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December 4, 2012

Members of the *ad hoc* Committee
Professor Emmanuel Gaillard
Professor Michael C. Pryles
Professor Christoph Schreuer

Re: Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador (ICSID Case No. ARB/09/17) – Annulment Proceeding

Dear Members of the Committee,

I am writing on instruction from the Government of El Salvador, with regard to the default letter sent by the ICSID Secretariat last week on account of Applicants' failure to pay the second advance payment in this annulment proceeding, and in light of the proximity of the due date for El Salvador to file its Rejoinder.

According to the default letter, the final date for either party to pay the required amount following the default is now Monday, December 17, 2012. El Salvador's Rejoinder is due on Friday, December 28, 2012.

As we have stated before, El Salvador cannot relieve Applicants of their obligation of bearing the sole financial responsibility for making the advance payments for their application for annulment. Therefore, whether the required payment is received by the due date will depend solely on Applicants' ability to make that payment. The recent history of this case strongly suggests that this new declaration of default will lead to another stay of the proceeding, which would in turn delay the hearing, and might even lead to the discontinuance of the annulment proceeding.

Taking into account the time lag of several days for the ICSID Secretariat to receive confirmation from the World Bank's Financial Department of whether Applicants' payment is received by December 17, 2012, a potential motion from the Secretary-General to stay the proceeding would be made at around the same time El Salvador's Rejoinder is currently due, the week of December 24-28, which includes a major holiday.

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Such result would be unfair to El Salvador, which would be forced to spend significant resources preparing a major written submission precisely at a time when the annulment proceeding might be stayed and even discontinued. On the other hand, if the proceeding is stayed but subsequently resumed, the filing of El Salvador's Rejoinder by the current due date of December 28, 2012, would give Applicants an unfair advantage, because Applicants would have the Rejoinder in their possession for several months before a new hearing could be rescheduled. This would be an undeserved reward for their failure to comply with their financial obligations.

Therefore, in light of the default letter issued by ICSID last week, taking into account the potential stay of the proceeding that appears likely to follow, and the need to safeguard the procedural fairness of this annulment proceeding, El Salvador requests an extension of the time limit for the filing of its Rejoinder, currently due on December 28, 2012.

Instead of a new fixed date, El Salvador proposes the establishment of a time limit triggered by the date when Applicants make their payment or, if the proceeding has been stayed, the date on which the proceeding is resumed. El Salvador also requests that, regardless of the date of payment, the due date not be earlier than two weeks after the current due date, to give El Salvador two weeks to resume preparation of its Rejoinder if Applicants make the required payment before December 28. The due date in the latter situation would be January 11, 2013, one month before the date currently scheduled for the hearing, February 11, 2013.

El Salvador therefore requests and proposes that the current due date to file its Rejoinder, December 28, 2012, be replaced by the following: "El Salvador will file its Rejoinder no later than two weeks from the date when the parties receive confirmation from the ICSID Secretariat that Applicants have made their required payment, if the proceeding has not been stayed; or no later than two weeks after the proceeding resumes, if a stay has been ordered; but in any event no earlier than Friday, January 11, 2013."

Sincerely,



Luis Parada