

April 17, 2017

**By email**

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**Re: Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v.  
Republic of Costa Rica (UNCT/13/2)**

Dear Mesdames and Sirs,

I write on the instructions of the presiding arbitrator on behalf of the Tribunal.

The Tribunal notes the Claimants' letter dated March 15, 2017 and the Respondent's letter dated April 7, 2017, both requesting the Tribunal to terminate the arbitral proceedings. The Tribunal also notes the Claimants' letter dated April 3, 2017 refusing to respond to the Tribunal's request to the Parties dated March 20, 2017 to submit documentation addressing developments in the domestic legal proceedings concerning the Claimants' Lots up until the date of the transmittal of the Interim Award.

The Tribunal has reviewed the additional documents submitted by the Respondent by email dated April 4, 2017 concerning Lots B1, B3, B5 and B8 responsive to the Tribunal's request dated March 20, 2017.

The Tribunal has concluded that this documentation, and in particular (but not limited to) the documentation concerning Lot B1 discloses an error or omission of a factual nature in the Interim Award of October 25, 2016 within the scope of Article 38 of the UNCITRAL Arbitration Rules that should have been drawn to the attention of the Tribunal by the Parties pursuant to the Tribunal's express request in its letter dated October 25, 2016 transmitting the Interim Award.

The Tribunal considers that it is not *functus officio*, being still seized of the dispute between the Parties and having expressly requested the Parties to draw to the Tribunal's attention errors or omissions going to the factual detail of the case.

Having regard to the above, the Tribunal invites comments from the Respondent and Claimants respectively on the Claimants' letter dated March 15, 2017 and the Respondent's letter dated April 7, 2017. The Tribunal also invites the comments of the Parties on how the Tribunal should proceed in the light of the additional documentation referred to above concerning Lots B1, B3, B5 and B8 and the Tribunal's conclusion that the documentation in question, notably concerning (but not limited to) Lot B1 discloses an error or omission of a factual nature in the Interim Award that would warrant correction of the Interim Award. The Tribunal's provisional conclusion is that this development ought properly to be reflected either in a corrected Interim Award or, if the Parties consider that the arbitral proceedings should be terminated without the issuing of a corrected Interim Award, in the Order of the Tribunal terminating the arbitral proceedings.

The Parties are requested to submit their views to the Secretary of the Tribunal by 1 May 2017 who will, on receipt of the correspondence of both Parties, circulate the correspondence to the Parties and to the Tribunal.

Yours sincerely,



Anneliese Fleckenstein  
Secretary of the Tribunal

cc: Members of the Tribunal