

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

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

CLARIFICATION TO PROCEDURAL ORDER NO. 6

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

Secretary of the Tribunal
Martina Polasek

1. On July 20, 2014 the Tribunal issued Procedural Order No. 6 whereby it decided on the dispute that existed between Claimants and Respondent regarding the production of certain documents.
2. On July 21, 2014, Respondent requested from the Tribunal clarification of Procedural Order No. 6, with respect to Respondent's Requests Nos. 2 and 7, as narrowed by the Tribunal and reflected in the Redfern Schedule appended to Procedural Order No. 6 (Annex A).
3. Respondent's first request for clarification referred to Respondent's Request No. 7, which was granted by the Tribunal in the following terms:

"To the extent not already delivered to Respondent, Claimants shall produce documents [REDACTED] limited to those related to questions or inquiries from [REDACTED] and their corresponding replies by Claimants exclusively on the following two topics: (i) Claimants' reclassification of Postova's portfolio of GGBs from HTM to AFS; and (ii) the [REDACTED] agreements already produced by Claimants in these proceedings."¹

4. Respondent notes that the category of documents concerning the classification or reclassification of the bonds made by Claimants to which the Tribunal referred to in Procedural Order No. 6, Analysis section ¶8, appears to be broader than the one identified in Request No. 7.²
5. The Tribunal notes that in fact Procedural Order No. 6, Analysis section ¶8, covers "*the classification or reclassification of the bonds made by Claimants (available for sale ("AFS"), held-to-maturity ("HTM") or held-for-trading ("HFT"))*"³. Consequently, the clarification requested by Respondent is accepted by the Tribunal and therefore, Request No. 7 is hereby amended to read as follows:

"To the extent not already delivered to Respondent, Claimants shall produce documents [REDACTED] limited to those related to questions or inquiries from [REDACTED] and their corresponding replies by Claimants exclusively on the following two topics: (i) Claimant's classification or reclassification of the bonds made by Claimants (available for sale ("AFS"), held-to-maturity ("HTM") or held-for-trading ("HFT")); and (ii) the [REDACTED] agreements already produced by Claimants in these proceedings".

6. Respondent's second request for clarification refers to Respondent's Request No. 2, which was granted by the Tribunal in the following terms:

"To the extent not already produced, Claimants shall provide their own internal documents adopting the decisions to designate and/or re-designate any of the Interests in Bonds held in Postova's portfolio at any

¹ Procedural Order No. 6, dated July 20, 2014, Annex A, Decision on Request No. 7, pp.17-18

² Letter from Cleary Gottlieb Steen & Hamilton LLP, dated July 21, 2014, pp. 1-2

³ Procedural Order No. 6, dated July 20, 2014, Analysis Section, ¶8 (a)

time between January 1, 2010 and the present as available-for-sale (“AFS”), held-to-maturity (“HTM”) or held-for-trading (“HFT”).”⁴

7. Respondent seeks clarification to specify that Claimants should not only produce documents containing their ultimate decision to designate or re-designate their GGB Interests, but also documents providing rationale for such decision of designation or re-designation.⁵
8. The Tribunal understands that the documents containing the final decision for designation or re designation may not include the rationale for the given decision, and that a clarification to that effect may be required. However, the specificity of the category of documents admitted by the Tribunal must be maintained. Therefore, Request No. 2 is hereby amended to read as follows:

“To the extent not already produced, Claimants shall provide their own internal documents adopting the decisions to designate and/or re-designate any of the Interests in Bonds held in Postova’s portfolio at any time between January 1, 2010 and the present as available-for-sale (“AFS”), held-to-maturity (“HTM”) or held-for-trading (“HFT”). To the extent that the internal documents adopting the aforesaid decisions to designate and/or re-designate do not contain the rationale for the designation or re designation, Claimants shall produce the specific document or documents that contain the rationale for the ultimate decision of designation or re designation, but need not search for or produce all documents that make reference to such rationale”.

9. The clarifications to Requests Nos. 2 and 7 are reflected in the amended Redfern Schedule attached hereto Annex A.

[signed]

Eduardo Zuleta

President of the Tribunal

Date: July 23, 2014

⁴ Procedural Order No. 6, dated July 20, 2014, Annex A, Decision on Request No. 2, p. 8

⁵ Letter from Cleary Gottlieb Steen & Hamilton LLP, dated July 21, 2014, p. 2