

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. 14

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

June 10, 2021

1. The Tribunal addresses three matters in this Procedural Order: (A) amendments to the Procedural Timetable necessitated by recent developments; (B) the parties' disagreement over the date by which the QE Claimants were to produce to the Respondent the documents of which production was ordered in Annexes A and B to Procedural Order No. 13 (*PO13*); and (C) the Privilege Expert process.

A. Amendments to the Procedural Timetable

2. The Tribunal refers to the communications from Mr. Taylor and the Respondent dated 7 and 9 June 2021 respectively, commenting on the QE Claimants' proposal that the privilege review and any production relating to the additional 2,008 documents identified by Mr. Taylor as responsive to the Respondent's document production requests (the *Second Taylor Batch*) be postponed until after the Claimants file their Reply submissions.
3. Mr. Taylor opposes the QE Claimants' proposal on the basis that he intends to file a Reply and must have sight of the QE Claimants' final production before he can file that Reply. The Respondent opposes the QE Claimants' proposal on the basis that the resultant delay in the QE Claimants' production will breach principles of procedural fairness, as its time to review and process the QE Claimants' production prior to the filing of its Rejoinder will be significantly reduced.
4. The Tribunal has been keen to avoid invasive changes to the Procedural Timetable, and in particular a rescheduling of the hearing. But the complications that have arisen from the Second Taylor Batch have breached the levees and have left the Tribunal with no choice. Those complications require changes that cannot be accommodated within the current Procedural Timetable. While procedural efficiency and celerity is of paramount importance, it cannot be allowed to compromise due process. The Tribunal also agrees with the Respondent that any disputes relating to the Second Taylor Batch should be resolved before the parties resume their briefing.
5. For the foregoing reasons, the Tribunal fixes the revised Procedural Timetable set out in Annex A, which leads to a hearing during the first quarter of 2022 and supersedes the dates set out in paragraphs 11 to 13 of PO13 and other Procedural Orders to the contrary.

Should any particular date in the revised Procedural Timetable cause undue hardship to a party, it may address the Tribunal after first seeking leave to that effect.

6. Assuming the parties remain of the view that prudentially two weeks of hearing time should be reserved, the Members of the Tribunal can offer the weeks of 14 and 21 March 2022. The parties are directed to confirm whether they too can accommodate those dates by COB 15 June 2021.

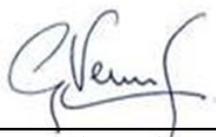
B. Time limit for production by the QE Claimants ordered by PO13

7. The Tribunal did two things in PO13: (i) in paragraph 2 of, and Annexes A and B to, PO13, the Tribunal ordered the QE Claimants to produce certain documents for which their privilege claim was rejected or upheld in part; and (ii) in paragraphs 7 to 14 of PO13, the Tribunal referred certain contested privilege claims—referred to in PO13 with the defined term *Outstanding Privilege Claims*—to the Privilege Expert.
8. As regards (i), the Tribunal did not expressly indicate by when the QE Claimants had to produce the documents. In paragraph 9(g) of Procedural Order No. 9, however, the Tribunal had provided for 7 days to produce “all documents listed in [the parties’ privilege] logs for which the Tribunal has not upheld the privilege or confidentiality claim”. PO13 stated no intent to depart from that direction. The QE Claimants’ view that those documents only had to be produced by 9 July 2021 is incorrect: the 9 July time limit was expressly stated in PO13 to apply to their production of the documents that are the subject of the Outstanding Privilege Claims.
9. The Tribunal therefore directs the QE Claimants to produce the documents of which production was ordered in Annexes A and B to PO13 forthwith, and in any event within 7 days from this Procedural Order.

C. Privilege Expert

10. The Tribunal encloses the Terms of Reference executed by Mr. Sharpe and the Tribunal. The parties will note that Mr. Sharpe will charge an hourly rate of US\$ 350/hour. The Tribunal Secretary will contact the parties to coordinate execution by their representatives of the same.

11. As reflected in the revised Procedural Timetable in Annex A, the Tribunal envisages that Mr. Sharpe will issue a single report regarding all the Outstanding Privilege Claims, including any such privilege claims as may be asserted regarding the Second Taylor Batch and may be referred by the Tribunal in the future. However, as a practical matter, Mr. Sharpe will immediately commence his work regarding the presently Outstanding Privilege Claims.



Dr. Gaëtan Verhoosel
On behalf of the Tribunal
Date: 10 June 2021