

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Ricardo Filomeno Duarte Ventura Leitão Machado**

**v.**

**Republic of Angola**

**(ICSID Case No. ARB/24/8)**

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**PROCEDURAL ORDER NO. 2  
On Transparency and Confidentiality**

***Members of the Tribunal***

Ms. Valeria Galíndez, President of the Tribunal

Mr. Alfonso Iglesia, Arbitrator

Prof. Diego P. Fernández Arroyo, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Toubiana

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27 November 2024

## **Contents**

I. PROCEDURAL BACKGROUND.....	1
II. LEGAL FRAMEWORK.....	1
III. TRANSPARENCY RULES .....	2
A. Written Submissions (UNCITRAL Transparency Rules, Art. 3) .....	2
B. Orders, Decisions and Award (UNCITRAL Transparency Rules, Art. 3) .....	2
C. Open Hearings (UNCITRAL Transparency Rules, Art. 6).....	2
D. Transcripts and Recordings of Hearings (UNCITRAL Transparency Rules, Art. 3).....	3
E. Procedure for redactions - Non-disclosure of Protected Information (UNCITRAL Transparency Rules, Art. 7).....	3
F. Repository (UNCITRAL Transparency Rules, Art. 8) .....	4
ANNEX A.....	6

## I. PROCEDURAL BACKGROUND

1. On 18 October 2024, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 28 October 2024, the Parties commented on Draft PO2.
3. On 20 November 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. This Procedural Order No. 2 contains the Parties’ agreements concerning the transparency regime governing this case.

## II. LEGAL FRAMEWORK

5. The legal framework applicable to these proceedings is determined by the Agreement between the Portuguese Republic and the Republic of Angola for the Promotion and Reciprocal Protection of Investments signed on 22 February 2008 and revised on 16 July 2021 (the “**BIT**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. Article 11(10) of the BIT provides: “*the Transparency Rules of the United Nations Commission on International Trade Law (UNCITRAL) shall apply to any proceedings initiated under paragraph 2(b) to (e).*”
7. Article 1(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “**UNCITRAL Transparency Rules**”) provides:

*In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:*

*(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;*

*(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.*

8. The UNCITRAL Transparency Rules shall therefore apply to this proceeding and govern matters of transparency and confidentiality, subject to the following adaptations adopted by the Tribunal after consultation with the Parties, pursuant to Article 1(3)(b) of the UNCITRAL Transparency Rules.

### III. TRANSPARENCY RULES

9. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.
10. Articles 1(1)-(2) and 2 of the UNCITRAL Transparency Rules are not applicable.
11. Article 1(5) is adapted to the extent that the Tribunal may exercise its authority pursuant to the ICSID Arbitration Rules to promote transparency in this case.

#### A. WRITTEN SUBMISSIONS (UNCITRAL TRANSPARENCY RULES, ART. 3)

12. The following provision replaces Article 3(1) of the UNCITRAL Transparency Rules:

*Subject to article 7, the following documents shall be made available to the public: the Claimant's request for arbitration, the Claimant's memorial, the Respondent's counter-memorial and any further written statements or written submissions by any disputing party; [...].*

13. ICSID shall publish the documents referenced in paragraph 12 above with any redactions agreed to by the Parties or decided by the Tribunal, in accordance with Section E below.

#### B. ORDERS, DECISIONS AND AWARD (UNCITRAL TRANSPARENCY RULES, ART. 3)<sup>1</sup>

14. ICSID shall publish on its website all orders, decisions and the Award of the Tribunal, with any redactions agreed by the Parties and jointly notified to the Secretary-General subject to the procedure established in Section E below.

#### C. OPEN HEARINGS (UNCITRAL TRANSPARENCY RULES, ART. 6)

15. Pursuant to Article 6 of the UNCITRAL Transparency Rules, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements. The Parties shall give the Tribunal advance notice prior to referencing protected information at the hearing. The Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information addressed during the hearing at the latest at the pre-hearing organizational conference.
16. The Tribunal may, after consultation with the Parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

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<sup>1</sup> Pursuant to ICSID Arbitration Rule 72(2), this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

17. The ICSID Secretariat will make all necessary technical arrangements to broadcast the hearings through a video link.

**D. TRANSCRIPTS AND RECORDINGS OF HEARINGS (UNCITRAL TRANSPARENCY RULES, ART. 3)**

18. ICSID shall publish transcripts or recordings, with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section E below.

**E. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF PROTECTED INFORMATION (UNCITRAL TRANSPARENCY RULES, ART. 7)**

19. With respect to publication pursuant to Sections A, B, C and D above, any protected information as defined in Article 7.2. of the UNCITRAL Transparency Rules that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
20. Pursuant to Article 7(3)(a) and (b) of the UNCITRAL Transparency Rules, each Party or third person shall give notice within 21 days from the filing or dispatch of any document (save for (i) the Award, the publication of which is addressed in paragraph 24 below; and (ii) witness statements, the publication of which is addressed in paragraph 22 below) that it seeks protection for confidential or protected information in that document, or on the grounds set forth in Articles 7(6) and 7(7) of the UNCITRAL Transparency Rules, (“**Objection to Transparency**”), using the Transparency Schedule in **Annex A** to this Order.
21. In the absence of such objection, the Tribunal will authorize the publication by ICSID of any document mentioned in Article 3(1) of the UNCITRAL Transparency Rules (save for the Award).
22. The publication of expert reports and witness statements is governed by Article 3(2) of the UNCITRAL Transparency Rules. Each Party or third person shall submit an Objection to Transparency to the Tribunal within 21 days upon the receipt of a request to publish any expert report or witness statement. The objection must be made using the Transparency Schedule in **Annex A** of this Order. In the absence of such an objection, the Tribunal will authorize the publication by ICSID of the expert report or witness statement, excluding any exhibits thereto.
23. Any Objection to Transparency made in accordance with the preceding paragraphs shall specifically identify the document (or parts thereof) sought to be designated as confidential or protected. The other Party shall reply to the Objection to Transparency, using the Transparency Schedule in **Annex A** to this Order, within 15 days. In case of disagreement between the Parties, the Tribunal will decide whether the identified document or information is confidential or protected. If an Objection is raised concerning the entire document and the Tribunal deems it justified, the document shall not be published. If specific information is found to be confidential or protected, the Party or third person will provide the Tribunal with a redacted version of the document in question. The Tribunal will thereafter authorize and instruct ICSID to publish such document.

24. With respect to the Award, the Parties, after the Award is dispatched, shall confer and agree on the redactions that they wish to make to protect confidential or otherwise protected information. Upon reaching an agreement, the Parties shall either jointly transmit to ICSID a redacted version of the Award to be published on the ICSID website, or inform ICSID that they have agreed not to make any redactions and to publish the Award as it was dispatched.
25. If the Parties do not agree on the redactions, they shall, within a term of 45 days after the dispatch of the Award, give notice of their disagreements to the ICSID Secretariat using the Transparency Schedule in **Annex A**.
26. The ICSID Secretariat will communicate the Transparency Schedule to the former Members of the Tribunal who will proceed to decide<sup>2</sup>. Following the decision by the former Members of the Tribunal, the Parties shall jointly prepare a redacted copy of the Award reflecting the redactions pursuant to the decision of the former Members of the Tribunal. The Award so redacted will thereafter be published by the ICSID Secretariat.

**F. REPOSITORY (UNCITRAL TRANSPARENCY RULES, ART. 8)**

27. Article 8 is adapted to the extent that the Repository of published information shall be ICSID. In addition, the following rules shall apply in connection with the Repository:
  - i. The Repository shall publish documents on its website upon and pursuant to the Tribunal's instructions.
  - ii. The Repository shall publish either redacted versions of documents prepared by a Party or the Parties pursuant to an agreement between them or to a decision by the Tribunal, or unredacted versions of documents as they were filed or issued in the course of the proceeding.
  - iii. The Tribunal will be released of its responsibility under the UNCITRAL Transparency Rules and this Order upon completion of its mandate under the ICSID Convention and Arbitration Rules, such mandate extending to any interpretation or revision proceedings.
  - iv. Upon completion of the case, all documents referred to in Article 3 of the UNCITRAL Transparency Rules (as modified in this Order or

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<sup>2</sup> The Parties agree that the power to decide on such dispute shall reside in the former Members of the Tribunal, even if such Tribunal is at that time *functus officio*. However, as the proceeding will conclude upon dispatch of the Tribunal's Award, any costs incurred after the dispatch of the Award (e.g., arbitrator fees for time spent deciding on disputed redactions) will not be considered part of the costs of the proceeding. To ensure the payment of any fees incurred by the former Members of the Tribunal in connection with disputes over redactions of the Award, the Parties agree that ICSID will maintain the case trust fund open after the proceeding is concluded. The three former Members of the Tribunal will be able to submit claims for such fees at the same hourly rate and through the same process used during the proceeding, and the claims will be paid from the advance payments made by the Parties. ICSID will close the case trust fund once the arbitrators have submitted their claims for fees relating to the resolution of disputes over redactions of the award, if any.

otherwise) shall continue to be made available to the public on the ICSID website.

On behalf of the Tribunal,

[ *Signed* ]

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Ms. Valeria Galíndez  
President of the Tribunal  
Date: 27 November 2024

**ANNEX A**

**TRANSPARENCY SCHEDULE**

[insert Party]	Objection 1 [use one sheet per category of documents]
Documents (or parts thereof) sought to be protected	
Legal basis for protection	
Comments	
Reply by opposing party	
Decision	