

Procedural Order No. 10

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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

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**PROCEDURAL ORDER NO. 10**

*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 and Summary of Parties' Submissions**

1. On 18 April 2014, the Tribunal set out its Rulings on the Claimant's additional requests for document production dated 24 March 2014 ("**Documents Ruling**") in which it sustained some of the Claimant's requests. 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 10 days before the hearing. In its Documents Ruling, the Tribunal acknowledged that this was not possible in this instance, and extended the date for placing documents on the record until Friday, 25 April 2014.
2. On 18 April 2014, the Claimant:
  - (a) Submitted one document produced by the Respondent following the additional round of document production;
  - (b) Reserved its rights to place on the record Arabic documents produced in the additional round of document production;
  - (c) Sought the Tribunal's permission to submit five new documents on the record. These documents were not ones that had been produced in the additional round of document production, but were allegedly "responsive to new issues raised in Respondent's Rejoinder and supporting submissions"; and
  - (d) Sought the Tribunal's permission to submit the remainder of an exhibit that had allegedly been submitted in incomplete form by the Respondent ("**Claimant's Application**").
3. There is no issue with (a) or (b) as it is consistent with the directions made in the Tribunal's Documents Ruling. The Tribunal invited the Respondent to reply in respect of (c) and (d) by Wednesday, 23 April 2014 and it duly did so. The Respondent first opposed the Claimant's Application to introduce the five new documents, and denied that they were responsive to new issues raised in the

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Respondent's Rejoinder. The Respondent gave the example of the mining photographs, and said that the state of mining operations had been put in issue by the Claimant's own witness, Mr. Archibald.

4. The Respondent also opposed the Claimant's Application to submit the remainder of one of the Respondent's exhibits, the Nakheel Supply Contract. The Respondent pointed out that the exhibit originated from the Claimant (the Claimant produced three copies of the Nakheel Supply Contract in response to Oman's First Request for Documents, after which time the Respondent exhibited it). The Respondent also expressed doubt that the "remainder" of the exhibit which the Claimant sought to introduce did in fact form part of the Nakheel Supply Contract.

**Tribunal's Ruling**

5. The Tribunal accepts that the Claimant's request to produce the five additional documents onto the record is not in conformity with the procedural directions contained in Procedural Order No. 1, and further accepts that procedural directions must generally be adhered to. However, the Respondent has not asserted that it will suffer any prejudice by admitting the documents onto the record at this stage. Furthermore, the number of documents sought to be admitted is not large (five), and the Respondent will have the opportunity to cross-examine the Claimant's witnesses on these documents as well as lead direct evidence from its own witnesses on the documents. The Respondent may also comment on these documents in its submissions if it so wishes. Balancing the interests of both parties, and taking into account the need for the Tribunal to have before it all possibly relevant evidence so as to achieve a fair and just decision, the Tribunal considers that the five additional documents should be admitted onto the record.
6. As for the alleged incomplete exhibit produced by the Respondent, the Tribunal has taken note of the Respondent's submission that this document originated from the Claimant. However, it did not form part of the record until the Respondent introduced it as an exhibit. The Claimant now says that the exhibit is incomplete and

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wishes to introduce a new exhibit to complete it. The Respondent disagrees that the new exhibit necessarily completes the old exhibit. In these circumstances, the Tribunal considers that the best course of action is to admit the new exhibit into the record on a provisional basis only. Its relationship with the old exhibit (the Nakheel Supply Contract), if any, and its relevance and the weight to be accorded to it, if any, can be dealt with in submissions and/ or witness examination as the parties see fit.

[signed]

For and on behalf of the Tribunal  
Professor David A. R. Williams QC  
*President of the Tribunal*  
Date: 24 April 2014