

**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. 2  
On Transparency and Confidentiality**

***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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20 December 2024

## **I. PROCEDURAL BACKGROUND**

1. On 24 October 2024, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On 27 November 2024, the Parties commented on Draft PO2.
3. On 29 November 2024, 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 Panama (the “**Canada-Panama FTA**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. In this case, Article 9.30 of the Canada-Panama FTA contains a number of rules on transparency/confidentiality, which shall apply to these proceedings. It provides as follows:

### **Article 9.30: Public Access to Hearings and Documents**

1. 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.
  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, including business confidential information.
  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 those 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 Chapter, but they shall ensure that those persons protect confidential information in those documents.
  5. To the extent that a Tribunal’s confidentiality order designates information as confidential and a Party’s domestic law on access to information requires public access to that information, the Party’s domestic law on access to information prevails. However, a Party should endeavour to apply its domestic law on access to information so as to protect information designated confidential by the Tribunal.
7. In accordance with Article 9.01 of the Canada-Panama FTA, confidential information means “confidential business information or information that is privileged or otherwise protected from disclosure.”

### **III. TRANSPARENCY RULES**

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

#### **A. AWARD (CANADA-PANAMA FTA ARTICLE 9.30)**

9. Further to Article 9.30 of the Canada-Panama FTA, the Parties consent to publication of the Award by ICSID on its website, subject to the redaction of confidential information in accordance with Section G below.

#### **B. ORDERS AND DECISIONS (CANADA-PANAMA FTA ARTICLE 9.30)**

10. 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 (CANADA-PANAMA FTA ARTICLE 9.30)**

11. ICSID shall not publish the written submissions of the Parties.

#### **D. SUPPORTING DOCUMENTS (CANADA-PANAMA FTA ARTICLE 9.30)**

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

#### **E. OPEN HEARINGS (CANADA-PANAMA FTA ARTICLE 9.30)**

13. To the extent required by the Canada-Panama FTA, hearings shall be open to the public. The Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information addressed during the hearing at the latest at the pre-hearing organizational conference.

#### **F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (CANADA-PANAMA FTA ARTICLE 9.30)**

14. ICSID shall not publish transcripts or recordings of the hearings.

#### **G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (CANADA-PANAMA FTA ARTICLE 9.30)**

15. With respect to publication pursuant to Section A above, any confidential or protected information as defined in the Canada-Panama FTA or any additional definition agreed by the Parties that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
16. Within 30 days from the date of dispatch of the Award, Decisions or Orders, 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 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 Award without redactions from the Parties.
17. Within 30 days of receipt of the notice referred to in paragraph 16, the other Party may raise objections to the proposed redactions.
18. If no objections are raised within the deadline established in paragraph 17, the Tribunal will authorize ICSID to publish the Award at issue with the requested redactions.

19. If objections are raised within the deadline established in paragraph 17, the Parties shall confer and seek to agree on redactions within 30 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the Award at issue with the agreed redactions.
20. 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.
21. 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*.
22. 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 ICSID Administrative and Financial Regulations.<sup>1</sup>

On behalf of the Tribunal,

[Signed]

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Yves Derains  
President of the Tribunal  
Date: 20 December 2024

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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 confidentiality designations) 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.

**ANNEX TO PROCEDURAL ORDER NO. [...]**  
**TRANSPARENCY SCHEDULE**

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