

Procedural Order No. 9

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

PROCEDURAL ORDER NO. 9

The Tribunal

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. On 7 April 2014 the Claimant submitted (i) its additional requests for production of documents dated 24 March 2014 (“**Additional Requests for Document Production**”); (ii) the Respondent’s objections dated 3 April 2014; and (iii) the Claimant’s responses dated 7 April 2014. This was set out in a Redfern Schedule and accompanied by a letter. The Tribunal Secretary invited the Respondent to reply by Wednesday, 9 April 2014. On 9 April 2014, the Respondent duly submitted a letter in reply and the Claimant’s Redfern Schedule with an extra column of Reply Objections.
2. In this Order, the Tribunal records its General Rulings in relation to the Claimant’s Additional Requests 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. Given the proximity of the hearing, where requests for documents have been allowed by the Tribunal, the Respondent is to produce responsive documents by **Wednesday, 23 April 2014**. The Tribunal notes that paragraph 13.1.13 of Procedural Order No 1 provides that if a party wishes to place on the record any documents produced in the additional round of document production, it must do so no later than ten days before

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the hearing. That is not possible in this instance. The Tribunal therefore extends the date for placing on the record documents produced in the additional round of document production to **Friday, 25 April 2014**. These deadlines should allow the Respondent time to produce the documents and the Claimant time to decide which documents it wishes to introduce into the record. Leave is granted for the parties to apply for any extension of time if such extension proves necessary.

6. The Tribunal notes that its decision on the Claimant's Additional 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 Order, 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 Additional Requests for Document Production, shall be reserved for later consideration, if necessary.
10. In response to some requests, the Respondent has asserted that it has no responsive documents or that it has not withheld any responsive documents. Since the parties are represented by high-quality and reputable legal firms with very ample resources, the Tribunal takes the view that if an assertion of a good faith search has been made, then generally that will be accepted by the Tribunal unless and until an opposing party is able to demonstrate, by the reference to other specific evidence or documents, that the assertion of a good faith search is clearly suspect or unfounded. Of course, if such an assertion of good faith is made but it turns out at the hearing that a party has not

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conducted itself in good faith in the disclosure process, any such failure may be taken into account by the Tribunal. For example, the Tribunal may infer that the documents that were not produced would have been adverse to the interests of the party to whom the request was made (IBA Rules, Article 9(6)), and the Tribunal may also take such failure into account in the allocation of the costs of the arbitration including costs arising out of or in connection with the production of evidence (IBA Rules, Article 9(7)).

[signed]

For and on behalf of the Tribunal
Professor David A. R. Williams QC
President of the Tribunal
Date: 18 April 2014