

1505



9 June 2024

To the attention of:  
1510 Mr. Jackson Cole, President of the Tribunal  
Dr. Nika Havendale, Arbitrator  
Prof. Brynn Sterling, Arbitrator

**Response to the Request for Security for Costs**

1515 Dear Members of the Tribunal,

The Claimant hereby submits its brief observations on the Respondent's request for security for costs. The Claimant reserves the right to further present its position in due course.

**1. The Respondent's action caused severe financial difficulties to the Claimant**

The Claimant does not dispute that it was late in making the payment requested by the  
1520 Centre on 25 September 2022. The late payment, however, is a direct consequence of the Respondent's actions described in the Request for Arbitration.

Contrary to the Respondent's assertions, the Claimant acted in good faith and despite the Respondent's actions, was able to pay the requested amounts.

In such circumstances, a mere 3-month suspension cannot be the basis of a request for  
1525 security for costs.

**2. The Claimant did not fail to disclose a Third-Party Funder**

ICSID Arbitration Rule 14 requires the disclosure of "the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of

the proceeding a donation or grant, or in return for remuneration dependent on the outcome of the proceeding.”

Marcial Ventures Ltd and Platonial Investments do not constitute third party funders under the definition of ICSID Arbitration Rule 14 since they have held equity in Astracommex’s parent company for several years now and the money was contributed to Astracommex further to a capital call as provided for by the bylaws of its parent company.<sup>32</sup>

Astracommex was thus under no obligation to disclose the names of Marcial Ventures Ltd and Platonial Investments to the Tribunal.

In addition, if such disclosure obligation existed (*quod non*), the financing of a party by a TPF is not sufficient to demonstrate “exceptional circumstances” which are required for a Tribunal to order security for costs.

Considering the foregoing, the Claimant requests the Tribunal to deny the Respondent’s request for security for costs.

### **3. The Claimant will be able and are willing to pay adverse costs**

Despite the Respondent’s actions that caused financial hardship for the Claimant, the Claimant will be able to honor a hypothetical cost award. First, the Claimant has assets in the form of the satellites which are sufficient to cover an adverse cost award. Second, the Claimant is a 100% owned subsidy of Astracommex Global Communications Inc., which is solvent, and thus the Claimant’s financial situation should be of no concern to the Respondent since it can enforce any cost award against the assets of the former in accordance with Nebuland’s domestic law.<sup>33</sup>

In addition, the Claimant hereby confirms that it will honor any cost award rendered against it.

Considering the foregoing, the Claimant requests the Tribunal to deny the Respondent’s request for security for costs.

  
AstroJuris Arbitration

---

<sup>32</sup> Exhibit C-10, Bylaws of Astracommex Global Satellite Communication Inc.

<sup>33</sup> Exhibit C-11, Nebuland’s Code of Civil Procedure