

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 8
ON RESPONDENT'S APPLICATION FOR PRODUCTION OF DOCUMENTS**

1 April 2016

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:

Paragraph 15.2 of Procedural Order No. 1 (**PO No. 1**) provides that “Documents may only be requested after the deadline prescribed in Annex A with the leave of the Tribunal or the written consent of the other party”;

In accordance with the timetable established by the Tribunal, the Claimants filed with their Reply and Defence on Jurisdiction a Second Witness Statement of Mr Michael Suheil Dagher dated 11 November 2015 (**Dagher 2**);

By letter dated 25 March 2016, the Respondent identified nine paragraphs in which Mr Dagher is said to refer to legal advice he received, and seeks an order from the Tribunal “that the Claimants produce the documents containing the above advice on matters of Jordanian law, or confirm that no such documents exist” (**Application**);

By letter of 29 March 2016, the Claimants objected to the Application, on the basis that the Respondent had failed to seek or obtain leave, and on the basis that the relevant paragraphs of Dagher 2 “clearly indicate the sources of the information in question and do not indicate the existence of any documents of the nature requested by the Respondent, save those already in its possession”;

The Tribunal recalls that any party who wishes to make a request for the production of documents after the deadline set by Annex A of PO No. 1 must seek leave to do so, which requirement the Tribunal specifically drew to the attention of the parties by its letter of 15 March 2016;

The Respondent did not seek leave before making the present Application, nor does its letter of 25 March 2016 explain (save inferentially) why it might be appropriate for the Tribunal to grant leave in circumstances in which the basis for the request is a witness statement filed in November 2015;

In light of the view that the Tribunal has formed of the underlying merits of the Application, it has not proved necessary for the Tribunal to reach a concluded view on the question of leave, but the parties are reminded of the need to comply with the existing directions of the Tribunal in order to ensure the fair and orderly disposition of the proceedings.

The Tribunal orders as follows:

1. The Respondent has identified 9 paragraphs of Dagher 2 that refer to the receipt of legal advice. In six of these paragraphs – namely paragraphs 16, 17, 18, 20, 22 and 27 – Mr Dagher testifies to having received advice without specifying in terms the form in which the advice was provided. The terms that Mr Dagher uses in his Statement – including “informed”, “told”, “explained”, “received” and “confirmed” – may apply to oral or written advice.
2. The Claimants have confirmed that the advice referred to at paragraph 22 was verbal, but they have not provided an equivalent confirmation in relation to paragraphs 16, 17, 18, 20 and 27 – apparently because they regard this as implicit in the language used by Mr Dagher. In view of the importance that Mr Dagher attaches to this advice in his statement, the Tribunal considers that it would be assisted in the consideration of his evidence by the receipt of a confirmation in advance of the hearing from the Claimants, if it be the case, that the advice to which Mr Dagher refers in those paragraphs was given to him in oral

form only. To the extent that the advice was provided to him in writing, it ought to be produced.

3. The Respondent also refers to paragraphs 19, 31 and 32 of Dagher 2. The Tribunal has considered each of these paragraphs but does not consider that the Respondent's requests require an order from the Tribunal:
 - (a) At paragraph 19, Mr Dagher refers to the note handwritten by Advocate Madani on the copy of the Tax Court of Appeal faxed to Mr Dagher. The Claimants have explained that this document, including Mr Madani's handwritten annotation, is already on the record as Exhibit C-125.
 - (b) At paragraph 31, Mr Dagher testifies that Batelco was advised by "HSBC, Norton Rose and Zubi law" and that the question of liability for income tax on the sale of the shares in UMC was never raised. The Respondent has identified no basis for concluding that the Claimants or Mr Dagher are in possession of any advice provided to Batelco by those advisers.
 - (c) At paragraph 32, Mr Dagher refers to the legal opinions which UTT provided to Saba/Deloitte on the question of whether the transaction was taxable. The Claimants respond that three of these opinions are already on the record as Exhibits C-91 to C-93, while a fourth (by Mr Amani Hawwari dated 15 September 2007) was disclosed by Saba/Deloitte on 9 November 2015. The Tribunal is not able to verify the latter assertion, since the relevant opinion has not been placed on the record. It notes, however, that the Respondent sought production of documents relating to the taxability of UTT's disposition in its original Redfern Schedule, which was the subject of Procedural Order No. 3 dated 1 September 2015 and subsequent correspondence,¹ and the Respondent has identified no basis for suggesting that the Claimants or Mr Dagher possess further relevant documents.
4. Therefore:
 - (a) The Claimants are directed to provide the confirmations or alternatively the document production described at paragraph 3 above by close of business in London on Monday 4 April 2016;
 - (b) The Application is otherwise dismissed.

For and on behalf of the Arbitral Tribunal

SIGNED

Professor Campbell McLachlan QC
President of the Tribunal
Date: 1 April 2016

¹ See, in particular, letter from counsel for Claimants dated 15 October 2015.