

# EXHIBIT 3

**Caratube International Oil Company LLP**

**v.**

**Republic of Kazakhstan**  
**(ICSID Case No. ARB/08/12)**

**Members of the Tribunal:**

- 1. Professor Karl-Heinz Böckstiegel, President**
- 2. Dr. Kamal Hossain, Arbitrator**
- 3. Dr. Gavan Griffith QC, Arbitrator**

**Date: 26 April 2010**

**Procedural Order (PO) No. 2**  
**Regarding Document Production**

**1. Introduction**

1.1. The Tribunal has taken note of the submissions of the Parties regarding the issues of document production on which they cannot agree.

1.2. The **"IBA Rules on the Taking of Evidence in International Commercial Arbitration "** to which reference is made in section 15.4 of the Minutes of the 1<sup>st</sup> Session (particularly Articles 3 and 9) can be considered as a guideline giving indications regarding the relevant criteria for what documents may be requested and ordered to be produced.

1.3. The Tribunal recognizes that, on one hand, requests and orders regarding the production of documents are today a regular feature of international arbitration, but, on the other hand, the present arbitration is a case also involving Parties domiciled in Kazakhstan which is predominantly a Civil Law country where production of documents is far less used than in Common Law countries.

1.4. The Tribunal further recognizes that, on one hand, ordering the production of documents can be helpful for a party to present its case and for the Tribunal to establish the facts relevant for the issues to be decided. But, on the other hand, the process of discovery and disclosure may be time-consuming, excessively burdensome and even oppressive. Unless carefully limited, the burden may even be disproportionate to the value of the result. Furthermore, Parties may have a legitimate interest of confidentiality.

1.5. Finally the Tribunal notes that, insofar as a Party has the **burden of proof**, it is sufficient for the other Party to deny what the respective Party has alleged and then

respond to and rebut the evidence provided by that respective Party to comply with its burden of proof.

## **2. Documents to be produced**

2.1. Having considered the related arguments by the Parties regarding the outstanding Requests of Claimant, the Tribunal invites the Parties to produce the documents and information so identified in the right hand column of the Redfern Schedules attached to this PO and also to conduct the investigations specified in the right hand column of the **annexed Redfern Schedules** and produce such documents if the investigations confirm that these documents are in Respondent's possession.

2.2. All documents and information identified according to sections 2.1. above shall be produced, **within four weeks from the date this Order is received**, to the other Party in this procedure, but not yet to the Tribunal, subject to the further qualifications and limitations in this Order. The receiving Party may then decide in how far it wishes to rely on such documents in its further submissions to the Tribunal and may submit the respective documents with its next Memorials due on the dates agreed according to sections 14.12 and 14.13 of the Minutes of the 1<sup>st</sup> Session.

2.3. To avoid any misunderstanding, the Tribunal clarifies that all of its decisions regarding the production of documents are without prejudice as to the final relevance and evidentiary value of the document in the further procedure for the Tribunal's decisions on jurisdiction and the merits..

## **3. Qualifications and Limitations of Document Production**

3.1. All documents produced under this Order may be used by the other Party only in direct connection with the present arbitration procedure.

3.2. Insofar as a Party requests the production of "all" or "any" documents of a certain category, the requested Party is only required to produce those documents which can reasonably be considered as relevant and material for the other Party to present its case and for the Tribunal to decide on the claims raised in this procedure taking into account the factual allegations and legal arguments presented by the Parties.

3.3. Of the documents ordered to be produced by the Tribunal, the following documents or categories of documents **need not be produced, but the reason for the non-production must be identified**. If they:

do not exist or do not yet exist,

or are not in the possession, custody or control of a Party,

or have already been sent or copied to the requesting Party,

or are of special political sensitivity or have been classified as secret or privileged by law or by orders of the government,

or include information regarding third parties for which the ordered Party has an obligation of confidentiality,

or are subject to attorney-client privilege under the legal or ethical rules by which Counsel of the Parties are bound in their respective jurisdictions,

or which reflect the seeking or rendering of a legal opinion by internal or external counsel.

3.4. If a document or category of documents ordered by the Tribunal contains **some** information or sections which do not have to be produced according to Section 3.3 above, the respective document **may be redacted** in such a way that those sections are excluded from the production. **The reason** for non-production or redaction and the extent of such redaction **must be indicated** in a separate note or in the document.

3.5. "Documents" should be understood to include permanent records in any form, including on paper and electronic.

#### **4. Adverse Inference**

Insofar as documents ordered are not produced or not produced as ruled in this Order, the Tribunal may take this into account in its evaluation of the respective factual allegations and evidence including an inference against the Party refusing production.

#### **5. Translation of Documents**

5.1. Since both Parties use English speaking Counsel, they are invited to produce any documents which are not in English to the other Party together with an unofficial translations into English, unless the Parties agree otherwise.

5.2. Regarding any documents a Party submits as evidence to the Tribunal, English translations must be added according to section 7.1 of the Minutes of the 1<sup>st</sup> Session.



Karl-Heinz Böckstiegel  
Chairman of Tribunal

**Two Annexes:** Redfern Schedules Claimant and Respondent with Decisions