

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic
(ICSID Case No. ARB/13/8)

PROCEDURAL ORDER NO. 1

Eduardo Zuleta, President of the Tribunal
Brigitte Stern, Arbitrator
John M. Townsend, Arbitrator

Secretary of the Tribunal
Martina Polasek

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Introduction

The first session of the Arbitral Tribunal was held on December 17, 2013, at 1 p.m. EST, 7 p.m. CET, by telephone conference.

Participating in the conference were:

Members of the Tribunal

Eduardo Zuleta	President of the Tribunal
Brigitte Stern	Arbitrator
John M. Townsend	Arbitrator

ICSID Secretariat:

Martina Polasek	Secretary of the Tribunal
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Participating on behalf of the Claimants:

David W. Rivkin, Debevoise & Plimpton LLP
Catherine M. Amirfar, Debevoise & Plimpton LLP
Rebecca Jenkin, Debevoise & Plimpton LLP
Dušan Sedláček, Havel, Holasek & Partners s.r.o.

Participating on behalf of the Respondent:

Styliani Charitaki, Member of the Legal Council of the State
Emmanuela Panopoulou, Member of the Legal Council of the State
Claudia Annacker, Cleary Gottlieb Steen & Hamilton LLP
Christopher Moore, Cleary Gottlieb Steen & Hamilton LLP
Enikő Horváth, Cleary Gottlieb Steen & Hamilton LLP
Laurie Achtouk-Spivak, Cleary Gottlieb Steen & Hamilton LLP

The President of the Tribunal (President) opened the session at 1 p.m. EST and welcomed the participants.

The Tribunal and the parties considered the following:

- The Draft Agenda and Draft Procedural Order circulated by the Tribunal Secretary on November 7, 2013; and

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- The parties' comments on the Draft Agenda and the Draft Procedural Order received on November 27 and December 13, 2013, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The Tribunal approved the parties' agreements and addressed those items on which the parties did not agree.

The session was adjourned at 2.55 p.m. EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on October 21, 2013 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on October 21, 2013.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.3. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Decisions and Procedural Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 5.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Delegation of Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President has the power to fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Martina Polasek, Team Leader/Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Martina Polasek
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Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-4567
Fax: + 1 (202) 522-2615
Email: mpolasek@worldbank.org
Paralegal email: oakinyode@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:

Martina Polasek
701 18th Street, N.W. ("J Building")
2nd Floor
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8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

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9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of October 23, 2013, ICSID requested that each party pay US\$150,000 to defray the initial costs of the proceeding. ICSID received Claimants' payment on November 4, 2013 and the Respondent's payment on November 21, 2013.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. Washington D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree, and the parties agree to hold hearings in Paris.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.

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- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
 - 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
 - 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
 - 11.7. The parties will notify the Tribunal, as soon as possible, and no later than 25 days before the hearing, which witnesses or experts require interpretation.
 - 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
12. Routing of Communications
Administrative and Financial Regulation 24
- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
 - 12.2. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.
 - 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23
- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

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pleading with the supporting documentation to the FTP server created for this case.

13.1.1. courier to the Tribunal Secretary within three business days:

13.1.1.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.1.1.2. four minimum hard copies in A4/Letter format of the entire submission, including the pleading as well as the witness statements, expert reports, and documents (but not including legal authorities); and

13.1.1.3. five minimum USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading as well as the witness statements, expert reports, documents, and legal authorities.

13.1.2. at the same time, courier to the opposing party at the address(es) indicated at §8.1 above:

13.1.2.1. one hard copy in A4/Letter format of the entire submission, including the pleading as well as the witness statements, expert reports, and documents (but not including legal authorities); and

13.1.2.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading as well as the witness statements, expert reports, documents, and legal authorities.

13.2. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.3. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

13.4. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.5. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

² The A4/Letter format is required for ICSID's archiving.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. Following the Parties' agreement to bifurcate jurisdiction from the merits, a procedural schedule on jurisdiction was established as follows:

ACTION	DATES
Respondent's request for production of documents relevant to the issues of jurisdiction	January 10, 2014
Claimants' production of documents	January 24, 2014
Respondent's Memorial on Jurisdiction	March 24, 2014
Claimants' Memorial on Merits and Counter-Memorial on Jurisdiction	April 24, 2014
Respondent's request for supplementary documents relevant to jurisdiction	May 8, 2014
Claimants' production of documents	May 22, 2014
Respondent's Reply on Jurisdiction	June 18, 2014
Hearing on Jurisdiction	July 9-10, 2014 (The Tribunal agreed to reserve July 11 th , 2014 for deliberations)
Decision on Jurisdiction/Award	by November 15, 2014

15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. Production of documents shall be governed by Article 3 of the *International Bar Association Rules on the Taking of Evidence in International Arbitration (2010)*, except where inconsistent with this Procedural Order or any later order of the Tribunal, in which case the orders of this Tribunal shall prevail.

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- 15.2. The parties shall submit their request for the Tribunal's decision, if any, in the form of a Redfern schedule.
- 15.3. The failure to produce as ordered may result in adverse inferences drawn by the Tribunal as regards the credibility of a witness or the merits of the defaulting party's case.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties may be submitted in rebuttal with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter "C-" for factual exhibits and "CL-" for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter "R-" for factual exhibits and "RL-" for legal exhibits containing authorities etc.
 - 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.

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- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. To avoid duplicating submissions, the parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 17.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 17.3. Each witness statement and expert report shall be signed and dated by the witness.
18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. Witness statements shall stand in lieu of direct examination during the hearing. Accordingly, witnesses shall testify at the hearing only if they are called by the opposing party or the Tribunal for cross-examination. In the event that a witness

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is called by the opposing party or the Tribunal, the party that has submitted a witness statement shall be responsible for summoning the witness to the hearing.

- 18.2. During the hearing, the party presenting the witness may conduct a brief direct examination. Re-direct examination shall be limited to the subject of cross-examination.
- 18.3. The Tribunal may examine the witness or expert at any time during the hearing.
- 18.4. No less than thirty (30) days before the hearing, each party will identify the fact and expert witnesses of the opposing party whom it intends to cross-examine.
- 18.5. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.6. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons.
- 18.7. Unless the parties agree, the Tribunal will determine at the pre-hearing organizational meeting held in accordance §19 whether factual and expert witnesses shall be allowed in the hearing room when not being examined.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
- 19.2. Pre-hearing organizational meetings shall be held on the dates determined by the Tribunal in prior consultation with the parties.

20. Hearings
Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing on jurisdiction shall take place on July 9 and 10, 2014 in Washington, D.C.

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- 20.3. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.4. The principle of equal time shall be observed at the hearing through the use of a “chess-clock” procedure, with the Secretary of the Tribunal responsible for keeping time.
- 20.5. The parties will inform the Tribunal during the pre-hearing organizational meeting whether they consent to hold all or part(s) of the hearing in public.
- 20.6. At the hearing, there will be no use of new documentary evidence not already in the record, without the express permission of the Tribunal on a showing of good cause. This does not concern the production of new public international law authorities, which may be referred to by a party at the hearing upon notice and production to the other party at least 24 hours before their use.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 21.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.4. The parties shall agree on any corrections to the transcripts within 15 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties or court reporter in the transcripts (“revised transcripts”). In case of disagreement between the parties, the Tribunal shall decide upon such disagreement and any correction adopted by the Tribunal shall be entered by the parties or court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

22.1. Whether there will be post-hearing briefs, and if so, their content and format, will be addressed at the close of hearing.

22.2. No additional documentary evidence may be produced together with the post-hearing briefs, except with leave from or at the request of the Tribunal.

23. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

23.1. The parties consent to ICSID publication of any ruling issued in the present proceeding.

[Signed]

Eduardo Zuleta
President of the Tribunal
Date: December 20, 2013