

PCA Case No. 2025-47

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE AGREEMENT
BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE
SULTANATE OF OMAN ON THE ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENTS, SIGNED ON 19 SEPTEMBER 1987, AND
ENTERED INTO FORCE ON 1 FEBRUARY 1989**

(the ‘Treaty’)

– and –

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW 2010**

(the ‘UNCITRAL Rules’)

– between –

PETROGAS EXPLORATION & PRODUCTION LLC (OMAN)

(the ‘Claimant’)

– and –

THE KINGDOM OF THE NETHERLANDS

(the ‘Respondent’, and together with the Claimant, the ‘Parties’)

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

Tribunal

Prof. Campbell McLachlan KC (Presiding Arbitrator)
Mr. Barton Legum
Prof. Hélène Ruiz-Fabri

Tribunal Secretary
Dr. Levent Herberstein

Registry
Permanent Court of Arbitration

29 April 2026

Whereas:

- (1) On 18 March 2026, the Tribunal conducted the First Session via video-conference. The Tribunal heard oral submissions from the Parties as to the confidentiality and transparency of these proceedings.
- (2) On 29 March 2026, the Tribunal issued Procedural Order No. 1 (**PO No 1**). Clause 14.1 of PO No 1 stated that:

Having heard the Parties' submissions on the extent of confidentiality or transparency in these proceedings, the Tribunal directs the Parties to confer and seek to agree, by Thursday, 2 April 2026, on a Protocol for the present arbitration that balances transparency and confidentiality in light of the considerations identified between the Tribunal and the Parties in the course of the First Session.
- (3) On 2 April 2026, Counsel for the Parties jointly requested an extension on this deadline until 10 April 2026.
- (4) On 7 April 2026, the Tribunal informed the Parties it had no objection to the extension.
- (5) On 10 April 2026, Counsel for the Parties jointly requested a further extension on this deadline until 16 April 2026.
- (6) On 15 April 2026, the Tribunal informed the Parties that it approved this further extension.
- (7) On 16 April 2026, Counsel for the Parties informed the Tribunal that the Parties had been unable to agree on a Protocol.
- (8) On 17 April 2026, Counsel for each Party submitted short submissions to the Tribunal and requested that it determine the Protocol.

The Tribunal, having deliberated, now decides as follows:

The Parties' Agreements and Arguments

1. As set out in their respective submissions, the Parties agree that the following categories of documents in these proceedings shall remain confidential and not be publicly disclosed, unless the Tribunal directs otherwise:¹
 - a. witness statements;
 - b. expert reports;
 - c. exhibits; and

¹ Claimant's Submissions on Confidentiality dated 17 April 2026 (**Claimant's Confidentiality Submission**), [2(i)]; Respondent's Submissions on Confidentiality dated 17 April 2026 (**Respondent's Confidentiality Submission**), [11].

- d. submissions by any third parties.
2. The Parties also agree that hearings and transcripts of those hearings should be held *in camera*.²
 3. The Parties agree that the PCA may publish information about the proceedings on its website, including the names of the Parties, the composition of the Tribunal and the status of the proceedings.³
 4. To the extent that documents filed in the proceedings are published, the Parties agree that a regime for the protection of confidential information through confidentiality designation and redaction is appropriate.⁴
 5. Otherwise, the *Claimant* submits that Party pleadings and submissions should remain confidential and that only excerpts of the Tribunal awards should be published online. The Claimant recognises that publication of arbitral awards can ‘serve the development of international arbitral jurisprudence’. It accepts that excerpts of the Tribunal’s Award(s) that may be of general legal interest should be made public, provided the Parties have had an opportunity to redact sensitive, confidential and other protected information, with any dispute regarding redactions being resolved by the Tribunal.⁵
 6. It contends that there is ‘no reason to go [as] far’ as the 2022 ICSID Arbitration Rules (**ICSID Rules**) which contemplate publication of Tribunal orders and other decisions (subject to redaction). It says that the nature of this dispute means that it is unlikely the proceedings will lead to orders and decisions of general legal interest.⁶
 7. The Claimant does not consent to the publication of Party pleadings and argues that this would serve no public interest. Similarly, Parties’ submissions will contain confidential and sensitive information requiring redaction. Disagreement over the scope of redactions could lead to satellite disputes which ‘risk derailing the proceedings’.⁷
 8. The Claimant submits that its proposal strikes a fair balance between confidentiality and transparency having regard to any genuine public interest in the proceedings as well as the legitimate interest of the Claimant, as a family business, in keeping its affairs private and avoiding escalation of the dispute.⁸

² Claimant’s Confidentiality Submission, [2(i)]; Respondent’s Confidentiality Submission, [11(iv)]; UNCITRAL Rules, art 28(3).

³ Claimant’s Confidentiality Submission, [2(iii)].

⁴ Claimant’s Confidentiality Submission, [2(iii)]; Respondent’s Confidentiality Submission, [9].

⁵ Claimant’s Confidentiality Submission, [3(ii)], [4(i)-(ii)].

⁶ Claimant’s Confidentiality Submission, [4(ii)].

⁷ Claimant’s Confidentiality Submission, [4(iii)].

⁸ Claimant’s Confidentiality Submission, [5].

9. The *Respondent* proposes a broader disclosure regime. Having regard to its need to comply with duties of parliamentary and governmental oversight and broader interest in the transparency of investor-State adjudication, the *Respondent* says it must retain the ability to publish:⁹
 - a. the Request for Arbitration and any amended request;
 - b. all orders, decisions and awards of the Tribunal; and
 - c. the Parties' written submissions, including the Statement of Claim, Statement of Defence, and any subsequent submissions on the merits.
10. The *Respondent* accepts that any provision for publication 'must be accompanied by robust safeguards' that include protection for confidential information with 'efficient procedures for resolving disputes over redactions or confidentiality designations, including, where necessary, determination by the Tribunal.'¹⁰
11. The *Respondent* contends that the Claimant's limited proposal for the publication of excerpts of Tribunal awards would not allow for meaningful transparency into the Tribunal's reasoning.¹¹ Similarly, the *Respondent* can only inform the Dutch public of its position in the proceedings by providing access to the written submissions.¹²
12. The *Respondent* accordingly proposes that the documents listed in paragraph 9 above be published on the website of the PCA, subject to redactions and confidentiality protections conducted according to a confidentiality designation process.¹³

Legal Framework

13. From the outset, it is important to emphasise the distinction between privacy and confidentiality in arbitral proceedings. The concept of privacy refers to the fact that only the parties to the proceedings, and not third parties, may attend and participate in arbitral hearings. Confidentiality refers to the extent of parties' obligations not to disclose information concerning the arbitration to third parties.¹⁴
14. The applicable procedural rules do not comprehensively provide for the confidentiality of these proceedings.

⁹ Respondent's Confidentiality Submission, [4]-[6].

¹⁰ Respondent's Confidentiality Submission, [9].

¹¹ Respondent's Confidentiality Submission, [7].

¹² Respondent's Confidentiality Submission, [8].

¹³ Respondent's Confidentiality Submission, [13].

¹⁴ ILA International Commercial Arbitration Committee Report and Recommendations 'Confidentiality in International Commercial Arbitration' (2010) 74 ILA Conf Rep 186; *Michael Wilson & Partners Ltd v Emmott* [2008] EWCA Civ 184; [2008] 2 All E.R. (Comm) 193.

15. The Tribunal determined in PO No 1 that these proceedings are governed by the UNCITRAL Rules 2010 (as amended) (**UNCITRAL Rules**).¹⁵ These Rules do not amount to a comprehensive code of confidentiality. They do relevantly provide:
 - a. As regards the privacy of the hearings, that ‘[h]earings shall be held *in camera* unless the parties agree otherwise’;¹⁶ and,
 - b. ‘An award may be made public with the consent of the parties or where and to the extent disclosure is required of a party by a legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.’¹⁷
16. The UNCITRAL Transparency Rules do not apply, because the Parties do not agree to their application.¹⁸ The United Nations Convention on Transparency in Treaty-based Investor-State Arbitration 2014 (**Mauritius Convention**) is not applicable, not being in force as between The Netherlands and Oman.
17. The law applicable to arbitral confidentiality is the law governing the arbitration agreement.¹⁹ In the present case, this is not English law, despite the fact that, by the Parties’ agreement, England is the seat of this arbitration.²⁰ The Parties’ arbitration agreement in this case is derived from a standing offer to submit disputes contained in the Netherlands—Oman Treaty.²¹ Such an arbitration agreement is, like the Treaty itself, governed by international law.²² This position is confirmed by the carve-out of arbitration agreements derived from treaties from the statutory presumption, introduced into English law by s 1(2) of the Arbitration Act 2025, that the law of the seat governs the arbitration agreement in the absence of an express choice to the contrary.²³
18. The Treaty itself makes no specific provision for the confidentiality of arbitral proceedings commenced thereunder. The Parties do not contend, and the Tribunal does not find, any such obligation in general international law.

¹⁵ PO No 1, [2.1].

¹⁶ UNCITRAL Rules, art 28(3).

¹⁷ UNCITRAL Rules, art 34(5).

¹⁸ UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, art 1(1); Parties’ Consolidated Comments on Draft PO1 (11 March 2026).

¹⁹ *Ali Shipping Corporation v Shipyard Trogir* [1999] 1 W.L.R. 314, 325-6; *Michael Wilson & Partners Ltd v Emmott* [2008] EWCA Civ 184; [2008] 2 All E.R. (Comm) 193, [84] per Collins LJ.

²⁰ Terms of Appointment (28 January 2026), art 5(4).

²¹ Agreement on the Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Sultanate of Oman (signed on 19 September 1987, entered into force on 1 February 1989), art 8.

²² *Occidental Exploration & Production Co v Republic of Ecuador* [2005] EWCA Civ 1116, [2006] Q.B. 432, [33]; *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell, London 2023), [16-171]; *Mustill & Boyd: Commercial and Investor State Arbitration* (3rd edn, LexisNexis, 2024), [18.23].

²³ Arbitration Act 1996, s 6A(3)(a).

19. In the absence of an applicable specific framework, the Tribunal must determine the outstanding confidentiality and privacy issues in these proceedings not addressed by the UNCITRAL Rules ‘in such a manner as it considers appropriate, provided that the Parties are treated with equality and that at an appropriate stage of the proceedings each Party is given a reasonable opportunity of presenting its case’.²⁴
20. In so doing it has had regard to practice in investment arbitration as it has developed:
 - a. in *ad hoc* cases conducted under UNCITRAL Rules pursuant *inter alia* to the North American Free Trade Agreement (NAFTA), which, like the present Treaty, does not impose a general duty of confidentiality;²⁵ and
 - b. by way of comparison, under the provisions of the ICSID Rules 2022.

Tribunal’s Determination

21. As recorded above, the Parties agree that evidence produced in these proceedings (including witness statements, expert reports and exhibits) and submissions by third parties should remain confidential and that any hearings should remain private.²⁶
22. The Parties also agree that certain procedural information about the proceedings may be published on the PCA website.
23. Accordingly, the Tribunal must determine whether and to what extent there should be public disclosure of the two categories of documents on which the Parties disagree, namely (a) the Tribunal’s orders and any Award(s); and (b) the Parties’ pleadings and submissions.
24. In determining these issues, the Tribunal is conscious that, given the public interest involved, ‘[c]onsiderations of confidentiality and privacy have not played the same role in the field of investment arbitration’ as in standard commercial arbitration and that there is a ‘marked tendency towards transparency in treaty arbitration’.²⁷ Further, as the Claimant accepts, publication of Tribunal awards

²⁴ PO No 1, [2.2].

²⁵ NAFTA Free Trade Commission Interpretative Statement ‘A. Access to Documents’ (31 July 2001); *International Thunderbird Gaming Corporation v The United Mexican States*, UNCITRAL Tribunal, Procedural Order 1 (26 January 2006); *United Parcel Service of America Inc. v Canada* ICSID Case No. UNCT/02/1, Procedural Directions and Order of the Tribunal (4 April 2003); *Chemtura Corporation v Canada*, PCA Case No. 2008-01, Confidentiality Order (21 January 2008); *Detroit International Bridge Company v Canada*, UNCITRAL PCA Case No. 2012-25, Confidentiality Order (27 March 2013); *Einarsson v Canada*, ICSID Case No. UNCT/20/6, Confidentiality Order (13 June 2022); *Alberta Petroleum Marketing Commission (APMC) v USA*, Case No. UNCT/23/4, Procedural Order No. 2 on Confidentiality (5 February 2024). See also *Orlandini-Agreda v Bolivia* PCA Case No 2018-39, Procedural Order No 2 Protocol on Confidentiality and Transparency (8 March 2019) (under the Bolivia-USA BIT and UNCITRAL Rules 2010).

²⁶ UNCITRAL Rules, art 28(3).

²⁷ *Biwater Gauff (Tanzania) Ltd v Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 (29 September 2006), [114].

promotes the development of a coherent body of case law in international investment law.²⁸

25. Equally, it recognises that these proceedings may require the Parties to disclose information which describes trade secrets, or financial or personal information which, if disclosed, could result in material financial loss, or unwarranted personal exposure. Beyond the immediate cost to the Parties, the disclosure of such information could exacerbate their dispute or otherwise compromise the integrity of the arbitration proceedings.
26. The Tribunal considers that each of these concerns may be addressed, and the Parties treated equally, by a protocol that allows for the protection of commercially or personally sensitive information but that otherwise permits sufficient disclosure of information produced in the proceedings to promote transparency and the development of jurisprudence.
27. Such a regime is without prejudice to:
 - a. Either Party's obligations to produce documents as required by a legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority; or
 - b. A Party's right to withhold documents from disclosure on the basis of recognised grounds, including those specified under the IBA Rules on the Taking of Evidence in International Arbitration 2020 (**IBA Evidence Rules**), which are applicable as guidance in the present proceedings.²⁹

(a) Tribunal Awards, Orders and Decisions

28. *Awards.* Article 34(5) of the UNCITRAL Rules provides that the Tribunal's award can be made public with the consent of all parties. In this case, the scope of the consent common to both Parties is presently limited to the publication of excerpts of the Tribunal's Award that are of general legal interest, with an opportunity to redact confidential information.
29. The Tribunal will so record in this Order. At the conclusion of the Hearing, the Tribunal will revisit with the Parties the scope and modalities for the publication of extracts of the Award.
30. In any event, as further provided in Article 34(5), the Tribunal notes that the Award may be made public by a Party 'where and to the extent disclosure is required of a party by a legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.'
31. *Orders and Decisions.* The disclosure risks associated with publication of an Award apply with less force to the Tribunal's procedural orders and other interlocutory decisions. The Tribunal considers that an appropriate balance

²⁸ *Beccara v Argentina*, ICSID Case No. ARB/07/5, Procedural Order No. 3 (Confidentiality Order) (27 January 2010), [72].

²⁹ PO No 1, [6.5.6] & [7.1].

between protection of confidentiality and public interest in the transparency of the proceedings is served by publishing all of its procedural orders and other interlocutory decisions on the PCA website, subject to any redactions requested by the Parties that are either agreed or ordered by the Tribunal in respect of their confidential information.

(b) Pleadings and Submissions

32. The Tribunal regards the decision as to the publication of each Party's pleadings and submissions as a matter for that Party, and not for the Tribunal. This is consistent with practice adopted by other tribunals conducting arbitrations under UNCITRAL Rules.³⁰
33. In order to protect against the risks identified above, where a Party does propose to publish one of its pleadings that contains reference to submissions of the opposing Party, the latter should be afforded a reasonable opportunity to request redaction of confidential information prior to publication.

(c) Documents Exchanged in Document Production

34. The Parties have already agreed to keep all evidentiary material confidential. Any Documents produced in response to the Tribunal's document production orders will be presumptively treated as confidential.

³⁰ See, eg, *Detroit International Bridge Company v Canada*, UNCITRAL PCA Case No. 2012-25, Confidentiality Order (27 March 2013), [16]; *Chemtura Corporation v Canada*, PCA Case No. 2008-01, Confidentiality Order (21 January 2008), [11]; *Orlandini-Agrede v Bolivia*, PCA Case No 2018-39, Procedural Order No 2 Protocol on Confidentiality and Transparency (8 March 2019), [7].

Order

35. **Now therefore, for the reasons set out above, the Tribunal hereby decides:**

Definitions

(1) For the purposes of this Order:

- a. ‘Disputing Party’ means the Claimant (Petrogas Exploration & Production LLC), or the Respondent (the Kingdom of the Netherlands).
- b. ‘Confidential Information’ means information that is not publicly available and is designated by a Disputing Party as confidential on the grounds that it is:
 - i. Business Confidential Information of a Disputing Party or of a state/provincial or municipal government;
 - ii. Business Confidential Information relating to a third party;
 - iii. private personal information;
 - iv. information that otherwise may be protected from disclosure under the applicable domestic law, including confidential fiscal information; or
 - v. information that is deemed to be financial, commercial, scientific, or technical information supplied by third parties that has been treated in a confidential manner by those third parties.
- c. ‘Business Confidential Information’ includes:
 - i. trade secrets;
 - ii. financial, commercial, scientific, or technical information that is treated consistently in a confidential manner by the Disputing Party, state, provincial or municipal government, or third party to which it relates, including but not limited to pricing and cost information; identification of customers, profit, loss and expense information; contracts; marketing and strategic planning documents; market share data; accounting or financial records; proprietary economic models; and other information of commercial value, not otherwise disclosed in the public domain;
 - iii. information the disclosure of which could result in material financial loss or gain to the Disputing Party, state/provincial or municipal government, or third party to which it relates;
 - iv. information the disclosure of which could interfere with contractual negotiations or relationships, or other negotiations or relationships of the Disputing Party, state/provincial or municipal government, or third party to which it relates; and

- v. other communications treated as confidential in furtherance of settlement between the Disputing Parties.
- d. ‘Pleading’ means a Request for Arbitration, Statement of Claim/Memorial, Statement of Defence/Counter-Memorial, Reply, Rejoinder, and any other similar submission or written argument filed by a Disputing Party, excluding any attached Evidentiary Documentation.
- e. ‘Evidentiary Documentation’ means witness statements, expert reports, exhibits, annexes, and any other similar evidentiary documentation.

A. Protection and Disclosure of Confidential Information

Designation of Confidential Information

- (2) A Disputing Party may designate information as confidential by clearly identifying on each page of the document containing such information the notation ‘Confidential’ and (if necessary) indicating using square brackets ‘[]’ which portion of the document is confidential.
- (3) For those Pleadings already filed in the proceedings, namely the Request for Arbitration and the Statement of Claim, the Claimant shall have a period of sixty (60) days from the date of this Order to file a further copy containing any such designations.
- (4) Where a Disputing Party does not agree that information designated as Confidential Information by the other Disputing Party is confidential under the terms of this Order, it shall submit the issue for resolution to the Tribunal. The Tribunal will rule on such objections on the basis of submission by the Disputing Parties and in accordance with the terms of this Order. The disputed Confidential Information shall not be publicly disclosed until the dispute is resolved by the Tribunal.

Disclosure of Confidential Documents and Confidential Information

- (5) Confidential Documents (defined in paragraph (10) below) and Confidential Information shall not be disclosed except in accordance with the terms of this Order or with the prior written consent of the Disputing Party that claimed confidentiality with respect to the information or document and, in the case of materials from third parties, the owner of such Confidential Information.
- (6) Except as otherwise provided in this Order, Confidential Documents and Confidential Information may be used only in these proceedings and may be disclosed only for such purposes to and among:
 - a. legal counsel to a Disputing Party whose involvement in the preparation or conduct of this proceeding is reasonably considered by the Disputing Party to be necessary;
 - b. officials or employees of the Disputing Parties, including any officials elected or appointed to public office, to whom disclosure is reasonably

considered by a Disputing Party to be necessary for the preparation or conduct of this proceeding;

- c. independent experts or consultants retained or consulted by the Disputing Parties in connection with this proceeding; or
- d. witnesses who in good faith are reasonably expected by a Disputing Party to offer evidence in this proceeding and only to the extent that the disclosure is relevant to their expected testimony.

Permitted disclosure and withholding of documents

- (7) Notwithstanding any other provision in this Order, the Disputing Parties may make such disclosure of Confidential Documents or Confidential Information as is required by law.
- (8) Nothing in this Order shall be construed to abrogate or support a claim or entitlement with respect to a refusal to disclose any information under or on the basis of: (a) state or provincial/municipal law; (b) a privilege; or (c) other grounds for exemption or non-disclosure.

B. Conduct of Proceedings and Public Disclosure of Documents

Hearings

- (9) The hearings in this arbitration shall be held *in camera* and transcripts of those hearings shall remain confidential unless the Parties agree otherwise.

Confidential Documents

- (10) The Parties agree that the following documents shall not be publicly disclosed, unless such documents are already publicly available or the Tribunal, having heard the Parties, determines otherwise:
 - a. Evidentiary Documentation;
 - b. Submissions from any third party; and
 - c. Documents exchanged in document production.(together, **Confidential Documents**).

Publication of case information and Tribunal Decisions, Orders and Award(s)

- (11) The PCA shall publish the following information about these proceedings on its website:
 - a. the names of the Disputing Parties;
 - b. Disputing Parties' counsel;
 - c. the case reference;

- d. the composition of the Tribunal;
 - e. the status of the proceedings;
 - f. the administering authority;
 - g. the nature of the case;
 - h. the subject matter or economic sector concerned;
 - i. the procedural rules applicable;
 - j. the treaty applicable;
 - k. the language of the proceedings;
 - l. the seat of arbitration;
 - m. the date of commencement of the proceedings; and
 - n. the date of any Tribunal Award(s).
- (12) The Parties consent to the publication of excerpts of any of the Tribunal's Award(s) that are of general legal interest, subject to an opportunity to redact Confidential Information. At the conclusion of the hearing prior to the issue of any Award, the Tribunal will revisit with the Parties the scope and modalities for publication of excerpts of the Award in order to maintain protection of any Confidential Information.
- (13) The PCA shall publish every Order and Decision of the Tribunal on its website with any redactions of Confidential Information agreed to by the Disputing Parties.
- (14) The Disputing Parties shall have sixty (60) days from the receipt of an Order or Decision to jointly agree and notify the Tribunal of any redactions of Confidential Information in the Order or Decision. For PO No 1, the 60-day period shall run from the date of this Order.
- (15) If either Disputing Party notifies the Tribunal Secretary within the 60-day period referred to in paragraph (14) that the Parties disagree on any proposed redactions, the Tribunal shall decide any disputed redactions.

Public disclosure of Pleadings

- (16) Either Disputing Party shall be free to publicly disclose the Pleadings filed by it in these proceedings, provided that the Disputing Party provides the other Disputing Party with sixty (60) days' notice of its intention to disclose such material publicly.
- (17) A Disputing Party has sixty (60) days from the date of notice given by the other Disputing Party in paragraph (16) to object to public disclosure on the basis that a Pleading contains Confidential Information.

- (18) Where a Disputing Party raises such an objection, the Parties shall seek to agree on redactions of Confidential Information.
- (19) If either Disputing Party notifies the Tribunal Secretary within the 60-day period referred to in paragraph (17) that the Parties disagree on any proposed redactions, the Tribunal shall decide any disputed redactions.

Survival

- (20) The obligations created by this Order shall survive the termination of these proceedings.

Legal obligations

- (21) The above order is without prejudice to either Party's obligations to produce documents as required by a legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority

On behalf of the Tribunal



Prof. Campbell McLachlan KC
(Presiding Arbitrator)

Place of Arbitration: London, England
29 April 2026