

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE UNITED
MEXICAN STATES – SINGAPORE AGREEMENT ON THE PROMOTION AND
RECIPROCAL PROTECTION OF INVESTMENTS AND
THE UNCITRAL ARBITRATION RULES (2010)**

PACC Offshore Services Holdings Ltd

v.

The United Mexican States

(UNCT/18/5)

PROCEDURAL ORDER No. 6

Members of the Tribunal

Dr. Andrés Rigo Sureda, President of the Tribunal

Prof. W. Michael Reisman, Arbitrator

Prof. Philippe Sands QC, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski

February 24, 2022

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WHEREAS,

1. On January 11, 2022, the Tribunal issued its Award dated January 11, 2022, and the Concurring and Dissenting Opinion of Professor W. Michael Reisman (the “**Award**”). Certified copies of the English and Spanish versions of the Award were attached to a letter from the Secretary of the Tribunal of the same date (“**Transmittal Letter**”).
2. The Transmittal Letter, reminded the Parties that “[i]n accordance with Article 18.4 of the BIT and Section 3(ii) of Procedural Order No. 3 dated January 10, 2019, “[i]n the case of the award, the decisions and the procedural orders issued by the Tribunal, within a period of 30 days from the date of issuance, the parties will identify the information that they consider should be protected and will seek to reach an agreement about the information that must be eliminated from the redacted version, before the decision or the award is published. After this period, without any of the disputing parties having identified the information susceptible of being protected, it will be understood that the decision or award of the Tribunal is of a public nature.”” It was further indicated that “the Secretariat [would] proceed to publish the Award on the ICSID website once said period has elapsed without any of the disputing parties having identified the information susceptible of being protected.”
3. On February 10, 2022, the Claimant filed an Application for an Additional Award, in accordance with Article 39 of the UNCITRAL Arbitration Rules (2010) (“**Additional Award Application**”). On the same date, the Secretary of the Tribunal confirmed ICSID’s receipt of the Additional Award Application.
4. Also on February 10, 2022, the Respondent submitted in accordance with the Article 18.4 of the Mexico-Singapore BIT (the “**BIT**”), and Section 3(ii) of Procedural Order No. 3, dated January 10, 2019 (“**PO 3**”), its proposed redactions to paragraphs 217 and 256 of the English and Spanish versions of the Award. In particular, (a) the redaction of the name [REDACTED] in paragraph 217 of the Award, and (b) the

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redaction in paragraph 256 of two quotes from the second report of its expert Javier Paz (“**Respondent’s Proposed Redactions**”).

5. On February 11, 2022, the Claimant informed the Tribunal that it was still reviewing the Respondent’s Proposed Redactions, and requested that the Award not be made public until the Tribunal has resolved the Application for an Additional Award and issue the complete Award.
6. Later on the same date of February 11, 2022, the Respondent requested that the Award be published on the ICSID website in accordance with Article 18.4 of the BIT and PO 3.
7. On February 12, 2022, the Tribunal invited the Respondent’s comments on the Additional Award Application by no later than March 2, 2022.
8. On February 18, 2022, the Claimant filed observations on the Respondent’s Proposed Redactions, and communications of February 10 and 11, 2022. The Claimant accepted the Respondent’s proposed redaction in paragraph 217 of the Award, and rejected the Respondent’s proposed redactions in paragraph 256. The latter, argues the Claimant, because the second report of Mr. Paz is not privileged. According to the Claimant, the Respondent’s Rejoinder, which was made public, quoted frequently from Mr. Paz’s second report without redaction of any quote. In particular, paragraphs 191, 195, 199, 203, 209, 215 of that report (“**Claimant’s Observations**”).
9. The Claimant confirmed in its communication of February 18, 2022, that it does not propose to make any additional redactions to the Award.
10. On February 18, 2022, the Respondent submitted a clarification to the Claimant’s communication of the same date (“**Respondent’s Response**”). According to the Respondent, the proposed redaction of a portion of paragraph 256 is necessary because it transcribes parts of the Detention Order, the divulgation of which is protected under Mexican law and they do not contain any opinion of the expert. The Respondent also

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insisted in that it is incorrect to describe the Award as incomplete, the Tribunal did not indicate that the Award was incomplete, and it was Mexico's understanding that the Award was issued in accordance with Article 18.3 and 18.4 of the BIT, sections 12,15 and 26.1 of OP 1 and Article 34 of the UNCITRAL Rules of 2010.

11. On February 21, 2022, the Tribunal invited the Claimant to comment on the Respondent's Response no later than February 23, 2022.
12. On February 23, 2022, the Claimant commented that it is not apparent that the references to Mr. Paz's second report are a verbatim citation of the Detention Order, and, therefore, "publication of the Award without redaction of these references will not constitute a disclosure of the contents of the seizure order."
13. On publication of the Award, the Claimant commented that "precisely because Claimant and Respondent disagree on whether the Award is "complete" or not that the Award should not be published until the Tribunal has resolved Claimant's Application regarding this very issue. Until then, the question of whether the Award is indeed "complete" remains an open one."
14. The Tribunal observes that the references in paragraph 256 of the Award are actually verbatim references to the extension of the Detention Order and their redaction would be permitted under PO 3.
15. Whether the Award is or not complete is a matter of dispute between the Parties. The views of the Respondent on the Application for an Additional Award are due on March 2, 2022. In these circumstances publication of the Award before the Tribunal decides whether the Additional Award Application is justified would be premature and possibly misleading.

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16. For these reasons, **the Tribunal decides:**

- (1) To accept the redactions in paragraph 256 of the Award proposed by the Respondent;
and
- (2) To postpone publication of the Award until after the Respondent has filed its observations on the Additional Award Application, and that Application has been resolved by the Tribunal.

For and on behalf of the Tribunal,

[Signed]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: February 24, 2022