

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

B-Mex, LLC and others

v.

United Mexican States

(ICSID Case No. ARB(AF)/16/3)

PROCEDURAL ORDER NO. 3

Regarding the Details of the Hearing

Members of the Tribunal

Dr. Gaëtan Verhoosel, President
Prof. Gary Born., Arbitrator
Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Natalí Sequeira, ICSID

9 May 2018

1. Hearing dates and venue

- 1.1. Monday 21 May to Sunday 27 May 2018
- 1.2. World Bank – 1818 H Street NW, Washington DC 20433

2. Hearing daily schedule

- 2.1. 9 am - 5.30 pm
- 2.2. There will on each day be a one-hour lunch break and two 15-minute breaks.

3. Allocation of time

- 3.1. The total nominal useful time shall be 49 hours. In view of the large number of witness statements introduced with Claimants' Rejoinder on Jurisdiction, and to ensure fairness and equality of treatment, this total shall be divided as follows: 26 hours for Respondent; 23 hours for Claimants.
- 3.2. Questions from the Tribunal shall be deducted equally from each of the parties' time allocations. For planning purposes, a prudent estimate for the parties to assume is one hour per hearing day.
- 3.3. Openings and closings by each party shall not exceed 3 hours each—i.e., a maximum of 12 hours for both parties' openings and closings.
- 3.4. Without prejudice to Section 4.3 below, each party shall use its time as it sees fit. The Tribunal Secretary shall record the time used by each party and report the same at the end of each hearing day.

4. Witness examinations

- 4.1. The order of the witness examinations shall be as follows (italicized names are witnesses whose examination shall be conducted by video-conference):
 - 4.1.1. Ana Carla Martinez Gamba
 - 4.1.2. Gordon Burr
 - 4.1.3. Erin Burr
 - 4.1.4. Julio Gutiérrez
 - 4.1.5. José Ramón Moreno
 - 4.1.6. John Conley
 - 4.1.7. Benjamin Chow
 - 4.1.8. Luc Pelchat
 - 4.1.9. José Luis Segura
 - 4.1.10. Moisés Opatowski
 - 4.1.11. Neil Ayervais
 - 4.1.12. *Peg Rudden*
 - 4.1.13. *Lou Fohn*
 - 4.1.14. *Victory Fund*
 - 4.1.15. René Irra Ibarra
 - 4.1.16. [*legal expert presented by Claimant*]

- 4.2. The foregoing sequence may be varied by the Tribunal at the hearing should logistical issues relating to video-conferencing so demand.
- 4.3. In accordance with Section 19.5 of Procedural Order No. 1, direct examination shall be “brief”. Where a party in its last written submission relies on new exhibits to challenge the evidence of a witness as reflected in his/her witness statement(s), a party shall be entitled to conduct a brief direct examination in regard to those new exhibits.
- 4.4. The Tribunal may decide to examine both legal experts by way of expert conferencing (or “hot-tubbing”). The Tribunal shall advise the parties whether it wishes to do so at the hearing.
- 4.5. Where a witness is examined by video-conference, the parties shall be entitled to each designate one proctor to be present in the room with the witness. Except for the requisite IT personnel, no other persons shall be allowed to be in the room with the witness.

5. Presence of witnesses at the hearing

- 5.1. All witnesses and expert shall be allowed to attend the opening statements.
- 5.2. Claimants’ witnesses who are also parties shall be allowed to be present during the examination of Respondent’s sole fact witness, Ms. Martinez Gamba.
- 5.3. All other witnesses shall be allowed to be present in the room during the examination of other witnesses only after their own examination has been concluded.

6. Non-Disputing NAFTA Parties

- 6.1. The Tribunal Secretary shall advise the Non-Disputing NAFTA Parties of the dates and venue of the hearing. In accordance with Article 1128 of NAFTA, should any such Non-Disputing NAFTA Party make a request to attend the hearing, the Tribunal shall grant any such request.
- 6.2. A Non-Disputing NAFTA Party shall be granted access to the hearing materials described in Article 1129 of NAFTA where it makes a request to that effect to the Tribunal.

7. Other organizational or logistical matters

- 7.1. Any matters not addressed in this Procedural Order shall be resolved by reference to the parties’ agreements recorded in the joint document submitted to the Tribunal on 2 May 2018 and attached hereto; or, absent such agreement, by the Tribunal after hearing the parties.

On behalf of the Tribunal,



Dr. Gaëtan Verhoosel
President of the Tribunal
Date: 9 May 2018

Attached: Annex A (Draft Agenda – Hearing Logistics)