

**ICSID Case No. ARB/07/5**

**GIOVANNA A BECCARA AND OTHERS  
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC  
(RESPONDENT)**

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**PROCEDURAL ORDER NO. 4**

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**18 MARCH 2010**

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## PRELIMINARY REMARKS

1. In this Order, the Tribunal adopts the following method of citation:
  - “R-MJ” refers to Respondent’s First Memorial on Jurisdiction and Admissibility filed on 8 August 2008.
  - “C-MJ” refers to Claimants’ Counter-Memorial on Jurisdiction filed on 7 November 2008.
  - “R-R-MJ” refers to Respondent’s Reply Memorial on Jurisdiction and Admissibility filed on 23 February 2009.
  - “C-R-MJ” refers to Claimants’ Rejoinder Memorial on Jurisdiction filed on 6 May 2009.
  - “CL 07.06.09” refers to Claimants’ letter of 7 June 2009.
  - “CL 16.09.09” refers to Claimants’ letter of 16 September 2009.
  - “RSP 16.09.09” refers to Respondent’s letter of 16 September 2009.
  - “RSP 23.10.09” refers to Respondent’s submission of 23 October 2009.
  - “RSP 01.03.10” refers to Respondent’s submission of 1 March 2010.
  - “CL 02.03.10” refers to Claimants’ submission of 2 March 2010.
  - “RSP 08.03.10” refers to Respondent’s submission of 8 March 2010.
  - “CL 09.03.10 (1)” refers to Claimants’ letter of 9 March 2010 complementing its letter of 2 March 2010.
  - “CL 09.03.10 (2)” refers to Claimants’ email of 9 March 2010 objecting to Respondent’s submission of 8 March 2010.
  - “First Session Tr.” refers to the transcript made of the First Session of 10 April 2008 (Tr. p. 1/l. 1 means Transcript on page 1 on line 1).
  - “First Session Minutes” refers to the Minutes of the First Session of 10 April 2008.
  - “Exh. C-[N°]” refers to Claimants’ exhibits.
  - “Exh. R[letter]-[N°]” refers to Respondent’s exhibits.

**I. RELEVANT PROCEDURAL HISTORY**

2. On 21 May 2009, the Tribunal issued a letter setting forth certain principles for conduct of the Hearing on Jurisdiction to be held in June 2009. In this letter the Tribunal defined the scope of direct examination of witnesses and experts, set deadlines for the designation of witness and experts and for the submission of documents for direct and cross-examination. With regards to the submission of documents for direct and cross-examination, the letter states as follows:

4.4 Any document not already in the record to be used for the purpose of cross-examination are to be exchanged by 3 June 2009 and documents not already in the record to be used for the purpose of re-direct examination by 9 June 2009.

4.5 With respect to the documents to be used for the direct examination regarding new issues in the Rejoinder, they are to be submitted by the Respondent by 3 June 2009 and documents to be used for cross-examination of such persons by the Claimants are to be provided by 9 June 2009.

3. On 3 June 2009, Respondent submitted its documents for direct and cross-examination (so called “Supplemental Exhibits”) accompanied by an index.
4. On 7 June 2009, Claimants responded to Respondent’s submission of 3 June 2009 and, with regard to the submitted documents, raised an objection claiming that Respondent’s submission of its Supplemental Exhibits should be deemed untimely, abusive and partly in disregard of confidentiality obligations. Claimants therefore asked the Tribunal not to admit such documents.
5. On 9 June 2009, ICSID informed the Parties that in the light of unfortunate circumstances affecting Dr. Briner, the Hearing on Jurisdiction could not take place as foreseen.
6. On the same day, Claimants acknowledged that the Hearing was postponed and understood that related deadlines were presently suspended, including with respect to the submission of examination documents, etc. Thus, Claimants did not submit any document for cross- and re-direct examination.
7. On 17 June 2009, Dr. Briner sent out a letter to the Parties regarding several hearing issues. With regard to Claimants’ objection of 7 June 2009 regarding

Respondent's submission of 3 June 2009 (see above § 4), especially with regard to Claimants' objection relating to confidential material, the Tribunal invited Respondent to state its position by 24 June 2009.

8. On 24 June 2009, Respondent responded to Claimants' letters of 7 and 9 June 2009 (see § 4 and 6 above). With regard to allegedly confidential material submitted for direct and cross-examination, Respondent stressed that it had not submitted any document filed in sealed proceedings and that there was no general rule of confidentiality governing ICSID arbitration proceedings. It therefore requested that Claimants' objections regarding confidentiality be rejected and that all the documents submitted on 3 June 2009 be admitted. Respondent further complained about Claimants' decision in their letter of 9 June 2009 (see § 6 above) to suspend the deadline for submission of document for cross- and re-direct examination, and concluded as follows:

Therefore, Argentina respectfully requests the Tribunal to order Claimants to immediately present documents, if any, to be used for examination, and to allow Argentina to submit new documents dated or becoming public after June 3 and within a period of time equal to the time that Claimants have been additionally enjoying since June 9.

9. On 6 July 2009, Claimants responded to Respondent's letter of 24 June 2009 requesting once again that the Tribunal exclude the use of confidential documents, and requesting a confidentiality order protecting the confidentiality of the current proceedings. Claimants also stressed that the suspension of the deadline for submission of documents for witness and experts examination was in accordance with ICSID's communication of 9 June 2009.
10. On 16 September 2009, Claimants repeated its request that the Tribunal strike Respondent's Supplemental Exhibits and confidential material as submitted by Respondent on 3 June 2009.
11. On the same day, Respondent requested the Tribunal to set a whole new calendar, including new dates for witnesses and experts hearings and in particular new dates for witness and expert designation as well as for the submission of thereto related documents. It further insisted on the admission of its documents submitted on 3 June 2009, and again protested against Claimants' letter of 9 June

2009 (see § 6 above), in which they announced that they suspended the term to submit additional documents to be used in cross- and re-direct examinations.

12. On 17 and 23 September 2009, Claimants responded to Respondent's letter of 16 September 2009 and formulated, among others, the following requests with regard to the documents for witness and expert examination: (i) to limit Respondent to using only those Supplemental Exhibits that relate expressly to the scope of direct testimony of Claimants' experts/witnesses, (ii) to strike irrelevant and confidential documents, and (iii) to set new deadlines for Claimant's submission of documents not already in the record for the cross-examination and re-direct examination of witnesses and experts, while rejecting Respondent's request to be given a further opportunity to submit documents for direct or cross-examination. Claimants also explained why they deemed that ICSID's communication of 9 June 2009 (see § 5 above) and Dr. Robert Briner's letter of 17 June 2009 (see § 7 above) justified Claimants' suspension on 9 June 2009 of the deadline for submission of documents for the witness and expert examination (see § 6 above).

13. Following the resignation of Dr. Briner as President of the Tribunal, Prof. Pierre Tercier was appointed on 2 September 2009 as his successor and new President of the Tribunal. The procedure, which had been on hold since June 2009, was actively resumed on 14 October 2009 through a joint telephone conference between the Tribunal, the Secretary and the Parties. During the conference call, new pre-hearing deadlines and hearing dates, as well as other organisatory aspects were discussed. With regard to the submission of documents for witness and expert examination, the Tribunal noted the existence of an imbalance due to the fact that Claimants did not submit documents in accordance with the deadline set forth in the Tribunal's letter of 21 May 2009 (see § 2 above), but expressed its understanding that this failure was due to the uncertainty raised by the circumstances surrounding the postponement of the hearing. The Tribunal, accordingly, stated that, whilst Claimants should not be prevented from further submitting said documents, the Respondent must be given an appropriate time to review them. Consequently, the Tribunal announced that it would set a new time limit (which would start running following the final designation of witnesses and experts) for: (a) Claimants to submit documents for witnesses' and experts' cross-examination and (b) for the Respondent to comment on this submission.

14. On 1 December 2009, the Tribunal issued its Procedural Order No. 2, in which (i) it admitted – under certain restrictions - the direct and cross-examination of the handwriting experts, (ii) it admitted the direct examination by Respondent of Professors Richard A. Nagareda and Antonio Briguglio, and by Claimant of Professor Nicola Picardi, and (iii) it set the dates for the Hearing on Jurisdiction to 7 April 2010 to 13 April 2010.
15. On 11 December 2009, Claimants requested some further clarifications concerning Procedural Order No. 2 with regard to the procedure for examination of the handwriting experts and the scope of examination in general.
16. On 28 December 2009, the Tribunal provided the Parties with further clarifications on the Procedural Order No. 2, and enclosed a draft hearing agenda inviting the Parties to comment thereon by 22 January 2010. It further invited Claimants to submit by 22 January 2010, the documents to be used for its direct, cross- and re-direct examination and not yet in the record, while Respondent was given a deadline until 19 February 2010 to comment thereon.
17. On 19 January 2009, Claimants requested clarifications regarding its duty to submit any supplemental exhibits not yet in the record for use during direct, cross- and re-direct examination, alleging that the outstanding decision of the Tribunal concerning confidentiality and admissibility of part of Respondent’s Supplemental Exhibits played a role on the scope of Claimants’ submission.
18. On 21 January 2010, ICISD, on behalf of the President of the Tribunal, responded to Claimants’ enquiry of 19 January 2010 informing the Parties that Claimants’ deadline for submitting any additional exhibits for witness and expert examination was postponed until the issuance of the imminent Procedural Order No. 3, and that Respondent’s deadline for commenting on Claimants’ submission would be postponed accordingly.
19. On 27 January 2010, the Tribunal issued its Procedural Order No. 3 ruling on the standard of confidentiality to be followed in the present proceeding and rejecting the admissibility of Respondent’s Exhibits RE-427, RE-428, RE-429, RE-435, RE-440, RE-452, RE-462, RE-488, RE-489, RE-490, RE-491, RE-492, RE-493, RE-494, RE-495, RE-496, RE-497, RE-498, RE-499, RE-504 and RE-528, as

well as of any other Exhibit relating to an expert report or to a transcript of expert examination issued in another arbitration.

20. On the same day, ICSID invited Claimants to submit any additional exhibits not yet in the record for use during direct, cross- and re-direct examination by February 1, 2010 according to the Tribunal's letter of 21 January 2010 (see above § 18). Respondent was invited to comment on Claimants' submission by February 22, 2010. This latter deadline was then corrected to 1 March 2010.
21. On 1 February 2010, Claimants filed their supplemental exhibits not yet in the record for use during direct, cross- and redirect examination, as requested by the Tribunal in its letters of 28 December 2009 (see § 16 above) and 27 January 2010 (see § 20 above).
22. On 1 March 2010, Respondent objected to Claimants' submission of 1 February 2010, mainly arguing that these documents are irrelevant for the witness and expert examination, beyond the admissible scope of examination, and/or unduly belated, since they could and should have been submitted earlier. In case the Tribunal was to accept Claimants' supplemental exhibits, Respondent requested the right to file additional documents in response to those filed by Claimants, and actually already filed such documents with ICSID.
23. On 2 March 2010, Claimants reacted to Respondent's submission of 1 March 2010 raising various objections against the submission of additional documents by Respondent. Claimants requested that the Tribunal issue an immediate order directing that the documents submitted by Respondent not be admitted to the record, and announced that they would respond in full to Respondent's submission within one week.
24. On 8 March 2010, Respondent sent a letter to the Tribunal concerning a new claim that Claimants would allegedly have initiated before the Federal Court of the Southern District of New York, including as Plaintiffs some of the Claimants, as well as two other litigation procedures initiated in the US. Respondent consequently asked the Tribunal to invite Claimants to disclose certain information in this regard.
25. On 9 March 2010, ICSID sent out two letters from the Tribunal dated 5 March 2010 regarding (i) an updated hearing agenda and (ii) the question of the



submission of documents for expert and witness examination. Regarding the latter, the Tribunal's letter provided – among others - that it had received the Parties' submissions of 1 February 2010, 1 March 2010 and 2 March 2010, and that it would shortly issue a decision according to § 3 of its letter of 28 December 2009.

26. On 9 March 2010, Claimants submitted a letter in which it substantiated its previously raised objections (see § 23 above) against Respondent's submission of documents of 1 March 2010, and further requested that Respondent be ordered to specify the matters it would address in its direct examination of its own handwriting experts.
27. On the same day, Respondent submitted a second expert report from Hector Jorge Petersen and Hector Jorge Petersen (h) concerning the authenticity of signatures attributed to Claimants and appearing in the powers of attorneys, together with an accompanying note.
28. On the same day, Claimants strongly objected to the submission by Respondent of such report and accompanying note.
29. On 10 March 2010, ICSID sent out a letter to Parties conveying a message from the Tribunal stating as follows:

Counsel shall not send any further documents until the Arbitral Tribunal has issued its upcoming Procedural Order on the admissibility of all documents relating to the expert and witness examination, including the latest submission by Respondent. In this respect, the Tribunal has taken due note of the Claimants' objection thereto. However, in order to prevent a further escalation of this issue preventing the Tribunal to focus on the substantial issues of the hearing, the Tribunal invites the Parties to refrain from any further comments until reception of the upcoming Procedural Order.

30. On 11 March 2010, notwithstanding the Tribunal's letter of 10 March 2010, Respondent submitted a letter insisting that Messrs Petersen's report submitted on 9 March 2010 (see § 27 above) be admitted. On the same day, Claimants stressed that this submission was in violation of the Tribunal's letter of 10 March 2010 and reserved the right to respond in due course.

## **II. OBJECT OF THE PRESENT PROCEDURAL ORDER AND THE TRIBUNAL'S POWER TO DECIDE**

31. In the present Procedural Order No. 4, the Tribunal deals with the following issues:

- (i) The admissibility of all documents not yet in the record as of 21 May 2009 and submitted by the Parties for witness and expert examination;
- (ii) Respondent's request of 8 March 2010 for information concerning pending litigations involving some of or all of the Claimants;
- (iii) Claimants' request of 9 March 2010 to order Respondent to specify the matters to be addressed during the direct examination of Respondent's own handwriting experts.

32. Rule 19 of the ICSID Arbitration Rules provides that "[t]he Tribunal shall make the orders required for the conduct of the proceeding". All the above mentioned issues relate to the conduct of the proceeding, and in particular of the upcoming hearing on jurisdiction.

33. Consequently, the present order is based on the Tribunal's power to determine the conduct of the proceedings as deriving from Rule 19 of the ICSID Arbitration Rules.

## **III. ADMISSIBILITY OF DOCUMENTS FOR WITNESS AND EXPERT EXAMINATION**

### **A. Parties' Position**

#### *a) Claimants' Position*

34. In general, Claimants object to Respondent's various submissions of documents based mainly on the arguments that the submitted documents are (i) irrelevant and/or beyond the scope of examination as provided in the Tribunal's letter of 21 May 2009, (ii) inadmissible because of confidentiality issues or other issues affecting equal treatment of the parties, and (iii) abusive in the sense that their main purpose would be to "sand bag" and delay the present arbitration proceeding.

35. With regard to Respondent's submission of 3 June 2009 (see § 3 above), Claimants bring forward that Respondent submitted over 7,000 pages of documents, which would be (i) irrelevant to the scope of the expert reports and witness declarations they are supposed to refer to, (ii) beyond the scope of admissible cross-examination as defined in the Tribunal's letter of 21 May 2009, and (iii) some of these documents would be in breach of confidentiality obligations.<sup>1</sup>
36. With regard to Respondent's submission of 1 March 2010 (see § 22 above), Claimants bring forward that such submission of over 1,400 pages of additional documents and a video is untimely, unauthorized and inadmissible, and also procedurally unfair. Claimants base their position on the following main arguments: (i) the deadline for production of documents by Respondent is long passed (ie 3 June 2009), (ii) Respondent was given the right by the Tribunal to "comment" on Claimants' submission of 1 February 2010, but not to submit further documents in response thereto, (iii) such a voluminous production of documents less than a month before the hearing would be prejudicial to Claimants by violating the equality of treatment of the parties and preventing Claimants from making their case and prepare for the upcoming hearing, and (iv) such submission is part of a pattern of procedural abuses by Respondent, which should not be rewarded.<sup>2</sup>
37. With regard to Respondent's submission of 9 March 2010 (see § 27 above), Claimants bring forward that this submission of a 60 page report (i) would consist of largely irrelevant documents related to persons not Claimants in the present arbitration proceedings, (ii) would be unauthorized and based on an unilateral reservation of Respondent, (iii) would violate the principles of due process and of equality of treatment of the parties, (iv) would have been made in bad faith since Respondent never mentioned the preparation of such report before, (v) would deal with circumstances relating to individual Claimants which were excluded from the scope of the jurisdictional hearing, and (vi) would moreover be in contradiction to Respondent's own previous statement that the examination of handwriting experts would not aim to establish the non-authenticity of additional signatures.<sup>3</sup> Claimants

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<sup>1</sup> CL 07.06.09.

<sup>2</sup> CL 02.03.10 and CL 09.03.10 (1).

<sup>3</sup> RSP 23.10.09, p. 7.

further bring forward that such report could be submitted at a later stage, ie when the Tribunal considers the individual Claimant handwriting issues as part of the merits/individual jurisdictional phase.<sup>4</sup>

38. With regard to its own submissions, Claimants insists that (1) the documents submitted are relevant to witness examination, (2) they are made timely, and (3) the documents do not violate the Tribunal's confidentiality order.<sup>5</sup>

39. Consequently, Claimants request that:

- The admission of Respondent's submission of 3 June 2009 be limited to documents within the scope of admissible examination, ie to documents relevant to the direct testimony by Claimants' experts and witnesses;<sup>6</sup>
- Respondent's submission of additional documents of 1 March 2010 be rejected;<sup>7</sup> and
- Respondent's submission of an additional expert report and its accompanying note of 9 March 2010 be rejected.<sup>8</sup>

b) Respondent's Position

40. With regard to its own submissions, Respondent insists that all documents submitted be admitted.

41. With regard to its submission of 3 June 2009, Respondent brings forward that these documents are essential to the credibility and coherence of the witnesses and experts presented by Claimants, and that restricting the use of such documents for impeachment purposes would represent a serious departure from due process. In addition, Respondent insists that these documents were timely filed and not previously restricted, and that in some cases the Claimants' counsel already knew about them or already held them.<sup>9</sup>

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<sup>4</sup> CL 09.03.10 (2).

<sup>5</sup> CL 09.03.10 (1).

<sup>6</sup> CL 07.06.09, p. 7.

<sup>7</sup> CL 02.03.10 and CL 09.03.10 (1).

<sup>8</sup> CL 09.03.10 (2).

<sup>9</sup> RSP 16.09.09, pp. 5-6, 10.

42. With regard to its submission of 9 March 2010, Respondent brings forward that the concerned expert report on the authenticity of signatures attributed to Claimants and appearing in the powers of attorney relate directly, albeit not exclusively to issues 1 and 2 of the jurisdictional issues listed in the Tribunal's letter of 9 May 2008. Consequently, such submission would be within the scope of admissible witness and expert examination. In addition, such submission would be made within the scope of the reservation made by Respondent in its R-R-MJ and in which Respondent allegedly reserved its right "to update the reports of the handwriting experts".<sup>10</sup>
43. With regard to Claimants' document submission of 1 February 2010, Respondent essentially brings forward that these documents (i) do not relate to any of the planned witness examinations, and (ii) are dated prior to the Parties' Memorials, so that they should have been filed earlier. In addition, regarding CLA-318 to 330, Respondent brings forward that these relate to a proceeding before the Permanent court of Arbitration and should according to Procedural Order No. 3 be rejected because the case files are not openly accessible to Respondent or the Tribunal.<sup>11</sup> In this respect, in its submission of 1 March 2010, Respondent requests that - in case the Tribunal was to admit Claimants' submission of 1 February 2010 - Respondent should be entitled to submit the documents as described in Annex A to its letter of 1 March 2010. Respondent justifies this position arguing mainly that Respondent should be given the opportunity to respond to the documents submitted by Claimants, especially in the light of the additional time given to Claimants for the submission of such documents.
44. Consequently, Respondent requests that:
- Respondent's Supplemental Exhibits submitted on 3 June 2009 be fully admitted;<sup>12</sup>
  - Claimants' submission of 1 February 2010 be rejected, or alternatively that Respondent's submission of documents of 1 March 2010 be admitted as a response to Claimants' submission;<sup>13</sup> and

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<sup>10</sup> See R-R-MJ fn. 558.

<sup>11</sup> RSP 01.03.10.

<sup>12</sup> RSP 16.09.09, p. 10.

<sup>13</sup> RSP 01.03.10.

- Respondent's submission of 9 March 2010 consisting in an additional expert report of Messrs Petersen on the handwriting issues be admitted.<sup>14</sup>

## **B. Tribunal's Analysis**

### *a) Preliminary Remark*

45. In its Procedural Order No. 3 of 27 January 2010, the Tribunal already ruled on the admissibility of some of the documents contained in Respondent's Supplemental Exhibit. In particular, it ruled that

Respondent's Exhibits RE-427, RE-428, RE-429, RE-435, RE-440, RE-452, RE-462, RE-488, RE-489, RE-490, RE-491, RE-492, RE-493, RE-494, RE-495, RE-496, RE-497, RE-498, RE-499, RE-504 and RE-528, as well as any other Exhibit relating to an expert report or to a transcript of expert examination issued in another arbitration shall not be admitted as evidence in the present proceedings and, hence, shall not be used as examination documents.

46. This decision remains fully in force and the principles described therein apply also to any document filed or to be filed by either Party in the present arbitration.

47. With regard to documents contained in Respondent's Supplemental Exhibits of 3 June 2009, in Claimants' submission of 1 February 2010, and/or in Respondent's submission of 1 March 2010 and not concerned by the Procedural Order No. 3, the principles as set forth below apply.

### *b) Regarding Documents Submitted by the Parties as of 1 March 2010*

48. In the light of the volume of the documents submitted by the Parties, it is difficult – not to say impossible - at this stage of the proceedings, ie less than a month before the upcoming hearing, to evaluate with all due care and precautions the relevancy of each of these documents. In order not to penalize any of the Parties and to guarantee to a maximum extent an equal treatment of the Parties, the Tribunal has decided to admit as evidence in the present proceedings all the

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<sup>14</sup> RSP 09.03.10.

documents relating to the witness and expert examinations and submitted by the Parties as of 1 March 2010.

49. However, in the light of the volume of these documents, it is impossible to use them all during the upcoming hearing. In addition, the general character of some of the concerned documents carries the risk of unduly extending the scope of admissible examination as set forth in the Tribunal's letter of 21 May 2009, as well as the scope of the jurisdictional phase as defined during the First Session of 10 April 2008 (ie relating to general jurisdictional issues, and not just to legal or factual issues relevant only to individual Claimants).<sup>15</sup>

50. **Consequently, all documents submitted as of 1 March 2010 for witness and expert examination are admitted into the present proceedings. Their usage during the upcoming hearing is however subject to the following conditions:**

- *Each Party shall by 26 March 2010 submit a list of the documents already submitted and which it plans to use during the hearing. This list shall specify the relevant expert report and/or witness statement to which the concerned document refers and the reasons why this document is important for the concerned examination (ie the purpose it is supposed to serve).*
- *The use of these documents may not serve to unduly extend the scope of admissible examination for the jurisdictional hearing as set forth at the First Session of 10 April 2008 and in the Tribunal's letter of 21 May 2009.*

c) Regarding Messrs Petersen's Second Report

51. With regard to the second expert report of Messrs Petersen submitted by Respondent on 9 March 2010, the Tribunal, in order to evaluate its admissibility would need first to read it, and if it deemed it within the scope of admissible expert and/or witness examination and within the scope of the preliminary phase and thereby potentially admissible, it would still need to give Claimants the opportunity to comment on its admissibility and to respond to its content. This is no longer possible, given that the hearing is to take place in less than a month: Claimants,

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<sup>15</sup> See First Session Minutes item # 14(A).

who have primarily to prepare for the hearing, would not have sufficient time to respond to the report.

52. In these circumstances, the Tribunal finds that allowing Respondent to use this report during the witness and expert examination in the upcoming hearing would run against the principle of equality of treatment and of due process.

53. **Consequently, Messrs Petersen's second report submitted on 9 March 2010 shall not be used during the upcoming hearing, while reserving the possibility for the Tribunal to admit it as evidence at a later stage.**

d) Regarding Future Submissions

54. As of today, neither Party may submit any further document in the present procedure without prior express approval of the Tribunal, which may only be granted based on a duly motivated request of the Party wishing to submit further documents and after having heard the other Party.

55. Any documents submitted in violation of these principles will not be admitted in the present proceedings.

**IV. REQUEST FOR INFORMATION ON PENDING PROCEEDINGS INVOLVING CLAIMANTS**

56. According to Respondent, the fact that Claimants participate in proceeding against Argentina before certain state courts (see § 24 above) demonstrate that Claimants have indeed remedies at their disposal, outside of the ICSID framework, to address their claims related to their security entitlements in Argentine bonds. Although these proceedings may be of a different nature, these proceedings as well as the present ICSID arbitration seek the same remedy. Respondent thus brings forward the existence of a risk of double recovery, in addition to other risks related to parallel proceedings.<sup>16</sup>

57. Consequently, Respondent requests the Tribunal to invite Claimants (i) to inform whether or not the proceedings mentioned above “are the only one initiated in New York or in any other jurisdiction relating to security entitlements in

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<sup>16</sup> RSP 08.03.10.



Argentine bonds that comprise individuals or companies that are also Claimants in this arbitration”, and (ii) to confirm whether or not all the Claimants in any of these proceedings are also Claimants in this arbitration.<sup>17</sup>

58. Claimant has not yet responded to this request.
59. The Tribunal believes that the existence of parallel proceedings concerning Claimants’ security entitlements may indeed be relevant to some of the 11 jurisdictional issues.
60. **Consequently, the Tribunal grants Respondent’s request with the following adjustment:**
- *Claimants’ Counsel shall disclose the existence of any proceedings relating to Claimants’ security entitlements, conducted outside the present arbitration and which involve individuals or companies which are also Claimants in the present arbitration, and which Claimants’ Counsel know of.*
  - *To this effect, Claimants are invited to submit by 30 March 2010 a list of these proceedings with an indication of the key facts (such as the place and court where the proceedings are pending, the dates of initiation thereof, whether or not they are suspended, the object of the proceedings, the number of Claimants concerned thereby, etc.).*
  - *In case Claimants have any objection to providing such information, they shall justify such objection in written by 26 March 2010.*

V. **INSTRUCTIONS CONCERNING DIRECT EXAMINATIONS OF EXPERTS**

61. After acknowledging the Tribunal’s letter of 5 March 2010 (see § 25 above), in which the Tribunal instructed Claimants to identify and summarize the specific issues to be addressed during Claimants’ direct examination of Mr Kaczmarek and Prof. Picardi, Claimants requested in their submission of 9 March 2010 that the Tribunal also instructs Respondent to do so with regard to the direct examination by Respondent of its own handwriting experts

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<sup>17</sup> RSP 08.03.10, pp 2-3.

62. Respondent has not yet responded to this request.
63. In its letter of 21 May 2009 (§ 4.1), the Tribunal provided that if Respondent was to make use of its right of direct examination, it shall by 3 June 2009 identify the specific issues to be addressed during such direct examination and summarize the substance of the testimony.
64. To the extent that Respondent's right to direct examination was extended to the handwriting experts, the corresponding duty to identify the specific issues to be addressed and to summarize the substance of the testimony also applies to these experts.
65. ***Consequently, Respondent shall by 26 March 2010 identify the specific issues to be addressed during the direct examination of its handwriting experts Subinspector Pereyra and Mr Petersen (h) and summarize the substance of their testimony.***

## **VI. ORDER**

66. For the reasons set forth above, the Tribunal issues the following decision:

- (a) The Procedural Order No. 3 remains fully in force and the principles described therein apply also to any document filed or to be filed by either Party in the present arbitration.**
- (b) With regard to the admissibility of documents for witness and expert examination and not concerned by the Procedural Order No. 3:**
  - (i) All documents submitted as of 1 March 2010 for witness and expert examination are admitted into the present proceedings. Their usage during the upcoming hearing is however subject to the following conditions:**
    - Each Party shall **by 26 March 2010** submit a list of the documents already submitted and which it plans to use during the hearing. This list shall specify the relevant expert report and/or witness statement to which the concerned document refers and the reasons why this document is important for the concerned examination (ie the purpose it is supposed to serve).
    - The use of these documents may not serve to unduly extend the scope of admissible examination for the jurisdictional hearing as set forth at the First Session of 10 April 2008 and in the Tribunal's letter of 21 May 2009.
  - (ii) Messrs Petersen's second report submitted on 9 March 2010 shall not be used during the upcoming hearing, while reserving the possibility for the Tribunal to admit it as evidence at a later stage.**
- (c) With regard to Respondent's request for information concerning pending proceedings involving Claimants:**
  - (i) Claimants' Counsel shall disclose the existence of any proceedings relating to Claimants' security entitlements, conducted outside the present arbitration and which involve individuals or companies which are also Claimants in the present arbitration, and which Claimants' Counsel know of.**
  - (ii) To this effect, Claimants are invited to submit by 30 March 2010 a list of these proceedings with an indication of the key facts (such as the place and court where the proceedings are pending, the dates of initiation thereof, whether or not they are suspended, the object of the proceedings, the number of Claimants concerned thereby, etc.).**

- (iii) In case Claimants has any objection to providing such information, it shall justify such objection in written by 26 March 2010.**
- (d) With regard to further specification of the matters to be addressed in Respondent's direct examination of its handwriting experts:**
- Respondent shall by 26 March 2010 identify the specific issues to be addressed during the direct examination of its handwriting experts Subinspector Pereyra and Mr Petersen (h) and summarize the substance of their testimony.**
- (e) As of today, neither Party may submit any further document in the present procedure without prior express approval of the Tribunal, which may only be granted based on a duly motivated request of the Party wishing to submit further documents and after having heard the other Party. Any documents submitted in violation of these principles will not be admitted in the present proceedings.**

On behalf of the Tribunal,

[signed]

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Pierre Tercier,  
Chairman