

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE AGREEMENT ON
RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE CARIBBEAN
COMMUNITY AND THE DOMINICAN REPUBLIC AND THE UNCITRAL ARBITRATION RULES
(1976)**

MICHAEL ANTHONY LEE-CHIN

v.

THE DOMINICAN REPUBLIC

(ICSID Case. No. UNCT/18/3)

PROCEDURAL ORDER No. 11

Members of the Tribunal

Prof. Diego P. Fernández Arroyo, Presiding Arbitrator

Prof. Christian Leathley, Arbitrator

Prof. Marcelo Kohen, Arbitrator

Secretary of the Tribunal

Ms. Marisa Planells-Valero

March 15, 2022

I. THE PARTIES' POSITIONS

A. Claimant's Position

1. On March 3, 2022, Claimant requested the Tribunal's authorization to reference, in his responses to the Tribunal's questions of February 14, 2022, additional legal authorities that are not part of the arbitral record. In doing so, Claimant indicated that it had no objection to the Tribunal granting the same opportunity to Respondent.
2. Claimant notes that his counsel had reached out to Respondent's counsel seeking agreement on this request so that both Parties could utilize previously uncited legal authorities in order to fully respond to the Tribunal's questions, but that Respondent has rejected this request.
3. Claimant argues, *inter alia*, that denying a Party the opportunity to cite relevant legal authorities in response to the Tribunal's questions would serve no valid purpose, would impact the Parties' due process rights, and would hinder the Parties' ability to provide the Tribunal with legal authorities to fully analyze the legal issues raised by the Tribunal.

B. Respondent's Position

4. On March 10, 2022, Respondent opposed Claimant's request. According to Respondent, paragraph 45 of Procedural Order No. 8 unmistakably states that the Parties cannot incorporate or make reference to authorities that are not part of the arbitral record in their Post-Hearing Briefs. Respondent further alleges that the Parties have already had numerous opportunities to discuss their position and that the Tribunal's questions do not relate to any new topic.
5. In addition, Respondent argues that Claimant has failed to prove the existence of exceptional circumstances within the meaning of paragraph 14.4 of Procedural Order No. 1. Lastly, Respondent alleges that Claimant's request would create unnecessary costs and would delay the proceedings.

II. THE TRIBUNAL'S DECISION

6. The Tribunal accepts that it may, in principle, but only exceptionally, decide to accept the incorporation of new documents. However, the Tribunal considers that, in the present case, Claimant has failed to prove the existence of the exceptional circumstances needed to justify the incorporation of new legal authorities into the record at this late stage of the proceedings. The texts of Procedural Order No. 1 and Procedural Order No. 8 are clear in this sense. Additionally, the Tribunal notes that the Parties have had numerous opportunities to present their case and to submit legal authorities in support of their arguments.
7. Accordingly, the Tribunal has decided to reject Claimant's request and confirms that no new authorities should be referenced in the Parties' response to the Tribunal's questions of February 14, 2022.

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For and on behalf of the Tribunal,

[signed]

Prof. Diego P. Fernández Arroyo
President of the Tribunal
Date: March 15, 2022