

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. 19

Members of the Tribunal

Dr. Gaëtan Verhoosel, President

Prof. Gary Born, Arbitrator

Prof. Raúl Emilio Vinuesa, Arbitrator

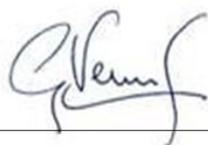
Secretary of the Tribunal

Ms. Natalí Sequeira, ICSID

7 January 2022

1. On 6 December 2021, the Respondent wrote to the Tribunal challenging the QE Claimants' decision not to produce (in whole or in part) 20 separate documents (the *Challenged Documents*).
2. According to the Respondent, the QE Claimants did so on the basis that those documents (or parts thereof) were subject to inconsistent rulings. Specifically, each of the Challenged Documents was ordered to be produced subject to redactions, while one or more duplicates (including duplicates of certain parts) were ordered to be withheld from production.
3. On 10 December 2021, the QE Claimants explained that they had adopted "the more conservative privilege ruling for all copies of the same document, as this was the only way to give meaning and effect to the Tribunal's privilege rulings".
4. On 15 December 2021, the Tribunal wrote to the parties observing that: (i) in each instance, the Privilege Expert, who had assessed a total of 428 privilege log entries, had determined both that privilege attached only in part to a Challenged Document and that privilege attached in full to one or more duplicates (including duplicates of certain parts) of the Challenged Document; and (ii) the Challenged Documents and their duplicates were not expressly identified as such in the Claimants' second joint privilege/confidentiality log and the descriptions of the Challenged Documents and their duplicates were not identical, thus providing the Tribunal with no means to independently determine the existence of the discrepancies. The Tribunal proceeded to invite the Privilege Expert to clarify his observations in respect of the Challenged Documents and their duplicates and indicated that it would then revisit its previous orders.
5. On 17 December 2021, the QE Claimants confirmed that they had provided the Privilege Expert with the Challenged Documents and their duplicates, and the list of such documents. The QE Claimants also clarified that not all of the Challenged Documents were withheld from production in full as some of the duplicates were only duplicates of parts of the Challenged Documents.
6. On 23 December 2021, the Privilege Expert provided his clarifications (the *Clarifications*).

7. The Tribunal has carefully reviewed the Clarifications and the updated report by the Privilege Expert dated 29 October 2021 (the *Privilege Expert Report*).
8. In the annex to this Procedural Order, the Tribunal sets out its revised rulings in respect of certain privilege claims in the Claimants' second joint privilege/confidentiality log. The Tribunal's rulings in respect of these privilege claims as set out in previous Procedural Orders are deemed revised accordingly. Insofar as the Tribunal's assessment of the Privilege Expert's Clarifications called for no changes to its rulings, those rulings have not been reiterated in the annex.
9. The Tribunal's decision on costs relating to the disclosure phase is reserved.



Dr. Gaëtan Verhoosel
On behalf of the Tribunal
Date: 7 January 2022