directly responsive to the Tribunal's questions and will not be inappropriately converted into post-hearing submissions.
4. On the same date, Claimants sent a letter to the Tribunal objecting to Respondent's request that a page limit be imposed for responses to questions the Tribunal intends to present. According to Claimants, the Parties should be permitted to exercise judgment in how to respond to the Tribunal questions and that they intend, in any event, to be concise and focused in their responses.
5. On 28 January 2020, the Tribunal sent another letter to the Parties concerning the next steps of the proceedings, noting, among other things, that it would revert to the Parties concerning the questions it intends to ask, as well as any page limit in this connection.

**II. THE TRIBUNAL'S CONSIDERATIONS**

6. The Tribunal has already decided that there will not be any post-hearing briefs at this stage of the proceedings, but that it will present to the Parties a list of questions that have arisen during and following the Hearing of December 2019 (see above para. 2).
7. As noted also in its letter of 17 December 2019, the Tribunal's decision will not deprive the Parties from an opportunity to present post-hearing arguments following the Hearing of September 2020 for both the Hearings of December 2019 and September 2020.
8. The Tribunal has therefore deliberated and decided the following in relation to this next step.

**A. List of questions**

9. The Tribunal invites the Parties to provide their answers to the following questions:
  - (a) For each of Claimants' BIT claims, at what exact point in time was the breach consummated? What precise measure attributable to Respondent resulted in the alleged breach for each claim?

- (b) Did Claimants' alleged losses occur (or begin to occur) at the same point in time that the breach is said to have been consummated in respect of each claim? Should Claimants' alleged losses be quantified on the date upon which each breach is alleged to have occurred? If not, is the point in time when Claimants' alleged losses occurred relevant to establishing liability for a breach in respect of each claim?
- (c) Does conduct attributed to Respondent equate to a systematic State policy or practice that may be characterized as a composite act in breach of the relevant BIT pursuant to Article 15 of the Articles on Responsibility of States for Internationally Wrongful Acts? The Parties may refer to commentary on state responsibility and/or Article 15 of the Articles on Responsibility of States for Internationally Wrongful Acts in developing their answers.
- (d) How and to what extent should public opinion and its impact upon the political situation in Romania be factored into the assessment of liability and damages under the relevant BIT?
- (e) Do Claimants maintain that the process leading to the submission of a draft law to Parliament in August 2013 and its subsequent rejection by Parliament was a standalone breach of the relevant BIT or an element of a wider course of conduct that resulted in a breach of the BIT? Was there any breach of Romanian law in the process leading to the submission of the draft law and its ultimate rejection by Parliament?
- (f) Do Claimants maintain that there was a breach of the relevant BIT after the rejection of the draft law by Parliament by reference to acts of Respondent occurring solely during the period after that rejection (i.e., independently of any acts leading up to that rejection)? If so, what precise act/s are said to constitute the breach?

**B. Format of answers**

- 10. The Parties shall provide their answers in a maximum of **120 pages**. This page limit shall include any extracts of exhibits and footnotes.
- 11. Save from the Parties' answer on question (c) above, and only if necessary, the Parties may not submit any new legal exhibits.
- 12. The Parties shall, in their answers, refer to the relevant passages in their submissions and the transcript of the Hearing of December 2019.

**C. Sequence of answers**

13. Due to the nature of the questions, the filing of the Parties' answers shall be consecutive. In specific, Claimants shall file their answers first and **by 10 April 2020**. Respondent shall then have an opportunity to file its answers **by 11 May 2020**.
14. The Tribunal reserves the possibility of having an additional round of answers to the relevant questions.

**III. ORDER**

*The Parties shall file their answers to the Tribunal's questions pursuant to its instructions in the present Procedural Order (see above paras 9 to 14).*

On behalf of the Tribunal,

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Prof. Pierre Tercier  
President of the Tribunal