

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and
Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan
(ICSID Case No. ARB/13/38)**

**PROCEDURAL ORDER NO 4
ON DOCUMENT PRODUCTION FROM THIRD PARTIES**

17 December 2015

The Tribunal

The Honourable L. Yves Fortier, PC CC OQ QC
Professor Marcelo G. Kohen
Professor Campbell McLachlan, QC (President)

Secretary to the Tribunal

Ms. Aïssatou Diop

Assistant to the Tribunal

Mr. Jack Wass

Whereas:

By Procedural Order No. 1 of 16 October 2014 (**PO No. 1**), the Tribunal directed that document production would take the form of a simultaneous exchange of *inter partes* disclosure requests, and that the IBA Rules on the Taking of Evidence in International Arbitration (**IBA Rules**) would be used as ‘general guidance for the parties and the Tribunal in these proceedings’;

By its Redfern Schedule submitted in accordance with those directions, Respondent sought the production of 10 categories of documents from Claimants;

Claimants objected to the admissibility of Respondent’s requests, but nevertheless stated that they had been unable to locate any disclosable documents responsive to Respondent’s requests;

By Procedural Order No. 3 of 1 September 2015 (**PO No. 3**), the Tribunal ordered Claimants, *inter alia*, to:

- ‘(1) Confirm that the search extended to documents held by:
- a. UTT [Umniah Telecommunications and Technology, L.L.C.];
 - b. Mr Dagher; or
 - c. Saba/Deloitte
- on behalf of Claimants or under Claimants’ control.’

By letter dated 15 October 2015, Claimants stated that they had made the requisite enquiries to Mr Dagher for documents responsive to Respondent’s requests which he held on behalf of Claimants or which he held and were under Claimants’ control, and confirmed that no documents had been provided;

By the same letter, Claimants stated that they had requested from the Liquidator of UTT documents responsive to Respondent’s requests, held by UTT or the Liquidator on behalf of Claimants or under the Claimants’ control, and that the Liquidator had confirmed that no such documents existed other than those already disclosed;

By letter dated 9 November 2015, Claimants stated that they had requested the Liquidator of UTT to make enquiries of Saba/Deloitte for documents responsive to Respondent’s document production requests, that Saba/Deloitte had provided a number of responsive documents to Claimants that day, and that Claimants had passed all of these documents on to Respondent;

The Tribunal is now seised of an application by Respondent brought by letter dated 15 November 2015 (**Application**) for an order, pursuant to its general powers of case management and Article 3(9) of the IBA Rules, that Respondent have leave to apply to the Jordanian courts for an order for the production of documents from certain third parties (UTT, its Liquidator and Saba/Deloitte, UTT's auditor, together the **third parties**);

By letters dated 23 and 25 November 2015, Claimants objected to the Application but stated that they would consent to the Tribunal addressing a direct enquiry to the Liquidator of UTT and Saba/Deloitte in order to seek an assurance from them in unqualified terms in relation to the categories of documents sought by Respondent;

On 10 December 2015, the Tribunal wrote to the Parties noting that, without finally determining the Application, the Tribunal’s provisional view was that it would have the

power to issue such a request, noted that it wished to consider the extent to which such a step could assist in the satisfactory resolution of the matter, and sought Respondent's views;

By letter dated 14 December 2015, Respondent acknowledged that the Tribunal had the power to issue such a request, and while maintaining that its original Application was properly made, indicated that it would consent to such a request on certain terms;

The Tribunal having deliberated and considering that it has the power under Article 3(9) of the IBA Rules to issue direct requests to the third parties for the production of documents, and that such a step would assist in the fair, just and timely resolution of the present aspect of the matter has decided to issue such requests upon the terms here set out.

The Tribunal now issues the following procedural directions:

1. The Tribunal will issue, via the Secretariat, the letters annexed to this Order as follows:
 - A. Letter to Saba/Deloitte, copied to counsel for the Parties and to the Liquidator of UTT;
 - B. Letter to the Liquidator of UTT, copied to counsel for the Parties and Mr Michael Dagher.
2. As regards the letter at **Annex A**, addressed to Saba/Deloitte, Claimants are directed to instruct (to the fullest extent permitted by law) the Liquidator of UTT to instruct Saba/Deloitte to comply with this request. Claimants are also directed to confirm to the Tribunal, within 5 days of the date of this letter, that each of the Claimants' instruction to the Liquidator and the Liquidator's instruction to Saba/Deloitte has been given (annexing copies of such instructions).
3. As regards the letter at **Annex B**, addressed to the Liquidator of UTT, Claimants are directed, and Mr Dagher is requested, to instruct (to the fullest extent permitted by law) the Liquidator to comply with this request. Claimants are also directed to confirm to the Tribunal, within 5 days of the date of this letter, that Claimants' and Mr Dagher's instructions to the Liquidator have been given (annexing copies of such instructions).
4. Pending the outcome of the Tribunal's enquiries, the Tribunal formally reserves the Application, and grants the Parties leave to apply for further directions if necessary.

For and on behalf of the Arbitral Tribunal

SIGNED

Professor Campbell McLachlan QC
President of the Tribunal
Date: 17 December 2015