

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

B-Mex, LLC and others

v.

United Mexican States

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

PROCEDURAL ORDER NO. 11

Members of the Tribunal

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

Secretary of the Tribunal
Ms. Natalí Sequeira, ICSID

5 April 2021

1. In a letter dated 4 April 2021, Mr Taylor requested the Tribunal to (i) “clarify Procedural Order Number 9 by ordering [QE] [to] immediately provide me with all documents responsive to Respondent’s request” (emphasis added), and (ii) “allow an additional week for [his] review” of the documents identified as responsive by QE.
2. The Tribunal grants Mr Taylor’s application only in part, for the reasons set out below.
3. As explained in PO9, the Tribunal’s directions set out therein were necessitated by an application for urgent interim relief by the QE Applicants relating to a disagreement between the QE Claimants and Mr Taylor regarding documents in the possession of Mr Taylor which the QE Claimants asserted should be excluded from production to the Respondent on the basis that they were (i) not responsive and/or (ii) privileged or confidential to the QE Claimants.
4. In addressing that application, the Tribunal ruled that while the QE Claimants could not prevent Mr Taylor from producing documents in his possession that they considered not to be responsive, they were “entitled to claim the protection of privilege or confidentiality” attaching to any such documents in his possession, within the bounds of Article 9.2 of the IBA Rules.
5. The Tribunal’s directions in paragraph 9(d) of PO9 should be understood with that context in mind: PO9 was concerned with documents in Mr Taylor’s possession which he regarded as responsive to the Respondent’s requests but the QE Claimants (but not Mr Taylor) regarded as privileged or confidential to them. The directions in paragraph 9(d) of PO9 should therefore not be construed as requiring the QE Claimants to produce to Mr Taylor documents that are not in his possession and that they claim to be privileged or confidential to them (or vice versa).
6. To avoid any doubt, paragraph 9(d) of PO9 is to be understood as requiring the parties to proceed as follows:
 - a. Mr Taylor produces to the QE Claimants all the documents he regards as responsive to the Tribunal’s order in PO10, save insofar as he claims any such documents are privileged to him, in which case Mr Taylor must

identify those documents for the QE Claimants in a privilege/confidentiality log but not produce them.

- b. The QE Claimants produce to Mr Taylor all the documents they regard as responsive to the Tribunal's order in PO10, save insofar as they claim any such documents are privileged to them, in which case the QE Claimants must identify those documents for Mr Taylor in a privilege/confidentiality log but not produce them.
- c. The QE Claimants and Mr Taylor compile a joint privilege/confidentiality log that includes (i) all the documents identified by either of them in their respective privilege/confidentiality logs exchanged as per 6(a) and (b) above and (ii) any documents which one of them proposes to produce to the Respondent but which the other one regards as privileged or confidential. Where the QE Claimants and Mr Taylor disagree over a claim of privilege/confidentiality by the other, they should so indicate in the joint privilege/confidentiality log.
- d. By 19 April 2021,
 - i. the QE Claimants and Mr Taylor jointly produce to the Respondent the aggregate of the responsive documents previously exchanged between them as per 6(a) and (b) above, excluding all documents that either of them has identified as privileged or confidential in the joint privilege/confidentiality log as per 6(c) above;
 - ii. the QE Claimants and Mr Taylor jointly produce to the Respondent the joint privilege/confidentiality log prepared as per 6(c) above;
 - iii. the Respondent produces to the QE Claimants and Mr Taylor the documents responsive to the Tribunal's order in PO10, save insofar as it claims privilege or confidentiality over them; and
 - iv. the Respondent produces to the QE Claimants and Mr Taylor its privilege/confidentiality log.

7. To accommodate the extension granted in 6(d) above, the time limit set out in paragraph 9(e) of PO9 is amended to 28 April 2021. All the subsequent time limits continue unaltered.
8. The Tribunal trusts that these directions will provide the Claimants with the granular detail that will now enable them to engage with each other in a constructive manner and avoid the need for further intervention by the Tribunal.
9. The decision on costs is reserved.

A handwritten signature in black ink, appearing to read 'G. Verhoosel', is written over a horizontal line. The signature is enclosed within a rectangular frame defined by vertical lines on the left and right sides.

Dr. Gaëtan Verhoosel
On behalf of the Tribunal
Date: 5 April 2021