

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. 4 ON DOCUMENT PRODUCTION

Members of the Tribunal

Mr. Manuel Conthe Gutiérrez, President of the Tribunal

Dr. Franz X. Stirnimann Fuentes, Arbitrator

Prof. Alain Pellet, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

Date: 3 February 2023

I. INTRODUCTION

1. In accordance with paragraph 15 of Procedural Order No. 1 and the Procedural Calendar, each side served on the other side document production requests (DPRs) in the form of a Redfern Schedule. The Parties exchanged their objections to production and each side then completed its Redfern Schedule by including its responses to the other side's objections. The Parties submitted their completed Redfern Schedules to the Tribunal on 13 January 2023.
2. In this Order, the Tribunal addresses the Parties' contested document requests.
3. In a supplement to this order, the Tribunal will address in due time the Request for Additional Documents filed by the Claimants on January 27, 2023.

II. APPLICABLE STANDARDS

4. Paragraph 15.1 of Procedural Order No. 1 provides that the Tribunal, in deciding on the Parties' document production requests, will take the IBA Rules on the Taking of Evidence in International Arbitration 2020 (IBA Rules) as a guideline and to the extent they are consistent with the ICSID Arbitration Rules.
5. Guided by these standards, the Tribunal has deliberated and decided on each contested request as set out in the simplified Redfern Schedules attached as Annex 1 (on the Claimants' Requests for Documents) and Annex 2 (on the Respondent's Requests for Documents). The Tribunal's decisions should be understood in the terms spelled out in paragraphs 6 to 8 below.
6. Whenever the Tribunal orders the production of documents and a party invokes privilege against disclosure, the party should identify any such privileged document in a "privilege log", with a neutral description and the date of the document.

7. Whenever the Tribunal does not consider it necessary to issue a document production order on the basis that the requested party has declared to have made an extensive search for responsive documents and that it has not found them, the Tribunal reserves the right to take appropriate action if such documents or their existence were to subsequently to emerge.
8. Whenever a party has stated pledged, in response to a document production request, that it will provide any documents responsive to the request that it finds discovers, the Tribunal considers that pledge binding, as if the production request had been ordered by the Tribunal.

III. ORDER

7. The Tribunal ORDERS as follows:

(1) The Tribunal decides on the contested document production requests as set out in Annex 1 and Annex 2, which are the simplified Redfern Schedules for the Claimants and the Respondent, respectively. These Annexes form an integral part of the present Order.

(2) Each Party shall produce all documents ordered to be produced by 24 February 2023.

(3) If a Party withholds the production of a document based on an assertion of privilege or other immunity from disclosure, that Party must produce a Privilege Log as describe in paragraph 6 above to the other side by 24 February 2023.

(4) The documents produced shall not be communicated to the Tribunal at this stage and shall not be considered part of the record unless and until one side submits a document to the Tribunal in accordance with the Procedural Calendar.

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On behalf of the Tribunal

[Signed]

Manuel Conthe Gutiérrez
President of the Tribunal
Date: 3 February 2023