

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE  
TRADE AGREEMENT AND THE UNITED STATES-MEXICO-CANADA AGREEMENT**

**- and -**

**THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

**- between -**

**Coeur Mining, Inc.**

**(the “Claimant”)**

**and**

**United Mexican States**

**(the “Respondent”)**

**ICSID Case No. UNCT/22/1**

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**PROCEDURAL ORDER No. 3**

**CONFIDENTIALITY ORDER**

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*Tribunal*

Ms. Sabina Sacco, President

Mr. Pierre Bienvenu, Ad. E.

Prof. Hugo Perezcano Díaz

*Secretary of the Tribunal*

Ms. Veronica Lavista

**23 February 2024**

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**I. SCOPE OF CONFIDENTIALITY ORDER**

1. Having consulted with the Parties,<sup>1</sup> and in accordance with paragraph 18 of the Terms of Appointment, the Tribunal issues the following procedural order which shall govern the designation, protection and use of confidential information and documents, and the preparation of redacted copies of documents for disclosure (the “**Confidentiality Order**” or “**Procedural Order**”).
2. In accordance with Section A (Access to Documents) of the NAFTA Free Trade Commission Interpretative Note issued on July 31, 2001 (the “**Note**”), “[n]othing in the NAFTA imposes a general duty of confidentiality on the disputing parties to a Chapter Eleven arbitration, and, subject to the application of Article 1137(4), nothing in the NAFTA precludes the Parties from providing public access to documents submitted to or issued by a Chapter Eleven tribunal.”
3. Moreover, paragraph 18 of the Terms of Appointment, dated July 31, 2023, states:

*18. Publication*

*18.1. The Parties consent to ICSID’s publication on its website, of the following information:*

*18.1.1. The case details of the arbitration, including the instrument involved and procedural details updates.*

*18.1.2. In accordance with NAFTA Annex 1137.4, the Note of Interpretation of the North American Free Trade Commission of 31 July 2001, and subject to any confidentiality order, ICSID shall publish public versions of decisions and procedural orders of the Tribunal, as well as the Award with any confidential information redacted. For the sake of clarity, the parties’ pleadings and written submissions, witness statements, expert reports, transcripts, documentary evidence, and legal authorities, or excerpts thereof, shall not be subject to publication.*

*18.1.3. The written submissions by the Governments of Canada or the United States of America (“Non-Disputing NAFTA Parties”) and the written submissions by the non-disputing USMCA Annex Party or third persons (amicus curiae) that have been admitted by the Tribunal shall be published on the dates determined by the Tribunal.*

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<sup>1</sup> ICSID letter to the Parties dated 14 November 2023 inviting the Parties to confer; email from the the Respondent dated 26 January 2024 attaching a draft of this Order agreed by the Parties; email from the Claimant of the same date confirming the agreed nature of the Order.

4. On the basis of the above, this Confidentiality Order shall thus govern the publication of the following documents, which the Parties have agreed can be published on ICSID's website (the "**Covered Documents**"):
  - a. Any decisions, procedural orders and awards rendered by the Tribunal.
  - b. Any written submissions by the Governments of Canada or the United States of America (as Non-Disputing NAFTA Parties or Non-Disputing USMCA Parties) and third parties (*amicus curiae*) that have been admitted by the Tribunal.
5. For the sake of clarity, pursuant to paragraph 18.1.2 of the Terms of Appointment, pleadings and written submissions of the Parties, witness statements, expert reports, transcripts, documentary evidence and supporting legal documents, or extracts thereof, shall not be published.

## **II. CONFIDENTIAL INFORMATION**

### **A. Definition**

6. Notwithstanding that there is no "general duty of confidentiality" under NAFTA, the Note also states that a Chapter Eleven tribunal shall treat as confidential the following categories of information and documents: (i) "confidential business information"; (ii) "information which is privileged or otherwise protected from disclosure under the Party's domestic law"; (iii) "information which the Party must withhold pursuant to the relevant arbitral rules, as applied" ("**Confidential Information**").
7. For the sake of clarity, "confidential business information" shall include (i) information relating to past, present or contemplated business activities, or financial or business affairs, of a disputing party or its affiliates, (ii) business trade secrets or any information which is proprietary, (iii) financial, commercial, scientific or technical information of a disputing party that has been consistently treated as confidential by the disputing party, including but not limited to pricing, cost, strategic and marketing plans, market share data, and accounting or financial records that have not been disclosed to the public, (iv) information the disclosure of which would be reasonably likely to result in material financial loss or gain, or which would be reasonably likely to prejudice the competitive position of the disputing party to which it relates, and (v) information the disclosure of which would interfere with contractual or other negotiations of the disputing party to which it relates ("**Confidential Business Information**"). The foregoing definition of Confidential Business Information shall apply not only to Confidential Business Information about the disputing parties themselves, but also to Confidential Business Information concerning any third party to which a disputing party owes a legal obligation of confidentiality.

**B. Procedure With Respect to Protecting Confidential Information Contained in Covered Documents**

8. Any Party shall have the right to designate any portion of a Covered Document as confidential if it falls within the categories set out in paragraph 6 above.
9. Within fifteen days of a Covered Document's submission or issuance, either Party may indicate to the other Party and to the Tribunal which portions of the Covered Document should be designated and treated as Confidential Information ("**Notice Period**"). Where a Party has asserted that a Covered Document contains Confidential Information within the Notice Period, the ICSID Secretariat shall not publish the Covered Document until redactions have been agreed or resolved pursuant to the procedure set forth in paragraph 11. If, however, no Party asserts a Covered Document contains Confidential Information within the Notice Period, the ICSID Secretariat may publish the Covered Document on its website without any redactions applied.
10. Where a Party has asserted that a Covered Document contains Confidential Information within the Notice Period, it will have twenty days from the expiration of the Notice Period (the "**Redaction Period**") to propose to the other Party redactions to the portions of the Covered Document containing Confidential Information (the "**Redacted Version**").
11. If the receiving Party disagrees with all or part of the Redacted Version, it shall communicate the reasons for its disagreement to the submitting Party and the Tribunal within fifteen days of receiving the Redacted Version (the "**Objections Period**") in the form attached hereto as Annex A. The submitting Party shall then either withdraw or explain its justification for the challenged designation within seven days (the "**Party's Reply**"). The Tribunal shall, after reviewing the Parties' respective submissions, decide whether all or part of the designated portions of the Covered Documents shall be designated and treated as Confidential Information. The Tribunal will make its best efforts to issue its decision within two weeks of receiving the Party's Reply.
12. Absent disagreement by the other Party, the designated portions of the Covered Document shall be designated and treated as Confidential Information. Conversely, if the Parties disagree on a proposed designation, any material subject to such disagreement shall be treated as Confidential Information until and unless the Tribunal rules otherwise.
13. If a Party belatedly identifies information that it believes should be designated as confidential, it shall promptly notify the other Party and the Tribunal and follow the process set out above. Immediately upon such notification and until the propriety of the proposed designation is resolved, the ICSID Secretariat shall remove any Covered Document in question from its website and refrain from further publication thereof.

14. With respect to the Final Award, the Parties agree that the Tribunal will only be *functus officio* after confidentiality objections, if any, have been resolved pursuant to paragraph 11 above.
15. Any costs incurred after the issuance of the Final Award will not be considered part of the costs of the proceeding. Each Party shall bear their post-award costs relating to the redaction of the Final Award. The fees and costs of the members of the Tribunal and ICSID in relation to the redaction procedure will be paid from the trust account for the case, which shall be maintained following the issuance of the Final Award for this purpose. The three arbitrators will be able to submit claims for such fees and expenses 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.
16. With the exception of any award issued in this arbitration, the Parties agree that there shall be no need to await the translation of a Covered Document for its publication. The translation shall be published as soon as it is issued, provided any Confidentiality Objections have been resolved, and shall contain the same redactions as the English version of the Covered Document.

### **C. Protection Of Confidential Information And Documents**

17. Confidential Information may only be used in this arbitration or in any proceeding relating to the recognition, enforcement, interpretation, correction, completion, revision, annulment or set aside of the Final Award issued in this arbitration (“**Subsequent Proceeding**”), for which Confidential Information may be disclosed only to: (i) the Tribunal and any judicial court in any Subsequent Proceeding, and their assistants if any; (ii) the Secretary of the Tribunal and ICSID Secretariat and persons employed by the ICSID Secretariat, (iii) the inside counsel, officials, employees, officers, and directors of each Party, provided that such persons are directly involved in this Arbitration or any Subsequent Proceeding or the management thereof; (iv) former officers, directors, officials, or employees of the Parties as counsel in good faith reasonably deem necessary to assist with respect to this Arbitration or any Subsequent Proceeding; (v) the outside counsel of a Party in connection with this Arbitration or any Subsequent Proceeding, including legal assistants and other staff; (vi) experts and consultants (including associated support staff) retained by a Party or its counsel in connection with this Arbitration or any Subsequent Proceeding; (vii) individuals providing fact witness statements in this Arbitration or any Subsequent Proceeding, or persons whom a Party’s counsel in good faith reasonably expects to offer witness testimony, but only to the extent material to their expected testimony; and (viii) firms, officers, directors, partners, employees, and agents of firms, or persons that have been engaged by the Parties or their counsel for purposes of translating, document storage, or other similar

litigation support activities in connection with this arbitration or any Subsequent Proceeding.

**III. DEPOSITORY OF PUBLISHED INFORMATION**

18. Without prejudice to Respondent's obligations under NAFTA Article 1127 and Section A.2 of the Note, the Parties agree that ICSID shall act as the Depository of the published documents and information.
19. The following rules shall apply to the Depository:
  - a. The Tribunal shall send the documents for publication (in redacted form, if applicable) to the Depository;
  - b. The Depository shall publish the information and documents in the format and language in which they are received;
  - c. After the conclusion of this Arbitration, documents that have been published in accordance with Section II will continue to be publicly available on the ICSID website.

[Signed]

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Ms. Sabina Sacco  
President of the Tribunal  
Date: 23 February 2024

**ANNEX A**

**Confidentiality Chart**

<b>Title of document</b>	
<b>Text at issue (along with cite to page and paragraph numbers)</b>	
<b>Reason(s) provided by the Proposing Party for requesting the redaction</b>	
<b>Objection(s) by the Receiving Party to the redaction</b>	
<b>Reply provided by the Proposing Party for requesting the redaction</b>	
<b>Decision by the Tribunal</b>	