

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bank of Nova Scotia
Claimant

v.

Republic of Peru
Respondent

(ICSID Case No. ARB/22/30)

PROCEDURAL ORDER No. 5

Redactions to the Claimant's Memorial on the Merits

Members of the Tribunal

Ms. Lucy Reed, President of the Tribunal
Prof. Dr. Kaj Hobér, Arbitrator
Prof. Zachary Douglas K.C., Arbitrator

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

25 February 2025

A. Procedural History

1. On 29 November 2024, the Claimant filed its Memorial on the Merits (the “**Memorial**”).
2. On 18 December 2024, the ICSID Secretariat sent a letter to the Parties stating that, in accordance with Section 17 of Procedural Order No. 2 and absent any indication from either Party, “*ICSID will proceed to publish the Memorial on the Merits on the ICSID website on Friday, 20 December 2024*”.
3. On 19 December 2024, the Claimant sent a letter to the Tribunal requesting that certain parts of the Memorial be designated as Confidential Information and submitted a redacted version of the Memorial.
4. On 20 December 2024, the Respondent sent an email to the Tribunal, in response to the Secretariat’s letter of 18 December and the Claimant’s letter of 19 December 2024. The Respondent requested additional time, until 7 January 2025, to determine whether certain information should be redacted from the Memorial.
5. On 23 December 2024, the Tribunal invited the Claimant to propose redactions of Confidential Information by way of a Transparency Schedule, as required in paragraphs 17-18 and Annex A of Procedural Order No. 2, by no later than 6 January 2025. The Respondent was invited to submit its objections to the Claimant’s proposed redactions within 15 days of receipt of the Claimant’s Transparency Schedule.
6. On 6 January 2025, the Claimant filed its Transparency Schedule setting out its proposed redactions to any public version of the Memorial on the Merits.
7. On 23 January 2025, with permission of the Tribunal, the Respondent submitted its comments on the Claimant’s proposed redactions to its Memorial on the Merits, using the Claimant’s Transparency Schedule, and also proposed its own redactions to the Claimant’s Memorial by way of a Transparency Schedule.
8. On 27 January 2025, the Tribunal invited the Claimant to provide the reasons supporting the proposed redactions challenged by the Respondent by 30 January 2025, in accordance with paragraph 20 of Procedural Order No. 2. The Tribunal also invited the Claimant to submit any objections to the Respondent’s proposed redactions within 15 calendar days of receipt, by 7 February 2025.
9. On 30 January and 7 February 2025, respectively, the Claimant filed its response to the Respondent’s objections and the Claimant submitted its objections to the Respondent’s proposed redactions.
10. On 14 February 2025, the Respondent submitted its response to the Claimant’s objections.

B. Tribunal’s Analysis

11. The Tribunal does not consider that detailed reasons for its approved redactions to the Claimant’s Memorial are necessary or helpful to the Parties.

12. In general, the Tribunal (a) approves both Parties' proposed redactions that, directly by name or indirectly by date or other information, constitute protected personal information concerning individuals who are not parties in this arbitration; and (b) does not approve proposed redactions, primarily made by the Respondent, of material that is general in nature and relate to the basic factual disputes in this arbitration.
13. Where individuals (other than high government officials) are identified in such general material, the Tribunal has determined to approve redactions of identifying information, even if available through the public record. The Tribunal considers that, at this early stage of the proceedings where evidence has not been tested, disclosure of such identifying information could possibly put named non-party individuals at increased risk in other fora and aggravate the dispute.
14. The Tribunal's specific decisions concerning the Parties' proposed designations and redactions of Confidential Information are set out in the Parties' Transparency Schedules attached to this Order as Annex A (Claimant's Transparency Schedule) and Annex B (Respondent's Transparency Schedule).

ORDER

15. The Parties are ordered to coordinate to prepare an integrated redacted version of the Claimant's Memorial containing the redactions approved in this Procedural Order No. 5 by the Tribunal.
16. In accordance with paragraph 20 of Procedural Order No. 2, the Parties are directed to provide this integrated redacted version of the Claimant's Memorial to the ICSID Secretariat by **4 March 2025**.

On behalf of the Tribunal,

[Signed]

Lucy Reed
President of the Tribunal

Date: 25 February 2025