

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

**Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth
Rand, Robert Harry Leander Rand and
Sembi Investment Limited**

Applicants on Annulment

and

Republic of Serbia

Respondent on Annulment

**ICSID Case No. ARB/18/8
Annulment Proceeding**

**ORDER OF THE COMMITTEE TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDINGS WITH RESPECT TO RAND INVESTMENTS LTD., MS.
KATHLEEN ELIZABETH RAND, MS. ALLISON RUTH RAND, MR. ROBERT HARRY LEANDER
RAND AND SEMBI INVESTMENT LIMITED**

Members of the ad hoc Committee

Prof. Lawrence Boo, President of the *ad hoc* Committee
Dr. Claudia Annacker, Member of the *ad hoc* Committee
Mr. Colm Ó hOisín SC, Member of the *ad hoc* Committee

Assistant to the Committee

Ms. Sarra Azaiez

Secretary of the Committee

Ms. Marisa Planells-Valero

Date of dispatch to the Parties: 3 July 2024

REPRESENTATION OF THE PARTIES

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I. INTRODUCTION

1. This proceeding concerns an application for partial annulment (the “Application for Partial Annulment”) of the Award issued in the case of *Rand Investments Ltd, William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited v. Republic of Serbia*, ICSID Case No. ARB/18/8, on 29 June 2023, as supplemented by the Decision on the Claimants’ Request for a Supplementary Decision dated 27 October 2023 (the “Award”), rendered by a tribunal composed of Prof. Gabrielle Kaufmann-Kohler, Mr. Baiju S. Vasani and Prof. Marcelo G. Kohen (the “Tribunal”).
2. The applicants on annulment are Rand Investments Ltd., Mr. William Archibald Rand, Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand, Mr. Robert Harry Leander Rand and Sembi Investment Limited (the “Applicants” or “Claimants”) and the respondent on annulment is the Republic of Serbia (“Serbia” or the “Respondent”). The Applicants and Respondent are collectively referred to as the “Parties.” The Parties’ representatives and their addresses are listed above on page i.
3. The Award decided a dispute submitted to the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) on the basis of the Agreement between Canada and the Republic of Serbia for the Promotion and Protection of Investments, which was signed on 1 September 2014 and entered into force on 27 April 2015 (the “Canada-Serbia BIT”) and the Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, which was signed on 21 July 2005 and entered into force on 23 December 2005, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on October 14, 1966 (the “ICSID Convention”).

4. In the Award, a majority of the Tribunal found that it had jurisdiction over Mr. William Archibald Rand's claims under the Canada-Serbia BIT in respect of his beneficial ownership of 75.87% of the shares in BD Agro AD and that these claims were admissible. The majority declined jurisdiction over his other claims and the claims of the remaining Claimants. On the merits, the majority found that the acts of the Privatization Agency concerning the termination of the Privatization Agreement were attributable to Serbia and that there had been a breach of the fair and equitable treatment provision in Article 6(1) of the Canada-Serbia BIT. The majority further ordered Serbia to pay EUR 14,572,730 to Mr. William Archibald Rand, together with interest at the average EURIBOR for 6 months deposits plus 2% *per annum*, compounded semi-annually, until the date of payment.¹ The Tribunal ordered the Parties to bear 50% of the Tribunal's fees and expenses and ICSID's fees, and to bear their own legal fees and costs.
5. Prof. Marcelo G. Kohen issued a Dissenting Opinion disagreeing with the majority's conclusions on jurisdiction, the admissibility of Mr. William Archibald's Rand's claims, the breach of Article 6(1) of the Canada-Serbia BIT and, consequently, the award of damages.

II. PROCEDURAL HISTORY

6. On 24 February 2024, the Claimants submitted their Application for Partial Annulment of the Award, invoking the following two grounds for annulment: (i) manifest excess of powers (under Article 52(1)(b) of the ICSID Convention), and (ii) failure to state reasons (Article 52(1)(e) of the ICSID Convention).

¹ In its Supplementary Decision of 27 October 2023, the Tribunal clarified that the interest should accrue from 21 October 2015—the date of the breach.

7. On 1 March 2024, the Secretary-General of ICSID registered the Application for Partial Annulment in accordance with Rule 50(2) of the ICSID Rules of Procedure for Arbitration Proceedings (the “ICSID Arbitration Rules”).
8. On 1 May 2024, in accordance with Rules 6 and 53 of the ICSID Arbitration Rules, the Parties were notified that an *ad hoc* Committee composed of Prof. Lawrence Boo, Mr. Colm Ó hOisín SC and Dr. Claudia Annacker had been constituted (the “Committee”). On that same date, the Parties were also notified that Ms. Marisa Planells-Valero, Legal Counsel, ICSID, would serve as Secretary of the Committee.
9. On 14 June 2024, the Applicants submitted a document titled “Partial Withdrawal of Application for Partial Annulment, in which they stated that “[b]earing in mind the objective of judicial economy, the Rejected Claimants [Rand Investments Ltd., Kathleen Elizabeth Rand, Allison Right Rand, Robert Henry Leander Rand and Sembi Investment Limited] have now decided to withdraw the Application in the part concerning the Tribunal’s refusal to exercise jurisdiction over their claims. This withdrawal shall also terminate the Rejected Claimants’ participation in this annulment proceeding.”²
10. Accordingly, the Applicants requested that “the Committee exercise its powers under Article 44 of the ICSID Convention, in conjunction with Article 52(4) of the ICSID Convention, and acknowledge:
 - a. Rejected Claimants’ partial withdrawal of the Application [...]; and
 - b. that, as a result of the partial withdrawal of the Application, Rejected Claimants no longer participate in the annulment proceeding and the annulment proceeding shall continue as between Serbia and Mr. [William Archibald] Rand as the sole applicant.”³

² Ibid, ¶ 6.

³ Ibid, ¶ 21.

11. On 20 June 2024, upon the Committee’s invitation to comment on the Claimants’ “Partial Withdrawal of Application for Partial Annulment,” the Respondent confirmed, at the beginning of the First Session between the Committee and the Parties, that it did not oppose the Claimants’ request of 14 June 2024, including the Rejected Claimants’ requests to withdraw from the present proceedings.

III. COMMITTEE’S CONSIDERATION

12. The Committee considers the request to withdraw from that present proceedings as an application by the Rejected Claimants to discontinue their application for partial annulment, leaving only Mr. William Archibald Rand as the sole Applicant.

13. Rule 44 of the ICSID Arbitration Rules provides:

If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

14. Neither ICSID Arbitration Rule 44, nor any other ICSID Arbitration Rule or the ICSID Convention, expressly provides for the discontinuation by one or more parties from an arbitration and for the remaining parties to continue thereafter.

15. Article 44 of the ICSID Convention provides:

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not

covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

16. The Committee considers that, at a party's request and in the absence of objection from other parties, ICSID Arbitration Rule 44, read with Articles 44 and 52(4) of the ICSID Convention, permits the discontinuance of the proceedings with respect to one or more of the parties and their claims.

IV. ORDER

17. THEREFORE, in accordance with the agreement of the Parties, and pursuant to Article 44 of the ICSID Convention and Rule 44 of the ICSID Arbitration Rules, read with Article 52(4) of the ICSID Convention, the Committee hereby takes note of the discontinuance of the proceedings by Rand Investments Ltd., Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited. The present proceedings shall hereafter continue as between Mr. William Archibald Rand and the Respondent.

For and on behalf of the Committee,

[signed]

Prof. Lawrence Boo
President of the *ad hoc* Committee
Date: 3 July 2024