

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eka Tjandranegara

v.

Malaysia

(ICSID Case No. ARB/25/27)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal

Ms. Juliet Blanch, President of the Tribunal
Prof. Zachary Douglas KC, Arbitrator
Mr. Stuart Isaacs KC, Arbitrator

Secretary of the Tribunal

Ms. Izabela Chabinska

Assistant to the President of the Tribunal

Mr. Tim Robbins

May 22, 2026

I. INTRODUCTION

1. On February 3, 2026, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On February 10, March 6, 10, May 19 and 20, 2026, the Parties commented on Draft PO2.
3. On March 13, 2026, 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.
5. The legal framework applicable to these proceedings is determined by the ASEAN Comprehensive Investment Agreement dated February 26, 2009, ratified by Malaysia on June 17, 2009, which entered into force on February 24, 2012 (the “**ACIA**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. For purposes of Section G below, subject to ACIA Article 39, confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration (in particular, Articles 21 and 39 of the ACIA);
 - (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.

7. Additionally, Article 39 of the ACIA provides as follows:

1. Subject to paragraphs 2 and 3, the disputing Member State may make publicly available all awards, and decisions produced by the tribunal.

2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

5. The tribunal shall not require a Member State to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Member State's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

6. The non-disputing Member State shall be entitled, at its cost, to receive from the disputing Member State a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing

Member State. The disputing Member State shall notify all other Member States of the receipt of the notice of arbitration within 30 days thereof.

II. TRANSPARENCY RULES

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

A. AWARD (ICSID ARBITRATION RULE 62; ACIA ARTICLE 39)

9. The Tribunal takes note that Article 39 of the ACIA provides that: “the disputing Member State may make publicly available all awards ... produced by the tribunal.”
10. The Claimant consents to the publication of any award(s) by the Tribunal. The Respondent does not consent to the publication of any award of the Tribunal by ICSID.

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULES RULE 63; ACIA ARTICLE 39)

11. The Tribunal takes note that Article 39 of the ACIA provides that: “*the disputing Member State may make publicly available ... [the] decisions produced by the tribunal.*”
12. Subject to the Respondent’s right to seek the non-disclosure of any particular orders and decisions pursuant to Article 39(1) of the ACIA and the Parties’ rights under Article 39(2) of the ACIA, the Parties agree that 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 G below.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULES RULE 64)

13. The Parties do not consent to the publication of the Parties’ written submissions by ICSID.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULES RULE 64)

14. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) and transcripts or recordings of proceedings (including procedural meetings) shall not be published by ICSID.

E. OPEN HEARINGS (ICSID ARBITRATION RULES RULE 65(1)–(2))

15. Hearings shall not be open to the public.

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

16. Transcripts and recordings of hearings shall not be published by ICSID.

G. PROCEDURE FOR REDACTIONS – NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULES RULE 66) AND DATA PRIVACY

17. With respect to publication pursuant to Sections A - F, above, any confidential or protected information as defined in paragraph 6 above that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below.
18. The Tribunal is mindful of the need to protect the personal data of individuals and draws the Parties' attention to Section 26 of Procedural Order No. 1. When identifying protected information in accordance with paragraph 19 below, the Tribunal recommends that the Parties redact, to the extent possible, the names of individuals, possible identifiers (such as position, title, nationalities) and information that can be considered sensitive regarding any individuals mentioned in any document to be published.
19. Within 60 days from the date of a decision or order, a written submission, or the date of transmittal of a final transcript, 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, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.
20. Within 14 days of receipt of the notice referred to in paragraph 19, the other Party may raise objections to the proposed redactions.
21. If no objections are raised within the deadline established in paragraph 20, the Tribunal will authorize ICSID to publish the document at issue with the requested redactions.
22. If objections are raised within the deadline established in paragraph 20, 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 Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.

23. 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. The Tribunal shall resolve the disputed redactions requests and communicate its decision to the Parties.
24. If information is to be redacted from a document in accordance with paragraphs 19, 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.
25. 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*.
26. The former Members of the Tribunal will be compensated for time spent in the resolution of any disputes in connection with 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.¹

On behalf of the Tribunal,

[signed]

Ms. Juliet Blanch
President of the Tribunal
Date: May 22, 2026

¹ 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 such costs incurred in connection with disputes over redactions of the Award, the Parties agree that ICSID will keep the case trust fund open after the proceeding is concluded and debit the trust fund for any incurred costs. 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.

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	