

Italian Bondholders Push Forward at World Bank Despite Desperate Bad-Faith Measures By Argentina

Stock states, "The World Bank Tribunal and the bondholders are prepared to advance to the merits of the case. Argentina's procedural delays only emphasize its unlawful treatment of the bondholders. The bondholders will persevere and the case will move forward in order to hold Argentina accountable for its actions."

Following its landmark 4 August 2011 decision in favor of the Italian bondholders, the international Tribunal presiding over the arbitration against Argentina at the World Bank's International Centre for Settlement of Investment Disputes (ICSID) advanced to the next phase of the arbitration.

In its Decision, the Tribunal resolved many critical issues (see TFA press statement dated August 11, 2011, available at tfargentina.it) and also identified certain issues that would be considered after the parties had addressed and the Tribunal determined the procedure to be followed. On 25 August, the Tribunal ordered the parties to file comments on procedural matters for the next phase, after which it would convene a conference with the parties. In compliance with the Tribunal's directive, on 15 September Claimants submitted a comprehensive procedural proposal, with supporting opinions by their experts on matters of international law, mass claims, and data management, all as identified in the Decision.

Argentina chose to unilaterally disregard the Tribunal's deadline for procedural submissions, as it has disregarded other Tribunal orders throughout the proceeding. Instead, Argentina filed a surprise request to disqualify two of the three Tribunal members: Chairman Pierre Tercier, appointed by party agreement, and Claimants' party-appointed arbitrator Albert Jan van den Berg. Both Tribunal members are highly experienced arbitrators and held in the highest regard in the international community. Both have participated on the Tribunal for years without objection by either party. Argentina's objection to the arbitrators arose only after the issuance of the 4 August decision rejecting Argentina's objections to jurisdiction.

Argentina alleges that the arbitrators purportedly demonstrated bias against Argentina by rejecting its objections in the Decision on Jurisdiction, and by rejecting a last-minute request for "provisional measures" which Argentina had filed just prior to issuance of the Decision. Since filing its disqualification request at ICSID, Argentina also has released the full submission to the press for publication – in direct violation of the Confidentiality Order issued by the Tribunal in January 2010. Claimants will not violate the Confidentiality Order, strongly object to Argentina's violation and rely here on public information to address Argentina's allegations.

Argentina's request to disqualify the arbitrators is unsupported by law and reflects Argentina's desperation following its defeat in the jurisdictional phase. Under the established governing standard under the ICSID Convention and ICSID Arbitration Rules, a Tribunal member cannot be disqualified simply because a party disagrees with the Tribunal's decision. Notably, Argentina's similar attempts to challenge arbitrators in prior ICSID cases on the basis of their rulings have all been rejected. In addition, Argentina's particular disagreements with the Tribunal's rulings are completely unfounded:

- Majority Decision. Argentina argues that the two challenged arbitrators improperly issued their majority Decision on Jurisdiction without the dissenting opinion of the

third arbitrator, Georges Abi-Saab, appointed by Argentina. To the contrary, the authority to issue a majority decision is well-established under the Convention and the Rules, and the record demonstrates that all Tribunal members participated in the long deliberation process. The dissent is still pending, now 18 months since the conclusion of the hearing.

- Claimant Handwriting. Argentina argues that the Tribunal failed to decide questions relating to the signatures of individual Claimants on documents. However, Claimants already demonstrated that Argentina's handwriting allegations were unsubstantiated and not applicable to all Claimants. In fact, the two individuals that Argentina's arbitrator challenge focuses on withdrew from the proceedings more than a year ago. Moreover, the scope of the first phase was limited to general legal issues – and expressly excluded individual issues, as confirmed in the Decision on Jurisdiction. Argentina's arguments are contrary to the established procedural order and the plain language of the Decision.
- Right of Defense. Argentina claims that a proceeding involving thousands of Claimants will violate its right of defense. The Tribunal already assessed and rejected this argument. Indeed, Argentina sought investments from thousands of investors, benefited from those investments, defaulted on and arbitrarily repudiated billions of dollars of bonds (contrary to guaranties in its laws and treaties), deconstructed the legal framework it had promised, and ultimately has only itself to blame for the number of bondholders seeking recovery of their investments. Further, the Tribunal recently gave both parties the opportunity to comment on procedural issues, but Argentina chose to ignore the Tribunal's deadline.
- Judgment of Issues. Argentina argues that the Tribunal "prejudged" certain issues in its Decision, thus precluding further inquiry in the future. To the contrary, the arbitrators made clear that they considered voluminous written submissions, participated in the 7-day hearing, engaged in months of deliberations, and only then set forth their conclusions in the Decision. Moreover, the Tribunal specifically reserved the possibility of inquiry into other matters. This is not a case of "prejudgment," but rather the very independent and objective judgment that arbitrators are supposed to exercise.

Claimants' counsel have objected to the challenge in the strongest possible terms, noting that the challenge is without legal merit and is simply the latest of Argentina's bad-faith efforts to avoid liability for its violations of its treaty. Counsel have pressed for the swift rejection of Argentina's arbitrator challenge so that the case may move forward in a timely fashion.

Nicola Stock, President of TFA, states, "The World Bank Tribunal and the bondholders are prepared to advance to the merits of the case. The Italian bondholders have persevered through Argentina's delay tactics before, and will continue to do so here in order to hold Argentina accountable for its actions."

According to the procedural rules governing at ICSID, Argentina's disqualification request should be decided by the Chairman of the ICSID Administrative Council, who also is President of the World Bank. The arbitration proceedings are automatically suspended pending the Chairman's decision. Following resolution of the arbitrator challenge, the suspension of the proceeding will be lifted, and the parties will proceed to the next phase of the proceeding.

This communication is being issued further to the Confidentiality Order in the case referenced above providing that the parties may engage in general discussion about the case in public, including a summary of the parties' positions.

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Italian bondholders participating in the ICSID arbitration may obtain information on the case by sending a request for information to info@tfargentina.it, or consulting the website www.tfargentina.it. Any participating bondholders who revoke their participation in the cases against Argentina referenced above place the protection of their rights against Argentina at risk.

Rome, 24 October 2011