

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

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

and

**THE ARGENTINE REPUBLIC  
(RESPONDENT)**

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**PROCEDURAL ORDER NO. 9**

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**26 NOVEMBER 2010**

## **CONSIDERING:**

1. Claimants' letter of 5 October 2010, submitting that certain Claimants, who tendered into the 2010 Exchange Offer, would no longer participate in the present arbitration, thereby reducing the number of remaining Claimants to approximately 60,000. Claimants attached to their letter updated versions of Annexes A, B, C and L, the latter containing a list of all Claimants who have withdrawn from the arbitration since 14 September 2006;
2. Respondent's answer of 22 October 2010, in which Respondent reacted to Claimants' letter of 5 October 2010 and in which Respondent requested the Tribunal: (i) to require Claimants to promptly inform which Claimants have tendered their security entitlements into the 2010 Exchange Offer, and (ii) to order that the Argentine Republic and those Claimants with respect to which proceedings will be discontinued under the terms set forth in its letter, equally bear the arbitration costs, and each of them bear their own cost, and that such order of discontinuance be rendered in due course;
3. Claimants' letter of 27 October 2010, in which Claimants requested that Respondent's requests raised in its letter of 22 October 2010 be denied based on the following main arguments: (i) with regard to Respondent's request for information on the identity of Claimants having tendered into the 2010 Exchange Offer, this request has been rendered moot because Respondent is already in possession of such information as Claimants already have submitted a complete list of all Claimants having withdrawn from the arbitration since 14 September 2006; and (ii) with regard to Respondent's request regarding costs issues as to withdrawn Claimants, this request constitutes an attempt to raise new issues regarding costs and should therefore be rejected and stricken from the record, or alternatively, Claimants should be given opportunity to brief the Tribunal in full as to this issue.
4. Respondent's response of 2 November 2010, in which Respondent contended that: (i) Claimants' objections to its requests was based on old arguments; (ii) that the information as to the identity of Claimants having tendered into the 2010 Exchange Offer is necessary, since these Claimants would have waived their right to sue Argentina whilst Claimants who have withdrawn irrespective of the 2010 Exchange Offer have not made such waiver; (iii) that Claimants are in a better

position than Respondent to provide such information; and (iv) that Respondent's request regarding costs is to be understood as a modality of the request for an order of discontinuance, which the Tribunal shall be free to issue when considered appropriate;

5. The Tribunal's power to determine the conduct of the proceedings as deriving from Rule 19 of the ICSID Arbitration Rules;

**THE TRIBUNAL DECIDES AS FOLLOWS:**

With regard to Respondent's requests as raised in its letter of 22 October 2010 and to Claimants' requests as formulated in their letter of 27 October 2010, the Tribunal rules as follows:

- (1) Respondent's request for further specific information on the identity of the Claimants having tendered into the 2010 Exchange Offer is denied based on the following main reasons:
  - (a) Claimants have already submitted a list of all Claimants having withdrawn from the present arbitration since 14 September 2006 in updated Annex L to their Request for Arbitration, including those having tendered into the 2010 Exchange Offer;
  - (b) At this stage of the arbitration proceedings, which does not include issues relating to individual Claimants, the Tribunal sees no valid reason to make a distinction between Claimants who have withdrawn because of the 2010 Exchange Offer or because of other reasons. The question of a withdrawal and its consequences on the present proceedings is the same for all Claimants having withdrawn irrespective of the specific reasons for such withdrawal;
  - (c) Whether or not the tendering into the 2010 Exchange Offer has an impact on certain Claimants' ability to pursue claims against Argentina in other fora is not directly related to this arbitration and is to be distinguished from the question of the conditions and effects of a withdrawal of such Claimants from the present proceedings;

- (2) Respondent's request regarding the allocation of arbitration costs concerning withdrawn Claimants will be dealt with in the Tribunal's upcoming conclusions on jurisdiction, together with the question of the withdrawal. In addition, Claimants' objection thereto and the alternative request for further opportunity to comment on this issue are rejected for the following reasons:
- (a) Respondent's request regarding the allocation of the arbitration costs concerning withdrawn Claimants is not an independent request, but a mere modality of its request for an order of discontinuance regarding such Claimants;
  - (b) The question of the adequacy or necessity of an order of discontinuance is connected to the question of the withdrawal of certain Claimants, whether such withdrawal is linked to the 2010 Exchange Offer or to other reasons;
  - (c) The question of certain Claimants' withdrawal is not a new issue and forms part of the jurisdictional issues to be determined by the Tribunal. Both Parties have had ample opportunities to discuss the conditions, effect and scope of such a withdrawal, including its relationship with an order for discontinuance under ICSID Arbitration Rule 44, this question being part of Issue No. 3 of the List of 11 Issues of 9 May 2008 and having been addressed in the Parties' various written submissions (e.g. C-MJ §§ 501 et seq., 538-543; C-R-MJ §§ 530 et seq.; C-PHB §§ 309 et seq.; R-MJ §§ 369 et seq., R-R-MJ §§ 622 et seq.; R-PHB §§ 225 et seq. and 253 et seq.; see further Hearing Tr. Day 7 p. 1825/l. 14 to 1826/l. 19);
  - (d) The Tribunal sees no reason to re-open the discussion on this matter, all the more that Claimants' Counsel have expressed in the past their incapacity of further representing withdrawn Claimants (e.g. Hearing Tr. Day 2 p. 421/l. 13 to 421/l. 19).

**Consequently:**

- (1) Respondent's request for further specific information on the identity of the Claimants having tendered into the 2010 Exchange Offer is denied;**
- (2) Respondent's request regarding the allocation of arbitration costs concerning withdrawn Claimants will be dealt with in the Tribunal's upcoming conclusions on jurisdiction together with the question of the withdrawal of certain Claimants. In addition, Claimants' objection thereto and the alternative request for further opportunity to comment on this issue are rejected.**

**Notwithstanding the above rulings, and depending on the Tribunal's upcoming decision regarding the issue of withdrawal of certain Claimants, the Tribunal reserves the right to re-evaluate whether or not it is necessary to seek further information from the Parties with regard to the withdrawal of specific Claimants.**

On behalf of the Tribunal,

[signed]

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Pierre Tercier,  
Chairman