

Adel A Hamadi Al Tamimi v. Sultanate of Oman
(ICSID Case No. ARB/11/33)

Rulings on Claimant's Requests for Production of Documents

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**ADEL A HAMADI AL TAMIMI V. SULTANATE OF OMAN
(ICSID CASE NO. ARB/11/33)**

RULINGS ON CLAIMANT'S REQUESTS FOR PRODUCTION OF DOCUMENTS

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Mr. Monty Taylor

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Introduction

1. In accordance with the procedural timetable as modified by Procedural Order No. 6, on 5 August 2013 the Claimant submitted (i) its request for production of documents dated 24 June 2013; (ii) the Respondent's objections dated 17 July 2013; and (iii) the Claimant's responses dated 5 August 2013. As envisaged by paragraph 13.1.7 of Procedural Order No. 1, this was set out in a Redfern Schedule and was accompanied by supplementary submissions made by the Respondent.
2. In this Ruling, the Tribunal records its General Rulings in relation to the Claimant's Request for Document Production. Rulings on each of the Claimant's specific requests are included in the attached Redfern Schedule.

Applicable Principles

3. Paragraph 15.1 of Procedural Order No. 1 provides *inter alia* as follows:

“15.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) may guide the Tribunal and the parties regarding document production in this case.”
4. In reaching its decisions, the Tribunal has carefully considered the parties' positions as set out in their various submissions and has been guided by the principles of Articles 3 and 9 of the 2010 IBA Rules referred to above.

General Rulings

5. To the extent that it may be argued that in some of these requests the Claimant seeks material to enable it to attempt to rebut any defences raised by the Respondent, and that there is no reason to grant these requests as the Claimant can simply rely on the burden of proof which rests upon the Respondent in relation to defences, the Tribunal does not consider that this is a dispositive answer. This matter is discussed in *Procedure and Evidence in International Arbitration* by Jeffrey Waincymer where it is stated at paragraph 11.7.1.2 that “It has also been suggested that a document needs to be material to an issue as to which the requesting party carries the burden of proof.

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There would be problems in applying this as a blanket rule [...] to deny the opposing party the opportunity to make targeted requests, removes an ability to easily identify selective presentation where this has occurred [...] The opponent should not have to rely on the tribunal holding that the burden was not satisfied.”

6. The Tribunal notes that its decision on the Claimant's Requests for Document Production is not intended to provide an implied decision on any issue of interpretation of the US-Oman FTA, any contract or on any other legal issue in dispute between the parties.
7. To the extent that requests for document production were denied, it is understood that such denial does not affect any documents already voluntarily produced or requested documents to which no objection has been taken.
8. Insofar as documents ordered are not produced or not fully produced as ruled in this Ruling, the Tribunal may take this into account in its evaluation of the respective factual allegations and evidence including a possible inference against the party refusing production.
9. The costs of, and incidental to, the Claimant's Request for Document Production, shall be reserved for later consideration, if necessary.
10. Leave is reserved for any party to apply in respect of any aspect of this Ruling.

[signed]

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David A.R. Williams QC
For and on behalf of the Tribunal

Dated: 21 August 2013