

**INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

**ICSID Case No. ARB/21/14**

BETWEEN:

**FIRST MAJESTIC SILVER CORP.**

Claimant / Investor

- and -

**GOVERNMENT OF THE UNITED MEXICAN STATES**

Respondent / Contracting Party

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**CLAIMANT'S SECOND REQUEST FOR PROVISIONAL MEASURES**

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**November 27, 2025**

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## GLOSSARY

TERM	DEFINITION
<b>2010 Tax Reassessment</b>	PEM's tax liabilities for fiscal year 2010 alleged by the SAT
<b>2012 Tax Reassessment</b>	PEM's tax liabilities for fiscal year 2012 alleged by the SAT
<b>APA</b>	Advance Pricing Agreement entered into by the SAT with PEM in 2012 to establish the methodology for transfer pricing
<b>[REDACTED] Witness Statement</b>	Witness Statement of [REDACTED] Witness Statement, dated November 25, 2025
<b>Claimant</b>	First Majestic Silver Corp.
<b>Claimant's Memorial</b>	<i>First Majestic Silver Corp. v. United Mexican States</i> , ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022.
<b>ICSID</b>	International Centre for the Settlement of Investment Disputes
<b>ICSID Convention</b>	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
<b>ICSID Rules</b>	2006 ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules)
<b>NAFTA</b>	North American Free Trade Agreement
<b>PEM</b>	Primero Empresa Minera, S.A. de C.V.
<b>Respondent</b>	United Mexican States
<b>PM Order</b>	Tribunal's Decision on the Claimant's Request for Provisional Measures, dated May 26, 2023.
<b>SAT</b>	Servicio de Administración Tributaria
<b>Stay</b>	Interim relief pending the final award of this Tribunal regarding SAT's collection of the 2010 and 2012 Tax Reassessments
<b>Stay Request</b>	Request for interim relief pending the final award of this Tribunal regarding SAT's collection of the 2010 and 2012 Tax Reassessments
<b>Supreme Court</b>	Suprema Corte de Justicia de la Nación, or Supreme Court of Mexico
<b>Third [REDACTED] Expert Report</b>	[REDACTED] Provisional Measures Report, dated November 21, 2025.
<b>VAT Refunds</b>	Value Added Tax Refunds

## I. INTRODUCTION

1. First Majestic Silver Corp. (“**Claimant**”) submits this second request for provisional measures pursuant to Article 1134 of the North American Free Trade Agreement (“**NAFTA**”), Article 47 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“**ICSID Convention**”), and Rule 39 of the 2006 ICSID Arbitration Rules (“**ICSID Rules**”).<sup>1</sup>

2. The request concerns the Servicio de Administración Tributaria (“**SAT**”)’s measures related to the imminent collection from Primero Empresa Minera, S.A. de C.V. (“**PEM**”) of [REDACTED],<sup>2</sup> which it asserts are PEM’s tax liabilities for fiscal year 2012 (the “**2012 Tax Reassessment**”).

3. The SAT’s imminent collection efforts have been instigated by the recent Suprema Corte de Justicia de la Nación, Supreme Court of Mexico (“**Supreme Court**”) decision, made on October 30, 2025, refusing PEM’s request to be heard in order to advance constitutional arguments concerning the illegality of the 2012 Tax Reassessment. The Supreme Court, by denying PEM’s request to be heard, did not address the merits of the dispute between the parties concerning the legally binding nature of the Advance Pricing Agreement (“**APA**”).

4. The Supreme Court’s decision leaves PEM without any further remedies in Mexican courts and precludes PEM from establishing the illegality of the 2012 Tax Reassessment before Mexico’s highest court. Had the appeal been admitted, PEM would have argued that the ongoing validity of the APA—still in effect and not yet set aside pursuant to the *Juicio de Lesividad* proceeding—renders the 2012 Tax Reassessment fundamentally flawed because the SAT disregarded the APA’s revenue calculation methodology for PEM’s exports of its mined silver.

5. Additionally, had the Supreme Court upheld PEM’s request to be heard, PEM would have argued that any future successful setting aside of the APA through the *Juicio de*

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<sup>1</sup> See Article 1134, NAFTA, dated 1994, **CL-0001**; see also Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**; Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

<sup>2</sup> As of September 10, 2025.

*Lesividad*, could not authorize retroactive taxation for 2010 and all other fiscal years of PEM covered by the APA.<sup>3</sup>

6. The Claimant's position in this arbitration proceeding and what it sought to advance before the Supreme Court are consistent. The Claimant takes the position that the 2012 Tax Reassessment is fundamentally flawed and illegal (as are the reassessments for all years covered by the APA), as it ignores the existence of the APA issued by the SAT to PEM in October 2012.

7. The SAT's derivation of PEM's revenues is based on the use of prevailing "spot price." In contrast, the APA methodology links the revenue amount to the fixed prices negotiated in the streaming agreements, reflecting the revenues actually realized by PEM.<sup>4</sup>

8. The SAT's 2012 Tax Reassessment methodology is inconsistent with the methodology that the SAT had agreed to in the APA, contrary to fundamental accounting and financial reporting practices followed worldwide, and also entirely at odds with Mexico's own taxation system.<sup>5</sup>

9. The Supreme Court's refusal to hear PEM's appeal in respect of the 2012 Tax Assessment has cleared the way for the SAT to immediately proceed with its collection efforts in relation to the 2012 Tax Assessment. The SAT has finalized tax reassessments for the years 2010 through 2017, totaling approximately [REDACTED], in all cases by ignoring the existence of the APA. The SAT intends to initiate its collection actions, starting with about 20 percent of this sum—[REDACTED]—which it asserts is owed for PEM's 2012 fiscal year, with the remaining years to follow.

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<sup>3</sup> This is because if the tax authorities are allowed to determine tax reassessments for particular years, while there is an ongoing *Juicio de Lesividad* process filed by the same tax authorities against an APA covering precisely the same taxation years, then the *Juicio de lesividad* proceeding would be pointless as would the ongoing validity of the APA.

<sup>4</sup> *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022 ("Claimant's Memorial"), ¶¶ 26-44.

<sup>5</sup> *Id.*

10. The Claimant therefore requests immediate interim relief (the “**Stay Request**”) pending the final award of this Tribunal (“**Stay**”), in connection with any attempts by the SAT to collect from PEM any monies in respect of the 2012 Tax Reassessment.

11. The Stay would preserve the Tribunal’s exclusive jurisdiction, maintain the *status quo* of the dispute, protect the Claimant’s substantive and procedural rights, and avoid an aggravation of the dispute, without prejudicing the Respondent.

12. Absent a Stay, the dispute will be severely aggravated and result in substantially greater harm being suffered by the Claimant and PEM.

13. The Expert Report prepared by [REDACTED] at [REDACTED] (“**Third [REDACTED] Expert Report**”) states that [REDACTED] if required to pay the SAT-claimed amount based on the 2012 Tax Reassessment. This will then lead to PEM’s [REDACTED] and a complete loss of the Claimant’s investment in the San Dimas mine held through PEM.<sup>6</sup>

14. The cessation of the San Dimas mine operations would trigger repayment obligations to secured creditors of PEM, and immediate liabilities under Mexican labor laws, including payroll and other amounts owed to employees, and would cause the termination of funding for social and educational programs for employees and the surrounding community.<sup>7</sup>

15. Additionally, not all losses and damages that will be suffered by the Claimant are quantifiable,<sup>8</sup> as the [REDACTED] of PEM will have major harmful consequences for many stakeholders including hundreds of large and small suppliers of goods and

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<sup>6</sup> [REDACTED] Provisional Measures Report, dated November 21, 2025 (“**Third [REDACTED] Expert Report**”), ¶ 42, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>7</sup> First Majestic has consistently been acknowledged as a corporate leader for more than two decades for its social and educational programs. Third [REDACTED] Expert Report, ¶ 42, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**. For example, in the 2019 Sustainability Report published by First Majestic, the first full year during which it owned the San Dimas Mine, First Majestic detailed that it supplied electricity to 100 communities benefitting over 800 families and contributed to roadworks that improved 319 kilometers (about 200 mi) and 13 roads in the area. First Majestic also supported 347 students through scholarships, provided supplies to local schools, electronic equipment for trade schools, and building materials to improve the schools’ infrastructures. *See* Claimant’s Memorial, ¶¶ 32-33; *see also* Sustainability Report, First Majestic, dated August 31, 2020, pp. 1-55, **C-0014**; Third [REDACTED] Expert Report, ¶ 44, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>8</sup> The cessation of the San Dimas mine can be expected to negatively impact the Claimant’s share price, which will result in a material decrease to the Claimant’s market capitalization.

services to the San Dimas mine.<sup>9</sup> Equally important, the Stay will protect the Claimant's critical procedural rights that ensure a fair process.

16. The SAT's 2012 Tax Reassessment (and all the other SAT reassessments between the years 2010 and 2017 which ignore the methodology set out in the APA), are not only unlawful but are arbitrary, confiscatory and discriminatory.<sup>10</sup>

17. Considering the totality of the reassessments for the years 2010 to 2017 of approximately [REDACTED] reinforces the punitive nature of the SAT's imposition of amounts it claims to be "taxes" and its destructive collections posture which will render PEM bankrupt (and will cause consequential harm to the community surrounding the San Dimas mine).

18. Finally, the Claimant and PEM have previously demonstrated to this Tribunal (when seeking the provisional measures contained in the First Request for Provisional Measures, dated January 4, 2023) that it possesses the necessary jurisdiction to adjudicate on the dispute between the parties. The Tribunal continues to retain its jurisdiction as nothing has changed between then and now in relation to the necessary requirements for maintaining jurisdiction.

## **II. RELEVANT FACTS**

19. This Stay Request has been narrowly framed to meet the requirements of necessity, urgency, and proportionality. PEM seeks a Stay against the collection of amounts claimed as being owed by PEM for the 2012 fiscal year. The amount claimed by the SAT as being owed for this fiscal year is [REDACTED].

20. In total, for fiscal years 2010 through 2017, the SAT is seeking to collect from PEM, based on final tax reassessments issued by the SAT against PEM, of approximately [REDACTED]

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<sup>9</sup> Third [REDACTED] Expert Report, ¶ 52-53, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**; *see also* Claimant's Memorial, ¶ 503.

<sup>10</sup> *See* Claimant's Memorial, ¶¶ 53-62, 75-77; *see also* Expert Report of [REDACTED] dated April 25, 2022, ¶ 70 ("Under the New Stream Agreement with Wheaton that was negotiated by Claimant as part of the acquisition, Wheaton's entitlement is limited to receiving 25% of gold production and 25% of the silver production (expressed in gold equivalents based on a fixed exchange ratio of 70 silver ounces to 1 gold ounce) at San Dimas, at the lesser of \$600/oz (subject to a 1% annual inflation adjustment) and the prevailing spot price, for each ounce of gold equivalent produced."), [REDACTED]-0000.

██████████ This amount is purportedly made up of taxes, interest, penalties, inflation, and surcharges claimed by the SAT to be owed by PEM.<sup>11</sup>

21. The SAT has calculated these amounts without regard to the methodology set out in the APA, which to date continues to be valid.<sup>12</sup> Instead, it has calculated revenues of PEM for each year based on “spot prices” for the silver sold in the export market (thereby ignoring the actual revenues earned and recorded in PEM’s books and records).<sup>13</sup>

22. The SAT’s reliance on “spot prices”, which ignores the fixed price established by the streaming agreements entered into by PEM<sup>14</sup>, lacks legislative basis in Mexican law and is wholly inconsistent with international transfer pricing rules approved by the OECD in its universally relied-upon guidelines.

23. The SAT is treating the Supreme Court’s refusal on October 30, 2025, to hear PEM’s appeal, as validating its initiation of the collection measures for the 2012 fiscal year of PEM. Had PEM’s appeal been heard (*i.e.*, admitted or leave granted) PEM would have argued that the 2012 Tax Reassessment should be considered unlawful as the *Juicio de Lesividad* proceeding initiated by the SAT in 2015 remains pending.<sup>15</sup> However, the Supreme Court refused PEM’s request to be heard on the illegality of the 2012 Tax Reassessment. Therefore, there can be no conclusion drawn from the decision as validating the 2012 Tax Reassessment in the face of prior

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<sup>11</sup> Third ██████████ Expert Report, ¶ 20, **Expert Report-██████████-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>12</sup> Witness Statement of ██████████, dated November 25, 2025 (“██████████ Witness Statement”), ¶ 8, ██████████-0000; *see also* Claimant’s Memorial, ¶¶ 83, 382, 496-497.

<sup>13</sup> *See* ██████████ Witness Statement, ¶¶ 5, 46, ██████████-0000; *see also* Claimant’s Memorial, ¶¶ 83, 382, 496-497.

<sup>14</sup> ██████████ Witness Statement, ¶ 5, ██████████-0000; *see also* Claimant’s Memorial, ¶¶ 53-62, 75-77; Expert Report of ██████████ dated April 25, 2022, ¶ 70 (“Under the New Stream Agreement with Wheaton that was negotiated by Claimant as part of the acquisition, Wheaton’s entitlement is limited to receiving 25% of gold production and 25% of the silver production (expressed in gold equivalents based on a fixed exchange ratio of 70 silver ounces to 1 gold ounce) at San Dimas, at the lesser of \$600/oz (subject to a 1% annual inflation adjustment) and the prevailing spot price, for each ounce of gold equivalent produced.”), ██████████-0000.

<sup>15</sup> *See* Claimant’s Memorial, ¶¶ 91-92; *see also Juicio de Lesividad* Complaint of the SAT, No. 900 04 02-2015-31276, dated August 4, 2015, pp. 1-202, **C-0002, pp. 185-386**.



jurisprudence of the predecessor court (*i.e.*, that retroactive imposition of taxes is prohibited by the Mexican Constitution).<sup>16</sup>

24. As detailed below, SAT’s collection actions in connection with the 2012 Tax Reassessment are imminent.

25. A decision in connection with the 2010 tax reassessment issued by the SAT (“**2010 Tax Reassessment**”) is pending before the Second Collegiate Chamber in Administrative Matters of the First Circuit in Mexico City.<sup>17</sup> PEM has filed for a suspension of the trial concerning the 2010 Tax Reassessment until the *Juicio de Lesividad* is resolved—however as discussed previously, a similar request for the 2012 Tax Reassessment has already been rejected by the Mexican Court of Appeals.<sup>18</sup> The SAT will proceed with the collection for the 2010 fiscal year as soon as a final decision relating to the 2010 Tax Reassessment has been reached by the Mexican courts.

26. Once the 2010 Tax Reassessment reaches a final decision, the SAT will likewise pursue collection of this unlawful reassessment, amounting to [REDACTED].<sup>19</sup>

#### **A. Collection of the 2012 Tax Reassessment is Imminent**

27. The collection of the 2012 Tax Reassessment is imminent as PEM has exhausted domestic remedies for challenging this reassessment.

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<sup>16</sup> Iván Evair Saldaña, Corte revierte acuerdo de Piña: deja firme sentencia que obliga a minera a pagar 2.8 mmdp, La Jornada, dated October 30, 2025, C-0109.

<sup>17</sup> *Id.*

<sup>18</sup> [REDACTED] Witness Statement, ¶ 29, [REDACTED]-0000.

<sup>19</sup> Third [REDACTED] Expert Report, ¶ 20, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

1. PEM has Exhausted Domestic Remedies for the 2012 Tax Reassessment

28. On October 30, 2025, the Supreme Court rendered a decision refusing PEM's appeal to be heard concerning the illegality of the 2012 Tax Reassessment, thus ending PEM's recourse to domestic remedies against the reassessment.<sup>20</sup>

29. As stated by Claimant's witness, [REDACTED]:

In PEM's view the constitutional issues advanced in the appeal were novel and there in fact is no prior jurisprudence. The constitutional issues can be summarized as follows: (i) whether the SAT through its audit powers could nullify the existence of the APA issued pursuant to Article 34-A of the Federal Fiscal Code, as the very purpose for the issuance of an APA is to provide certainty, predictability, and stability in the government's use of methodology for calculating revenues in relation to transfer pricing transactions; (ii) whether the SAT could proceed to reassess PEM and ignore the existence of the APA when making its reassessment, even though the *Juicio de Lesividad* proceeding it initiated to set aside the APA is still ongoing; and (iii) whether the lower courts should have required the SAT to issue its reassessment for the 2012 fiscal year of PEM only after the conclusion of the *Juicio de Lesividad* proceeding.

By dismissing the appeal, the Mexican Supreme Court also dismissed PEM's argument that ongoing negotiations justified a stay, as well as the argument regarding the APA's continued validity.<sup>21</sup>

30. With respect to the refusal of the Supreme Court to hear PEM's appeal, as explained by [REDACTED], "while extremely disappointing is not surprising. Historically, the Supreme Court rarely admits tax-related appeals, focusing instead on matters of broad constitutional or human rights significance."<sup>22</sup>

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<sup>20</sup> [REDACTED] Witness Statement, ¶ 7, [REDACTED]-0000.

<sup>21</sup> [REDACTED] Witness Statement, ¶¶ 8-9, [REDACTED]-0000.

<sup>22</sup> [REDACTED] Witness Statement, ¶ 9, [REDACTED]-0000. See Mario Maldonado, Lenia Batres revive los peores temores de los empresarios, *El Universal*, dated November 24, 2025, **C-0110**; see also Video posted by Lenia Batres (@LeniaBatres), X, dated October 30, 2025 (informal translation) ("Regarding the substance, it is proposed to uphold the grievances raised by the appealing authority. Although there is a constitutional issue, the case does not present exceptional interest in terms of constitutional or human rights matters."), **C-0111**.

Note that Grupo Salinas, led by Ricardo Salinas Pliego, alleged governmental persecution tied to multi-billion-peso tax credits pursued by the SAT against companies such as Grupo Elektra and TV Azteca. See Denuncia Grupo Salinas acoso y persecución política contra su president, *Quadratin Mexico*, dated September 19, 2025, **C-0113**. On November 10, 2025, the Supreme Court published the list of matters to be heard on November 13, 2025, including several extraordinary appeals by those companies challenging tax credits and claiming de facto double taxation through the

31. The usual process leading to collection following a decision of the Supreme Court favoring the SAT, is that the Court’s resolution would be transmitted to the Second Circuit Court of Appeals on Administrative Matters in Mexico City.<sup>23</sup> After notification, the Second Circuit informs the High Chamber of the Federal Administrative Courts to confirm that the tax liability is final.<sup>24</sup> Upon confirmation, the SAT and PEM will be notified that collection measures can be initiated.<sup>25</sup> This process normally takes a few weeks.<sup>26</sup>

32. Alternatively, the SAT, based on the circumstances of any particular case (including one such as the present case), may consider the Court’s resolution as confirming PEM’s liability (as the appeal rights of PEM have been exhausted). Should the SAT follow this approach, it can implement its collection measures at any time, thereby avoiding remittals through the Second Circuit and High Chamber. The witness statement provided with this Request confirms that SAT’s collections process could start within days.

33. The amounts owed currently under the 2012 Tax Reassessment according to the SAT are:

2012 Assessment (as of September 10, 2025) <sup>27</sup>		
Item	Total (MXN)	Total USD
Tax		
Inflation		

disregard of tax losses. *See* Suprema Corte de Justicia de la Nación, Tribunal Pleno Asuntos de los que se Dará Cuenta en la Sesión Pública Ordinaria del Pleno de la Suprema Corte de Justicia de la Nación del Jueves 13 de Noviembre de 2025, dated November 10, 2025, **C-0114**. The listing was issued in apparent violation of Article 17 of the Court’s Rules of Procedure, which requires publication at least three days in advance, excluding the publication and session days. *See* Ivan Evair Saldaña, Corte desahoga juicios de Grupo Salinas: Deberá pagar más de 48 mil mdp al SAT, La Jornada, dated November 13, 2025, **C-0115**.

At the November 13 session, the Supreme Court declared the appeals inadmissible for lack of national legal importance or significance, mirroring its approach in PEM’s matter. That same day, Minister Lenia Batres posted an X message endorsing the outcome and criticizing past practices she characterized as unjustified judicial “forgiveness” or exemptions, asserting ministers are not tax authorities and must adhere to legal rules. *See* Lenia Batres (@LeniaBatres), X, dated November 13, 2025 (informal translation) (“Before, without legal justification, it was reached to condone or deduct or to exempt more than one physical or moral person, as if we ministers were tax authority.”), **C-0116**.

<sup>23</sup> [REDACTED] Witness Statement, ¶¶ 17-19, [REDACTED]-0000.

<sup>24</sup> [REDACTED] Witness Statement, ¶¶ 19-20, [REDACTED]-0000.

<sup>25</sup> [REDACTED] Witness Statement, ¶ 21, [REDACTED]-0000.

<sup>26</sup> [REDACTED] Witness Statement, ¶ 22, [REDACTED]-0000.

<sup>27</sup> [REDACTED] Witness Statement, ¶ 21, [REDACTED]-0000.

<b>Surcharges</b>					
<b>Penalties</b>					
<b>Total</b>					

2. The 2010 Tax Reassessment is Progressing and will Shortly Reach the Supreme Court

34. The 2010 case is following a similar trajectory to the 2012 Tax Reassessment and will be reaching a final decision within approximately four months. Specifically, PEM’s appeal against the 2010 Tax Reassessment is currently pending before the Second Collegiate Chamber in Administrative Matters of the First Circuit in Mexico City.<sup>28</sup> PEM has filed for a suspension of the trial pending the resolution of the *Juicio de Lesividad* concerning the retroactive validity of the APA. However, given the Second Collegiate Chamber’s denial of a similar request with respect to the 2012 Tax Reassessment, as explained by Claimant’s witness, [REDACTED], “the suspension request for the 2010 Tax Reassessment can also be expected to be denied.”<sup>29</sup> Once the appeal before the Second Collegiate Chamber is rejected, PEM plans to file an appeal before the Supreme Court.<sup>30</sup>

35. Consistent with the outcome of the 2012 Tax Reassessment, PEM anticipates that the Supreme Court admission of the appeal for the 2010 Tax Reassessment will be rejected based on the same rationale.<sup>31</sup>

36. As explained by [REDACTED], collection by SAT will follow shortly thereafter, likely within four months of the filing of this Second Request for Provisional Measures.<sup>32</sup>

37. To demonstrate the impact of the imposition of interest, penalties, inflation, and surcharges imposed on amounts claimed by the SAT to be unpaid taxes, we refer to the 2010 taxation year: On August 8, 2019, the SAT assessed a tax deficiency in the amount of [REDACTED]

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<sup>28</sup> [REDACTED] Witness Statement, ¶ 28, [REDACTED]-0000.

<sup>29</sup> [REDACTED] Witness Statement, ¶ 29, [REDACTED]-0000.

<sup>30</sup> [REDACTED] Witness Statement, ¶ 29, [REDACTED]-0000.

<sup>31</sup> [REDACTED] Witness Statement, ¶ 30, [REDACTED]-0000.

<sup>32</sup> [REDACTED] Witness Statement, ¶ 31, [REDACTED]-0000.

██████████ for alleged undeclared income, business flat taxes, surcharges, and adjustments for inflation and penalties.<sup>33</sup>

38. Currently, because of increased surcharges, inflation, and penalties, the alleged tax deficiency amounts to ██████████. Specifically:

2010 Assessment (as of September 10, 2025) <sup>34</sup>			
Item		Total (MXN)	Total (USD)
Tax		██████████	██████████
Inflation		██████████	██████████
Surcharges		██████████	██████████
Penalties		██████████	██████████
Total		██████████	██████████

#### **B. The Collection will Unfold Rapidly**

39. Following the Supreme Court's decision of October 30, 2025, refusing to hear PEM's appeal, the SAT is now in a position, in relation to the 2012 Tax Reassessment, to imminently engage in collection of the amounts it considers as owing. There are two procedures which the SAT may utilize.

40. The first, set out in Mexican civil procedure, requires the Supreme Court to publish its opinion on the official court website. Once the Second Circuit Court of Appeals on Administrative Matters in Mexico City receives a notification that the opinion has been published, it must then notify the High Chamber of Federal Administrative Courts. The High Chamber must then notify PEM and the SAT that a decision confirming the tax liability has been rendered and deemed final after which the SAT can collect on the tax liability.

41. The Claimant's witness, ██████████, anticipates that if the first procedure is followed, it will be only a few weeks before the SAT can collect on the tax liability.<sup>35</sup>

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<sup>33</sup> See Witness Statement of ██████████, dated April 25, 2022, ¶ 51, █████-0000; see also Administrative Appeal, No. RL2019008326, dated September 25, 2019, p. 3, C-0002, p. 1679.

<sup>34</sup> ██████████ Witness Statement, ¶ 32, █████-0000.

<sup>35</sup> ██████████ Witness Statement, ¶ 22, █████-0000.

42. The second procedure is based on the SAT treating the asserted tax liability as final and enforceable from the moment the Supreme Court dismissed PEM's final appeal.<sup>36</sup> As stated by [REDACTED] in this witness statement, in a recent meeting between PEM and the SAT, it was made clear to the company that the SAT would be proceeding with an "expedited approach for collections."<sup>37</sup> If that is the case, then collection may begin in a matter of days.<sup>38</sup>

43. Regardless of which procedure is used, once the SAT begins collections in relation to the 2012 Tax Reassessment (and shortly thereafter the 2010 Tax Reassessment), the procedure will be swift.

44. Specifically, under Mexican law, where a tax liability reaches a point of collection, the SAT will take into consideration whether it has been provided a guarantee for the amount to be collected. As stated by Claimant's witness [REDACTED], in the absence of a guarantee, the SAT does not even have to provide notice five days in advance of taking collection actions.

45. Once the SAT begins its collection, the SAT may first begin with the cash in PEM's bank accounts in accordance with the Federal Fiscal Code. If the SAT chooses to act in violation of this Tribunal's Decision on the Claimant's Request for Provisional Measures of May 26, 2023 ("PM Order") and Procedural Order No. 8, dated September 22, 2025, collection will begin with the transfer of monies from PEM's frozen bank accounts.<sup>39</sup> This would be a brazen violation of the Tribunal's prior orders, as it would include collecting monies from such accounts that should have been made freely available to PEM by the SAT pursuant to the PM Order.

46. Second, where the amounts transferred from the relevant financial institutions are insufficient, the SAT has the power to attach goods and other assets.<sup>40</sup> After attaching the assets,

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<sup>36</sup> [REDACTED] Witness Statement, ¶ 23, [REDACTED]-0000.

<sup>37</sup> [REDACTED] Witness Statement, ¶ 24, [REDACTED]-0000.

<sup>38</sup> [REDACTED] Witness Statement, ¶ 26, [REDACTED]-0000.

<sup>39</sup> See Tribunal's Decision on the Claimant's Request for Provisional Measures, dated May 26, 2023 ("PM Order"), ¶ 143; see also Procedural Order No. 8, dated September 22, 2025, ¶ 21.

<sup>40</sup> See Art. 151, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 14, 2025, C-0112; see also [REDACTED] Witness Statement, ¶ 40, [REDACTED]-0000.

the SAT may choose to sell them at a public auction, dispose of the assets without holding an auction, or assume control and ownership of the assets.<sup>41</sup>

### **C. The Collection Measures will Destroy PEM's Financial Viability**

47. If the Stay Request is not granted and the SAT is permitted to proceed with even the 2012 collection measures alone, PEM's financial viability will be destroyed. The Claimant's damages expert, [REDACTED] of [REDACTED] in support of this Stay Request, has provided a detailed analysis of the financial impact of the collection of the amounts for the 2012 Tax Reassessment on PEM.<sup>42</sup>

48. Specifically, [REDACTED] has explained that "PEM does not have the necessary liquidity to pay the 2012 Tax Reassessment (let alone other years)."<sup>43</sup> As illustrated by [REDACTED] in Tables 1 and 2 below, PEM's balance sheet with the 2012 Tax Reassessment would render PEM's equity value decreasing from a positive shareholder equity of [REDACTED] to negative [REDACTED].<sup>44</sup>

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<sup>41</sup> See Arts. 151, 155, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 14, 2025, C-0112; see also [REDACTED] Witness Statement, ¶¶ 41-42, [REDACTED]-0000.

<sup>42</sup> See generally Third [REDACTED] Expert Report, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>43</sup> Third [REDACTED] Expert Report, ¶ 33, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>44</sup> Third [REDACTED] Expert Report, Table 1 & 2, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

Table 1: PEM's Balance Sheet as of September 30, 2025<sup>9</sup>

*in MXN millions*

Component	Sep-25
Cash	
Blocked cash	
Trade & other receivables	
Other assets	
<b>Total assets</b>	
Trade & other payables	
Borrowings	
Intercompany payables	
Other liabilities	
<b>Total liabilities</b>	
<b>Equity</b>	
<b>Total liabilities &amp; equity</b>	

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Table 2: PEM's Balance Sheet as of September 2025 with the 2012 Tax Reassessment<sup>12</sup>

*in MXN millions*

Component	Including Tax Assessments
Cash & equivalents	
Trade & other receivables	
Other assets	
Blocked cash	
<b>Total assets</b>	
Trade & other payables	
Borrowings	
Intercompany payables	
Other liabilities	
Tax reassessment (2012)	
<b>Total liabilities</b>	
<b>Equity</b>	
<b>Total liabilities &amp; equity</b>	

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<sup>45</sup> Third [REDACTED] Expert Report, ¶ 26, Table 1, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>46</sup> Third [REDACTED] Expert Report, ¶ 30, Table 2, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.



49. In order to secure the required liquidity to pay the SAT for the 2012 Tax Reassessment, PEM in theory has three options. First, PEM could attempt to obtain financial support from the Claimant.<sup>47</sup> Second, PEM could secure external financing through financial institutions by way of loans. Third, the Claimant could sell PEM or its assets (in whole or in part).<sup>48</sup> Finally, PEM could initiate [REDACTED] proceedings.<sup>49</sup>

50. Of these options, [REDACTED] has determined, based on its expert opinion, that the first three options are not viable:

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>47</sup> Third [REDACTED] Expert Report, ¶ 33, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>48</sup> Third [REDACTED] Expert Report, ¶ 33, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>49</sup> Third [REDACTED] Expert Report, ¶ 33, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>50</sup> Third [REDACTED] Expert Report, ¶ 36, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>51</sup> Third [REDACTED] Expert Report, ¶ 34, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

[REDACTED]

51. As a result, as explained by [REDACTED], even if only the 2012 Tax Reassessment collection process is pursued (*i.e.*, not considering the further impact of the collection of fiscal years currently pending before Mexican courts), “[REDACTED] [REDACTED].”<sup>53</sup> The Claimant would therefore likely be “forced to abandon its investment in PEM.”<sup>54</sup>

52. Further, as explained by [REDACTED], even if the SAT were to seek to compel collection for the 2012 Tax Reassessments, it would not be able to “seize/attach or otherwise liquidate the San Dimas asset to fulfill the tax claims, because the SAT’s claims would be legally subordinate to the amounts payable to PEM’s employees, Wheaton, and PEM’s secured creditors.”<sup>55</sup> Therefore, [REDACTED], PEM’s lenders, creditors, and employees would have priority over the SAT in recovering amounts owed.

\* \* \*

53. In sum, if the Stay Request is not granted and the SAT is permitted to seek collection against PEM in relation to even the 2012 Tax Reassessment alone, through a local process outside of the present arbitral proceedings, such collection will not only cause PEM’s financial devastation and loss of rights related to owning and operating its business, but also greatly undermine the objective and integrity of this arbitral proceeding, as explained in the section that follows.

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<sup>52</sup> Third [REDACTED] Expert Report, ¶ 35, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>53</sup> Third [REDACTED] Expert Report, ¶ 42, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>54</sup> Third [REDACTED] Expert Report, ¶ 41, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

<sup>55</sup> Third [REDACTED] Expert Report, ¶ 43, Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG.

### **III. LEGAL ARGUMENT**

54. The Claimant seeks provisional measures in the form of an order that the Respondent refrain from collecting any amounts allegedly due in connection with the 2012 Tax Reassessment. The collection of such amounts, as the SAT plans to imminently initiate, would have devastating consequences for the Claimant as a protected investor in Mexico and as a litigant in the current ICSID proceedings. Consequently, as explained below, under the current circumstances, the Claimant's Stay Request readily meets the criteria for obtaining provisional measures relief.

#### **A. Applicable Standard**

55. The Tribunal's authority to grant a request for provisional measures under NAFTA derives from Article 1134 which provides:

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.<sup>56</sup>

56. A NAFTA Tribunal's power thus extends to protecting both "the rights of a disputing party," *i.e.*, protection of substantive rights, and to safeguard and make fully effective "the Tribunal's jurisdiction," *i.e.*, protection of procedural rights, including the right to be heard by the Tribunal pursuant to the chosen international arbitration rules.

57. The ICSID Convention and the ICSID Arbitration Rules, which govern this proceeding, add similar standards. Specifically, Article 47 of the ICSID Convention provides:

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.<sup>57</sup>

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<sup>56</sup> Art. 1134, NAFTA, dated January 1, 1994, **CL-0001**.

<sup>57</sup> Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**.

58. ICSID tribunals have interpreted Article 47 to mean that provisional measures may be granted where “they are necessary to preserve a party’s rights and urgent in order to avoid irreparable harm”<sup>58</sup> or “grave or serious harm.”<sup>59</sup>

59. Rule 39 of the ICSID Arbitration Rules implements Article 47 as follows:

(1) At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.

(2) *The Tribunal shall give priority to the consideration of a request made pursuant to paragraph (1).*

(3) *The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.*

(4) The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.<sup>60</sup>

60. Applying these same standards previously in resolving the Claimant’s first request for provisional relief, this Tribunal ruled, in its PM Order, that the following elements must be considered when deciding whether to grant a provisional measures order:

- (a) that the Tribunal has *prima facie* jurisdiction;
- (b) that the provisional measures are aimed at protecting, while the dispute is pending, either a substantive right of the requesting party[:]
- (c) or a procedural right, notably as to the integrity of the arbitral process, the exclusivity of the ICSID arbitration, and/or are aimed at avoiding

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<sup>58</sup> See, e.g., *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Procedural Order No. 5, dated April 3, 2013, ¶ 55, **RL-0129**.

<sup>59</sup> *Gerald International Limited v. Republic of Sierra Leone*, ICSID Case No. ARB/19/31, Procedural Order No. 2 (Decision on the Claimant’s Request for Provisional Measures), dated July 28, 2020, ¶ 176 (citing *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Claimant’s Request for Provisional Measures, dated January 21, 2015, ¶ 111, **RL-0094**), **CL-0096**.

<sup>60</sup> Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006 (emphasis added), **CL-0012**.

the aggravation of the dispute (maintaining the *status quo* while the dispute is pending);

- (d) from actions by the other party that are likely to cause an actual or imminent serious (irreparable) harm to the above rights, so that the requested measures appear to be necessary (proportionate) and urgent.
- (e) Moreover, the measures are by their nature provisional, *i.e.*, temporary, and must not prejudice the final decision of the dispute.<sup>61</sup>

61. The Claimant has demonstrated in what follows that it satisfies each of these elements for obtaining a Stay pursuant to this Stay Request.

## **B. Application of the Standard**

### **1. The Tribunal has *Prima Facie* Jurisdiction**

62. The first requirement for analyzing a request for provisional measures is assessing whether the Tribunal has *prima facie* jurisdiction. As explained by this Tribunal in its PM Order, possessing *prima facie* jurisdiction means:

that there has to be an appearance of a proper basis for the Tribunal to rule upon the dispute, such as the existence and applicability of a treaty under which the claimant is qualified to bring against the respondent the pending dispute, which ICSID has duly registered.<sup>62</sup> A finding of *prima facie* jurisdiction at this stage, *ratione temporis, materiae, personae*, is without prejudice of further analysis as to jurisdiction and the merits in subsequent stages of the proceedings.<sup>63</sup>

63. In the PM Order, this Tribunal found that it “undoubtedly” had *prima facie* jurisdiction on the dispute.<sup>64</sup> The Tribunal reasoned:

The Claimant’s Request for Arbitration was registered by ICSID on 31 March 2021, following a preliminary examination by the Secretary-General in conformity with Article 36(3) of the ICSID Convention. The Respondent has not challenged that the Claimant is a Canadian company entitled to bring an arbitration against Mexico also *ratione temporis* as provided by the “legacy provisions” of Annex 14-c of the

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<sup>61</sup> PM Order, ¶ 93.

<sup>62</sup> PM Order, ¶ 95 (relying on Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd ed., dated 2022, Commentary to Article 47, ¶ 64, CL-0085).

<sup>63</sup> PM Order, ¶ 95 (relying on *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Respondent’s Response to Claimant’s Request for Provisional Measures, dated February 10, 2023, ¶ 68, fn. 67).

<sup>64</sup> PM Order, ¶ 105.

Canada-United States-Mexico Agreement (“USMCA”) which has replaced the NAFTA.<sup>65</sup>

64. In further reaching this conclusion, this Tribunal considered the fact that the Respondent had raised a jurisdictional objection under the NAFTA’s carve-out for taxation measures in Article 2103(1), but that this did “not exclude that the Tribunal has currently *prima facie* jurisdiction to entertain the dispute and conduct proceedings, in any case until this exception has been adjudicated.”<sup>66</sup>

## 2. The Provisional Measures are Aimed at Preserving the Claimant’s Substantive and Procedural Rights

65. The next requirement in determining the need for provisional measures is assessing whether the measures are aimed at preserving a substantive or procedural right of the claimant. Specifically, in its prior PM Order, this Tribunal explained:

[T]he protection of both substantive and procedural rights can be the object and aim of provisional measures. As to *substantive rights*, such measures may aim at avoiding that the rights that a claimant accuses the respondent to breach in violation of an international obligation not be irreparably prejudiced or destroyed while the case is pending. The *prima facie* existence of such rights must be shown. As to *procedural rights*, the integrity and exclusivity of the arbitration, and the avoidance of aggravation of the dispute (maintaining the *status quo*) may come into play. In this respect, provisional measures have been issued by ICSID tribunals against actions by a respondent State that would have interfered with the carrying out of the arbitration. This could be the case of domestic proceedings which might jeopardize the impartiality and fairness of the arbitration or hamper a party’s or its counsel and experts’ unincumbered right to participate in the proceedings.<sup>67</sup>

66. Notably, a party need not provide—and the Tribunal need not conclude there exists—absolute proof of the existence of the rights claimed.<sup>68</sup>

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<sup>65</sup> PM Order, ¶ 105.

<sup>66</sup> PM Order, ¶ 106.

<sup>67</sup> PM Order, ¶ 96 (emphasis omitted) (relying on *International Oil Company LLP & Mr. Devincci Salah Hourani v. Republic of Kazakhstan*, ICSID Case No. ARB/13/13, Decision on the Claimants’ Request for Provisional Measures, dated December 4, 2014, ¶ 137, **RL-0097**).

<sup>68</sup> *Victor Pey Casado and President Allende Foundation v. Republic of Chile (I)*, ICSID Case No. ARB/98/2, Decision on Provisional Measures, dated September 25, 2001, ¶ 46 (informal translation) (“It follows from the very nature of

67. Here, the Claimant's Stay Request aims to preserve both substantive and procedural rights.

68. To this end, the Claimant asserts the following *substantive* rights:

- (1) the Claimant's right to preserve the protection provided by the APA instead of having the Respondent engaging in nullifying it by proceeding with its Tax Reassessments;
- (2) Claimant's right to preserve and protect its investment, financial resources and business interests while the arbitration is pending; and
- (3) the Claimant's rights under NAFTA to manage, operate and earn revenue from its investment.

69. In addition, the Claimant's Stay Request aims to preserve the following *procedural* rights:

- (1) the Claimant's right to exclusivity of the ICSID proceedings; and
  - (2) the Claimant's right to non-aggravation of the dispute and maintenance of the *status quo* during the pendency of this arbitration.
- a) *The Claimant's Substantive Rights are at Risk of Harm*

70. Tribunals agree that provisional measures may be granted to "preserve the rights the protection of which has been sought" in the arbitration,<sup>69</sup> *i.e.*, a requesting party's substantive rights. Similarly, in *Plama v. Bulgaria*, the tribunal explained the scope of permissible substantive rights to be protected:

The rights to be preserved must relate to the requesting party's ability to have its claims and requests for relief in the arbitration fairly considered and decided by the arbitral tribunal and for any arbitral decision which grants to the Claimant the relief it seeks to be effective and able to be carried out. Thus the rights to be preserved by

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that mechanism that the Arbitration Tribunal cannot require, as a condition prior to granting a recommendation, in accordance with Rule 39 of the Regulations, the evidence by the applicant of the existence, reality, or current validity of the rights that the requested measure intends to safeguard or preserve."), **RL-0113**.

<sup>69</sup> *Millicom International Operations B.V. and Sentel GSM S.A. v. Republic of Senegal*, ICSID Case No. ARB/08/20, Decision on the Application of Provisional Measures, dated December 9, 2009, ¶ 39, **CL-0128**.

provisional measures are circumscribed by the requesting party's claims and requests for relief.<sup>70</sup>

71. The Claimant's substantive rights at issue exist under both Mexican law and the NAFTA and are set out herein and in its prior pleadings in this case.

72. First, under Mexican law, the Claimant has a substantive right to earn revenues that are to be taxed based on the terms of the APA. As explained, as of October 4, 2012, PEM enjoyed contractual rights under the APA, a binding agreement between a taxpayer and the tax authority that determines the transfer pricing methodology for the taxpayer's international transactions for the years specified by the APA.<sup>71</sup> The APA therefor contractually obligates the tax authority to assess taxes on the taxpayer based exclusively on the agreed transfer pricing methodology, so that the taxpayer can manage its business affairs accordingly and with stability and predictability.

73. As agreed, the APA set out in detail the PEM's methodology for calculating cumulative revenues and income for fiscal years 2010 through 2014. The revenue calculations were based on the price at which it had agreed to sell mined silver pursuant to the streaming agreement with Wheaton. Specifically, the APA established PEM's right to account for realized revenues, based on amounts actually received, rather than based on "spot prices," for calculating taxes payable to the SAT.<sup>72</sup>

74. The APA created legally binding contractual rights that were commercially significant and highly valuable to PEM. Because of the SAT's binding commitments, PEM, and, in turn, First Majestic, were provided legal assurances that PEM would not be treated as earning revenues other than pursuant to the methodology agreed under the APA beginning in 2010.

75. Second, under the NAFTA, the Claimant has substantive legal rights to direct and indirect "investments" it made in Mexico including based on the legal assurances established in

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<sup>70</sup> *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, dated September 6, 2005, ¶ 40, **RL-0096**; see also *City Oriente Limited v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 55 ("Article 47 of the Convention provides authorization for the passing of provisional measures prohibiting any action that affects the disputed rights...."), **CL-0132**.

<sup>71</sup> See *infra* ¶¶ 73-74; see also Claimant's Memorial, ¶ 69; SAT PEM Ruling, No. 900-08-2012-52885, dated October 4, 2012, pp. 1-38, **C-0002**, pp. 43-80.

<sup>72</sup> See Claimant's Memorial, ¶¶ 44, 382.



the APA. As explained, these “investments” include ownership as of 2004 of a number of mining companies, and ownership of PEM which it acquired indirectly in 2018; shareholdings of 100% of PEM’s stock; and PEM’s contractual rights under the APA.<sup>73</sup>

76. At the core, the issue in the present dispute is whether Respondent’s 2010-2017 tax reassessments, which ignored the binding terms of the APA, breached numerous investment protections under NAFTA. The Claimant’s claims include breaches of Article 1102 (National Treatment); Article 1103 (Most-Favored Nation Treatment); Article 1104 (Standard of Treatment); Article 1105 (Minimum Standard of Treatment); Article 1108 (Transfers); and Article 1110 (Expropriation).

77. The Claimant’s Stay Request thus undoubtedly seeks to “preserve the rights the protection of which has been sought”<sup>74</sup> in the present NAFTA arbitration. The Claimant seeks a declaration of Respondent’s breach of NAFTA protections based on its discriminatory, arbitrary, and confiscatory taking of PEM’s rights under the APA, along with appropriate compensation. If the Stay Request is not granted, the very issues to be resolved in this arbitration, including the illegality of what the SAT purports to be tax reassessments, will be grossly undermined.

*b) The Claimant’s Procedural Rights are at Risk of Harm*

78. The Claimant’s Stay Request is also aimed at preserving its procedural rights to exclusivity of the international proceedings, neutrality of the proceedings such that its dispute is resolved by this independent Tribunal (and not by the domestic courts), non-aggravation of the proceedings, and maintenance of the *status quo*, as discussed below.

79. First, the Claimant has a right to exclusive jurisdiction of this Tribunal over the dispute. Article 26 of the ICSID Convention provides that the consent of the parties to arbitration “shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy.”<sup>75</sup> Thus, as the *Tokios Tokelés v. Ukraine* tribunal explained “[a]mong the rights that may

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<sup>73</sup> See Claimant’s Memorial, ¶¶ 53, 154.

<sup>74</sup> *Millicom International Operations B.V. and Sentel GSM S.A. v. Republic of Senegal*, ICSID Case No. ARB/08/20, Decision on the Application of Provisional Measures, dated December 9, 2009, ¶ 39, **CL-0128**.

<sup>75</sup> Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**.

be protected by provisional measures is the right guaranteed by Article 26 to have the ICSID arbitration be the exclusive remedy for the dispute to the exclusion of any other remedy, whether domestic or international, judicial or administrative.”<sup>76</sup> That tribunal also noted that “ICSID tribunals have repeatedly ruled ... that the parties must withdraw or stay any and all judicial proceedings commenced before national jurisdictions and refrain from commencing any further such proceedings in connection with the dispute before the ICSID tribunal.”<sup>77</sup>

80. Similarly, in *Klesch Group v. Germany*, where the tribunal ordered the respondent to suspend measures related to an ongoing tax collection dispute based on the exclusivity requirements imposed by Article 26. Specifically, the tribunal found:

[i]t would be contrary to the Claimants’ right under Article 26 of the Convention to have disputes resolved in arbitration if the Claimants were required to dispute their obligation to pay the solidarity contribution in German legal proceedings, after having commenced this arbitration and challenged the legality of the [German statute] on the basis of international law.<sup>78</sup>

81. Notably, the claims need not be identical to interfere with the Claimant’s right to exclusivity. In *Alghanim v. Jordan*, the tribunal ordered the respondent to desist from enforcing a contested tax liability. In so doing, the tribunal rejected the respondent’s claim that “the subject matter of the Jordanian Proceedings and this arbitration are not the same because the former is concerned with the enforcement of the underlying tax debt while this arbitration concerns the Claimants’ allegation that the tax was not lawfully imposed,” noting the “very substantial overlap in the subject matter.”<sup>79</sup>

82. Second, the Claimant also has a right to non-aggravation of the dispute and maintenance of the *status quo*, two related protections. According to the tribunal in *Plama v.*

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<sup>76</sup> *Tokios Tokelés v. Ukraine*, ICSID Case No ARB/02/18, Order No. 3, dated January 18, 2005, ¶ 7, **CL-0129**; see Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd ed., dated 2022, Commentary to Article 47, ¶ 145 (“The exclusive nature of ICSID proceedings is secured by Art. 26 of the Convention.”), **CL-0085**.

<sup>77</sup> *Tokios Tokelés v. Ukraine*, ICSID Case No ARB/02/18, Order No. 1, dated July 1, 2003, ¶ 2, **CL-0089**.

<sup>78</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany* (“*Klesch Group v. Germany*”), ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 43, **CL-0130**.

<sup>79</sup> *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr. Fouad Mohammed Thunyan Alghanim v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/13/38, Order on Application for the Grant of Provisional Measures, dated November 24, 2014, ¶¶ 71-72, **CL-0131**.

*Bulgaria*, provisional measures are “appropriate to prevent parties from taking measures capable of having a prejudicial effect on the rendering or implementation of an eventual award which might aggravate or extend the dispute or render its resolution more difficult.”<sup>80</sup>

83. The tribunal’s reasoning in *City Oriente v. Ecuador* is similarly instructive. In that case, the claimant sought provisional measures to bar the respondent’s collection of payments that were allegedly in violation of a contract between the claimant and the respondent. In granting the measures, the tribunal found that “pending a decision on this dispute, the principle that neither party may aggravate or extend the dispute or take justice into their own hands prevails” and that “the *status quo* must be maintained ... must prevail.”<sup>81</sup>

84. Along these same lines, in *Perenco v. Ecuador*, the tribunal declined to permit the enforcement of disputed “extraordinary income” payment because “the seizure of Perenco’s assets ... would seriously aggravate the dispute between the parties and jeopardise the ability of Perenco to explore for and produce oil ... pursuant to the Participation Contracts.”<sup>82</sup> The tribunal further noted that “enforced collection or termination proceedings ... operate[] as a pressuring mechanism, aggravates and extends the dispute and, by itself, impairs the rights which Claimant seeks to protect through this arbitration.”<sup>83</sup>

85. The Stay Request thus importantly seeks to protect the Claimant’s procedural rights to ICSID exclusivity, non-aggravation of the dispute, and maintenance of the *status quo* pending the outcome of the ongoing arbitration proceedings. Any efforts by the SAT to collect what it claims are taxes owing pursuant to the 2012 Tax Reassessment—through a separate local process

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<sup>80</sup> *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, dated September 6, 2005, ¶ 38, **RL-0096**.

<sup>81</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)* (“*City Oriente v. Ecuador*”), ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶¶ 57, 59, **CL-0132**.

<sup>82</sup> *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, dated May 8, 2009, ¶¶ 10, 46, **CL-0133**.

<sup>83</sup> *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, dated May 8, 2009, ¶ 57 (citing *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69, **CL-0132**), **CL-0133**.

and which would effectively and unilaterally prejudge the claims before the Tribunal—puts these rights at considerable risks.

86. Additionally, the consequences to the Claimant and PEM will be cessation of the activities at the San Dimas mine and render resolution of the dispute between the parties far more difficult.

3. The Provisional Measures are Necessary, Urgent, and Proportionate Because Respondent's Actions will Cause Serious and Imminent Harm to the Claimant's Rights

87. As explained by this Tribunal, the provisional measures must be aimed at protecting a party's rights "from actions by the other party that are likely to cause an actual or imminent serious (irreparable) harm to the above rights, so that the requested measures appear to be necessary (proportionate) and urgent."<sup>84</sup> Thus, the Tribunal when making a decision on this Stay Request must consider necessity, urgency, and proportionality (including as it relates to necessity).

88. As explained in detail below, the requested provisional measures satisfy these required elements to protect the Claimant's substantive and procedural rights (which have been described above).

*a) The Provisional Measures are Necessary*

89. The Stay Request readily meets the test for necessity because the nature of the harm from the imminent collection measures of the Respondent severely impact the Claimant's substantive and procedural rights.

90. The Tribunal explained the element of necessity in its PM Order:

[T]he paramount requirement is that provisional measures be necessary to protect such rights [of a requesting party], appropriate to preserve the *status quo* and to

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<sup>84</sup> PM Order, ¶ 93.

avoid serious, in principle irreparable, harm to a right of the requesting party, even if disputed.<sup>85</sup>

The Tribunal thus recognized a range of actionable harm from “serious” to “irreparable.”

91. Likewise, the tribunal in *Klesch Group v. Germany* found that harm, within the meaning of Article 47 of the ICSID Convention “may be either in the sense that the harm is not ‘adequately reparable by an award of damages’ or that there is a ‘material risk of serious or grave damage to the requesting party.’”<sup>86</sup>

92. The actual harm need not be manifested to justify the ordering of provisional measures, because the Tribunal’s mandate “extends to ensuring that potential inhibitions and unfairness do not arise; equally, its mandate extends to attempting to reduce the risk of future aggravation and exacerbation of the dispute, which necessarily involves probabilities, not certainties.”<sup>87</sup> A requesting party is not required to prove definitively that such harm, in fact, *will* occur. Rather, it must only “establish the existence of a sufficient risk or threat that grave or serious harm will occur if provisional measures are not granted.”<sup>88</sup> In other words, the requesting party need not prove that the harm is *certain* to occur, “[r]ather, it is generally sufficient to show that

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<sup>85</sup> PM Order, ¶ 100 (emphasis omitted) (relying on *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. USA)*, CIJ, Order, dated October 3, 2018, ¶ 77 (“The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when there is a risk that irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences.”), **RL-0112**; *Victor Pey Casado and President Allende Foundation v. Republic of Chile (I)*, ICSID Case No. ARB/98/2, Decision on Provisional Measures, dated September 25, 2001, ¶¶ 2, 18-19, 20-26, **RL-0113**).

<sup>86</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 33 (citation omitted), **CL-0130**.

<sup>87</sup> *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, dated September 29, 2006, ¶ 145, **CL-0086**.

<sup>88</sup> *Gerald International Limited v. Republic of Sierra Leone*, ICSID Case No. ARB/19/31, Procedural Order No. 2 (Decision on the Claimant’s Request for Provisional Measures), dated July 28, 2020, ¶ 176 (citing *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Claimant’s Request for Provisional Measures, dated January 21, 2015, ¶ 111, **RL-0094**), **CL-0096**.

there is a *material risk* that it will occur,”<sup>89</sup>—that is, that the threat to the Claimant’s rights can be assessed with a high degree of certainty.<sup>90</sup>

93. The interpretation of what constitutes “serious or grave harm” under Article 47 of the ICSID Convention is clarified in the *Perenco v. Ecuador* decision. In that case, the tribunal found: “[w]here action by one party may cause loss to the other which may not be capable of being made good by an eventual award of damages, the test in the Article [47] is likely to be met.”<sup>91</sup> Similarly, in *City Oriente v. Ecuador*, the tribunal stated “[i]t is not so essential that provisional measures be necessary to prevent irreparable harm, but that the harm spared the petitioner by such measures must be significant and that it exceed greatly the damage caused to the party affected thereby.”<sup>92</sup>

94. In this case, the Claimant will suffer both serious and irreparable harm to its substantive and procedural rights.

*i. Harm to the Claimant’s Substantive Rights*

95. The collection of the 2012 Tax Reassessment against PEM would meet the necessity test because it would cause, at a minimum, “material risk of serious or grave damage to the requesting party,”<sup>93</sup> and more likely result in [REDACTED] of PEM, *i.e.*, its substantive rights.

96. This arbitration is similar to the recently decided case of *Rotalin v. Moldova* where the tribunal found that the possibility of [REDACTED] because of the respondent government’s tax collection efforts, constitutes risk of irreparable harm. Specifically, the tribunal found that “having found that Rotalin is at risk of [REDACTED] following collection actions of the Moldovan authorities,

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<sup>89</sup> *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Claimant’s Request for Provisional Measures, dated January 21, 2015, ¶ 111 (emphasis added), **RL-0094**.

<sup>90</sup> Third [REDACTED] Expert Report, ¶¶ 41-42, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>91</sup> *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, dated May 8, 2009, ¶ 43, **CL-0133**.

<sup>92</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Revocation of Provisional Measures, dated May 13, 2008, ¶ 72, **CL-0099**.

<sup>93</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 33 (citation omitted), **CL-0130**.

the Tribunal is satisfied that there is a risk of irreparable harm if the collection of the fine is not, at least partially, suspended.”<sup>94</sup>

97. [REDACTED]

[REDACTED] PEM would face [REDACTED],<sup>98</sup> [REDACTED]  
[REDACTED] The damage to the Claimant, negative impact on its share value and market capitalization, and potential destruction of its investment in PEM, would amount to serious prejudice to the Claimant’s substantive rights to benefit from its investment.

98. Further, the SAT’s planned collection of amounts under the 2012 Tax Reassessment would deny the Claimant the right to “preserve the rights the protection of which has been sought” in this arbitration”<sup>99</sup> and deprive the Claimant of its “ability to have its claims and requests for relief in the arbitration fairly considered.”<sup>100</sup>

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<sup>94</sup> *RTI Rotalin Gas Trading AG and Rotalin Gaz Trading S.R.L. v. Republic of Moldova*, ICSID Case No. ARB(AF)/22/4, Procedural Order No. 6 (Decision on the Claimants’ Second Request for Provisional Measures), dated July 15, 2024, ¶ 113, **CL-0134**.

<sup>95</sup> Third [REDACTED] Expert Report, ¶ 31, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>96</sup> Third [REDACTED] Expert Report, ¶ 25, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>97</sup> Third [REDACTED] Expert Report, ¶ 29, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>98</sup> Third [REDACTED] Expert Report, ¶ 49, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>99</sup> *Millicom International Operations B.V. and Sentel GSM SA v. The Republic of Senegal*, ICSID Case No. ARB/08/20, Decision on the Application of Provisional Measures, dated December 9, 2009, ¶ 39, **CL-0128**.

<sup>100</sup> *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, dated September 6, 2005, ¶ 40, **RL-0096**.

99. The same right was at stake in *Klesch Group v. Germany* where the claimant sought to stay the collection of payments allegedly owed under the German Annual Tax Act 2022. There, the dispute on the merits centered around the legality of the claimant’s obligation to pay the taxes claimed as being owed under the domestic tax law. When considering whether the provisional measures were necessary, the *Klesch Group* Tribunal determined that “the Claimants ought not to be compelled to pay this solidarity [tax] contribution while the arbitration is pending and the Tribunal has not determined this issue.”<sup>101</sup>

Instead, the provisional measures are necessary in this case because ... the solidarity [tax] contribution *is the very subject-matter of this arbitration*, and the legality of the Claimants’ obligation to pay the same under the German Annual Tax Act 2022 is a key issue in this arbitration.... The Respondent does not appear to dispute this. The Claimants ought not to be compelled to pay this solidarity [tax] contribution while the arbitration is pending and the Tribunal has not determined this issue.<sup>102</sup>

100. The reasoning in *Klesch Group* is instructive for the present case, where the SAT is preparing imminent collection actions based on the 2012 Tax Reassessment. Crucially, these reassessments disregard the ongoing validity of the APA, which lies at the heart of this dispute and has yet to be resolved by the Tribunal. Initiating collection measures grounded in these reassessments would be premature and unjustified. In the absence of a stay, the Claimant faces the risk of suffering irreparable harm before this arbitration reaches its conclusion.

ii. *Accordingly, Provisional Measures are Necessary to Prevent the Claimant from Suffering Harm to the Claimant’s Procedural Rights*

101. The SAT’s planned collection efforts would also violate Claimant’s procedural rights to exclusivity, non-aggravation, and maintenance of the *status quo* as described above. This Tribunal’s ability to resolve the dispute would be made immeasurably more complex following asset seizures and potential damage to First Majestic’s investment. The Respondent’s engagement

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<sup>101</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 56, **CL-0130**.

<sup>102</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 56 (emphasis added), **CL-0130**.



in self-help by the Respondent's tax authority directly threatens the integrity of these arbitration proceedings.

102. First, measures by the Respondent to enforce the 2012 Tax Reassessment violate the principle of exclusivity. As discussed above, this Tribunal has exclusive jurisdiction pursuant to Article 26 of the ICSID Convention to determine whether the repudiation of PEM's APA constitutes NAFTA violations that have been claimed, and if so, what the appropriate remedy should be. The consequences of Respondent's retroactive repudiation of the PEM's rights under the APA require an examination of its legality both under Mexican law and more importantly under international law, including NAFTA, which is the exclusive province of this Tribunal.

103. Specifically, the Tribunal must assess the legality of the SAT issuing and enforcing the 2012 Tax Reassessment notwithstanding the still-binding APA. Further, the Tribunal must analyze whether revoking the APA due to the SAT's own failure to request allegedly critical information, which is the only criticism levied by a Mexican court against the APA, is sufficient grounds to revoke an agreement to which PEM at all times adhered.<sup>103</sup> The courts in Mexico have not found any wrongdoing by PEM or its advisors in obtaining the APA.

104. If the Respondent were allowed to collect on the tax reassessments now, it would effectively make an end-run around the Tribunal (having already achieved the same in Mexico by not proceeding expeditiously with its *Juicio de Lesividad* proceedings). The taking by the SAT of imminent and decisive actions—and in some cases irreversible, as in the case of liquidation of certain assets—will cause the Claimant and PEM substantial and irreversible harm. Permitting the Respondent to steer and dictate the outcome of these proceedings before an award is issued, fundamentally interferes with the ability of the Tribunal to make and effectuate its decision.

105. In other words, coercively altering the situation on the ground in the Respondent's favor based on Respondent's own view of the appropriate outcome of these proceedings, deprives the Claimant of its fundamental treaty-based right to relief as determined by this independent and neutral Tribunal.

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<sup>103</sup> Claimant's Memorial, ¶ 96; *see also* Expert Report of [REDACTED], dated March 28, 2022, p. 26, [REDACTED]-0000.

106. Second, permitting the Respondent to unilaterally engage in self-help measures by coercing the payment of what it has claimed to be taxes, of which the legality is under review by this Tribunal, plainly violates the *status quo ante* and severely aggravates the proceedings.

107. As [REDACTED] explains, if the Respondent compels payment of amounts that it claims to be liability arising from tax reassessments, [REDACTED] leading to a complete loss of the Claimant's investment.<sup>104</sup> This would constitute an enormous escalation of the dispute, one which could only serve to undermine the progress made in the resolution of the dispute while fundamentally altering the scope and nature of the dispute. The Tribunal's efforts to reach a determination in the dispute would likely be faced with dramatically more complex patterns of fact and law involving the seizure and disposal of a wide range of assets amid cross-cutting interests and debt-obligations across a range of parties. Indeed, depending on the scope and nature of the measures taken by Respondent, the Claimant may be forced to enter ancillary claims and other requests for relief which could draw out the proceedings for months or years.

*b) The Need for Provisional Measures is Urgent*

108. The Claimant's Request also squarely meets the test for urgency.

109. On the element of urgency, this Tribunal in the PM Order stated:

The requirement of urgency is inherent to the nature of provisional measures, since they are based on the premise that the protection of a party's right may not wait until a decision is taken in the merits at the end of the proceedings, and/or that these must be ensured immediately as to their proper conduct while pending (integrity). Therefore, the action of the other party that is being enjoined must be imminent and likely to cause prejudice *medio tempore* while the dispute is pending.<sup>105</sup>

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<sup>104</sup> Third [REDACTED] Expert Report, ¶ 42, **Expert Report-[REDACTED]-Valuation-Second Request for Provisional Measures-Third Report-ENG**.

<sup>105</sup> PM Order, ¶ 102 (emphasis omitted) (relying on *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, dated August 17, 2007, ¶ 89, **CL-0135**); see also, e.g., *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 3, dated January 18, 2005, ¶ 8 ("A measure is urgent where 'action prejudicial to the rights of either party is likely to be taken before such final decision is taken.'" (citation omitted)), **CL-0129**; *Burimi S.R.L. and Eagle Games S.H.A. v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2, dated May 3, 2012, ¶ 36 ("Urgency is usually satisfied when 'a question cannot await the outcome of the award on the merits.'" (emphasis omitted) (citation omitted)), **RL-0134**.

110. The standard for urgency was also addressed in *Klesch Group v. Germany*. In that case, the tribunal considered whether a request for provisional measures to “prevent the attempted collection of a disputed financial liability” was urgent.<sup>106</sup> The tribunal found the requirement had been met given the obligation on the claimant to pay the collection amounts within a month and a half after the claimant filed its request for provisional measures, “failing which it will be subject to enforcement action under German law.”<sup>107</sup> The tribunal further noted, “[t]he case law is clear that the Claimants cannot wait for harm to occur first.”<sup>108</sup>

111. Similarly, in *City Oriente v. Ecuador*, the tribunal found that a provisional measures order was urgent, notwithstanding the fact that the claimant was unlikely to have to pay the tax at issue for a year or more.<sup>109</sup> Specifically, the tribunal observed that the claimant’s request was urgent because payment would be demanded “notwithstanding any pending proceeding.”<sup>110</sup> The tribunal further explained that:

[T]he passing of the provisional measures is indeed urgent, precisely to keep the enforced collection or termination proceedings from being started, as this operates as a pressuring mechanism, aggravates and extends the dispute and, by itself, impairs the rights which Claimant seeks to protect through this arbitration. Furthermore, where, as is the case here, the issue is to protect the jurisdictional

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<sup>106</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 64 (emphasis omitted) (citation omitted), **CL-0130**.

<sup>107</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 67, **CL-0130**.

<sup>108</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 67 (citing *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Claimant’s Request for Provisional Measures, dated January 21, 2015, **RL-0094**; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, dated September 29, 2006, ¶ 145, **CL-0086**), **CL-0130**.

<sup>109</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69, **CL-0132**; see also *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, dated August 17, 2007, ¶ 59 (relying on *Case Concerning Passage Through the Great Belt (Finland v. Denmark)*, for the proposition that “[a] measure is urgent where ‘action prejudicial to the rights of either party is likely to be taken before such final decision is given.’”), **CL-0135**; *Case Concerning Passage Through the Great Belt (Finland v. Denmark)*, Order of the Request for the Indication of Provisional Measures, 1991 *I.C.J. Rep.* 12, dated July 29, 1991, p. 17, ¶ 23, **CL-0136**.

<sup>110</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69 (emphasis omitted), **CL-0132**.

powers of the tribunal and the integrity of the arbitration and the final award, then the urgency requirement is met by the very own nature of the issue.<sup>111</sup>

112. Here, if the Stay Request is not granted, the Claimant could be forced to begin payment of the alleged tax liability for the 2012 Tax Reassessment at any moment. When this process begins, the Respondent could quickly begin seizure of assets, and the Claimant's obligations to creditors in the [REDACTED] could be triggered. Such an imminent and severe threat to the Claimant's substantive and procedural rights presents a high degree of urgency. If the Claimant does not pay the collection amount, it will be subject to enforcement actions in Mexico which include the seizure of its frozen Value Added Tax refunds ("**VAT Refunds**") as well as the seizure of property and other assets owned by PEM in Mexico.

113. The compelling of payments purportedly as taxes owed, would therefore immediately interfere with the Claimant's substantive property rights and its rights to manage, operate, and control its investment under NAFTA. It would also immediately interfere with the Claimant's procedural rights to non-aggravation and maintenance of the *status quo* by fundamentally altering the facts on the ground and significantly expanding and complicating the nature and scope of the claims under review by this Tribunal. Finally, as in *City Oriente v. Ecuador*, the issue here is also "to protect the jurisdictional powers of the tribunal [*i.e.* the exclusivity of this Tribunal's jurisdiction]." <sup>112</sup> Therefore "the urgency requirement is met by the very own nature of the issue."<sup>113</sup>

*c) The Provisional Measures are Proportionate*

114. The provisional measures requested are also proportionate to the risk of harm to the Claimant and would not prejudice the Respondent.

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<sup>111</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69, **CL-0132**.

<sup>112</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69, **CL-0132**.

<sup>113</sup> *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (I)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 69, **CL-0132**.

115. This Tribunal explained in its PM Order, “a measure that goes beyond what is (strictly) necessary to avoid (additional) harm ceases to be necessary, would not be proportionate to the need, nor balanced considering the right of the opposing party.”<sup>114</sup>

116. As the *Klesch Group* Tribunal explained, “[t]he test is whether the threatened harm to the Claimants if the provisional measures sought are not granted would ‘*substantially outweigh*’ the harm caused to the Respondent if the provisional measures were granted.”<sup>115</sup> Here, the harm caused to the Respondent (if any) is minimal, while the threatened harm to the Claimant is extremely severe.

117. PEM faces an existential threat to its ability to continue to operate in Mexico, if the Respondent seeks to compel collection of the 2012 Tax Reassessment. Similarly, the Claimant will suffer tremendous financial loss in its role as PEM’s parent company and sole shareholder, including not only the loss of its entire investment, but also a reduction in its share value and market capitalization. Further, the core procedural rights that safeguard its right to a fair process—including exclusivity of the ICSID proceedings, non-aggravation of the dispute, and maintenance of the *status quo*—would also be eviscerated, as discussed above.

118. By contrast, harm to the Respondent because of the requested provisional measures is modest at best. The reassessments relate to alleged tax liabilities occurring well over ten years ago. The process of reassessment did not begin until 2015, not because of any established public necessity, but rather as part of Respondent’s newly established campaign driven by the new President at that time to extract large sums from foreign investors. The existence of that campaign, which included the firing of the head of PRODECON which was tasked with upholding taxpayer rights, has been documented by the Claimant in its previous submissions.

119. That campaign of raising revenues by intimidating and threatening taxpayers continues under the current administration.

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<sup>114</sup> PM Order, ¶ 101 (relying on *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, dated August 17, 2007, ¶ 59, **CL-0135**).

<sup>115</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 70, **CL-0130**.

120. Upholding the Claimant’s Stay Request does not infringe upon or prejudice the Respondent’s right to legitimately collect tax revenues; instead, it would simply postpone the Respondent’s attempt to secure an unwarranted windfall, before the Tribunal has had an opportunity to adjudicate the dispute. The nearly two and a half years of delays in these proceedings—largely attributable to a series of procedural challenges filed by the Respondent, which were all found to be lacking merit, including the consolidation proceeding also initiated by the Respondent—have allowed the SAT to impose collection measures while simultaneously and unjustifiably delaying the arbitration process. As a result, the Claimant has been deprived of a timely final award from the Tribunal.

121. Further, while the amounts of the reassessments, if enforced, are devastating to PEM’s ability to operate, they are inconsequential in relation to the total 2024 expenditures for the Federal Government of Mexico. Expenditures in 2024 were approximately [REDACTED] relative to the 2012 Tax Reassessment totaling [REDACTED], *i.e.*, [REDACTED] of federal expenditures.<sup>116</sup>

122. Moreover, as in *Klesch Group v. Germany*, the Respondent would not be disproportionately harmed by the purported risk of not collecting the amount now, as there is no “material risk that a delay in collecting, if provisional measures were granted, would not be compensable (for example, by repayment with interest, penalties, inflation, and surcharges)] by the Claimants.”<sup>117</sup>

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123. In sum, the Claimant has demonstrated that its Stay Request satisfies the requirements of necessity, urgency, and proportionality.

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<sup>116</sup> Mexico Government Budget, CEIC Data, last accessed November 20, 2025, **C-0117**.

<sup>117</sup> *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Provisional Measures, dated July 23, 2024, ¶ 79, **CL-0130**.

### C. Relief Pending Determination on this Application

124. The Tribunal's Article 1134 authority to issue provisional measures includes recommending measures to maintain the *status quo* until it has reached a determination on this Stay Request. For instance, in *Niko Resources v. Bangladesh*, the tribunal issued a procedural order on "Preservation of Status Quo Until the Hearing on Provisional Measures."<sup>118</sup> In that case, the hearing on the claimant's request for provisional measures was scheduled some time *after* a hearing in a Bangladeshi municipal court on attachment of certain assets related to the dispute before the tribunal. To ensure that "the situation surrounding [the request for provisional measures] is not aggravated or compliance with a possible recommendation by the Tribunal is not rendered more difficult" the tribunal recommended, in part, that the respondent request adjournment of the hearing on attachment measures.<sup>119</sup>

125. Similar relief is required here to preserve the *status quo* until this Tribunal has reached a determination on the Claimant's Stay Request. As discussed above, the Respondent could begin taking measures to compel payment of the 2012 Tax Reassessment at any time. This could well occur before the Tribunal can hold a hearing on—much less issue an order in relation to—the Claimant's Stay Request, particularly considering the upcoming holidays. Without such interim relief, and as detailed above, the SAT's unrestrained collection measures would risk serious and irreparable prejudice to the Claimant's substantive and procedural rights, including to the very integrity of these proceedings.<sup>120</sup>

### IV. RELIEF REQUESTED

126. The Claimant requests this Tribunal, taking into consideration the foregoing evidence and legal grounds:

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<sup>118</sup> *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited, and Bangladesh Oil Gas and Mineral Corporation*, ICSID Case Nos. ARB/10/11 and ARB/10/18, Procedural Order No. 5 (Preservation of Status Quo Until the Hearing on Provisional Measures), dated March 6, 2014, **CL-0137**.

<sup>119</sup> *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited, and Bangladesh Oil Gas and Mineral Corporation*, ICSID Case Nos. ARB/10/11 and ARB/10/18, Procedural Order No. 5 (Preservation of Status Quo Until the Hearing on Provisional Measures), dated March 6, 2014, p. 1, ¶ 12, **CL-0137**.

<sup>120</sup> See *supra* ¶¶ 95-107.

1. Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending issuance of the Tribunal's Final Award;
2. Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending resolution of this Request for Provisional Measures; and
3. Recommend such other remedy as the Tribunal based on the Claimant's request or based on its own determination considers appropriate in the present circumstances.

Date November 27, 2025,

Respectfully submitted,



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