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. 7

12 MARCH 2014

CONSIDERING:

(A) Article 20 of the UNCITRAL Rules, which provides that

> During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

(B) Section 6 of the Tribunal's Order No. 6 of 14 February 2014, which provides that

> 6.1 Any further documentary evidence must be submitted no later than Monday, 10 March 2014 and must be accompanied by an application indicating the relevance of the document and the reason it was not included in the Party's earlier submissions.
>
> 6.2 After 10 March 2014, additional documentary evidence will be admitted only in extraordinary circumstances and upon a showing of good cause.

(C) The Claimant's application of 7 March 2014 to submit further documentary evidence in the form of the "financial statements of Telemedia for the period 2002-2006 and extracts of the annual returns for the period 2003-2012 (excluding the annual return for 2005)" and "copies of three letters it located when recently searching the Company Registry";

(D) The Claimant's application of 7 March 2014 to supplement the Claimant's claim "to also include the legal and other expenses incurred by the Claimant, including the fees of its legal counsel, in pursuing the First Constitutional Challenge, Second

Constitutional Challenge and the Anti-Arbitration Injunction Challenge before the Belize Courts and the Caribbean Court of Justice";

(E) The Respondent's letter of 10 March 2014, in which it requested (i) an order "summarily denying BCB's application and excluding the new evidence and new claim for damages from these proceeding and . . . prohibiting BCB from making any reference to the subject matter of these new records, or from asking question related to the subject matter of these new records, at the hearing in this arbitration"; (ii) the suspension of these proceedings; (iii) that the Tribunal

> (1) order BCB to identify all files in its possession, custody and/or control that relate to Belize Telemedia and the subject loans; and
>
> (2) order BCB to make all such files (excluding only attorney-client privileged documents contained therein) available for inspection by GOB's counsel. As to any documents being withheld on account of the attorney-client privilege, BCB should be ordered to produce a privilege log identifying each document withheld and sufficient information to make a determination about the claimed privilege.

and (iv) in the alternative, that the Tribunal terminate these proceedings;

(F) The Claimant's letter of 11 March 2014, "maintain[ing] its request to be allowed to supplement its claim and provide the necessary evidence in support of that claim";

(G) The Respondent's communication of 11 March 2014, reiterating its request for the orders set out in its letter of 10 March 2014;

(H) The Claimant's further communication of 11 March 2014.

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The Claimant's application to submit further documentary evidence in the form of the "financial statements of Telemedia for the period 2002-2006 and extracts of the annual returns for the period 2003-2012 (excluding the annual return for 2005)" and "copies of three letters it located when recently searching the Company Registry" is **denied**. Paragraph 6.1 of the Tribunal's Order No. 6 requires that any application for the introduction of additional evidence must indicate "the reason it was not included in the Party's earlier submissions." Based on the record before it, the Tribunal does not see that the Claimant could not reasonably have located the documents in question earlier and introduced them in connection with its written submissions. The Tribunal also notes that the volume of documents in question is substantial.

2. The Claimant's application to supplement its claim "to also include the legal and other expenses incurred by the Claimant, including the fees of its legal counsel, in pursuing the First Constitutional Challenge, Second Constitutional Challenge and the Anti-Arbitration Injunction Challenge before the Belize Courts and the Caribbean Court of Justice" is **denied**. The Tribunal does not see that the Claimant could not have asserted this claim on 15 July 2013, in connection with its Amended Statement of Claim.

3. The Respondent's request for an order "prohibiting BCB from making any reference to the subject matter of these new records, or from asking question related to the subject matter of these new records, at the hearing in this arbitration" is **denied**. It does not follow from the non-admission of the documents in question that the Claimant is barred from addressing the subjects to which they relate using evidence already admitted to the record.

4. The Respondent's request for an order for the Claimant to make all documents "that relate to Belize Telemedia and the subject loans" available to the Respondent in order to identify noncompliance with the Tribunal's document production order is **denied**. As described by the Claimant, the documents it seeks to introduce would not have been responsive to any of the Respondent's requests for the production of documents granted by the Tribunal as the letters were located in the Company Registry, rather than in the possession of the Claimant.

5. The Respondent's requests for the suspension or termination of these proceedings are **denied**.

On behalf of the Arbitral Tribunal,

Albert Jan van den Berg,
Presiding Arbitrator