

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Tayeb Benabderrahmane**

**v.**

**The State of Qatar**

**(ICSID Case No. ARB/22/23)**

---

**PROCEDURAL ORDER NO. 4  
Further Production of Documents  
In Relation to Third-Party Funding**

***Members of the Tribunal***

Ms. Lucinda Low, President of the Tribunal  
Prof. Andreas Bucher, Arbitrator  
Mr. Makhdoom Ali Khan, Arbitrator

***Secretary of the Tribunal***

Dr. Jonathan Chevry

---

14 December 2023

## I. Background

### A. The Respondent's Application

1. On 26 September 2023, the Respondent requested that the Tribunal order the Claimant “to produce further documents and information in relation to the third-party funding provided to him for the purposes of this arbitration, pursuant to Rules 14(4) and 36(3) of the 2022 ICSID Arbitration Rules” (the “**Respondent's Application**” or “**Application**”).

2. Recalling the background of its Application, the Respondent observes that:

(a) The Respondent received from the ICSID Secretariat a copy of a letter sent by the Claimant, dated 2 May 2023, stating that the Claimant “asserts that he has received funds, in the form of a loan, for the pursuit of the proceeding from a non-party, a natural person: Mr. [REDACTED] who resides at [REDACTED]”.

(b) Noting that the letter was not accompanied by further documentation or other detail, the Respondent, through its letter addressed to the Claimants on 10 May 2023, requested as follows:

*“We should be grateful if you would please provide a copy of the loan agreement in question and please also confirm whether Mr. [REDACTED] is the ultimate source of funds; if not, please confirm the identity of the ultimate source.”*

(c) In response to this letter, the Claimant's counsel wrote to the Respondent's firm on 19 June 2023, enclosing redacted copies of two loan agreements concluded between the Claimant and Mr. [REDACTED], asserting that “to the best of our client's knowledge, Mr. [REDACTED] is the ultimate source of the funds”.

3. The Respondent is of the view that these limited disclosures raise a number of serious questions about the nature and the extent of the funding in question. Apart from what Respondent characterizes as the “vague and wholly unsatisfactory assertion” cited above as to the ultimate source of the funds, the Claimant's redactions included key details of the two purported loan agreements. The Respondent submits that this information “*is wholly insufficient to make any meaningful assessment of the basis on which the Claimant is funding his pursuit of the arbitration, or indeed of the Respondent's prospects of successfully enforcing any costs Award which may be rendered against the Claimant in due course in this Arbitration*”.

4. The Respondent then requested further information from the Claimant, *i.e.* nine requests in its letter written to the Claimant on 6 July 2023, and further two requests set out in an email sent the day thereafter. Having not received any response from the Claimant, the Respondent wrote to the Claimant on 11 September 2023, requesting a confirmation, by the latest on 15 September 2023, that the Claimant anticipated providing the documents and information

requested. The Claimant did not respond, nor did he engage with any of the Respondent's requests or indicated any intention of doing so.

5. Therefore, the Respondent's Application requests that the Tribunal direct the Claimant to produce the documents and information requested by the Respondent in its letter of 6 July 2023 and email of 7 July 2023, these requests being reproduced as eleven numbered requests in an Annex to the Respondent's letter, for the Tribunal's ease of reference. These requests are as follows:

1. *The precise state of the Claimant's knowledge as to the source of funds.*
2. *What information has been:*
  - (i) *requested by the Claimant from Mr [REDACTED] or any other person or entity; or*
  - (ii) *provided to the Claimant by [REDACTED] or any other person or entity as to the source of the funds or of any other funds which have been provided or promised to the Claimant, whether directly or indirectly, for the purposes of the Claimant's pursuit of this arbitration.*
3. *The principal amount of the loan which has already been drawn down.*
4. *The total amount which Mr [REDACTED] – or any other person or entity – has agreed to lend or provide to the Claimant, including any amounts not yet drawn down.*
5. *The timeframe in which the Claimant is liable to repay the principal of the loan. This is unclear from the documents the Claimant has thus far provided.*
6. *Whether the two one-page loan agreements provided by the Claimant represent the total documentation in respect of any and all loans or financial facilities which have been granted to the Claimant by Mr [REDACTED] or any other person or entity in relation to this arbitration. If they do not, the Respondent requests that the Tribunal direct that the Claimant provide any and all other relevant documentation.*
7. *Whether Mr [REDACTED] (or any other person or entity who has provided any financing, directly or indirectly to the Claimant), has assumed liability to pay any costs Award which may be rendered against the Claimant in due course, and if so, that the Claimant provides any and all relevant documentation.*
8. *Whether the Claimant has granted to Mr [REDACTED] – or any other person or entity who has provided financing, directly or indirectly in*

*relation to this arbitration – any security in respect of any loans extended to the Claimant, and if so, that the Claimant provides details thereof.*

9. *The nature of Mr ██████████ relationship to the Claimant and the reasons why Mr ██████████ has purportedly loaned the Claimant funds for the purposes of pursuing an ICSID arbitration against the State of Qatar, to which Mr ██████████ appears to have no connection.*
10. *Whether Mr ██████████ – or any other person or entity who has provided, or promised to provide, any form of financing, whether directly or indirectly, to the Claimant - has any form of entitlement to, interest in or recourse to (whether contingent or otherwise) any damages or costs which may be awarded to the Claimant in this arbitration, and if so, that the Claimant provides details, as well as any and all relevant documentation setting out the basis of such entitlement.*
11. *Whether Mr ██████████ – or any other person or entity who has provided, or promised to provide, any form of financing, whether directly or indirectly, to the Claimant - has any entitlement to control, direct or influence the Claimant's conduct of this arbitration and if so that the Claimant provides details, and any and all relevant documentation setting out the basis of such entitlement.*

## **B. The Claimant's Response**

6. On 5 October 2023, the Claimant submitted its observations on the Respondent's Application. It submitted that "it has already abided to the obligations set out in Rule 14 of the ICSID Arbitration Rules both, by providing the name and address in its written notice to the Tribunal and further, by replying to the Respondent's request of 10 May 2023 whereby the Claimant confirmed that the [sic] Mr ██████████ was the only third-party funder of the arbitration".

7. The Claimant submits in its letter of 5 October 2023 that the Respondent makes requests that go much further than what is prescribed by the ICSID Rules. He reiterates that Mr ██████████ is the only non-party from which the Claimant has received funds for the pursuit or defense of the proceeding, either directly or indirectly, with such funding taking the form of a loan with no remuneration dependent on the outcome of the proceeding.

8. The Claimant therefore asks the Tribunal not to grant the Respondent's Application as the terms of the third-party agreement are not relevant to assessing a potential conflict of interest of the arbitrators and also because there are no reasons in this case that justify the use of the Tribunal's power pursuant to Rule 14(4) and Rule 36(3) of the 2022 ICSID Arbitration Rules.

9. The Claimant asserts that Rule 14 does not set out a general obligation to disclose the entirety of the third-party funding agreement. Referring to a number of ICSID working papers that served the elaboration of Rule 14, the Claimant explains that a complete disclosure of the funding agreement is clearly not an underlying obligation of Rule 14(1) nor is it granted as a right

under Rule 14(4). This latter provision is a prerogative that may be used by the Tribunal only in limited circumstances, notably if the funding agreement is a relevant element to another issue raised in the proceeding. Rule 14(4) therefore does not create an open door to allow for the systematic disclosure of the funding agreement at the simple request of a party to the Tribunal. Obtaining third-party funding is simply not evidence of impecuniosity or a disinclination to comply with an adverse costs order.

## II. The Tribunal's Analysis

10. The Respondent's Application is based on Rules 14(4) and 36(3) of the ICSID Arbitration Rules. It does not invoke any other part of Rule 14, in particular paragraphs (1) through (3) of that Rule. As such, the Respondent is not raising any deficiency of the Claimants' Notice of Third-Party Funding but is seeking further disclosure regarding the terms and conditions of such funding. The Respondent has also not made an application for [REDACTED] costs under Rule 53.

11. Having identified the issue raised by the Application as solely one of further disclosure with respect to third party funding, the Tribunal therefore begins its analysis with the relevant rules in relation to such disclosure.

12. Rule 14(4) provides as follows:

*The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).*

13. The referenced provision of Rule 36(3) provides:

*The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.*

Rule 36 falls within the 2022 ICSID Arbitration Rules under a section headed: "Evidence: General Principles".

14. Rules 14(4) and 36(3) therefore give the Tribunal the power on a discretionary basis to order disclosure of further information regarding any funding agreement and the non-party providing funding based on a determination of necessity. The Tribunal also notes that it is explicitly provided that it may make such a determination at any stage of the proceeding. The Rules do not state any criteria on which the Tribunal's decision whether and how to exercise its discretion should be based.

15. Rule 37 of the 2022 ICSID Arbitration Rules, on "Disputes Arising from Requests for Production of Documents," while not specifically concerned with a request for production of documents related to a funding agreement or other issues relevant for non-party funding, nonetheless sets forth general standards that are relevant to this production dispute. These include the indication that the Tribunal "shall consider all relevant circumstances", including the scope of the request (a), the relevance and materiality of the documents requested (b), and the basis of the objection to the other party's request for production of documents (d). However, when considering

“all relevant circumstances” in the context of the present Application, the Tribunal’s power to order the production of further documents in relation to third-party funding “where it deems it necessary” must take into account, and is consequently limited by, the content and specific purpose of Rules 14(4) and 36(3).

16. Although the Respondent relies on Rules 14(4) and 36(3), its submission does not contribute significantly to the understanding and interpretation of these two provisions. The Respondent does not suggest, more concretely, how the Tribunal should understand the proviso that it may call for the production of documents “if it deems it necessary” at the current stage of these proceedings. It does not explain either whether the “information” which is qualified in Rule 14(4) with the attribute of being “further” in respect of the funding agreement and the non-party funding, may have a specific meaning in relation to the preceding provisions in Rule 14(1) to 14(3).

17. The Tribunal also observes that the Respondent stated in its letter dated 26 September 2023 that it had received on 19 June 2023 a “copy of two purported loan agreements concluded between the Claimant and Mr. [REDACTED].” Hence, it asked, in Request No. 6, “whether the two one-page loan agreements provided by the Claimants represent the total documentation in respect of any and all loans or financial facilities which have been granted to the Claimant by Mr [REDACTED] or any other person or entity in relation to this arbitration”. If the Claimant would deny this question, the Respondent requests that it “provide any and all other relevant documentation”, such documentation thus being different and additional to the two loan agreements.

18. At the outset, the Tribunal notes that a requested document in respect of funding should be “focused.” Given the purpose outlined in the first paragraph of Rule 14, a complementary request that relates to documents which are material for the purpose of disclosing relevant documents as defined in Rule 14(1), to such an extent that the Tribunal may deem their production “necessary” under “all relevant circumstances”, is obviously of central relevance. Rule 14(1) defines the content of the written disclosure notice in specific terms, in respect of the identity of the non-party providing funds (name, address) and certain modalities of the funding (pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding). These terms clearly demonstrate that the required disclosure is limited in its content and purpose. As the Claimant rightly observes, the disclosure notice is not designed to provide evidence of a potential impecuniosity or similar lack of funds of a party or of its funding non-party.

19. Rule 14 is part of Chapter II of the Rules, on the “Establishment of the Tribunal”. It is, thus, designed to provide a guideline for the setting up of the Tribunal and of its relation to each of the Parties, and this particularly for the purpose of the disclosure of any potential conflict of interest affecting an arbitrator and a party, through the latter’s funding partner. Rule 14 is not designed to open for the opposing party an opportunity to inquire about the financial status either of this party or of its non-party funder, either at the initial stage or at a subsequent stage of the proceedings. Particularly at a later stage of the proceedings after the Tribunal has been established, a strong showing of necessity for a legitimate purpose, such as the integrity of the proceedings (where the application raises such an issue) or other material implications for the proceedings, is



required in the view of the Tribunal. However, a great number of the Respondent's requests rely on such a broad disclosure inquiry, in numerous details the object of which are provided by the Respondent with rather limited explanations.

20. Moreover, as the Tribunal has already made clear in its Procedural Order No. 3 (para. 24), it will not approve requests framed in overly broad and/or unspecific terms, such as those deemed to seek for "all files and records" "any and all relevant documentation", as is the case with a great number of the requests submitted by the Respondent, *e.g.*, Requests Nos. 6, 10, and 11. Moreover, the Tribunal is not convinced by an approach whereby the Respondent extends its questioning to "any other person or entity" than Mr [REDACTED], *e.g.*, Requests Nos. 2, 4, 6, 7, 8, and 10, where the Claimant has already confirmed that Mr [REDACTED] is the only non-party funder, and the Respondent shows no evidence that would allow to have doubts in this respect.

21. The Respondent's Application disregards in many respects these fundamental objectives of the relevant provisions in Rule 14(4) and Rule 36(3) of the 2022 ICSID Arbitration Rules. With limited exceptions as noted below, the Tribunal does not consider that the Respondent has demonstrated the necessity for the requested disclosures at this time.

22. For the foregoing reasons, in respect of the specific Requests submitted by the Respondent, the Tribunal rules as follows:

- (a) Request No 1 ("*The precise state of the Claimant's knowledge as to the source of funds.*") is denied as it asks for information about the Claimant's knowledge as to the source of funds which have been provided to him. This request goes far beyond the framework of the disclosure that may further be required or necessary considering the circumstances of the present proceedings. Further, the request seems to be moot, as the Respondent recalls the Claimant's correspondence stating that to the Claimant's and his Counsel's knowledge, Mr [REDACTED] is "the ultimate source of the funds". Finally, to the extent that it calls for the Claimant to provide more information than what he has already provided, the request is unclear in its scope.
- (b) Request No 2 ("*What information has been: (i) requested by the Claimant from Mr [REDACTED] or any other person or entity; or (ii) provided to the Claimant by Mr [REDACTED] or any other person or entity as to the source of the funds or of any other funds which have been provided or promised to the Claimant, whether directly or indirectly, for the purposes of the Claimant's pursuit of this arbitration*") is equally denied as it overlaps with Request No. 1 and is unspecific and not substantiated for the purpose of providing information on the matter of non-party funding. Moreover, it is overbroad insofar as it requests from the Claimant information that it was not required to collect and disclose under the provision of Rule 14(1) from the non-party funder and "any other person or entity".

- (c) Requests Nos. 3 and 4 (“3. *The principal amount of the loan which has already been drawn down*; 4. *The total amount which Mr [REDACTED] – or any other person or entity – has agreed to lend or provide to the Claimant, including any amounts not yet drawn down*”) are denied as not material in respect of the purpose of Rule 14(1), which does not include any disclosure obligation in respect of the total amount, or the current use of the funds provided. Furthermore, such information is not necessary for the Tribunal in pursuing the present proceeding.
- (d) Request No. 5 (“*The timeframe in which the Claimant is liable to repay the principal of the loan. This is unclear from the documents the Claimant has thus far provided.*”), is granted. The Tribunal considers this a basic aspect of the loan arrangement in this case which could have a material implication for the proceedings. The first document with respect to the loan agreement (Exhibit C23a) indicates that the loan is granted for a duration of 10 years without interest (“*le prêt est accordé pour 10 ans sans intérêt*”), while the second document (Exhibit C23b) specifies a duration of 10 years. Both documents suggest that the principal may be repaid in whole or in part before that time in the “*observations*” (with slight variations in language between the two documents) that, in the terms of the first document, “*à défaut de remboursement total avant 10 ans, le prêt donne lieu à un intérêt payable chaque année au taux de 1.5% calculé sur le montant du principal restant au 30 décembre de chaque année.*”
- (e) Request No. 6 (“*Whether the two one-page loan agreements provided by the Claimant represent the total documentation in respect of any and all loans or financial facilities which have been granted to the Claimant by Mr [REDACTED] or any other person or entity in relation to this arbitration. If they do not, the Respondent requests that the Tribunal direct that the Claimant provide any and all other relevant documentation.*”) is denied as it seems in large part no longer relevant and for the remaining part unspecific, given the Claimant’s statement that he had submitted the total documentation in respect of the loan agreements and that no other party than Mr [REDACTED] has provided funding.
- (f) Request No. 7 (“*Whether Mr [REDACTED] (or any other person or entity who has provided any financing, directly or indirectly to the Claimant), has assumed liability to pay any costs Award which may be rendered against the Claimant in due course, and if so, that the Claimant provides any and all relevant documentation.*”) is granted as to the question set forth prior to the “and if so” further request, and denied as to the further request for “any and all relevant documentation”. The question of whether and if so to what extent the third-party lender has assumed liability for any costs Award is also a basic question that could have implications for the proceedings in this case.



- (g) Request No. 8 (“Whether the Claimant has granted to Mr [REDACTED] – or any other person or entity who has provided financing, directly or indirectly in relation to this arbitration – any security in respect of any loans extended to the Claimant, and if so, that the Claimant provides details thereof.”) is denied as it is not material for the purpose of the provisions on non-party funding whether security has been granted to Mr [REDACTED], either by the Claimant or by “any other person or entity”, the latter being designated by the Respondent without further explanation or observation in light of the Claimant’s statement that no funding party other than Mr [REDACTED] was involved in this respect.
- (h) Requests Nos. 9 to 11 (set forth in a footnote due to their length)<sup>1</sup> are denied as being not relevant and insufficiently specific in light of the purpose and scope of the obligation for disclosure under Rule 14(1) and with regard to a possible extension under Rule 14(4) and Rule 36(3), which does not require any information (i) about the reasons underlying the funding and the relationship between a party and the non-party funder (Request No 9); (ii) any form of entitlement to any amount that may be awarded (No 10); and (iii) any entitlement related to the control or influence upon the Claimant’s conduct of this arbitration (No 11).

---

<sup>1</sup> 9. The nature of Mr [REDACTED] relationship to the Claimant and the reasons why Mr [REDACTED] has purportedly loaned the Claimant funds for the purposes of pursuing an ICSID arbitration against the State of Qatar; to which Mr [REDACTED] appears to have no connection.

10. Whether Mr [REDACTED] – or any other person or entity who has provided, or promised to provide, any form of financing, whether directly or indirectly, to the Claimant - has any form of entitlement to, interest in or recourse to (whether contingent or otherwise) any damages or costs which may be awarded to the Claimant in this arbitration, and if so, that the Claimant provides details, as well as any and all relevant documentation setting out the basis of such entitlement.

11. Whether Mr [REDACTED] – or any other person or entity who has provided, or promised to provide, any form of financing, whether directly or indirectly, to the Claimant - has any entitlement to control, direct or influence the Claimant’s conduct of this arbitration and if so that the Claimant provides details, and any and all relevant documentation setting out the basis of such entitlement.

**III. Decision and Order**

23. In conclusion, the Tribunal dismisses all of the Respondent's 11 requests for documents and information as submitted in the Application, except for Request No. 5 and the first part of Request No. 7. Such dismissal is without prejudice to a subsequent application at a later stage of the proceedings based on the facts and circumstances at that time.

24. Accordingly, the Claimant is ordered to produce the information responsive to those requests within three weeks of the date of this Order.

On behalf of the Tribunal,



Ms. Lucinda A. Low  
President of the Tribunal  
Date: 14 December 2023