

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE
TRADE AGREEMENT**

-and-

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

-between-

FIRST MAJESTIC SILVER CORP.

(the “Claimant”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

CONSOLIDATION REQUEST UNDER NAFTA ARTICLE 1126

(ICSID Case No. ARB/21/14 & ICSID Case No. ARB/23/28)

TERMS OF APPOINTMENT

Consolidation Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator

Ms. Tina M. Cicchetti, Arbitrator

Mr. Christian Vidal-León, Arbitrator

Secretary of the Consolidation Tribunal

Ms. Elisa Méndez Bräutigam, Legal Counsel, ICSID

Assistant to the Consolidation Tribunal

Ms. Emily Hay

5 August 2024

1. Introduction

- 1.1 On 12 February 2024, the United Mexican States submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**”) a request for the consolidation of the claims submitted to arbitration in the cases *First Majestic Silver Corp. v. United Mexican States* (ICSID Case No. ARB/21/14) and *First Majestic Silver Corp. v. United Mexican States* (ICSID Case No. ARB/23/28) pursuant to Article 1126 of the North American Free Trade Agreement (“**NAFTA**”) (the “**Consolidation Request**”).
- 1.2 These Terms of Appointment set out the parties’ agreements concerning the standards and procedures that shall govern the resolution of the Consolidation Request.
- 1.3 These Terms of Appointment are annexed to the Procedural Order No. 1 issued by the Consolidation Tribunal on 5 August 2024 as **Annex B**.

2. Representation

- 2.1 The parties have designated their representatives listed below as being authorized to act on their behalf in this proceeding.
- 2.2 In the event of any change by a party of its representatives or of the contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each Member of the Consolidation Tribunal, and to ICSID. Failing such notification, communications sent to the addresses set out below shall be valid. The Consolidation Tribunal reserves the right to exclude the participation of any representatives from any hearing or other meeting where their participation has not been duly notified sufficiently in advance of that hearing or meeting. In the event that a change in the representation of a party may create a conflict of interest, or a reasonable appearance of a conflict of interest with one or more of the arbitrators, the Consolidation Tribunal may, after consulting with the parties, take appropriate measures to safeguard the integrity and stability of the proceeding, including by preventing the participation of the new representative.
- 2.3 The Claimant is represented by:

Mr. Riyaz Dattu
ArentFox Schiff, LLP
1301 Avenue of the Americas 42nd Floor
New York, NY 10019
United States of America
and

Mr. Lee M. Caplan
Ms. Maya S. Cohen
Ms. Jodi Tai
ArentFox Schiff, LLP
1717 K Street NW
Washington, DC 20006
United States of America

Emails:

riyaz.dattu@afslaw.com
lee.caplan@afslaw.com
maya.cohen@afslaw.com
jodi.tai@afslaw.com

2.4 The Respondent is represented by:

Mr. Alan Bonfiglio Ríos
Mr. Geovanni Hernández Salvador
Mr. Alejandro Rebollo Ornelas
Mr. Luis Fernando Muñoz Rodríguez
Ms. Laura Mejía Hernández
Mr. Fabián Arturo Trejo Bravo
Ms. Alicia Monserrat Islas Martínez
Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Torre Ejecutiva
Calle Pachuca #189, Piso 7
Colonia Condesa
Demarcación Territorial Cuauhtémoc
Mexico City, 06140
United Mexican States
and
Mr. Greg Tereposky
Ms. Jennifer Radford
Mr. Vincent DeRose
Mr. Daniel Hohnstein
Mr. Alejandro Barragan
Ms. Ximena Iturriaga
Mr. Juan Pablo Gomez
Tereposky & DeRose LLP
Suite 1000, 81 Metcalfe Street
Ottawa, Ontario, K1P 6K7
Canada
and
Mr. Stephan E. Becker
Pillsbury Law
1200 17th Street, NW
Washington, D.C., 20036
United States of America
Emails:
alan.bonfiglio@economia.gob.mx
geovanni.hernandez@economia.gob.mx
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dhohnstein@tradeisds.com abarragan@tradeisds.com
xiturriaga@tradeisds.com
jpgomez@tradeisds.com
stephan.becker@pillsburylaw.com

3. Constitution of the Consolidation Tribunal

- 3.1 In accordance with NAFTA Article 1126(5), on 8 May 2024 the Secretary-General of ICSID appointed the Members of the Consolidation Tribunal. The contact details of the Members of the Consolidation Tribunal are as follows:

Prof. Albert Jan van den Berg

Hanotiau & van den Berg
IT Tower, 9th Floor
Avenue Louise 480 B.9
1050 Brussels
Belgium
Email: ajvandenbergh@hvdb.com

Ms. Tina M. Cicchetti

Arbitration Place
Bay Adelaide Centre West
333 Bay Street, Suite 900
Toronto, ON
M5H 2R2 Canada
Email: tcicchetti@cicchettiarbitration.com

Mr. Christian Vidal-León

Chemin du Pré-Roset 14A
Genthod, Switzerland, 1294
Email: christian.vidal.leon@gmail.com

- 3.2 The Members of the Consolidation Tribunal confirm that they are and shall remain impartial and independent of the parties. Each Member of the Consolidation Tribunal confirms that he or she has disclosed, to the best of his or her knowledge, all circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence and that he or she will without delay disclose any such circumstances that may arise or come to his or her attention during this proceeding.
- 3.3 The parties confirm that they have no objection to the appointment of any Member of the Consolidation Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them as at the date of signature of these Terms of Appointment.
- 3.4 The Members of the Consolidation Tribunal confirm that they have sufficient availability during the next months to dedicate to the resolution of the Consolidation Request.

4. Applicable Procedural Rules

- 4.1 This consolidation proceeding is conducted in accordance with the UNCITRAL Arbitration Rules of 1976, except as modified by Article 1126 of the NAFTA.

5. Mandate of the Consolidation Tribunal

- 5.1 The parties acknowledge that the mandate of the Consolidation Tribunal shall be to determine, after hearing from the parties, whether the cases referred to above shall be consolidated, and to issue an order consistent with that determination.

- 5.2 The parties further acknowledge that, in accordance with NAFTA Article 1126(2), the Consolidation Tribunal may assume jurisdiction over, and hear and determine together, all or part of the claims, or assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.
- 5.3 The parties acknowledge that the standard of decision of the Consolidation Tribunal with respect to the issue within its mandate is set forth in NAFTA Article 1126(2).
- 5.4 In accordance with NAFTA Article 1126(9), on application of a disputing party, the Consolidation Tribunal, pending its decision under NAFTA Article 1126(2), may order that the proceedings of a Tribunal established under Article 1120 be stayed, unless the latter Tribunal has already adjourned its proceedings. The Consolidation Tribunal notes that the Respondent has made a request to that effect at paragraph 60 of its Consolidation Request. The Respondent's request is dealt with in Procedural Order No. 1.

6. Place of Arbitration

- 6.1 In accordance with NAFTA Article 1130, and by agreement of the parties, the place of arbitration is agreed by the parties as Washington, D.C., United States of America.

7. Language of Proceeding

- 7.1 Pursuant to Article 17(1) of the UNCITRAL Rules 1976, the parties agree that English and Spanish are the procedural languages of the consolidation proceeding.

8. ICSID

- 8.1 The contact details of ICSID are as follows:

Ms. Elisa Méndez Bräutigam
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-2851
Email: emendezbrautigam@worldbank.org
Paralegal name: Mr. Pedro Magariño
Paralegal email: pmagarino@worldbank.org

9. Assistant to the Consolidation Tribunal

- 9.1 With the parties' approval, the Consolidation Tribunal has appointed Ms. Emily Hay of Hanotiau & van den Berg as Assistant to the Consolidation Tribunal, for the benefit of the overall cost and time efficiency of the proceedings.
- 9.2 The Assistant to the Consolidation Tribunal shall perform such tasks as are assigned to her by the Consolidation Tribunal or the President of the Consolidation Tribunal, including:
- (a) assisting the Consolidation Tribunal in the review of the evidence and of the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, and research on specific factual or legal issues;

- (b) assisting the Consolidation Tribunal in the preparation and communication of its decisions to the parties on issues of procedure and substance, including by preparing initial drafts of procedural orders, decisions and awards, under the direction and supervision of the Consolidation Tribunal or its President;
- (c) liaising with the Tribunal Secretary and the ICSID Secretariat regarding any of these tasks; and
- (d) providing other support to the Consolidation Tribunal or its Members, especially its President, at any time, especially during hearings and deliberations, which the Assistant to the Consolidation Tribunal may attend.

9.3 Under no circumstances shall the Consolidation Tribunal delegate any decision-making functions to the Assistant to the Consolidation Tribunal. The Assistant to the Consolidation Tribunal will work at all times under the specific instructions and continuous control and supervision of the Consolidation Tribunal.

9.4 The Assistant to the Consolidation Tribunal shall be subject to the same independence, impartiality and confidentiality obligations as the Members of the Consolidation Tribunal and shall be afforded the same immunities as the Consolidation Tribunal.

9.5 The Assistant to the Consolidation Tribunal will not charge for her time on this matter, which shall be subsumed in the fees of the President of the Consolidation Tribunal. The Assistant to the Consolidation Tribunal will be reimbursed for (i) actual expenses of overnight lodging and other charges when traveling to a hearing, session or meeting held away from her or his residence up to but not exceeding USD 900 per day; and (ii) reimbursements for the costs of air (at one class above economy class) and ground transportation to and from the city where the hearing, session or meeting is held.

10. Deposit and Apportionment of Costs

10.1 The parties shall deposit an equal amount as an advance for the costs of the consolidation proceeding.

10.2 By letter of 13 May 2024, at the request of the Consolidation Tribunal, ICSID requested that each party pay a deposit of US\$150,000 to defray the initial costs of the proceeding. ICSID received the Respondent's payment on 21 June 2024. At the date of execution of these Terms of Appointment, ICSID had not received the Claimant's payment.

10.3 ICSID will review the adequacy of the deposit from time to time and, at the request of the Consolidation Tribunal, may invite the parties to make supplementary deposits. Such requests will be accompanied by an interim statement of account.

10.4 Any transfer fees or other bank charges will be charged by ICSID to the deposit.

10.5 After the conclusion of the consolidation phase, the ICSID Secretariat may, if appropriate, render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

11. Fees and Expenses of the Arbitrators

- 11.1 The fees and expenses of each Member of the Consolidation Tribunal 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.

12. Immunity of the Consolidation Tribunal

- 12.1 No Member of the Consolidation Tribunal shall be liable, and the parties shall not seek to make the Consolidation Tribunal or any of its Members liable in respect of any act or omission in connection with any matter related to this proceeding.
- 12.2 The parties agree that no Member of the Consolidation Tribunal shall be under any legal obligation to make any statement to any party or any person about any matter concerning this proceeding; nor shall any party seek to make any Member of the Consolidation Tribunal a party, witness or participant in any legal or other proceedings arising out of or in connection with this proceeding.

13. Data Protection

- 13.1 The Members of the Consolidation Tribunal, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this proceeding.
- 13.2 The Members of the Consolidation Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the proceeding, where necessary. Should compliance with applicable law require action from another participant in the proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Consolidation Tribunal for specific data protection measures to be put in place.
- 13.3 Each of the parties and their representatives shall indemnify and hold harmless the Consolidation Tribunal with respect to any breach of applicable data protection and privacy regulations by the party or its representatives in relation to the proceeding.

14. Adoption of the Terms of Appointment

- 14.1 These Terms of Appointment, as agreed by the parties, are adopted by the Tribunal as Annex B to Procedural Order No. 1.