

**INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES**

LION MEXICO CONSOLIDATED LP
Claimant

v.

UNITED MEXICAN STATES
Respondent

(ICSID Case No. ARB(AF)/15/2)

DECISION ON BIFURCATION

Members of the Tribunal

Juan Fernández-Armesto, President of the Tribunal
David J.A. Cairns, Arbitrator
Ricardo Ramírez, Arbitrator

Secretary of the Tribunal

Anneliese Fleckenstein

Assistant to the Tribunal

Luis Fernando Rodríguez

May 29, 2017

1. This decision rules on the “*Solicitud de bifurcación y síntesis de las excepciones jurisdiccionales*” [the “**SdB**”] that Mexico filed on April 4, 2017. Additionally, Mexico requests the Tribunal to change the seat of this arbitration from Washington (USA) to Toronto (Canada).
2. The Tribunal will first rule on the SdB, bifurcating the proceedings with respect to one of the objections. Then it will reject the request for a change of the seat as untimely and unwarranted.

Request to bifurcate the proceedings

3. In its SdB Mexico alleges two objections to the Tribunal’s jurisdiction under Art. 45(2) ICSID Additional Facility Rules, namely:
 - 1) The Tribunal lacks jurisdiction *ratione materiae* because Lion did not make an investment in Mexico within the terms required by Arts. 1101 and 1139 NAFTA [“**Objection 1**”]¹.
 - 2) The Tribunal lacks jurisdiction *ratione materiae* and/or *ratione voluntatis* to hear Lion’s claim that Mexico breached the minimum standard of treatment (Art. 1105 NAFTA). Mexico alleges that NAFTA Chapter 14 (“Financial Services”), rather than Chapter 11 (“Investment”) might govern this dispute [“**Objection 2**”]². Chapter 14 does not include the minimum standard of treatment among its protections.
4. For these reasons, Mexico urges a bifurcation of the case³.
5. Lion submitted its Response to Mexico’s SdB [the “**Response**”] on May 4, 2017, opposing the SdB and demanding that Mexico’s objections to jurisdiction be heard together with the merits of the dispute⁴.
6. In the procedural calendar attached as Annex A to Procedural Order [“**PO**”] No.1, the Arbitral Tribunal established a period of one month after Claimant’s Response to issue its decision on bifurcation.
7. The Arbitral Tribunal now issues its decision on Mexico’s SdB within the established time period.
8. The Tribunal has carefully analyzed the arguments Mexico and Lion have submitted. It finds that, for the following reasons, Objection 1, but not Objection 2, should be bifurcated.

¹ SdB, paras. 5 and 7–9.

² SdB, para. 5 and 10–28.

³ SdB, para. 38.

⁴ Response, para. 68.

9. First, Objection 1 may potentially extinguish all the claims. In addition, the objection raised is not intertwined with the merits of the dispute.
10. Second, Objection 2 is not dispositive of the case. If Mexico prevails, the dispute would still go forward, with fewer claims and different scope. Besides, Objection 2 may require opening a document production phase within the jurisdictional phase so that Mexico may gather evidence in support of its allegation. As Mexico admits, “[E]sta objeción no se puede resolver sobre la base del expediente en su estado actual, sin embargo, es posible hacerlo de manera eficiente . . . siempre que la Demandante coopere revelando hechos y documentos relevantes durante la etapa de jurisdicción”⁵. This means that, even if the objection is eventually upheld, this document production phase would not spare the Parties either the merits phase or a second document production exercise. And that would undoubtedly cause a significant delay in the proceedings.
11. Therefore, in order to abide by the principles of procedural economy and cost efficiency, the Tribunal decides to bifurcate the proceedings in respect of Objection 1 exclusively.
12. The procedural calendar established as Annex A to PO No. 1 provides that, in case of bifurcation, the Tribunal “shall establish a separate calendar for the exchange of pleadings on jurisdiction after consultation with the Parties”.
13. In the meantime, as Annex A to PO No. 1 also provides, “the proceedings on the merits shall remain suspended until the Tribunal decides otherwise”.
14. Accordingly, the Tribunal asks the Parties to confer and submit, by June 7, 2017, a joint proposal of a procedural calendar for this jurisdictional phase. If the Parties are unable to agree on a common proposal, they are kindly requested to submit simultaneously its own proposal by June 14, 2017.
15. The Tribunal may decide at any time after the presentation of the last submission on the jurisdictional issues to join the jurisdictional issues to the merits and decide on both issues in the same award.
16. If the Tribunal decides to opt-out of the bifurcated proceedings, the case will continue in accordance with the calendar for the merits phase. If the Tribunal decides not to opt-out of the bifurcated proceedings, it shall issue an Award on Jurisdiction.

Request to change the seat of the arbitration

17. Mexico includes an additional petition in its SdB, asking the Tribunal to change the seat of this arbitration from Washington (USA) to Toronto (Canada). Mexico argues it is now clear that Lion is a “*vehículo de inversión*” created by US entities

⁵ SdB, para. 27.

to invest in Mexico and with no real ties with Canada⁶. Lion opposes this request⁷.

18. The Tribunal rejects Mexico's application. The request is untimely and has no direct connection with the issue at this procedural stage: the Tribunal already fixed the seat of the arbitration in its PO No. 2. The facts and legal basis for the Tribunal's decision remain unchanged, and do not warrant reconsideration.

On behalf of the Arbitral Tribunal,

[Signed]

Juan Fernández-Armesto
President of the Arbitral Tribunal

⁶ SdB, paras. 16–28 and 38.

⁷ Response, paras. 61–67 and 69.