

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

Railroad Development Corporation

Claimant

v.

The Republic of Guatemala

Respondent

ICSID Case No. ARB/07/23

STATEMENT OF JORGE DE LEÓN

JORGE SAMUEL DE LEÓN OVALLE, being duly sworn, deposes and says:

1. My name is Jorge Samuel de León Ovalle. I have been the **Administrative Manager and Chief Financial Officer** of Compañía Desarrolladora Ferroviaria, S.A. (CODEFE), also known as Ferrovías Guatemala or FVG, since the company commenced business operations in 1998. I am an Accountant, registered in the Tax Administration Superintendence under No. 17575, and I have completed the Public Accounting and Auditing curriculum in *Universidad de San Carlos de Guatemala* (the national university).

2. As FVG's Chief Financial Officer, I have been responsible for overseeing and managing all financial and accounting matters for the company, including, but not limited to, maintaining the company's financial books, invoicing customers and paying vendors, preparing financial statements, working with outside auditors, and accounting for all capital and equity contributions to FVG. As such, I am quite familiar with all of FVG's financing activities during its entire existence, including the amounts FVG's parent corporation, Railroad Development Corporation (RDC), and other persons and entities have invested in FVG.

3. In connection with this litigation, I was asked to prepare a summary chart which sets forth the total cash flow FVG directly received from financing activities from RDC and other sources from 1998-2007 including all share purchases, equity contributions and loans ("FVG Cash Flow Financing Chart").¹ I prepared this summary chart by reviewing FVG's audited financial statements and general ledger of accounts and identifying those accounting journal entries which were attributable to FVG financing activities. I also prepared a year-by-year compilation of the FVG General Ledger journal entries which back up and support the amounts stated in my summary chart of FVG financing activities.²

4. As my summary chart shows, the total direct investment in FVG from 1998-2006 was Q.114,249,298 or US\$15,386,010 and the total direct investment from 1998-2007 was Q.122,185,960 or US\$16,421,010. The amounts invested consisted of, among other things, (i) purchases of shares by RDC and local shareholders, (ii) loans, (iii) placement of debt, and (v) equity contributions.

5. As indicated above, investment in FVG includes not only amounts invested by RDC, but also amounts invested by local shareholders in Guatemala. RDC holds 82% of the outstanding shares of FVG; the remaining 18% of FVG's outstanding shares are held by other shareholders, the majority of which were purchased by a subsidiary of Cementos Progreso, International Financial Securities, Inc. (IFS), in bearer shares. The FVG Cash Flow Financing Chart breaks out the investment received by FVG from 1998-2007 into three groupings: (1) RDC investment; (2) IFS - Cementos Progreso investment; and (3) "Others." "Others" refers to "other sources of financing" received by FVG and it consists of, among other things, (i) share purchases by minority shareholders other than IFS; (ii) net fees and expenses of withdrawals covered by RDC; (iii) accounting adjustments and reclassifications; (iv) differential exchange for contributions and acknowledgments of debt; (v) 1999 interest allowance for RDC; (vi) cash exchange rate differentials; (vii) cash differential exchange of minority shareholders; (viii) CODEFE promissory notes exchange rate differential; and (ix) a loan from Banco de Occidente and Risdesa.

6. When broken out by financing source, the FVG Cash Flow Financing Chart shows that, from 1998-2007, RDC directly invested Q.94,677,236 or US\$12,504,550; IFS-Cementos invested

¹ Ex. C-145, Compañía Desarrolladora Ferroviaria, S.A. Detailed Cash-Flow Statement from Financing Activities, 1998-2007.

² Ex. C-161, Compilation of FVG General Ledger Journal Entries showing FVG financing activities, 1998-2007 (RDC003862-4080).

Q.20,025,152 or US\$2,818,614; and FVG received Q.7,483,567 or US\$1,097,848 in financing from “Others.”

7. It was brought to my attention that, although FVG’s cash flow statements show that the total amount RDC directly invested in FVG was US\$12,504,550, RDC’s financial statements show that the total amount it directly invested in FVG was US\$13,835,683, a difference of US\$1,331,133. I was asked to review RDC’s summary investment chart entitled “Railroad Development Corporation Analysis of CODEFE Investment and Expenses, 1998-2007”³ against FVG’s accounting records in order to reconcile this apparent discrepancy. My reconciliation analysis is set forth at the bottom of the FVG Cash Flow Financing Chart, under the heading “Reconciliation with RDC Analysis of CODEFE Investment.”

8. Based upon my reconciliation analysis, the approximately US\$1.3 million difference between the amounts FVG shows as receiving in direct investment from RDC and the amounts RDC states it directly invested in FVG consists of three principal components: (1) in 1998, RDC incurred pre-feasibility and due diligence expenses in the amount of \$545,629 for the FVG project, whereof US\$482,597.75 were paid in shares and US\$63,031.01 were never charged to FVG; (2) there is \$735,192.33 in accrued interest from a series of loans RDC provided to FVG from 1999 through 2003. These loans were later converted into preferred and common equity by FVG, but the accrued interest has never been fully paid and, thus, never appeared as cash flow from financing activities on FVG’s books because accrued interest is a non-cash item; (3) exchange rate issues account for an amount with no relative significance of the difference, because all RDC direct investments in FVG were made in U.S. dollars and, therefore, FVG had to convert these amounts into Guatemalan quetzals.

9. I can also state that FVG did not at any time pay any of the salaries of any RDC employee who performed work for or on FVG’s behalf. Thus, FVG did not pay any of the salaries of RDC and FVG Chairman Henry Posner III or RDC Vice-President-Operations and FVG President, Bill Duggan. It is my understanding that their salaries were always paid entirely by RDC.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: March 18, 2011

Jorge Samuel De León Ovalle

³ Ex. C-146, Railroad Development Corporation Analysis of CODEFE Investment and Expenses, 1998-2007.