

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Continental Gold Inc.**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/24/25)**

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

***Members of the Tribunal***

Prof. Dr. Klaus Sachs, President of the Tribunal  
Ms. Elisabeth Eljuri, Arbitrator  
Ms. Loretta Malintoppi, Arbitrator

***Secretary of the Tribunal***

Ms. Elisa Méndez Bräutigam

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14 March 2025

## **I. PROCEDURAL BACKGROUND**

1. On 10 February 2025, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On 3 March 2025, the Parties commented on Draft PO2.
3. On 5 March 2025, at 8:00 am (Washington, D.C. time) 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 and the Tribunal’s decisions concerning the transparency regime governing this case.

## **II. LEGAL FRAMEWORK**

5. The legal framework applicable to these proceedings is determined by the Free Trade Agreement between Canada and the Republic of Colombia signed on 21 November 2008, and which entered into force on 15 August 2011 (“FTA”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. Article 830 of the FTA contains provisions on transparency and confidentiality, which shall apply to these proceedings. It provides as follows:

### **Article 830: Public Access to Hearing and Documents**

1. Any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information. A disputing party providing information that it claims is confidential has the burden of designating it as confidential.
2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.
3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.
4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.
5. To the extent that a Tribunal’s confidentiality order designates information as confidential and a Party’s law on access to information requires public access to

that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section requires a disputing Party to disclose, furnish or allow access to information that it may withhold in accordance with Article 2202 (Exceptions – National Security) or Article 2205 (Exceptions – Disclosure of Information).
7. In accordance with Article 838 (“Definitions”) of the FTA, “confidential information” means:
  - i. Confidential business information; and
  - ii. Information that is privileged or otherwise protected from disclosure under the law of a Party.
8. ICSID Arbitration Rule No. 66 establishes the following:

Rule 66 Confidential or Protected Information

For the purposes of Rules 62-65, 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**

9. The Tribunal adopts the following transparency and confidentiality rules governing these proceedings.

**A. AWARD (ARTICLE 830(1) OF THE FTA)**

10. In accordance with Article 830(1) of the FTA, the Award shall be publicly available on ICSID's website, subject to the deletion of any confidential information.
11. The procedure to redact confidential information from the Award is addressed in **Section F** below.

**B. ORDERS AND DECISIONS (ARTICLE 830(1) OF THE FTA)**

12. ICSID shall publish on its website the orders and decisions of the Tribunal, subject to the deletion of any confidential information. The procedure for the deletion of any confidential information from these documents is addressed in Section F below.

**C. WRITTEN SUBMISSIONS (ARTICLE 830(1) OF THE FTA)**

13. ICSID shall publish the Parties' main written submissions (Request for Arbitration, Memorials, Counter-Memorials, Replies, and Rejoinders) on its website, subject to the deletion of any confidential information. The procedure for the deletion of confidential information from these documents is addressed in Section F below.
14. The Parties may agree to publish other written submissions not falling within paragraph 12 above within 14 days from the filing of the relevant submission, subject to the deletion of any confidential information in accordance with Section F below. For these submissions, the deadline foreseen at paragraph 22 below to propose redactions shall start running from the date of the Parties' agreement to publish the relevant submission.

**D. SUPPORTING DOCUMENTATION (ARTICLE 830(1) OF THE FTA)**

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

**E. OPEN HEARINGS (ARTICLE 830(2) OF THE FTA)**

16. In accordance with Article 830(2) of the FTA, hearings shall be open to the public by providing a live stream of the proceedings on a video sharing platform. The live stream of proceedings shall not be made available for on-demand viewing by the public.
17. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.
18. The Tribunal, in consultation with the Parties, shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings. Any such procedures and arrangements will be discussed between the Tribunal and the Parties at the pre-hearing organizational meeting to be held in accordance with Section 20 of Procedural Order No. 1.

19. In accordance with Article 827(2) of the FTA, the Government of Canada, as the other Contracting Party to the FTA, shall have the right to attend any hearings. Upon written notice to the Parties, the Government of Canada may make oral and written submissions to the Tribunal on a question of interpretation of the FTA.

**F. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ARTICLE 830 OF THE FTA)**

20. A Party providing information that it claims is confidential has the burden of designating it as confidential.
21. With respect to the publication pursuant to Sections A, B, and C above, any confidential information shall be protected from disclosure and publication in accordance with the procedure set forth below:
22. Within 30 days from the date of the issuance of the Award, a decision or order, or the filing of a written submission, a Party shall give written notice to the Tribunal, ICSID, and the other Party that it requests the non-disclosure of certain information it considers confidential or protected and propose redactions. Absent such a notice within the 30-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with the applicable framework, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.
23. Within 14 days of receipt of the notice and proposed redactions 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 document 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 7 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.
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 the Annex to this Order.
27. If information is to be redacted from a document in accordance with paragraphs 23, 24, or 25, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
28. The Parties agree that in the event of a dispute regarding proposed redactions to the Award, the power to decide shall reside with the former Members of the Tribunal, even if such Tribunal is at that time *functus officio*.

29. The former Members of the Tribunal will be compensated for time spent in the resolution of any disputes in connection with the redaction of confidential information 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.<sup>1</sup>

On behalf of the Tribunal,

[Signed]

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Professor Dr. Klaus Sachs  
President of the Tribunal  
Date: 14 March 2025

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<sup>1</sup> 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 addressing 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. 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.

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Procedural Order No. 2 – Annex

**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	