

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Naftiran Intertrade Co. (NICO) Limited
(Claimant)

v.

Kingdom of Bahrain
(Respondent)

(ICSID Case No. ARB/22/34)

PROCEDURAL ORDER No. 2
On Transparency and Confidentiality

Members of the Tribunal

Dr. Claus von Wobeser, President of the Tribunal
Prof. Bernard Hanotiau, Arbitrator
Prof. Maxi Scherer, Arbitrator

Secretary of the Tribunal

Ms. Anna Holloway

May 7, 2024

I. PROCEDURAL BACKGROUND

1. On March 5, 2024, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On March 18, 2024, the Parties commented on Draft PO2.
3. On March 20, 2024, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft procedural order no. 1.
4. On April 2, 2024, the Tribunal circulated revised drafts of Procedural Orders Nos. 1 and 2 (including an updated proposed procedural calendar), inviting parties’ comments on the procedural calendar by April 5, 2024 (subsequently extended to April 8, 2024).
5. On April 8, 2024, each party confirmed that they had no comments on the revised Procedural Orders Nos. 1 and 2.
6. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

7. The legal framework applicable to these proceedings is determined by the Malaysia-Bahrain BIT (1999), the ICSID Convention, and the 2022 ICSID Arbitration Rules. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information.
8. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
9. In this case, the Malaysia-Bahrain BIT (1999) is silent with respect to transparency /confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 as amended/supplemented by Section III of this Order.
10. In accordance with ICSID Arbitration Rule 66 confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration;
 - (b) by the applicable law or applicable rules;
 - (c) in the case of information of a State party to the dispute, by the law of that State;
 - (d) in accordance with the orders and decisions of the Tribunal;
 - (e) by agreement of the parties;
 - (f) because it constitutes confidential business information or protected personal information;
 - (g) because public disclosure would impede law enforcement;

- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

III. TRANSPARENCY RULES

- 11. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. AWARD (ICSID ARBITRATION RULE 62)

- 12. In accordance with Article 48(5) of the ICSID Convention, the Centre shall not publish the award without the consent of the parties.
- 13. Any publication of an award must be in compliance with ICSID Arbitration Rule 62.

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

- 14. Any publication of the Tribunal's Orders and Decisions must be in compliance with ICSID Arbitration Rule 63.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)

- 15. ICSID shall not publish the Parties' written submissions.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

- 16. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))

- 17. Hearings shall not be open to the public.

F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))

- 18. Transcripts and recordings of hearings shall not be published by ICSID.

G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66)

- 19. With respect to any proposed publication pursuant to the above Sections, any confidential or protected information as defined in ICSID Arbitration Rule 66 or additional definition agreed by Parties that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below.
- 20. Within 28 days from the date of a decision or order, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the 28 day timeline, and

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unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.

21. Within 21 days of receipt of the notice referred to in paragraph 20, the other Party may raise objections to the proposed redactions.
22. If no objections are raised within the deadline established in paragraph 21, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
23. If objections are raised within the deadline established in paragraph 21, the Parties shall confer and seek to agree on redactions within 21 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
24. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted for decision to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order.

On behalf of the Tribunal.

[signed]

Dr. Claus von Wobeser
President of the Tribunal
Date: May 7, 2024

**ANNEX TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE**

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	