

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE N° 2010-13 / DUN-BZ

DUNKELD INTERNATIONAL INVESTMENT LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 4

21 JULY 2014

CONSIDERING:

- (A) The initiation on 4 December 2009 of these arbitration proceedings;
- (B) The initiation on 4 May 2010 of arbitration proceedings between British Caribbean Bank Limited and the Government of Belize;
- (C) The hearing in *British Caribbean Bank Ltd. v. The Government of Belize* held in San José, Costa Rica from 17-19 March 2014;
- (D) The Respondent's letter of 9 June 2014, requesting permission to use the transcript of the March 2014 hearing in *British Caribbean Bank Ltd. v. The Government of Belize* in these proceedings on the grounds that (a) both matters involve "many overlapping factual and legal issues"; (b) introducing the transcript from *British Caribbean Bank Ltd. v. The Government of Belize* in these proceedings "is necessary for GOB to defend its rights and for *the truth* to be aired out"; (c) "various testimony taken in the BCB Arbitration merits hearing is directly relevant to the Dunkeld Arbitration"; (d) as the Claimant and British Caribbean Bank are represented by the same counsel there is "no risk of unfair advantage or prejudice"; and (e) as the same Tribunal presides over both matters, it is "already aware of the facts that were presented at the hearing" (the "Request");
- (E) The Claimant's letter of 19 June 2014, in which it (a) opposes the Respondent's Request; (b) notes that the Respondent has previously opposed efforts to coordinate the two arbitrations and that it is "not now open for the Government to change its stance as this would be prejudicial [to] Dunkeld"; (c) submits that "Dunkeld is entitled to advance evidence in support of its legal case as it sees fit, being required to submit evidence only insofar as it seeks to rely on that evidence"; (d) considers that the status of the hearing

transcripts in these proceedings would be unclear, giving rise to issues of procedural fairness; and (e) argues that the Government has not substantiated its position that it would be severely handicapped by the exclusion of the transcripts;

- (F) The Respondent's letter of 25 June 2014, in which it argues that Article 25(4) of the UNCITRAL Arbitration Rules, applied to the *British Caribbean Bank Ltd. v. The Government of Belize*, would not prevent the introduction of the transcript and elaborates on the arguments recorded in Recital (D) above in favour of permitting the use of the transcripts;
- (G) The Claimant's letter of 30 June 2014, in which it elaborates the arguments recorded in Recital (E) above and argues further that, if admitted, there is a risk that the hearing transcript would be used out of context;
- (H) That these proceedings and the proceedings in *British Caribbean Bank Ltd. v. The Government of Belize* are being heard by the same Tribunal;
- (I) That the Claimant and the claimant in *British Caribbean Bank Ltd. v. The Government of Belize* are represented by the same counsel as is the Respondent in both matters;
- (J) That in the present circumstances, the Tribunal, the Respondent, and the Claimant are already effectively aware of the content of the hearing transcripts in *British Caribbean Bank Ltd. v. The Government of Belize*;
- (K) The Claimant's letter to the Respondent of 28 June 2013 in *British Caribbean Bank Ltd. v. The Government of Belize*, proposing "that the BCB and Dunkeld arbitrations be heard together on a concurrent basis" and noting that

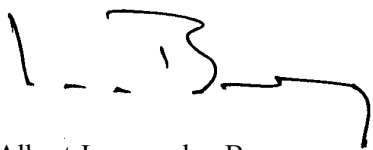
[t]here is a large overlap between the legal and factual issues which arise in both the BCB and Dunkeld arbitrations. The claims in those arbitrations are advanced under largely the same provisions of the UK-Belize Bilateral Investment Treaty. They also arise out of the same underlying legislative measures. Moreover, the same arbitral tribunal presides over both arbitrations.

- (L) That in light of the foregoing, granting Respondent's Request would neither prejudice Claimant nor would it be procedurally unfair;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The Respondent's Request to use the transcript of the hearing in *British Caribbean Bank Ltd. v. The Government of Belize* in these proceedings is **granted**.

On behalf of the Arbitral Tribunal,

A handwritten signature in black ink, appearing to be 'A. J. van den Berg', with a long horizontal stroke extending to the right.

Albert Jan van den Berg,
Presiding Arbitrator