

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Basel LLC and Ronald Waldmann**  
*Claimants*

**v.**

**Georgia**  
*Respondent*

**(ICSID Case No. ARB/23/23)**

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**PROCEDURAL ORDER No. 2**  
**On Transparency and Confidentiality**

***Members of the Tribunal***

Prof. Eduardo Zuleta, President  
Prof. Andrés Jana Linetzky, Arbitrator  
Mr. Mark A. Kantor, Arbitrator

***Secretary of the Tribunal***

Mr. Benjamin Garel

***Assistant to the President of the Tribunal***

Ms. María Marulanda

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April 30, 2024

## I. PROCEDURAL BACKGROUND

1. On March 7, 2024, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the parties.
2. On March 13, 2024, the parties commented on Draft PO2.
3. On March 14, 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.

## II. LEGAL FRAMEWORK

4. The legal framework applicable to these proceedings is determined by the Agreement between the Swiss Confederation and Georgia on the Promotion and Reciprocal Protection of Investments, signed on 3 June 2014 (the “**BIT**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
5. Article 10(3) of the BIT provides:

*The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to the settlement of disputes between a Contracting Party and an investor of the other Contracting Party under paragraph (2), letters (a) and (b) of this Article. [i.e. ICSID arbitration and UNCITRAL arbitration, respectively].*

6. Article 1(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “**UNCITRAL Transparency Rules**”) provides:

*In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:*

*(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;*

*(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.*

## III. TRANSPARENCY REGIME

7. The UNCITRAL Transparency Rules shall therefore apply to this proceeding and govern matters of transparency and confidentiality, subject to the following

adaptations adopted by the Tribunal after consultation with the parties, pursuant to Article 1(3)(b) of the UNCITRAL Transparency Rules:<sup>1</sup>

8. Articles 1(1)-(2) and 2 are not applicable.
9. Article 1(5) is adapted to the extent that the Tribunal may exercise its authority pursuant to the ICSID Arbitration Rules to promote transparency in this case.
10. The following provision replaces Article 3(1) of the UNCITRAL Transparency Rules:

Subject to article 7, the following documents shall be made available to the public: the Claimant’s request for arbitration, the Claimant’s memorial, the Respondent’s counter-memorial and any further written statements or written submissions by any disputing party; [...].

11. Pursuant to Article 6(3) of the UNCITRAL Transparency Rules, the following logistical arrangements will be made to facilitate public access to the hearings:
  - i. The hearings will be broadcast and made publicly accessible by video link to third persons present at the ICSID headquarters and/or at the hearing venue (as applicable) in designated rooms. The broadcast will be delayed by 30 minutes to protect potentially confidential or protected information. For logistical reasons, physical attendance by third persons at hearings will not be permitted.
  - ii. In order to protect potentially confidential or protected information, the Tribunal shall establish a protocol for the handling of confidential information during hearings. Under this protocol, which shall be established ahead of hearings and in consultation with the parties, a party may, at any time during hearings, request that a part of the hearing where confidential or protected information could reasonably be expected to arise be held in private, that the broadcast of the hearing be temporarily suspended, or that protected information be excluded from the video transmission. To the extent possible, parties shall inform the Tribunal before raising topics where confidential or protected information could reasonably be expected to arise. In case of disagreement between the parties, the Tribunal will consult the parties. Such consultations shall be held *in camera* and the transcript shall be marked “confidential”. After consultation with the parties, the Tribunal will decide whether to exclude the information in question from the broadcast and the relevant portion of the transcript shall be marked “confidential”. The transcript made public by the Repository shall redact those portions of the hearing marked “confidential”.

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<sup>1</sup> As a result, Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62 to 67 do not apply to proceedings before this Tribunal. Further, in Annexes B and C to this Procedural Order the Tribunal provides a version (clean and mark-up, respectively) of the UNCITRAL Rules reflecting the adaptations adopted in consultation with the Parties pursuant to Article 1(3)(b) of the UNCITRAL Transparency Rules.

- iii. When establishing the protocol referred to in paragraph 11(ii) above, a party may submit a reasoned application to exclude the testimony of any fact witness from the video transmission of the hearing or the transcript. This exclusion may be granted to protect the integrity of the proceedings, as determined pursuant to Article 7(7) of the UNCITRAL Transparency Rules. The testimony of any fact witness whose witness statement has been excluded from publication pursuant to paragraph 13 below, shall be automatically omitted from the video transmission of the hearing and the transcript.
  - iv. The ICSID Secretariat will make all necessary technical arrangements to broadcast the hearings through video link.
12. Pursuant to Article 7(3)(a) and (b) of the UNCITRAL Transparency Rules, each party or third person shall give notice within 21 days from the filing or dispatch of any document (save for (i) the Award, the publication of which is addressed in paragraph 15 below; and (ii) witness statements, the publication of which is addressed in paragraph 13 below) that it seeks protection for confidential or protected information in that document, or on the grounds set forth in Articles 7(6) and 7(7) of the UNCITRAL Transparency Rules, (“**Objection to Transparency**”), using the Transparency Schedule in Annex A to this Order. In the absence of such objection, the Tribunal will authorize the publication of any document mentioned in Article 3(1) of the Transparency Rules (save for the Award).
  13. The publication of expert reports and witness statements is governed by Article 3(2) of the UNCITRAL Transparency Rules. Each party or third person shall submit an Objection to Transparency to the Tribunal within 21 days upon the receipt of a request to publish any expert report or witness statement. The objection must be made using the Transparency Schedule in Annex A of this Order. In the absence of such an objection, the Tribunal will authorize the publication of the expert report or witness statement, excluding any exhibits thereto.
  14. Any Objection to Transparency made in accordance with the preceding paragraphs shall specifically identify the document (or parts thereof) sought to be designated as confidential or protected. The other party shall reply to the Objection to Transparency, using the Transparency Schedule in Annex A to this Order, within two weeks. In case of disagreement between the parties, the Tribunal will decide whether the identified document or information is confidential or protected. If an Objection is raised concerning the entire document and the Tribunal deems it justified, the document shall not be published. If specific information is found to be confidential or protected, the party or third person will provide the Tribunal with a redacted version of the document in question. The Tribunal will thereafter authorize and instruct the Repository to publish such document.
  15. With respect to the Award, the parties, after the Award is dispatched, shall confer and agree on the redactions that they wish to make to protect confidential or otherwise protected information. Upon reaching an agreement the Parties shall either jointly transmit to the Repository a redacted version of the Award to be

published on the ICSID website, or inform the Repository that they have agreed not to make any redactions and to publish the Award as it was dispatched.

16. If the parties do not agree on the redactions, they shall, within a term of forty-five (45) days after the dispatch of the Award, give notice of their disagreements to the ICSID Secretariat using the Transparency Schedule in Annex A. The ICSID Secretariat will communicate the Transparency Schedule to the former Members of the Tribunal who will proceed to decide<sup>2</sup>. Following the decision by the former Members of the Tribunal, the parties shall jointly prepare a redacted copy of the Award reflecting the redactions pursuant to the decision of the former Members of the Tribunal. The Award so redacted will thereafter be published by the ICSID Secretariat.
17. Article 8 is adapted to the extent that the Repository of published information shall be ICSID. In addition, the following rules shall apply in connection with the Repository:
  - i. The Repository shall publish documents on its website upon and pursuant to the Tribunal's instructions.
  - ii. The Repository shall publish either redacted versions of documents prepared by a Party or the Parties pursuant to an agreement between them or to a decision by the Tribunal, or unredacted versions of documents as they were filed or issued in the course of the proceeding.
  - iii. The Tribunal will be released of its responsibility under the UNCITRAL Transparency Rules and this Order upon completion of its mandate under the ICSID Convention and Arbitration Rules, such mandate extending to any interpretation or revision proceedings.
  - iv. Upon completion of the case, all documents referred to in Article 3 of the UNCITRAL Transparency Rules (as modified in this order or otherwise) shall continue to be made available to the public on the ICSID website.

On behalf of the Tribunal,

Signed

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Prof. Eduardo Zuleta  
President of the Tribunal  
Date: April 30, 2024

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<sup>2</sup> The Parties agree that the power to decide on such dispute shall reside in the former Members of the Tribunal, even if such Tribunal is at that time *functus officio*. However, 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 deciding on disputed redactions) 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. The three former Members of the Tribunal will be able to submit claims for such fees at the same hourly rate and through the same process used during the proceeding, and the claims will be paid from the advance payments made by the Parties. 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 A**

**TRANSPARENCY SCHEDULE**

[insert Party]	Objection 1 [use one sheet per category of documents]
Documents (or parts thereof) sought to be protected	
Legal basis for protection	
Comments	
Reply by opposing party	
Decision	