

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

Lion Mexico Consolidated L.P.

v.

United Mexican States

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

PROCEDURAL ORDER NO. 5

(on the Organization of the Hearing on Jurisdiction)

Members of the Tribunal

Juan Fernández-Armesto, President of the Tribunal

David J.A. Cairns, Arbitrator

Laurence Boisson de Chazournes, Arbitrator

Secretary of the Tribunal

Anneliese Fleckenstein

Assistant to the Tribunal

Luis Fernando Rodríguez

Washington D.C., March 2, 2018

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A. Background

1. This procedural order addresses the organization of the hearing on jurisdiction in this case [the “**Hearing**”], and is a revised and updated version of Procedural Order No. 4.
2. Subject to the terms of this order, the Hearing shall otherwise be conducted in accordance with the applicable provisions of Procedural Order No. 1 and the other directions by the Tribunal.
3. On January 4, 2018, the Tribunal circulated a first draft of Procedural Order No. 4, requesting the Parties to confer and submit by January 18, 2018, (i) a joint version, reflecting the points and language agreed upon and—where applicable—each Party’s suggested wording on those points they had not agreed upon; and (ii) each Party was invited to submit a brief with its position on those points that had not been agreed, for the Tribunal’s consideration.
4. On January 22, 2018, at 11:00 a.m. EST the Tribunal and the Parties held a pre-hearing conference call to discuss the draft and any outstanding procedural, administrative, and logistical matters in preparation for the Hearing, pursuant to Section 21.1 of Procedural Order No. 1.
5. On January 23, 2018, the Tribunal issued Procedural Order No. 4, on the organization of the hearing.
6. On January 25, 2018, Mexico-appointed arbitrator Ricardo Ramírez Hernández tendered his resignation. The following day, arbitrators Juan Fernández-Armesto and David J.A. Cairns considered the reasons for and consented to his resignation under Art. 14(3) ICSID Arbitration (AF) Rules. By communication of the same date the Secretary of the Tribunal notified the Parties of the resignation and the vacancy on the Tribunal, and of the suspension of the proceedings until Mexico appointed another arbitrator, pursuant to Art. 16(2) ICSID Arbitration (AF) Rules.
7. On February 2, 2018, Mexico designated Prof. Laurence Boisson de Chazournes as arbitrator, in accordance with Art. 1123 NAFTA and Art. 17(1) ICSID Arbitration (AF) Rules.
8. On February 6, 2018, Prof. Boisson de Chazournes accepted the appointment and submitted her declaration under Art. 13 ICSID Arbitration (AF) Rules. The same day the proceedings resumed.
9. On February 19, 2018, the Parties agreed to reschedule the Hearing for March 22 and 23, 2018.
10. On February 28, 2018, ICSID notified the Parties and the non-disputing NAFTA Parties of the new dates, time, and venue for the Hearing.

11. Following this notification, the Tribunal now issues this PROCEDURAL ORDER NO. 5, updating the contents of Procedural Order No. 4 with the new dates, times, and venue for the Hearing.

B. Hearing Dates and Location

12. Pursuant to Section 11 of the Procedural Order No. 1 and ICSID communications of February 20 and 28, 2018, the Hearing will take place on **March 22 and 23, 2018**, at the **Conference Room I 2-220 (2th Floor) of the World Bank I Building located at 1850 I Street NW**, Washington, D.C. As pointed out in para. 27 of Procedural Order No. 3, “a two-day hearing should be enough for the Parties to make their allegations and present all relevant evidence.”
13. Further logistical details including setup, entry passes, room assignment, internet connection and catering will be provided by the Secretary of the Tribunal in due course.

C. Attendance

14. Pursuant to Section 22.6 of Procedural Order No. 1, the Hearing will be closed to the public; however, provisions shall be made for representatives of the non-disputing NAFTA Parties that formally request to attend the Hearing.
15. The Parties shall provide the names and affiliations of all representatives who will attend the Hearing, including Parties’ counsel and representatives, by **March 8, 2018**. ICSID will circulate a draft table for that purpose in due course.

D. Examination of experts and witnesses

16. On January 15, 2018, each Party provided to the opposing Party, with a copy to the Tribunal, the names of witnesses and experts whose statement or report has been submitted by the other Party with the request that they be available for cross-examination at the Hearing. Claimant notified it did not wish to call any witnesses or expert proposed by the Respondent. Mexico called Mr. Rodrigo Zamora Etcharren, Claimant’s expert on Mexican law.
17. On January 19, 2018, Claimant filed its Rejoinder on Jurisdiction. It attached a third report prepared by Mr. Zamora.
18. At the January 22 pre-hearing conference, Mexico asked to call its own expert, Mr. René Irra Ibarra, to the Hearing, on grounds that Claimant’s third expert report introduced new arguments. After hearing the Parties, the Tribunal grants this request. Mr. Irra’s examination will be centered on the new arguments

introduced in Mr. Zamora's third report. Mr. Zamora may be present at Mr. Irra's examination.

19. The rules regarding the examination of experts are set out in Section 20 of Procedural Order No. 1. In particular, the Tribunal will control the examination of both experts and might ask questions to both experts simultaneously.

E. Allocation of Time

20. Each Party shall have a total time allocation for the Hearing of no more than 5.5 hours, inclusive of opening statements, closing statements, and witness examination.
21. The Tribunal shall have a total time allocation for questions and procedural issues of no more than 4 hours.
22. In the interest of time, each Party shall be afforded up to 45 minutes to present its opening submission. With the Tribunal's approval, the rest of the time available to each Party can be freely allocated as the Party considers it appropriate within the total allocation of time set above.
23. The Tribunal Secretary will keep track of time using a chess clock method.

F. Tentative Schedule

24. The daily schedule of the Hearing shall be as follows:
 - Start: 9:30 a.m.
 - Breaks: mid-morning and mid-afternoon, each 15 minutes in duration.
 - Lunch: around 1:00 p.m., from 60 to 90 minutes in duration.
 - End: no later than 6:00 p.m.
25. The tentative hearing schedule for **Thursday, March 22** (day 1), will be as follows:
 - Welcome and procedural issues (15 min.)
 - Opening statement by the Respondent (45 min. max.)
 - Break (15 min.)
 - Opening statement by the Claimant (45 min. max.)
 - Break (15 min.)

- Examination of Experts (beginning with Respondent’s Expert)
 - Lunch (60–90 min.)
 - Examination of Experts (continuation)
 - Break (15 min.)
 - Examination of the Experts (continuation)
 - Break (15 min.)
 - Examination of the Experts (continuation)
 - Questions of the Tribunal, if any.
26. The tentative hearing schedule for **Friday, March 23** (day 2), will be as follows:
- Procedural issues (15 min.)
 - Closing statement by the Respondent (90 min.)
 - Break (to be determined by the Tribunal)
 - Closing statement by the Claimant (90 min.)
 - Lunch (60 min.)
 - Questions of the Tribunal (60 min.)
 - Break (15 min.)
 - Questions of the Tribunal (60 min.)
 - Final procedural issues (30 min.)

G. Hearing Materials

27. The rules regarding additional documents and new evidence are set out in Section 18 of Procedural Order No. 1.
28. The rules regarding demonstrative exhibits are set out in Section 18.7 of Procedural Order No. 1. For ease of reference, the Parties are reminded that “demonstrative exhibits (such as PowerPoint slides, charts tabulations, etc.) may be used at any hearing, provided they contain no new evidence.”
29. The Parties shall number its demonstrative exhibits consecutively as CH-1, CH-2, etc., (for Claimant) or RH-1, RH-2, etc. (for Respondent). Demonstrative exhibits must indicate from which legal authorities or documentary exhibits they are derived.

30. The Party submitting such exhibit shall provide them in hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the Assistant to the Tribunal, the court reporter(s) and the interpreter(s) at the Hearing immediately prior to the respective presentation for which it is used.
31. Sufficient copies of cross-examination bundles (exhibits or legal authorities on the record to which the witness or expert is to be referred) are to be provided immediately before the cross-examination.

H. Hearing Equipment

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

I. Interpretation

34. Pursuant to Section 12 of Procedural Order No. 1, the Hearing will be conducted in Spanish and English. There shall be simultaneous Spanish-English and English-Spanish interpretation throughout the Hearing.
35. The Parties will notify by **March 8, 2018**, which witnesses or experts require services of interpretation.
36. In accordance with Section 12.9 of Procedural Order No. 1, the costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

J. Records of the Hearing

37. Pursuant to Section 23 of Procedural Order No. 1, sound recordings will be made of the Hearing as well as *verbatim* transcripts in the two procedural languages.
38. ICSID has made arrangements to have English and Spanish verbatim transcripts available in real-time using Live Note or a similar software during the Hearing.
39. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
40. The Parties shall agree on any corrections to the transcripts within 30 days. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement

between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

41. The original language (non-translated) version of the transcript will be the only authoritative transcript for use in any other subsequent pleading or presentation.

On behalf of the Tribunal,

[Signed]

Juan Fernández-Armesto
President of the Tribunal
Date: March 2, 2018