

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**TMA Australia Pty Ltd and others**

**v.**

**Republic of the Philippines**

**(ICSID Case No. ARB/24/41)**

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

***Members of the Tribunal***

Ms. Meg Kinnear, President of the Tribunal  
Dr. Bernardo M. Cremades, Arbitrator  
Mr. J. Christopher Thomas KC, Arbitrator

***Assistant to the Tribunal***

Dr. Randi Ayman

***Secretary of the Tribunal***

Ms. Aurélia Antonietti

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March 28, 2025

## **I. PROCEDURAL BACKGROUND**

1. On January 3, 2025, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On March 12, 2025, the Parties commented on Draft PO2.
3. On March 19, 2025, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and 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 Agreement between the Government of Australia and the Government of the Republic of the Philippines on the Promotion and Protection of Investments, and Protocol, which entered into force on December 8, 1995 (the “Australia-Philippines BIT” or the “BIT”), 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.
6. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
7. In this case, the BIT 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 and supplemented by Section III of this Order.
8. 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**

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

#### **A. AWARD (ICSID ARBITRATION RULE 62)**

- 10. The Award shall not be published by ICSID on its website, unless otherwise agreed by the Parties.
- 11. ICSID may nonetheless still publish excerpts of the Award in accordance with and pursuant to the procedure set out in ICSID Arbitration Rule 62(4). The Parties may comment on the proposed excerpts within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected. ICSID shall consider any comments received on the proposed excerpts and publish the excerpts within 30 days after the expiry of the time limit for the Parties' comments on the proposed excerpts.

#### **B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)**

- 12. Orders and decisions shall be published by ICSID on its website in accordance with ICSID Arbitration Rule 63, and the Parties shall follow the procedure set out in Section G below with respect to redactions / non-disclosure of confidential or protected information in such orders and decisions.

#### **C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)**

- 13. Written submissions shall be published by ICSID on its website with consent of the Parties in accordance with ICSID Arbitration Rule 64(1). Absent such consent, ICSID Arbitration Rule 64(2) shall apply.

#### **D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)**

- 14. Supporting documents shall be published by ICSID on its website with consent of the Parties, in accordance with ICSID Arbitration Rule 64.

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

15. Hearings shall be open to the public, unless either Party objects.

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

16. Transcripts and recordings of the hearings shall be published by ICSID on its website upon request of a Party, unless the other Party objects.

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

17. With respect to publication pursuant to Sections B, C, D and F above, *to the extent applicable*, any confidential or protected information as defined in ICSID Arbitration Rule 66 that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
18. Within 60 days from the date of a decision or order, a written submission, or the date of transmittal of a final transcript or recording, *to the extent applicable*, 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 60-day timeline, 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, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.
19. Within 60 days of receipt of the notice referred to in paragraph 18, the other Party may raise objections to the proposed redactions.
20. If no objections are raised within the deadline established in paragraph 19, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
21. If objections are raised within the deadline established in paragraph 19, the Parties shall confer and seek to agree on redactions within 15 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.
22. 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** to this Order.
23. If information is to be redacted from a document or recording in accordance with paragraphs 20, 21 or 22, 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.

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Procedural Order No. 2

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On behalf of the Tribunal,

[signed]



Ms. Meg Kinnear  
President of the Tribunal  
Date: March 28, 2025

**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	