

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE N° 2010-13 / DUN-BZ

DUNKELD INTERNATIONAL INVESTMENT LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 3

2 JULY 2014

CONSIDERING:

- (A) ¶ 5 of Order No. 1 in conjunction with ¶ 4.1 of Annex A to Order No. 1, stating that “[p]ursuant to Article 16(1) of the UNCITRAL, the Tribunal has determined that The Hague, The Netherlands, is the place of this arbitration”;
- (B) ¶ 5 of Order No. 1 in conjunction with ¶ 10.7 of Annex A to Order No. 1, stating that “the Tribunal envisages as locale for the hearing the premises of the Inter-American Court of Human Rights, San Jose, Costa Rica, without prejudice to The Hague being the place of arbitration in the legal sense”;
- (C) ¶ 10 of Order No. 1, stating that “[t]he hearing scheduled for 5-9 November 2014 will be held in Miami, Florida. The Tribunal will determine the venue for the hearing in due course”;
- (D) The Respondent’s e-mail communication of 23 April 2014, conveying the Parties’ request that “the location of the merits hearing be changed from Miami to The Hague, if those facilities are available during the hearing dates” as the Parties “believe that those facilities will be more convenient than [those in] Miami”;
- (E) The Tribunal’s e-mail to the Parties of 25 April 2014, stating that “the hearing dates and venue are maintained, but that either party is at liberty to apply for a change of venue and/or date by means of a fully particularized application”;
- (F) The Respondent’s application of 9 June 2014, requesting a change in the venue of the hearing to “The Hague, The Netherlands or, in the alternative, to the Inter-American Court of Human Rights in San Jose, Costa Rica or another location in the Caribbean,” noting that neither Party has a connection to the United States, and arguing that

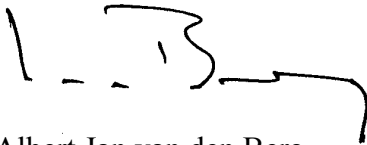
if the venue remains in Miami, issues may arise, under the New York Convention, whether Florida courts have primary jurisdiction over, and whether United States arbitration law applies to, these proceedings. Further, by arbitrating in the United States, GOB may be subject to an argument that it has waived its sovereign immunity in the United States.

- (G) The Claimant's letter of 16 June 2014, opposing the Respondent's request. Claimant notes that its previous agreement to a change of venue was limited to The Hague and predicated on the Tribunal being able to accommodate a hearing in The Hague on the previously reserved dates. Claimant argues that irrespective of whether the hearing is held in Miami or elsewhere, "the Dutch courts have supervisory conduct and Dutch procedural law is applicable as a consequence of the fact that the seat of the arbitration is The Hague";
- (H) The Respondent's letter of 17 June 2014, reiterating the requests set out in Recital (F) above, noting that "GOB does not intend to waive its sovereign immunity or subject itself to jurisdiction in the United States," and arguing that
- Courts are undecided as to whether the Federal Arbitration Act, 9 U.S.C § 1 et seq., in the United States allows a foreign sovereign to assert sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq., as a defense to jurisdiction. This law is unique to the United States and potentially at odds with the UNCITRAL Rules and this conflict should be considered when determining the appropriate location for the arbitration.
- (I) The Respondent's alternative request, in its letter of 17 June 2014, that the Tribunal "clarify that GOB has not agreed to arbitration in the United States, that the legal place of this arbitration is in The Netherlands and that primary jurisdiction over this arbitration pursuant to the New York Convention is with courts in The Netherlands";
- (J) The Claimant's letter of 23 June 2014, reiterating its opposition to the Respondent's request and arguing that the Respondent's arguments regarding the jurisprudence of U.S. courts are without authority. Claimant also submits that any clarification from the Tribunal "shall be limited to confirmation that (a) the legal seat or place of this arbitration is The Hague; and (b) the Dutch courts have the supervisory jurisdiction of the arbitration, which exists as a consequence of The Hague being the legal seat or place of the arbitration";
- (K) That the Inter-American Court of Human Rights has informed the PCA that its facilities in San José, Costa Rica are not available during the reserved hearing dates of 5-9 November 2014;
- (L) That a change to a European venue would not permit the Tribunal to maintain the reserved hearing dates of 5-9 November 2014;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The dates reserved for the hearing in this matter shall remain 5-9 November 2014.
2. The venue for the hearing in this matter shall remain Miami, Florida.
3. Nothing in this order shall be construed as altering the fact that the legal place of this arbitration is The Hague, the Netherlands, as decided in ¶ 5 of Order No. 1 in conjunction with ¶ 4.1 of Annex A to Order No. 1, and that the courts of the Netherlands accordingly have supervisory jurisdiction over this arbitration.

On behalf of the Arbitral Tribunal,

A handwritten signature in black ink, appearing to read 'A. J. van den Berg', with a long horizontal line extending to the right and a vertical line at the end.

Albert Jan van den Berg,
Presiding Arbitrator