

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. 9
(Hearing Organization)**

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

November 15, 2023

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I. PROCEDURAL BACKGROUND

1. On August 29, 2023, the Tribunal circulated to the Parties a Draft Procedural Order No. 9 regarding the organization of the Hearing for the Parties to discuss and confer, and to revert to the Tribunal with their comments.
2. On October 6, 2023, the Parties notified the opposing party which witness and experts each party call for cross-examination.
3. On October 17, 2023, the Parties submitted the points on which they agreed, as well as the points of disagreement on the Draft Procedural Order No. 9.
4. Pursuant to paragraph 19.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by Zoom on October 27, 2023 (the “**Pre-Hearing Conference**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the hearing on jurisdiction and merits (“**Hearing**”). Participating were:

Arbitral Tribunal:

Mr. Manuel Conthe Gutiérrez, President of the Tribunal
Dr. Franz X. Stirnimann Fuentes, Arbitrator
Prof. Alain Pellet, Arbitrator

ICSID Secretariat:

Ms. Anneliese Fleckenstein, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Andrew B. Derman, Holland & Knight LLP
Mr. Andrew Melsheimer, Holland & Knight LLP
Mr. Javan Porter, Holland & Knight LLP
Mr. Cole Browndorf, Holland & Knight LLP

On behalf of the Respondent:

Mr. Alan Bonfiglio Ríos, Secretaría de Economía
Mr. Rafael Alejandro Augusto Arteaga Farfán, Secretaría de Economía
Mr. Rafael Rodríguez Maldonado, Secretaría de Economía
Ms. Laura Mejía Hernández, Secretaría de Economía
Mr. Jorge Escalona Gálvez, Secretaría de Economía
Mr. Oscar Manuel Rosado Pulido, Secretaría de Economía

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Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP
Mr. Gary Shaw, Pillsbury Winthrop Shaw Pittman LLP
Mr. Greg Tereposky, Tereposky & DeRose

5. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order No. 9 and the Parties' respective positions where no agreement was reached.
6. On November 1, 2023, the recording of the Pre-Hearing Conference was made available to the Members of the Tribunal and the Parties.
7. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules which will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT

8. The Hearing will take place in person from December 4 to December 7, 2023 (the "**Hearing Days**"), in Washington DC, at ICSID's Hearing Centre located at 1225 Connecticut Ave., NW, Washington, DC. Friday, December 8, up to 2 pm, will be held in reserve.
9. Hearing Day 1 will be used for the Parties' opening statements, including questions from the Tribunal, and the United States' oral submission. Hearing Days 2 through 4 will be used for expert and fact witness examinations. There will be no closing statements.
10. The order and structure of the Hearing, including the number and length of breaks, is indicated in the attached Agenda as Annex A (the "**Agenda**"). Subject to their right to allocate their free time as they see fit, the Parties will make a good-faith effort to adhere, to the extent possible, to the schedule reflected in the Agenda.
11. The Tribunal reserves discretion to adjust the Hearing schedule, including the sitting times on any day and the reserve day, as needed to accomplish the prescribed Agenda and to

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accommodate changes in the planning of the Hearing¹ or any technical and/or other disruptions.

B. TIME ALLOCATION

12. The Hearing will proceed on the principle that the Parties should have equal time to present their case. Accordingly, considering the total number of Hearing days (4 days, without considering the reserve day), each Party shall have a total of 11 hours (or 660 minutes) for the entire hearing (without considering the reserve day). Subject to the specific time limits described in paragraph 15 below, Parties will be allowed to use their time as they see fit.
13. Time used by the Parties in oral argument or in examination of witnesses and experts (including re-direct or re-cross examinations,) shall be attributable to the Party making such argument or conducting such examination.
14. Time taken by the Tribunal for its own questions and the answers by the witnesses to those questions, as well as time used for housekeeping or to resolve technical difficulties, shall not be counted against the Parties' time.
15. Each Party shall respect the following specific time limits:
 - a. *Opening Statements.* Each Party shall be allowed a maximum of 2 hours for its Opening Statement, followed by a maximum of 45 minutes for rebuttals.
 - b. *Witnesses/Expert cross-examinations:*
 - i. *Direct Examination of Fact Witnesses.* The direct examination of a fact witness envisioned by Section 18.7 of Procedural Order No. 1 shall not exceed 10 minutes.

¹ A change in the planning of the Hearing may for example result from the fact that the Tribunal has offered Mr. Keoseyan to testify at any time of his choosing. Thus, if Mr. Keoseyan were to testify, this would mean that the Hearing schedule would have to be changed to accommodate Mr. Keoseyan's testimony, whenever it takes place.

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ii. *Direct Presentations by Experts.* The presentation by an expert envisioned in Section 18.8 of Procedural Order No. 1 shall not exceed 30 minutes.

16. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.
17. The Tribunal emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard. In principle, witnesses and experts should be available half a day before and after the time they are scheduled to be examined.

C. DOCUMENTS FOR USE AT THE HEARING

1. Documents to be presented before the Hearing

18. The Parties shall submit to the Tribunal by November 24, 2023, jointly or, where they are unable to agree, separately:
 - A chronology of relevant facts in tabular form;
 - A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
 - A list of the substantive issues requested to be determined by the Tribunal.

2. Electronic Hearing Bundle

19. There shall be a single Electronic Hearing Bundle (PC- and Mac-compatible), to be prepared jointly by the Parties. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

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Electronic Hearing Bundle:

- 01. Pleadings**
 - A. Claimant
 - B. Respondent
- 02. Factual Exhibits**
 - A. Claimant
 - B. Respondent
- 03. Legal Authorities**
 - A. Claimant
 - B. Respondent
- 04. Witness Statements**
 - A. Claimant
 - B. Respondent
- 05. Expert Reports**
 - A. Claimant
 - B. Respondent
- 06. Expert Exhibits**
 - A. Claimant
 - B. Respondent
- 07. Tribunal's Rulings**

20. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX file-sharing platform no later than November 24, 2023.
21. To ensure proper operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX file-sharing platform, using the structure indicated at para. 20 *supra*, including a consolidated hyperlinked index.
22. The court reporters and interpreters will be provided with a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
23. During any cross-examination or re-examination, the Parties will refer only to documents that already form part of the record of the case and that, therefore, are included in the Electronic Hearing Bundle
24. If a Party wishes to use for cross-examination purposes a specific, more limited cross-examination bundle, it will provide it in electronic format, at least 15 minutes prior to the

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beginning of the cross-examination, to the opposing Party, each Member of the Tribunal, the Secretary, the Assistant of the Tribunal, and the court reporter via email and the BOX folder created for this case, to be downloaded before the cross-examination.

25. The witness and experts are entitled 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).

3. Slide presentations

26. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits. At least 15 minutes before their presentation, the Parties will distribute one hard copy to each Tribunal Member and one hard copy to the opposing side.

27. Demonstrative exhibits shall be used in accordance with paragraph 16.10 of PO1 (reproduced below):

“16.10. 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 number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and the interpreter(s) at the Hearing at a time to be decided at the pre-hearing organizational meeting.”

28. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibits to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

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D. WITNESS AND EXPERT EXAMINATION

29. The rules set out in Procedural Order No. 1 for the examination of witnesses and experts are confirmed. The examination, cross-examination and re-examination will proceed in accordance with paragraph 18 of Procedural Order No. 1.
30. Witnesses shall not be allowed in the hearing room before rendering their testimony, except for witnesses who are also party representatives, who may attend opening statements and the United States' oral submission. Experts shall be allowed in the hearing room at any time. Witnesses who are also party representatives shall render their testimony first in the course of the hearing.
31. Re-direct examination shall be permitted, but it will be limited to the subject of cross-examination.
32. Re-cross examination shall be permitted, when appropriate, but it will be limited to the subject of re-direct examination.
33. At the discretion of the Tribunal, both Parties will also be allowed to pose questions, when appropriate, as a follow-up to questions asked to witnesses by the Tribunal.
34. The Party presenting a witness will provide that witness with clean (unannotated) hard copy/copies of that witness's statement(s) immediately before his examination. The witness shall not have access to any other documents, notes, information, or materials of any kind (whether in hard copy or electronic form).
35. The experts will be permitted to bring to the witness table clean (unannotated) hard copies of (i) that expert's report(s), (ii) the expert report(s) presented by the opposing Party, and (iii) any annexes or exhibits to the expert report(s) that the expert may find useful.
36. The Party examining the witness or expert will use the Hearing or Cross-Examination Bundle, rather than hard copies.

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37. Where more than one expert signed the report(s), those experts are permitted to testify together. Consistent with arbitral practice, each expert will be prepared to answer questions on a specific set of topics, and only one expert may answer each question.
38. It is desirable that witness examination is concluded within one session. The Parties shall use their best efforts to complete the examination of a given fact or expert witness on the same day. The Tribunal will try to accommodate the sitting hours to ensure that the examination is not interrupted.
39. If that, however, proves impossible and a fact or expert witness's cross-examination is interrupted and must continue in the following session, or there is a break during the testimony, the fact or expert witness will be instructed not to speak with anyone about the case or the subject of the dispute until the examination is completed. To avoid potential disputes, the fact or expert witness may not speak **with** or contact any of the Parties, their representatives or counsel until the examination is completed.

E. AUDIO RECORDING

40. Paragraph 2.1 of Procedural Order No. 1, concerning audio recording (reproduced below) applies.

21.1 Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

41. The video and audio recording shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Tribunal upon the conclusion of the Hearing. Except for the court reporters, Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.

F. TRANSCRIPTION

42. Paragraph 21.3 of Procedural Order No. 1 concerning transcription (reproduced below) applies.

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[...]

21.3. The parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the 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.”

43. In addition, real-time court reporting in English and Spanish shall be made available to the Participants via an online link connection to be provided by the court reporters. The Participants will be able to access the streamed transcripts from their own devices (laptop or tablet).
44. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
45. 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.

G. INTERPRETATION

46. Paragraphs 11.7 to 11.10 of Procedural Order No. 1 concerning interpretation (reproduced below) apply.

“11.7. The hearing will be conducted in Spanish and English with simultaneous interpretation into the other procedural language.

11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish shall be interpreted, simultaneously.

11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §18.1 below), which witnesses or experts require interpretation.

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11.10. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.”

47. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
48. Each Participant should, inasmuch as practicable, circulate any presentations to the interpreters prior to the start of each intervention.

H. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS

49. After consulting with the Parties during the Hearing, the Tribunal, either at the end of the Hearing or shortly thereafter, will determine:
 - a) Whether any new round of allegations on specific topics or submission of new evidence might be appropriate before the Parties file their Post-Hearing Briefs.
 - b) The maximum length, formal content and date for the filing of their Post-Hearing Briefs. No new evidence may be filed with such Post-Hearing Briefs.
 - c) The date for the filing of the Parties’ statements of costs (and for the Parties’ comments, if any, on the other Party’s statements of costs).

I. PUBLICITY

50. Consistent with USMCA Article 14.D.8.2. and Sections 20.6 and 24.2 of Procedural Order No. 1 and Sections 14, 10-20 of Procedural Order No. 2, the Hearing will be made available to the public on ICISD’s website.
51. To the extent that both Parties determine this necessary, the transcript of the Hearing will be redacted, and the recording will be modified to exclude any redacted information. The redaction process will be subject to the rules set out in paragraphs 15 and 16 of Procedural Order No.2, with the revised, non-redacted transcript of the Hearing being considered a Tribunal’s document and the 14 day period for redaction requests envisaged in paragraph 16

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(vii) of that Procedural Order running from the time of the final agreement between the Parties on the revised transcript.

52. After the Parties have submitted their proposed redactions to the Tribunal, and the Tribunal has reached a decision regarding any disagreement between the Parties, the recording of the Hearing shall be edited to exclude any redacted information in accordance with the revised transcripts. Once ICSID has been informed of the sections (if any) of the recording that need to be deleted, ICSID will make the redactions; and the videos (with redactions, if any) will be uploaded to the ICSID website.
53. Any other measure (beyond redactions to the transcript and the modification of the recording) shall be the subject of a separate procedural request to be submitted by the interested Party.

J. HEALTH & COVID-19 PROTOCOL

54. The Tribunal, in consultation with the parties and the ICSID Secretariat, may issue a protocol on COVID-related measures if the circumstances so justify.

K. CONFIDENTIALITY AND DATA PRIVACY

55. The confidentiality provisions set out in Procedural Order No. 2 will apply to the Hearing.
56. This ICSID proceeding, including all communications, is confidential. Participants must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All participants providing services [interpreters, court reporters, technicians, etc] 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.

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57. 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. These data are 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. The Parties, the Members of the Tribunal and ICSID will retain the information to the extent necessary pending the conclusion of the arbitration. All other hearing participants must delete all electronic copies and dispose of any printed copies, as confidential material, as soon as they fulfill their Hearing-related obligations.

For and on behalf of the Tribunal,

[signed]

Mr. Manuel Conthe Gutiérrez
President of the Tribunal
Date: November 15, 2023

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ANNEX A

FINLEY RESOURCES INC., MWS MANAGEMENT INC., AND PRIZE PERMANENT HOLDINGS, LLC

v.

UNITED MEXICAN STATES

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AGENDA

Hearing on Jurisdiction and the Merits

December 4 to December 7, 2023

Washington, D.C.

Day 1 (Monday, December 4, 2023)

Hour	Duration	PROCEDURAL STEP
09:30	<i>15 min</i> ²	Housekeeping matters
09:45	30 min	U.S. Oral Submission
10:15	120 min	Claimants' Opening Statement
12:15	15 min	Coffee Break
12:30	120 min	Respondent's Opening Statement
14:30	60 min	Lunch Break
15:30	45 min	Claimants' Rebuttal
16:15	45 min	Respondent's Rebuttal
17:00	<i>60 min</i>	Tribunal's Questions
18:00		End

Day 2 (Tuesday, December 5, 2023)

Hour	Duration	PROCEDURAL STEP
09:00	<i>10 min</i>	Housekeeping matters
09:10	10 min	Direct Examination of Claimants' Fact Witness Jim Finley
09:20	<i>120 min</i>	Cross-Examination of Mr. Finley

² All figures in *italics* are tentative; and those for cross-, re-direct and re-cross examination by the Parties particularly so, as they are subject to the Parties' decisions on how to use their overall time allocation, having been estimated so as to add up to a similar overall number of minutes for both Parties. Thus, those figures should be considered a non-binding estimate by the Tribunal, meant only for planning purposes. The same applies to the estimated time for the Tribunal's questions.

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11:20	15 min	Coffee Break
11:35	40 min	Re-Direct and Re-Cross Examination of Mr. Finley
12:15	60 min	Tribunal's Questions
13:15	60 min	Lunch Break
14:15	10 min	Direct Examination of Claimants' Fact Mr. Luis Kernion
14:25	120 min	Cross-Examination of Mr. Kernion
16:25	15 min	Coffee Break
16:40	40 min	Re-Direct and Re-Cross Examination of Mr. Kernion
17:20	60 min	Tribunal's Questions
18:20		End

Day 3 (Wednesday, December 6, 2023)

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
09:30	15 min	Housekeeping matters
09:45	10 min	Direct Examination of Respondent's Fact Witness Rodrigo Loustaunau Martínez
09:55	120 min	Cross-Examination of Mr. Loustaunau
11:55	15 min	Coffee Break
12:10	80 min	Continuation of cross-Examination of Mr. Loustaunau
13:30	40 min	Re-Direct and Re-Cross Examination of Mr. Loustaunau
14:10	60 min	Lunch Break
15:10	60 min	Tribunal's Questions
16:10		<i>Slack time, to be used if Mr. Keoseyan testifies³</i>
18:00		End

Day 4 (Thursday, December 7, 2023)

<i>Hour</i>	<i>Duration</i>	PROCEDURAL STEP
08:30	30 min	Direct Examination of Claimants' Experts Rodrigo Zamora and Daniel Diaz
09:00	120 min	Cross- Examination of Claimants' Experts
11:00	15 min	Coffee Break
11:15	40 min	Re-Direct and Re-Cross Examination of Claimants' Experts
11:55	60 min	Tribunal's Questions
12:55	60 min	Lunch Break
13:55	30 min	Direct Examination of Respondent's Expert Jorge Asali Harfuch
14:25	150 min	Cross-Examination of Respondent's Expert
16:55	15 min	Coffee Break

³ The Tribunal has offered Mr. Keoseyan to testify at any time of his choosing. Hence, this slack time is just meant to accommodate changes in the timetable resulting from Mr. Keoseyan's testimony, whenever it takes place. Additionally, Friday, December 8, 2023 until 2pm will also remain in reserve.

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17:10	<i>40 min</i>	Re-Direct and Re-Cross Examination of Respondent's Expert
17:50	<i>60 min</i>	Tribunal's Questions
18:50	<i>15 min</i>	Final housekeeping matters
19:10		End
The morning of Day 5 (Friday, December 8, 2023, up to 2 pm) will be available, if needed		