

**INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES**

LION MEXICO CONSOLIDATED LP
Claimant

v.

UNITED MEXICAN STATES
Respondent

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

PROCEDURAL ORDER NO. 3

Members of the Tribunal

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

Secretary of the Tribunal

Anneliese Fleckenstein

Assistant to the Tribunal

Luis Fernando Rodríguez

June 30, 2017

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1. This Procedural Order sets the calendar for the jurisdictional phase of this arbitration.

1. PROCEDURAL BACKGROUND

2. On April 4, 2017, Mexico filed the “*Solicitud de bifurcación y síntesis de las excepciones jurisdiccionales*” [the “**Request for Bifurcation**”]. Mexico raised two objections to the Tribunal’s jurisdiction under Art. 45(2) ICSID Additional Facility Rules.
3. Lion submitted its Response to Mexico’s Request for Bifurcation on May 4, 2017, opposing the request and demanding that Mexico’s objections to jurisdiction be heard together with the merits of the dispute¹.
4. In its Decision on Bifurcation, of May 29, 2017, the Tribunal decided to bifurcate the proceedings in respect of only one of the two objections, namely: that the Tribunal lacks jurisdiction *ratione materiae* because Lion did not make an investment in Mexico within the terms required by Arts. 1101 and 1139 NAFTA².
5. The Tribunal asked the Parties to confer and submit, by June 7, 2017, a joint proposal of a procedural calendar for this jurisdictional phase. Otherwise they were each requested to submit simultaneously their own proposals on June 14, 2017.
6. Lion and Mexico were unable to agree on a joint proposal and so, on June 14, 2017, each Party submitted its own position on the calendar.
7. The procedural calendar established as Annex A to Procedural Order No. 1 provides that, in case of bifurcation, the Tribunal “shall establish a separate calendar for the exchange of pleadings on jurisdiction after consultation with the Parties”. In accordance with such provision, and after examining the Parties’ submissions, the Tribunal hereby issues the procedural calendar for the jurisdictional phase.

2. THE PARTIES’ POSITIONS

8. The following chart shows each Party’s proposals for the timetable to be observed during the jurisdictional phase:

	Lion’s proposal	Mexico’s proposal
Respondent’s Memorial on Jurisdiction	2 months after the starting date	11 weeks after the starting date

¹ Response to Mexico’s SdB, para. 68.

² SdB, paras. 5 and 7–9.

Claimant's Counter-Memorial on Jurisdiction	2 months later	11 weeks later
Respondent's Reply on Jurisdiction	1 month later	6 weeks later
Claimant's Rejoinder on Jurisdiction	1 month later	6 weeks later
NAFTA Article 1128 Submissions	No time should be allocated.	2 weeks later
Parties' Comments to NAFTA Article 1128 Submissions	No time should be allocated.	2 weeks later
Hearing	Thereafter	No earlier than 8 weeks later
Tribunal's Decision	Thereafter	To be determined by the Tribunal

9. The next sections describe the Parties' positions and the Tribunal's decision on each issue.

3. TIME LIMITS FOR THE EXCHANGE OF PLEADINGS

10. Lion and Mexico agree on having two rounds of pleadings for the jurisdictional phase.

11. Lion asks for two months for the submission of each pleading during the first round and one month for the submission of each pleading during the second round. Rather, Mexico suggests 11 weeks per pleading for the first round and six weeks per pleading for the second round.

12. The Tribunal has decided to accept the proposal of Lion regarding the time limits for these pleadings.

13. Two months per pleading for the first round and one month per pleading for the second one should give the Parties enough time to prepare their cases, for the following reasons.

14. First, the jurisdictional phase deals with only one objection; its scope is self-contained and clearly limited as per the Decision on Bifurcation. The objection is not intertwined with the merits of the dispute.

15. Second, this is not the first time the Parties address this specific issue. The Parties already discussed it at the outset of the arbitration, after Mexico submitted a preliminary objection under Article 45(6) ICSID Arbitration (AF) Rules. In

dismissing the objection, the Tribunal remarked the length and complexity of the submissions made by the Parties³:

“Both Mexico and Lion have made extensive submissions and have marshalled significant evidence and legal authority in support of their respective positions. Lion’s submissions cover almost a hundred pages, accompanied by over 130 legal exhibits, on the legal characterization of *hipotecas* and *pagarés* as investments according to NAFTA and international law; Mexico’s submissions, shorter than those of Lion, include, quote, and cite to a similar wealth of legal authorities and case law”.

16. Therefore, much of the work must be already done.
17. Third, shorter time periods – as proposed by Lion – seem to be more proportionate within the general timeline of this arbitration. The Main Calendar (which deals with the merits) foresees three months for the first round of pleadings and two months for the second one (*see* Annex A to Procedural Order No. 1).
18. For the foregoing reasons, the Tribunal grants two months to each Party to submit the first round of pleadings and one month to each Party to submit the second round. These time periods will run since the date of the present Order, as set out in its Annex I below.

4. SUBMISSIONS UNDER ART. 1128 NAFTA

19. Mexico suggests allocating two weeks after the submission of Lion’s rejoinder for NAFTA governments to make submissions under Art. 1128 NAFTA, followed by other two weeks for the Parties to comment on these submissions.
20. Lion opposes this suggestion.
21. Art. 1128 NAFTA allows the signatories to make submissions whenever they wish:

“On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement”.

22. The language of the provision does not limit this right of the signatory countries to certain stages of the proceedings. However, such right must be balanced against the Tribunal’s duty to conduct an orderly and efficient proceeding and the Parties’ due process rights. In addition, para. 26.1 of the Procedural Order No. 1 provides that “[t]he Tribunal will decide on how to address any *amicus curiae* or Non-Disputing Party request after hearing the parties”.

³ Para. 78 of the Decision on the Respondent’s Preliminary Objection under Art. 45(6) of the ICSID Arbitration (Additional Facility) Rules, of December 12, 2016.

23. An untimely receipt of Art. 1128 NAFTA submissions may unreasonably disrupt the good management of these proceedings, to the detriment of the Parties. In order to accommodate all actors' interests, the Tribunal hereby sets the following deadlines:
- The Tribunal will admit any submission under Art. 1128 NAFTA at any time during the bifurcation proceedings, but in any case **no later than 2 weeks after the Rejoinder on Jurisdiction.**
 - Each Party may submit comments to any submission under Art. 1128 NAFTA **within the 2 weeks after it was received.**

5. HEARING

24. Lion and Mexico agree on holding a hearing before the Tribunal renders its decision on jurisdiction.
25. Mexico wants the hearing to take place at least eight weeks after the last submission by a party. Lion has not expressed any preference.
26. After checking the Parties' and Tribunal's availability, the date of the hearing is hereby scheduled for **February 19 and 20, 2018 (with February 21, 2018, reserved** in case the hearing lasts longer than expected).
27. Considering the scope and nature of the objection, a two-day hearing should be enough for the Parties to make their allegations and present all relevant evidence.

6. VENUE OF THE HEARING

28. The Parties have not agreed or suggested the venue for the hearing on jurisdiction. Thus the Tribunal kindly requests them to confer and agree on a venue **by July 20, 2017**, or to submit simultaneously their positions on the issue by **July 27, 2017**. Afterwards the Tribunal will make a decision in accordance with paras. 11.2 and 22.2 of the Procedural Order No. 1.

7. OPTING OUT OF THE BIFURCATED PROCEEDINGS

29. As already set out in the Decision on Bifurcation, the Tribunal may decide at any time after the presentation of the last submission on the jurisdictional issues to join the jurisdictional issues to the merits and decide on both issues in the same award.
30. If the Tribunal decides to opt out of the bifurcated proceedings, the case will continue in accordance with the calendar for the merits phase. If the Tribunal decides not to opt out of the bifurcated proceedings, it shall issue an Award on Jurisdiction.

8. SUSPENSION OF THE MAIN CALENDAR

31. The Tribunal reminds the Parties that – as Annex A to PO No. 1 provides – during the jurisdictional phase “the proceedings on the merits shall remain suspended until the Tribunal decides otherwise”.

On behalf of the Arbitral Tribunal,

[Signed]

Juan Fernández-Armesto
President of the Arbitral Tribunal

ANNEX I

PROCEDURAL CALENDAR
FOR THE JURISDICTIONAL PHASE

Procedural action	Party required to act	Deadline
Memorial on Jurisdiction	Respondent	August 29, 2017 (+2 months)
Counter-Memorial on Jurisdiction	Claimant	October 30, 2017 (+2 months)
Reply on Jurisdiction	Respondent	November 29, 2017 (+1 month)
Rejoinder on Jurisdiction	Claimant	December 29, 2017 (+1 month)
Deadline for NAFTA Article 1128 Submissions (if any)	NAFTA signatories	At any time during the proceedings, but in any case no later than 2 weeks after the Rejoinder on Jurisdiction
Parties' Comments to any NAFTA Article 1128 Submissions	Both Parties	2 weeks after any NAFTA submission
Pre-Hearing Conference	Both Parties and Tribunal	About a month before the hearing. (The exact date and time will be set at a later stage)
Hearing	Both Parties and Tribunal	February 19 and 20, 2018 [with February 21, 2018, in reserve]
Decision	Tribunal	Two months later.