

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bear Creek Mining Corporation

v.

Republic of Peru

(ICSID Case No. ARB/14/21)

PROCEDURAL ORDER NO 3

**Regarding the Designation and Protection of Confidential Information and the Preparation
of Redacted Copies of Documents for Disclosure**

Date of Order: October 19, 2015

Professor Dr. Karl-Heinz Böckstiegel, President of the Tribunal
Dr. Michael Pryles, Arbitrator
Professor Philippe Sands QC, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski

Assistant to the Tribunal

Ms. Katherine Simpson

Introduction

Pursuant to Section 24.4 of Procedural Order No. 1, the Parties have agreed to the following procedure for the designation and protection of confidential information and the preparation of redacted copies of documents for disclosure under Article 835 of the Canada-Peru FTA.

1. Designation and Protection of Confidential Information

- 1.1. Within 15 days of submitting or receiving Main Documents (as defined in Procedural Order No. 1), a Party shall indicate to the other Party and to the Arbitral Tribunal which portions of these Main Documents (if any) should be designated as confidential and treated as confidential information. With respect to Main Documents that have already been submitted or received as of the date of the issuance of this Order, the Parties shall have 15 days after the issuance of the Order to propose such designations.
- 1.2. If the other Party disagrees with all or part of the proposed designation, it shall communicate the reasons for its disagreement within 15 days of receiving such proposed designation. The Party that proposed the confidentiality designation shall then either withdraw or explain its justification for the challenged designation within 5 days.
- 1.3. Absent disagreement by the other Party, the designated portions of the Main Documents shall be designated as confidential and treated as confidential information. Conversely, if the Parties disagree on a proposed designation, the Arbitral Tribunal shall, after reviewing the Parties' respective submissions, decide whether all or part of the designated portions of the Main Documents shall be designated as confidential.
- 1.4. Except for legal authorities (which are presumed to be in the public domain), Supporting Documents (as defined in Procedural Order No. 1) shall be presumed to contain confidential information and be treated accordingly. However, either Party may at any time propose to reclassify their own or the other side's Supporting Document on the grounds that it does not constitute or contain confidential information, and the procedures under points 1.2 and 1.3 shall apply.
- 1.5. Except as provided by Articles 835.5 and 835.6 of the Canada-Peru FTA, confidential information shall not be used or disclosed to any third party by a Party whose access to that information arises exclusively as a result of this arbitration for any purpose without the consent of the other Party or authorization by the Arbitral Tribunal.
- 1.6. If proposed designations of confidential information are not received within the 15-day period specified in point 1.1 above, the ICSID Secretariat shall proceed to

publish the Main Documents. The ICSID Secretariat shall not publish Supporting Documents, even if they have been reclassified as not constituting or containing confidential information pursuant to point 1.5 above.

- 1.7. If a Party belatedly identifies information that it believes should be designated confidential, it shall promptly notify the other Party and the Arbitral Tribunal and follow the process set out in points 1.1-1.3 above. Immediately upon such notification and until the propriety of the proposed designation is resolved, the ICSID Secretariat shall remove any Main Document(s) in question from its website and refrain from further publication thereof.

2. Confidential Information in Hearings

- 2.1. In accordance with Article 835.1 of the Canada-Peru FTA and section 21.6 of Procedural Order No. 1, the Parties may request the Arbitral Tribunal to consider holding portions of the hearing *in camera*, to the extent necessary to ensure the protection of confidential information.

3. Preparation of Redacted Copies of Documents for Disclosure

- 3.1. Pursuant to Section 24.2 of Procedural Order No. 1, portions of the Main Documents designated as confidential shall be redacted before such Main Documents are published by the ICSID Secretariat.

[Signed]

Prof. Dr. Karl-Heinz Böckstiegel
President of the Tribunal
Date: **October 19, 2015**