

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Libra LLC and Others

v.

Republic of Azerbaijan

(ICSID Case No. ARB/23/46)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Professor Eduardo Zuleta Jaramillo, President of the Tribunal
Mr. D. Brian King, Arbitrator
Professor Claus von Wobeser

Secretary of the Tribunal

Leah W. Njoroge

Assistant to the Tribunal

Maria Marulanda-Mürle

January 3, 2025

I. PROCEDURAL BACKGROUND

1. On November 21, 2024, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On December 2, 2024, the Parties commented on Draft PO2.
3. On December 5, 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 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Azerbaijan Republic for the Promotion and Protection of Investments dated January 4, 1996 (the “BIT”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing the transparency and confidentiality of this proceeding.
7. In this case, the BIT is silent with respect to transparency/confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 as amended/supplemented by Section III of this Order.
8. In accordance with ICSID Arbitration Rule 66, confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration;
 - (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.

III. TRANSPARENCY RULES

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

A. AWARD (ICSID ARBITRATION RULE 62)

10. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, ICSID shall not publish the Award on its website, unless otherwise agreed by both Parties.¹

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

11. 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 RULE 64)

12. ICSID shall not publish the Parties' written submissions, unless both Parties agree otherwise no later than 30 days after the filing of the relevant submission.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

13. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID, unless both Parties agree otherwise within 30 days of the filing of the relevant supporting document(s).

E. HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))

14. Hearings shall not be open to the public, unless both Parties agree otherwise at the latest by two months before the hearing. If the Parties agree that the hearings shall be open to any persons in addition to the Parties, the Tribunal shall establish a protocol governing access to a hearing and the non-disclosure of confidential and protected information discussed during the hearing at the latest at the pre-hearing organizational conference.

¹ Pursuant to ICSID Arbitration Rule 72(2), this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

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

15. Transcripts and recordings of hearings shall not be published by ICSID, unless both Parties agree otherwise no later than 60 days from the time limit for corrections to a transcript.

G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66)

16. With respect to publication pursuant to Sections A, B, C, D and F above, any confidential or protected information as defined in ICSID Arbitration Rule 66 or under the laws of the Republic of Azerbaijan that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
17. Within 14 days from the date of a decision or order, or the Parties' consent on the publication of a written submission, final transcript, recording or other document, 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 14-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66 or under the laws of the Republic of Azerbaijan, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.
18. Within 14 days of receipt of the notice referred to in paragraph 17, the other Party may raise objections to the proposed redactions.
19. If no objections are raised within the deadline established in paragraph 18, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
20. If objections are raised within the deadline established in paragraph 18, 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.
21. 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.
22. If information is to be redacted from a document or recording in accordance with paragraphs 19, 20 or 21, 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.
23. The publication by a Party of any written submission, final transcript, procedural order, Award, recording, or other document relating to the present proceedings require prior leave from the Tribunal.

On behalf of the Tribunal,

[signed]

Professor Eduardo Zuleta Jaramillo
President of the Tribunal
Date: January 3, 2025

ANNEX A TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE

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