

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC

v.

United Mexican States

(ICSID Case No. ARB/21/25)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Manuel Conthe Gutiérrez, President of the Tribunal

Prof. Alain Pellet, Arbitrator

Dr. Franz X. Stirnimann Fuentes, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

December 17, 2021

Contents and Agenda for First Session

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Introduction

The first session of the Tribunal was held on December 3, 2021, beginning at 10:00 a.m. Washington D.C. time, by video conference. The session was adjourned at 1:33 p.m. Washington D.C. time.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties on December 6, 2021.

Participating in the conference were:

Members of the Tribunal:

Mr. Manuel Conthe Gutiérrez, President of the Tribunal
Prof. Alain Pellet, Arbitrator
Dr. Franz X. Stirnimann Fuentes, Arbitrator

Assistant to Prof. Pellet:

Dr. Jean-Baptiste Merlin

ICSID Secretariat:

Ms. Anneliese Fleckenstein, Secretary of the Tribunal

Participating on behalf of the Claimants:

Mr. Andrew B. Derman, Holland & Knight LLP
Mr. Andrew Melsheimer, Holland & Knight LLP
Mr. Gabriel Ruiz, Holland & Knight LLP
Mr. TJ Auner, Holland & Knight LLP
Mr. Jim D. Finley, Finley Resources, Inc. & MWS Management, Inc.
Mr. Luis Dangevill Kernion, Prize Permanent Holdings, LLC

Participating on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Ms. Cindy Rayo Zapata, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Alan Bonfiglio Ríos, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Rafael Alejandro Augusto Arteaga Farfán, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Ms. Laura Mejía Hernández, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Ms. Virginia Isabel Pérez Del Castillo Pérez, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

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Mr. Eduardo Fragoso Jacobo, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP
Mr. Mr. Gregory Tereposky, Tereposky & DeRose LLP

Interpreters:

Ms. Anna Sophia Chapman, Interpreting Services
Ms. Claudia Bishopp-Reynaud, Interpreting Services

Technical Support:

Mr. Mark Cumming, Sparq

During the session, the Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on November 5, 2021; and
- The Parties' comments on the Draft Procedural Order received by the Tribunal on November 24, 2021.

In light of the debate during the first session, the Tribunal Secretary circulated on December 9, 2021 a second Draft Procedural Order, on which the Parties submitted their comments on December 14, 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following those exchanges, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

NAFTA Article 1120; USMCA Article 14.D.3.5; Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent that they are modified by Section B of NAFTA Chapter Eleven and Annex D of the USMCA.

2. Constitution of the Tribunal and Tribunal Members' Declarations

NAFTA Article 1123; USMCA Article 14.D.6, Arbitration Rule 6

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- 2.1. The Tribunal was constituted on October 22, 2021, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted in accordance with Article 1123 of the NAFTA and Article 14.D.6.1 of the USMCA and that no party has any objection to the appointment of any Member of the Tribunal.
 - 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on October 22, 2021.
 - 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
 - 2.4. The Members of the Tribunal confirmed that they are and shall remain impartial and independent of the parties. Each of the Members of the Tribunal confirmed that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US \$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

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5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the Award, within a reasonable time period. If a ruling, not including the Award, has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every month. If the Award has not been issued within six months after the final submission, the Tribunal will provide the Parties with status updates every three months.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Anneliese Fleckenstein, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

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Anneliese Fleckenstein
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-6434
Fax: + 1 (202) 522-2615
Email: afleckenstein@worldbank.org
Paralegal email: atsimberlidis@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Anneliese Fleckenstein
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-2426

8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Mr. Andrew B. Derman
Mr. Andrew Melsheimer
Mr. Gabriel Ruiz
Mr. TJ Auner
Ms. Julia Segovia

Holland & Knight LLP
1722 Routh Street
Suite 1500
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Tel. +1.214.969.1700

Emails:

For Respondent

Mr. Orlando Pérez Gárate
Ms. Cindy Rayo Zapata
Mr. Alan Bonfiglio Ríos
Ms. Laura Mejía Hernández
Mr. Rafael Alejandro Augusto Arteaga Farfán
Ms. Virginia Isabel Pérez Del Castillo Pérez
Mr. Eduardo Frago Jacobo

Dirección General de Consultoría Jurídica de
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gtereposky@tradeisds.com
arbitration@se-isds.com

- 8.2. Following the date of signature of this Procedural Order, any intended change or addition by a party to the above legal representatives shall be notified promptly in writing to the other party, the Tribunal, and the Tribunal Secretary. Any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal. The Tribunal may withhold approval of any intended change or addition to a party's legal representatives where such change or addition could compromise the composition of the Tribunal or the finality of any decision, order, or award (on the grounds of possible conflict or other like impediment).

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of October 25, 2021, ICSID requested that each party pay US\$250,000 to cover the initial costs of the proceeding. ICSID received the Claimants payment on November 30, 2021. The Respondent informed the Centre that the payment is in course.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. After the Award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

10. Place of Proceeding

NAFTA Article 1130; USMCA Article 14.D.7.1; Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. These proceedings shall be subject only to the ICSID Convention and Arbitration Rules, as supplemented by this Procedural Order.
- 10.2. The Hearing shall be held at the seat of the Centre, as indicated in §20.2 below, or, exceptionally, at such other place as the parties may agree with the Tribunal and the Secretariat.
- 10.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.
- 10.4. The Award shall be deemed to be made at the seat of the Centre, regardless of where it is signed.

11. Procedural Languages, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language, with the understanding that the Tribunal's internal working language will be English.

[For Parties' Pleadings]

- 11.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language. However, within 14 days following the corresponding submission, the submitting party shall make its best efforts to submit a courtesy translation into the other procedural language of the pleadings, witness statements and expert opinions. If, exceptionally, this term is extended by the Tribunal at the request of a party, there shall be a corresponding extension to the submission of the following scheduled pleading. In the case of annexes or appendices to witness statements and expert reports, any manifestly irrelevant parts will not have to be translated.
- 11.4. The Tribunal may require that a party translate any document in whole or in part. For ease of reference, the parties shall paginate any translation in the same way as the original document, if possible.
- 11.5. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 11.6. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in their original language and need not be translated.

[For Hearing]

- 11.7. The hearing will be conducted in Spanish and English with simultaneous interpretation into the other procedural language.
- 11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish shall be interpreted, simultaneously.
- 11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §18.1 below), which witnesses or experts require interpretation.
- 11.10. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

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[For Tribunal's Documents Except the Award]

- 11.11. The Tribunal may initially make any order or decision in English or Spanish and subsequently shall issue that order or decision in the other procedural language. Both language versions shall be equally authentic.
- 11.12. Exceptionally, in the face of tight deadlines, when a decision by the Tribunal may affect any party's capacity to react on time in light of such decision, the Tribunal may, for information purposes, as soon as possible, provide the parties with an early indication of the essential contents of its decision, in only one language, with the Procedural Order containing the full decision, including its motivation, to be issued shortly thereafter.

[For Tribunal's Award]

- 11.13. The Tribunal shall render the award in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 12.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.3. The Tribunal Secretary shall not be copied on communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.4. The email addresses of the Members of the Tribunal are:

Mr. Manuel Conthe Gutiérrez
manuel.conthe@mconthe.com

Dr. Franz X. Stirnimann
Fuentes
fxs@stirnimannfuentes.com

Prof. Alain Pellet
courriel@alainpellet.eu

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the parties shall:

13.1.1. Submit by email to the Tribunal Secretary, the Tribunal and the opposing party an electronic version (without supporting documentation) of the

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pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading (the “Electronic E-mail Filing”).

13.1.2. By the end of the third business day following the Electronic E-mail Filing, the parties shall upload the pleading, with all the supporting documentation to the file sharing platform that has been created by ICSID for purposes of this case (the “Electronic Box Filing”).

13.2. The filing process indicated under §13.1.1 and §13.1.2 shall apply to both to the original language submission and to any subsequent translations submitted pursuant to §11.

13.3. The addresses of the Tribunal Members are as follows:

| | | |
|--|--|--|
| Mr. Manuel Conthe Gutiérrez | Dr. Franz X. Stirnimann Fuentes | Prof. Alain Pellet |
| Serrano 26, 4th floor 28001 Madrid, Spain | STIRNIMANN FUENTES Dispute Resolution, Route de Malagnou 6, 1208 Geneva, Switzerland. | Résidence Parc 17, 36 rue Bernard Buffet (BAL 36), 75017 Paris, France |
| Tel: + 34 697 801 570 | | Tel: +33 (0)1 56 92 15 87 |
| | Tel: +41 22 552 04 24 | |

13.4. All documents shall be submitted in electronic format only, unless hardcopies are specifically requested by the Tribunal.

13.5. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

13.6. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and, the pleading with which it was submitted. (Please follow the naming conventions contained in Annex B).

13.7. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents. The Tribunal or the Secretary of the Tribunal may also request at any time of the proceeding additional hard copies of the case file.

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- 13.8. The official date of receipt of a pleading or communication shall be the day on which its electronic version, in its original language, is sent to the Tribunal and the Tribunal Secretary by email.
- 13.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 14.1. As stated in Article 41(2) of the ICSID Convention, any objection by a party that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal, which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute. Any such request for bifurcation must be filed within 4 weeks after the Statement of Claim is submitted. The Claimants would then have 4 weeks to respond, and the Tribunal would have 4 weeks to decide whether the request for bifurcation is appropriate or not.
- 14.2. If no preliminary stage pursuant to Article 41(2) is requested or decided, the arbitration shall be bifurcated in a liability stage and a quantum stage, with the procedural calendar for the former being set out in Annex A. If the Tribunal concludes that the Respondent is liable, the stage of quantum shall initiate. The procedural calendar for the damages stage, if needed, will be discussed by the parties and established by the Tribunal at the end of the jurisdiction and liability stage.
- 14.3. The Tribunal, upon a showing of good cause by either party or on its own initiative, may amend, and then reissue, the Procedural Timetable set out in Annex A.
- 14.4. If a preliminary stage on the Tribunal's jurisdiction is requested and decided, and it ends with a decision confirming the Tribunal's jurisdiction, the procedural calendar for the merits stage or stages of the arbitration will be discussed by the parties and established by the Tribunal shortly after its initial award on jurisdiction.
- 14.5. In principle, a memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions. A reply or rejoinder shall not merely repeat the Parties' contentions but shall be directed to bringing out the issues that still divide them.
- 14.6. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each

legal argument, the parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.

14.7. Each written submission shall be divided into consecutively numbered paragraphs.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. The International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) (“The IBA Rules”), to the extent they are consistent with the ICSID Arbitration Rules, will guide the Tribunal and the parties regarding document disclosure (and any other evidentiary matters) in this case, but shall not be binding on either the Tribunal or the parties.

15.2. By the dates set forth in the Procedural Timetable in Annex A, any party may submit to the other party (without copy to Tribunal or the Tribunal Secretary) a request for the disclosure of a reasonable number of documents, in the form of a Redfern Schedule (a template of which is set out in Annex C).

15.3. The parties shall use such model format throughout their exchange of requests, objections, and responses.

15.4. Each document request should follow as a guideline the requisites established in Article 3(3) of the IBA Rules. The description of a category of documents shall include a date or range of dates and the subject matter insofar as possible.

15.5. The Tribunal will have the power to determine the formal correctness of a request taking as a guideline Article 3(3) of the IBA Rules.

15.6. The parties shall seek agreement on production requests to the greatest extent possible.

15.7. Objections to the production of a document or a category of documents should be justified on one or more of the grounds, taking as a guideline for such grounds the ones set forth in Article 9(2) of the IBA Rules.

15.8. If a party objects to only a portion of a request, or if it has in its possession, custody or control documents that are responsive to a request, but which are not covered by its objection to that request, then it shall disclose those documents by the date specified in the Procedural Timetable in Annex A.

15.9. The requesting party may reply to the other party’s objections (if any) in the column designated in the Redfern Schedule for such reply, and then submit the completed Redfern Schedule (with parties’ aggregate comments) to the Tribunal, by the date specified in the Procedural Timetable in Annex A. For any request for production where the parties have been unable to reach agreement, the parties shall

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simultaneously submit all outstanding requests that they wish to pursue to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.

- 15.10. The Tribunal shall rule on any such requests. The Tribunal shall endeavour to set out its rulings on any such requests on the schedule set out in Annex A of this Order, and any production so ordered shall be produced in accordance with what is set out in the schedule in Annex A of this Order.
 - 15.11. Documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary.
 - 15.12. Documents that are not text documents (such as excel tables) shall be disclosed, whenever possible, in their native format.
 - 15.13. Documents disclosed pursuant to this Section (either voluntarily or by order of the Tribunal) shall not be considered on the record unless and until the requesting party subsequently files them as exhibits in accordance with the Procedural Timetable for this arbitration and the terms of this or any other applicable procedural order or ruling.
 - 15.14. The timetable for document production may be amended by agreement of the parties or by order of the Tribunal, after consultation of the parties. Amendments to the Document Production Schedule will be made by reissuing Annex A.
 - 15.15. In exceptional circumstances, the parties may seek leave from the Tribunal to request additional documents, other than those requested at the time envisaged in Annex A, upon a showing that such request is justified by the discovery or allegation of a new fact that the requesting party did not know and that such ignorance could not have been prevented through the exercise of due diligence. Before ruling, the Tribunal shall hear any observations the parties may have.
16. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the party making the submission, including exhibits and legal authorities. For greater clarity, the parties shall endeavour to attach all documents and legal authorities on which they rely during the first round of exchanges in Annex A, i.e., the Claimants' Memorial and the Respondent's Counter-Memorial. Further documentary evidence relied upon by the parties in rebuttal, or related to new issues ascertained through disclosure, shall be submitted with the Reply and Rejoinder.
 - 16.2. The documents shall be submitted in the manner and form set forth in §12.3 above.

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- 16.3. 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 exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
- 16.3.1. 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.
- 16.3.2. 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 a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “central-” for legal exhibits containing authorities, etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities, etc. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish.
- 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.4. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.5. Electronic filings and the accompanying indexes shall follow the naming conventions contained in Annex B.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.

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- 16.7. When attaching documents to their pleadings, the parties shall attach documents in their entirety if available (all pages of the email chain, including attachments, etc.). However, to avoid unnecessary duplication, attachments which have already been submitted shall be omitted, provided an adequate cross-reference to such source is made.
- 16.8. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.9. Where parties refer to legal materials (legal texts, commentaries, judgments and awards, etc.), the corresponding exhibit shall include the first page of the relevant book or journal in which the text appears. The materials exhibited should allow both parties and the Tribunal to read and understand any cited passages in their context.
- 16.10. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and the interpreter(s) at the Hearing at a time to be decided at the pre-hearing organizational meeting.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. In keeping with Article 43 of the ICSID Convention, the Tribunal may, if it deems it necessary at any stage of the proceedings, call upon the parties to produce documents or other evidence, including, when relevant and material for the resolution of the dispute, the examination of fact witnesses.
- 17.4. Each witness statement and expert report shall be signed and dated by the witness or expert and include all the information contemplated in Articles 4(5) and 5(2), respectively, of the IBA Rules on the Taking of Evidence in International Arbitration (2010).

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- 17.5. Witness Statement and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
18. Examination of Fact Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with their pleadings. The Tribunal may also direct a witness to appear for examination even if that witness is not called by the opposing party for cross-examination.
- 18.2. Subject to the Tribunal's approval, each party may call to testify any of its own witnesses or experts. Any witness or expert called for direct examination may be cross-examined by the other party. In this case, the Tribunal shall decide upon the scope of the examination by each party.
- 18.3. For justified reasons, including health reasons, examination of a witness by video-conference may be accepted by the Tribunal.
- 18.4. The parties shall notify the opposing party which witness and experts it intends to call for cross-examination within 4 weeks after completion of the written procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.
- 18.5. The Tribunal will decide how much weight, if any, to give to the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons, when it evaluates all the evidence that the parties have submitted to its consideration during the proceeding.
- 18.6. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witness and experts shall make a declaration of truthfulness.
- 18.7. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness may conduct a brief (not to exceed 10 minutes) direct examination at the hearing. Any witness called for direct examination may be cross-examined by the other party and questioned by the Tribunal.
- 18.8. In lieu of a direct examination, experts may make a presentation summarizing their conclusions, which will last no longer than 30 minutes.
- 18.9. Subject to the direction of the Tribunal as to relevance and fairness, the scope of the cross-examination may cover the contents of the witness statement as well as matters which are relevant to the resolution of the dispute and are within the direct

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knowledge of the witness. Re-direct examination shall be limited to the subject of cross-examination.

18.10. Witnesses shall not be allowed in the hearing room before rendering their testimony, except for witnesses who are also party representatives, who may attend opening statements. Experts shall be allowed in the hearing room at any time. Witnesses who are also party representatives shall render their testimony as early as possible in the course of the hearing.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held at a date to be determined by the Tribunal after consultation with the parties, by video conference between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the Hearing.

20. Hearings
USMCA Article 14.D.8.2; Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing shall be held in-person in Washington, DC, at the time determined by the parties and the Tribunal. If extraordinary circumstances such as the COVID-19 pandemic and restrictions on domestic and international travel make an in-person hearing impossible or impracticable, the hearing shall be held virtually.

20.3. The date of the hearing shall be determined at a later stage.

20.4. The Members of the Tribunal shall endeavour to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. Unless the Tribunal determines otherwise, the total hearing time shall be split evenly between the parties, subject to the time the Tribunal intends to reserve for itself for questions and other matters. Each party shall be permitted to use the time allocated to it as it sees fit. Time shall be documented and measured using a chess clock with the Secretary of the Tribunal responsible for timekeeping.

20.6. Pursuant to USMCA Article 14.D.8.2., the hearings shall be open to the public and the Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information, it shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the bearing for the duration of the discussion of that information.

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- 20.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
- 20.7.1. A chronology of relevant facts in tabular form;
- 20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- 20.7.3. A list of the substantive issues required to be determined by the Tribunal.
- 20.8. All other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal at a later stage.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. The Tribunal shall decide at the hearing, after consulting with the parties, whether any post-hearing briefs shall be filed, and if so, their length, formal content and the date for the filing. No new evidence may be submitted together with the post-hearing brief.
- 22.2. At the conclusion of the hearing, after consulting with the parties, the Tribunal shall determine the date as well as in what form the parties shall file their statements of costs.

23. Publication, Transparency and Confidentiality

NAFTA Article 1137.4 and Annex 1137.4; FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents; USMCA Article 14.D.8; Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

23.1. The Parties consent to ICSID's publication of the Award and any order or decision issued in the present proceeding.

23.2. The written submissions by the Governments of Canada or the United States of America ("Non-Disputing NAFTA/USMCA Parties") and the written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal shall be published on ICSID's website.

23.3. Subject to the transparency rules set out in the two previous paragraphs, matters concerning confidentiality and privacy of the arbitral proceedings, rulings, orders, decisions and the Award shall be the subject of a separate confidentiality order that the Tribunal will issue in consultation with the disputing parties (the "Confidentiality Order"). Such Order shall be subject to the redaction process of protected information envisaged in USMCA Article 14.D.8.4.

24. Non-Disputing NAFTA/USMCA Parties

NAFTA Articles 1127, 1128 and 1129; USMCA Article 14.D.7.2

24.1. Non-Disputing NAFTA Parties/non-disputing Annex Parties to the USMCA may make submissions to the Tribunal within the meaning of NAFTA Article 1128 and USMCA Article 14.D.7.2 by the date indicated in Annex A.

24.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, and USMCA Articles 14.D.7.2 and 14.D.8.2, Non-Disputing NAFTA/USMCA Parties may attend oral hearings and are entitled to receive a copy of confidential versions of transcripts, written submissions and exhibits, including witness statements and expert reports.

24.3. The disputing Parties shall have the opportunity to comment on any Article 1128 or Article 14.D.7.2 submission only by the date set forth in Annex A.

25. Amicus Curiae Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; USMCA Article 14.D.7.3; Arbitration Rule 37(2).

25.1. If a request for the submission of an *amicus curiae* brief is filed by the date indicated in Annex A, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 37(2) and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003.

- 25.2. By the relevant dates indicated in Annex A, the disputing parties shall have the opportunity to: (1) make submissions on any request for the submission of an *amicus curiae* brief; and (2) file simultaneous observations on issues raised in any *amicus curiae* brief submitted pursuant to a decision of the Tribunal.

On behalf of the Tribunal

[Signed]

Mr. Manuel Conthe Gutiérrez
President of the Tribunal
Date: December, 17, 2021

Annex A

Procedural Calendar

| <i>Description</i> | <i>By</i> | <i>Days</i> | <i>Date</i> |
|--|------------|---|-------------------|
| First Session | All | | December 3, 2021 |
| Procedural Order # 1 | Tribunal | | December 17, 2021 |
| Statement of Claim (including RFD) | Claimant | 25 weeks from the date of PO1 | June 10, 2022 |
| Request for Bifurcation (if presented) | Respondent | 4 weeks from the Statement of Claim | July 8, 2022 |
| Response on the Request of Bifurcation (if bifurcation requested) | Claimant | 4 weeks from the Request of Bifurcation | August 5, 2022 |
| Decision on the Request of Bifurcation (if bifurcation requested) | Tribunal | 4 weeks from the Response on the Request of Bifurcation | September 2, 2022 |
| If the Request for Bifurcation is granted, the Tribunal will adjust this Schedule | | | |
| If the Request for Bifurcation is denied, the Calendar continues as envisaged below | | | |
| Statement of Defense (including: objections to Claimants' RFD; and Respondent's RFD) | Respondent | 25 weeks from Statement of Claim | December 2, 2022 |
| Objections to Respondent's RFD | Claimant | 3 weeks from Statement of Defense | December 23, 2022 |

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| | | | |
|--|---------------------|--|--------------------|
| Replies to objections to RFDs, if any | Parties | 3 weeks | January 13, 2023 |
| Tribunal's decision | Tribunal | 3 weeks | February 3, 2023 |
| Disclosure | Parties | 3 weeks after the Tribunal's Decision | February 24, 2023 |
| Reply | Claimants | 18 weeks from Statement of Defense | April 7, 2023 |
| Rejoinder | Respondent | 16 weeks from Reply | July 28, 2023 |
| Non-Disputing Party Submissions/ <i>amicus curiae</i> | Non-Disputing Party | 3 weeks from the due date of the Rejoinder | August 18, 2023 |
| Parties' comments on Non-Disputing Party Submissions/ <i>amicus curiae</i> | Parties | 3 weeks from the due date of the Non-Disputing Party Submissions/ <i>amicus curiae</i> | September 8, 2023 |
| Notification of Witnesses each party is calling for examination | Parties | 4 weeks after the completion of the written procedure | October 6, 2023 |
| Pre-Hearing Conference | All | At least 6 weeks before the Hearing | |
| Hearing | All | Dates to be determined | Late November 2023 |

Annex B

Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

| SUBMISSION TYPE | ELECTRONIC FILE NAMING GUIDELINES |
|---|--|
| MAIN PLEADINGS | Title of Pleading–LANGUAGE |
| | <i>Memorial on Jurisdiction-FR</i> |
| | <i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i> |
| | <i>Reply on Annulment-FR</i> |
| | <i>Rejoinder on Quantum-ENG</i> |
| SUPPORTING DOCUMENTATION Exhibits | C-####–LANGUAGE |
| | R-####–LANGUAGE |
| | To be produced sequentially throughout the case. |
| | CLAIMANT’S FACTUAL EXHIBITS |
| | <i>C-0001-ENG</i> |
| | <i>C-0002-SPA</i> |
| | RESPONDENT’S FACTUAL EXHIBITS |
| | <i>R-0001-FR</i> |
| <i>R-0002-SPA</i> | |
| Legal Authorities | CL-####–LANGUAGE |
| | RL-####–LANGUAGE |
| | To be produced sequentially throughout the case. |
| | CLAIMANT’S LEGAL AUTHORITIES |
| | <i>CL-0001-ENG</i> |
| | <i>CL-0002-FR</i> |
| | RESPONDENT’S LEGAL AUTHORITIES |
| <i>RL-0001-SPA</i> | |
| <i>RL-0002-ENG</i> | |

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Procedural Order No. 1 - Annexes

| | |
|--|---|
| Witness Statements | Witness Statement-Name of Witness-Name of Submission-LANGUAGE |
| | <i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i> |
| | <i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i> |
| Expert Reports | Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE |
| | <i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i> |
| | <i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i> |
| Legal Opinions | Legal Opinion-Name of Expert-Name of Submission-LANGUAGE |
| | <i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i> |
| | <i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i> |
| Exhibits to Witness Statements, Expert Reports, Legal Opinions | WITNESS/EXPERT INITIALS-### |
| | <i>For exhibits filed with the Witness Statement of [Maria Jones]</i> |
| | <i>MJ-0001</i> |
| | <i>MJ-0002</i> |
| | <i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i> |
| | <i>TK-0001</i> |
| | <i>TK-0002</i> |
| | <i>For exhibits filed with the Expert Report of [Lucia Smith]</i> |
| | <i>LS-0001</i> |
| <i>LS-0002</i> | |
| INDICES | Consolidated Hyperlinked Index |
| | Index of Exhibits-C-#### to C-#### |
| | <i>Index of Exhibits-C-0001 to C-0023</i> |
| | Index of Legal Authorities-RLA-### to RLA-### |
| | <i>Index of Legal Authorities-RLA-0001 to RLA-0023</i> |
| OTHER APPLICATIONS | Name of Application-[Party]-LANGUAGE |
| | <i>Preliminary Objections under Rule 41(5)-SPA</i> |
| | <i>Request for Bifurcation-ENG</i> |
| | <i>Request for Provisional Measures-[Respondent]-SPA</i> |
| | <i>Request for Production of Documents-[Claimant]-SPA</i> |
| | <i>Request for Stay of Enforcement-FR</i> |
| | <i>Request for Discontinuance-[Claimant]-ENG</i> |
| | <i>Post-Hearing Brief-[Claimant]-SPA</i> |
| <i>Costs Submissions-[Respondent]-ENG</i> | |
| <i>Observations to Request for [XX]-[Claimant]-SPA</i> | |

