

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.**

**vs**

**Romania**

**(ICSID Case No. ARB/15/31)**

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**PROCEDURAL ORDER NO. 13**

***Members of the Tribunal***

Prof. Pierre Tercier, President of the Tribunal

Prof. Horacio A. Grigera Naón, Arbitrator

Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal Yetano

***Assistant to the Tribunal***

Ms. Maria Athanasiou

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20 July 2018

**I. THE RELEVANT PROCEDURAL STEPS**

1. On 8 June 2018, the Tribunal rendered *Procedural Order No. 10*, together with Annexes A and B, ruling on the Parties' Document Production Requests (hereinafter "PO No. 10").
2. On 2 July 2018, the Tribunal rendered *Procedural Order No. 12*, together with Annexes A and B, ruling on Claimants' Privilege and Redaction Logs and on Respondent's Privilege Log (hereinafter "PO No. 12").
3. On 14 July 2018, Claimants informed the Tribunal that they provided Respondent with Supplemental Privilege and Redaction Logs on 22 June 2018, to which Respondent commented on 11 July 2018. Claimants noted that the Parties are in agreement as to the redaction of the documents listed in Claimants' Supplemental Redaction Log, but that they have not reached agreement regarding certain documents listed in Claimants' Supplemental Privilege Log. Claimants therefore asked the Tribunal to rule that the documents described in such Log are privileged and should not be produced.

According to Claimants, the disputed items consist of

4. On 18 July 2018, Respondent submitted its comments to Claimants' letter of 14 July 2018, noting the Parties' disagreement regarding the scope of the attorney-client privilege.

According to Respondent, the non-privileged portions of the documents should be disclosed, notwithstanding any general confidentiality designations on the documents (Resp. 18.07.18).

**II. THE TRIBUNAL'S CONSIDERATIONS**

5. The issue is whether certain documents listed in Claimants' Supplemental Privilege Log should be treated as privileged.

- 6.

[REDACTED]

7. [REDACTED]

8. *The Tribunal* recalls that the disputed documents in Claimants' Supplemental Privilege Log concern documents responsive to Respondent's Document Request No. 35, which states as follows:

[REDACTED]

The Tribunal granted Respondent's Request No. 35 (see PO No. 10, Annex B). Claimants then raised legal privilege as a defence in their Supplemental Privilege Log of 22 June 2018.

9. To decide, the Tribunal refers to the principles set out in its PO No. 10 and PO No. 12 regarding legal privilege. Specifically, it refers to the following:

*"The Tribunal notes that it is undisputed that a requested document which is the subject of legal privilege shall be excluded from production. Indeed, pursuant to Article 9(2)(b) of the IBA Rules, the Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document for "legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable"."* (PO No. 10, para. 44).

*"The Tribunal further notes that it is undisputed that written work product of counsel and direct communications with counsel are subject to attorney-client privilege. With respect to whether other documents are subject to attorney-client privilege or other legal privilege shall be for the Tribunal to decide in line with the aforementioned principles (see above para. 45 [referring to Article 9(3) of the IBA Rules])."* (PO No. 10, para. 46).

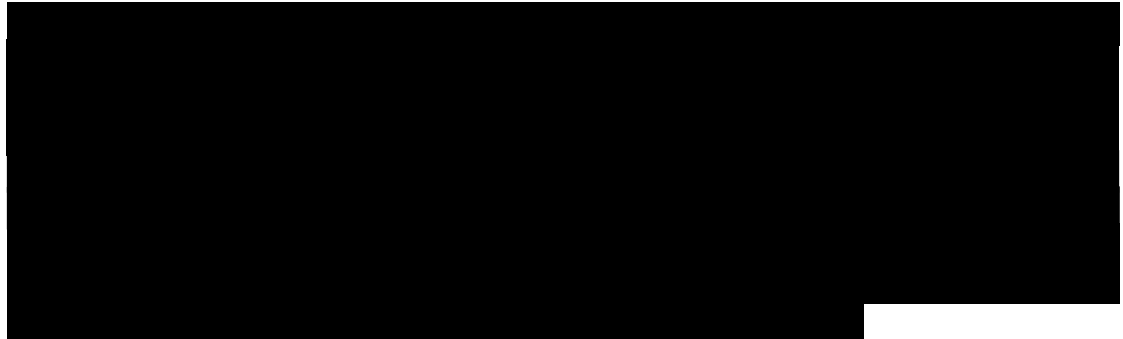
*"Therefore, where a document contains statements subject to legal privilege, such document should be disclosed but with the relevant statements redacted (Article 9(2)(b) of the IBA Rules). [...]"* (PO No. 12, para. 25).

*“This issue is independent from the question of whether this information should be communicated to the public. Such decision has to be made in accordance with PO 3.” (PO No. 12, para. 27).*

10.



11.



12. Accordingly, the Tribunal decides that the documents listed in Claimants’ Supplemental Privilege Log and responding to Respondent’s Request No. 35 are privileged and shall not be produced (see Annex A to *Procedural Order No. 13*).

**III. ORDER**

13. Having reviewed and considered the Parties’ positions, the Arbitral Tribunal hereby orders as follows:

*The documents listed in Claimants’ Supplemental Privilege Log and responding to Respondent’s Request No. 35 are privileged and shall not be produced (see Annex A to Procedural Order No. 13).*

On behalf of the Tribunal,

\_\_\_\_\_[Signed]\_\_\_\_\_  
Prof. Pierre Tercier  
President of the Tribunal