

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

TS VILLALBA GMBH AND OTHERS

Claimants

and

KINGDOM OF SPAIN

Respondent

ICSID Case No. ARB/21/43

**ORDER OF THE SECRETARY-GENERAL TAKING NOTE OF THE DISCONTINUANCE
OF THE PROCEEDING**

Date of dispatch to the Parties: 24 March 2022

REPRESENTATION OF THE PARTIES

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1. On 30 August 2021, the International Centre for Settlement of Investment Disputes (“**ICSID**”) received a request for arbitration (the “**Request**”) from TS Villalba GmbH and others (the “**Claimants**”) for the institution of arbitration proceedings under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “**ICSID Convention**”), in respect of a dispute with the Kingdom of Spain (the “**Respondent**”, and jointly with the Claimants, the “**Parties**”).
2. The Request was registered on 16 September 2021, pursuant to Article 36(3) of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.
3. The Parties agreed to constitute the Arbitral Tribunal in accordance with Article 37(2)(a) of the ICSID Convention and that the Tribunal would consist of three arbitrators, one to be appointed by each Party, with the third arbitrator and President of the Tribunal to be appointed by agreement of the Parties. The details of the method of constituting the Tribunal were agreed by the Parties in their communications of 6, 19, 20, 21, and 25 October 2021.¹
4. On 27 October 2021, the Claimants appointed Mr. D. Brian King, a national of the United States of America, as an arbitrator. On 29 October 2021, the Secretariat informed the Parties that Mr. King had accepted his appointment. On 17 November 2021, the Respondent

¹ The agreed method of constituting the Tribunal read as follows:

- 1) The Arbitral Tribunal shall consist of three arbitrators.
- 2) The Claimants shall endeavor to appoint one arbitrator not later than October 27, 2021. In the event the Claimants make their appointment after that date, the date in 3) shall be extended in kind.
- 3) The Respondent shall appoint one arbitrator not later than November 17, 2021.
- 4) The parties shall make their best efforts to appoint by agreement the third arbitrator, who shall be the president of the Arbitral Tribunal, before December 14, 2021. The parties’ representatives may communicate with their respective co-arbitrators for the purpose of the selection of the presiding arbitrator.
- 5) In case either party has not appointed an arbitrator after the referred dates or no agreement is reached regarding the appointment of the president of the Arbitral Tribunal, the parties agree on the following rules, which expressly exclude the procedure set forth in Article 38 of the Convention:
 1. From December 14, 2021 on, either party may request the Secretary-General of ICSID to appoint the arbitrator or arbitrators not yet appointed.
 2. The arbitrator or arbitrators appointed by the Secretary-General may be appointed from outside the Panel of Arbitrators and shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.
 3. The Secretary-General shall make its appointment after having consulted both parties under a ballot procedure with candidates who may be from outside the Panel of Arbitrators and shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.
- 6) The Claimants shall communicate to the Secretary-General of ICSID this agreement on the method for the constitution of the arbitral tribunal, and the Respondent shall promptly confirm its consent to the agreement.

appointed Mr. Paul Sreenan SC, a national of Ireland, as an arbitrator. On 19 November 2021, the Secretariat informed the Parties that Mr. Sreenan had accepted his appointment.

5. By communications of 14 December 2021, the Parties advised the Secretariat of their agreement to extend the deadline for them to make their best efforts to appoint by agreement the presiding arbitrator from 14 to 22 December 2021.
6. On 17 December 2021, the Parties informed the Secretariat of their further agreement to exchange a list of three proposed candidates to act as President of the Tribunal, which they did on that same date. On 10 January 2022, pursuant to the Parties' further agreement of 20 December 2021, each Party informed the Secretariat as to the acceptability of the candidates proposed by the other Party; each Party rejected the other Party's list of candidates.
7. On 14 March 2022, the Secretariat received a letter from the Claimants, requesting the discontinuance of the proceeding pursuant to Rule 44 of the ICSID Rules of Procedure for Arbitration Proceedings ("**Arbitration Rules**").
8. Rule 44 of the ICSID Arbitration Rules provides:

If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.
9. On the same date, in accordance with Rule 44 of the ICSID Arbitration Rules, the Secretary-General sent a letter to the Parties ordering the Respondent to state by 21 March 2022 whether or not it opposed the discontinuance of the proceeding.
10. On 15 March 2022, the ICSID Secretariat received a letter from the Respondent stating that it had no objection to the discontinuance of the proceeding.

ORDER

11. THEREFORE, considering the above and in accordance with Rule 44 of the ICSID Arbitration Rules, I hereby take note of the discontinuance of the proceeding.

A handwritten signature in black ink, appearing to read "Meg Kinnear". The signature is written in a cursive, flowing style.

Meg Kinnear
Secretary-General