

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/21/14

BETWEEN:

FIRST MAJESTIC SILVER CORP.

Claimant / Investor

- and -

GOVERNMENT OF UNITED MEXICAN STATES

Respondent / Contracting Party

CLAIMANT'S REQUEST FOR PROVISIONAL MEASURES

January 4, 2023

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	TRIBUNAL’S AUTHORITY	3
III.	SUMMARY OF DISPUTE	5
IV.	REQUESTED PROVISIONAL MEASURES	6
V.	RELEVANT LEGAL PRINCIPLES	9
A.	Prima Facie Jurisdiction.....	10
B.	Protection of Tribunal’s Jurisdiction	13
C.	Jurisdiction is made Fully Effective	29
i.	Stay of Collegiate Court proceedings, investigations and enforcement.....	31
ii.	Statements made to the Media	33
iii.	Preservation of Rights.....	36
a)	VAT Refunds	36
b)	Enforcement, Investigations and Proceedings	38
D.	Additional factors for Tribunal to consider	46
i.	Avoiding Irreparable Harm.....	46
ii.	Preventing the Aggravation of the Dispute.....	52
iii.	Necessity and Urgency	63
iv.	Narrow and Specific	66
a)	VAT Refunds	66
b)	Enforcement, Investigations and Proceedings	67
VI.	REQUESTED RELIEF.....	68

I. INTRODUCTION

1. First Majestic Silver Corp. (**Claimant**) on its own behalf and on behalf of Primero Empresa Minera, S.A. de C.V. (**PEM**), seeks an order for provisional measures from this Tribunal pursuant to Article 1134 of the NAFTA,¹ Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules.²

2. The steps taken in this proceeding as of the filing of the Request for Arbitration on March 2, 2021 are summarized in paragraph 4 of the Claimant's Memorial.³

3. Following the filing of the Claimant's Memorial on April 26, 2022 (along with two witness statements and six expert reports),⁴ the Respondent was entitled to file a Request for Bifurcation within 50 days (i.e., until June 15, 2022), which date passed without a request being made.⁵

4. The Respondent's Counter-Memorial was filed on November 25, 2022.⁶

5. On December 15, 2022, the Claimant forwarded correspondence to the Tribunal noting that certain statements made by the Respondent at paragraphs 334 to 339 in the Counter-

¹ The arbitration has been initiated under the legacy provisions of Annex 14-C of the Canada-United States-Mexico Agreement. Claims filed prior to July 1, 2023 against the United Mexican States can be pursued based on the provisions of Section B of Chapter 11 of NAFTA.

² See Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 4.

⁴ See Witness Statement of [REDACTED], dated April 25, 2022, ¶ 1, **RW-0000**; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 6, 2022, ¶ 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 25, 2022, p. 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED] **0000**; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED] **0000**.

⁵ See *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Amended Procedural Order No. 1, dated March 16, 2021, p. 1, **C-0007**.

⁶ See *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Amended Procedural Order No. 1, dated March 16, 2021, p. 1 (the tribunal has added an additional day for the Respondent's Memorial due date), **C-0007**.

Memorial did not comply with the settlement privilege evidentiary rules.⁷ However, of much greater concern to the Claimant, was that the Respondent had repeated in these paragraphs within the Respondent’s Counter-Memorial the statements [REDACTED]

[REDACTED]

6. [REDACTED]

7. Having received legal advice and based on its duty to act in the best interest of its shareholders, the Claimant noted in its communication to the Tribunal, [REDACTED]

[REDACTED]

8. At the Respondent’s request, the Tribunal provided the Respondent leave for a response to be filed on or before December 30, 2022, to the Claimant’s letter of December 15, 2022.¹²

⁷ See Letter from Riyaz Dattu to Sara Marzal, dated December 15, 2022, pp. 1-9. As noted in that letter, the Claimant did not ask for a ruling from the Tribunal at this time in relation to its concerns. Rather, the Claimant indicated that it would address the remarks made in the identified paragraphs in the Respondent’s Counter-Memorial, in its Reply Memorial to be filed in August 2023.

⁸ See *id.*

⁹ See *id.* at p. 4.

¹⁰ See *id.* at p. 5.

¹¹ See *id.*

¹² See Email from Anastasia Tsimberlidis to Claimant and Respondent’s Counsel, dated December 16, 2022.

9. On December 15, 2022, the Tribunal also requested from the Respondent clarification of its position concerning transparency obligations contained within Section A of the *Notes of Interpretation of the NAFTA Free Trade Commission* (dated July 31, 2001), a joint proposal from the disputing parties on finalizing a Confidentiality Order.¹³ Responses were due from the disputing parties by December 30, 2022, which date was thereafter extended based on the request of the disputing parties to the Tribunal to January 13, 2023.¹⁴

II. TRIBUNAL'S AUTHORITY

10. This arbitration is being conducted under the ICSID Convention, the ICSID Convention Institutional Rules, the ICSID Arbitration Rules and Chapter 11 of NAFTA.¹⁵

11. The Tribunal's authority to order provisional measures arises from Article 47 of the ICSID Convention, Rule 39 of the ICSID Arbitration Rules, and Article 1134 of NAFTA, which are reproduced below:

Article 47

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.¹⁶

Rule 39: Provisional Measures

(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).

¹³ See Email from Sara Marzal to Claimant and Respondent's Counsel, dated December 15, 2022, p. 1.

¹⁴ See *id.*

¹⁵ See ICSID Convention, dated October 14, 1966, **CL-0012**; see also ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**; Ch. 11, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

¹⁶ Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**.

(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.

(5) If a party makes a request pursuant to paragraph (1) before the constitution of the Tribunal, the Secretary-General shall, on the application of either party, fix time limits for the parties to present observations on the request, so that the request and observations may be considered by the Tribunal promptly upon its constitution.

(6) Nothing in this Rule shall prevent the parties, provided that they have so stipulated in the agreement recording their consent, from requesting any judicial or other authority to order provisional measures, prior to or after the institution of the proceeding, for the preservation of their respective rights and interests.¹⁷

Article 1134: Interim Measures of Protection

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.¹⁸

12. Based on the foregoing provisions, the Claimant on its own behalf and on behalf of its investment, seeks the provisional measures described below in order to:

- a) fully protect the Tribunal's jurisdiction,
- b) ensure that the Tribunal's jurisdiction is made fully effective, and
- c) to preserve their rights as detailed herein.¹⁹

13. Each of the foregoing criteria for obtaining provisional measures has been discussed in greater detail below.

¹⁷ Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

¹⁸ Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

¹⁹ See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

14. The Claimant, after addressing the foregoing three criteria, has also set out the factual circumstances that make the granting of such provisional measures appropriate, in accordance with NAFTA Article 1134, Article 47 of the ICSID Convention, and Rule 39 of the ICSID Arbitration Rules.²⁰

III. SUMMARY OF DISPUTE

15. As noted in the Claimant's Memorial, this arbitration concerns the arbitrary, unconscionable, discriminatory, disproportionate and improper conduct of the SAT, the entity responsible for administration and enforcement of various taxes in the United Mexican States (**Mexico**), which has throughout acted contrary to Mexican law, including the federal Constitution, and international law obligations that are binding on Mexico under treaties and principles of international law.²¹

16. However, the dispute extends beyond the SAT and also concerns the gross misconduct of the tax prosecutor, the administrative courts (for their consistent failure to provide avenues for redress available for transfer pricing disputes and to ensure that SAT's conduct is in compliance with Mexico's laws and its international treaty obligations), interference and manipulation of the judicial processes by Government officials in order to achieve an outcome that favors the Respondent's position, and discriminatory and other offensive actions of highly placed government officials including the President of Mexico (**President**).²²

17. As detailed in the Claimant's Memorial, the current President (without regard to Mexico's own laws that prohibit public disclosure of matters concerning taxpayers),²³ has

²⁰ See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**; Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**.

²¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 12.

²² This shocking mistreatment of the Claimant and its investment is the result of the breakdown on the Rule of Law in Mexico, as discussed in detail in the Expert Report of [REDACTED]. See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 52; see also Expert Report of [REDACTED], dated April 25, 2022, pp. 16-22, 48-54 [REDACTED]0000.

²³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 421, fn 438; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 122, fn. 95, [REDACTED]0000.

unreservedly and publicly criticized, chastised, and maligned the Claimant—a publicly traded company—for lawfully challenging the amounts claimed by the SAT as “taxes” owing (which has yet to be determined under Mexican law), for defending itself in the Mexican courts, and for seeking resolution of its dispute with the Government of Mexico pursuant to the international arbitration provisions contained in Chapter 11 of NAFTA.²⁴

IV. REQUESTED PROVISIONAL MEASURES

18. The provisional measures requested seek to avoid having the Government of Mexico, while this Tribunal is exercising its jurisdiction, from:

- a) interfering with the Tribunal’s exclusive jurisdiction pursuant to Article 26 of the ICSID Convention²⁵ to adjudicate the dispute in a neutral manner and in an international forum (and to the exclusion of any domestic process in Mexico), in relation to the measures taken and not taken, that have been identified by the Claimant to be in violation of Chapter 11 of NAFTA;²⁶
- b) exacerbating the dispute including by causing irreparable harm to the Claimant and its investment;²⁷ and
- c) impinging on any legal rights of the Claimant and its investment including the ability to carry on its business at the San Dimas Mine which is the source of livelihood for hundreds of its employees and their families in Mexico.²⁸

19. The requested provisional measures, all of which are within the Tribunal’s jurisdiction to make, have in each case been framed in a narrow, specific and proportionate manner, as follows:

²⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 331-343; see also *id.* at ¶ 8 (noting that First Majestic is publicly listed on the New York Stock Exchange, the Toronto Stock Exchange, and the Frankfurt Stock Exchange).

²⁵ See Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**.

²⁶ See Ch. 11, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

²⁷ See Expert Report of ██████████ dated April 25, 2022, ¶ 30, █████-0000.

²⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 25, 423.

- a) *Immediate Suspension of the amparo proceedings relegated to the Mexican Fourteenth Collegiate Court on Administrative Matters of the First Circuit (Collegiate Court)*²⁹ *proceeding*: The stay or suspension order requested by the Claimant concerns an *amparo* filed by PEM with the Collegiate Court on November 30, 2020 and which was thereafter admitted on February 23, 2021.³⁰ The *amparo* was filed by PEM as a necessary protective measure to preserve the validity of the APA, and before the filing by the Claimant of the Request for Arbitration and the formation of this Tribunal. As discussed further below, based on political interference and machinations, the *amparo* proceeding was sought to be transferred by the Government to the Mexican Supreme Court based on an unusual and rarely used procedure known as the “power of attraction.” However, the Government of Mexico has now, after the lapse of two years, inexplicably withdrawn as of December 8 and 9, 2022, each of the two separate petitions filed for the transfer of the *amparo* to the Mexican Supreme Court. The decision on the *amparo*, after this inordinate delay, has been relegated back to the Collegiate Court which has acknowledged receipt of the case on December 12, 2022. A decision has yet to be issued by the Collegiate Court, but could be issued any day.
- b) *Prohibition against the Mexican government officials’ use of the Public Media to Discuss the Dispute*: The order requested would prohibit any statements by the President of Mexico, the Minister of Economy and any other Mexican government official, to the public media³¹ concerning matters that are the subject of this arbitration proceeding including its progress.
- c) *Future VAT refunds payable to PEM*: The requested order would require the SAT to make all VAT refunds that have accrued to PEM after the date of the filing of the Request for Arbitration, and all future VAT refund payments, to be made fully

²⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 97; see also *Amparo Lawsuit Complaint*, dated November 30, 2020, p. 1, **C-0002**, p. 1078.

³⁰ See *id.*

³¹ Defined herein as newspapers and other periodicals, radio and television, and mailed or electronically transmitted written or visual communications.

accessible to PEM.³² Furthermore, the order would require that these VAT refunds remain free from SAT's seizures or freezing of bank accounts.

d) *Stay of Enforcement, Transfer Pricing Audits and* [REDACTED] The order would ensure that the SAT and any other authority working in conjunction with the SAT, will refrain from:

i. Undertaking any additional enforcement or collection measures against the Claimant and its investment (including the assets of the investment), whether [REDACTED] in relation to any amounts claimed to be owing as taxes, penalties, interest and surcharges for the 2010 to 2014 taxation years of PEM.³³

ii. Undertaking any transfer pricing related investigations or audits and issuing any additional tax reassessments for 2010 and all subsequent years, based on any methodology other than that provided for in the APA issued in 2012.

iii. Initiating any [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] against the management personnel of the Claimant and its investment, whether residing in Mexico or outside the country, and whether currently or previously employed, including in relation to:

a. the obtaining by PEM of the APA in 2012, and any amounts claimed by the SAT to be owing as taxes, penalties, interest, and surcharges for the 2010 to 2020 taxation years of PEM, and any other measures currently under adjudication before this Tribunal; and

b. any settlement offer made to the Respondent (whether or not in compliance with Mexican law formalities) by PEM for any

³² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 446.

³³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 442.

reassessments for its taxation years 2010 to 2020 in order to achieve a final resolution of the dispute.³⁴

20. The provisional measures requested from this Tribunal should remain effective until the final award is rendered, unless the Tribunal of its own accord or at the request of one of the parties, decides to amend or terminate in whole or in part the order providing for the provisional measures.

21. These provisional measures are necessary to fully protect and make effective the Tribunal's jurisdiction, to avoid the exacerbation of this dispute, and to permit the Claimant and its investment to preserve their legal rights. Furthermore, they are narrow, specific, necessary, urgent, and proportional and will avoid irreparable harm that will otherwise be suffered by the Claimant and its investment.³⁵

V. RELEVANT LEGAL PRINCIPLES

22. NAFTA Article 1134, Article 47 of the ICSID Convention, and Rule 39 of the ICSID Arbitration Rules, when applied cumulatively, authorize this Tribunal to provide for provisional measures for the purposes requested by the Claimant.³⁶

23. NAFTA Article 1134 explicitly provides this Tribunal broad discretionary authority to award interim relief to *preserve the rights of a disputing party, protect the Tribunal's jurisdiction* and to *ensure that its jurisdiction is made fully effective*, provided the order does not constitute an "...attachment or enjoin the application of measures alleged to constitute a breach referred to in Article 1116 or 1117."³⁷

³⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 144(b), 145-147; see also Witness Statement of ██████████, dated April 25, 2022, ¶¶ 145, 150-151, ██████-0000.

³⁵ See, e.g., *Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Decision on Claimant's Application for Provisional Measures, dated June 14, 2022, ¶ 65, CL-0084.

³⁶ See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, CL-0001; Art. 47, ICSID Convention, dated October 14, 1966, CL-0012; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, CL-0012.

³⁷ See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, CL-0001.

24. None of the provisional measures requested seek to attach or enjoin the application of the measures that have been enumerated by the Claimant to constitute a breach of Mexico's NAFTA obligations. Furthermore, each of the requested measures has been *narrowly circumscribed* to ensure that (i) the Tribunal's jurisdiction is protected, (ii) its jurisdiction is made fully effective, and (iii) to preserve the rights of the Claimant and its investment, in relation to the dispute submitted for arbitration pursuant to Chapter 11 of NAFTA.

25. Based on the facts and circumstances of this case, the Tribunal has also been provided with the grounds for concluding that there exists urgency and necessity for the requests, the requested provisional measures are proportionate, and the irreparable harm that will follow in the absence of the provisional measures.

26. The preliminary issue for this Tribunal to determine, when a request is made to it for an order for provisional measures, is the existence of *prima facie* jurisdiction over the claims made in the arbitration.

A. Prima Facie Jurisdiction

27. When establishing the existence of *prima facie* jurisdiction of the Tribunal over the claims, the Claimant has to overcome a low threshold. The Claimant does not have to satisfy the Tribunal, at this stage, that it will arrive at the same conclusion concerning its jurisdiction later in the proceedings, after it has fully considered and ruled on the jurisdictional objections raised by the Respondent.

28. As stated in *Nasib Hasanov v. Georgia*, “the *prima facie* jurisdictional test does not set a high bar.”³⁸

29. In the present case, the Respondent did not elect to challenge, at an early stage, the Tribunal's jurisdiction over the claims that have been advanced. It avoided making a request for a bifurcated process for challenging the Tribunal's jurisdiction, although it had previously requested and was afforded an opportunity to do so within the timeline contained in Procedural Order No. 1.

³⁸ *Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Decision on Claimant's Application for Provisional Measures, dated June 14, 2022, ¶ 64, **CL-0084**.

30. The Claimant’s Memorial contains extensive and credible evidence to support the *prima facie* conclusion that all its claims are properly before this Tribunal for adjudication pursuant to Chapter 11 of NAFTA and the ICSID Convention.³⁹

31. The Counter-Memorial filed by the Respondent does not provide sufficient facts and sustainable objections so as to impact in whole or in part the Tribunal’s jurisdiction. The Claimant will in due course respond in full to all of the jurisdictional objections made by the Respondent in its Counter-Memorial.

32. In the meantime, at this stage of the proceedings, the Tribunal is fully entitled to rely exclusively on the facts as advanced by the Claimant in its Request for Arbitration and its Memorial, to establish on a *prima facie* basis its jurisdiction to adjudicate on the dispute:

The Tribunal considers that a determination whether or not *prima facie* jurisdiction exists should not anticipate a thorough analysis of potentially ensuing jurisdictional challenges by either Party. Rather, the Tribunal should satisfy itself that upon an initial analysis, i.e. “at first sight”/*prima facie*, it has jurisdiction. For this, it is necessary and sufficient that the facts alleged by the Claimant establish this jurisdiction without it being necessary or possible at this stage to verify...⁴⁰

33. In summary, the Tribunal has in its possession the following evidence, set out in the Claimant’s Memorial, that confirms the Tribunal’s *prima facie* jurisdiction over the claims:

- a. The Claimant is a legal entity duly incorporated in the Province of British Columbia, Canada. The Claimant is therefore an “investor” of Canada.⁴¹

³⁹ See Ch. 11, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**; see also Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**; *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 149-204.

⁴⁰ See *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, ¶ 168, **CL-0096**.

⁴¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 151.

- b. The Claimant has made significant “investments” in Mexico for close to twenty years. The Claimant directly, and indirectly through PEM, its wholly owned subsidiary, has made “investments” in Mexico including in the San Dimas Mine.⁴²
- c. The Respondent’s actions and failure to take certain other actions in this case relate to the Claimant and its investments.⁴³
- d. The Respondent’s measures that have given rise to this dispute are numerous and a non-exhaustive list is contained in the Claimant’s Memorial.⁴⁴
- e. These measures of the Respondent, by the executive branch and the administrative courts, have detrimentally and severely impacted the Claimant’s ability to carry on its business in Mexico.⁴⁵
- f. The Claimant is entitled to bring its claims on its own behalf, and on behalf of PEM, pursuant to Articles 1116 and 1117 of NAFTA.⁴⁶
- g. All the temporal requirements set out in Chapter 11 of NAFTA have been satisfied.⁴⁷
- h. The Claimant has also complied with the conditions in Article 1121 of NAFTA for the submission of its claims to arbitration and has satisfied the requirements for initiating

⁴² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 152-155.

⁴³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶ 157.

⁴⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶ 158.

⁴⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶ 159.

⁴⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶¶ 175-178.

⁴⁷ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶¶ 179-183.

arbitration under the ICSID Convention, the ICSID Institution Rules and the ICSID Arbitration Rules.⁴⁸

- i. The measures at issue are not excluded from the scope of Chapter 11 of NAFTA, including Article 2103(1) of NAFTA as they are not “taxation measures”, and furthermore the Claimant has complied with the requirements of Article 2103(6) of NAFTA as the competent authorities *failed to agree* within the requisite period that an expropriation has *not* occurred.⁴⁹

B. Protection of Tribunal’s Jurisdiction

34. The resolution of this dispute requires application of international law, including relevant international treaties and the provisions of Chapter 11 of NAFTA. Furthermore, it requires a neutral Tribunal that can determine whether Mexico has performed its treaty obligations in good faith.

35. Domestic law cannot be used as an excuse for not adhering to the obligations contained within an international treaty, including one or more avoidance of double taxation treaties binding on a country. This decision can best be made in a neutral and independent manner by this Tribunal.

36. As stated in Articles 26 and 27 of the *Vienna Convention on the Law of Treaties*:

Article 26. Every treaty in force is binding upon the parties to it and must be performed by them in good faith.⁵⁰

Article 27. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty...⁵¹

⁴⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 184-187.

⁴⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, dated April 25, 2022, ¶¶ 160-174.

⁵⁰ Art. 26, Vienna Convention on the Law of Treaties, United Nations Treaty Collection Archives, dated 1969, entry into force January 27, 1980, pp. 12-13, **YB-0001**.

⁵¹ Art. 26, Vienna Convention on the Law of Treaties, United Nations Treaty Collection Archives, dated 1969, entry into force January 27, 1980, pp. 12-13, **YB-0001**.

37. The Claimant's Memorial and the accompanying expert reports make it abundantly clear that the Respondent, in seeking to retroactively reassess PEM's income taxes in respect of the 2010-2014 taxation years, is in breach of its obligations under international treaties and applicable principles of international law.⁵²

38. In particular, the SAT, in seeking to repudiate a contractual agreement (i.e., the Advanced Pricing Agreement or APA), is violating applicable international law and failing to perform its treaty obligations in good faith. Furthermore, the Respondent has failed to adhere to its treaty obligations by invoking internal law as justification, which is impermissible.

39. Fundamentally relevant to the decision of the Tribunal in granting the provisional measures request, in relation to the stay of the Collegiate Court proceeding, is Article 26 of the ICSID Convention.⁵³ It clearly states that the Tribunal has *exclusive* jurisdiction to resolve the dispute based on the claims filed in this NAFTA Chapter 11 arbitration, and that the Respondent cannot require PEM to continue any domestic judicial process:

Article 26. Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.⁵⁴

40. Mexico, by adopting the ICSID Convention, has agreed that this Tribunal shall have the exclusive jurisdiction to render its decision in a final award, without its process being up-ended or usurped in whole or in part by the Mexican courts and administrative decision-makers. Mexico did not stipulate that a claimant had to exhaust local remedies before resorting to international arbitration.

⁵² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 72-74, 269-274; see also Expert Report of [REDACTED], dated April 6, 2022, ¶ 1, [REDACTED]0000; Expert Report of [REDACTED] dated April 25, 2022, p. 1, [REDACTED]0000; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED]0000; Expert Report of [REDACTED], dated April 25, 2022, ¶ 1, [REDACTED]0000.

⁵³ See Art. 26, ICSID Convention, dated October 14, 1966, CL-0012.

⁵⁴ Art. 26, ICSID Convention, dated October 14, 1966, CL-0012.

41. As stated in *Schreuer's Commentary on the ICSID Convention*⁵⁵ (*Schreuer's*), Article 26 makes it clear that once consent to ICSID arbitration has been given, both parties lose their entitlement to seek relief in another forum, national or international, and are restricted to pursuing the resolution of their dispute through ICSID arbitration.⁵⁶ Additionally, Article 26 ensures that the Tribunal's jurisdiction is not interfered with, once the ICSID arbitration process has been instituted:

It is beyond doubt that the exclusive remedy rule of Art. 26 also operates in relation to proceedings before domestic courts. Therefore, turning to domestic proceedings, instead of ICSID, after ICSID arbitration is agreed, would clearly be impermissible unless this has been 'otherwise stated' between the parties.⁵⁷

42. To reinforce this conclusion, *Schreuer's* quotes the following passage from George R. Delaume, which explains the obligations imposed on a Contracting State when an ICSID arbitration is initiated:

If a court in a Contracting State becomes aware of the fact that a claim before it may call for adjudication under ICSID, the court should refer the parties to ICSID to seek a ruling on the subject. Until such ruling is made, if the possibility exists that the claim may fall within the jurisdiction of ICSD, the court must stay the proceedings pending proper determination of the issue by ICSID. Only in the event of an adverse decision by ICSID, which, for example, may result from the Secretary-General's refusal to register a request for arbitration or from a decision of an ICSID arbitral tribunal that the issue involved does not fall within its competence, may the court in question resume hearing the case, assuming, of course, that it has an independent basis for entertaining jurisdiction over the parties and the subject matter of the dispute.⁵⁸

⁵⁵ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 543, ¶ 230, **CL-0085**.

⁵⁶ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 600, ¶ 230, **CL-0085**; see also Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**.

⁵⁷ Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 600, ¶ 230, **CL-0085**; see also Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**.

⁵⁸ Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, pp. 600-601, ¶¶ 230-21, **CL-0085**.

43. It follows from this that international arbitration tribunals can order, when seeking to fully protect their own jurisdiction, domestic courts and tribunals to immediately suspend their proceedings. This has occurred in a number of cases.⁵⁹

44. For example, in *Biwater Gauff v. Tanzania*, an international tribunal conducting an ICSID arbitration had this to say concerning the broad powers of an international tribunal when seeking to ensure that it can render its final award without having the *integrity or its proceedings being harmed or prejudiced*, or in any way resulting in the *aggravation or extension of its proceedings*:

It is now settled in both treaty and international commercial arbitration that an arbitral tribunal is entitled to direct the parties not to take any steps that might (i) harm or prejudice the integrity of proceedings, or (2) aggravate or extend the dispute. Both may be seen as a particular type of provisional measure [...] or simply as a facet of the tribunal's overall procedural powers and its responsibility for its own process.⁶⁰

45. In *Holiday Inns v. Morocco*, the Respondent urged the ICSID tribunal in that case to suspend its proceeding so as to allow the Moroccan court to issue its decision.⁶¹ The loan agreement at issue specifically provided for dispute settlement before the courts of Morocco.⁶² Furthermore, according to the Respondent, once the Moroccan court had issued its decision, the Tribunal could only consider the possible effects of the Moroccan court decisions on the rights and obligations of the parties under international law.⁶³

⁵⁹ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 601, ¶ 231, **CL-0085**; see also *id.* at pp. 608-609, ¶ 264 (discussing *Agility for Public Warehousing Company K.S.C. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/11/8, Decision on Jurisdiction, dated February 27, 2013).

⁶⁰ *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, dated September 29, 2006, ¶135, **CL-0086**.

⁶¹ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 566, ¶¶ 58-59 (discussing *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Decision on Provisional Measures, dated July 2, 1972), **CL-0085**.

⁶² See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, pp. 556, ¶ 59, **CL-0085**.

⁶³ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 556, ¶ 59, **CL-0085**.

46. As noted in *Schreuer's*, “[t]he Tribunal squarely rejected these contentions. It emphasized the general unity of the investment operation and the principle that ‘international proceedings in principle have primacy over purely internal proceedings.’”⁶⁴ Specifically, according to the arbitration tribunal in *Holiday Inns v. Morocco*:

[T]he Moroccan tribunals should refrain from making decisions until the Arbitral Tribunal has decided the questions or, if the Tribunal has already decided them, the Moroccan tribunals should follow its opinion. Any other solution would, or might, put in issue the responsibility of the Moroccan State and would endanger the rule that international proceedings prevail over internal proceedings.⁶⁵

47. The Claimant also relies on *Mobil v. Argentina*⁶⁶ which distinguished proceedings in the domestic courts that are focused on constitutional remedy in the form of an *amparo*, relative to the issues before a tribunal in an investment arbitration where the scope of the relevant issues is far wider and the remedies requested being different.⁶⁷

48. The provisional remedy request of the Claimant, seeking to have the Collegiate Court suspend its proceeding, is entirely appropriate and compelling, especially in the context of the Mexican legal system. This is because the Mexican courts, including the Collegiate Court and the Mexican Supreme Court, are obligated to adhere to international law and decisions of international tribunals, and do so regularly.⁶⁸

⁶⁴ Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 556, ¶ 60 (discussing *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Further Decision on Jurisdiction, dated May 12, 1974), **CL-0085**

⁶⁵ See Christoph H. Schreuer, *Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 556, ¶¶ 60-61 (discussing *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Further Decision on Jurisdiction, dated May 12, 1974. Schreuer notes that “this decision appears convincing.” Schreuer referenced at ¶ 48, the decision in *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3 as reaching the same result), **CL-0085**; see also *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Decision on Preliminary Objections to Jurisdiction, dated November 27, 1985, ¶¶ 53-56, 58, **CL-0088**.

⁶⁶ See *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability, dated April 10, 2014, ¶¶ 145-146, **CL-0087**.

⁶⁷ This is indeed the case here as the validity of the APA has to be considered from a wider perspective by this Tribunal which includes contractual obligations, international law principles, international treaty obligations as well as relevant Mexican constitutional law principles.

⁶⁸ See, e.g., Alan Cardenas, At The Mercy Of The Mexican Supreme Court: The Implications Of Party Capability of Indigenous People's Cases, dated January 1, 2020, p. 1, **C-0034**.

49. As stated by Alan Cardenas in his paper entitled ‘At The Mercy Of The Mexican Supreme Court: The Implications Of Party Capability On Indigenous People’s Cases,’ examining the implications of international law rulings related to the rights of indigenous peoples of Mexico:

The Court’s main obligation is to apply the law securing the rights claimed in the cases presented to them, in which there could have been a possible violation. The Court’s ability to set precedent is limited, however, and thus mostly determines specific case claims (*inter partes*) rather than automatically setting national policy in every case (*erga omnes*)—except for constitutional controversies. However, the Court is not only obligated to protect the constitutional rights guaranteed for indigenous people, but it also applies regional and international laws domestically. In particular, the Mexican Supreme Court is obligated to adhere to international law, such as those from the International Labour Organization and The Inter-American Court of Human Rights. Thus, while the executive holds the majority of the *de facto* authority on indigenous policy (Domingo 2000), the Court’s role in protecting the rights of Indigenous Peoples is crucial as it remains the only mechanism directly linking Indigenous Peoples to the federal government and ensures their protection in the face of violations committed by the legislative and executive branches.⁶⁹

50. In the present case, this Tribunal has been granted by the NAFTA parties, including the Respondent, the exclusive jurisdiction to establish what rights are owed to the Claimant and its investment, under relevant international law principles and treaties. The Collegiate Court, and on an appeal filed by either of the disputing parties, the Mexican Supreme Court, would be required to adhere to the findings of an international tribunal which is applying an international treaty binding on the Respondent such as NAFTA.

51. This Tribunal is also best equipped to render a decision relating to the international law of investments, which encompasses customary international law, applicable principles of international law, and international treaties including avoidance of double taxation treaties, NAFTA, and the ICSID Convention. The Claimant refers this Tribunal to the expert reports filed

⁶⁹ Alan Cardenas, ‘At The Mercy Of The Mexican Supreme Court: The Implications Of Party Capability of Indigenous People’s Cases,’ dated January 1, 2020, p. 7, **C-0034**.

by the Claimant in the areas of international taxation and the treatment of international treaties as part of Mexican law.⁷⁰

52. In considering the provisional remedy seeking the suspension of the proceedings before the Collegiate Court, the Tribunal is entitled to take into account the inordinate delay of two years already experienced by the Claimant from the time of initiating the *amparo* proceedings in November, 2020, as well as the extremely unusual circumstances that have been the cause of this substantial delay. Furthermore, that this delay is entirely attributable to the Respondent's actions.

53. Put in a different way, the Tribunal is entitled to take into consideration, pursuant to Rule 39 of the ICSID Arbitration Rules, not only the existence of the delay but the full set of *circumstances* that have directly contributed to the procedural delays due to the politically motivated involvement of a Member of the Mexican Supreme Court and a Minister of the Government of Mexico, both simultaneously filing petitions seeking to have the Mexican Supreme Court up-end the usual progression of the *amparo* challenge from the Collegiate Court and thereafter on appeal to the Supreme Court of Mexico.⁷¹

54. A summary of the events, that support the position being advanced by the Claimant, of political interference in the administrative and judicial processes, are set out below:

- a) The SAT's illegitimate use in 2015 of the *Lesividad* to unlawfully coerce PEM to abandon reliance on the APA.⁷²
- b) The immense political pressure exerted starting in 2019 from the highest levels of the Government of Mexico, due to the refusal of PEM and the Claimant to abandon

⁷⁰ See Expert Report of ██████████, dated April 6, 2022, ¶ 1, █████0000; see also Expert Report of ██████████, dated April 25, 2022, p. 1, █████0000; Expert Report of ██████████, dated April 25, 2022, ¶ 1, █████0000; Expert Report of ██████████ dated April 25, 2022, p. 1, █████0000.

⁷¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 97-103; see also Amparo Lawsuit Complaint, dated November 30, 2020, p. 1, C-0002, p. 107; Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, CL-0012.

⁷² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 90-105, 402.

their reliance on the APA, including repeated statements made by the Head of the SAT, the Federal Prosecutor, and the President, to the Mexican and international media, calling out PEM and the Claimant as being involved in ██████ and refusing payment of amounts the SAT claimed were back “taxes” owed to the SAT.⁷³

- c) The refusal of the administrative courts to admit the appeals filed in 2019 by PEM, and the failure of the SAT to engage in the MAP procedures under ██████ ██████ of double taxation treaties (all of which coincided with the public media campaign of the Government of Mexico against the Claimant).⁷⁴
- d) The lack of fairness and due process, when on September 23, 2020, the High Chamber of the Tribunal Federal de Justicia Administrativa (TFJA), issued without notice a decision against PEM and without justifiable legal grounds.⁷⁵ The TFJA declared the APA null and void with retroactive effect, while at the same time finding no wrongdoing by PEM.⁷⁶ This was not only a patently incorrect decision both on procedural and substantive basis, but also illogical. As noted by ██████ in his expert report, the factual findings do not accord with the conclusion that the APA should be treated as null and void.⁷⁷
- e) On November 30, 2020, in response to the TFJA’s decision, PEM filed an *amparo* (constitutional challenge), which was admitted on February 23, 2021 to the

⁷³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 331-343.

⁷⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 108-124.

⁷⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 96; see also High Chamber of the TFJA Sentence, dated September 23, 2020, p. 370, C-0002, p. 702.

⁷⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 96; see also High Chamber of the TFJA Sentence, dated September 23, 2020, p. 370, C-0002, p. 702.

⁷⁷ See Expert Report of ██████, dated March 28, 2022, p. 26 (“all the reasons considered by the [High Court] of the TFJA to declare the nullity for the purpose of the resolution approved by the APA were attributable to the administrative authority and not to the taxpayer company, which seems not to have been taken into account when dictating the effects of the judgment.”), JC-0000.

Collegiate Court.⁷⁸ The *amparo* was filed as a defensive measure to avoid the APA being considered no longer valid and effective.

- f) At that time and even now, the APA continues to be valid under Mexican law and applicable international law, notwithstanding the SAT's illegal attempts to repudiate the APA.⁷⁹
- g) The intended transfer of PEM's *amparo* proceeding, originally filed in the Collegiate Court in November 2020, to the Supreme Court of Mexico, which had no other goal than having the APA being declared null and void.⁸⁰ PEM was not consulted, and it was given no opportunity to object to this transfer of its *amparo*.
- h) The proposed transfer to the Supreme Court of Mexico was unilaterally at the behest of a single recently appointed Member of the Court, Ms. Yasmin Esquivel, appointed by the President notwithstanding serious concerns about her lack of judicial independence and concerns about conflict of interest,⁸¹ and the Minister of Finance and Public Credit, through the "power of the attraction" process.⁸²
- i) The intended transfer of the *amparo* from the Circuit Court to the Mexican Supreme Court clearly was not being done for the sake of achieving a prompt, fair and objective resolution of the dispute, as at that time the Mexican Supreme Court had come under considerable criticism from within Mexico and internationally for its huge back-log of cases and delays in rendering of pending decisions. It is very likely

⁷⁸ See Amparo Lawsuit Complaint, dated November 30, 2020, p. 1, **C-0002, p. 1078**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 97.

⁷⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 303; see also Witness Statement of ██████████, dated April 25, 2022, ¶ 50, ██████████ **0000**.

⁸⁰ See Request of Power of Attraction to the Supreme Court, No. 135/2021, dated April 14, 2021, pp. 1-9, **C-0002, p. 1406**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 98.

⁸¹ See Reuters Staff, Mexico Senate picks wife of president's business ally for Supreme Court, Reuters, dated March 12, 2019, p. 1, **C-0033**.

⁸² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 98; see also Request of Power of Attraction to the Supreme Court, No. 135/2021, dated April 14, 2021, pp. 1-9, **C-0002, p. 1406**.

that the transfer was being undertaken so that the decision process would be under the control and supervision of Member Yasmin Esquivel who had petitioned the highest court to hear the case using the “power of attraction.”⁸³

- j) It should be emphasized that there has been no prior instance in Mexico when an APA issued by the SAT has been challenged in the courts, and certainly the use of a very unusual and remarkable process of transferring the proceeding, from the Collegiate Court to the Supreme Court of Mexico at the request of a Member of that Court, should correctly invite considerable attention and scrutiny from this Tribunal for being an aberration, an irregularity and prompted by improper motivations.⁸⁴
- k) As the Tribunal will have noted from the submissions to be found in the Claimant’s Memorial, the existence and validity of the APA is critical and necessary to ensure that PEM can continue to operate the San Dimas Mine, even while facing the severe restrictions and constraints imposed by the SAT’s unlawful measures which have included seizures of properties and freezing of its bank accounts.⁸⁵ The SAT’s enforcement actions taken amid the COVID-19 pandemic lock-down were in violation of injunctions issued by the Mexican courts, which the SAT knowingly and deliberately chose to ignore.⁸⁶ During that period, there were no protections afforded to PEM by the courts due to the government ordered closure of the

⁸³ Member Yasmin Esquivel continues to be mired in controversies, including in relation to her possible appointment to the position of President of the highest court in Mexico. An article published in several Mexican publications question whether she engaged in plagiarism when submitting her undergraduate thesis. *See* Candidate to preside over Mexico’s Supreme Court is accused of plagiarizing thesis, Mexico Daily Post, dated December 23, 2022, p. 1, **C-0046**.

⁸⁴ *See* Witness Statement of ██████████, dated April 25, 2022, ¶ 41 (“In the entire history of APAs since their implementation in the Mexican legal system, not a single APA has ever been challenged by tax authorities until now”), ██████████0000; *see also* *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 50, 304.

⁸⁵ *See* *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 158.

⁸⁶ *See* *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 137.

courts.⁸⁷ The SAT's behavior, at a time when there were no vaccinations available to protect individuals from being infected with COVID-19, endangered the medical safety and lives of the PEM employees.⁸⁸ These actions of the SAT were by any measure shocking and brazen, taking place in the middle of a once in a century worldwide pandemic (and at a time when vaccinations were not available), particularly when the assets at issue were mining assets which are hardly moveable from the territory of Mexico.

- l) Thereafter, the conduct of the SAT has continued to be high-handed not only in relation to its enforcement of amounts it unilaterally asserts are "taxes owed" (while at the same time admitting that the APA continues to be valid), but also in the manner in which it has thwarted and manipulated every single avenue of redress that would normally be available to contest the SAT's position, including most recently seeking to influence the judicial authorities at the highest level within Mexico.
- m) After more than two years of delay, each of the two petitions, filed by the single Member of the Supreme Court and the Minister of Finance and Public Credit, were inexplicably withdrawn, within a day of each other, on December 8 and 9, 2022. This surprising and unexplained "about turn" was undertaken without notice to PEM, and since then no reasons have been provided for this unexpected and unconventional conduct.
- n) The Collegiate Court has now again been relegated as of December 12, 2022 to adjudicate on the *amparo* after an extra-ordinary period of delay and under circumstances, and with the knowledge, of the Mexican Government's politically motivated machinations all of which have the single aim of setting aside the APA for which there is no prior precedent.

⁸⁷ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 137.

⁸⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 138.

- o) It is not clear when a decision will be made by the Collegiate Court, however it is possible that it may be made any day. Any decision by the Collegiate Court at this advanced stage of the arbitration proceeding has the potential for being extremely disruptive, exacerbating and extending the dispute between the parties, causing inordinate delays and imposing additional costs on the disputing parties for the resolution of the dispute. Additionally, it can be expected that the decision of the Collegiate Court will be the subject of further appeal by one of the disputing parties.

55. Without preservation of the status of the APA as valid (should the Collegiate Court be permitted to issue a decision and were it to rule against PEM), the following can be expected to occur immediately which will *cause irreparable harm to the Claimant and its investment*:

- a) PEM's existing legal right to defend against the unlawfulness of the amounts claimed by SAT as taxes, penalties, interest and surcharges will be immediately extinguished under Mexican law.
- b) The rights and entitlement of PEM and First Majestic to have the transfer pricing dispute resolved under the internationally accepted methodologies of the Organization for Economic Co-Operation and Development (OECD)⁸⁹ as reflected in Mexico's domestic law⁹⁰ and the existing three double taxation treaties⁹¹ will be irretrievably lost – the SAT can be expected to take the position, even more forcefully with the other three countries that are each party to the MAP process under the relevant avoidance of double taxation treaties, that reliance by the Claimant and its investment on the APA is misplaced.
- c) The Respondent will forcibly demand and seek to collect amounts in excess of the realized income of PEM during all the relevant five years covered by the APA, with

⁸⁹ See OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD, dated January 2022, p. 1, MS-0012.

⁹⁰ See Expert Report of ██████████, Ph.D., dated April 22, 2022, p. 19 (finding that the OECD Guidelines are part of Mexican Law and applied by the Mexican Supreme Court), █████0000; see also Expert Report of ██████████, dated April 25, 2022, pp. 3, 6, █████0000.

⁹¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 119, 437.

the devastating consequences discussed further below in detail. A high-level summary is set out immediately below:

i. [REDACTED]

ii. [REDACTED]

iii. [REDACTED]

iv. Additionally, there will be irreparable harm to the Claimant and to the many employees, contractors, suppliers, and other stakeholders that rely on the Claimant and PEM for their livelihood and for their well-being.⁹⁵

v. PEM, in addition to being required to pay taxes on income that it has not earned in Mexico, will also be subject to double taxation without the SAT engaging in the MAP process under each one of the three applicable avoidance of double taxation treaties. There will be no basis for adjustment of income as between Mexico and the other three relevant tax jurisdictions.⁹⁶

⁹² See, e.g., Expert Report of [REDACTED] dated April 25, 2022, ¶ 130, [REDACTED]0000.

⁹³ See Expert Report of [REDACTED] dated April 25, 2022, ¶ 132, [REDACTED]0000.

⁹⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 106.

⁹⁵ See, e.g., *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 25.

⁹⁶ See, e.g., *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 84.

- vi. [REDACTED]
- vii. The scope of this arbitration will have to be considerably expanded, several ancillary claims from the Claimant can be expected to be advanced, the expert report for damages suffered will have to be substantially revised, and all this new material will have to be introduced into this arbitration proceeding by the Claimant on its own behalf and on behalf of PEM, which will make achieving of a resolution under this arbitration even more difficult.
- viii. Existing pleadings including the Claimant’s Memorial will have to be supplemented resulting in considerable delays, procedural complexities, an extension of the timelines for this arbitration process, and making it extremely challenging to ensure fairness to the parties involved in this international arbitration.

56. Additional considerations that support imposing an immediate stay on the Collegiate Court process and maintaining the *status quo*, so as to preserve the Tribunal’s jurisdiction, are as follows:

- a) The SAT’s actions amount to engaging in forum shopping, rather than having a decision rendered by the Collegiate Court in the first instance, should be viewed as being problematic.⁹⁷
- b) As previously discussed, the Tribunal should also be concerned about the SAT’s use of an exceptional procedure (which has political overtones), by having a relatively recent and favored appointee of the President, Mexican Supreme Court Member Yasmin Esquivel, and his Minister of Finance and Public Credit, request

⁹⁷ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 8; see also *id.* at ¶ 8, fn 13.

⁹⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 97.

the Supreme Court on April 14, 2021,⁹⁹ to exercise its “power of attraction” and to hear the *amparo* claim filed by PEM, instead of having the matter resolved in the usual course by the Collegiate Court.

- c) The transfer of the case through the “power of attraction” to the Mexican Supreme Court has already resulted in a two-year delay in the resolution of the dispute between PEM and the SAT.¹⁰⁰ Therefore, the SAT cannot argue prejudice if a stay is ordered by this Tribunal to the Collegiate Court proceeding.¹⁰¹
- d) The irregularities and delay encountered in the resolution of the *amparo* filed by PEM is emblematic of the breakdown of the judicial process in Mexico. On February 10, 2022, 173 Mexican lawyers signed a letter to the Members of the Supreme Court, urging them to resolve the unusually high number of pending cases before the Supreme Court.¹⁰² As stated in the letter, the delay “keeps the country in an enormous legal uncertainty, in a lack of personal security, in a lack of guarantees necessary for development and in a social division of unforeseeable risks.”¹⁰³
- e) Additionally, beyond the current dispute, which has been the subject of political interference and influence in the judicial process, there have been growing concerns in recent months concerning the independence of the Mexican judiciary due to the

⁹⁹ See Request of Power of Attraction to the Supreme Court, No. 135/2021, dated April 14, 2021, pp. 1-9, **C-0002**, p. **1406**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 98.

¹⁰⁰ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 98-103.

¹⁰¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 98-103; see also Request of Power of Attraction to the Supreme Court, No. 135/2021, dated April 14, 2021, pp. 1-9, **C-0002**, p. **1406**.

¹⁰² See Hector Aguilar Camin, Warrant of 173 lawyers to the Court, Milenio, dated February 2, 2022, p. 1, **C-0021**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 100.

¹⁰³ See Hector Aguilar Camin, Warrant of 173 lawyers to the Court, Milenio, dated February 2, 2022, p. 1, **C-0021**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 100.

various actions of the President,¹⁰⁴ including numerous remarks he has made when the decisions of this highest Court in Mexico are inconsistent with his personal expectations. Most recently, the New York City Bar issued a statement condemning the President's remarks announcing the investigation of several judges for their decisions.¹⁰⁵ One of the many critical remarks made by the President against the judiciary related to an *amparo* proceeding:

We are investigating this judge for the Iberdrola case, we are reviewing how he granted an amparo so that the company does not pay a fine of (almost) 10 billion pesos.¹⁰⁶

According to the statement from the New York City Bar, these acts contravene several fundamental principles and standards of international law.¹⁰⁷ In addition to referencing the obligations on the Government of Mexico to abide by the United Nations Basic Principles on the independence of the Judiciary, the American Convention on Human Rights, and the jurisprudence of the Inter-American Court of Human rights emphasizing the importance of the judiciary to guarantee the right to a fair trial, the statement goes on to emphasize:

Publicly announcing investigations of judges who have ruled against the government violates these international standards because such conduct directly undermines the respect and independence of the judiciary and intimidates the judges involved and deters them from independently carrying out their judicial duties. Regardless of the legality of a judge's decision or alleged misconduct, if any party in a proceeding before a judge, including the government, disagrees with a ruling, legal processes are in place to reverse or modify the decision. Furthermore, in the event of credible allegations of judicial corruption or misconduct,

¹⁰⁴ See Lopez Obrador Threatens Judicial Independence, Human Rights Watch, dated April 26, 2021, **C-0023**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 104(b).

¹⁰⁵ See New York City Bar, Statement Condemning the Mexican President's Remarks Announcing the Investigation of Judges and their Decisions, dated August 1, 2022, p. 1, **C-0035**.

¹⁰⁶ New York City Bar, Statement Condemning the Mexican President's Remarks Announcing the Investigation of Judges and their Decisions, dated August 1, 2022, p. 1, **C-0035**; see also Judge Gomez Fierro is being investigated for 'saving' Iberdrola from a fine: AMLO, El Financiero, dated July 19, 2022, **C-0036**.

¹⁰⁷ See New York City Bar, Statement Condemning the Mexican President's Remarks Announcing the Investigation of Judges and their Decisions, dated August 1, 2022, p. 1, **C-0035**

appropriate and non-political channels should be pursued, while avoiding public and overt threats from other branches of government.¹⁰⁸

- f) The President of Mexico has taken a particularly unusual personal interest in the dispute between the Claimant and the SAT, as has been detailed in the Claimant's Memorial.¹⁰⁹ It is therefore not at all evident that PEM can expect to receive a fair hearing before the Collegiate Court in the current political environment and with the concerns of judicial independence.
- g) Finally, as there is no automatic right of appeal from the Collegiate Court to the Mexican Supreme Court, it is very much conceivable that an appeal launched by the SAT against a decision of the Collegiate Court favoring PEM will be allowed and admitted by the Mexican Supreme Court, while a decision in favor of the SAT will be made immune from challenge to the Mexican Supreme Court by the denial of leave to appeal.

57. In summary, the Claimant has a fundamental right provided by NAFTA Chapter 11 and the ICSID Convention, to have its dispute with the Respondent resolved *exclusively* by a neutral decision-maker free of political influence, in a transparent manner and without significant delays or disruption. Mexico upon signing the ICSID Convention consented to the resolution of its investment treaty disputes exclusively by international arbitration tribunals.¹¹⁰

C. Jurisdiction is made Fully Effective

58. Article 47 of ICSID and ICSID Arbitration Rule 39, empower the Tribunal to order provisional measures.¹¹¹ Rule 39 sets out detailed rules for the process leading to the making of

¹⁰⁸ New York City Bar, Statement Condemning the Mexican President's Remarks Announcing the Investigation of Judges and their Decisions, dated August 1, 2022, p. 3, **C-0035**

¹⁰⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 331-340.

¹¹⁰ See Ch. 11, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**; see also Art. 26, ICSID Convention, dated October 14, 1966, **CL-0012**.

¹¹¹ See Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

recommendations, including what the request for provisional measures should contain in connection with the preservation of rights.¹¹²

59. Requests have to provide for specificity in describing the rights to be preserved and the recommendations being sought. Additionally, the request for provisional measures must set out the *circumstances* that require such measures. Once a request for provision measures is received by the Tribunal, it must be afforded priority. Each party is to be afforded an opportunity to make observations in relation to the requested provisional measures.

60. The Tribunal has wide discretion when deciding on the provisional measures that it will recommend, which includes recommending additional measures than those requested.¹¹³ Furthermore, it may modify the recommendations at a later stage or revoke its recommendations.¹¹⁴

61. In the present case, the requested provisional measures are reproduced here again (for convenience), in summary form:

- a) Requiring the Collegiate Court to stay its proceeding related to the *amparo* request made by PEM, pending the final resolution of the NAFTA Chapter 11 dispute between the parties.
- b) Prohibition against statements to the media by the President, the Minister of Economy, and other Mexican government officials concerning matters that are the subject of this arbitration proceedings including its progress.

¹¹²The submissions that follow are based on Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules and focus on the authority of the Tribunal to make its jurisdiction fully effective. These provisions augment the requirement in Article 26 of the ICSID Convention, discussed in the earlier section of this request, that the Tribunal has exclusive jurisdiction to resolve a dispute once an arbitration process has been initiated and is underway. *See* Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

¹¹³ *See, e.g., Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, dated September 29, 2006, ¶ 135, **CL-0086**; *see also* Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1102, ¶ 202, **CL-0085**; *see also id.* at p. 1102, ¶¶ 203-204; Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

¹¹⁴ *See* Rule 39(3), ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

- c) Requiring the SAT to make all VAT refunds owed to PEM as of the filing of the Request for Arbitration, and all future VAT refunds, to be paid directly to PEM, with such funds to remain free from SAT’s seizures or freezing of bank accounts.
- d) Requiring the SAT and any other authority working in conjunction with the SAT, to refrain from exacerbating this arbitration proceeding by: infringing on the legal rights of the Claimant and PEM to not be subject to any additional Mexican government enforcement and collection measures; to not be subjected to investigations and audits while the APA issued in 2012 remains valid; and taking ██████████ against the management of the Claimant and PEM including in relation to any settlement offer made to the Respondent (whether or not in compliance with Mexican law formalities) made by PEM and the Claimant to resolve this dispute.

62. The relevant provisional measures decisions of other tribunals are discussed below.

i. Stay of Collegiate Court proceedings, investigations and enforcement

63. The Tribunal in addition to relying on Article 26 of the ICSID Convention as providing it with the exclusive jurisdiction (to the exclusion of other remedies including before domestic courts), is empowered to recommend the suspension of the Collegiate Court proceedings based on Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules.¹¹⁵

64. Grounds for the stay can include avoidance of aggravation or extending of the dispute, the orderly conduct of its own proceeding including maintaining the integrity of its proceeding and protecting the legal rights of the Claimant and PEM.¹¹⁶

¹¹⁵ See Arts. 26, 47, ICSID Convention, dated October 14, 1966, **CL-0012**; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

¹¹⁶ See Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 556, ¶¶ 60-61 (discussing *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Further Decision on Jurisdiction, dated May 12, 1974. Schreuer notes that “this decision appears convincing.” Schreuer referenced at ¶ 48, the decision in *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3 as reaching the same result), **CL-0085**; see also *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Decision on Preliminary Objections to Jurisdiction, dated November 27, 1985, ¶¶ 53-56, 58, **CL-0088**; *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, dated September 29, 2006, ¶135, **CL-0086**.

65. *Schreuer* points out that requests for restraint on domestic proceedings make up the largest group of cases under Article 47 of the ICSID Convention.¹¹⁷

66. In *MINE v. Guinea* the Contracting State sought to have the Belgian and Swiss court proceedings restrained while the arbitration was underway.¹¹⁸ In its Decision on Provisional Measures, the tribunal directed the claimant to immediately discontinue all actions in the domestic courts:

The Tribunal recommends that MINE immediately withdraw and permanently discontinue all pending litigation in national courts, and commence no new action, arising out of the dispute. Litigation based upon the award of the American Arbitration Association is considered to arise out of this dispute for purposes of the Provisional Measures.

The Tribunal further recommends that MINE dissolve every existing provisional measure in litigation in national courts ... and seek no new provisional remedy in a national court.¹¹⁹

67. *Schreuer's* points out that the Tribunal not only directed MINE to withdraw the existing actions in domestic courts, but also enjoined the claimant from starting any proceedings in the future.¹²⁰

68. In *Tokios Tokolés v. Ukraine*, a case with even greater similarities to the present case, the claimant requested provisional measures to ensure that its rights were not seriously impacted. The parallel proceedings in Ukraine involved investigations by the tax authorities of that country. The tribunal in that case granted the requested relief, as follows:

The Tribunal has determined that in the present instance the circumstances require that provisional measures be taken to preserve the respective rights of either party. The Ukrainian officials – whether judicial or other – are, therefore under the legal obligation to abstain from, and to suspend and discontinue, any proceedings before

¹¹⁷ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1089, ¶ 145, **CL-0085**.

¹¹⁸ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, pp. 1089-90, ¶¶ 146-150, **CL-0085**.

¹¹⁹ Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, pp. 1090, ¶ 147, (discussing *Maritime International Nominees Establishment v. Republic of Guinea (II)*, ICSID Case No. ARB/84/4, Decision on Provisional Measures, dated December 4, 1985), **CL-0085**.

¹²⁰ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, pp. 1090, ¶ 148, **CL-0085**.

any domestic body, whether judicial or other, which might in any way jeopardize the principle of exclusivity of the ICSID proceedings or aggravate the dispute.¹²¹

69. The same result was obtained by the claimant in *Lao Holdings v. Lao*, in the case of a claim conducted under the ICSID Additional Facility Rules. As summarized in *Schreuer's*:

The Tribunal issued a provisional measure on 17 September 2013, in which it enjoined the Respondent from demanding that the Claimant pay any amounts allegedly due under the relevant tax legislation, and *from instituting or further pursuing any action, judicial or otherwise, to collect any payments under the relevant tax legislation*, or in relation to the Claimant's investments or funds. *It also enjoined the parties from taking any steps that would alter the status quo ante or aggravate the dispute.*¹²²

ii. Statements made to the Media

70. In appropriate cases, the Tribunal can issue provisional measures prohibiting statements being made by either of the parties to the public media, that can have the potential of affecting the integrity of the arbitration process including its interim and final awards or have the potential to aggravate the dispute.

71. For example, in *Ipek v. Turkey*, the tribunal ruled that "... in order not to exacerbate the dispute, breach the confidentiality of particular documents in the proceedings, or otherwise impair the right of both parties to a fair hearing" it may become necessary to issue provisional measures requiring restrictions on publication.¹²³

72. The Tribunal in *Biwater Gauff v. Tanzania*, based on the circumstances of that case, found that it was necessary that provisional measures be issued prohibiting statements to the media

¹²¹ Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1094, ¶ 167 (discussing *Tokios Tokolés v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order No. 1, dated July 1, 2003), **CL-0085**; see also *Tokios Tokolés v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order No. 1, dated July 1, 2003, ¶ 3, **CL-0089**.

¹²² Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1097, ¶ 181 (discussing *Lao Holdings v. Lao*), **CL-0085**; see also *Lao Holdings N.V. v. Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on Claimant's Amended Application for Provisional Measures, dated September 17, 2013, ¶ 30 (emphasis added), **CL-0094**.

¹²³ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1105, ¶ 217 (discussing *Ipek Investment Limited v. Republic of Turkey*, ICSID Case No. ARB/18/18), **CL-0085**; see also *Ipek Investment Limited v. Republic of Turkey*, ICSID Case No. ARB/18/18, Procedural Order No. 11 on Use of Arbitration Materials in *Ipek v. Koza Altin AS*, dated February 21, 2020, ¶ 21, **CL-0090**.

by the parties.¹²⁴ The requirement of avoiding aggravation or exacerbation of the dispute, as well as the necessity to preserve the integrity of the proceeding, required that an order be issued during the time when the arbitration was ongoing:

*It is self-evident that the prosecution of a dispute in the media or in other public fora, or the uneven reporting and disclosure of documents or other parts of the record in parallel with a pending arbitration, may aggravate or exacerbate the dispute and may impact upon the integrity of the procedure. This is all the more so in very public cases, such as this one, where issues of wider interest are raised, and where there is already substantial media coverage, some of which already being the subject of complaint by the parties.*¹²⁵

73. The decision in *Biwater* was considered very recently by the tribunal in *Vulcan Legacy v. Mexico*.¹²⁶ In *Vulcan*, the circumstances were very similar to the present case, except that in that case the current President of Mexico made prejudicial statements at the late stages of an ongoing arbitration process, where as in the present case the same President has made the Claimant and its investment a consistent target of his media campaign of over three years of ‘naming and shaming’ multi-national companies.¹²⁷ The very act of initiating this arbitration proceeding resulted in the President’s singling out of the Claimant unjustifiably as a Canadian mining company that allegedly refuses to pay taxes.¹²⁸ These statements to the press show no sign of abating. As recently as December 2022, the Minister of Economy, Ms. Raquel Buenrostro

¹²⁴ See *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, dated September 29, 2006, ¶ 136 (emphasis added), **CL-0086**.

¹²⁵ *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, dated September 29, 2006, ¶ 136 (emphasis added), **CL-0086**; see also Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1105, ¶ 217 (discussing *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22), ¶¶ 209-210, **CL-0085**

¹²⁶ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 83, **CL-0091**.

¹²⁷ See, e.g., *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶¶ 20-23, **CL-0091**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 331-343.

¹²⁸ See Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 1, **C-0003**, p. 89.

(previously the Head of the SAT), has continued to malign Canadian mining companies as being corrupt, with specific reference to the Claimant.¹²⁹

74. The tribunal in *Vulcan Legacy*, when issuing a provisional order requiring that the President of Mexico avoid making media statement concerning the arbitration proceedings, stated:

The Tribunal concurs that the parallel prosecution of an ongoing dispute in public fora may exacerbate the dispute before the Tribunal. The Tribunal recognizes the value of public dissemination of information about an ongoing arbitration proceeding under NAFTA, as also recognized in the form of various transparency measures under NAFTA. The importance of public access to information is consistent with the need to ensure the integrity of the arbitral proceedings. At the same time, this Tribunal is mandated to decide upon the Parties' dispute and must ensure the integrity of the arbitral proceedings. The Tribunal expresses its concern that public statements by President López Obrador made specifically in relation to this arbitration are likely to aggravate the Parties' dispute.¹³⁰

...

It should be noted that the above statements clearly refer to these pending arbitration proceedings, and therefore to Claimant's existing claims before the Tribunal. The Tribunal therefore rejects Respondent's suggestion that these facts are unrelated to the original claims made by Claimant.¹³¹

...

The Tribunal therefore considers that public comments made by Mexico's President on Claimant's claims and damages sought in these proceedings jeopardise the integrity of the arbitral process and are tantamount to prosecution of the dispute in the media and other public fora, contrary to the non-aggravation of the dispute. Such harm is irreparable, in the sense that it cannot be compensated by damages. Subject to its considerations on urgency below, the Tribunal therefore finds it necessary to issue a recommendation in relation to this item.¹³²

¹²⁹ See Sector minero no tributa y es corrupto: Economía, El Economista, dated December 7, 2022, p. 1 (quoting Buenrostro: "they do not want to pay their taxes, because there was a person who worked in the SAT and had a brother who worked in an office, and they gave them an interpretation according to criteria"), **C-0047**.

¹³⁰ *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 84, **CL-0091**.

¹³¹ *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 87, **CL-0091**.

¹³² *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 93, **CL-0091**.

75. In relation to the statements being made by the President of Mexico against the claimant in that case during his morning press conferences, the Tribunal concluded that such statements are susceptible of causing irreparable prejudice in the absence of the Tribunal's recommendation, and may occur again before the Tribunal issues its final award.

iii. Preservation of Rights

76. In making its request for payment to PEM of future VAT refunds and to avoidance of further enforcement, tax investigations and audits, and bringing of [REDACTED], the Claimant is seeking to ensure that its legal rights are preserved during the pendency of the international arbitration proceedings.

77. Additionally, it should also be noted that the (i) the request for stay of the Collegiate Court proceedings, and (ii) the request for the prohibition on the making of media statements, also have as their principal objectives the preservation of existing legal rights (i.e., maintaining the *status quo*) as well as fully protecting the Tribunal's jurisdiction and avoiding the aggravation of the dispute.

a) VAT Refunds

78. In making the request for provisional measures (concerning payments of VAT refunds owed to PEM as of the filing of the Request for Arbitration and all future payments of the VAT refunds to be made to PEM), the Claimant has framed its request carefully taking into consideration the limitations imposed by Article 1134 of NAFTA, according to which "[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."¹³³

79. The request for the payment by the SAT of refund payments to PEM free from any enforcement measures, seeks to ensure that the *status quo* is preserved, and the Respondent does not impede the rights and entitlement of the Claimant to the VAT refund.

¹³³ Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

80. To be clear, the Claimant is not seeking to have the freezing of PEM’s bank accounts undone including the funds that were on deposit at the time of the seizure, which could be viewed as directed at a measure being challenged in this arbitration.¹³⁴

81. Rather, it is seeking to ensure that its entitlement to the VAT refunds, which has not been the subject of a challenge under the ongoing NAFTA dispute, should not be gutted by the unauthorized deposit of the refunds by the SAT. Such unauthorized deposits of VAT refunds owing to PEM were made after the filing of the Request for Arbitration to the present date. PEM has not authorized such VAT refunds being deposited into one or more frozen bank accounts. The SAT has not denied that these VAT refunds are owed to PEM, and yet has continued depositing the VAT refunds into frozen bank accounts without any direction or authorization from PEM.

82. According to Cameron A. Miles, “the dominant reason for which most provisional measures are awarded is to protect a right *pendente lite*.”¹³⁵

83. Furthermore, by depositing funds into a frozen bank account,¹³⁶ to which PEM has an entitlement to receive as refunds (which is not in dispute), the Respondent should not be allowed to exacerbate the dispute and make any potential settlement efforts more difficult.

84. In *Burlington Resources v. Ecuador*, the claimant requested provisional measures to terminate Ecuador’s *coactiva* proceedings which authorized Ecuador’s seizure of the oil production.¹³⁷ The Tribunal grounded its provisional measures decision on “preservation of the status quo and the non-aggravation of the dispute.”¹³⁸ Furthermore, it noted that “[i]f the seizures

¹³⁴ See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

¹³⁵ Cameron A. Miles, *Provisional Measures Before International Courts and Tribunals*, Cambridge University Press, dated January 26, 2017, p. 174, **CL-0092**.

¹³⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 446.

¹³⁷ See *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente’s Request for Provisional Measures, dated June 29, 2009, ¶ 31, **CL-0093**.

¹³⁸ *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente’s Request for Provisional Measures, dated June 29, 2009, ¶ 59, **CL-0093**.

continue[d], it [would be] likely that the conflict will escalate and there is a risk that the relationship between the foreign investor and Ecuador may come to an end.”¹³⁹

b) Enforcement, Investigations and Proceedings

85. The request for a bar against future enforcement seeks to prohibit the following: (i) Mexican government enforcement and collection measures, both [REDACTED]; (ii) government investigations and audits of PEM using a different methodology while the APA remains valid; and (iii) taking of [REDACTED] against the management of the Claimant and PEM including in respect of any settlement offer made to the Respondent (whether or not in compliance with Mexican law formalities) to resolve the ongoing dispute.

86. These requested provisional measures are necessary and urgent to preserve the rights of the Claimant and its investment (i.e., maintain the *status quo*), to safeguard the integrity of the arbitration proceeding, to avoid exacerbation of the dispute and irreparable harm.

87. It is a well-established principle, that when a dispute is before an international tribunal, further enforcement on the part of the Respondent that can lead to the aggravation of the dispute and that may impair the integrity of the proceedings of an international tribunal, will not be tolerated.¹⁴⁰

88. As noted by the tribunal in *Biwater*, it was “settled in both treaty an international commercial arbitration that an arbitral tribunal is entitled to direct the parties not to take any steps that might (1) harm or prejudice the integrity of the proceedings, or (2) aggravate or exacerbate the dispute.”¹⁴¹

¹³⁹ *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente’s Request for Provisional Measures, dated June 29, 2009, ¶ 65, **CL-0093**.

¹⁴⁰ See, e.g., *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, dated September 29, 2006, ¶ 135, **CL-0086**; see also Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1102, ¶ 202, **CL-0085**; see also *id.* at p. 1102, ¶¶ 203-204.

¹⁴¹ See *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, dated September 29, 2006, ¶ 135, **CL-0086**; see also Christoph H. Schreuer, *Schreuer’s Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1102, ¶ 202, **CL-0085**; see also *id.* at p. 1102, ¶¶ 203-204.

89. *Schreuer's* emphasizes the importance of maintaining *the status quo*, where, as here, the ability to maintain a business is at stake, which may be damaged through unilateral action:

A recurrent theme is the relationship of the rights to be protected through the provisional measures to the rights in dispute between the parties. The references in the *travaux préparatoires* to the preservation of the status quo are an expression of the principle that in the course of litigation the parties must refrain from taking steps that might affect the rights of the other side which are the object of the proceedings on the merits. This is particularly so where an ongoing legal relationship remains in existence or where a business is at stake, which may be damaged through unilateral action, or attempt at self-help. Therefore, the rights to be protected through provisional measures must relate to the rights in dispute between the parties. At the same time, provisional measures must not prejudice the rights to be determined by the tribunal's decision on the merits.¹⁴²

90. In the present case, the existing rights of the Claimant and its investment are based on a contractual agreement entered into after several months of intense negotiations, with the involvement of a multiple number of experts, and lengthy interim and successive periods of deliberation by the SAT.¹⁴³ The agreement, known as the APA, was obtained without any wrongdoing by PEM (and none has been found by the Mexican authorities and the administrative courts).¹⁴⁴ It was to be binding for a five-year term.¹⁴⁵ Therefore, all contractual and other legal rights flowing from that APA should be protected. In that sense, the *Holiday Inns v. Morocco* decision of the tribunal is instructive:

Both parties are invited to abstain from any measure incompatible with the upholding of the Contract and to make sure that the action already taken should not result in any consequences in the future which would go against such upholding.¹⁴⁶

¹⁴² See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1106, ¶ 223, **CL-0085**.

¹⁴³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 63-70.

¹⁴⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 63-71.

¹⁴⁵ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 65; see also SAT PEM Ruling, No. 900-08-2012-52885, dated October 4, 2012, p. 4, **C-0002**, p. 43.

¹⁴⁶ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1106, ¶ 225 (discussing *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Decision on Provisional Measures, dated July 2, 1972), **CL-0085**.

91. In principle, Article 47 of ICSID permits ordering of provisional measures against the initiation of [REDACTED] by the respondent state.¹⁴⁷ However, in the case of [REDACTED], a higher threshold is placed on the claimant to support its request.

92. In *Lao Holdings v. Laos*, the tribunal with respect to a claim under the ICSID Additional Facility Rules, issued provisional measures which enjoined the respondent not only from demanding that the claimant pay the amounts allegedly due under the relevant tax legislation, but also ordered that the respondent should not undertake any further actions, whether administrative or judicial, to collect any amount pursuant to any relevant tax legislation, or as against the claimant's investments or funds.¹⁴⁸

93. The order extended to any [REDACTED] including the one in progress where it was alleged that one of the employees of the claimant had engaged in illegal conduct.¹⁴⁹

94. While the Tribunal affirmed that the respondent has the sovereign power to investigate the legality of the manner in which the claimant had made its investment, and to [REDACTED] conduct that was [REDACTED] it went on to note that there were "a number of exceptional circumstances" in that case which permitted the Tribunal to depart from the general rule entitling a state to enforce its [REDACTED] laws.¹⁵⁰ Such circumstances can include actions such as using the [REDACTED] process to gather evidence relevant for international arbitration, which can undermine the integrity of the arbitration process.¹⁵¹

¹⁴⁷ See Arts. 47, ICSID Convention, dated October 14, 1966, **CL-0012**.

¹⁴⁸ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1097, ¶ 181, **CL-0085**; see also *Lao Holdings N.V. v. Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on Claimant's Amended Application for Provisional Measures, dated September 17, 2013, ¶ 30, **CL-0094**.

¹⁴⁹ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1097, ¶ 182, **CL-0085**.

¹⁵⁰ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1098, ¶ 182, **CL-0085**.

¹⁵¹ See Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1098, ¶ 182, **CL-0085**.

95. Similarly, in *Hydro and others v. Albania*, where the dispute concerned Albania's alleged interference with the claimant's investment by the launching of tax-audits and money-laundering investigations, the seizure of bank accounts, and issuance of arrest warrants, the Tribunal was willing to require that the criminal proceedings be stayed against individuals who were expected to testify in the arbitration proceeding.¹⁵²

96. The circumstances of this case are such that the Tribunal should extend the provisional measures request to cover not only [REDACTED] and enforcement but also [REDACTED]

97. As noted in the Claimant's Memorial, the SAT is in an unprecedented manner seeking to revoke the APA, particularly where it has found no wrongdoing on the part of PEM or any of its representatives.¹⁵³ These and the following additional facts in support of this request which are discussed below, make a compelling case for the stay of any [REDACTED] even with the higher threshold:

- i. As previously noted, under Mexican law and international law the APA continues to be valid at this time.¹⁵⁴ This is indisputable as the *Lesividad* process initiated by the SAT in 2015 has not reached its finality pending the resolution of the *amparo* now (again) before the Collegiate Court.¹⁵⁵
- ii. Therefore, all of the SAT's reassessments that have been made for the years 2010-2013 against PEM are illegal as they ignore the existence of the APA, and purport to retroactively impose exorbitant amounts as taxes, penalties, interest and surcharges that

¹⁵² See *Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, dated March 3, 2015, ¶¶ 3.41, 5.1, **CL-0095**; see also Christoph H. Schreuer, *Schreuer's Commentary on the ICSID Convention*, Cambridge University Press, 3rd Ed., dated 2022, p. 1099, ¶ 186, **CL-0085**

¹⁵³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 304-306.

¹⁵⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 99.

¹⁵⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 90-99; see also Request of Power of Attraction to the Supreme Court, No. 135/2021, dated April 14, 2021, pp. 1-9, **C-0002**, p. 1406.

are outside the legislative framework and Mexico's constitutional requirements.¹⁵⁶

- iii. Furthermore, the SAT has barred PEM access to any domestic remedies against any of these reassessments by dismissing the administrative appeals.¹⁵⁷ The SAT has also refused to comply with its international obligations to engage in the MAP process under three applicable international treaties for the avoidance of double taxation.¹⁵⁸
- iv. Additionally, the SAT has taken enforcement measures against the assets of PEM including searches and seizures at PEM's facilities, by ignoring an injunction issued by its own authorities, based on the pending MAP requests made under the avoidance of double taxation treaties for the resolution of the transfer pricing dispute.¹⁵⁹
- v. The SAT also caused PEM's bank accounts to be frozen, and it continues to deposit VAT refunds (without authorization) as of the filing of the Request for Arbitration, and to which PEM is lawfully entitled, with the knowledge that PEM is unable to access these funds.¹⁶⁰ These VAT refunds relate to the ongoing operations of PEM and are payable on any goods or services it acquires to carry on its mining activities.¹⁶¹ It has an immediate entitlement to those refunds and yet it is being deprived access to these

¹⁵⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 106-107.

¹⁵⁷ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 108-111; see also Official Letter, No. 900-09-02-2019-10302, dated December 5, 2019, p. 10, **C-0002, p. 1848**; Official Letter, No. 900-09-02-2019-3067, dated April 6, 2020, p. 9, **C-0002, p. 3010**.

¹⁵⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 119-124; see also Official Letters Nos. 900-06-01-00-00-2020-000098, 900-06-01-00-00-2020-000102 and 900-06-01-00-00-2020-000103, dated February 14, 2020, pp. 2-3, **C-0002, p. 2148**; Official Letters, Nos. 900-06-01-00-00-2020-000319, 900-06-01-00-00-2020-000320 and 900-06-01-00-00-2020-000321, dated May 8, 2020, pp. 1-2, **C-0002, p. 4831**.

¹⁵⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 26.

¹⁶⁰ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 446-448; see also Expert Report of ██████████ dated April 25, 2022, ¶ 30, ██████████ 0000.

¹⁶¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 446; see also Witness Statement of ██████████, dated April 25, 2022, ¶¶ 118, 31(k), ██████████ 0000.

funds.¹⁶²

- vi. At a time when obtaining financing for its mining operations is becoming extremely costly, due to a high interest rate environment for debt financing and dramatic drop in share value due to the wide-spread plunge in the equity markets, the sequestering by the SAT of the VAT refunds amounting to approximately [REDACTED] (and on average amounting [REDACTED] per month of VAT refunds payable in the future) is highly injurious to the Claimant.¹⁶³ Furthermore, it restricts the legal entitlement of PEM to meet its payroll obligations by using the VAT refunds.
- vii. The SAT has also encumbered and seized other assets of PEM including [REDACTED] plots of land and [REDACTED] mining concessions.¹⁶⁴
- viii. Furthermore, it has repeatedly brought [REDACTED] against a former legal representative of PEM, even when courts have refused to proceed due to lack of evidence and dismissed the charges.¹⁶⁵ Appeals by the Tax Prosecutorial Service and the Attorney General's office to higher courts in connection with the [REDACTED] [REDACTED] have also been dismissed.¹⁶⁶ This has not stopped the initiation of new [REDACTED] based on the same facts and against the same individual.¹⁶⁷
- ix. There is therefore no assurance that these [REDACTED] will cease

¹⁶² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 452.

¹⁶³ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 446; see also Expert Report of [REDACTED] dated April 25, 2022, ¶ 30, [REDACTED]0000.

¹⁶⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 139(b); see also [REDACTED] Witness Statement, dated April 25, 2022, ¶ 8(h), [REDACTED]0000; Tax Collection Orders, Payment Requirements and Seizure Orders, dated April 3, 2020, p. 2, **C-0002, p. 4952**.

¹⁶⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 145-147; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶¶ 145, 150-151, [REDACTED]0000.

¹⁶⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 147; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 150, [REDACTED]0000.

¹⁶⁷ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 147; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 150, [REDACTED]0000.

particularly as recent events suggest that the judiciary cannot in the future be expected to act fairly and impartially.¹⁶⁸ The Claimant’s Memorial sets out details of judicial misconduct including a judge assisting in the advancement of ██████████ of a former PEM legal representative, by suggesting to the prosecutor that the re-launching of a prosecution, based on ██████████ charges rather than based on specific provisions of the ██████████, would increase the chances of success in having the prosecution move forward.¹⁶⁹

- x. The foregoing has to be put into the context of the concerns raised in the Claimant’s Memorial that the Respondent has “weaponized” prosecutions and threats of prosecutions to coerce settlements with multinational corporations.¹⁷⁰ Indeed, the President, the Tax Prosecutor’s Office, and the Head of the SAT have all admitted that these tactics have resulted in the forced collection of hundreds of millions of so called “unpaid taxes.”¹⁷¹ As noted in the Claimant’s Memorial:

Fiscal Prosecutor Carlos Romero threatened not only these selected large corporations but also individuals connected with these corporations. He has indicated that “if large corporate taxpayers were to come under scrutiny, arrest warrants could target several types of positions, including the person in charge of tax payments, board members, lawyers and accountants.” To prove his point, he has been quoted as saying that “Between 2020 and 2021, there will be people in

¹⁶⁸ See, e.g., Mexican Lawyers Raise Voices to Defend Judicial Independence, Law.com, dated March 18, 2021, **C-0022**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 104; Carmen Moran Brena, Lopez Obrador charges against “corruption of judges” to defend informal pre-trial detention, El Pais, dated August 30, 2022, **C-0041**; Lida Arista, AMLO Recognizes that he did pressure ministers of the Court for prison Preventive, Expansion politica, dated September 6, 2022, **C-0042**; *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 104.

¹⁶⁹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 147(a); see also Witness Statement of ██████████, dated April 25, 2022, ¶ 150, █████-0000.

¹⁷⁰ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 129.

¹⁷¹ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 130; see also Exclusive: Mexico’s Tax Chief Eyes Criminal Charges as Path to Tougher Corporate Enforcement, Reuters, dated June 9, 2020, p. 1, **C-0003**, p. 176.

jail.”¹⁷²

xi. Attached to the Claimant’s Memorial, as exhibit C-0003, are examples of national and international media reports of the SAT’s coercive revenue raising campaign against targeted foreign companies, including First Majestic.¹⁷³

xii.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁷⁴

xiii. This has been injurious not only to the Claimant’s activities and investments in Mexico, but has deprived Mexico from having the Claimant make additional investments.¹⁷⁵ As explained in the Claimant’s Memorial, for the first time ever, the Claimant has now made investments outside Mexico because of the political conditions and also concerns for the security of management personnel.¹⁷⁶

98. In summary, the Claimant requests that the Tribunal issue provisional measures requiring the Respondent to maintain *status quo* and to allow the Claimant and PEM management personnel to maintain and operate the San Dimas mine, from within Mexico or from outside the country, without being subject to (i) additional enforcement measures, whether [REDACTED] (ii) additional tax investigations, audits and reassessment that is inconsistent with the methodology provided for in the APA; and (iii) threat of [REDACTED] against management personnel of the Claimant and the Mexican subsidiaries including in relation to any settlement

¹⁷² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 132; see also Daina Beth Solomon and Carlos Gonzalez Galvan, Exclusive: ‘There will be people in jail’: Mexico plans arrests soon in tax crackdown, Reuters, dated July 15, 2020, p. 1, **C-0003**, p. 12.

¹⁷³ See Media Summaries, dated April 25, 2022, **C-0003**.

¹⁷⁴ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 132.

¹⁷⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 423.

¹⁷⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 26; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 8(j), [REDACTED]0000.

offer made to the Respondent (whether or not in compliance with Mexican law formalities).

99. These measures are necessary to avoid exacerbation of the dispute, to avoid delays and the disruption of the current arbitration proceedings (such that the Tribunal can exercise its jurisdiction based on the existing claims made by the Claimant in its Request for Arbitration and the Claimant's Memorial), and also so as to avoid irreparable harm to the Claimant and its investment which are already subject to restrictive measures arising from previous enforcement actions of the SAT.

D. Additional factors for Tribunal to consider

100. Once satisfied that it has a *prima facie* jurisdiction over the claims, the Tribunal should consider the following list of elements or factors (many of which have already been discussed in the foregoing analysis), in its overall decision-making process for recommending provisional measures:

- a) the measures are necessary to avoid irreparable harm.
- b) the measures would preserve the *status quo* and prevent the aggravation of the dispute, without impermissibly improving the Claimant's position.
- c) the requested measures are urgent.
- d) the requested measures have been framed as being specific and not being overly broad or disproportionate.

101. In what follows, each one of the elements is discussed with a focus on the factual circumstances of this case that are most relevant.

i. Avoiding Irreparable Harm

102. The provisional remedy requested for the stay of the Collegiate Court proceedings is discussed here in relation to the element of avoiding irreparable harm. This remedy is also urgently required in the current circumstances to avoid exacerbation of the dispute and to preserve

the rights of the Claimant. The stay remedy has been framed in a narrow manner and is both clear and specific.

103. It is evident from the facts available to this Tribunal that the Collegiate Court ruling on PEM's *amparo* request, if negative and rendered before the Tribunal makes its final award, will cause the Claimant and PEM irreparable harm particularly if leave to appeal to the Mexican Supreme Court is refused. In the absence of the provisional measures requested, [REDACTED]

[REDACTED]¹⁷⁷

104. The SAT claims that it is owed taxes, penalties, interest, and surcharges, for the 2010-2014 taxation periods of PEM, all totaling approximately [REDACTED].¹⁷⁸

105. According to the Expert Report of [REDACTED] filed along with the Claimant's Memorial, close to two-thirds of the amount being claimed relates to the repudiation by the SAT of the validity of the APA:

[REDACTED]

[REDACTED]

106. The [REDACTED] Expert Report goes on to note the following in connection with the SAT's patently untenable claim that Mexico is owed [REDACTED] by PEM:

[REDACTED]

¹⁷⁷ See, e.g., Expert Report of [REDACTED] dated April 25, 2022, ¶ 130, [REDACTED]-0000.

¹⁷⁸ See Expert Report of [REDACTED] dated April 25, 2022, ¶ 107, [REDACTED]0000.

¹⁷⁹ Expert Report of [REDACTED] dated April 25, 2022, ¶ 107, [REDACTED]0000.

¹⁸⁰ Expert Report of [REDACTED] dated April 25, 2022, ¶ 108, [REDACTED]-0000.

[REDACTED]

...

[REDACTED]

...

[REDACTED]

[REDACTED]

107. [REDACTED], will also cause irreparable harm:

- a) Loss of livelihood for approximately 2,000 individuals employed at the San Dimas Mine, indirectly impact the remaining over 3,000 employees and contractors

¹⁸¹ Expert Report of [REDACTED] dated April 25, 2022, ¶ 111, [REDACTED]-0000
¹⁸² Expert Report of [REDACTED] dated April 25, 2022, ¶ 117, [REDACTED]-0000.
¹⁸³ Expert Report of [REDACTED] dated April 25, 2022, ¶ 123, [REDACTED]-0000.
¹⁸⁴ Expert Report of [REDACTED] dated April 25, 2022, ¶ 124 (emphasis added), [REDACTED]-0000.

employed by First Majestic through its other operations in Mexico, as well as some of the indirect jobs numbering 20,000 spread among eight states within Mexico.¹⁸⁵

- b) Foreclose any possibility for the Claimant to develop additional silver and gold mines from its [REDACTED]¹⁸⁶
- c) Injure the many suppliers to the San Dimas Mine as well as their employees.¹⁸⁷
- d) Loss of large expenditures made by First Majestic and PEM for social, educational, training and other philanthropic causes, including through its subsidiaries, relating to:
 - i. On the job training for high skills needed for its mining operations;¹⁸⁸
 - ii. Scholarships for promising employees to upgrade their skills and technical abilities;¹⁸⁹ and
 - iii. Developing relationships with indigenous communities, various business partners, various levels of government in Mexico, and other stakeholders and entities interested in ensuring a sustainable future for mining in Mexico.¹⁹⁰

¹⁸⁵ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 24-25.

¹⁸⁶ *See First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 23.

¹⁸⁷ *See First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 5(i), 25.

¹⁸⁸ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 29.

¹⁸⁹ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 33.

¹⁹⁰ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 32.

e) Detrimentially affect all the work the Claimant and PEM have been undertaking over several years for social, educational and training purposes,¹⁹¹ that has resulted in the Claimant and its subsidiaries receiving recognition by the Centro Mexicano para la Filantropia (CEMEFI) as a “Socially Responsible Company,” each consecutive year starting in 2008 until the present.¹⁹²

108. As explained in the [REDACTED] Expert Report:

[REDACTED]

[REDACTED]¹⁹⁴

109. [REDACTED]

[REDACTED]

[REDACTED]

¹⁹¹ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 30-36.

¹⁹² *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 31; *see also* Witness Statement of [REDACTED], dated April 25, 2022, ¶ 28, [REDACTED]0000.

¹⁹³ Expert Report of [REDACTED] dated April 25, 2022, ¶ 130, [REDACTED]-0000.

¹⁹⁴ Expert Report of [REDACTED] dated April 25, 2022, ¶ 131, [REDACTED]-0000.

[REDACTED]

110. [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

111. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹⁵ Expert Report of [REDACTED] dated April 25, 2022, ¶ 132, [REDACTED]0000.

¹⁹⁶ Expert Report of [REDACTED] dated April 25, 2022, ¶ 134 (emphasis added), [REDACTED]0000.

[REDACTED]

ii. Preventing the Aggravation of the Dispute

112. The provisional remedy requested for prohibiting the President of Mexico, the Minister of Economy and government officials from making media statements is necessary for the prevention of the aggravation of the dispute. Furthermore, this provisional measure is necessary to preserve the rights of the Claimant, to avoid irreparable harm, meet the existing urgency, has been framed in a narrow manner, and is clear and specific.

113. The President of Mexico is said to be the only leader in the world that holds daily media events that are broadcast live on public television, streamed on a dedicated YouTube channel, and also on the President’s official website.¹⁹⁸

114. These media events usually start at 7 a.m., are most often held at Mexico City’s National Palace, and are attended by a few selected reporters.¹⁹⁹ They can last between one to three hours, but usually are around two hours long.²⁰⁰ It is estimated that 10 million viewers access the President’s speeches, commonly referred to as his *mañaneras* (daily press conferences).²⁰¹ These *mañaneras* provide an extraordinary platform to the President to ostracize his critics and perceived enemies.

¹⁹⁷ Expert Report of [REDACTED] dated April 25, 2022, ¶ 143 (emphasis added), [REDACTED]0000.

¹⁹⁸ See, e.g., Laura Martinez, The Mexican President’s Covid Diagnosis Has Paused His Exhausting Daily Press Conferences, SLATE, dated January 28, 2021, pp. 1-5, C-0037; see also Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, pp. 1-2, C-0038.

¹⁹⁹ See, e.g., Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, p. 1, C-0036.

²⁰⁰ See Laura Martinez, The Mexican President’s Covid Diagnosis Has Paused His Exhausting Daily Press Conferences, SLATE, dated January 28, 2021, p. 2, C-0037.

²⁰¹ See Laura Martinez, The Mexican President’s Covid Diagnosis Has Paused His Exhausting Daily Press Conferences, SLATE, dated January 28, 2021, p. 2, C-0037.

115. It has been noted that these *mañaneras* set “the nation’s agenda for the day. His announcements and claims reverberate on social media, dominating each news cycle until it is time for the next show to air.”²⁰²

116. As described by a U.S. journalist attending one of his events in early 2021:

Controlling the day’s narrative is the point of AMLO’s show. Claiming the mainstream media often ignores or misrepresents the truth, he has effectively used what is ostensibly a press event to instead bypass the traditional media’s gatekeeping. Just like Trump used to do on Twitter, AMLO uses the *mañaneras* to personally confront or denounce his enemies, namely the “power mafia” and “the posh media” (or *prensa fifí* as he likes to call it). The marathon sessions are packed with sympathetic journalists, essentially pro-AMLO YouTubers who cheer him on when taking on the more establishment members of the media sprinkled throughout the audience. And the president is masterful at dodging tough questions when they do make an appearance, launching long-winding monologues that often trail off without a point. And he never fails to blame his corrupt predecessors as the source of most of the country’s problems.²⁰³

117. This view is fully consistent with the opinion of the well-known journalist, Jorge Ramos, who in an editorial published by the New York Times over a year earlier stated (in April 2019):²⁰⁴

The *Mañaneras* benefit from wide distribution on social networks and, often, dominate the news in the traditional media as well. Despite the journalistic effort on display, *Mr. López Obrador has systematically used the space to discredit reporters, columnists, and the media that criticize him.* He calls them “fifí media,” among other qualifiers (such as conservatives and dishonest). He says he is only exercising his “right of reply,” which he is entitled to.

But the criticism is worrisome. Mexico is ranked one of the deadliest countries for journalists. Six have been murdered since AMLO’s inauguration on Dec. 1. At least 124 people have died in connection with their work since 2000, according to the organization Article 19. In a country wracked by violence related to drug

²⁰² Laura Martinez, The Mexican President’s Covid Diagnosis Has Paused His Exhausting Daily Press Conferences, SLATE, dated January 28, 2021, pp. 1-5, **C-0037**.

²⁰³ Laura Martinez, The Mexican President’s Covid Diagnosis Has Paused His Exhausting Daily Press Conferences, SLATE, dated January 28, 2021, pp. 1-5, **C-0037**.

²⁰⁴ Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, p. 1, **C-0038**.

trafficking, journalists fall as if they were in a war zone. The President can and must do much more to protect my brave colleagues.

The primary social responsibility of journalists is to question those in power. It is up to us to serve as a critical counter-power and to ask difficult questions. But Mr. López Obrador doesn't seem to understand this. He recently praised those journalists he deemed "prudent," and declared: ***"If you cross the line, well, you know what happens, right? But it's not me it's the people."***²⁰⁵

118. It is this type of powerful and menacing messaging that prompted the Claimant in *Legacy Vulcan* to seek provisional measures seeking to avoid its dispute with Mexico becoming fodder for the daily mañaneras.²⁰⁶ The request in that case was framed as follows:

Recommend as provisional measures pursuant to Article 47 of the ICSID Convention, Rule 39 of the ICSID Arbitration Rules, and NAFTA Article 1134 that Mexico take no action that denies due process to Legacy Vulcan or that might further aggravate or extend the dispute between the Parties, including further public attacks that exacerbate the dispute between the Parties, unduly pressure CALICA or Legacy Vulcan, or render the resolution of the dispute potentially more difficult.²⁰⁷

119. The Tribunal in that case referenced and relied on the decision in *Biwater Gauff v. Tanzania*, and the following key passage in agreeing to the claimant's request for provisional measures.²⁰⁸ This passage is also relevant in the present case:

It is self-evident that the prosecution of a dispute in the media or in other public fora, or the uneven reporting and disclosure of documents or other parts of the record in parallel with a pending arbitration, may aggravate or exacerbate the dispute and may impact upon the integrity of the procedure. This is all the more so in very public cases, such as this one, where issues of wider interest are raised, and where there is already substantial media

²⁰⁵ Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, pp. 1-2 (emphasis added), **C-0036**.

²⁰⁶ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 16(i), **CL-0091**.

²⁰⁷ *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 16(i), **CL-0091**.

²⁰⁸ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 83, **CL-0091**.

coverage, some of which already being the subject of complaint by the parties.²⁰⁹

120. After quoting this passage from *Biwater Gauff*, the tribunal in the *Vulcan Legacy* case stated:

The Tribunal concurs that the parallel prosecution of an ongoing dispute in public fora may exacerbate the dispute before the Tribunal. The Tribunal recognizes the value of public dissemination of information about an ongoing arbitration proceeding under NAFTA, as also recognized in the form of various transparency measures under NAFTA. The importance of public access to information is consistent with the need to ensure the integrity of the arbitral proceedings. At the same time, this Tribunal is mandated to decide upon the Parties' dispute and must ensure the integrity of the arbitral proceedings. The Tribunal expresses its concern that public statements by President López Obrador made specifically in relation to this arbitration are likely to aggravate the Parties' dispute.²¹⁰

...

It should be noted that the above statements clearly refer to these pending arbitration proceedings, and therefore to Claimant's existing claims before the Tribunal. The Tribunal therefore rejects Respondent's suggestion that these facts are unrelated to the original claims made by Claimant.²¹¹

...

The Tribunal therefore considers that public comments made by Mexico's President on Claimant's claims and damages sought in these proceedings jeopardise the integrity of the arbitral process and are tantamount to prosecution of the dispute in the media and other public fora, contrary to the non-aggravation of the dispute. ***Such harm is irreparable, in the sense that it cannot be compensated by damages.*** Subject to its considerations on urgency below, the Tribunal therefore finds it necessary to issue a recommendation in relation to this item.²¹²

²⁰⁹ *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 on Provisional Measures, September 29, 2006, ¶ 136, **CL-0086**.

²¹⁰ *See Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 84, **CL-0091**.

²¹¹ *See Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 87, **CL-0091**.

²¹² *See Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 93 (emphasis added), **CL-0091**.

121. The record in this arbitration proceeding is replete with statements that have been made by the President that are inconsistent with the preservation of the integrity of this proceeding and equally importantly that indicate that the judiciary in Mexico will find it difficult to be impartial, or be seen to be impartial.²¹³

122. Examples of the President, as well as the Tax Prosecutor and the Head of the SAT (now the Minister of Economy), engaging in the public “naming and shaming” media campaign and using the press to publicly brand First Majestic as a [REDACTED]²¹⁴ are as follows:

- a) The harassment began soon after First Majestic filed its Notice of Intent in this arbitration in May 2020. One month later, on June 9, 2020, in his “mañanera,” the President pointed out that “*there are Mining Companies from Canada, initiating proceedings, in International Courts, to fight taxes they owe in Mexico.*”²¹⁵ He then indicated that he had encouraged Canada’s Ambassador to Mexico to try to persuade such companies to avoid such international proceedings. He is quoted as saying “*What are we going to court for? It’s very clear that they have these debts with the SAT. Hopefully they’ll help us to convince them [to pay].*”²¹⁶ [REDACTED] the Claimant’s former Chief Financial Officer, has in his witness statement indicated that it was clear that the President was addressing the fact that First Majestic had served the Government of Mexico with a Notice of Intent in May, 2020.²¹⁷

²¹³ See, e.g., Mexican Lawyers Raise Voices to Defend Judicial Independence, Law.com, dated March 18, 2021, C-0022; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 104; Carmen Moran Brena, Lopez Obrador charges against “corruption of judges” to defend informal pre-trial detention, El Pais, dated August 30, 2022, C-0041; Lida Arista, AMLO Recognizes that he did pressure ministers of the Court for prison Preventive, Expansion politica, dated September 6, 2022, C-0042.

²¹⁴ See, e.g., *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶¶ 331-343.

²¹⁵ Pedro Dominguez, AMLO dice que pidió ayuda a Trudeau para que mineras de Canadá paguen impuestos, Milenio, dated June 17, 2020, p. 1 (informal translation), (emphasis added), C-0003, p. 212; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 135, [REDACTED]0000; *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 332.

²¹⁶ AMLO asks Canada to persuade mining company to pay their taxes, Mexico News Daily, dated June 10, 2020, pp. 1-2 (emphasis added), C-0039.

²¹⁷ See Witness Statement of [REDACTED], dated April 25, 2022, ¶ 135, [REDACTED]0000.

- b) At the same mañanera, the President went on to note that several multinationals, including Walmart, Coca-Cola bottler Femsa, and Toyota were paying back what they owed the government. He is quoted as thanking them for paying instead of going to court.²¹⁸
- c) Thereafter, First Majestic became a regular target of the Government’s media campaign. *In early 2021, the SAT Chief, Ms. Buenrostro, intentionally leaked confidential financial information about First Majestic to the press.*²¹⁹ Specifically, on February 1, 2021, a *Reforma* article reported that the “SAT seeks to collect 11 billion pesos from Canadian mining company First Majestic Silver Corp in what it says is a debt for taxes stemming from keeping silver prices artificially low over the past decade.”²²⁰
- d) The next day, on February 2, 2021, *Reforma* reported that “[o]fficials are also redoubling their efforts to ██████████ First Majestic's local unit, Primero Empresa Minera, for ██████████ related to the pricing scheme, even after a judge stayed charging on Thursday.”²²¹
- e) A few weeks later, in an interview with Mr. Carlos Romero, the Tax Prosecutor responsible for handling the case against First Majestic, a reporter posed the following loaded question:

...to explain it [the case] to the people, First Majestic w[as] reporting a cost on the silver artificially so that they could report

²¹⁸ See Daina Beth Solomon, Exclusive: Mexico’s tax chief eyes criminal charges as path to tougher corporate enforcement, Reuters, dated June 9, 2020, **C-0003**, p. 176; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 459.

²¹⁹ *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 334.

²²⁰ See Reuters, Busca SAT cobrar 11 mil mdp a minera canadiense, *Reforma*, dated February 1, 2021, p. 1 (reporting on the *Reforma* article), **RP-0027**; see also Reuters, Mexican tax chief Raquel Buenrostro named as next economy minister, dated October 7, 2022, pp. 1-2, **C-0040**.

²²¹ See Reuters, Busca SAT cobrar 11 mil mdp a minera canadiense, *Reforma*, dated February 1, 2021 (emphasis added), **RP-0027**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 335.

*less income and therefore take more. This mining company basically takes silver from Mexico....*²²²

While Mr. Romero declined to discuss the specifics of the case, his response was clearly slanted against First Majestic:

*...what I can tell you is that any natural or legal person who defrauds the federal treasury can be denounced and in the relevant cases we will not let the issue pass.*²²³

- f) Earlier this year, on February 22, 2022, the President made statements in his *mañaneras* that again indicated, as before, that he had pre-judged the outcome of the litigation pending (at that time) before the Mexican Supreme Court by stating that First Majestic *does not* “*want to pay taxes.*”²²⁴ This presupposes that the company is legally required to do so – a matter still to be resolved under Mexican law and by the Mexican Supreme Court.
- g) The President has throughout the time he has been in his position continued to misuse his position by making statements that are pejorative and injurious to First Majestic and has made it clear that *he expects the Mexican Supreme Court will act with “rectitude”* (a word that carries a moral implication and expectation of righteousness) and rule in accordance with his expectations that PEM will be required to pay the amounts the SAT claims it is owed.²²⁵ He has made clear that

²²² Ni First Majestic ni otras se irán sin pagar lo que le deben al SAT, asegura el Procurador Fiscal, sinembargo, dated April 29, 2021, p. 1 (emphasis added), **C-0003, p. 56**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 336.

²²³ Ni First Majestic ni otras se irán sin pagar lo que le deben al SAT, asegura el Procurador Fiscal, sinembargo, dated April 29, 2021, p. 1 (emphasis added), **C-0003, p. 56**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 1337.

²²⁴ Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 1 (emphasis added), **C-0003, p. 89**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 338.

²²⁵ See Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 1 (emphasis added), **C-0003, p. 89**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Memorial, dated April 25, 2022, ¶ 413.

he does not see why First Majestic is contesting the SAT's position as in his view it is very clear that debts are owed to the SAT.²²⁶

- h) It is also abundantly obvious that by having his appointee, Member Yasmin Esquivel, and the Ministry of Finance and Public Credit, request the Supreme Court of Mexico to hear the dispute, by exercising its “power of attraction” to hear the case, the President interfered with the usual judicial process and has created an expectation that the Mexican Supreme Court (and now the Collegiate Court) will rule in his favor.²²⁷ The President, when he does not get his way, calls out for judges to be investigated, and claims that these judges are supporters of the “elite” and are acting against “the public.”²²⁸
- i) The concern with any statement made by the President, whether against the Claimant or its investment, is that in Mexico the press carries and hyperbolizes these statements and sentiments, unbridled by any of the usual rules of responsible journalism – as noted by Jorge Ramos in his New York Time editorial, the President favors media outlets that support his propaganda and discredits reporters, columnists and media that criticize him.²²⁹ It is therefore to be expected that the Mexican press will amplify and distort any criticisms the President directs at the

²²⁶ See Reuters, Mexican President Urges Canadian Mining Firms to Pay Taxes, The New York Times, dated June 9, 2020, p. 1, **C-0003**, p. 200; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 413.

²²⁷ See Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 1, **C-0003**, p. 89; *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 98.

²²⁸ Mexican Lawyers Raise Voices to Defend Judicial Independence, Law.com, dated March 18, 2021, **C-0022**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 104; Carmen Moran Brena, Lopez Obrador charges against “corruption of judges” to defend informal pre-trial detention, El Pais, dated August 30, 2022, **C-0041**; Lida Arista, AMLO Recognizes that he did pressure ministers of the Court for prison Preventive, Expansion politica, dated September 6, 2022, **C-0042**; *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 194.

²²⁹ See Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, pp. 1-2, **C-0038**.

Mexican Supreme Court or this Tribunal, if it issues a decision that he will not accept.²³⁰

- j) The following is the type of “yellow journalism” that can be expected in the Mexican press, if the President decides to voice his opinion against Mexico’s own courts or this Tribunal’s decision:

Complicated 1Q for First Majestic Silver

By Lorenzo Núñez / Thu, 04/15/2021 - 17:07

First Majestic Silver reports a slight decrease in their 1Q silver production due to ice storms and uncontrollable factors. *In addition, the company’s current tax dispute continues to be filled with controversy after a controversial lawyer was hired to represent them in legal dispute. (sic)*

...

Adding to First Majestic’s rough 1Q, [REDACTED]. The Canadian-based company has started legal proceedings against the Tax Administration Office (SAT). As reported by MBN, First Majestic’s legal advisors reviewed the court’s decision regarding the Advance Price Agreement (APA) annulment and came to the conclusion that the company had made a mistake in the APA request. (sic) The same advisors also concluded there were some irregularities in the procedures, as well as failures to address evidence from legal authorities. (sic) First Majestic has tried multiple times to engage in good faith negotiations with the Mexican government to resolve this dispute, but the administration has refused, according to a press release from the company. First Majestic believes that the government’s actions are contrary to the terms of Advance Price Management. (sic)

First Majestic has hired the Bulgarian lawyer called Stanimir A. Alexandrov who will be representing the company in its dispute with the federal government. (sic) [The sentence that follows is not reproduced as it is offensive to the integrity of this Tribunal]

The data used in this article was sourced from:

²³⁰ See Jorge Ramos, Jorge Ramos: AMLO Is Not Our Boss, Opinion, New York Times, dated April 27, 2019, pp. 1-2, **C-0038**.

- k) The above referenced article is rife with misinformation in almost all respects including the findings of the Mexican courts in relation to the APA which have not found any wrongdoing by PEM in obtaining the APA and meeting its compliance obligations. The article impugns the independence of this Tribunal, and the role of this Tribunal in adjudicating the NAFTA dispute. It references an article in LaJornada as its source – that article is not only wholly inaccurate but extremely odious and even more disrespectful of the integrity of this neutral arbitration process, to the point that we have not reprinted it below.²³² The misinformation concerning the APA could easily have been corrected by referencing the press releases issued by First Majestic in the period before this arbitration was commenced.²³³
- l) Most recently, the Mexican Minister of Economy (previously the Head of the SAT) has been quoted as follows: “they do not want to pay their taxes, because there was a person who worked in the SAT and had a brother who worked in an office, and they gave them an interpretation according to criteria.”²³⁴

123. The Claimant therefore requests that the Tribunal find that there is a real risk that statements by Mexican government officials, including the President, have the likelihood of being highly inaccurate, damaging, impugning the integrity of this arbitration process, disrupting this arbitration proceeding and causing irreparable harm.

²³¹ Lorenzo Nunez, Complicated 1Q for First Majestic Silver, Mexico Business News, dated April 15, 2021, pp. 1-2, **C-0043**; see also Dora Villaneuva, First Majestic Silver contrata a controvertido abogado en disputa discal con Mexico, La Jornada, dated March 15, 2021, p. 1, **C-0044**.

²³² Lorenzo Nunez, Complicated 1Q for First Majestic Silver, Mexico Business News, dated April 15, 2021, p. 2, **C-0043**; see also Dora Villaneuva, First Majestic Silver contrata a controvertido abogado en disputa discal con Mexico, La Jornada, dated March 15, 2021, p. 1, **C-0044**.

²³³ See News Releases: First Majestic Provides SAT Tax Dispute Update, First Majestic, dated September 25, 2020, p. 1, **C-0002**, p. 1076; see also [REDACTED] Witness Statement of [REDACTED], dated April 25, 2022, ¶ 132(r), 134, [REDACTED]0000.

²³⁴ See Sector minero no tributa y es corrupto: Economía, El Economista, dated December 7, 2022, p. 1, **C-0047**.

124. The power that the President has over the Mexican media, his ability to criticize in public *fora* members of the judiciary he disagrees with, and his willingness to influence the highest Court in Mexico by various means including, initially by prolonging the term of the current head of the Court (even though this is unconstitutional) and now seeking to appoint Member Yasmin Esquivel as the new President of the Court even while there are ongoing concerns of conflict of interest and newly emerging information about possible plagiarism while she was at university, are all of concern to the integrity of the current arbitration process.²³⁵

125. Witnesses and experts who have agreed to testify in this arbitration proceeding on behalf of the Claimant have to be protected from both direct and indirect statements that could be made in the future by Mexican government officials, especially the President and the Minister of Economy. This President has been known to accuse tax advisors to foreign companies of being treasonous by claiming that they are acting against the interests of the Mexican state.²³⁶ Such statements have drawn strong protests from the American Bar Association and other international organizations representing lawyers.²³⁷

126. The Tribunal should, in the interest of *preserving the Claimant's rights, for the Tribunal's jurisdiction being made fully effective*, and as well to fully *protect the Tribunal's jurisdiction and the integrity of the current proceedings*, provide for provisional measures prohibiting statements to the Mexican media in relation to the ongoing Mexican Supreme Court proceedings and this international arbitration.

²³⁵ See Mary Beth Sheridan, Lopez Obrador's bid to alter Mexican Supreme Court seen as threat to judicial independence, Washington Post, dated April 27, 2021, pp. 1-3, **C-0045**; see also Candidate to preside over Mexico's Supreme Court is accused of plagiarizing thesis, Mexico Daily Post, dated December 23, 2022, p. 1, **C-0046**.

²³⁶ See, e.g., Letter Regarding Respect For the Rule of Law and the Right to Legal representation, American Bar Association, dated October 20, 2020, pp. 1-2, **MT-0032**; see also *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 135.

²³⁷ See, e.g., Letter Regarding Respect For the Rule of Law and the Right to Legal representation, American Bar Association, dated October 20, 2020, pp. 1-2, **MT-0032**; see also IBA Letter, dated August 27, 2020, **C-0027**.

127. Otherwise, as found by the Tribunal in *Legacy Vulcan*, there is a risk that such statements, which could be made at any time, will aggravate or extend the dispute and render the resolution of the dispute extremely difficult.²³⁸

128. Given the tendency of the President of Mexico, and the vitriol he has exhibited in his *mañaneras* against his critics and perceived enemies, the slightest type of perceived provocation can lead to statements capable of causing irreparable harm.²³⁹ Once the damage is done, it becomes irreparable.

iii. Necessity and Urgency

129. All the provisional remedies requested meet the required elements discussed previously to obtain from this Tribunal the order requested. Furthermore, they are needed urgently.

130. As an example of the existence of urgency for the provisional measures requested, this section deals with the suspension of Collegiate Court proceeding.

131. In *Legacy Vulcan*, in response to the statements being made by the President of Mexico to the public media, the tribunal held that the requirement of “urgency” is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the tribunal makes a final decision in this case.²⁴⁰ Furthermore, in each case of a request for provisional measures, the determination of “urgency” will depend on the matter under consideration.²⁴¹

²³⁸ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 84, **CL-0091**

²³⁹ See, e.g., Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 1, **C-0003, p. 89**.

²⁴⁰ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 84, **CL-0091**.

²⁴¹ See *Legacy Vulcan, LLC v. United Mexican States*, ICSID Case No. ARB/19/1, Procedural Order No. 7, dated July 11, 2022, ¶ 93, **CL-0091**.

132. In the case of the Collegiate Court and its decision on the *amparo* proceeding, it is not known when the matter will come up for a decision by the Court.²⁴² It is however expected that the decision could be made at any time.

133. On the other hand, by now, this international proceeding has advanced to a stage where any decision of the Collegiate Court will be extremely disruptive to the current proceedings and will undoubtedly prolong this arbitration proceeding.

134. The Claimant filed its Memorial on April 26, 2022 and the Respondent filed its Counter-Memorial on November 25, 2022.²⁴³ It is therefore quite likely that this Tribunal will be able to schedule a hearing in the first part of 2024, after the next rounds of filings by the parties in 2023.²⁴⁴ If the Collegiate Court were to render its decision on the *amparo*, the schedule of this Tribunal will be disrupted and considerably prolonged.

135. The Claimant is entitled to have its dispute with the Respondent resolved in a neutral forum by decision makers that are free of any improper influence. Any proceeding and decision of the Collegiate Court at this time will not only be disruptive of the ongoing arbitration proceeding but will *not* bring the dispute to an end. In fact, it will aggravate the dispute.

136. If the Collegiate Court rules against PEM, the Claimant will nevertheless be entitled to continue with this arbitration proceeding, as its NAFTA claims not only encompasses the validity of the APA, but also include the various measures taken and not taken by the Respondent which are in violation of the standards of treatment provided for in Section A of Chapter 11 of NAFTA.²⁴⁵

²⁴² See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 413.

²⁴³ See *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Procedural Order No. 1, dated October 21, 2021, p. 4, **C-0007**.

²⁴⁴ See *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Procedural Order No. 1, dated October 21, 2021, p. 4, **C-0007**.

²⁴⁵ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 6; see also Ch. 11, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

137. Furthermore, the validity of the APA and the process for resolving the dispute extends beyond domestic law and any ruling made by the Mexican Courts. The Tribunal will be able to independently assess the validity of the APA based on its interpretation and application of relevant international treaties, principles of international law and the standards of protection provided for in Chapter 11 of NAFTA.²⁴⁶ In the absence of a stay in the Collegiate Court's proceedings, the Claimant and its investment will suffer irreparable injury resulting from the Collegiate Court decision and its enforcement by the SAT, which will have to be adjudicated by this Tribunal based on a whole new series of filings. It is therefore to be expected that the decision of the Collegiate Court will not only aggravate the dispute, but will also extend the period for the final adjudication of the dispute.

138. Even if the Collegiate Court rules in favor of the Claimant's position in the *amparo* proceeding, the Claimant nevertheless has valid claims for breach of the NAFTA provisions and will continue to seek damages from the Respondent.²⁴⁷

139. It should be recalled that PEM's filing of the *amparo* in the Collegiate Court, before the Request for Arbitration was filed, was based on the necessity of preserving PEM's legal rights and as a defensive measure to challenge the irregular and improper use of the *Lesividad* process initiated in 2015 by the SAT.²⁴⁸ PEM can now seek to have its rights adjudicated by this Tribunal, and therefore seeks to have the Collegiate Court proceedings put in abeyance.

140. The Claimant asks this Tribunal to take note of the fact that the Respondent has not stipulated that the jurisdiction of this Tribunal to adjudicate disputes is subject to exhaustion of local administrative or judicial remedies. The Respondent therefore has no right to insist that the Collegiate Court proceeding be continued, particularly when the *amparo* was filed by PEM as a protective measure.

²⁴⁶ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 344-414.

²⁴⁷ See, e.g., *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 3.

²⁴⁸ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶¶ 92-97.

141. In any case, the Claimant's request is not for the discontinuance of the Collegiate Court process, but that it should be held in abeyance, and therefore it is consistent with the right of the Claimant to seek to preserve the *status quo* and to avoid the exacerbation of this dispute.

iv. Narrow and Specific

142. The requested measures concerning the stay of the Collegiate Court process and the ban against media statements by the President and Mexican government officials have been framed in a narrow and specific manner.

143. The other requested measures including the necessity for the VAT refund payments to be made to PEM and the prohibition against additional enforcement, [REDACTED] [REDACTED] regardless of whether [REDACTED], are equally narrow in their scope and specific in their application. These remaining requested remedies are discussed further below both in relation to how they have been framed and their substantive merits based on the applicable elements to be applied by this Tribunal.

a) VAT Refunds

144. The Claimant, based on the strictures imposed by Article 1134 of NAFTA and other applicable provisions of NAFTA, the ICSID Convention and the ICSID Rules, has limited its request to payment of VAT refunds owed to PEM by SAT that have been deposited into its bank accounts without the authorization of PEM and future VAT refunds that have not been deposited into a frozen bank account.²⁴⁹

145. This request for provisional measures relating only to unauthorized deposit of VAT refunds and future VAT refunds is based on the following grounds:

- a) The Tribunal can issue provisional measures related to actions of the Respondent, such that the Claimant's rights are preserved, that the dispute is not further aggravated, and that the status quo is maintained.

²⁴⁹ See, e.g., See Art. 1134, North American Free Trade Agreement, dated January 1, 1994, **CL-0001**; see also Rule 39, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, CL-0012; Art. 47, ICSID Convention, dated October 14, 1966, **CL-0012**.

- b) The Respondent has not made any assertions or claims with respect to the lack of entitlement of PEM to VAT refunds.
- c) The dispute as between the Claimant and the Respondent concerns the years 2010 to 2014, and whether the APA should continue to apply for the determination of transfer pricing and therefore the amount of income potentially taxable in Mexico.
- d) The SAT has in no way suggested that there is a connection between the potential income tax liability owing for those years, and the entitlement of PEM to obtain refunds for the VAT paid on its input (whether in the past or into the future).

146. The Respondent is aggravating the dispute by having these sums of money deposited into an account that has been seized without the authorization of PEM or in an account that PEM cannot access. These funds are urgently needed to carry out the operations of the San Dimas Mine.

147. In the absence of the provisional measures for the VAT refunds payable to PEM, the Respondent is effectively denying PEM monies to which it is entitled and over which the SAT has no right to withhold.

b) Enforcement, Investigations, and Proceedings

148. The Claimant also requests provisional measures requiring the Respondent to maintain *status quo* and to allow the Claimant and PEM to maintain and operate the San Dimas mine without being subject to (i) additional enforcement measures, whether [REDACTED] (ii) additional tax investigations, audits and reassessment inconsistent with the methodology provided for in the APA; and (iii) threat of [REDACTED] against management personnel of the Claimant and the Mexican subsidiaries including in relation to settlement offer made to the Respondent (whether or not in compliance with Mexican law formalities).

149. The principal basis for the request for these provisional measures is also grounded in the necessity of avoiding exacerbating the dispute during the limited period while this Tribunal is in the process of resolving the NAFTA Chapter 11 arbitration, and to avoid further injury to PEM's operations.

150. While the APA remains valid,²⁵⁰ and this arbitration proceeding is almost at the stage where each of the parties will have filed its first round of Memorials, it would be highly disruptive should the Respondent take further unlawful measures against the Claimant, its investment and the management personnel of both these legal entities.

151. The taking of any further enforcement actions will not only be abusive of both the Mexican legal and judicial process, but it will also bring into question Mexico's acceptance of the neutrality, fairness, and integrity of this arbitration process. Mexico has agreed by signing on to NAFTA and the ICSID Convention, that this Tribunal can best provide for a resolution of this dispute based on the application of international law. Canadian investors and their investments have an entitlement to rely on Mexico's commitment to resolve disputes under NAFTA and the ICSID Convention, if they seek to do so to the exclusion of the domestic legal processes.

152. The Respondent should therefore not be permitted, by taking additional collection and enforcement actions, to disrupt these proceedings. The Tribunal should be allowed to render its final award without having to contend with the complexities that can be expected to arise in the resolution of the existing dispute before the Tribunal from new measures being taken by the Respondent.

VI. REQUESTED RELIEF

153. The Claimant requests this Tribunal to take into consideration the foregoing evidence and legal grounds, when making its decision on the following provisional measures that have been requested:

- a) The suspension or stay of the proceedings pending before the Collegiate Court, in relation to the *amparo* relief requested by PEM from the Collegiate Court.
- b) Requiring the SAT and any other authority working in conjunction with the SAT, to refrain from:

²⁵⁰ See *First Majestic Silver Corp. v. Government of United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022, ¶ 99.

- i. undertaking any additional enforcement measures, whether ██████ against the Claimant and its investment (and the assets of the investment);
 - ii. undertaking any further tax audits and issuing any additional tax reassessments based on any methodology other than provided for in the APA issued in 2012; and
 - iii. initiating any proceedings, whether ██████ against the management personnel of the Claimant and its investment, whether in Mexico or residing outside the country, and whether currently or previously employed, in relation to the measures currently under adjudication before this Tribunal and also any settlement offer made to the Respondent (whether or not in compliance with Mexican law formalities) offers made by PEM.
- c) Requiring the SAT to make all payments of VAT refunds owed to PEM after the filing of the Request for Arbitration and all future VAT refund payments into a newly opened bank account of PEM that will remain free from SAT's seizure or freezing order; and
 - d) maintaining strict confidentiality of the arbitration proceeding such that no written or other media statements are made by the President of Mexico and any other Mexican government official, concerning the arbitration proceedings or the legal dispute with First Majestic and its investment.

154. The provisional measures should remain effective until the rendering of the final award by this Tribunal, unless the Tribunal of its own accord or at the request of one of the parties, decides to amend or terminate in whole or in part the order providing for the provisional measures.

155. The Claimant hereby reserves the right to seek interim relief during the period of time until the Tribunal has made a decision on this request for provisional measures, to amend its provisional measures request while this matter is under consideration by the Tribunal, and such additional provisional measures as may become necessary in the future.

156. Finally, the Claimant will address the Tribunal on the matter of costs of this request at a time when the Tribunal considers it appropriate.

Date: January 4, 2023

Respectfully submitted,



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