

**IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE NAFTA AND ICSID CONVENTION**

B E T W E E N:

FIRST MAJESTIC SILVER CORP.

Claimant / Investor

- and -

GOVERNMENT OF UNITED MEXICAN STATES

Respondent / Contracting Party

**REQUEST FOR ARBITRATION
OF
FIRST MAJESTIC SILVER CORP.**

March 1, 2021

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SUBMISSION OF CLAIM TO ARBITRATION

1. First Majestic Silver Corp. (“**First Majestic**”), on its own behalf and on behalf of Primero Empresa Minera S.A. de C.V. (“**PEM**”), its investment in Mexico, hereby submits its claim against the Government of the United Mexican States (“**Government of Mexico**”) to international arbitration pursuant to Article 1120(1)(a) of the *North American Free Trade Agreement* (“**NAFTA**”),¹ and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the “**ICSID Convention**”).²
2. On May 13, 2020, First Majestic delivered to the Government of Mexico its Notice of Intent stating that certain of its measures, and its failure to take certain other measures, were in breach of the NAFTA, causing First Majestic and its investment in Mexico to suffer damages and losses.³ The Notice of Intent requested the Government of Mexico to engage in amicable settlement of the dispute.⁴
3. First Majestic has, since serving its Notice of Intent, made repeated attempts at seeking amicable settlement of its legal dispute with the Government of Mexico, but the dispute remains unsettled.⁵ More than six months have elapsed since the events giving rise to

¹ As a claim pursuant to Annex 14-C (Legacy Investment Claims and Pending Claims) of the Canada-United States-United Mexican States Agreement (known in each of the three countries, respectively, as “**CUSMA**”, “**USMCA**” and “**T-MEC**”). Relevant portions of the NAFTA and the CUSMA are attached as **Exhibit “A”**.

² The ICSID Convention entered into force in the United Mexican States on August 26, 2018.

³ NAFTA, Article 1119.

⁴ NAFTA, Article 1118. A copy of the Notice of Intent is attached as **Exhibit “B”**. Power of Attorney authorizing legal counsel to serve the Notice of Intent on behalf of First Majestic and PEM can be found attached as **Exhibit “C”**.

⁵ On June 12, 2020, First Majestic provided the NAFTA Article 2103.6 Competent Authorities of each of the Government of Canada and the Government of Mexico a copy of the Notice of Intent and written communication concerning Article 2103 of the NAFTA. In addition, First Majestic provided basis for its view on the inapplicability of Article 2103 of NAFTA to the dispute, and that it intended to rely on all available standards of treatment and protection under Part A of Chapter 11 of the NAFTA including an expropriation claim (on the basis that Article 2103 was inapplicable to the dispute). The Competent Authorities have not or have failed to agree within the required six-month period of the referral that any one of the measures giving rise to the dispute does not constitute an expropriation.

First Majestic's claim⁶ and more than 90 days have elapsed since First Majestic delivered its Notice of Intent on the Government of Mexico.⁷

4. The submission of this claim by First Majestic on its own behalf and on behalf of PEM, its wholly owned subsidiary, for international arbitration constitutes consent to and demand for such arbitration under Article 1122(2)(a) of the NAFTA and Chapter II of the ICSID Convention.

5. First Majestic has taken all necessary internal measures, both on its own behalf and on behalf of PEM, its wholly owned subsidiary, to authorize the submission of its claim to arbitration.⁸

6. Mexico, by signing and ratifying the NAFTA and Annex 14-C of the T-MEC, has provided its written consent to this arbitration. First Majestic, in its own right and on behalf of PEM, accepts Mexico's written consent by submitting this Request for Arbitration.⁹

7. Furthermore, both First Majestic and PEM hereby provide their respective waivers, pursuant to Article 1121(1) and (2) of the NAFTA, save for injunctive, declaratory or other extraordinary relief procedures not involving the payment of damages under the laws of Mexico.¹⁰

⁶ NAFTA, Article 1120(1).

⁷ NAFTA, Article 1119.

⁸ On February 18, 2021, the First Majestic Board of Directors passed Board Resolutions authorizing the President and CEO to direct legal counsel to file this claim against the Government of Mexico pursuant to Chapter 11 of NAFTA. The Resolutions are attached to this Request for Arbitration as **Exhibit "D"**. Prior to filing this claim, First Majestic made one more attempt, following several prior attempts, which did not result in an amicable settlement.

⁹ Pursuant to ICSID Institution Rule 2(3), the date on which the parties consented in writing to submit their dispute to ICSID is the date on which First Majestic Silver, Corp., filed this Request for Arbitration.

¹⁰ The written and executed consents and waivers are attached to this Request for Arbitration as **Exhibit "E"**.

THE PARTIES

8. First Majestic is a Canadian mining company incorporated under the laws of the Province of British Columbia, Canada and has its head office in Vancouver, British Columbia.

9. It is publicly listed on the New York Stock Exchange, the Toronto Stock Exchange, and the Frankfurt Stock Exchange.

10. First Majestic is in the business of the exploration, development, and acquisition of silver deposits and silver mines. It acquired its first mine in Mexico in 2004, and to date has invested over USD \$2.4 billion in Mexico.¹¹

11. In May 2018, First Majestic acquired all of the issued and outstanding shares of Primero Mining Company (“**PMC**”), another Canadian corporation. PMC owned 100 percent of the common shares of PEM. Through this transaction, First Majestic came to wholly own and control PEM, and the San Dimas mining assets of PEM.¹²

12. The San Dimas mine is located in the State of Durango, Mexico, and has more than 100 years of mining production. The San Dimas region has had a history of silver mining stretching back 250 years, and is considered one of the most significant metal mining districts in Mexico.

13. Currently, First Majestic employs over 5,000 employees in Mexico in its mining operations, creates indirect employment for over 25,000 individuals in Mexico and provides social benefits to over 50,000 persons in the communities in which it operates. It has for over a decade been consistently recognized by the Centro Mexicano para la Filantropia as

¹¹ First Majestic is a juridical person of Canada, a party to ICSID effective as of December 1, 2013. The incorporation documents for First Majestic are attached as **Exhibit “F”**. First Majestic is therefore an “investor of a Party” having made investments in Mexico.

¹² First Majestic owns all the outstanding shares of PEM. The corporate ownership chart, the incorporation documents for PEM, and proof of ownership are evidenced by the documents attached to this Request for Arbitration as **Exhibit “G”**. PEM is therefore an “investment of an investor of a Party” as it is owned and controlled directly or indirectly by an investor of Canada.

a “socially responsible company” and for committing a certain percentage of its revenues towards social expenditures.

14. Through PEM, First Majestic has supported various community education initiatives in the State of Durango. Examples of these initiatives include: (a) providing a 50 percent tuition subsidy to *all* of the students who attend the school in Tayoltita where PEM carries out its mining activities; (b) financially supporting the College of Professional Technical Education (CONALEP) campus in Tayoltita where students participate in classroom activities; and (c) making available to students hands-on practical experience in laboratories and workshops owned by PEM and located at the San Dimas mine.

15. Over the 13 years since the educational funding initiatives started, approximately 40 percent of the graduates from CONALEP have been able to obtain employment at the San Dimas Mine. The Mexican Ministries of Education and Labour has recognized First Majestic’s ongoing support to this program with a 1st place distinction for practices in education and employment at the College.

16. First Majestic having made “investments” in Mexico, is for the purposes of the NAFTA an “investor” of Canada.¹³ Its address is as follows:

1800-925 West Georgia Street
Vancouver, B.C., Canada
V6C 3L2

17. First Majestic is represented in these proceedings by legal counsel at Arent Fox LLP, 1717 K Street, NW, Washington D.C. They have been duly authorized by First Majestic and PEM to act on their behalf in these proceedings and to receive all communications related to these proceedings.¹⁴ All correspondence should be directed to:

¹³ See *supra*, footnotes 11 and 12. First Majestic wholly owns and controls PEM through PMC, a Canadian corporation. PEM is an “enterprise” incorporated in Mexico, which constitutes an “investment” of First Majestic under Article 1139 (Definitions) of the NAFTA.

¹⁴ The evidence of their appointment and authorization is attached as **Exhibit “C”**.

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18. Mexico is a sovereign state, and this Request for Arbitration is being served on:

Honorable Lic. Orlando Perez Garate
Dirección General de Consultoría Jurídica de Comercio Internacional
Pachuca 189, Colonia Condesa, 06140 Cuauhtémoc, CDMX, México
orlando.perez@economia.gob.mx

19. As set out further below, the measures taken and not taken by the Government of Mexico have resulted in violations of Mexico's obligations under the NAFTA and have harmed and continue to harm First Majestic, its investment and its returns on its investment.

20. The nature of the legal dispute and the harm caused to First Majestic and its investment and returns from investment are described further below. The measures that have given rise to this dispute can be summarized as follows:

- a) the repudiation of the advance pricing agreement ("APA") entered into by PEM in 2012 with the Servicio de Administración Tributaria ("SAT"), which has provided the legal framework for certainty and stability for investments made in Mexico by PEM and First Majestic, resulting in the creation of thousands of jobs in Mexico, and which, notwithstanding the SAT's actions and omissions, continues to remain legally valid;
- b) the unlawful and unprecedented rejection by the SAT of PEM's requests for resolution of any disputes pursuant to the universally accepted process set out in avoidance of double taxation treaties,¹⁶ known as the Mutual

¹⁵ Joining Arent Fox LLP in May 2021.

¹⁶



Agreement Procedures (“MAPs”), which is provided for in each of the [REDACTED] Mexico Tax Treaty, the [REDACTED]-Mexico Tax Treaty and the [REDACTED] Mexico Tax Treaty;

- c) various other illegal and egregious measures and activities, and excessively harsh enforcement and intimidation tactics, including: (i) unduly interfering with the operation of the business of PEM, and the management activities of its executives (including during the very difficult circumstances of the ongoing COVID-19 pandemic); (ii) using collateral powers of the Government of Mexico including [REDACTED] legislation and [REDACTED] law provisions to interfere with the core business activities of PEM and to create conditions of coercion; (iii) unjustifiably encumbering, attaching and freezing of PEM bank accounts and other assets; (iv) violation of injunctions ordered by the Mexican Federal Court on Administrative Matters in January 2020, for the 2010 and 2012 taxation years of PEM, prohibiting SAT from seeking to collect taxes while the MAPs requests were pending; (v) interference with contractual agreements entered into by PEM with its workforce and suppliers by limiting PEM’s ability to meet its legal obligations, which are critical for generating revenues from its mining activities and for maintaining the health and welfare of its workforce; (vi) targeting and ostracizing First Majestic and PEM in the media for relying on their legal rights under domestic law and international law, and publicizing confidential tax related information of First Majestic and PEM and asserting that hundreds of millions of dollars are owed by PEM when this has not yet been lawfully determined; (vii) impeding the ability of First Majestic to receive dividends and other returns from PEM; and (viii) violating the protections afforded to PEM, its executives and workforce by the Federal Constitution of the United Mexican States (“**Mexican Constitution**”) and Mexican domestic law.¹⁷

[REDACTED]

¹⁷ These measures, both taken and not taken, against First Majestic and PEM establish the foundation of “a legal dispute arising directly out of an investment” made by First Majestic in Mexico, thus satisfying the jurisdictional requirement set forth in Article 25(1) of the ICSID Convention

FACTUAL BACKGROUND

21. First Majestic owns through its various wholly-owned subsidiaries seven mines in Mexico. Three are producing mines: San Dimas, Saint Elena and La Encantada mines. The remaining four mines, San Martin, Del Toro, La Parrilla and La Guitarra, have had their production suspended. First Majestic also has several projects in Mexico which are currently in the exploration or development phase.

22. Since commencing initial production in 2005, First Majestic has increased silver equivalent production in Mexico every single year except for 2017 and 2020. Between 2009 and 2019, it increased production from slightly less than 5 million ounces to over 25 million ounces, a more than 500 percent increase over 10 years.

23. It has achieved this by investing over USD \$2.4 billion in Mexico, including by acquiring the San Dimas mine in 2018.

24. In making its investment decisions, First Majestic relied on a political and legal environment at the federal government level that historically had supported the mining industry, a cooperative and amicable relationship with the government of the State of Durango, a reliable and enthusiastic labour force, dependable government permitting processes, economic policies that rewarded entrepreneurial efforts, and its commitments and legal obligations under a network of treaties including avoidance of double taxation treaties and the NAFTA.

25. The San Dimas mine currently produces more silver than the other two producing silver mines on a combined basis. It has become the cornerstone asset of First Majestic's investments in Mexico.

26. Prior to May 10, 2018, the San Dimas mine was owned by PMC, a Canadian corporation, through its wholly-owned subsidiary, PEM. First Majestic acquired all the issued and outstanding shares of PMC on that date.

27. As a result of that transaction, First Majestic acquired PMC's historical obligations under the "**San Dimas Stream Agreement**". These historical obligations are discussed further below in some level of detail, as the dispute with the Government of Mexico relates to these agreements including the SAT's refusal to honour its legal commitments, made to both PMC and PEM, and the unlawful actions and threats against PEM arising from the repudiation of its legal obligations.

San Dimas Stream Agreement

28. The original San Dimas Stream Agreement was executed in 2004 by affiliates of Goldcorp Inc. ("**Goldcorp**") and affiliates of Silver Wheaton Corp. ("**Silver Wheaton**"). Goldcorp and Silver Wheaton were not related or affiliated companies.

29. The San Dimas Stream Agreement was thereafter amended and restated when PMC acquired the San Dimas mine from Goldcorp in August 2010.¹⁸

30. Under the amended San Dimas Stream Agreement ("**San Dimas Stream Agreement**"), which continued to be an arm's length agreement, PMC was required to sell to an affiliate of Silver Wheaton [REDACTED] of the silver produced from the San Dimas mine up to [REDACTED] [REDACTED] of silver produced thereafter, based on the following formula of the lesser of: (i) the current market price; and (ii) [REDACTED] per ounce plus an annual increase of [REDACTED]. This arm's length negotiated price represented the total value that PMC (including its Mexican affiliate) would receive for the sale of silver to Silver Wheaton (the "**Realized Price**").

31. The specific terms of the San Dimas Stream Agreement required PMC to sell the silver through one of its non-Mexican subsidiaries, Silver Trading Barbados ("**STB**"), located in Barbados. STB would in turn sell the silver to Wheaton Precious Metals International Ltd., a Silver Wheaton company in the Caymans. As a result, the vendor and the purchaser transacted the sale of the silver through their respective subsidiaries in Barbados and Caymans.

¹⁸ Unless noted otherwise, any references to and descriptions of the San Dimas Stream Agreement in this memorandum relate to the San Dimas Stream Agreement in place between August 2010 and May 2018.

Internal Streaming Agreement

32. PMC, to meet its obligations under the San Dimas Stream Agreement entered into an agreement with PEM (the “**Internal Stream Agreement**”), which would sell the required silver from the San Dimas mine to STB (the PMC affiliate in Barbados).

33. In 2010, after PMC had acquired the San Dimas mine, the sales from PEM to STB were also made at the Realized Price (“**PEM Realized Price**”). For Mexican income tax purposes, PEM recognized the revenue on these sales pursuant to the Internal Stream Agreement at the PEM Realized Price.

The Advance Pricing Agreement

34. To obtain clarity, certainty and stability for PMC’s investment and its returns, and to ensure that the SAT would accept the PEM Realized Price as the appropriate price for determining income tax, PEM applied for an Advance Pricing Agreement (the “**APA**”)¹⁹ from the SAT. PEM received the APA on October 4, 2012. This provided PEM a legally binding agreement with the SAT for calculating revenues from the sale of silver for a defined five year period.

35. To obtain the APA, PMC disclosed to the SAT extensive and detailed information concerning its financial performance and that of PEM, and all relevant domestic and international transactions including the streaming agreements. It also paid the required fee to the SAT. This information was gathered, and the analysis and transfer pricing studies were presented to the SAT with the involvement of the international accounting firms, Ernst & Young and KPMG, and economic studies prepared by two of the most prestigious Mexican academic institutions, Instituto Tecnológico Autónomo de México and Instituto Tecnológico y de Estudios Superiores de Monterrey. It took between October 17, 2011 and October 4,

¹⁹ The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations defines an APA as a determination of a transfer price for transactions over a fixed period of time. (at para 4.135). See: https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2017_tpg-2017-en#page217.

2012, or approximately 12 months, to obtain the APA after a thorough review and analysis of the information by the SAT.

36. The APA confirmed that the PEM Realized Price on the sale of silver between PEM and PMC was consistent with the arm's length principle and would be used to calculate taxes owed on the silver sold under the Internal Stream Agreement. The APA also required that PEM provide annual reporting of financial information for the 2013 and 2014 years. PEM fully complied with this financial reporting obligation as required by the APA.

37. Under Mexican law, an APA is valid and binding on the SAT for a period of five years. The SAT cannot revoke an APA without seeking an annulment resolution from the Federal Court of Administrative Justice. Such a resolution must be based on existence of evidence demonstrating malfeasance by the applicant. Furthermore, an adverse resolution against a taxpayer is subject to an appeal to the Federal Circuit Court and thereafter to the Mexican Supreme Court.

38. Therefore, the APA represented the SAT's legally binding agreement with PEM for calculating its taxes for the 2010 to 2014 years.

39. PEM thereafter continued to use the PEM Realized Price for calculating its revenues and taxes owing between 2015 and May 2018 based on the methodology set out in the APA.

Mexico's efforts to set aside the APA and issue illegal reassessments contrary to the APA

40. In 2016, SAT initiated a legal proceeding, *Juicio de Lesividad*, seeking to retroactively nullify the APA.

41. This was entirely unexpected as such a proceeding had not been initiated previously by the SAT in relation to any APA it has issued. Furthermore, the *Juicio de Lesividad* proceeding sought to nullify the APA without evidence of malfeasance on the part of PEM.

42. To date, under the applicable Mexican laws, the APA remains binding on the SAT.

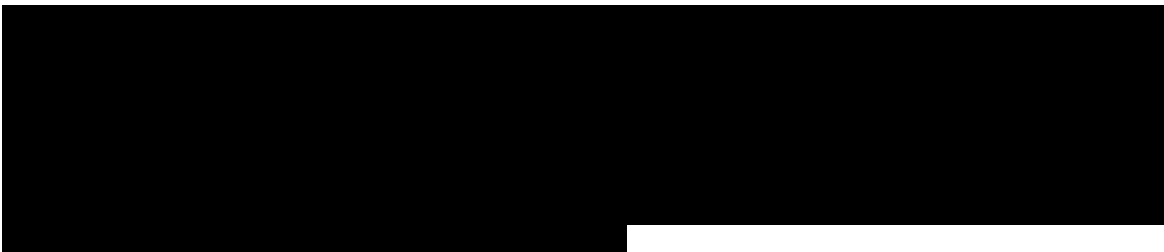
43. Notwithstanding the legal validity and binding effect of the APA on the SAT, the SAT unlawfully proceeded in 2019 to issue retroactive reassessments for the years 2010 through 2012 in the total amount of [REDACTED], consisting purportedly of taxes owing in the amount of [REDACTED] in denied interest and management fees, and [REDACTED] in interest and penalties. Mexico's measures seeking to impose retroactively reassessments and then collect this sum of money for periods dating back approximately 10 years amounts to brazen actions taken in violation of its own laws and the Mexican Constitution.

44. To protect its legal rights, PEM filed administrative appeals against all three illegal reassessments.

45. PEM also invoked the Mutual Agreement Procedures (the "MAPs") under three applicable international avoidance of double-taxation treaties.²⁰ Among other things, First Majestic's submissions to the applicable Competent Authorities under the avoidance of double-taxation treaties pointed to the existence of the legally binding APA during the relevant years, and that (a) the SAT was trying to tax income that had already been subject to taxation in the three non-Mexican jurisdictions and therefore SAT's retroactive and illegal reassessments contravened the avoidance of double-taxation treaties, and (b) in the case of the [REDACTED] Treaty, that SAT's unlawful reassessments in 2019 in relation to the 2010 to 2012 years violated the five-year limitation period provided for in that treaty.

46. SAT promptly barred PEM's access to administrative avenues of seeking redress, and as well PEM's and First Majestic's international avenues for challenging the illegal and retroactive reassessments. It dismissed the administrative appeals without legal justification. Shortly after that, the SAT ignored without any lawful basis the requests for

²⁰



MAPs from the Competent Authorities of [REDACTED] under the applicable avoidance of double taxation treaties.

47. SAT incorrectly and unlawfully claimed that the controversies for which MAPs had been initiated by First Majestic and PEM, were required to be resolved under Mexican law without resort to the applicable treaties. This is obviously incorrect as the avoidance of double taxation treaties signed by Mexico with [REDACTED] each contain provisions for invoking the MAPs and Mexico has confirmed to the Organisation for Economic Cooperation and Development that this process can be invoked if the taxpayer is potentially going to be subjected to double taxation.

48. The refusal of the SAT to acknowledge its legal obligations under the MAPs provisions for avoidance of double-taxation treaties clearly violates the pre-eminence of the international treaties which bind Mexico over Mexican domestic legislation, and the actions of the SAT are contrary to the embedded and well recognized principles contained in the Mexican Constitution.

49. The Government of Mexico cannot invoke its internal laws as an excuse for failure to comply with its international obligations under treaties with other sovereign states, and has an obligation to carry out its commitments on a good faith basis.

50. The Government of Mexico has therefore in violation of its international law obligations, Mexican Constitution and domestic law denied both First Majestic and PEM, on an arbitrarily and illegal basis, recourse to the international dispute resolution mechanism specifically provided in the tax treaties to resolve disputes relating to double taxation.

Mexico's illegal efforts to collect on the unlawful reassessments

51. The Government of Mexico has, starting in 2019, coinciding with the election of President Andrés Manuel López Obrador in December 2018, significantly ramped up its efforts at appropriating corporate revenues for the government.

52. Much of its efforts have been directed at collecting amounts that it claims are "taxes" owed based on publicly raising the specter of pursuing tax evasion and fraud charges

against its targeted list of companies. Many of these targeted companies are large multi-nationals owned by foreign investors.

53. These collection efforts have also been accompanied by the targeted companies being “named and shamed” in the press. Among many similar articles published in 2020 and 2021 by Bloomberg, Financial Times, NY Times, the Economist and other reputable and reliable sources, the following article²¹ from Reuters is illustrative:

Exclusive: Mexico’s tax chief eyes criminal charges as path to tougher corporate enforcement

MEXICO CITY (Reuters) - Mexico’s tax chief is preparing to press criminal charges against some of the biggest companies operating in the country as part of an enforcement crusade, telling Reuters that officials had opened “four or five” cases of tax fraud this year alone.

The campaign has already squeezed hundreds of millions of dollars from retailer Walmart Inc's Mexico unit and Coca-Cola bottler Femsa, with other firms under scrutiny in the country with the lowest take in the Organisation for Economic Co-operation and Development.

Raquel Buenrostro, chief of the Tax Administration Service (SAT), said past administrations were too lenient with powerful firms, depriving the government of needed income.

“There was tax fraud in the past, and it never led to criminal procedures,” Buenrostro said on Monday in an interview at her spartan office, decorated with a Mexican flag and a framed photo of President Andres Manuel Lopez Obrador.

“Executives now know that if they commit tax fraud, we will have to open a criminal procedure,” Buenrostro said.

The president, a leftist, runs a tight budget and has promised no new taxes for three years. Instead he wants to increase revenue through more efficient collection and has threatened to expose 15 companies he says owe a total of \$2 billion.

On Tuesday he said Toyota Motor Corp was bringing its payments up to date, but that some Canadian mining companies were seeking international

²¹ June 9, 2020. See: <https://www.reuters.com/article/us-mexico-politics-tax-exclusive-idUSKBN23G2V3> (accessed February 25, 2021).

arbitration rather than pay what the government said they owed. It was not clear if they were on the president's list of 15 companies behind on taxes.

Toyota did not immediately respond to a request for comment.

Buenrostro said the list of 15 represented just a handful of the companies in arrears.

When asked how many criminal complaints had been opened against large companies, Buenrostro said: "From big taxpayers we have four or five... for tax fraud, this year, plus others that have accumulated."

She did not say how many overall companies were targeted in the new complaints.

Walmart de Mexico paid \$358 million to the SAT last month after negotiations over matters including the 2014 sale of a restaurant chain. The company said the amount was arrived at in collaboration with the SAT.

Walmart de Mexico's corporate affairs director previously said the retailer did not have knowledge of a criminal complaint. The company declined to comment in response to questions from Reuters on Tuesday.

Mexican conglomerate Femsa, one of the world's largest Coca-Cola bottlers, followed days later with its own agreement with the SAT, pledging to pay \$398 million. The company said the payment resolved interpretative differences over taxes paid outside Mexico.

Femsa was not presented with a criminal charge, a corporate communications representative said.

Buenrostro said she welcomed reaching a deal with companies without resorting to charges.

"Our aim is not to send people to jail," she said.

Buenrostro declined to say whether Walmart and Femsa were threatened with, or faced, criminal charges.

The strategy appears to be yielding results. Large taxpayers forked over more than 50 billion pesos (\$2.3 billion) in total from January to May, compared with only 37 billion pesos during all of last year.

Buenrostro also said the SAT, with 1,300 audits underway, has focused on cases where it was confident of proving a tax obligation, rather than entering the complicated world of tax law interpretation.

The SAT is reviewing recent transactions, typically from within the past five to seven years, she said.

“We selected not only the biggest debts, but also the easiest ones to recover,” Buenrostro said.

54. The Fiscal Prosecutor Carlos Romero also confirmed in a Bloomberg article²² dated June 29, 2020, entitled “**Mexico Tax Prosecutor: Pay Up, or We Are Taking Your Company**”, that the Government of Mexico was increasingly targeting individuals and corporate taxpaying entities for criminal prosecutions, and that the government was ready to seize and dissolve corporate entities that are found to be guilty of fraud charges:

In the past, fraud charges were few and usually filed against low-level executives who signed documents or members of the board, Romero said. His strategy against big companies has been to target the legal entity itself, as well as the tax lawyers involved, with criminal fraud charges. If a company is found guilty, the government could even decide to seize or dissolve it, he said.

55. Fiscal Prosecutor Romero also confirmed to Reuters in a July 15, 2020 article²³ entitled “**‘There will be people in jail’: Mexico plans arrests soon in tax crackdown**” that while the COVID-19 pandemic had resulted in a postponement of arrest orders, the campaign of using criminal laws to enforce payments from taxpayers would continue in 2020-21 including by jailing individuals:

Various criminal complaints over tax violations are pending, Fiscal Prosecutor Carlos Romero said in an interview, without providing details on the number or the targets. “We were going to have the first arrest orders between April and May, but the pandemic hit us. Right now, I expect it will be between September and October,” Romero said. “Between 2020 and 2021, there will be people in jail.”

56. President López Obrador’s government has, as of January 2020, provided itself with the legislative basis to collect amounts it claims are owed by taxpayers even before it has established, following appropriate legal procedures, that taxes are in fact owed to the

²² June 29, 2020. See: <https://www.bloomberg.com/news/articles/2020-06-29/mexico-tax-prosecutor-pay-up-or-we-are-taking-your-company> (accessed February 28, 2021).

²³ July 15, 2020. See: <https://news.yahoo.com/exclusive-people-jail-mexico-plans-121815469.html> (accessed February 28, 2021).

government. Furthermore, under this law tax evasion is categorized as the equivalent to high felony laws such as organized crime, narcotics trafficking, corruption and homicide thereby allowing executives to be jailed even before the allegations of fraud and evasion are proven in court.

57. First Majestic and PEM have experienced first-hand the harsh and aggressive measures, which have escalated over time. During the earlier part of 2020, when the COVID-19 lock-down was ordered by the Government of Mexico, PEM bank accounts were frozen by the SAT, thereby restricting its ability to meet its payroll obligations and to maintain a secure environment for its employees that was safe from the spread of COVID-19.

58. Furthermore, while the Government's COVID-19 directives required the lock-down of PEM's mining operations, the SAT launched an investigation to identify the assets of PEM that could be seized or forfeited. It did so by requiring entry to the offices of PEM, which should have been closed due to the lock-down, thereby exposing PEM employees to risk of contracting COVID-19 virus.

59. Moreover, the Mexican courts were also in the lock-down, barring PEM from accessing the Mexican courts to fully protect its legal rights and those of its management personnel.

[REDACTED]

60. In addition to the illegal collection actions and enforcement measures, the SAT also commenced during the COVID-19 lock-down period in early 2020, an investigation of PEM for alleged [REDACTED]

61. Again, this required employees of PEM to be at its offices, exposing them to risk of contracting the COVID-19 virus and illness.

62. In doing so, the SAT purportedly relied on a statute that has not been previously applied or considered relevant by SAT to PEM's transactions.

63. SAT assessed substantial fines for these purported violations [REDACTED]
[REDACTED] There is no merit to these allegations.

64. PEM launched administrative appeals from SAT's finding, and in January 2021 obtained a reversal including of the fines levied. The appeal decision confirmed that legitimate wire transfers by PEM should not be considered as improper cash transactions, as claimed by the SAT. In addition, the SAT has also been directed to review evidence provided by PEM identifying parties to certain transactions, and to issue a new resolution.

NAFTA Notice of Intent

65. On May 13, 2020, in the face of the Government's escalation of illegal collection efforts, mounting threats and intimidation, and other collateral actions, First Majestic filed the Notice of Intent pursuant to Chapter 11 of the NAFTA. The Notice of Intent requested an opportunity to engage in mutually beneficial discussions with the relevant authorities, to explore an amicable settlement of its dispute with the Government of Mexico. All efforts made to date by First Majestic have been summarily rebuffed.

APA Related Proceedings

66. On September 23, 2020, PEM was notified that the Federal Court on Administrative Matters ("**Federal Court**") had reached its first instance decision regarding APA nullification proceedings being pursued by the SAT. The Federal Court decision was made without the usually applicable procedural safeguards being applied including providing adequate notice to PEM and its legal counsel. PEM was by virtue of such procedural failings denied the opportunity to fully participate in the decision-making process and became aware of the Federal Court decision after it had been issued.

67. The Federal Court written decision, which was served on PEM a few weeks later on November 6, 2020, directed SAT to re-examine the evidence and basis for the issuance of the APA in 2012 because of the following: (i) SAT's own errors in analyzing PEM's request for the APA and the evidence provided in support of the request; and (ii) SAT's own failure to request from PEM certain additional information before issuing the APA.

68. There is no allegation of malfeasance by PEM in the Federal Court's decision. Rather, the supposed errors that are to be examined are exclusively those that may have been made by the SAT's own personnel engaged in administering the transfer pricing rules.

69. The decision is entirely inconsistent with all previous legal decisions, violates applicable Mexican laws and violates the Mexican Constitution.

70. On December 1, 2020, PEM appealed the decision to the Circuit Court. Proceedings are still ongoing. Pending the final resolution of the appeal and the making of a definitive decision against the validity of the APA, under Mexican law it continues to be legally valid.

Proposed Reassessments for 2013 to 2015

71. PEM is aware of additional SAT reassessments that will likely be issued in respect of the 2013-14 years even though the APA remains legally valid.

72. In addition, the SAT has also initiated an audit in respect of the 2015 year.

73. The SAT has made it be publicly known²⁴ that it is seeking to collect close to [REDACTED] in total from PEM, based on the amount it has reassessed for the 2010-12 years and the amounts for the periods still under reassessment and audit.

74. With the ongoing [REDACTED] and additional such proceedings being threatened by the Government of Mexico against PEM, including against PEM management personnel, First Majestic has been denied the ability as the sole shareholder to transfer monies from PEM to itself by way of dividends and other forms of transfer of profit and returns from its investment. The looming threat of these [REDACTED] [REDACTED] for an amount of [REDACTED] has also severely impacted First Majestic's ability to control and manage the operations of PEM.

²⁴ February 2, 2021. See: <https://www.reuters.com/article/mexico-tax-first-majestic-idUSL1N2K81T9> (accessed February 28, 2021)

[REDACTED]

75. As previously discussed, to force payments from taxpayers the Mexican Government has added new criminal law provisions to its arsenal, implemented as of 2020, that remove the presumption of innocence and allow for the jailing of management personnel and executives of legal entities considered by the SAT as having failed to pay taxes by engaging in fraud or evasion.

76. This new law will be used extremely aggressively as an intimidation tactic to extort monies from foreign investors and significant businesses operating in the country, by forcing them to acquiesce to demands from tax authorities or face criminal proceedings (including potential jail time for senior executives and employees) based simply on assertions of taxes being owed to the SAT.

77. While this new law has not and should not be applied to PEM,²⁵ PEM has nevertheless been subject to intimidation tactics and threats in respect of the 2015 year. In 2020, the Government of Mexico commenced [REDACTED] against PEM and two of its senior management personnel on allegations of underpayment of taxes in the year 2015 by PEM. These [REDACTED] were commenced notwithstanding the fact that the SAT has not yet completed auditing the 2015 year of PEM, and there is no reassessment of the amounts owing following an audit. The allegation [REDACTED] is based on PEM declaring revenues and taxes owing based on the methodology provided for in the APA issued in 2012, which was not subject to any review or challenge by the SAT in 2015.

78. The arbitrary and unlawful basis for charging PEM and its senior management personnel was so egregious that it was ruled as unlawful by a Court. The Court has also ruled that the Federal Fiscal Prosecutor, in order to bring [REDACTED] in the future, would have to demonstrate that PEM had unlawfully failed to properly report revenues and taxes owing for the 2015 year.

²⁵ The new law implemented as of 2020, should not apply to PEM for transactions and events preceding the implementation of this legislation.

Illegal Disclosure of Tax Information

79. Article 69 of the Mexican tax legislation prohibits all public officials from disclosing tax information of both individuals and corporate taxpayers. Disclosures made in violation of Article 69 are subject to criminal law enforcement.

80. However, this legislative provision seeking to protect taxpayers from their confidential tax information being disclosed publicly including to the media has not been honoured during the years starting in 2019 when the government began a campaign of “naming and shaming” taxpayers on its target list.

81. It is now fairly common for tax officials in Mexico to leak information to the media so as to engage in the “naming and shaming” campaign of taxpayers allegedly involved in corruption and defrauding the government of “taxes”. In these cases, the media attributes, within their news articles, statements concerning identified taxpayers and their alleged failure to pay taxes owing, to un-identified officials within the SAT (as their sources for information). In other instances, where the statements for publication are made on the public record by tax officials, the specificity of the information provided is such that the writers of the media articles can provide names of the taxpayer while indicating that the government had not disclosed the name of the taxpayer to the writer.

82. In this manner, the Government of Mexico has consistently targeted and ostracized First Majestic and PEM in the media, and disparaged their position for seeking independent resolution of the legal dispute as tactics and maneuvers for blocking what the government (unjustifiably) refers to as legitimate collection efforts of the government.

83. The Government of Mexico, in addition to having a target list of corporations that it has relentlessly pursued through the use of coercive and illegal collection tactics, has also sought to interfere with the ability of these corporations to obtain legal representation by publicly chastising lawyers. In a recent letter from the President of the American Bar

Association,²⁶ the problems faced by both targeted taxpayers and their advisors has been described as follows:

During your presidential campaign as well as during your administration, you have called for a transformation of public life in Mexico, with the goal to end corruption and tax evasion. These goals are to be commended and should be the standard in any society.

Recently, however, there have been public reports that in relation to compliance with tax obligations, (i) several high-ranking officials of the Servicio de Administración Tributaria have stated that members of the legal profession are an obstacle to the Mexican government's goals for transformation; (ii) government officials have called for persons or entities that are perceived not to have complied with their legal obligations to refrain from seeking legal representation and instead approach government agencies directly to correct the alleged misconducts; and (iii) the Procuraduría Fiscal de la Federación is initiating or threatening to initiate criminal investigations as a negotiating tactic to pressure persons or entities to correct whatever tax-related misconduct they perceive has been committed.

The ABA strongly opposes any action taken by governments to curtail the people's right to seek legal counsel, to a fair trial or proceeding, or to challenge the alleged violation of any law or statute through appropriate legal channels. The actions are in breach of fundamental notions of due process and the human rights granted, among others, by Articles 14, 17, and 20, section B, subsection VIII of the Political Constitution of Mexico and Articles 8, paragraph 2, subsection d) and 25 of the American Convention of Human Rights, to which Mexico is a party. These rights are intimately linked to the right of attorneys, consultants, and litigators to engage in the practice of law, to give legal advice and to represent their clients against government actions. Full respect for these rights is the hallmark of every democratic society and the standard of democratic governments.

84. In closing the President of the American Bar Association requested that the Government of Mexico respect the Rule of Law and to instruct all government officials to respect the right of taxpayers to seek legal counsel and to be defended in judicial proceedings free from government interferences with their right to be represented by legal counsel of their choice.

²⁶ Letter from Patricia Lee Refo, President, American Bar Association, dated October 20, 2020. The letter is addressed to the President of the Government of Mexico, with copies to Mr. Aruturo Herrera Guíérrez, Secretary of Finance and Public Credit, Ms. Raquel Buenrostro Sánchez, Chief of the Tax Administration Service and Mr. Carlos Romero Aranda, Tax Prosecutor of the Federation.

85. One month earlier, in September 2020, several committees of the International Bar Association sent a similar strongly worded letter signed by the Vice-Chair of the Legal Practice Division, asking the SAT and the Federal Fiscal Prosecutor's office to cease threatening taxpayers and their legal advisors with criminal prosecution unless monies claimed by the SAT are paid.²⁷ The letter referred to the strategy of publicly reproaching lawyers and accountants as "overreach", and called the threat of criminal prosecution as "disturbing".

VIOLATIONS OF THE NAFTA

86. First Majestic's dispute with the Government of Mexico is in respect of a series of measures taken and not taken, for which Mexico is responsible, and which have and continue to affect First Majestic and PEM materially and adversely. These measures have caused both entities to incur damages and losses.

87. These measures and failure to take certain measures include: illegally repudiating the APA issued to PEM which continues to remain legally binding on the SAT in relation to the 2010 to 2014 years; attempting to retroactively nullify the APA based on improper grounds; issuing unlawful retroactive tax reassessments; seeking to collect amounts purportedly as taxes, penalties and interest without any legal basis; engaging in unlawful collection methods that violate Mexico's own laws and the Mexican Constitution; pursuing a dubious [REDACTED]; blocking bank accounts and imposing restrictions and charges against other assets of PEM; leaking information required under Mexican law to be confidential concerning First Majestic and PEM to the national and international media; bringing [REDACTED] antecedent to establishing any underpayment of taxes and without any evidence of [REDACTED]; and limiting and restricting First Majestic and PEM from relying on all available domestic and international avenues for seeking redress.

88. The measures taken and not taken by the Government of Mexico have resulted in violation of the NAFTA, including but not limited to Articles 1102, 1103, 1104, 1105, 1109 and 1110 of the NAFTA.

²⁷ "Mexican tax campaign threatens rule of law, international attorney say," September 19, 2021, Reuters, <https://www.reuters.com/article/mexico-taxes-idINKBN26A0B6> (accessed February 28, 2021).

Discriminatory Treatment

89. The Government of Mexico has unlawfully discriminated against First Majestic and PEM, by singling out First Majestic as a Canadian company refusing to pay amounts claimed by the Government of Mexico as being owed and by requiring payments of such amounts. Other similarly situated Mexican companies and foreign companies have been treated more favorably. PEM is the only taxpayer that has had its APA issued by the SAT over 8 years ago being put into question on basis of errors committed exclusively and unilaterally by the SAT. This discriminatory and arbitrary treatment violates Mexico's national treatment and most-favoured-nation treatment obligations under Articles 1102, 1103 and 1104 of the NAFTA.

90. In addition, the Government of Mexico has publicized its dispute with First Majestic and PEM, and by doing so has unlawfully disclosed confidential tax information that is required to be kept confidential. First Majestic and PEM have become convenient examples for the SAT to use in its campaign to extract monies from the mining sector which according to the Mexican government has not paid sufficient amount of monies as taxes to Mexico, even if the legal basis for the amounts owing is not grounded in Mexico's tax legislation or its international obligations under double-taxation treaties.

Minimum Standard of Treatment

91. The illegal collection efforts and the launching of [REDACTED] and [REDACTED] (even where the supposed underpayment of taxes has not been established under Mexico's taxation laws), along with a failure to afford First Majestic due process in [REDACTED] demonstrates the extent to which Mexico will pursue its illegal collection efforts using highly arbitrary and unlawful tactics.

92. In particular, notwithstanding a binding APA which was issued in 2012 and which continues to be valid, the SAT has sought to collect amounts in excess of [REDACTED] [REDACTED] for the 2010 to 2012 years, as if the APA was never issued and does not legally exist. It has denied First Majestic access to the courts and it has ignored rulings and injunctions issued by its own courts when this has suited its purpose by threatening collection of

inordinate amounts not grounded in its own tax laws. By doing so, it has acted contrary to its own agreement set out in the APA and assurances provided in its own tax legislation of providing clarity, certainty and tax stability for a five-year period. Such actions are unprecedented and extraordinarily brazen as the Government of Mexico is acting in disregard of its own laws and the Mexican Federal Constitution, abusing the tax administration process, and denying First Majestic due process.

93. Beyond violating its own tax laws, the Government of Mexico has decided as of early 2020 to weaponize its criminal laws in its collection efforts, by remove the presumption of innocence and allow for the jailing of management personnel and executives considered by the SAT as have failed to pay taxes by engaging in fraud or evasion. Many of these practices, even though not embedded in its laws or inapplicable to transactions and events prior to 2020, have been used starting from 2019 to the present time.

94. Similarly, the unprecedented launching of a [REDACTED] of PEM, at the very time that the Government of Mexico had issued a lock-down due to the COVID-19 pandemic, demonstrates the level of arbitrary, discriminatory actions and unconscionable treatment being taken against PEM. This investigation put at risk employees of PEM in contracting COVID-19, at the very time that the Government of Mexico had ordered mining companies to suspend their operations to avoid the contraction and spread of the virus.

95. By failing to take certain measures and taking other measures against First Majestic and PEM, the Government of Mexico has acted in a manner that is arbitrary, discriminatory and in violation of the requirements contained in Article 1105 of the NAFTA, in that it failed to accord to First Majestic and PEM treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

96. Rather than following legal processes and procedures, whether under Mexico's domestic laws or under international treaties, the Government of Mexico has engaged in threats and intimidation tactics to extract monies not yet established as being owed by PEM. In their totality, the measures of the Government of Mexico constitute unconscionable and

shocking behaviour as they reflect a willingness to flout well established domestic and international legal rules and norms.

Expropriation

97. The Government of Mexico has additionally violated Article 1110 of the NAFTA, when SAT issued three reassessments in 2019 for the sum of [REDACTED], for the years 2010 through 2012 based on an unlawful repudiation of the APA, and then initiated illegal collection efforts demanding these monies notwithstanding a court injunction prohibiting such activities. These reassessments and collection efforts amounted to expropriation of First Majestic's investment and returns from its investment, or measures having an equivalent effect to expropriation, in violation of Article 1110.

98. The Government of Mexico has also taken unlawful actions and threats related to attachments, seizures and restrictions on bank accounts, mining licences and confiscation of other assets of PEM in violation of both Mexican laws and international double-taxation treaties, and otherwise interfered with contractual agreements entered into by PEM with its customers which are critical for generating and transferring revenues from its mining activities in violation of Article 1110 of the NAFTA.

99. In addition, the Government of Mexico has made it public that it will be demanding and expects to collect additional monies from PEM for the years commencing 2013 even though it has not issued reassessments or completed audits for one or more of those years. At this time, the amount that the Government of Mexico claims as being owed is in excess of [REDACTED]

Transfers

100. With the looming threat of additional [REDACTED] for an amount in excess of [REDACTED], First Majestic's ability to control and manage the operations of PEM has been severely impaired. This includes the inability, notwithstanding that it is the sole and the controlling shareholder to transfer monies from PEM to itself by way of dividends and other forms of transfers of profit and returns from its investment.

101. The Government of Mexico through its unlawful measures and failure to take other measures is in violation of Article 1109 of NAFTA.

RELIEF

102. The foregoing measures taken by the Government of Mexico and the failure to take other measures have severely impacted the value of First Majestic's investments in Mexico and its returns from the investments, in violation of Articles 1102, 1103, 1104, 1105, 1109 and 1110 of the NAFTA. Furthermore, such measures have harmed and resulted in losses for First Majestic and PEM.

103. First Majestic therefore requests:

- a) a declaration that the measures taken and not taken by the Government of Mexico described herein violate Mexico's obligations under Chapter 11 of the NAFTA and international law;
- b) an award requiring that the Government of Mexico compensate First Majestic and PEM for any and all losses and damages caused as a result of its violation of Chapter 11 of the NAFTA;
- c) an award requiring that the Government of Mexico pay First Majestic and PEM all costs and expenses of this proceeding, in an amount to be determined;
- d) an award requiring that the Government of Mexico pay interest on all sums awarded, in amounts to be determined;
- e) such interim and provisional measures to preserve the rights of First Majestic and PEM, as may be appropriate, pending the final determination of this matter; and
- f) such further and other relief as may be requested by First Majestic on its own behalf and on behalf of PEM before and during the proceeding, and as the Tribunal may find appropriate in the circumstances.

104. First Majestic's losses and damages far exceed the amount of [REDACTED] [REDACTED] assessed and likely to be assessed by the SAT for the 2010 through 2015 years. The full extent of damages will be calculated based on evidence to be advanced by First Majestic in the arbitration proceeding, and will include any additional amounts that SAT will assess for

the years beginning 2010 and any additional years, the impact of the measures on the value of PEM's shares held by First Majestic, and other bases for damages outlined in the previous paragraph.

105. First Majestic reserves the right to supplement or amend this Request for Arbitration, including the right to submit further claims, documents and evidence as First Majestic may deem necessary or appropriate, and any additional claims of loss and damage by reason of, or arising out of, any violation of the NAFTA.

APPOINTMENT OF ARBITRATORS, SEAT AND LANGUAGE OF ARBITRATION

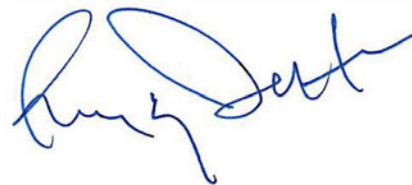
106. Pursuant to Article 1120(1)(a) of the NAFTA, First Majestic initiates the present arbitration in accordance with the ICSID Convention and the ICSID Arbitration Rules.

107. Consistent with the requirements of ICSID Rule 3(1), First Majestic will notify the Government of Mexico in a separate submission the name of the Claimant's appointed arbitrator as one of the three arbitrators.

108. Pursuant to Article 63 of the ICSID Convention and ICSID Rule 13(3), First Majestic hereby provides notice that the seat of arbitration will be in Washington, D.C.

109. Pursuant to ICSID Rule 22(1), First Majestic hereby provides notice that English shall be the procedural language of the arbitration.

DATED THIS 1ST DAY OF MARCH, 2021.



Arent Fox LLP
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Washington, D.C. 2006

Riyaz Dattu*
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Lee Caplan

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***Joining Arent Fox LLP in May 2021**

TO:

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Exhibit A

Article 1115: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

- (a) Section A or Article 1503(2) (State Enterprises), or
- (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

- (a) Section A or Article 1503(2) (State Enterprises), or
- (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the issues and the factual basis for the claim; and
- (d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

- (a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

- (a) consent to arbitration in accordance with the procedures set out in this Agreement; and
- (b) waive their right to initiate or continue before any administrative tribunal or court

under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.
4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:
 - (a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and
 - (b) Annex 1120.1(A)(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;
 - (b) Article II of the New York Convention for an agreement in writing; and
 - (c) Article I of the Inter-American Convention for an agreement.

Article 1123: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

Article 1124: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
2. If a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.
3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties.

CHAP-11

ANNEX 14-C

LEGACY INVESTMENT CLAIMS AND PENDING CLAIMS

1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:

- (a) Section A of Chapter 11 (Investment) of NAFTA 1994;
- (b) Article 1503(2) (State Enterprises) of NAFTA 1994; and
- (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.^{20, 21}

2. The consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
- (b) Article II of the New York Convention for an "agreement in writing"; and
- (c) Article I of the Inter-American Convention for an "agreement".

3. A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.

4. For greater certainty, an arbitration initiated pursuant to the submission of a claim under paragraph 1 may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the expiration of consent referenced in paragraph 3, and Article 1136 (Finality and Enforcement of an Award) of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

²⁰ For greater certainty, the relevant provisions in Chapter 2 (General Definitions), Chapter 11 (Section A) (Investment), Chapter 14 (Financial Services), Chapter 15 (Competition Policy, Monopolies and State Enterprises), Chapter 17 (Intellectual Property), Chapter 21 (Exceptions), and Annexes I-VII (Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters) of NAFTA 1994 apply with respect to such a claim.

²¹ Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

5. For greater certainty, an arbitration initiated pursuant to the submission of a claim under Section B of Chapter 11 (Investment) of NAFTA 1994 while NAFTA 1994 is in force may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the termination of NAFTA 1994, and Article 1136 of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

6. For the purposes of this Annex:

- (a) "legacy investment" means an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement;
- (b) "investment", "investor", and "Tribunal" have the meanings accorded in Chapter 11 (Investment) of NAFTA 1994; and
- (c) "ICSID Convention", "ICSID Additional Facility Rules", "New York Convention", and "Inter-American Convention" have the meanings accorded in Article 14.D.1 (Definitions).

Exhibit B

**IN THE MATTER OF AN ARBITRATION UNDER
THE NORTH AMERICAN FREE TRADE AGREEMENT**

FIRST MAJESTIC SILVER CORP.

Claimant/Investor

- and -

GOVERNMENT OF UNITED MEXICAN STATES

Respondent/Contracting Party

NOTICE OF INTENT

May 13, 2020

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Lawyers for the Claimant/Investor

1. First Majestic Silver Corp. (“**First Majestic**”), a corporation incorporated under the applicable laws of British Columbia, Canada, hereby notifies the Government of the United Mexican States (“**Government of Mexico**”) that in relation to its investment in Mexico, a dispute exists within the terms of the *North American Free Trade Agreement* (“**NAFTA**”).
2. The Government of Mexico is being served with this Notice of Intent to Submit a Claim to Arbitration (“**Notice**”) by First Majestic, on its own behalf and on behalf of its investment in Mexico,¹ for actions and omissions of the Government of Mexico and its agencies that are in violation of Chapter 11 of NAFTA and applicable international law principles.
3. In advancing its claim under NAFTA, First Majestic will rely on Section A of Chapter 11 of NAFTA (Standards of Treatment), including Article 1102 (National Treatment), Article 1103 (Most-Favored-Nation Treatment), Article 1105 (Minimum Standard of Treatment), Article 1109 (Transfers) and Article 1110 (Expropriation and Compensation) as well as Section B of NAFTA (Settlement of Disputes), and such other provisions of NAFTA and principles of international law as may be determined to be applicable.
4. The dispute relates to measures or a series of measures, taken and not taken, by the Government of Mexico including its agency, the Servicio de Administración Tributaria (“**SAT**”), against First Majestic as an investor, and its investments made through its wholly-owned subsidiaries, Primero Mining Corp. (“**Primero Canada**”) and Primero Empresa Minera S.A. de C.V. (“**Primero Mexico**”), in violation of NAFTA, applicable international law principles including those codified in the *Vienna Convention on Law of Treaties* (“**Vienna Convention**”), the *Convention Between the [REDACTED] and the [REDACTED] For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income* (the “[REDACTED]”), the *Convention Between the [REDACTED] and the [REDACTED] For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income* (the “[REDACTED]”), the *Convention between [REDACTED]*

¹ See Appendix to this Notice for the name and address of the disputing investor and that of the enterprise on behalf of which the claim is to be made.

██████████ *for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital* (the “██████████”) and various provisions of the Federal Constitution of the United Mexican States (“**Mexican Constitution**”) and Mexican domestic law.

5. These series of measures and failure to take certain other measures have included:

(a) unlawful actions and threats related to attachments, seizures and restrictions on bank accounts, mining licences and confiscation of other assets of Primero Mexico notwithstanding pending judicial proceedings in Mexico, all contrary to the Mexican Constitution and applicable laws of Mexico, and in direct contravention of Articles 9 and 23 of the ██████████, Articles 9 and 26 of the ██████████ and Articles 9 and 25 of the ██████████, which prohibit Mexico from taking such measures;

(b) unlawful and unprecedented rejection by SAT of Primero Mexico’s requests for resolution of any taxation related disputes pursuant to the universally accepted process set out in double taxation conventions, known as the Mutual Agreement Procedure (“**MAP**”), which is provided for in each of the ██████████

The purported reason provided by SAT and the Mexican Competent Authority for the rejection of the several requests for resolution pursuant to the MAP contained in each of the double taxation treaties, is based on asserted claims of imposing and providing primacy to Mexican domestic tax law provisions over those of the relevant double-taxation treaties contrary to the clear requirements of the relevant treaties, the Mexican Constitution, applicable laws of Mexico and international law;

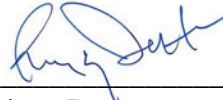
(c) the egregious failure to abide by the advance pricing agreement (“**APA**”) entered into by Primero Mexico with SAT, which has provided the legal framework based on which over 2 billion dollars of investment have been made in Mexico by First Majestic and its investments, resulting in the creation of thousands of jobs in Mexico, and which notwithstanding the SAT’s assertions of invalidity, continues to remain legally valid; and

- (d) various other illegal and egregious measures and activities, and excessively harsh enforcement and intimidation tactics, including: (i) interfering with the operation of the business of Primero Mexico, and its management; (ii) using collateral powers to interfere with the core business activities of Primero Mexico; (iii) unjustifiably encumbering, attaching and freezing of bank accounts and other assets; (iv) violation of injunctions ordered by the Mexican Federal Court on Administrative Matters in January 2020, for the 2010 and 2011 taxation years of Primero Mexico prohibiting SAT from seeking to collect taxes while the MAPs requests were pending; and (v) interference with contractual agreements entered into by Primero Mexico with its customers which are critical for generating revenues from its mining activities.
6. These series of measures taken, and failure to take certain other measures, have severely impacted and harmed Primero Mexico's ability to continue to operate and manage its business including mining activities and deriving revenues generated from such activities.
 7. The impediments imposed, by the taking of series of measures and failing to take certain other measures, have also resulted in severe harm to First Majestic, including in its ability to manage its investments, maximize returns from its investments, make further investments in Mexico, repatriate its earnings and enhance the value of its investments in Mexico.
 8. In addition, the measures of the Government of Mexico amount to denial of justice in view of lack of adequate and effective remedies under the laws of Mexico for resolving the dispute, the blatant ignoring by the Government of Mexico of the Mexican Constitution and law as well as Mexican court decisions, and by the failure of the Government of Mexico to provide compensation to Primero Mexico and First Majestic for the losses it has suffered and continues to suffer.
 9. These measures of the Government of Mexico, and those of its agencies, SAT and the Mexican Competent Authority, are in addition to being illegal under both Mexican law and international law, unreasonable, arbitrary, discriminatory and entirely unprecedented.

10. Such unlawful and entirely unwarranted actions and threats of the Government of Mexico, have and are putting at risk the employment and livelihood in Mexico of thousands of employees of Primero Mexico during the COVID-19 worldwide pandemic crisis when Primero Mexico has been focussing on ensuring the health, safety and welfare of its workforce. Furthermore, through its measures and failure to take other measures the Government of Mexico, through SAT, is putting at risk further investments in Mexico by First Majestic, while at the same time claiming to create and ensure a stable and favorable legal and economic environment for foreign investors, by implementing a new trade agreement known as the United States-Mexico-Canada Agreement on July 1, 2020, which will when effective replace NAFTA.
11. To date First Majestic has sought to engage in good faith mutually beneficial negotiations, which have been ignored and rebuffed by SAT and the Government of Mexico, and instead have been met with threats and intimidation.
12. The Government of Mexico, is by virtue of this Notice provided by First Majestic, required under international law and Chapter 11 of NAFTA, to engage in amicable settlement of the dispute, failing which First Majestic can request that the dispute be settled by international arbitration as provided for in Articles 1116 and 1117 of NAFTA.
13. First Majestic hereby renews its offer to settle its dispute with the Government of Mexico, and by issuing this Notice, invites the Government of Mexico to promptly engage in discussions to arrive at an amicable settlement of the dispute described in this Notice within the 90-day period provided for in Chapter 11 of NAFTA.
14. Failing a mutually satisfactory agreement, First Majestic will, at its option, commence the arbitration proceeding under the rules of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (also known as the ICSID Convention) or the *Arbitration Rules of the United Nations Commission on International Trade Law* (UNCITRAL Rules).
15. The relief that is requested includes the complete reversal by SAT of the reassessments against Primero Mexico that are based on failure to abide by the Government of Mexico's

avoidance of double taxation treaties, the Mexican Constitution, Mexican domestic law and Mexico's international law obligations. The amount of compensation that will be claimed in the arbitration has been estimated to be no less than [REDACTED] along with interest and the applicable costs of the arbitration.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on 13 May, 2020.



Riyaz Dattu

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Counsel for the Claimant/Investor

APPENDIX TO NOTICE OF INTENT TO SUBMIT A CLAIM

Name and Address of Disputing Investor

First Majestic Silver Corp.
1800-925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Canada

Name and Address of Disputing Investor

Primero Empresa Minera S.A. de C.V.
Fanny Anitua 2700
Colonia Los Ángeles
34076 Victoria de Durango, Durango
México

Address for Service on Legal Counsel for Claimant

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