

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

-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)

PROCEDURAL ORDER NO. 1

Members of the 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

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Introduction

The first procedural meeting of the Consolidation Tribunal was held on 16 July 2024, at 10.00 a.m Washington, D.C. time, by video-conference. The meeting was adjourned at 11.20 am Washington, D.C. time.¹

An audio recording of the meeting was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Consolidation Tribunal and the parties.

Participating in the meeting were:

Members of the Consolidation Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator

Ms. Tina M. Cicchetti, Arbitrator

Mr. Christian Vidal-León, Arbitrator

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Consolidation Tribunal

Assistant to the Consolidation Tribunal:

Ms. Emily Hay, Hanotiau & van den Berg

Participating on behalf of the Claimant:

Ms. Andrea Elvira Elizondo Duran, First Majestic Silver Corp.

Mr. Riyaz Dattu, ArentFox Schiff, LLP

Mr. Lee M. Caplan, ArentFox Schiff, LLP

Ms. Maya S. Cohen, ArentFox Schiff, LLP

Ms. Jodi Tai, ArentFox Schiff, LLP

Participating on behalf of the Respondent:

Mr. Alan Bonfiglio Ríos, Secretaría de Economía, México

Mr. Geovanni Hernández Salvador, Secretaría de Economía, México

Mr. Alejandro Rebollo Ornelas, Secretaría de Economía, México

Mr. Luis Fernando Muñoz Rodríguez, Secretaría de Economía, México

Ms. Laura Mejía Hernández, Secretaría de Economía, México

Mr. Fabián Arturo Trejo Bravo, Secretaría de Economía, México

Ms. Alicia Monserrat Islas Martínez, Secretaría de Economía, México

Mr. Greg Tereposky, Tereposky & DeRose LLP

Mr. Daniel Hohnstein, Tereposky & DeRose LLP

Mr. Alejandro Barragan, Tereposky & DeRose LLP

¹ On 15 July 2024, the Claimant requested that the Consolidation Tribunal adjourn the first procedural meeting scheduled for the next day, 16 July 2024. On the same date, the Respondent filed a response opposing the request. After hearing both parties, the Consolidation Tribunal decided to hold the meeting as scheduled.

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Ms. Ximena Iturriaga, Tereposky & DeRose LLP
Mr. Juan Pablo Gomez, Tereposky & DeRose LLP
Ms María Mateus, Tereposky & DeRose LLP

The Consolidation Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 and the draft Terms of Appointment circulated by ICSID on 20 May 2024;
- The parties' comments on the Draft Procedural Order No. 1 and the draft Terms of Appointment received on 31 May 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree;
- The parties' submissions on the Claimant's request that the consolidation proceeding be stayed dated 10 July 2024 and 15 July 2024; and
- The parties' submissions on the Respondent's request under NAFTA Article 1126(9) dated 12 February 2024, 23 May 2024 and 30 May 2024.

This order records the agreement of the parties on procedural matters set out herein, and where no agreement was reached, sets forth the Consolidation Tribunal's directions, having heard the parties and deliberated. This order further records the Consolidation Tribunal's decision on the Respondent's request under NAFTA Article 1126(9).

Following the meeting, the Consolidation Tribunal now issues the present Order:

Order:

1. Commencement of the Consolidation Proceeding

- 1.1. On 12 February 2024, the United Mexican States submitted to ICSID, pursuant to Article 1126 of the North American Free Trade Agreement ("NAFTA"), 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) ("FM1") and *First Majestic Silver Corp. v. United Mexican States* (ICSID Case No. ARB/23/28) ("FM2") (the "**Consolidation Request**").

2. Request for Suspension of Consolidation Proceeding

- 2.1. By correspondence dated 10 July 2024, the Claimant requested the suspension of the Consolidation Proceeding on the basis that the Consolidation Tribunal was established after the 60-day period provided for in NAFTA Article 1126(5) ("**Preliminary Objection on 60-day Period**"). The Respondent provided its views on this request on 15 July 2024.

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2.2. At the first procedural meeting, the Consolidation Tribunal decided to address the Claimant’s Preliminary Objection on 60-day Period in an initial written phase, as set out in the Procedural Timetable in **Annex A**. Subject to the Consolidation Tribunal’s decision on the Preliminary Objection on 60-day Period, the remainder of the Procedural Timetable shall take effect.

3. Request to Stay FM1 and FM2

Article 1126(9) of the NAFTA

3.1. In the Consolidation Request, the Respondent requested, pursuant to NAFTA Article 1126(9) that, once constituted, the Consolidation Tribunal issue an order that the FM1 and FM2 proceedings be stayed pending the decision of the Consolidation Tribunal under NAFTA Article 1126(2) (“**Request for the Stay of FM1 and FM2**”).

3.2. As decided by the Consolidation Tribunal at the first procedural meeting, pursuant to NAFTA Article 1126(9), the proceedings in FM1 and FM2 are stayed.

3.3. With respect to the stays ordered, either party is at liberty to apply to the Consolidation Tribunal that the stay it has ordered be lifted or that the proceedings of the Consolidation Tribunal be stayed. The Consolidation Tribunal shall decide on any request for stay of its proceedings.

4. Applicable Arbitration Rules

Article 1126 of the NAFTA

4.1. As set out in §4.1 of the Terms of Appointment in **Annex B**, this consolidation proceeding is conducted in accordance with the UNCITRAL Arbitration Rules of 1976, as provided in NAFTA Articles 1126(1) and 1139, except as modified by NAFTA Article 1126.

5. Contact Details of the Consolidation Tribunal

5.1. The Consolidation Tribunal was constituted on 8 May 2024 in accordance with NAFTA Article 1126(5), as indicated in §3 of the Terms of Appointment as set out in **Annex B**.

5.2. The contact details of the Members of the Consolidation Tribunal are set out in §3.1 of the Terms of Appointment as set out in **Annex B**.

6. Presence and Quorum

6.1. The presence of all Members of the Consolidation Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

7. Decisions and Procedural Rulings of the Consolidation Tribunal

Article 31 of the UNCITRAL Arbitration Rules 1976

7.1. All decisions of the Consolidation Tribunal shall be taken by a majority of the Members of the Consolidation Tribunal.

7.2. The Consolidation Tribunal may take decisions by correspondence among its Members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Consolidation Tribunal. If the matter is urgent, or if a co-arbitrator cannot be reached in a timely manner, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Consolidation Tribunal.

7.3. The President is authorized to issue Procedural Orders on behalf of the Consolidation Tribunal.

7.4. The Consolidation Tribunal's rulings on procedural matters shall be communicated to the parties and may be informed by the Tribunal Secretary in the form of a letter or email. The Consolidation Tribunal, before issuing a decision on procedural matters, shall consult the disputing parties, save for circumstances when the Tribunal deems it necessary to issue a ruling without consulting both parties.

8. Power to Fix Time Limits

Article 23 of the UNCITRAL Rules 1976

8.1. The President of the Consolidation Tribunal may fix and extend time limits for the completion of the various steps in the proceeding.

8.2. In exercising this power, the President shall consult with the other Members of the Consolidation 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 Consolidation Tribunal.

9. Contact Details of the Parties

9.1. Representation of the parties shall be in accordance with §2 of the Terms of Appointment.

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- 9.2. The contact details of the parties' respective representatives are set out §2.3 and §2.4 of the Terms of Appointment.

10. Place of Arbitration

Article 1130 of the NAFTA, Article 16 of the UNCITRAL Arbitration Rules 1976

- 10.1. As set out in §6.1 of the Terms of Appointment in **Annex B**, and by agreement of the parties, Washington, D.C., shall be the place of arbitration.
- 10.2. The Consolidation Tribunal may hold hearings at any other place that it considers appropriate, after consultation with the parties.
- 10.3. The Consolidation Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation

Article 17 of the UNCITRAL Arbitration Rules 1976

- 11.1. English and Spanish are the procedural languages of the proceeding.
- 11.2. The Consolidation Tribunal and the Secretariat may communicate in either procedural language.
- 11.3. Any written requests or applications from the parties may be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 7 days thereafter.
- 11.4. Pleadings may be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 30 days thereafter.
- 11.5. Expert opinions and witness statements shall be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 30 days thereafter.
- 11.6. Exhibits, legal authorities and other supporting documents can be submitted in either procedural language.
- 11.7. Exhibits, legal authorities, or other supporting documents submitted in a language other than English or Spanish shall be accompanied by a translation into either procedural language. It is sufficient to translate only the relevant part of a supporting document, unless the Consolidation Tribunal requires a fuller or a complete translation.
- 11.8. Translations need not be certified, unless the translation is disputed and the Consolidation Tribunal orders a party to provide a certified translation.

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- 11.9. The parties will notify the Consolidation Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §15 below), which witnesses or experts require interpretation.
- 11.10. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language.
- 11.11. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or Spanish shall be interpreted simultaneously into English and Spanish, unless the Consolidation Tribunal orders otherwise.
- 11.12. The costs of interpretation will be paid from the advance payments made by the parties, without prejudice to the decision of the Consolidation Tribunal as to which party shall ultimately bear those costs.
- 11.13. The Consolidation Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish. Both language versions shall be equally authentic.

12. Routing of Communications

Article 15(3) of the UNCITRAL Arbitration Rules 1976

- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the opposing party, the Tribunal Secretary, the Assistant, and the Consolidation Tribunal. If such communications contain attachments, they shall be text searchable (i.e., OCR PDF or Word Document).
- 12.2. Electronic versions of communications ordered by the Consolidation Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Consolidation Tribunal.
- 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Consolidation Tribunal.
- 12.4. The parties and their representatives shall not engage in any oral or written communications with any Member of the Consolidation Tribunal *ex parte* in connection with the subject-matter of this proceeding.

13. Pleadings and Oral Proceeding

- 13.1. This consolidation proceeding shall consist of a written phase followed by an oral phase.
- 13.2. The number and sequence of written pleadings shall be as provided in the Procedural Timetable of **Annex A**. The parties will submit the pleadings by the deadlines established in the Procedural Timetable, except if the Consolidation Tribunal, at the reasonable request of any party or on its own initiative, decides that for good cause this Procedural Timetable has to be amended.

14. Number of Copies and Method of Filing of Pleadings

- 14.1. By the relevant filing date, the parties shall:
 - 14.1.1. submit by email to the Tribunal Secretary, the opposing party, the Assistant, and the Members of the Consolidation Tribunal an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading (without supporting exhibits and without legal authorities);² and
 - 14.1.2. upload the pleading, with all the supporting documentation to the file sharing platform that ICSID has created for purposes of this proceeding.
- 14.2. The filing process indicated under §14.1.1 and §14.1.2 shall apply to both the original language submission and to any subsequent translations submitted pursuant to §11.
- 14.3. Two weeks in advance of the hearing, the parties shall courier to each Member of the Consolidation Tribunal at the addresses indicated at § 3.1 of the Terms of Appointment a USB drive (PC and Mac compatible) with a full copy of the entire record, both in the original language and translations – where relevant, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.
- 14.4. The Consolidation Tribunal does not wish to receive hard copies of any submission from the parties.
- 14.5. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

² Please note that the World Bank server does not accept emails larger than 25 MB.

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- 14.6. All pleadings shall be accompanied by a cumulative index with all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted and the language of the document.
- 14.7. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
- 14.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

15. Pre-Hearing Organizational Meetings

- 15.1. A pre-hearing organizational meeting shall be held on the date set out in **Annex A** by video conference between the Consolidation Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

16. Hearings

Article 25 of the UNCITRAL Rules 1976

- 16.1. The hearing shall be held on the dates set out in **Annex A**.
- 16.2. Hearings may be held in person or by any other means of communication as determined by the Consolidation Tribunal after consultation with the parties.
- 16.3. Having due regard to the views of the parties and the specific circumstances of the case, including any relevant travel restrictions and/or social distancing health and safety measures, the Consolidation Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 16.4. The Members of the Consolidation Tribunal shall determine the next steps following the hearing, including in relation to deliberations.
- 16.5. In accordance with Article 25(4) of the UNCITRAL Rules 1976, hearings shall be held *in camera* unless the parties agree otherwise.

17. Records of Hearings and Sessions

Article 25(3) of the UNCITRAL Rules 1976

- 17.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Members of the Consolidation Tribunal.

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- 17.2. 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 Consolidation Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Consolidation Tribunal on a same-day basis.
- 17.3. The parties shall agree on any corrections to the transcripts within 21 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 Consolidation Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Consolidation Tribunal shall be entered by the court reporter in the revised transcripts.

18. Post-Hearing Briefs and Statements of Costs

Article 38 of the UNCITRAL Arbitration Rules 1976

- 18.1. Whether and when the parties shall exchange post-hearing submissions and statements of costs shall be discussed at the pre-hearing organizational meeting referred to in § 15 above.

19. Transparency, Confidentiality and Publication

Article 1126 of the NAFTA, FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents

- 19.1. According to the NAFTA Free Trade Commission Note of Interpretation of Certain Chapter 11 Provisions of 31 July 2001 (the “Note”), “the NAFTA Parties agree that nothing in the relevant arbitral rules imposes a general duty of confidentiality or precludes the Parties from providing public access to documents submitted to, or issued by, Chapter Eleven tribunals [...]”
- 19.2. The Note further establishes that, in the application of the foregoing, the NAFTA Parties agree that documents submitted to, or issued by, a Chapter Eleven tribunal will be made available to the public subject to the redaction of (i) confidential business information; (ii) information which is privileged or otherwise protected from disclosure under the relevant domestic law; and (iii) information which must be withheld pursuant to the relevant arbitral rules.
- 19.3. Subject to the applicable limitations on confidentiality grounds envisaged below, the ICSID Secretariat will publish on the Centre’s website the following documents (collectively, “Covered Documents”):
- a) Any procedural orders, decisions, and the Award issued by the Tribunal (collectively, “Decisions”);

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- b) The following pleadings (but not the supporting witness statements, expert reports, exhibits, or legal authorities which shall not be published on the ICSID website nor be disclosed otherwise to the public, except with the consent of both parties and of the Tribunal): (i) the consolidation application; and (ii) pleadings (Memorial and Counter-Memorial); and
 - c) Any written submissions by Non-Disputing NAFTA Parties (Governments of Canada or the United States of America).
 - d) Any written submission by third persons (*amicus curiae*) that have been admitted by the Tribunal.
- 19.4. The parties further agree that the ICSID Secretariat publish on its website the case details of the proceeding, including the instrument involved and updates on its procedural details.
- 19.5. The parties agree that confidential information is information that is protected because:
- a) it is confidential business information;
 - b) it is information that is privileged or otherwise protected from disclosure under the Party's domestic law;
 - c) it is information which the Party must withhold pursuant to the relevant arbitral rules, as applied;
 - d) it is protected by the relevant applicable law or applicable rules;
 - e) it is protected in accordance with the orders and decisions of the Tribunal;
 - f) it is protected by agreement of the parties;
 - g) public disclosure would impede law enforcement;
 - h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
 - i) because public disclosure would aggravate the dispute between the parties; or
 - j) because public disclosure would undermine the integrity of the arbitral process.
- 19.6. A disputing party claiming that a Covered Document contains confidential information shall notify the other disputing party and ICSID within fifteen days of its filing or issuance, as the case may be, that it contains confidential information and shall provide its redacted version to the other disputing party within thirty days thereafter. The ICSID Secretariat shall not publish any Covered Document on its website until the initial fifteen-day period has expired, and no declaration of confidentiality has been made by either disputing party, or the proposed redactions have been agreed or resolved in the manner provided below.
- 19.7. If a disputing party opposes any redaction that the other disputing party proposes, it shall notify the other proposing party within fifteen days of receiving the redacted document in question, providing its reasons for objecting.

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- 19.8. If the disputing parties cannot agree on the resolution of any dispute within thirty days, either party may submit the matter to the Consolidation Tribunal for a decision.

20. Non-Disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

- 20.1. Non-Disputing NAFTA Parties may make submissions to the Consolidation Tribunal within the meaning of NAFTA Article 1128 by the date indicated in **Annex A**.
- 20.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, Non-Disputing NAFTA 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. Non-Disputing NAFTA Parties shall be made aware of any confidentiality measures, and pursuant to NAFTA Article 1129, shall treat all information received from the Respondent as if they were a disputing party, notably in respect of protection of confidential information.
- 20.3. The disputing parties shall have the opportunity to comment on any NAFTA Article 1128 submission only by the date set forth in **Annex A**.

21. Disability Inclusion

- 21.1. The parties will advise the Consolidation Tribunal if there are any disability considerations amongst the parties, witnesses, counsel or other participants which need to be taken into account in establishing the procedure, including the hearing.

[Signed]

Prof. Albert Jan van den Berg
President of the Consolidation Tribunal
Date: 5 August 2024

ANNEX A - PROCEDURAL TIMETABLE

Description	By	Days	Date	POI §
First Procedural Meeting	All	0	Tue-16-Jul-2024	
Preliminary Objection re 60-day Period	Claimant	22	Wed-7-Aug-2024	13.2, 13.3
Response on Preliminary Objection re 60-day Period	Respondent	15	Thu-22-Aug-2024	13.2, 13.3
Decision on Preliminary Objection re 60-day Period	Tribunal	7	Thu-29-Aug-2024	13.2, 13.3
<i>The following steps apply only if the Objection re 60-day Period is rejected</i>				
Memorial of Consolidation	Respondent	39	Mon-07-Oct-2024	13.2, 13.4
Counter-Memorial of Consolidation	Claimant	60	Fri-06-Dec-2024	13.2, 13.4
Submissions under NAFTA Article 1128	Non-Disputing Parties	17	Mon-23-Dec-2024	20.1
Comments on NAFTA Article 1128 submissions	Claimant and Respondent	15	Tue-07-Jan-2025	20.3
Notification of Witnesses and Experts	Claimant and Respondent	0	Tue-07-Jan-2025	
Pre-Hearing Organizational Meeting	All	1	Wed-08-Jan-2025	15.1
Hearing Commencement	All	19	Mon-27-Jan-2025	16.1
Hearing Ends (2 days + 1 day reserve)	All	2	Wed-29-Jan-2025	16.1
Simultaneous Post-Hearing Submissions	Claimant and Respondent	TBD	TBD	18.1
Simultaneous Costs Submissions	Claimant and Respondent	TBD	TBD	18.1
Decision on Consolidation	Consolidation Tribunal	TBD	TBD	7

ANNEX B – TERMS OF APPOINTMENT

Attached separately.