

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

Lion Mexico Consolidated L.P.

v.

United Mexican States

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

PROCEDURAL ORDER NO. 9

(on the Organization of the Hearing on the Merits)

Members of the Tribunal

Juan Fernández-Armesto, President of the Tribunal

David J.A. Cairns, Arbitrator

Laurence Boisson de Chazournes, Arbitrator

Secretary of the Tribunal

Francisco Grob

Assistant to the Tribunal

Luis Fernando Rodríguez

Washington D.C., June 26, 2019

A.	Background	3
B.	Hearing Dates and Location.....	3
C.	Attendance.....	3
D.	Examination of Experts and Witnesses.....	4
E.	Allocation of Time	4
F.	Tentative Schedule	4
G.	Hearing Materials.....	5
H.	Hearing Equipment	6
I.	Interpretation	6
J.	Records of the Hearing.....	6
K.	Post-Hearing Briefs.....	7

A. Background

1. This Procedural Order addresses the organization of the hearing on the merits in this arbitration [the “**Hearing**”].
2. Subject to the terms of this Order, the Hearing shall otherwise be conducted in accordance with the applicable provisions of Procedural Order No. 1 and the other directions by the Tribunal.
3. On June 5, 2019, the Tribunal circulated a first draft of Procedural Order No. 9, requesting the Parties to confer and submit by June 18, 2019, (i) a joint version, reflecting the points and language agreed upon and – where applicable – each Party’s suggested wording on those points they had not agreed upon; and (ii) each Party was invited to submit a brief with its position on those points that had not been agreed, for the Tribunal’s consideration.
4. On June 14, 2019, each Party provided to the opposing Party, with a copy to the Tribunal, the names of witnesses and experts whose statement or report has been submitted by the other Party with the request that they be available for cross-examination at the Hearing. On the same date, the Respondent specified the language in which each of their witnesses and experts will testify.
5. On June 24, 2019, at 17:00 hh CET the Tribunal and the Parties held a pre-hearing conference call to discuss the draft and any outstanding procedural, administrative, and logistical matters in preparation for the Hearing.
6. Upon consultation with the Parties, the Tribunal now issues this PROCEDURAL ORDER NO. 9.

B. Hearing Dates and Location

7. The Hearing will take place at the World Bank Group Headquarters in Washington, D.C., from July 22 to July 25, 2019.
8. Further logistical details including setup, entry passes, room assignment, internet connection and catering will be provided by the Secretary of the Tribunal in due course.

C. Attendance

9. Pursuant to Section 22.6 of Procedural Order No. 1, the Hearing will be closed to the public; however, provisions shall be made for representatives of the non-disputing NAFTA Parties that formally request to attend the Hearing.
10. The Parties shall provide the names and affiliations of all representatives who will attend the Hearing, including Parties’ counsel and representatives, by July 12, 2019. ICSID will circulate a draft table for that purpose in due course.

D. Examination of Experts and Witnesses

11. The general rules regarding the examination of witnesses and experts are set out in Section 20 of Procedural Order No. 1.
12. Fact witnesses may not attend the Hearing, including the opening statements, before their cross-examination (except for Ms. Onay Payne who, as a party representative, will be allowed to attend all the Hearing from the beginning and will be Claimant's first witness to testify). If there are breaks during the examination, the Tribunal will direct them not to communicate with anyone with respect to their evidence.
13. The experts from each side are entitled to make a presentation, summarizing their methodology and conclusions, before the cross-examination and in lieu of direct examination. This presentation will take no longer than 20 minutes for legal experts, and 30 minutes for *quantum* experts.
14. Length and format for direct-, cross-, and redirect examination of witnesses/experts; and possibility of re-cross will be as follows:
 - Witnesses' direct examination: 10 minutes / Experts' presentation: 20/30 minutes.
 - Cross-examination: no time limit.
 - Redirect examination: no time limit.

E. Allocation of Time

15. Each Party shall have a total time allocation for the Hearing of no more than 12 hours, inclusive of opening statements and witness and expert examination.
16. The Tribunal shall have a total time allocation for questions and procedural issues of no more than 6 hours.
17. Each Party shall be afforded up to 2 hours for opening submissions. With the Tribunal's approval, the rest of the time available to each Party can be freely allocated as the Party considers it appropriate within the total allocation of time set above.
18. The Tribunal Secretary will keep track of time using a chess-clock method.

F. Tentative Schedule

19. The daily schedule of the Hearing shall be as follows:
 - Start: 9:30 a.m. (the first day, at 9:00 a.m.).
 - Breaks: mid-morning and mid-afternoon, each 15 minutes in duration.
 - Lunch: around 1:00 p.m., of 60–90 minutes in duration.
 - End: no later than 6:00 p.m.

20. The tentative hearing schedule for **Monday, July 22** (day 1), will be as follows:
 - Welcome and procedural issues (15 min.)
 - Opening statement by Claimant (2 hh. max.)
 - Opening statement by Respondent (2 hh. max.)
 - Lunch (60–90 min.)
 - Examination of Ms. Onay Payne
21. The tentative hearing schedule for **Tuesday, July 23** (day 2), will be as follows:
 - Procedural issues (15 min.)
 - Examination of Mr. James Hendricks
 - Examination of Mr. José Arechederra
 - Lunch (60–90 min.)
 - Examination of Mr. Raúl Calva
 - Examination of Dr. Rodrigo Zamora (Claimant’s legal expert)
22. The tentative hearing schedule for **Wednesday, July 24** (day 3), will be as follows:
 - Procedural issues (15 min.)
 - Examination of Dr. José Ovalle (Respondent’s legal expert)
 - Examination of Dr. Raúl Plascencia (Respondent’s legal expert)
 - Lunch (60–90 min.)
 - Examination of Claimant’s *quantum* experts (Cushman & Wakefield)
 - Questions of the Tribunal, if any.
23. The tentative hearing schedule for **Thursday, July 25** (day 4), will be as follows:
 - Examination of Respondent’s *quantum* experts (CBRE and Sánchez Devanny)
 - Questions of the Tribunal, if any.
 - Lunch (60–90 min.)
 - Questions of the Tribunal, if any.
 - Final procedural issues (30 min.)

G. Hearing Materials

24. The rules regarding additional documents and new evidence are set out in Section 18 of Procedural Order No. 1.
25. One week before the start of the Hearing, the Parties will jointly prepare and provide

the Tribunal with a flash drive containing an electronic version of the file in this arbitration, together with the appropriate indexes.

26. The rules regarding demonstrative exhibits are set out in Section 18.7 of Procedural Order No. 1. For ease of reference, the Parties are reminded that “demonstrative exhibits (such as PowerPoint slides, charts tabulations, etc.) may be used at any hearing, provided they contain no new evidence.”
27. The Parties shall number its demonstrative exhibits consecutively as CH-1, CH-2, etc., (for Claimant) or RH-1, RH-2, etc. (for Respondent). Demonstrative exhibits must indicate from which legal authorities or documentary exhibits they are derived.
28. The Party submitting such exhibit shall provide them in hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the Assistant to the Tribunal, the court reporter(s) and the interpreter(s) at the Hearing immediately prior to the respective presentation for which it is used.
29. Sufficient copies of cross-examination bundles (exhibits or legal authorities on the record to which the witness or expert is to be referred) are to be provided immediately before the cross-examination.

H. Hearing Equipment

30. Each Party commits to carry a laptop that shall be connected to the screens made available by ICSID for projections of demonstrative exhibits and visual aids.
31. Upon a timely request, ICSID may arrange to have a blackboard at the hearing room.

I. Interpretation

32. Pursuant to Section 12 of Procedural Order No. 1, the Hearing will be conducted in Spanish and English. There shall be simultaneous Spanish-English and English-Spanish interpretation throughout the Hearing.
33. In accordance with Section 12.9 of Procedural Order No. 1, the costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

J. Records of the Hearing

34. Pursuant to Section 23 of Procedural Order No. 1, sound recordings will be made of the Hearing as well as *verbatim* transcripts in the two procedural languages.
35. ICSID has made arrangements to have English and Spanish verbatim transcripts available in real-time using Live Note or a similar software during the Hearing.

36. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
37. The Parties may agree on any corrections to the transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
38. The original language (non-translated) version of the transcript will be the only authoritative transcript for use in any other subsequent pleading or presentation.

K. Post-Hearing Briefs

39. After the Hearing, each Party shall simultaneously submit its post-hearing brief on the date and with the number of pages established by the Tribunal.

On behalf of the Tribunal,

[Signed]

Juan Fernández-Armesto
President of the Tribunal
Date: June 26, 2019