

Arbitration under the UNCITRAL Arbitration Rules

BRITISH CARIBBEAN BANK LTD. (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 1

6 September 2010

CONSIDERING:

- (A) The notice for the Preparatory Conference to be held at the premises of the World Bank (International Centre for the Settlement of Investment Disputes - ICSID) in Washington DC on 26 August 2010 at 3:30pm, sent to the Parties on 26 July 2010, with reminders sent to the Parties on 4 and 23 August 2010;
- (B) The draft Agenda for the Preparatory Conference regarding the conduct of the present arbitral proceedings sent to the Parties on 26 July 2010;
- (C) The comments by Claimant on the draft Agenda in its communications of 10, 23 and 24 August 2010;
- (D) The lack of comments by Respondent on the draft Agenda and, more generally, the absence of any communication from Respondent to the Tribunal regarding the present arbitral proceedings;
- (E) The Preparatory Conference held at the premises of the World Bank in Washington DC on 26 August 2010 at 3:30pm, an audio recording of which has been made available to the Parties;
- (F) Respondent's failure to appear at the Preparatory Conference referred to in Recital (E) above;
- (G) Article 28(2) of the UNCITRAL Arbitration Rules (**UNCITRAL Rules**), providing: "If one of the parties, duly notified under these Rules, fails to appear at a hearing, without

- showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration”;
- (H) The fact that Respondent appears to have been aware of the Preparatory Conference on 26 August 2010, as it is evidenced by paragraph 35 of the Affidavit of Joseph Waight, Financial Secretary of the Government of Belize, of 16 August 2010, filed in the proceedings before the Supreme Court of Belize in Claim No. 588 of 2010;
 - (I) The decision of the Arbitral Tribunal taken at the outset of the Preparatory Conference that it is to proceed with the arbitration as, having been duly notified, Respondent has not shown sufficient cause for the failure to appear;
 - (J) The comments made by Claimant during the Preparatory Conference;
 - (K) The Tribunal’s invitation to the Parties to submit comments by 5 September 2010 on the proposed draft of this Order No. 1, which was transmitted to the Parties by Tribunal by courier, e-mail, and facsimile on 31 August 2010; and Claimant’s comments received on 5 September 2010 in response to such invitation.

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. Party Representation

- 1.1 The details of the representation of British Caribbean Bank Ltd. (**Claimant**) are as follows:

Allen & Overy LLP
1 Bishops Square
London E16AD, UK
Telephone: +44 (0) 20 3088 0000
Facsimile: +44 (0) 20 3088 0088
Attention: Judith Gill / Matthew Gearing / Angeline Welsh / Alexis Martinez /
Henrietta Jackson-Stops

Judith Gill, QC
Telephone: +44 (0)20 3088 3779
E-mail: judith.gill@allenoverly.com

Matthew Gearing
Telephone: +852 2974 7177
E-mail: matthew.gearing@allenoverly.com

Angeline Welsh
Telephone: +44 (0)20 3088 4093
E-mail: angeline.welsh@allenoverly.com

Alexis Martinez
Telephone: +44 (0)20 3088 4405
E-mail: alexis.martinez@allenoverly.com

Henrietta Jackson-Stops
Telephone: +44 (0)20 3088 2614
E-mail: henrietta.jackson-stops@allenoverly.com

1.2 According to Claimant, the details of the Government of Belize (**Respondent**) are:

The Honourable Dean Barrow
Prime Minister and Minister of Finance
The Office of the Prime Minister
3rd Floor, Sir Edney Cain Building
Belmopan City
Cayo District
Belize
Facsimile: +501 822 0898
E-mail: secretarypm@opm.gov.bz

The Honourable Bernard Q.A. Pitts
The Attorney General of Belize
The Attorney General's Ministry
East Block Building
Belmopan City
Belize
Facsimile: +501 822 3390
E-mail: agministrybze@yahoo.com

2. Arbitral Tribunal

2.1 The details of the Arbitral Tribunal are as follows:

Mr. John Beechey, Arbitrator
Strictly private and confidential – addressee only
ICC International Court of Arbitration
38 cours Albert 1er
75008 Paris
France

Telephone: +33 1 49 53 28 21
Facsimile: +33 1 49 53 29 33
E-mail: john.beechey@iccwbo.org

Mr. Rodrigo Oreamuno, Arbitrator
Facio & Cañas
Barrio Tournon
PO Box 5173-1000
San José
Costa Rica

Telephone: +506 2256-555
Facsimile: +506 2255 2510
E-mail: roreamuno@fayca.com

Professor Dr. Albert Jan van den Berg, Presiding Arbitrator
Hanotiau & van den Berg
IT Tower, 9th Floor
480 Avenue Louise, B.9
1050 Brussels
Belgium

Telephone: +32 (2) 290 39 13
Facsimile: +32 (2) 290 39 42
E-mail: ajvandenbergh@hvdb.com

3. Place of Arbitration

- 3.1 Pursuant to Article 16(1) of the UNCITRAL Rules, the Tribunal has determined that The Hague, The Netherlands is the place of this arbitration.

4. Language of Proceedings

- 4.1 English is the language of this arbitration.
- 4.2 Any document submitted to the Tribunal which is not in English shall be accompanied by a translation into English. Informal translations will be acceptable unless contested by the other Party, in which case certified translations shall be provided.
- 4.3 Witnesses or experts called to testify at any hearing before the Tribunal may give their evidence in English or in their principal language. In the event the witness or expert testifies in his or her principal language, the Parties and the Tribunal shall make arrangements for interpretation services.

5. Mode of Communication, Written Submissions and Notifications

- 5.1 The Parties shall file written submissions both in hard copy and electronic form (in word searchable PDF format, where possible) on CD-ROM or flash drive, by courier,

together with any supporting exhibits, including documents, witness statements, expert reports, and legal authorities. The Tribunal has a preference for the A5 format (“mini-bundle”) for the hard copy. The Party making the submission shall dispatch one hard copy to the Representatives of the opposing Party; two hard copies to the Presiding Arbitrator; one hard copy to each of the co-arbitrators, and one hard copy to the Permanent Court of Arbitration (**PCA**).

5.2 The Parties shall also file the electronic version of written submissions (excluding documentary evidence) by e-mail.

5.3 All written communications shall be deemed to have been validly made when they have been sent to:

Parties: to the addresses set forth in paragraph 1 above;

Tribunal: to the addresses set forth in paragraph 2 above;

PCA: to the address set forth in paragraph 14.3 below.

5.4 Any change of name, description, address, telephone number, facsimile number, or e-mail address shall immediately be notified by the Party or member of the Tribunal concerned to the Tribunal, Counsel for the Parties, and the PCA for onward communication. Failing such notification, communications sent in accordance with this section shall be valid.

5.5 A written submission shall be considered to have been submitted in a timely fashion if the submission is dispatched in electronic form on or before the applicable deadline, followed by hard copy of the submission dispatched by courier on the next business day.

5.6 The Parties shall file written notifications electronically by e-mail (in word searchable PDF format, where possible) and in hard copy by facsimile.

5.7 The Parties and the Tribunal shall transmit short messages by e-mail only.

5.8 In the event no e-mail address is provided by a Party, the submissions, notifications and messages may also be transmitted by facsimile only.

6. Schedule for Submitting Statements

6.1 The sequence and timing of the proceedings shall be the following:

a) Claimant’s Statement of Claim to be filed on or before 29 September 2010.

- b) Respondent to indicate by 3 November 2010 whether or not it wishes to provide a Statement of Defence.
- c) Failing any such positive indication by Respondent, a two day hearing for consideration of all aspects of Claimant's claims shall take place on 20-21 December 2010.
- d) In the event that Respondent wishes to serve a Statement of Defence referred to in paragraph b) above, the further sequence and timing of the proceedings shall be the following:
 - e) Respondent's Statement of Defence to be served by 19 November 2010.
 - f) Claimant's Statement of Reply to be filed by 24 December 2010.
 - g) Respondent's Statement of Rejoinder to be filed by 18 February 2010.
 - h) A five day hearing for consideration of all aspects of Claimant's claims and Respondent's defences shall take place on 2-6 May 2011.
 - i) The question whether Post-Hearing Memorials and/or Costs Submissions are required, and any ensuing timetable, shall be decided by the Tribunal at the hearing, unless the Parties otherwise agree.

7. Documentary Evidence

- 7.1 All evidence shall be submitted together with the written submissions referred to in paragraph 6 above.
- 7.2 The Parties will include with any second written submission only additional written witness testimony, expert opinion testimony, and documents or other evidence as is necessary to respond to or rebut the matters raised in the other Party's immediately previous written submission.
- 7.3 If any new and material evidence comes to the knowledge of a Party after the filing of its last written submission, or any new facts or issues arise since the date of a witness or expert's last signed statement, that Party shall address such evidence, facts or issues in its subsequent written submission. If such a submission is not scheduled or if the matter is of an urgent nature, the Tribunal, upon a reasoned written request from a Party and after receiving comments on the request from the other Party, may admit such new evidence or allow a witness or expert to submit an additional witness or expert statement before the hearing. If the Tribunal admits new evidence or additional witness

or expert statements into the record, it shall grant the other Party an opportunity to submit evidence or witness or expert statements in rebuttal.

- 7.4 The Parties may timely request documents from each other during the proceedings. Correspondence or documents exchanged in the course of this process shall not be sent to the Tribunal.
- 7.5 To the extent that the totality of these requests is not satisfied, the Parties are allowed to submit for decision by the Tribunal one request for production of documents after the first round of written pleadings.
- 7.6 After the Parties have exchanged their respective demands as outlined above, this request shall take the form of a joint submission in tabular form, the template of which will be provided to the Parties in due course.
- 7.7 For its decision on document requests, the Tribunal will be guided by the relevant provisions of the IBA Rules of Evidence, and in particular its Article 3 and 9.2.
- 7.8 If additional documents are needed by a Party, leave to submit a further disclosure request to the Tribunal must first be sought. The Parties are urged to seek leave in exceptional cases only and to avoid document disclosure requests on a rolling basis.
- 7.9 Demonstrative exhibits shall be authorised at the hearing subject to timely advance notice being given, and no new documentary evidence being introduced.
- 7.10 Claimant's documentary evidence shall be numbered consecutively "C-", and Respondent's documentary evidence "R-" and be provided in both electronic and hard copy format (preferably A5).
- 7.11 Authorities cited by the Parties shall be numbered consecutively "CA-" by Claimant and "RA-" by Respondent and be provided in both electronic and hard copy format.
- 7.12 Questions relating to a Joint Chronological List of Exhibits and Common (Core) Bundle of Documents shall be determined by the Tribunal at a later date prior to the hearing, in consultation with the Parties.

8. Evidence of Witnesses

- 8.1 Without prejudice to the power of the Tribunal to request or allow the Parties to produce further evidence at any stage of the proceedings, all written witness statements and expert reports shall be submitted together with the Parties' written pleadings and shall constitute the direct testimony of each factual or expert witness, respectively.

- 8.2 Each witness statement and expert report shall:
- a) reflect whether the witness is a witness of fact or an expert witness;
 - b) contain the name and address of the witness and a description of his or her qualifications;
 - c) contain his or her relationship to any of the Parties in this arbitration;
 - d) contain the substance of the evidence that the Party will present through the testimony of that witness at the Hearing; and
 - e) be signed by the witness and give the date and place of signature.
- 8.3 There shall be no direct examination of witnesses or experts at the hearing by the Party presenting the witness or expert, save that there may be limited direct examination of witnesses or experts in respect of new facts or issues that arose since the date of the witness or expert's last signed statement.
- 8.4 Prior to the oral procedure and within time limits agreed by both Parties or established by the Tribunal, each Party or the Tribunal may call upon the other Party to produce at the oral procedure for cross-examination any witness or expert whose written statement has been advanced by the requested Party with the written submissions. Any witness or expert so called shall be subject to cross-examination at the oral procedure.
- 8.5 Subject to the provisions of paragraph 8.3 above, during the direct examination, Counsel should avoid asking leading questions to the witness.
- 8.6 Re-direct examination shall be limited to matters arising out of cross-examination.
- 8.7 If a witness or expert called by a Party or the Tribunal does not appear without a valid reason at the oral procedure, the Tribunal shall disregard that witness's or expert's statement or opinion. If a witness or expert is unable to attend the Hearing in person, the Tribunal may provide for examination by videoconference or other means.
- 8.8 Subject to paragraph 8.7 above, a decision by either Party not to call a witness or expert to appear for cross-examination at a hearing shall not be considered a concession as to the substance of the written statement of the witness or report of the expert.
- 8.9 Witnesses and experts shall be examined by each Party under the control of the Presiding Arbitrator. Before giving evidence, witnesses shall make a declaration that "I solemnly declare upon my honour and conscience that I shall speak the truth, the whole

truth and nothing but the truth,” and experts a declaration that “I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.”

8.10 During the examination of a fact witness, other fact witnesses shall not be present in the hearing room until his or her examination has been completed. Such sequestration does not apply to experts.

9. Hearing(s)

9.1 The hearing shall take place at the dates mentioned in paragraph 6.1(c) or 6.1(h) above.

9.2 A Pre-Hearing Telephone Conference shall be scheduled at the convenience of the Parties and the Tribunal, preferably two weeks prior to the hearing.

9.3 Questions relating to the organization of the hearing shall, to the extent not agreed by the Parties, be determined by the Tribunal at the Pre-Hearing Telephone Conference.

9.4 The Hearing shall proceed as follows:

- a) Opening Statement by Claimant;
- b) Opening Statement by Respondent;
- c) Examination of Claimant’s fact witnesses;
- d) Examination of Respondent’s fact witnesses;
- e) Examination of Claimant’s expert witnesses, if any;
- f) Examination of Respondent’s expert witnesses, if any;
- g) Closing Statement by Claimant;
- h) Closing Statement by Respondent.

9.5 The principle of equal time shall apply.

9.6 The maximum length of the oral Opening Statements and oral Closing Statements shall be determined in consultation with the Parties at the Pre-Hearing Telephone Conference.

9.7 The hearing shall be held at a locale to be fixed by the Tribunal outside the Turks and Caicos Islands and Belize. As provided in Article 16(2) of the UNCITRAL Rules and as contemplated by the Host Country Agreement between the PCA and the Republic of Costa Rica, the Tribunal envisages as locale for the hearing the premises of the Inter-American Court of Human Rights, San Jose, Costa Rica, without prejudice to The Hague being the place of arbitration in the legal sense.

10. Post-Hearing Memorials

10.1 The need for Post-Hearing Memorials and any schedule for submission shall be determined by the Tribunal at the hearing, in consultation with the Parties.

11. Costs

11.1 The timing and form of Costs Submissions and the issuing decision shall be determined by the Tribunal at the hearing, in consultation with the Parties.

12. Award

12.1 The Tribunal shall endeavour to render the award as soon as practicably possible after the hearing or, in the event of Post-Hearing Memorials referred to in paragraph 10.1 above, as soon as practically possible after their filing.

13. Confidentiality and Privacy

13.1 The Tribunal adheres to the nowadays generally accepted principle of transparency of investment treaty arbitration, it being understood that each Party is at liberty to apply for measures regarding confidentiality and privacy of the proceedings as well as the publication of the award.

14. Administrative Secretary

14.1 It is confirmed that Ms. Niuscha Bassiri, associate with the law firm of the Presiding Arbitrator, shall act as the Administrative Secretary to the Tribunal. The remuneration of the Administrative Secretary shall be € 175 per hour. The fees and disbursements incurred by the Administrative Secretary shall be effected from the deposits made by the Parties as the Tribunal's disbursements.

14.2 The Permanent Court of Arbitration (PCA) at the Peace Palace in The Hague shall provide registry services and administrative support to the present arbitration

proceedings in consultation with the Presiding Arbitrator, which will be charged in accordance with the PCA Schedule of Fees.

- 14.3 The contact details of the PCA are as follows:

Permanent Court of Arbitration
Attn: Ms. Judith Levine/Mr. Garth Schofield
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Telephone: +31 70 302 4165
Facsimile: +31 70 302 4167
E-mail: jlevine@pca-cpa.org
gschofield@pca-cpa.org

15. Fees and Deposits

- 15.1 The time of each member of the Tribunal shall be remunerated at a rate of € 500 per hour.
- 15.2 The PCA will act as fund holder for the advance on costs referred to in Article 41 of the UNCITRAL Rules. The PCA does not charge any fees for the holding of the deposit as such, but any transfer fees or other bank charges will be charged to the account. No interest will be paid on the deposit.
- 15.3 All payments to the Tribunal shall be made from the deposit, and the Members of the Tribunal shall submit periodic invoices in respect of their fees and expenses in no less than quarterly intervals. Fees and expenses incurred by PCA staff shall be paid in the same manner as the Tribunal's fees and expenses.
- 15.4 The Parties shall defray the expenses of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to allocation of costs. In the event of default in the proceedings by one of the Parties, the other Party shall defray the expenses of the proceedings in full, without prejudice to the final decision of the Tribunal as to allocation of costs.

16. The Order of the English Commercial Court dated 4 May 2010

- 16.1 Claimant having notified the Tribunal of its intention to apply to the English Commercial Court for a continuation of the Order of that Court dated 4 May 2010, until this Tribunal issues a final award, the Tribunal confirms that it has no objection to such

application being made, having also regard to the provisions of Article 26(3) of the UNCITRAL Rules (“A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement”).

17. Court Proceedings in Belize

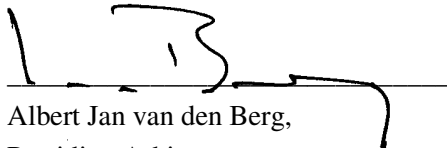
17.1 The Tribunal has taken note of the Judgment of the Supreme Court of Belize dated 30 July 2010 in Claim 874 of 2009, the Fixed Day Claim Form dated 16 August 2010, the Notice of Application for an Interim Injunction dated 17 August 2010, supporting documents, and the decision by Legall J dated 18 August 2010, copies of which were submitted by Claimant.

17.2 The Tribunal does not deem it appropriate to accede to Claimant’s request to inform the Supreme Court of Belize of the Tribunal’s constitution under Article 8 of the Belize – United Kingdom Bilateral Investment Treaty, entered into force on the signature for each State on 13 April 1982, nor of the Tribunal’s power to rule on objections that it has no jurisdiction (“competence-competence”) under Article 21(1) of the UNCITRAL Rules.

18. Status of Orders

18.1 Any Order of the Tribunal may, at the request of a Party or at the Arbitral Tribunal’s own initiative, be varied if the circumstances so require for the proper conduct of these proceedings.

On behalf of the Arbitral Tribunal,



Albert Jan van den Berg,
Presiding Arbitrator