

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE N° 2010-21 / DUN-BZII

DUNKELD INTERNATIONAL INVESTMENT LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

**TERMINATION ORDER
AND AWARD OF COSTS**

31 DECEMBER 2016

CONSIDERING:

- (A) The Tribunal's Order N° 8 of 6 February 2014, suspending these proceedings until further notice;
- (B) The Parties' Settlement Agreement of 11 September 2015;
- (C) That, pursuant to the Parties' Settlement Agreement, the "remaining issues to be determined by the Arbitral Tribunal" in PCA Case N° 2010-13 were defined to include those set out in Section 8 of the Claimant's Post-Hearing Brief in that matter, "together with the related pre-hearing submissions, evidence and submissions on costs";
- (D) That section 8.5(b) of the Claimant's Post-Hearing Brief defined the Claimant's claim for the costs of the second arbitration by reference to Section 7.6(b) of the Claimant's Reply, which in turn defined the claim by reference to Section 7.6 of the Claimant's Statement of Claim (see Statement of Reply, para. 301 n. 525);
- (E) That Section 7.6 of the Claimant's Statement of Claim and the accompanying Annexes C-222, C223, and C-224 in PCA Case N° 2010-13 set out the Claimant's claim for the fees and expenses of Allen & Overy LLP, Courtenay Coye LLP, and PricewaterhouseCoopers LLP in relation to the present arbitration, but did not specify the costs of the present Tribunal or amounts deposited as an advance on costs;
- (F) The Award of 28 June 2016 in the first Dunkeld Proceedings (PCA Case N° 2010-13), deciding, pursuant to the Parties' Settlement Agreement, the disposition of the Claimant's legal costs (those of Allen & Overy LLP, Courtenay Coye LLP, and PricewaterhouseCoopers LLP) in relation to the present proceedings (see Award, paras. 338 and 362(f));
- (G) The Tribunal's letter to the Parties of 28 June 2016, inviting the Parties to indicate whether there were any matters remaining to be decided in the present proceedings;

- (H) The Parties' respective e-mail communications of 5 July 2016, confirming that there were no issues remaining to be decided;
- (I) The Tribunal's letter to the Parties of 15 November 2016 inviting the Parties to indicate any elements they considered should be included in the termination order for the proceedings and offering to share a draft termination order with the Parties for their review;
- (J) The Respondent's e-mail communication of 20 November 2016, indicating that it did not consider that there was anything further for the Tribunal to address;
- (K) The Claimant's letter of 23 November 2016, welcoming the Tribunal's offer to share a draft of any termination order and requesting that, as the Respondent had not participated in the second Dunkeld proceedings, any remaining deposit be returned to the Claimant in full;
- (L) The Tribunal's letter to the Parties of 28 November 2016, enclosing a draft of this Termination Order and Award of Costs for the Parties' review;
- (M) The Respondent's e-mail communication of 12 December 2016, indicating that it had no further comments;
- (N) The Claimant's letter of 12 December 2016, proposing that, rather than make an award of the costs necessary to equalize the Parties' contributions to the deposit, an easier way to give credit for the Parties' unequal contributions would be to return the remaining amount to the Claimant in full;
- (O) The Claimant's argument, in its letter of 12 December 2016, that it had intended the Tribunal costs in the present proceedings to fall within the claim it advanced in PCA Case N° 2010-13 for the costs incurred in respect of these proceedings;
- (P) The Claimant's argument, in its letter of 12 December 2016, that "it will not easily be able to recover any funds that the Tribunal directs the Respondent to pay as part of a termination order";
- (Q) The Respondent's letter of 15 December 2016, objecting to the Claimant's proposal as being "based solely on the unfounded and improper assumption that GOB would not honor the Tribunal's payment directive" and confirming that the Government "will abide fully and timely with any directive the Tribunal may give regarding payment to Dunkeld";
- (R) The Claimant's letter of 21 December 2016, reiterating its proposal to return the remaining amount to the Claimant in full;
- (S) Article 34(2) of the UNCITRAL Rules, which provides as follows:

If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- (T) Article 40(3) of the UNCITRAL Rules, which provides as follows:

When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.

(U) Article 38 of the UNCITRAL Rules, which defines the “costs of arbitration” as follows:

The arbitral tribunal shall fix the costs of arbitration in its award. The term ‘costs’ includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

(V) That, as recorded in the Tribunal’s Order N° 8, the Parties agreed that the deposit held by the PCA in relation to these proceedings would also be used in connection with the first Dunkeld Proceedings (PCA Case N° 2010-13);

(W) That the Parties deposited with the PCA a total of €830,000.00 (€505,000.00 by the Claimant; €325,000.00 by the Respondent) to cover the costs of arbitration both in PCA Case N° 2010-13 and this arbitration;

(X) That, of this amount, €615,269.26 was expended to cover the combined tribunal costs (comprising the items covered in Articles 38(a) to (c) of the UNCITRAL Rules) in PCA Case N° 2010-13;

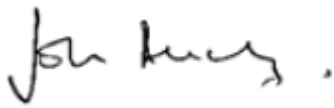
(Y) That in light of the Parties’ unequal contributions to the deposit held by the PCA, the tribunal in PCA Case N° 2010-13 effected an equal apportionment by ordering that “the Respondent shall pay to the Claimant the amount of €67,590.94 (corresponding to the Respondent’s portion of the tribunal costs, borne by the Claimant in the first instance and half of the fees of the PCA Secretary-General and the appointing authority, borne by the Claimant in the first instance);

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The arbitral proceedings are terminated.
2. The fees in this arbitration of Mr. John Beechey, the arbitrator appointed by the Claimant, amount to €38,500.00.
3. The fees and expenses in this arbitration of Mr. Rodrigo Oreamuno, the arbitrator appointed on behalf of the Respondent, amount respectively to €43,000.00 and €2,793.08.

4. The fees in this arbitration of Professor Albert Jan van den Berg, the Presiding Arbitrator, amount to €59,708.39.
5. Pursuant to the Tribunal's Order N° 2, the International Bureau of the PCA was designated to act as Registry in this arbitration. The PCA's fees for registry services in this arbitration amount to €6,685.00.
6. Also pursuant to the Tribunal's Order N° 2, Ms. Niuscha Bassiri was appointed as Tribunal Secretary for these proceedings. Ms. Bassiri's fees in this arbitration amount to €15,462.24.
7. Other tribunal costs in this arbitration, including court reporters, interpreters, hearing room equipment, tribunal accommodation, bank charges, and all other expenses relating to the arbitration proceedings, amount to €2,950.89.
8. Based on the above figures, the combined tribunal costs in this arbitration, comprising the items covered in Articles 38(a) to (c) of the UNCITRAL Rules, total €169,099.60.
9. The Parties' respective portions of these tribunal costs, amounting to €84,549.8 for each Party, shall be deducted from the deposit. The remaining deposit, in the amount of €45,631.14 shall be returned to the Parties in proportion of their respective contributions (€27,763.52 to the Claimant; €17,867.62 to the Respondent).
10. In the course of constituting the Tribunal in this arbitration, the fee of the PCA Secretary-General for the designation of an appointing authority was €750.00. The fee of the appointing authority for the appointment of an arbitrator on behalf of the Respondent was €1,000.00. These amounts, comprising the items covered in Article 38(f) of the UNCITRAL Rules, were borne by the Claimant in the first instance.
11. In light of the circumstances of this Order, the Tribunal decides that the Parties shall bear the costs of arbitration in equal shares. In light, however, of the Parties' unequal contributions to the deposit held by the PCA, the Tribunal effects an equal apportionment by ordering that the Respondent shall pay to the Claimant the amount of €18,336.10 (corresponding to the Respondent's portion of the tribunal costs, borne by the Claimant in the first instance, and half of the fees of the PCA Secretary-General and the appointing authority, borne by the Claimant in the first instance).

Done in The Hague, the Netherlands, the place of arbitration, on 31 December 2016.



John Beehey



Rodrigo Oreamuno



Albert Jan van den Berg
Presiding Arbitrator