

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

First Majestic Silver Corp.

v.

United Mexican States

(ICSID Case No. ARB/21/14)

PROCEDURAL ORDER NO. 4

Members of the Tribunal

Prof. Giorgio Sacerdoti, President of the Tribunal

Prof. Stanimir A. Alexandrov, Arbitrator

Prof. Yves Derains, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

9 March 2023

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I. PROCEDURAL BACKGROUND

1. On 26 April 2022, the Claimant filed its Memorial (the “**Memorial**”).
2. On 25 November 2022, the Respondent filed its Counter-Memorial (“**Counter-Memorial**”).
3. By letter dated 15 December 2022, the Claimant objected to certain information and statements contained in the Counter-Memorial, reserving its right to further address the issue, and indicating that it would be seeking provisional measures from the Tribunal.
4. On 30 December 2022, the Respondent presented a letter in response, reserving its right to respond to any request for provisional measures.
5. On 4 January 2023, the Claimant filed a Request for Provisional Measures (the “**Request**”).
6. Following communications from the Parties dated 4 and 5 January 2023, on 10 January 2023, the Respondent was invited to provide its response to the Claimant’s Request by 27 January 2023. Pending a decision on the Claimant’s Request, the Tribunal further invited the Parties “to abstain from measures and initiatives that might aggravate the dispute or prejudice any decision by the Tribunal on the Claimant’s Request.”
7. On 20 January 2023, the Respondent informed the Tribunal that it had attempted to reach an agreement with the Claimant regarding an extension of the presentation of its response to the Request but noted that the Parties were unable to reach an agreement. Accordingly, the Respondent requested a two-week extension for the presentation of its response.
8. On 23 January 2022, the Claimant responded to Mexico’s correspondence, indicating that it opposed the two-week extension on the grounds that it would be prejudicial to the Claimant, “including by exacerbating the dispute, prolonging it and cause irreparable harm.”

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9. On 24 January 2023, the Tribunal granted the Respondent’s request for a two-week extension and indicated that it would expect its response to the Request by 10 February 2023. It further reminded the Parties “to abstain from measures and initiatives that might aggravate the dispute or prejudice any decision by the Tribunal on the Claimant’s Request, as already indicated in the Tribunal’s letter of January 10, 2023.”
10. On 10 February 2023, the Respondent presented its Response to the Claimant’s Request for Provisional Measures (the “**Response**”).
11. On 13 February 2023, the Centre informed the Parties of the Tribunal’s intention to hold a half-day virtual hearing “to further clarify the respective positions of the Parties on the Request” (the “**Hearing**”) and invited the Parties to indicate their availability. Additionally, the Tribunal requested that the Parties submit jointly – or, where they were unable to agree, separately – one week before the hearing date, a chronology of relevant facts.
12. After hearing from both Parties, on 23 February 2023, the Tribunal confirmed that the Hearing would take place on 13 March 2023, beginning at 9:00 am EST. The Tribunal also informed the Parties that it would send some mostly factual questions in advance of the Hearing to be answered during the Hearing.
13. On 3 March 2023, the Tribunal transmitted a first draft of the present procedural Order and invited the Parties to submit any comments by Tuesday 7 March 2023.
14. On 6 March 2023, the Parties informed the Tribunal that they had been unable to jointly prepare a chronology of relevant events and both Parties submitted their own separate chronologies.
15. On 7 March 2023, the Parties submitted their respective comments on the draft circulated by the Tribunal.
16. In the present Order, the Tribunal sets out the procedural rules that the parties have agreed upon and the Tribunal has determined will govern the conduct of the virtual Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

17. The Hearing will take place on 13 March 2023 virtually for all participants through Zoom (“the Hearing Platform”).

B. ORDER OF PROCEEDINGS AND SCHEDULE

18. In light of the location of the participants and their respective time zones, the Hearing will start at from 3:00 – 6:00 PM CET (9:00 am – 12:00 PM EST). It is expected that the Hearing will last no longer than 3 hours, starting with a 45-minute presentation by each Party (extendable upon request during the hearing to one hour) and followed by questions from the Tribunal to the Parties.
19. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
20. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION

21. The Secretary of the Tribunal shall keep track of the time spent by each Party during their presentations.

D. DOCUMENTS FOR USE AT THE HEARING

1. Demonstrative Exhibits

22. In view of the narrow object of the Hearing and the short time, the Tribunal considers that demonstratives such as slides are not necessary. If one or both Parties insist on the presentation of slides, this notwithstanding, the following rules should be followed:
 - a. Demonstrative exhibits shall be used in accordance with Sections 16.8 of Procedural Order No. 1 (“**PO1**”) (reproduced below), with certain adjustments indicated in paragraph b *infra*:

“16.8. 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 (preceded by “CD-” for Claimant, and “RD-” for Respondent), 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, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.”

- b. To account for the virtual component of the virtual Hearing, PO1 Section 16.8 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed by the Party intending to use it *via* an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Members of the Tribunal, to the court reporter and to the interpreters as necessary no later than 1:00 p.m. on Sunday 12 March 2023 (or at a different time agreed by the Parties).
- c. In addition, promptly after the conclusion of the Hearing, the Parties shall upload such demonstrative to the case folder in the BOX file-sharing platform, designating each with the corresponding CD-__ or RD-__ number. Demonstrative exhibits need not be translated.

2. Electronic Presentation of Evidence

- 23. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Hearing Platform using the screen-sharing function or with the assistance of the technical support of the technical operator at the Parties' choosing. Any Hearing participant shall have the technical ability to display a document to all Hearing participants via the Hearing Platform, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed.
- 24. Documents that do not form part of the record may not be presented at the Hearing.

E. AUDIO RECORDINGS

25. The provision of Section 21.1 of PO1 concerning audio recording (reproduced below) applies.

“21.1. Audio recordings shall be made of all hearings and sessions. The audio recordings shall be provided to the Parties and the Tribunal Members.”

26. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing. The audio recording may not be duplicated, shall only be used for the purpose of verifying the contents of the verbatim transcript and may not be used in any setting outside these proceedings.
27. Except for the court reporters that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

F. TRANSCRIPTION

28. The provisions of PO1, Sections 21.2 and 23.3 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 30 *infra*.

“21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

21.3 The Parties shall agree on any corrections to the 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 Parties. The Tribunal will decide on the Parties’ deadline to agree on any corrections at the conclusion of the hearing after consulting with both Parties.”

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29. Transcription services will be provided by B&B Reporters and DR-Esteno (the “**Court Reporters**”). The Court Reporters will attend remotely. The Court Reporters may seek to clarify the record from time to time during the course of the Hearing.
30. Real-time court reporting in English and Spanish shall be made available to the Hearing participants *via* an online link connection to be provided by the Court Reporters. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing.
31. In accordance with Section 21.3 of PO1, the deadline for corrections to the transcript shall be decided during the Hearing by the Tribunal in consultation with the Parties.

G. INTERPRETATION

32. ICSID has arranged simultaneous interpretation in English and Spanish.
33. The interpreters will provide the interpretation remotely using the Hearing Platform.
34. The participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another participant.
35. Each participant should, insofar as possible, circulate any speaking notes and PowerPoint slides to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters and are to be treated as confidential information.

H. PARTICIPANTS

36. Each Party submitted its respective list of Hearing participants on **6 March 2023**, using the format provided in Annex B.

I. VIRTUAL HEARING ARRANGEMENTS

37. The Hearing Platform shall be hosted and operated by Sparq.
38. The details to join the Hearing Platform were shared by the ICSID Secretariat on 7 March 2023.

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39. In addition to the rules set out above, the procedures specified in **Annex C** shall apply as needed.

J. QUESTIONS FROM THE TRIBUNAL

40. As announced in its communication of 23 February 2023, the Tribunal includes in **Annex D** of this procedural Order the list of questions that should be addressed by the Parties during their presentations and/or answered in the subsequent questioning by the Tribunal.

For and on behalf of the Tribunal,

A handwritten signature in blue ink that reads "G. Sacerdoti". The signature is written in a cursive style and is positioned above a horizontal line.

Prof. Giorgio Sacerdoti
President of the Tribunal
Date: 9 March 2023

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ANNEX A

HEARING AGENDA

TIME	PROCEDURAL STEP
9:00 – 9:10 am EST	Housekeeping
9:10 – 9:55 am EST	Claimant’s presentation
9:55 – 10:00 am EST	5-minute break
10:00 – 10:45 am EST	Respondent’s presentation
10:45 – 11:00 am EST	15-minute break
11:00 am – 12:00 pm EST	Tribunal questions

ANNEX B

LIST OF PARTICIPANTS¹

TRIBUNAL				
Room	Name	Role	Affiliation	Email
T	T – Giorgio Sacerdoti	A	President of the Tribunal	gsacerdoti@cbmlaw.it
T	T – Stanimir Alexandrov	A	Member of the Tribunal	salexandrov@alexandrovlaw.com
T	T – Yves Derains	A	Member of the Tribunal	yvesderains@derainsgharavi.com

ICSID SECRETARIAT				
Room	Name	Role	Affiliation	Email
T	T – Sara Marzal	A	Secretary of the Tribunal	smarzal@worldbank.org

CLAIMANT				
Room	Name	Role	Affiliation	Email
	<i>Counsel:</i>			
C	C – Name Last name	A/P		
C	C – Name Last name	A/P		
C	C – Name Last name	A/P		
	<i>Party Representatives:</i>			
C	C – Name Last name	A/P		
C	C – Name Last name	A/P		

¹ Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating virtually will activate their cameras during the Hearing.

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RESPONDENT				
Room	Name	Role	Affiliation	Email
	<i>Counsel:</i>			
R	C – Name Last name	A/P		
R	C – Name Last name	A/P		
R	C – Name Last name	A/P		
	<i>Party Representatives:</i>			
R	C – Name Last name	A/P		
R	C – Name Last name	A/P		

COURT REPORTERS				
Room	Name and Contact	Role	Affiliation	Email
N/A	CR –	P	Court Reporter (English)	
N/A	CR –	P	Court Reporter (Spanish)	

INTERPRETERS				
Room	Name and Contact	Role	Affiliation	Email
N/A	INT –	P	Interpreter	
N/A	INT –	P	Interpreter	
N/A	INT –	P	Interpreter	

TECHNICAL SUPPORT				
Room	Name	Role	Affiliation	Email
N/A	TECH –	P	Technical Operator	

COURT REPORTERS

Room	Name and Contact	Role	Affiliation	Email
N/A	[CR] – David Kasdan	P	Court Reporter – English	david.kasdan@wwreporting.com
N/A	[CR] – Dante Rinaldi	P	Court Reporter – Spanish	dante_rinaldi@hotmail.com

INTERPRETERS

Room	Name and Contact	Role	Affiliation to Case	Email
N/A	[INT] – Silvia Colla	P	Interpreter	silviacolla@gmail.com
N/A	[INT] – Daniel Giglio	P	Interpreter	danielgiglio@earthlink.net

TECHNICAL SUPPORT STAFF

Room	Name	Role	Affiliation to Case	Email
N/A	[Sparq] – TBD	P	Technical Operator	

ANNEX C

PROTOCOL ON VIRTUAL HEARING MATTERS

a. Participants

1. For ease of identification, the Hearing participants shall join the videoconference using the naming convention indicated in the format in Annex B, namely, first and last name preceded by [T] (for Members of the Tribunal), [C] (for Hearing participants for the Claimant), or [R] (for Hearing participants for the Respondent). Should there be Hearing participants joining from a common conference room, the conference room connection may be identified as “[C or R] Conference Room #” as appropriate.
2. Hearing participants will join the videoconference through a “waiting room”.
3. Access to the Hearing Platform shall be restricted to those included in the List of Participants. Should any non-listed Hearing participant attempt to connect, the Technical Operator will alert the Secretary of the Tribunal, and, if necessary, the Tribunal will address the matter with the Parties. All Hearing participants bear an ongoing duty to warn the Technical Operator and the Secretary of the Tribunal of the presence of any other person on the Hearing Platform.
4. Hearing participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification of Hearing participants and to address any technical contingencies.

b. Connectivity

5. The Parties shall ensure that each of their representatives who will connect to the Hearing Platform use a stable internet connection offering sufficient bandwidth and use a camera and microphone/headset of adequate quality.
6. If available, Hearing participants are advised to use a wired Ethernet connection instead of Wi-Fi. Hearing participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing. For best connectivity, it is recommended that Hearing

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participants (i) avoid streaming during the Hearing; and (ii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to www.speedtest.net). If a Hearing participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed for a given Hearing participant.

7. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a Hearing participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back-up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels. Certain key Hearing participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point (in such circumstances, it is important that no more than one device is unmuted at any given time, to avoid audio feedback).
8. If a Hearing participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the Technical Operator; or (ii) send an email to the Operator with copy to the ICSID Secretariat. All other remote hearing support issues should be addressed to the Tribunal Secretary and the paralegal.

c. Interpretation

9. The Hearing participants who will be speaking should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the Zoom platform, there will be a Spanish and an English channel in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing. Participants on one channel can only be heard by other participants on that channel. If participants wish to address the Members of the Tribunal in English, they need to select the “English” channel. If they wish to address the Members of the Tribunal in Spanish with interpretation, they may do so from the “Spanish” channel.

d. Equipment and Set Up

10. For optimum sound quality, especially for the audio recording and transcription, the Secretariat highly recommends that the main speakers who are connecting virtually use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they will be using for the videoconference. If an external headset is not available, Active participants are asked to speak close to the microphone.
11. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

e. Videoconference Etiquette

12. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, virtual participants should remain connected throughout the Hearing.
13. Upon joining the videoconference, the Hearing participants using their computer should turn both their audio and video on. The President will invite each party to introduce its team. After each party has introduced all of its relevant Hearing participants, the Hearing participants who are not expected to speak should turn off their video feed and mute their microphones.
14. Hearing participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Technical Operator shall have the ability to mute Hearing participants if needed to avoid background noise, under the Tribunal’s control. Speakers should keep their phones and other devices on silent mode.
15. Hearing participants are advised to join the Hearing from a location without background noise and with adequate lighting. Hearing participants transmitting video feeds shall avoid sitting with a window or source of light behind them.
16. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

f. Break-Out Rooms

17. If applicable and requested, break-out rooms separate from the Hearing Room, to be used securely by each party and the Tribunal during breaks, will be arranged on the Hearing Platform.
18. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the Hearing Platform to enable all the Hearing participants to promptly reconvene following breaks.
19. The List of Participants shall indicate the break-out room to which Hearing participants shall be assigned, with [C] for the Claimant's break-out room, [R] for the Respondent's break-out room.
20. Each party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the Technical Operator.

g. Technical Difficulties

21. Each Party shall designate, in its List of Participants, one of its representatives to act as video-conference emergency contact person ("**VC Emergency Contact Person**") for purposes of addressing any technical incidents that might arise during the video-conference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the Tribunal Secretary if an essential Hearing Participant on their side is disconnected or is otherwise unable to participate. In all other cases, the VC Emergency Contact Person shall notify and address technical issues with the Tribunal Secretary and the Technical Operator.
22. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the Hearing Platform to be inadequate or likely to prejudice the due process rights of either of the parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available to them, mitigating any potential prejudice arising from the failure of any given Hearing participant to be able to follow the entire Hearing live on the Hearing Platform.

ANNEX D

LIST OF QUESTIONS FROM THE TRIBUNAL

Factual Questions

- A. The APA, the *Juicio de Lesividad* 15/2371 and the Amparo
1. What is the status of the APA after the judgement of the High Chamber (TFJA) of 23 September 2020 declaring the APA “invalid with retroactive effect”, in view of the fact that this judgment has been challenged by PEM by means of the currently pending Amparo lawsuit?
 2. Have the pending Amparo challenge and proceedings a suspensive effect on the TFJA Judgement? If yes, does this mean that currently the APA is (again) in force?²
 3. Could PEM ask and obtain the suspension of the Amparo proceedings?
 4. (*For Claimant*) Considering that the Amparo challenge has been initiated by PEM in order to annul the TFJA judgement that has annulled the APA, Claimant’s Request of a Provisional Measure that the Amparo proceedings be suspended (Request para.19(a)), if accepted by the Tribunal, would *de facto* result in the APA remaining provisionally in force?
 5. If the future judgement on the Amparo will be in favor of PEM, will the APA be automatically reinstated, or what other effect will such a decision have in respect of the APA?
 6. If the future judgement on the Amparo rejects the Amparo challenge of PEM, what will the effects be on the APA and on the TFJA judgement?

² See Claimant’s Memorial para. 106 “...the APA, which remains valid pending the appeal...”

7. Are further appeals against the future judgement on the Amparo possible, and if so, with what provisional and definitive effects? Will such an appeal result in a (further) suspension of the 2020 judgement while such an appeal will be pending?
8. The APA grants acceptance by SAT of PEM's transfer price scheme concerning its export sales of silver to related non-Mexican companies for the years 2010-2014. Does the APA have also effects on PEM's taxation for subsequent years? Has PEM established/filed its tax returns for subsequent years based on transfer price scheme accepted by SAT in the APA for previous years?³ Has this filing been challenged by SAT because of this reason?

B. The Tax Reassessments

9. According to Claimant (a fact which is not disputed by Respondent), SAT has issued tax reassessments against PEM for the years 2010-2013 (and has initiated an audit for 2014) which PEM has challenged. (Claimant's Memorial, paras 16 ff.). Are these Reassessments based on the challenge by SAT through the *Juicio de Lesividad* against the validity of the APA? (in other words: do they depend on the APA being invalid?) Are these tax assessments ("*crédito fiscal*"⁴) based on hypothetical profits by PEM as if the transfer price scheme by PEM had not been accepted by SAT?
10. Does the *Juicio de Lesividad* and the Amparo also concern/affect the validity of the Reassessments?⁵
11. Would the result of the Amparo against the TFJA judgement concerning the validity of the APA also affect the validity of the Reassessments?
12. PEM has challenged the Reassessments and has obtained from the TFJA in 2020 "a provisional injunction against the execution and collection of the 2010 tax deficiency", as

³ See Response, para.51.

⁴ Response, para.,41 ff)

⁵ See Memorial, para. 113 "PEM is not restricted to contesting the reassessments through the Lesividad trial."

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well as in respect of taxes for 2011 and 2012.⁶ What is the relation between these challenges/proceedings and the Amparo challenging the annulment of the APA by the TFJA 2020 judgement?

13. It appears that the provisional suspensions of the Reassessments were granted subject to certain conditions, notably the posting by PEM of certain guarantees that have not been accepted by SAT. Is this correct? Are the Reassessments currently suspended or has PEM been compelled to pay the back taxes claimed by SAT though these Reassessments?
14. What are the basis and the effects of the “provisional administrative seizure” of PEM’s business in 2021? How does this seizure affect the conduct of PEM’s (Claimant’s) business?

C. The blocking of PEM’s accounts and VATs refunds on blocked accounts

15. What are the reasons, and which is the nature and effect of certain accounts of PEM being “blocked”?
16. Are VAT refunds still being deposited on such blocked accounts? Are such blocked accounts factually unavailable for PEM?
17. Did PEM ask (unsuccessfully) that the tax refunds be deposited in other (freely disposable) accounts?

D. Statements of Mexican authorities to the Media

18. Can Claimant pinpoint which statements listed in CL-3 and CL-47 (or other exhibits) it considers (may) affect negatively the integrity of these ICSID proceedings, and in what

⁶ Memorial, para. 117

respect? Which of those statements single out Claimant or its subsidiaries and operations in Mexico?⁷

Legal Questions

1. Does Claimant agree with Respondent as to the five criteria that must be met for the granting of provisional Measures? Namely “(i) *jurisdicción prima facie*; (ii) *derecho susceptible de ser afectado y demostrar prima facie una violación*; (iii) *medidas provisionales son necesarias*; (iv) *urgentes*; (v) *proporcionales*”?⁸
2. The pending Amparo proceedings have been initiated by PEM (Claimant’s subsidiary) against the TFJA judgment that has annulled the APA, and Claimant has i.a. complained of the delays of these proceedings. In what respect Claimant’s Request that the Tribunal recommends, as provisional measure, in accordance with Article 47 ICSID and 1134 NAFTA, that these previously pending domestic proceedings, initiated by its subsidiary for the protection/reinstatement of its rights, go on being suspended, would “preserve” the rights of Claimant (47 ICSID) and/or “ensure that the tribunal’s jurisdiction is made fully effective” (1134 NAFTA)?
3. Have there been recent developments concerning the pending Amparo proceedings (such as a looming unfavorable decision⁹) that would make this (or other pending domestic proceedings) bring about the “aggravation” of the dispute, or prejudice the “orderly conduct” of this ICSID Tribunal’s proceedings, or their “integrity”?¹⁰
4. (*For Claimant*) According to Article 1134 NAFTA, by a Provisional Measure “A Tribunal may not...enjoin the application of the measure alleged to constitute a breach referred to

⁷ CL-3 is a US newspaper summary in English, not an original statement; CL-47 does not appear in the documents uploaded in the Box.

⁸ Response, para. 62

⁹ Response, para. 21: “...el Amparo 12/2021 continúa su trámite normal.”

¹⁰ Request, para. 64.

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in Article 1116 or 1117”. These Articles in turn refer to the standard of treatment to be accorded in accordance with Articles 1102, 1103, 1104 and 1105 ff. With reference to the annulment of the APA by the 2020 TFJA and the Amparo proceedings, which “measure(s)” of Respondent does Claimant allege being in breach of NAFTA?

5. *(For Claimant)* Please explain how the “Immediate Suspension of the amparo proceeding...” which you request is not in conflict with the prohibition in Article 1134 NAFTA against enjoining the application of the measure(s) you allege constitute a breach of NAFTA articles 1116 and 1117 (1102 ff.) such as “Mexico’s Wrongful repudiation of the APA” (Memorial page 24); “The *Juicio de Lesividad* Proceedings Initiated by the SAT” (ibid p. 27).