

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. 21

Organization of the Hearing

Members of the Tribunal

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

Secretary of the Tribunal

Ms. Natalí Sequeira, ICSID

17 June 2022

I. INTRODUCTION

1. The present Order sets out the procedural rules that the Parties have agreed and/or the Tribunal has determined will govern the conduct of the hearing.

II. ORGANIZATION OF THE HEARING

A. Dates and Venue

2. Pursuant to the Tribunal's letters of 28 June 2021 and 12 May 2022, the hearing is scheduled to run over ten days, from 5 to 14 July 2022, with a rest day on Sunday 10 July.
3. The Tribunal considers that the current conditions relating to the COVID-19 pandemic are such that, absent special medical conditions precluding international travel by a particular participant, they should not impede an in-person hearing in Washington D.C. The hearing will therefore take place in person at the ICSID facilities located at 1225 Connecticut Avenue, Washington D.C. 20036 NW, subject to the arrangements detailed in **Annex B**.
4. Should in-person attendance by any Active Participant (as defined in Section 37 below) be precluded by special medical conditions, a Party shall promptly apply to the Tribunal for permission for their remote participation.
5. As regards the remote appearance of witnesses:
 - a. Messrs Avi Yanus and John Conley will testify remotely by videoconference due to special medical conditions
 - b. Mr. Rudden will testify remotely by telephone due to the restrictions applicable to him at the Leavenworth penitentiary facility.
 - c. Ms. Marcela González Salas will testify in person. No cause has been shown for Ms. González Salas, who is a key witness for the Respondent, to appear remotely. A busy work schedule is not sufficient cause, especially where the dates of the hearing have been reserved for a very long time. No special medical circumstances have been suggested that could preclude air travel by Ms. González Salas from Mexico City to Washington DC, and it is uncontroverted that Ms. González Salas in recent times has

regularly travelled by air. The Parties are therefore directed to fix a date in the hearing timetable for Ms. Salas to be examined in-person, taking into account the Respondent's most recent proposal of 8 or 9 July.

- d. The Respondent advised the Tribunal and the Claimants for the first time at the CMC that Mr. García Hernández will likely have to testify remotely due to his inability timely to secure a US visa. The Tribunal notes that it has not been provided with information as to whether and when Mr. García Hernández initiated the process for obtaining the requisite US visa. The Respondent is directed to inform the Tribunal and the Claimants by COB 22 June as regards: (i) whether Mr. García Hernández has applied for a visa; (ii) if so, when he has applied for a visa; and (iii) what, if any, efforts have been made and steps have been taken by the competent authorities of the Respondent with the competent US immigration and consular authorities to secure a visa for Mr. García Hernández.
6. As provided in Section 19.6 of Procedural Order No. 1, each Party shall be permitted to use the time allocated to it as it sees fit. However, the Tribunal will be vigilant in ensuring that all witnesses are able to testify competently and without undue hardship, taking into account any special medical conditions. The Tribunal will entertain requests for reasonable accommodations at the hearing to that end, including ordering additional breaks or splitting the examination across different hearing days.
 7. For any remote participant the Secretary of the Tribunal will provide a connection via Zoom (“**Hearing Platform**”). The details to join the Hearing Platform will be shared by the Secretary of the Tribunal in advance of the hearing and the Hearing Platform will be available via the same link throughout the entire hearing.¹

¹ Other logistical details (e.g., testing, connectivity, equipment and set up, etc.) will be handled through correspondence directly by the Secretary of the Tribunal.

B. Hearing Time Allocation and Indicative Hearing Schedule

8. Section 19.6 of Procedural Order No. 1 provides that “[t]he principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings” and that “[e]ach party shall be permitted to use the time allocated to it as it sees fit”.
9. Equal allocation of time does not mean adding up the available hearing hours and allocating one third of that total to each of (i) the QE Claimants, (ii) Mr. Taylor and (iii) the Respondent. Rather, time should be allocated taking into account the relevant circumstances of the case, including in this case each of the following considerations:
 - a. The number of witnesses and experts to be cross-examined by each Party.
 - i. Where one Party has more witnesses to cross-examine than another Party, the time allocation should reflect the commensurately greater time required for the conduct of those cross-examinations.
 - b. The alignment of all the Claimants save in respect of three discrete factual issues.
 - i. Mr. Taylor has confirmed that: he “*does not dispute, and therefore accepts as his own, most of the claims and representations contained in the 2020 Claimants’ Memorial on the Merits*”;² his “*claims [against the Respondent] that the Casinos were shut down illegally and/or subject to confiscation are virtually identical to the claims made by the other Claimants*”;³ and “[s]hould the Tribunal find in favor of the other Claimants on these issues, it should also find in favor of Taylor”.⁴
 - ii. However, Mr. Taylor disputes the allegations and/or representations made by the QE Claimants in respect of three discrete factual issues: “*1) B-Cabo, LLC ... and the Cabo Project 2) Colorado Cancun, LLC ... and the Cancun Project 3) representations that ‘Claimants made their initial investments in Mexico, the*

² Taylor Reply ¶ 2.

³ *Ibid.* ¶ 4.

⁴ *Ibid.*

Mexican Enterprises, including E-Games operated their casino businesses in accordance with Mexican law”⁵ (the *Taylor Disputed Issues*).

- iii. To the extent Mr. Taylor has adopted “as his own” the QE Claimants’ case, efficiency will be achieved and no prejudice or unfairness will be caused by treating the Claimants collectively as a single party for the purpose of hearing time allocation. Accordingly, in respect of those aspects of the dispute submitted to the Tribunal on which the QE Claimants and Mr. Taylor speak with one voice, they should be allocated time as if there were only one indivisible group of Claimants.
 - iv. The same does not apply as regards the three Taylor Disputed Issues on which the positions of the QE Claimants and Mr. Taylor diverge. Mr. Taylor should be afforded adequate time to make opening (and, if applicable, closing) submissions on those issues, if he so wishes, commensurate with the more limited scope of those issues. That time will not come out of the time allocated to the QE Claimants.
 - v. The foregoing, however, must not be taken by any of the Parties as a license to use the available hearing time for the purpose of ventilating or exploring grievances between Mr. Taylor and the QE Claimants or their counsel where it cannot be shown that those grievances bear on the resolution of the claims by the Claimants against the Respondent under the Treaty that this Tribunal must adjudicate. Time spent on matters that do not assist the Tribunal with the taking of evidence necessary for its adjudication of those claims is time wasted, and the allocation of hearing time must reflect that.
- c. Having regard to the foregoing and the Parties’ submissions prior to and during the Pre-Hearing Conference of 14 June 2022, the total useful hearing time of $9 \times 6.5 = 58.5$ shall be allocated as follows:

⁵ *Ibid.* ¶ 2.

- i. 22.5 hours for the QE Claimants;
- ii. 22.5 hours for the Respondent;
- iii. 4.5 hours for Mr. Taylor;
- iv. 9.0 hours for housekeeping, Tribunal questions and Non-Disputing Party submissions, if any.

10. The Secretary of the Tribunal shall keep the time and report at the end of each morning and afternoon session the total time that each Party has used and the amount it has remaining.
11. Time spent during questions posed by the Tribunal and on answers to those questions, as well as time for administrative or organizational matters, will not be counted against the time of any Party. Time used for housekeeping or to resolve technical difficulties shall be counted against the time reserved for housekeeping or against the Tribunal's reserved time, if needed.
12. Each day, the hearing will start at 9:30 AM and conclude by 5:30 PM. There will be two coffee breaks of 15 minutes each (one in the morning and one in the afternoon), and a lunch break of 1 hour each day. One hour of hearing time per day will be reserved for the Tribunal to conduct housekeeping matters and to ask questions.
13. An indicative Hearing Schedule reflecting all of the foregoing is set out in **Annex A**. The Parties are directed to complete or, in the case of Day 1, adjust that schedule, taking into account the directions set out in this PO. The schedule need not be more granular than an indication of which witnesses are expected to appear on which day, AM or PM.

III. DOCUMENTS FOR USE AT THE HEARING

A. Electronic Core Bundle

14. There shall be a single Electronic Core Bundle in USB form (PC and Mac compatible), to be prepared jointly by the Parties, which shall be uploaded to a designated sub-folder in the BOX filesharing platform by 27 June 2022.
15. The Electronic Core Bundle shall contain all pleadings, witness statements, exhibits, legal authorities and Tribunal decisions and orders on file to date, with a unified hyperlinked index.

It shall not contain any document not previously filed. Unless otherwise agreed by the parties, with authorization of the Tribunal, it shall be organized as follows:

Electronic Core Bundle:

01. Pleadings

- A. QE Claimants
- B. Randall Taylor Claimant
- C. Respondent

02. Witness Statements (with exhibits)

- A. QE Claimants
- B. Randall Taylor Claimant
- C. Respondent

03. Expert Reports (with exhibits)

- A. QE Claimants
- B. Randall Taylor Claimant
- C. Respondent

04. Factual Exhibits

- A. QE Claimants
- B. Randall Taylor Claimant
- C. Respondent

05. Legal Authorities

- A. QE Claimants
- B. Randall Taylor Claimant
- C. Respondent

06. Tribunal's Procedural Orders

16. To ensure operation of the hyperlinked index in BOX, if feasible, the entire Electronic Core Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the single zip file make uploading it to BOX not possible, the Parties may simply upload the Electronic Core Bundle to a designated sub-folder in the BOX filesharing platform organized in sub-folders using the structure indicated above, including a consolidated (but non-hyperlinked) index.
17. In addition, the Parties shall distribute the Electronic Core Bundle USB at the onset of the Hearing to: (i) each Member of the Tribunal (3 copies); (ii) the Secretary of the Tribunal (1 copy); (iii) court reporters (2 copies) and (iii) interpreters (3 copies).
18. To the extent possible, all materials shall be text searchable (i.e., OCR PDF or Word), and should include a table of contents where applicable.

19. The parties are encouraged to facilitate a hard copy of their speaking notes and presentations to the interpreters and stenographers a few minutes before each presentation to facilitate the proper provision of these services. The presentations or notes will be provided only to the interpreters and stenographers who may not distribute them to any other person and shall treat them as strictly confidential. The speaking notes and presentations will be kept strictly confidential and destroyed after use.

B. Demonstrative Exhibits

20. The Parties may use PowerPoint or other slide presentations for their oral statements and questioning of witnesses, subject to the rule on demonstrative exhibits reproduced below. For the avoidance of doubt, the use of demonstrative exhibits is also subject to Section 29 below.
21. Demonstrative exhibits shall be used in accordance with Section 16.7 of Procedural Order No. 1 reproduced below:

Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the exhibit or legal authority number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members (3), the Tribunal Secretary and interpreters (1) immediately prior to the respective presentation for which it is used, and subsequently send them by email to the Tribunal Secretary and to the other party in electronic format.

22. Section 16.7 of Procedural Order No. 1 is amended such that an electronic copy of each demonstrative exhibit shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution including the other Party, the Secretary of the Tribunal, the Members of the Tribunal, the court reporters and the interpreters as necessary no later than 1 hour prior to its use, in order to facilitate offline access to the demonstrative exhibits by the hearing participants. It is advisable to transmit the demonstrative exhibits to the Members of the Tribunal, the Secretary of the Tribunal, the court reporters and the interpreters earlier than 1 hour prior to the demonstrative exhibit's use.
23. In addition, promptly after the conclusion of the hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload each demonstrative exhibit to the case

folder in the BOX electronic file sharing system, with the corresponding numbering, e.g., QEU&S D-XX (for the QEU&S Claimants), RT D-XX (Randall Taylor) or R D-XX (Respondent).

C. Examination Bundles

24. At the beginning of each witness or expert direct examination, the Party who is putting forward the witness or expert will provide the witness or expert with copies of his or her signed statements or reports.
25. During cross-examination, the Parties will refer to exhibits and legal authorities that already form part of the record of the case, using the Electronic Core Bundle.
26. The Party examining a witness shall upload an electronic copy of the cross-examination bundle (and direct examination, if applicable) to a designated folder in the BOX filesharing platform and send an email to the entire case email distribution including the other Party, the Secretary of the Tribunal, the Members of the Tribunal, the court reporters and the interpreters as necessary with the link to the designated BOX folder, no later than 15 minutes in advance of each testimony; but no witness or expert shall review such bundle before testifying. Documents will be shown electronically by each Party and displayed in screens in the hearing room.
27. Should Mr. Taylor or the Respondent examine Mr. Rudden, they shall mail a hard copy of the examination bundle to the designated official(s) of the United States Penitentiary in Leavenworth, Kansas (“**Leavenworth Officials**”), at least one week prior to the start of the hearing. Mr. Taylor and the Respondent shall coordinate with Counsel for the QE Claimants and the Leavenworth Officials to ensure that the QE Claimants, their counsel and their witnesses, including Mr. Rudden, are unable to see the documents until the start of Mr. Rudden’s testimony.
28. For the avoidance of doubt, examination bundles shall only contain documents that already form part of the record of the case. As provided in Section 16.3 of Procedural Order No. 1, “[n]either party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, except with leave from the Tribunal, to be granted upon a showing of good cause”.

29. The witnesses and experts are entitled to ask to be shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen).

IV. WITNESS AND EXPERT EXAMINATIONS

30. The Parties have provided notice of the witnesses and experts to be examined in accordance with Section 18 of Procedural Order No. 1 and the Tribunal's letter of 10 May 2022.

- a. The QE Claimants have called the following Respondent's fact and expert witnesses:

- Marcela González Salas y Petricioli, fact witness, testifies in Spanish.
- José Raúl Landgrave Fuentes, fact witness, testifies in Spanish.
- Marcos Eulogio García Hernández, fact witness, testifies in Spanish.
- Carlos Véjar Borrego, fact witness, testifies in Spanish.
- Alfonso Benigno Pérez Lizaur, fact witness, testifies in Spanish.
- Mauricio Rodrigo Ayala Rosique, fact witness, testifies in Spanish.
- Javier Mijangos y González, expert, testifies in Spanish.
- Alfredo Germán Lazcano Sámano, expert, testifies in Spanish.
- Rión M&A (Markus A. Kritzler Ring and Eduardo R. Pacheco Villagrán), expert, testifies in Spanish.

- b. The QE Claimants have also called the following fact and expert witnesses:

- Gordon Burr, fact witness, testifies in English.
- Erin Burr, fact witness, testifies in English.
- Neil Ayervais, fact witness, testifies in English.
- Julio Gutiérrez Morales, fact witness, testifies in Spanish.
- Avi Yanus, fact witness, testifies in English.
- José Ramón Moreno Quijano, fact witness, testifies in Spanish.
- Daniel Rudden, fact witness, testifies in English.
- Miguel Romero Cano, fact witness, testifies in Spanish.

- Randall Taylor, fact witness, testifies in English.
 - Patricio Gerardo Chávez Nuño, fact witness, testifies in Spanish.
 - Oscar Alejandro Vargas Ramírez, fact witness, testifies in Spanish.
 - Michael Soll, expert, testifies in English.
 - Luis Omar Guerrero Rodríguez, expert, testifies in Spanish.
 - Ezequiel González Matus, expert, testifies in Spanish.
 - Berkeley Research Group (Santiago Dellepiane and Andrea Cardani), expert, testifies in English.
- c. Claimant Randall Taylor has called the following fact and expert witnesses:
- Randall Taylor, fact witness, testifies in English.
 - John Conley, fact witness, testifies in English.
 - Gordon Burr, fact witness, testifies in English.
 - Erin Burr, fact witness, testifies in English.
 - Neil Ayervais, fact witness, testifies in English.
 - Dan Rudden, fact witness, testifies in English.
- d. The Respondent has called the following Claimants' fact and expert witnesses:
- Gordon Burr, fact witness, testifies in English.
 - Erin Burr, fact witness, testifies in English.
 - Julio Gutiérrez Morales, fact witness, testifies in Spanish.
 - Avi Yanus, fact witness, testifies in English.
 - John Conley, fact witness, testifies in English.
 - José Ramón Moreno Quijano, fact witness, testifies in Spanish.
 - Neil Ayervais, fact witness, testifies in English.
 - Miguel Romero Cano, fact witness, testifies in Spanish.
 - Randall Taylor, fact witness, testifies in English.
 - Ezequiel González Matus, expert testifies in Spanish.

- Luis Omar Guerrero Rodríguez, expert, testifies in Spanish.
- Berkeley Research Group (Santiago Dellepiane and Andrea Cardani), expert, testifies in English.

31. Subject to any agreement between the Parties or any order by the Tribunal, fact witnesses produced by the Claimants shall testify first, followed by fact witnesses produced by the Respondent. Experts shall then testify individually in the following order: Mexican *Amparo* law; Mexican administrative/gaming law; Gaming Industry (Claimants); and Damages. Within each subject-matter category, experts produced by the Claimants shall testify first, followed by experts produced by the Respondent. The Party producing each fact witness shall designate the order in which they will testify, subject to Section 35 below.
32. The rules and procedure concerning the conduct of examinations are set out in Section 18 of Procedural Order No. 1:

18.1 A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.

18.2. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Upon a reasoned request and following consideration of any observations by the other party, examination of a witness or expert by video-conference may be permitted at the discretion of the Tribunal.

18.3. The parties shall notify the opposing party which witnesses and experts it intends to call for cross-examination within four weeks⁶ after completion of the written procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.

18.4. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing.

18.5. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination at the hearing, limited to the content of their corresponding witness statement or expert report. Any witness called for direct examination may be cross-examined by the other party and questioned by the Tribunal.

⁶ Pursuant to the Tribunal's letter of 10 May 2022, the witness list notification was made on 30 May 2022.

18.6. Subject to the direction of the Tribunal as to relevance and fairness, there shall be no limitation on the scope of the cross-examination to the contents of the witness statement or expert report. Re-direct examination shall be limited to the subject of cross-examination.

18.7. The presence of fact and expert witnesses in the hearing room prior to giving their oral evidence shall be discussed between the parties prior to the pre-hearing organizational meeting to be held pursuant to §19.1 below and, if required, decided by the Tribunal at that meeting.

33. With respect to Section 18.5 in Procedural Order No. 1, it is understood that: (i) while each Party shall be permitted to use the time allocated to it as it sees fit, any “brief” direct examination of fact witnesses should, in principle and subject to the Tribunal’s discretion, not exceed 10 minutes (bearing in mind that the scope of direct examination is limited to the content of the corresponding statement or report), and (ii) expert witnesses may make a presentation not exceeding 30 minutes in lieu of a short direct examination.
34. With respect to the testimony of Mr. Taylor, he will be allowed to present direct evidence, subject to the same limitations set out in Section 33 above. Mr. Taylor will present any such direct evidence in narrative form, subject to the control and questioning of the Tribunal. In lieu of redirect examination, Mr. Taylor will be afforded an opportunity after his cross-examination to clarify or expand upon any answers given in cross-examination, subject again to the control and questioning of the Tribunal. However, Mr. Taylor shall not be allowed to use his (re)direct examination as an opportunity to make submissions instead of giving evidence regarding facts within his knowledge.
35. As with the procedure for the hearing on jurisdiction, and subject to hearing room capacity constraints, all fact witnesses and experts shall be allowed to attend the opening statements. After the opening statements have been completed, the following rules shall apply as regards attendance:
 - a. Expert witnesses may attend any part of the hearing, including before they give evidence.
 - b. No fact witnesses shall be present in the hearing room after the opening submissions and until they have given evidence, subject to what is provided below in (c) and (d).

- c. In the case of Mr. Gutiérrez Morales, who is both a fact witness and Mexican counsel to the QE Claimants in this arbitration, he will be allowed to be present in the hearing room both before and after he gives evidence in his capacity as legal counsel. This was also the approach agreed to by the Respondent in the context of the hearing on jurisdiction, where a significant number of witnesses presented by the Claimants were examined.⁷
- d. In the case of fact witnesses who are also Claimants, the Tribunal must strike a balance between the legitimate interest of such witnesses to attend the hearing and the legitimate interest of the Respondent to conduct cross-examination of those witnesses unfettered by their knowledge of the evidence given by other witnesses. In this respect, the Tribunal observes as follows:
- i. The Tribunal understands that, due to their personal circumstances, Messrs Rudden and Conley will not be able to attend the hearing other than to give evidence. As a practical matter, the dilemma alluded to above therefore does not apply to them. The only affected Claimants/witnesses are: Mr. Gordon Burr, Ms. Erin Burr and Mr. Ayervais—all three witnesses for the QE Claimants whose written evidence is extensive—and Mr. Taylor.
 - ii. Where Mr. Taylor is a *pro se* litigant without representation and Mr. Burr, Ms. Burr and Mr. Ayervais are all represented by Quinn Emanuel and Mr. Gutiérrez Morales, it is fair and reasonable that Mr. Taylor should be permitted to attend all parts of the hearing whereas the latter should not.
 - iii. At the same time, this concession to Mr. Taylor should not confer upon him the unfair benefit of giving evidence after having heard the evidence of other witnesses. That situation can only be avoided by requiring Mr. Taylor to give evidence prior to any other witnesses, including Mr. Burr, Ms. Burr and Mr. Ayervais.

⁷ Hearing on Jurisdiction, Day 1: p. 9, line 6 to p. 10, line 10.

- iv. The Tribunal is also mindful, however, that the QE Claimants, when putting forward their hearing schedule proposal, did not yet have the benefit of the above directions by the Tribunal; they did not identify Mr. Taylor as the first witness to give evidence; and no other Party has suggested that he should. They did indicate in their proposal that “[s]hould the Tribunal permit Mr. Gutiérrez Morales to be present in the hearing room prior to his testimony (as it did in the jurisdictional phase), the QEU&S Claimants will not object to Mr. Taylor’s presence in the hearing room before his testimony, as Mr. Taylor is representing himself in these proceedings.”
 - v. The Tribunal therefore considers it fair and just that the QE Claimants are allowed to make an election: either (i) request that Mr. Taylor give evidence first (in which case Mr. Taylor will give evidence without having the benefit of having heard the evidence of the QE Claimants/witnesses) or (ii) request that Mr. Taylor give evidence at a later time in the hearing (in which case Mr. Taylor will give evidence with the benefit of having heard the evidence of some or all of the QE Claimants/witnesses).
- e. If a witness or expert’s examination is interrupted and must continue on the following session, the witness or expert may not speak or contact any of the Parties, their representatives or counsel until the examination is completed. In addition, the cross-examination bundle shall not be accessible to the witness or expert while the examination is interrupted.
36. In order to avoid any delays during the course of the hearing, witnesses and experts shall be available for examination half a hearing day before and after the time at which his/her examination is scheduled.

V. LIST OF PARTICIPANTS

37. Each Party shall provide its respective List of Participants for the Hearing (“**List of Participants**”) no later than 22 June 2022, using the format provided in **Annex C**. Each Party shall designate those Hearing Participants who will have an active speaking role (i.e., fact witnesses, expert witnesses or advocates, collectively “**Active Participants**”), and those who

will be passive attendees (“**Passive Participants**”). In the same communication, each Party shall identify any individuals attending the Hearing remotely. Pursuant to Section 4 above, any Active Participant seeking to attend remotely will obtain prior permission from the Tribunal.

38. The List of Participants for the hearing will contain personal data provided to ICSID in the context of the hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the hearing.
39. Non-Disputing NAFTA Parties may be authorized by the Tribunal to attend the hearing and to make submissions pursuant to NAFTA Article 1128 and Section 22.3 of Procedural Order No. 1.

VI. INTERPRETATION

40. In accordance with Sections 11.9-11.12 of Procedural Order No. 1, there shall be simultaneous Spanish-English and English-Spanish interpretation throughout the hearing.
41. Hearing Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Hearing Participant.
42. It is planned that the interpreters will attend the hearing remotely.

VII. RECORDINGS OF THE HEARING

43. Pursuant to Section 20 of Procedural Order No. 1, sound recordings will be made of the hearing.
44. The sound recordings shall be provided to the Parties and the Tribunal at the conclusion of the hearing.

45. Except for the court reporters, who may make their own audio recording of the hearing for the purposes of preparing the transcript, the Tribunal and the Parties agree that the attendees will not otherwise record the hearing or any part of it, including via audio or video.

VIII. TRANSCRIPTION

46. Sections 20.2 and 20.3 of Procedural Order No. 1 provide as follows:

20.2. Verbatim transcripts in the procedural languages shall be made of any hearing other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

20.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties and/or 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.

47. 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.
48. Should court reporters be participating remotely, the real-time court reporting shall be made available to the Participants via an online link connection to be provided by the court reporters. The connectivity details (links and instructions) to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the hearing.
49. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
50. In the event of conflict between the English and the Spanish transcripts, the transcript in the original language in which the oral testimony or argument was given shall prevail, subject to the Tribunal’s approval.

IX. CONFIDENTIALITY

51. Pursuant to Section 19.3 of Procedural Order No. 1, the hearing shall be closed to the public.

52. Participants providing services shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the hearing; and (iii) dispose of all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their hearing-related work has been completed.

X. ORAL CLOSINGS AND POST-HEARING BRIEFS

53. The Tribunal notes the Parties' agreement that there shall be no oral closing statements and that, in lieu of closing statements, the Parties will submit post-hearing briefs together with their responses to any questions by the Tribunal. The Tribunal shall decide at the hearing, after consulting with the Parties, all matters pertaining to the scope and format of such post-hearing briefs.
54. No new evidence may be submitted together with the post-hearing briefs, subject to Section 16.3 of Procedural Order No. 1.

XI. STATEMENT ON COSTS

55. Pursuant to Section 21 of Procedural Order No. 1, the Tribunal shall determine the time limit for cost submissions at the conclusion of the hearing, after consulting with the Parties.

XII. COSTS

56. The costs of the hearing, including court reporting and interpretation, shall be paid from the case deposit established with ICSID, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.
57. Each Party shall be responsible for the costs associated with preparation of its Participants (any additional equipment, necessary internet connectivity, etc.), subject to the decision of the Tribunal as to which Party shall ultimately bear those costs.



On behalf of the Tribunal
Dr. Gaëtan Verhoosel QC
President of the Tribunal
Date: 17 June 2022

**ANNEX A
INDICATIVE HEARING SCHEDULE**

Total hearing time (excluding breaks): 58.5 hours

- Tribunal questions and other matters: 9 hours (i.e., 1 hour per day)
- QEU&S Claimants: 22.5 hours
- Mr. Taylor: 4.5 hours
- Respondent: 22.5 hours

Day 1: 5 July 2022 (Tuesday)

Time	Activity (Indicative Duration)
9:30-9:45	Housekeeping matters (15 mins)
9:45-11:00	QE Claimants' Opening Statement (1 hour 15 mins)
11:00-11:15	Break (15 mins)
11:15-12:30	QE Claimants' Opening Statement (1 hour 15 mins)
12:30-13:30	Lunch (1 hour)
13:30-14:15	Mr. Taylor's Opening Statement (45 mins)
14:15-15:15	Respondent's Opening Statement (1 hour)
15:15-15:30	Break (15 mins)
15:30-16:30	Respondent's Opening Statement (1 hour)
16:30-17:30	Tribunal's questions and other matters (including any submissions by the Non-Disputing Party) (1 hour)

Day 2: 6 July 2022 (Wednesday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 3: 7 July 2022 (Thursday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 4: 8 July 2022 (Friday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 5: 9 July 2022 (Saturday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 6: 11 July 2022 (Monday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 7: 12 July 2022 (Tuesday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 8: 13 July 2022 (Wednesday)

Time	Activity (Indicative Duration)
AM	
PM	

Day 9: 14 July 2022 (Thursday)

Time	Activity (Indicative Duration)
AM	
PM	

ANNEX B
IN PERSON MODALITY ADDITIONAL ARRANGEMENTS

1. This Annex contemplates certain additional protocols applicable due to restrictions in place at the World Bank premises because of the COVID-19 pandemic.

I. CONDITIONS AT THE WORLD BANK FACILITIES IN WASHINGTON, D.C.

2. The conditions currently in force for entry to the premises of the World Bank facilities in Washington D.C. for purposes of attending an ICSID Hearing are reproduced in this Section. These constitute the applicable conditions at present and might be subject to changes that may be notified by the World Bank should the circumstances related to the pandemic change.

A. NUMBER OF PARTICIPANTS

3. Each Party shall be allowed to have a maximum of 23 in-person participants in the Hearing at any given time. The maximum capacity of each room shall be as follows:
 - a. Main Hearing Room: maximum 29-person cap: Members of the Tribunal (3), Secretary of the Tribunal (1), Claimants (11), Respondent (11), court reporters (2) and witness (1).⁸
 - b. Break Out Room 1 – Claimants: 12 people maximum.
 - c. Break Out Room 2 – Respondent: 12 people maximum.
 - d. Break Out Room 3 – Tribunal: 4 people maximum.
 - e. Break Out Room 4 – Mr. Taylor: 3 people maximum.
4. Fact witnesses and experts shall only be present in the Hearing Room in accordance with Section 35 of this Procedural Order (and subject to the room’s in-person limitations). Fact

⁸ The interpreters (3), who will attend either remotely or from the interpretation booths adjacent to the Hearing Room shall not count towards the 29-person cap of the main Hearing Room. The maximum number of in-person participants per Party allowed into the main hearing room may be reduced to 9 if and when the NAFTA Non-Disputing Parties are present.

witnesses and experts shall remain in the respective Party's Break-Out Room (which shall not be connected to the Hearing) if they are not permitted to be in the Hearing Room.⁹

B. ID DOCUMENTS

5. In-person Participants must present a valid identity document with a photograph and attest to being fully vaccinated to enter the World Bank facilities. The Secretary of the Tribunal will provide further details to the Parties by email on how to attest vaccination status.

C. COVID-19 SANITARY REQUIREMENTS

6. All individuals who will be attending the Hearing in person must be fully vaccinated¹⁰ against COVID-19 and provide a negative COVID-19 antigen or PCR test not older than 72 hours and carried out by authorized health professionals ahead of the first day they participate in the Hearing. Each Party is responsible for making sure that the members of its own legal team and its witnesses and experts comply with this requirement. Each Party shall designate one person to collect confirmation of negative test results and inform the Secretary of the Tribunal prior to each attendee's participation in the Hearing and no later than by 5:00pm EST the day before each attendee's participation in the Hearing.
7. Each Participant attending in person will be required to wear a mask while inside the premises of the World Bank facilities, except while making an oral intervention at the Hearing or while eating.
8. Each Participant attending in person will have to abide by any other sanitary guidelines that might be communicated by the World Bank in Washington D.C., including additional COVID-19 testing. Additionally, World Bank visitors will be asked to sign an attestation form before entering the World Bank premises.

⁹ The Parties will ensure compliance with this provision.

¹⁰ A person is considered "fully vaccinated" two weeks after having received the required number of doses from any of the COVID-19 vaccines accepted internationally or nationally in any given country. This includes vaccines that have received national approval but may not yet have been approved by the WHO.

9. In advance of the Hearing, the Parties will be required to provide a copy (a scan) of their vaccination certificate or copy of proof of vaccination in another form to the Secretary of the Tribunal by 28 June 2022.

D. ACCESS OF DOCUMENTS

10. The number of document boxes that can enter the premises of the World Bank in Washington D.C. might be limited. ICSID will provide further guidance in this regard. Any materials are to be brought by the Parties directly on the day of the set up.

E. FOOD SERVICES

11. Food services (lunch and break refreshments) will be provided in individually wrapped items, with lunches for the Parties to be served in the breakout rooms.

F. OTHER REQUIREMENTS

12. The Parties and the Tribunal are aware that the above only concerns the requirements for entry into the premises of the World Bank facilities in Washington D.C. Each Hearing participant planning to attend in person bears the responsibility for making all necessary arrangements to ensure that they meet any other conditions necessary to attend in person. For example, Hearing participants planning to travel from abroad bear the responsibility of checking the conditions of entry into the USA to determine whether they will be able to participate in person at the Hearing in compliance with all the conditions provided for by USA law and regulations.

II. HEALTH AND COVID PROTOCOL

13. Any Participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until they have obtained a negative rapid antigen test. Any Participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing shall immediately inform the Tribunal and the Secretary of the Tribunal of this development, pending the results of their test.
14. If any Participant is to experience COVID-19 symptoms, the Tribunal and the Parties will discuss at the Hearing to what extent it will be possible for such Participant to continue participating at the Hearing remotely.

III. OTHER LOGISTICAL ARRANGEMENTS

15. Other logistical details (*e.g.*, confirmation of break-out room number assignments, set up day details, on-site internet access codes, and catering orders, etc.) will be handled through correspondence directly by the ICSID Hearing Organization Team.

**ANNEX C
LIST OF PARTICIPANTS**

TRIBUNAL				
Break-out room	Name	Type	Affiliation	Personal contact details
T	[T] –	A		
T	[T] –	A		
T	[T] –	A		

SECRETARY OF THE TRIBUNAL				
Break-out room	Name	Type	Affiliation	
T	[T] –	A		

QEU&S CLAIMANTS					
Break-out room	Name	Type	Affiliation to the case	Personal contact details	Location of connection
	<i>Counsel</i>				
C	[C] - Name and Last name			[Email and phone number]	[In-person or remote and if remote, location]
C	[C] - Name and Last name				
	<i>Party representative</i>				
C	[C] - Name and Last name				
C					
	<i>Witnesses:</i>				
W/E	[CW] - Name and Last name				
W/E					
	<i>Experts:</i>				
W/E	[CE] - Name and Last name				

W/E					
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MR. TAYLOR					
Break-out room	Name	Type	Affiliation to the case	Personal contact details	Location of connection
	<i>Counsel</i>				
C	[C] - Name and Last name			[Email and phone number]	[In-person or remote and if remote, location]
C	[C] - Name and Last name				
	<i>Party representative</i>				
C	[C] - Name and Last name				
C					
	<i>Witnesses:</i>				
W/E	[CW] - Name and Last name				
W/E					

RESPONDENT					
Break-out room	Name	Type	Affiliation to the Case	Personal contact details	Location of connection
	<i>Counsel</i>				
R	[R] - Name and Last name			[Email and phone number]	[In-person or remote and if remote, location]
R	[R] - Name and Last name				
	<i>Party representative</i>				
R	[R] - Name and Last name				
R					

	<i>Witnesses:</i>				
W/E	[RW] - Name and Last name				
W/E					
	<i>Experts:</i>				
W/E	[RE] - Name and Last name				
W/E					

COURT REPORTER				
Break-out room	Name	Type	Affiliation	Personal
N/A				[Email and phone number]

INTERPRETERS				
Break-out room	Name	Type	Affiliation	Personal
N/A				[Email and phone number]

TECHNICAL SUPPORT				
Break-out room	Name	Type	Affiliation	Personal
N/A				[Email and phone number]