

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE NO. 2010-18 / BCB-BZ

BRITISH CARIBBEAN BANK LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 11

17 January 2015

CONSIDERING:

- (A) The Arbitral Tribunal's issuance of its Award on 19 December 2014;
- (B) Paragraph 4 of the Arbitral Tribunal's Order N° 4, which provided as follows:
- For the time being the procedural orders, decisions and awards issued and rendered by the Tribunal shall be published on the website of the Permanent Court of Arbitration, subject to redactions based on confidentiality of commercially or politically sensitive or privileged matters as requested by either Party.
- (C) The Arbitral Tribunal's letter to the Parties of 7 January 2015, inviting the Parties to indicate by 14 January 2015, any redactions they wished to request to the Award;
- (D) The Respondent's e-mail communication of 13 January 2015, indicating that the Respondent intended to make an application pursuant to the provisions of the UNCITRAL Arbitration Rules relating to the interpretation or correction of the award or to the issuance of an additional award, and requesting –
- that the parties be provided with an extension until after GOB's motion is decided by the Tribunal to comment regarding the publication of and any redactions to the award, given that the award may have to be modified pursuant to the motion.
- (E) The Arbitral Tribunal's e-mail communication of 13 January 2015, suspending the deadline for the Parties to address the redaction of the Award, "pending the Respondent's application for further action by the Tribunal";

- (F) The Claimant's e-mail communication of 14 January 2015, informing the Arbitral Tribunal that the Parties would be appearing in a related hearing before the Caribbean Court of Justice on 23 January 2015 and indicating that –

in the event that the Tribunal has not been able to determine any applications that may be filed by the Respondent and consider any suggested redactions by the 23rd January, the Bank proposes to adduce the Award in its current form before the CCJ, and when doing so will inform the Court that it remains subject to those applications and is as yet not a public document.

- (G) The Respondent's e-mail communication of 14 January 2015, arguing that, in light of its anticipated application –

there is a potential for the Award to be completely different after the motion is decided by the Tribunal. As a consequence, and because the Award may be "corrected" under the UNCITRAL Rules (the title of Article 38 is, precisely, "Correction of Award"), the Award is not final and should not be presented to the CCJ.

- (H) The Claimant's e-mail communication of 15 January 2015, (a) contesting the Respondent's understanding of the scope of the changes permissible under the provisions of the UNCITRAL Rules on the correction of an award; (b) arguing that the Respondent's public comments on the Award are inconsistent with its opposition to publication at this time; (c) arguing that a situation of imminent parallel proceedings constitutes an exception to the duty of confidentiality; and (d) submitting that –

[i]f the CCJ proceeds on a misinformed basis, that would be difficult to reverse given that the hearing on 23 January 2015 is the final hearing in the appeal.

- (I) The Respondent's e-mail communication of 16 January 2015, arguing that (a) –

[b]ecause the Award is not final, it would be misleading to provide it to the CCJ at this time.

- (b) the Respondent has not waived its right to oppose publication pending its anticipated application; and (c) –

[t]he fact that there may be deadlines coming up in the CCJ case is completely irrelevant, because this Tribunal has held that the proceedings there and here are different and refused to stay this action to wait for the CCJ.

- (J) Articles 36 and 37 of the UNCITRAL Arbitration Rules, 1976;

- (K) The Respondent's *Motion pursuant to 1976 UNCITRAL Arbitration Rules, Articles 36 and 37* submitted on 16 January 2015;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The Parties' identification of any requests for redaction pursuant to the Arbitral Tribunal's Order N° 4 and the publication of the Award by the Arbitral Tribunal are stayed pending the resolution of the Respondent's *Motion pursuant to 1976 UNCITRAL Arbitration Rules, Articles 36 and 37*.
2. The Claimant is invited to provide its comments on the Respondent's *Motion* by **Saturday, 24 January 2015**.

On behalf of the Arbitral Tribunal,

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

Albert Jan van den Berg,
Presiding Arbitrator