

Scholz Holding GmbH v. Kingdom of Morocco

v.

Kingdom of Morocco

(ICSID Case No. ARB/19/2)

PROCEDURAL ORDER NO. 4

Members of the Tribunal

Mr. Alexis Mourre, President of the Tribunal
Professor Zachary Douglas QC, Arbitrator
Professor Nassib G. Ziadé, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

Assistant to the Tribunal

Ms. Marina Matousekova

7 December 2020

I. PROCEDURAL BACKGROUND

1. In accordance with the Tribunal's Procedural Order No. 1 dated 11 September 2019 ("PO No. 1") and the updated procedural timetable contained in Annex A of the letter from Mr. Abriani dated 4 September 2020, the Claimant and the Respondent submitted their Requests to Produce Documents in the form of a Redfern Schedule on 26 October 2020.
2. The parties produced the non-contested documents and filed their objections to the requests to which they have objected on 9 November 2020, and each Party replied to the opposing Party's objections on 23 November 2020.
3. The present Procedural Order No. 4 ("PO No. 4") contains the Arbitral Tribunal's decision on the Parties' document production requests.

II. THE REQUESTS FOR DOCUMENT PRODUCTION

A. The Parties' Positions

4. The Parties' positions on the documents requested by the opposing Party are contained in the Redfern Schedules at Annex A (Claimant's Requests to Produce) and B (Respondent's Requests to Produce) hereto.

B. The Tribunal's Decisions

1. Applicable Rules

5. Section 16 of PO No. 1 provides the following in respect to document production:

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 16.1. *Each party shall state in writing its responses or objections to the requested documents, in accordance with the timetable provided in **Annex B**. The requesting party shall file its comments in writing on any response or objection made to the document requests, insofar as there are any outstanding disputes relating to such requests. The parties' aggregate comments, in the form of a completed Redfern Schedule, shall be provided to the Tribunal in accordance with **Annex B** and **Annex C**.*

- 16.2. *In dealing with matters of production of documents, the Tribunal will be guided, but not be bound, by the IBA Rules on the taking of evidence. The Tribunal shall, along with its orders on the requests to produce, provide in a procedural order the instructions and practical arrangements for the production of documents.*

6. As provided at §1.2 of Section 16 of PO No. 1, the Tribunal, in deciding whether to order the production of a document or category of documents, may seek guidance from the 2010 IBA Rules on the Taking of Evidence in International Arbitration (the “**IBA Rules**”).

2. Analysis

7. The Tribunal’s decision with respect to each Request to Produce is stated in the Redfern Schedules which are attached as Annexes A (Claimant’s Requests to Produce) and B (Respondent’s Requests to Produce) hereto. These Annexes form an integral part of this Order.
8. In its decisions, the Tribunal only addresses the main basis for its decisions, and does not provide a detailed analysis to each of the objections whenever that is not necessary to the decision. Even if not explicitly addressed in its decisions, the Tribunal has considered all of the Parties’ arguments and objections.

3. Signature of PO No. 4

9. In accordance with §5.4 of PO No. 1, this Order is signed by the presiding arbitrator on behalf of the Tribunal after having consulted the co-arbitrators.

III. THE TRIBUNAL’S ORDER

10. For the foregoing reasons, the Tribunal:
- i. Decides each document production request as stated in the last column of the completed version of the Redfern Schedules which are attached as Annex A (Claimant’s Requests to Produce) and Annex B (Respondent’s Requests to Produce) hereto. These Annexes form an integral part of this Order; and
 - ii. Orders each Party to produce responsive documents, to the extent they exist, by 21 December 2020, as provided by the amended procedural calendar dated 4 September 2020. Documents shall be communicated directly to the requesting Party without copying the Tribunal. The documents so communicated shall not be considered to be on record unless and until either Party subsequently files them as exhibits in accordance with PO No. 1.

[signed]

Mr. Alexis Mourre
President of the Tribunal
Date: 7 December 2020