

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International
Trading (Shanghai) Co. Ltd.**

v.

United Mexican States

(ICSID Case No. ARB/24/21)

PROCEDURAL ORDER NO. 2
Transparency and Confidentiality

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal
Mr. Donald Francis Donovan, Arbitrator
Prof. Pierre Mayer, Arbitrator

Secretary of the Tribunal

Ms. Gabriela González Giráldez

Assistant to the Tribunal

Ms. Sofia Klot

8 April 2025

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I. PROCEDURAL BACKGROUND

1. On 27 January 2025, the Secretary of the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 21 February 2025, the Respondent sent its comments to Draft PO2. On 24 February 2025, the Claimants objected to having a separate procedural order regulating transparency and confidentiality, arguing that, except as required by the ICSID Convention, the ICSID Arbitration Rules, and the applicable treaties, the evidence and submissions filed by the Parties, as well as any procedural orders issued in this proceeding should be treated as confidential.
3. On 11 March 2025, the first session was held. During the first session, the Parties and the Tribunal discussed the transparency and confidentiality regime that would govern this case. The Claimants announced that they had reconsidered their position and were prepared to accept Draft PO2 with the modifications introduced by the Respondent, as long as Procedural Order No. 2 made it clear that redactions could be made for commercially sensitive matters.
4. On 28 March 2025, the Tribunal submitted an amended proposal of Draft PO2 to the Parties for comments.
5. On 4 April 2025, the Respondent confirmed its agreement with the amended Draft PO2. On 6 April 2025, the Claimants confirmed their agreement with the amended Draft PO2.
6. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency and confidentiality regime governing this case.

II. LEGAL FRAMEWORK

7. The legal framework applicable to this proceeding is determined by the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States for the Promotion and Reciprocal Protection of Investments, which entered into force on 25 July 2007 (the “**UK-Mexico BIT**”); the Agreement Between the Government of the United Mexican States and the Government of the People’s Republic of China on the Promotion and Reciprocal Protection of Investments, which entered into force on 6 June 2009 (the “**Mexico-China BIT**”¹); the ICSID Convention; and the 2022 ICSID Arbitration Rules. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the Award, orders, decisions, other documents filed in the proceeding, 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 the transparency and confidentiality of this proceeding.
9. In this case, Article 18.4 of the UK-Mexico BIT provides that “[t]he arbitral award shall be public, unless the disputing parties agree otherwise”, and Article 20.4 of the Mexico-China BIT provides

¹ For the sake of clarity, this language does not prejudice the Respondent’s consent to the applicability of two different treaties for one arbitration.

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that “[t]he arbitral award shall be publicly accessible, unless the disputing parties agree otherwise.” The BITs do not contain other provisions on transparency or 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. This Transparency and Confidentiality Order shall apply to any: (i) decisions; (ii) orders; (iii) the Award issued by the Tribunal; (iv) all written submissions (*e.g.*, memorial, counter-memorial, reply and rejoinder, whether on jurisdiction, merits or damages, pleadings on bifurcation and other submissions on procedural issues); (v) evidence and supporting documents (including factual exhibits, legal authorities, witness statements and expert reports with any annexes, appendices or exhibits thereto); and (vi) hearings, regardless of their modality, as well as hearing transcripts or recordings.
11. This Order governs issues relating to the disclosure of information to the public and is without prejudice to the Parties’ right to object to the production of documents on grounds of confidentiality.
12. 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.
13. Additionally, to the extent that it is not already included in ICSID Arbitration Rule 66, any information of a commercially sensitive nature shall also be considered and treated as confidential information protected from public disclosure.

III. TRANSPARENCY AND CONFIDENTIALITY RULES

14. The Tribunal adopts the following transparency and confidentiality rules to govern the proceeding.

A. PUBLICATION OF THE AWARD (ICSID ARBITRATION RULE 62)

15. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties consent to the publication of the Award by ICSID on its website, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section F *infra*.²
16. With respect to the Award, the Parties agree that the Tribunal shall only become *functus officio* after the confidentiality objections, if any, have been resolved.³

B. PUBLICATION OF ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

17. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section F *infra*.

C. CONFIDENTIALITY OF WRITTEN SUBMISSIONS AND SUPPORTING DOCUMENTS

18. Written submissions (*e.g.*, memorial, counter-memorial, reply and rejoinder, whether on jurisdiction, merits or damages, pleadings on bifurcation and other submissions on procedural issues), as well as any evidence and supporting documents, including factual exhibits, legal authorities, witness statements and expert reports (with any annexes, appendices or exhibits thereto) shall remain confidential and shall not be made public by any means.

D. CONFIDENTIALITY OF HEARINGS

19. Hearings shall be confidential and not open to the public.

² Pursuant to ICSID Arbitration Rule 72(2), this 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.

³ The Members of the Tribunal will be compensated for time spent in the resolution of any disputed redactions in the Award in accordance with Section 3 of Procedural Order No. 1, with their claims being paid from the case fund administered by ICSID for this proceeding pursuant to the ICSID Administrative and Financial Regulations. Any costs incurred after the dispatch of the Award (*e.g.*, arbitrator fees for time spent addressing disputed redactions) will not be considered part of the costs of the proceeding. To ensure the payment of any fees incurred by the 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 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 in equal parts 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.

E. CONFIDENTIALITY OF TRANSCRIPTS AND RECORDINGS OF HEARINGS

20. Transcripts and recordings of hearings shall not be disclosed or published by ICSID, the Parties, or any other person.

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

21. With respect to publication of the Award, orders or decisions pursuant to Sections A and B *supra*, any confidential or protected information as defined in paragraphs 12-13 *supra* shall be protected from disclosure and publication in accordance with the following procedures:

Procedure for the redaction of orders and decisions

22. Within 15 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 and shall propose any redactions to that effect. Absent such a notice within the 15-day time limit, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66 or because it is of a commercially sensitive nature, the Tribunal will authorize ICSID to publish the decision or order without redactions from the Parties.
23. Within 14 days of receipt of the notice referred to in paragraph 22, the other Party may raise objections to the proposed redactions.
24. If no objections are raised within the deadline established in paragraph 23, the Tribunal will authorize ICSID to publish the decision or order at issue with the requested redactions.
25. If objections are raised within the deadline established in paragraph 23, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Parties shall provide the Tribunal with a redacted version of the document and the Tribunal will authorize ICSID to publish the decision or order at issue with the agreed redactions.
26. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in **Annex A** hereto. The Tribunal will issue a decision on redactions as soon as practicable, and will ask the Parties to submit a new version of the document implementing the redactions as decided by the Tribunal, before authorizing ICSID to publish the decision or order at issue.
27. If information is to be redacted from a document in accordance with paragraphs 24, 25 or 26, the Parties shall provide the Tribunal with a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.

Procedure for the redaction of the Award

28. The Parties shall provide ICSID with their jointly redacted text of the Award within 60 days of its dispatch.

29. If the Parties do not agree on a jointly redacted text, they shall, within 60 days after the dispatch of the Award, inform ICSID and provide their respective proposals for redaction and objections to redactions in the form of the Transparency Schedule set out in **Annex A** hereto. ICSID shall refer the Parties' proposals to the Tribunal to decide any disputed redactions. Once the Tribunal issues its decision, the Parties shall implement any such redactions as decided by the Tribunal and shall provide the Tribunal with a redacted version of the Award. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
30. ICSID shall publish the Award in accordance with the decision of the Tribunal.

IV. PUBLICATION OF AWARDS, DECISIONS AND ORDERS

31. ICSID shall act as the repository of published information pertaining to this arbitration.
32. Upon receiving the redacted version of the documents from the Parties, the Tribunal shall submit the documents to ICSID for publication (in redacted form, if applicable).
33. ICSID will publish information and documents in the format and language in which it receives it.
34. Upon completion of this arbitration, documents whose publication has been authorized in accordance with Section III *supra* shall continue to be made available to the public on the ICSID website.

On behalf of the Tribunal,

[signed]

Eduardo Zuleta Jaramillo
President of the Tribunal
Date: 8 April 2025

ANNEX A - TRANSPARENCY SCHEDULE

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