

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC

v.

United Mexican States

(ICSID Case No. ARB/21/25)

**PROCEDURAL ORDER NO. ON RESPONDENT'S REQUEST FOR AN EXTENSION OF
THE DEADLINE FOR FILING ITS REJOINDER**

Members of the Tribunal

Mr. Manuel Conthe Gutiérrez, President of the Tribunal

Dr. Franz X. Stirnimann Fuentes, Arbitrator

Prof. Alain Pellet, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

Date: July 29, 2023

I. INTRODUCTION

1. By letter dated July 21, 2023, the Respondent asked that the August 4, 2023 filing date for its Reply, set out on April 26, 2023 in the revised Annex A of Procedural Order No.1, be extended until August 25, 2023 (i.e. by 21 days).
2. In support of its request, the Respondent alleged that several members of its defense team were preparing the hearing in the case *Legacy Vulcan v. Mexico* (ICSID Case No.ARB-19-1), whose timetable had recently been changed and was scheduled to take place on August 7-10, with August 11 in reserve.
3. Additionally, the Respondent argued that Mexico has not objected to Claimants' requests for extensions; and when on March 2, 2023 it had accepted one such one-week extension for the submission by the Claimants of their Reply, the calendar for its Rejoinder was only extended in parallel by one week to August 4, 2023, without any additional week granted. As a result, the Claimants had had 19 weeks for filing their Reply, as compared to 16 weeks for Mexico's Rejoinder. Thus, extending now the Rejoinder's filing date to August 25, 2023 would be equitable and provide both parties with a similar period to submit their Reply and Rejoinder, respectively.
4. In their July 26, 2023 response to Respondent's request, the Claimants recalled that they did not oppose a reasonable delay, and could accept a one-week extension, but not the three-week extension requested.
5. The Claimants stressed that when in September 15, 2022 the procedural calendar for the *Legacy Vulcan* case had been established, the hearing date was set for July 20-22, 2023, i.e. exactly one week before the then established filing deadline for the Respondent's Rejoinder in this arbitration (i.e. July 28, 2023). Furthermore, the Respondent knew since April 13, 2023, i.e. just one month after the revision of the calendar of this arbitration, of the new date for the *Legacy Vulcan's* hearing (August 7-10, 2023), but it was until July 10 2023 that sought the agreement by Claimant to the three-week extension.

6. The Claimants further argued that Mexico had not been fully candid with the Tribunal, had failed to explain the reasons for the change in the hearing date for the *Legacy Vulcan*'s case and had not identified the specific team members affected by the delay.
7. In closing, the Claimants argued that the Respondent, by calling now for an "equal time" to prepare its Rejoinder as the Claimants had had for their Reply was attempting to rewrite the agreed procedure in this arbitration, which had been designed in Article 14.5 of PO1 as a "front loaded" one, such that the Parties submitted their arguments with the Statements of Claim and Response, respectively, and Mexico was prevented from "sandbagging", i.e. presenting in its Rejoinder new witnesses, expert, evidence and legal arguments to which the Claimants had no longer the ability to respond.
8. Finally, on July 28, 2023, after seeking and obtaining the Tribunal's agreement to supply a brief factual information concerning the *Legacy Vulcan* case mentioned by the Claimants, which the Respondent had not be able to supply before it was made public on ICSID's website, Mexico explained that "the event which caused the change in the procedural timetable [in the *Legacy Vulcan* case]" was "the site visit by the Parties and the Tribunal, pursuant to ICSID Arbitration Rule 37(1), which took place from July 18 to 20, 2023 and required the Secretaría de Economía's in house counsel, as well as its external counsel, to stay away from their office from July 17 to 21 [to travel] to a remote place".¹

¹ The relevant part of Mexico's message in Spanish reads: "Recientemente el CIADI publicó en su portal web detalles sobre el evento que ocasionó la modificación del calendario procesal antes mencionado, siendo ésta una visita in situ realizada por las partes y el tribunal de dicho caso a los sitios relacionados con la disputa, conforme a la Regla 37 (1) de las Reglas de Arbitraje del Convenio CIADI, misma que se realizó del 18 al 20 de julio y que obligó a los abogados de la Secretaría de Economía y su asesor externo a ausentarse de sus oficinas del 17 al 21 de julio a un lugar remoto".

II. TRIBUNAL'S ANALYSIS

9. The Tribunal concurs with Claimants that this is not the time to revise the timetable set out in Procedural Order No. on equity grounds, with a view to introduce the principle of “equal time” for the deadlines for the Parties’ submission. The task at hand for the Tribunal is just to accommodate any reasonable request for extension by Respondent on the basis of new circumstances which emerged after the revised timetable for this arbitration was approved.
10. The Tribunal notes that the new date for the *Legacy Vulcan* case hearing, i.e. August 7-10, with July 11 in reserve, was established on April 13, 2023; that its Tribunal held a case management conference with the parties by videoconference on May 18, 2023; and that on June 22, 2023 it issued Procedural Order No. 8 concerning a site visit. Since the April 13, 2023 revised timetable for the *Legacy Vulcan* case has several redacted lines, the Tribunal can only take on trust, but accepts, Mexico’s claim that the site visit was the reason for the postponement of the hearing date.
11. According to Mexico, the site visit to the remote place kept its in-house and external counsel away from their offices during the week of July 17 to July 21.
12. That fact, on its own, might justify that the date for the filing of the Rejoinder be extended for one week, as accepted by the Claimants.
13. However, such an extension would force the Respondent to file its Rejoinder on August 11, 2023, i.e. on the reserve date for the hearing in *Legacy Vulcan* case, which might put Respondent in a difficult situation. Hence, an additional extension is justified.
14. After considering the circumstances of the case and the Parties’ allegations, the Tribunal has finally decided that a 13-day extension, i.e. up to Thursday, August 17, would be reasonable.

III. DECISION

15. In light of the foregoing, the Tribunal decides to extend until Thursday, August 17, 2023 the deadline for the Respondent to file its Rejoinder.

16. Except for that change, the rest of the calendar in this procedure remains as established by the Tribunal on April 26, 2023.

On behalf of the Tribunal

[Signed]

Manuel Conthe Gutiérrez
President of the Tribunal
Date: 29 July 2023