

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Orla Mining Ltd.**

**v.**

**Republic of Panama**

**(ICSID Case No. ARB/24/27)**

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**PROCEDURAL ORDER NO. 6**

***Members of the Tribunal***

Mr. Yves Derains, President of the Tribunal  
Prof. Dr. Horacio A. Grigera Naón, Arbitrator  
Mr. Ignacio Torterola, Arbitrator

***Secretary of the Tribunal***

Mr. Francisco Abriani

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12 January 2026

## **I. PROCEDURAL BACKGROUND**

1. On 24 October 2025, Claimant requested that the Parties' written pleadings filed in the disqualification proceedings be published on ICSID's website pursuant to Article 9.30(1) of the Canada-Panama FTA (the "FTA") and ICSID Rule 64(1).
2. On 31 October 2025, Respondent objected to such publication and noted that, absent the consent of all parties, ICSID could not publish the Parties' written pleadings either pursuant to Article 9.30(1) of the FTA or pursuant to ICSID Rule 64(1).
3. On 3 November 2025, the Tribunal reminded the Parties that, after hearing their respective views, paragraph 11 of Procedural Order No. 2 of 20 December 2024 provided that "*ICSID shall not publish the written submissions of the Parties,*" and decided that the Tribunal must enforce that rule unless the Parties agree otherwise, which is not the case under the present circumstances.
4. On 4 December 2025, relying on ICSID Rule 64(2), Claimant requested the publication of its own written pleadings filed in the disqualification proceeding on the ICSID's website.
5. On 15 December 2025, Respondent objected to this request, on the rationale that, given the Parties' agreement to the non-publication of their submissions in paragraph 11 of Procedural Order No. 2, ICSID Rule 64(2) did not apply.
6. On 23 December 2025, Claimant observed that the above-mentioned decision of the Tribunal dated 3 November 2025 was rendered under ICSID Rule 64(1) and that its agreement to the terms of paragraph 11 of Procedural Order No. 2 in no way precluded it from requesting the application of the terms of Rule 64(2). It further explained that paragraph 11 of Procedural Order No. 2 did not refer to ICSID's Rules at all and, thus, could not be said to waive Rule 64(2). Claimant added that the Tribunal had already recognized that an agreement between the Parties as to a procedural issue could not be interpreted as a waiver of rights provided under the ICSID Rules when it found that Respondent's agreement to non-bifurcated proceedings could not be construed as a waiver of its right to raise subsequently preliminary objections pursuant to ICSID's Rules. It

pointed out that the FTA and paragraph 11 of Procedural Order No. 2, which refers to the “Parties” collectively and not to an individual party, are silent as to the publication of a party’s own submissions in the absence of mutual consent and that ICSID Rule 64(2) was designed to address this scenario precisely. Moreover, Claimant is of the opinion that the Tribunal may not instruct ICSID not to publish its own written pleadings pursuant to ICSID Rule 64(2).

7. On 5 January 2026, Respondent confirmed that in view of the content of article 9.30(1) of the FTA, ICSID Rule 64 did not apply and stressed that the Tribunal had the power to enforce Article 11 of Procedural Order No. 2.

## II. THE TRINUNAL’S ANALYSIS

8. After analysing the Parties’ respective positions, the Tribunal is satisfied that the Claimant’s request for publication on ICSID’s website of its own written pleadings filed in the disqualification proceeding, based on ICSID Rule 64(2), must be denied.

9. As pointed out by Eva Kalnina and Ankita Godbole in an article submitted by Claimant with its letter of 4 December 2025,

*“The principle (sic) legal instrument governing an investor-State arbitration administered by ICSID is the investment treaty, investment law or contract that encapsulates the States’ consent to arbitrate investor-state disputes. If the principle (sic) investment instrument contains provisions regulating transparency, then these take precedence over ICSID’s internal procedural framework .... Only in the event there is no agreement between the parties or treaty-specific provisions in place, will the applicable institutional rules be resorted to for resolving issues pertaining to transparency.”<sup>1</sup>*

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<sup>1</sup> Eva Kalnina and Ankita Godbole, 'Part 3: ICSID Arbitration Rules, Chapter X: Publication, Access to Proceedings and Non-Disputing Party Submissions [Rules 62-68] ¶¶ 21-22, in Richard Happ and Stephan Wilske(eds), ICSID Rules and Regulations 2022: Article-by-Article Commentary, pp 617-659.

10. As recalled by Procedural Order No. 2 in its Article 6 “*Article 9.30 of the of the Canada-Panama FTA contains a number of rules on transparency/confidentiality, which shall apply to these proceedings.*” Articles 9 to 14 of Procedural Order No. 2 implement the provisions of Article 9.30 of the FTA and under the title “C. WRITTEN SUBMISSIONS (CANADA-PANAMA FTA ARTICLE 9.30)” Article 11 of Procedural Order No. 2 reads as follows: “*ICSID shall not publish the written submissions of the Parties.*”
11. It is not disputed that Article 11 of Procedural Order No. 2 was a confirmation of the Parties’ agreement. This is expressly admitted by Claimant in its letter of 23 December 2025 where it states that “*As such, Orla’s agreement to the terms of paragraph 11 of Procedural Order No. 2 in no way precludes it from requesting the application of the terms of Rule 64(2).*”
12. Article 9.30 (1) of the FTA reads:  
  
“*A Tribunal award under this Section shall be publicly available, subject to the redaction 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 redaction of confidential information.*”
13. By providing their agreement, as confirmed by Article 11 of Procedural Order No. 2, that “*ICSID shall not publish the written submissions of the Parties.*”, the Parties implemented Article 9.30(1) of the FTA.
14. Based on the above, as the FTA contains provisions regarding transparency and the Parties have agreed under these provisions that “*ICSID shall not publish the written submissions of the Parties.*”, ICSID Rule 64 has no role to play.
15. It is on the basis of this agreement of the Parties, entered into within the framework of Article 9.30(1) of the FTA and not pursuant to ICSID Rule 64(1), as suggested by Claimant in its letter of 23 December 2025, that the Tribunal rendered its decision of 3 November 2025 denying Claimant’s request that the Parties’ written pleadings on disqualification be published on ICSID’s website.

16. On the same basis, Claimant's request for the publication of its own written pleadings filed in the disqualification proceeding on ICSID's website, pursuant to ICSID Rule 64(2) must also be denied.
17. *Ex abundante cautela*, the Tribunal observes that the solution would be the same if ICSID Rule 64(2) were applicable as it understands that this Rule contemplates the situation where the Parties failed to consent to the publication of their written submissions and not the situation where the Parties did expressly agree that such publication would not take place.
18. The Tribunal does not need to consider whether it is entitled or not to give any instruction to ICSID regarding Claimant's request, as it is just enforcing Article 11 of Procedural Order No. 2.

### **III. DECISIONS**

19. For the reasons stated above, the Tribunal dismisses the Claimant's application to have its own written pleadings filed in the disqualification proceeding published on ICSID's website.
20. The Tribunal reserves to a later stage any decision on costs and fees concerned by the matters heard and decided herein.

For and on behalf of the Tribunal,

[Signed]

Yves Derains  
President of the Tribunal

Date: 12 January 2026