

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

TMA Australia Pty Ltd and others

v.

Republic of the Philippines

(ICSID Case No. ARB/24/41)

PROCEDURAL ORDER NO. 7

Decision on Admission of New Evidence related to Bifurcated Objection No. 1

Members of the Tribunal

Ms. Meg Kinnear, President of the Tribunal
Dr. Bernardo M. Cremades, Arbitrator
J. Christopher Thomas KC, Arbitrator

Assistant to the Tribunal

Dr. Randi Ayman

Secretary of the Tribunal

Mr. Yuichiro Omori

July 17, 2026

TABLE OF CONTENTS

I. PROCEDURAL BACKGROUND	3
II. THE APPLICATION TO INTRODUCE NEW EVIDENCE	4
A. THE APPLICATION.....	4
III. THE PARTIES' POSITIONS ON THE APPLICATION TO INTRODUCE NEW EVIDENCE	6
A. THE RESPONDENT'S POSITION.....	6
B. THE CLAIMANTS' POSITION	7
IV. THE TRIBUNAL'S ANALYSIS	8
V. ORDER	9

I. PROCEDURAL BACKGROUND

1. The Procedural Background in this case is recited in detail in Procedural Order No. 4 (**“Decision on Bifurcation”**).¹ In summary, the Claimants filed a Request for Arbitration on August 30, 2024; the Tribunal was constituted on December 16, 2024; the Claimants filed their Memorial on Jurisdiction and Merits on September 3, 2025; and the Respondent filed a Request for Bifurcation of Preliminary Objections on December 5, 2025. In that Request, the Respondent asked the Tribunal to bifurcate these proceedings on the basis of 10 enumerated grounds.²
2. On March 30, 2026, the Tribunal issued its Decision on Bifurcation.³ That decision concluded that Objection 1 should be heard as a preliminary matter, but that Objections 2-10 would be joined to the merits of the case. Objection 1 alleged that the Respondent had not given its written consent to the submission of the dispute to ICSID as required by Article 13 of the 1995 Philippines-Australia bilateral investment treaty (**“PH-AUS BIT”**), and hence there was no jurisdiction to proceed with the case.⁴
3. The Decision on Bifurcation included a briefing schedule on the bifurcated objection, leading to a remote hearing on June 11, 2026. That schedule was subsequently amended at the request of the Claimants and the Respondent, resulting in an extension of time to file the pleadings on the bifurcated objection and a hearing date of June 18, 2026.⁵
4. The Respondent filed its Memorial on the Bifurcated Objection on April 27, 2026; the Claimants filed a Counter-Memorial on the Bifurcated Objection on May 25, 2026; the Respondent filed a Reply on the Bifurcated Objection on June 1, 2026; and the Claimants filed a Rejoinder on the Bifurcated Objection on June 8, 2026.
5. By letter dated June 11, 2026, the Respondent advised the Tribunal that the Australian law firm of Watson, Farley & Williams had been instructed to represent the Philippines in this proceeding and provided its proof of authority to act.⁶
6. On June 14, 2026, the Respondent filed an application seeking a 28-day adjournment of the hearing, until July 16, 2026 (**“Application to Postpone the Hearing”**). The basis for the

¹ See *TMA Australia Pty Ltd and others v. Republic of the Philippines*, ICSID Case No. ARB/24/41, Procedural Order No. 4, Decision on Bifurcation, March 30, 2026 (**“Decision on Bifurcation”**), paras 1-12 for detailed procedural history up to February 27, 2026.

² *TMA Australia Pty Ltd and others v. Republic of the Philippines*, ICSID Case No. ARB/24/41, Request for Bifurcation of the Respondent Republic of the Philippines, December 5, 2025.

³ Decision on Bifurcation.

⁴ Decision on Bifurcation, paras. 20-23. See also CL-001.

⁵ Tribunal Email of April 9, 2026 to Parties, responding to e-mails of Parties dated March 31 and April 5, 2026.

⁶ This letter was received by ICSID on June 12, 2026.

Procedural Order No. 7

Respondent's request was that: (i) the recent appointment of external Counsel had been delayed due to internal procurement approvals; (ii) the Respondent required legal advice from external Counsel and more time to respond fully to the Claimants' reliance in their Counter-Memorial and Rejoinder on *Tantalum*, an unpublished case, and *Tethyan*, which were submitted one week before the Reply and 14 days before the hearing; and (iii) a short postponement would not materially prejudice the overall progress of the proceedings.⁷

7. On June 15, 2026, the Claimants objected to the Respondent's Application ("**Objection to the Application to Postpone the Hearing**"). The Claimants argued that: (i) there was no good cause to disturb the hearing date, which had been set in consultation with the Parties more than two months earlier; (ii) the Application contradicted the Respondent's procedural agreements and would prejudice the Claimants in terms of time and costs; (iii) the late engagement of external Counsel was entirely in the hands of the Respondent; and (iv) the fact that the *Tantalum* case is unpublished did not justify a postponement nor did insufficient time to deal with the *Tantalum* and *Tethyan* decisions, which had both been substantially addressed by the Respondent in its submissions.⁸
8. After considering these submissions, the Tribunal informed the Parties on June 16, 2026 that the hearing date of June 18, 2026 would be maintained. On June 17, 2026, the Tribunal issued Procedural Order No. 6 concerning the Organization of the Hearing on the Bifurcated Objection.

II. THE APPLICATION TO INTRODUCE NEW EVIDENCE

A. THE APPLICATION

9. On June 17, 2026, Counsel for the Respondent wrote the Tribunal asking to introduce new evidence relating to the bifurcated objection ("**Application to Introduce New Evidence**"). The Application was made pursuant to ICSID Arbitration Rule 30(3) and paragraph 17.3 of PO1 in this matter.
10. Rule 30(3) provides:

A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

⁷ Application to Postpone the Hearing, June 14, 2026, paras. 3-5.

⁸ Objection to the Application to Postpone the Hearing, June 15, 2026, pp. 4-5.

Procedural Order No. 7

11. Paragraph 17.3 of PO1 provides:

17.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other Party.

17.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.

17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such document.

12. The Respondent's Application was received by ICSID at 12:22 pm EDT on June 17, 2026, the afternoon before the hearing of June 18, 2026.
13. The Respondent advised that new responsive evidence had been obtained that very day (June 17, 2026) from an examination of the physical records of the Commonwealth of Australia in Canberra, Australia. The evidence in question comprised:
- (1) a letter dated February 8, 1990, from Australia's Principal Legal Officer, International Trade Law Business Affairs Division of the Attorney General's Department, to the Secretary of the Australian Department of Foreign Affairs and Trade, following the signing of the Australia-Papua New Guinea BIT; and
 - (2) a letter from ICSID Counsel, [REDACTED], to Australia's Attorney General's Department, dated 20 August 1994.⁹
14. The Application was shared with the Tribunal and Counsel for the Claimants on June 17, 2026, however the documents were not provided to the Tribunal or to the Claimants.
15. The Respondent advised that its Application had been made as soon as practically possible and should be considered timely.¹⁰ The Respondent also stated that this evidence was manifestly relevant to the bifurcated issue and would demonstrate that "Australia agreed with the Republic that the BIT would not be a standing offer to arbitrate and that consent would be required on a case-by-case basis."¹¹

⁹ Application to Introduce New Evidence, para. 5.

¹⁰ Application to Introduce New Evidence, paras. 4, 10.

¹¹ Application to Introduce New Evidence, para. 6.

Procedural Order No. 7

16. At 17:24 pm EDT on June 17, 2026, Counsel for the Claimants submitted a letter in reply, objecting to the Respondent's Application to Introduce New Evidence because it could and should have been submitted much earlier, it was untimely, and it was neither relevant nor material to the outcome of the bifurcated objection.¹²
17. The Tribunal advised both Parties that the matter would be addressed at the start of the hearing on June 18, 2026, and that the Parties should be prepared to address whether the new evidence should be admitted.¹³
18. On June 18, 2026, the hearing took place online and the Parties addressed the Application orally. The Tribunal took the arguments under advisement and proceeded to hear the Parties' submissions on the bifurcated objection (without reference to the new documents).
19. At the conclusion of the hearing, the Tribunal asked the Parties to provide the Claimants with the two documents in question and gave both Parties the opportunity to address their admissibility in a post-hearing brief due in 15 days.¹⁴
20. On July 3, 2026, the Parties filed their Post-Hearing Briefs.

III. THE PARTIES' POSITIONS ON THE APPLICATION TO INTRODUCE NEW EVIDENCE

A. THE RESPONDENT'S POSITION

- **Timeliness of application**

21. The Respondent explained that it started a process to retain foreign Counsel as soon as it received the Claimants' Counter-Memorial on May 25, 2026, and realized it needed to obtain the comparative State practice of Australia.¹⁵ The Respondent noted that hiring an external Counsel is a sovereign act that requires time to complete the necessary procurement approvals.¹⁶
22. The documents in question are publicly available but only accessible through an in-person inspection at the physical premises of the National Archives of Australia in Canberra. The

¹² Letter of K&L Gates, June 17, 2026.

¹³ Tribunal Email to Parties, June 17, 2026.

¹⁴ Transcript, June 18, 2026, pp. 158-159.

¹⁵ Transcript, June 18, 2026, p. 15.

¹⁶ Respondent's Post-Hearing Brief ("PHB"), para. 26.

Procedural Order No. 7

documents were therefore only accessible to the Respondent when it engaged an external counsel in Australia capable of conducting an in-person inspection.¹⁷

23. The newly engaged counsel located the two documents on June 17, 2026 and advised the Tribunal immediately. The Respondent therefore submits that the delay and timing of the request to introduce the evidence, which took only days, was due to the logistics of arranging for a physical inspection and copies thereof, and not a lack of diligence on the Respondent's part. In its view, it acted immediately and in good faith as soon as the documents were identified by the newly appointed external Counsel, and in these circumstances the application was timely filed.¹⁸

- **Necessity of the Evidence**

24. The Respondent also submitted that the new documents were necessary and could determine the entire case,¹⁹ as they show that it was Australia's intent that the BIT provide for a qualified consent and not an advance consent.²⁰ In the Respondent's view, the new documents corroborated and confirmed the position of the Republic concerning consent under the PH-AUS BIT.²¹
25. According to the Respondent, the necessity threshold must be measured against the importance of the evidence to jurisdiction.²²
26. While the Respondent concedes that the documents do not relate to the PH-AU BIT specifically, they argue they are relevant as they address similar language, namely "shall consent in writing," and show Australia's intention when it concluded its BITs in the 1990s.²³

B. THE CLAIMANTS' POSITION

- **Timeliness of application**

27. At the hearing, the Claimants argued that the Respondent could and should have obtained this evidence much earlier and that it was a very late submission of evidence that attempted

¹⁷ Respondent's PHB, para. 25.

¹⁸ Respondent's PHB, para. 26; Transcript, June 18, 2026, pp. 10-11.

¹⁹ Transcript, June 18, 2026, p. 12.

²⁰ Transcript, June 18, 2026, p. 11.

²¹ Transcript, June 18, 2026, pp. 17-18.

²² Transcript, June 18, 2026 p. 12.

²³ Respondent's PHB, para. 28, citing *Aguas del Tunari v Bolivia*, Decision on Jurisdiction, 21 October 2005 (RL-011, paras 291-292).

Procedural Order No. 7

to “ambush” the Claimants.²⁴ Not having received the documents or had time to consider their contents, such an attempt would constitute a breach of due process and of PO1.²⁵

- **Necessity of the Evidence**

28. Based on the Respondent’s submissions, the Claimants noted that the documents appeared neither relevant nor material as they: (i) concern a different treaty that predates the BIT in this case as well as Australia’s ratification of the ICSID Convention; and (ii) a letter from an ICSID Legal Counsel to Australia’s Attorney General in 1994 cannot be considered *travaux*.²⁶
29. In their Post-Hearing Brief, the Claimants submitted that after reviewing the content of the new documents, they no longer objected to their introduction into the record. To the contrary, the Claimants state that the new documents, particularly the letter of the Attorney-General, provides further support for the Claimants’ position on Objection 1.²⁷

IV. THE TRIBUNAL’S ANALYSIS

30. The Tribunal has reviewed the Parties’ submissions fully.
31. While the documents in question were submitted very late in the process, they were submitted at the earliest opportunity by the Respondent, having been obtained that very day. The Respondent advised that its Counsel had only very recently been retained (June 11, 2026) and this explained why they were not located at an earlier date.
32. While it is regrettable that the documents were not identified earlier, the Tribunal agrees that the Respondent has submitted a reasoned explanation for the delay and that the documents were timely submitted in the circumstances.
33. Based on the Parties’ descriptions of the documents in question, the Tribunal also finds that the documents are potentially relevant and material to the arguments made by the Parties based on Article 32 of the Vienna Convention on the Law of Treaties. As a result, it finds that the documents meet the threshold for admission pursuant to Rule 30(3) and paragraph 17.3 of PO1.

²⁴ Transcript, June 18, 2026, p. 22.

²⁵ Transcript, June 18, 2026, pp. 22-23.

²⁶ Transcript, June 18, 2026, pp. 23-24.

²⁷ Claimants’ PHB, para. 22.

Procedural Order No. 7

34. In addition, the Claimants no longer object to the introduction of the new evidence. Indeed, they have incorporated it into their argument on the bifurcated objection and argue that it supports the Claimants interpretation of the PH-AU BIT.
35. In light of the above, there is no prejudice to the Claimants, and considering that both Parties had the opportunity to present their observations on the content of the documents in their respective Post-Hearing Briefs, the Tribunal requests that the Respondent provide the documents by July 20, 2026 so that it may consider them in its pending determination on the merits of the Bifurcated Objection.

V. ORDER

36. For the foregoing reasons, the Tribunal orders as follows:
- (a) The Respondent's Request to Introduce New Evidence is granted;
 - (b) The Respondent shall provide the Tribunal with copies of the two documents at issue by July 20, 2026;
 - (c) The decision on costs related to this application is deferred to a later stage of the proceedings.

On behalf of the Tribunal,

Signed

Ms. Meg Kinnear
President of the Tribunal
Date: July 17, 2026