

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**
and
**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE RECIPROCAL
PROMOTION AND PROTECTION OF INVESTMENTS**
and
**THE AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED
MEXICAN STATES ON THE RECIPROCAL PROMOTION AND PROTECTION OF
INVESTMENTS**
and
**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES
AND THE REPUBLIC OF ARGENTINA FOR THE RECIPROCAL PROMOTION AND
PROTECTION OF INVESTMENTS**
- and -
**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -
CARLOS ESTEBAN SASTRE
RENAUD JACQUET
MARGARIDA OLIVEIRA AZEVEDO DE ABREU
EDUARDO NUNO VAZ OSORIO DOS SANTOS SILVA
GRAHAM ALEXANDER
MÓNICA GALÁN RÍOS
(the "Claimants")

and

THE UNITED MEXICAN STATES
(the "Respondent")

ICSID Case No. UNCT/20/2

AWARD ON JURISDICTION

Tribunal
Prof. Eduardo Zuleta (Presiding Arbitrator)
Dr. Charles Poncet
Mr. Christer Söderlund

Secretary of the Tribunal
Ms. Geraldine R. Fischer

Date of Dispatch to the Parties: 21 November 2022

Place of Arbitration: Washington, D.C., United States

REPRESENTATION OF THE PARTIES

*Representing Carlos Sastre, Renaud Jacquet,
Margarida Oliveira Azevedo de Abreu, Eduardo
Nuno Vaz Osorio Dos Santos Silva, Graham
Alexander and Mónica Galán Ríos:*

Mr. Ricardo A. Ampudia
Mr. Giovanni Angles
Ms. Alicia M. Menendez
Mr. John Barkett
Shook, Hardy & Bacon LLP
201 South Biscayne Boulevard
Suite 3200
Miami, FL 33131
U.S.A.

Representing the United Mexican States:

Mr. Orlando Pérez Gárate
Ms. Cindy Rayo Zapata
Mr. Antonio Nava Gómez
Ms. Ellionehit Sabrina Alvarado Sánchez
Ms. Pamela Hernández Mendoza
Ms. Erin Mireille Castro Cruz
Ms. Imelda Aime Anaid Silva Pacheco
Dirección General de Consultoría
Jurídica de Comercio Internacional
Secretaría de Economía
Pachuca 189, Col. Condesa,
Demarcación Territorial Cuauhtémoc,
Ciudad de México,
C.P. 06140
United Mexican States
and
Mr. Greg Tereposky
Ms. Graciela Jasa
Tereposky & DeRose, LLP
Suite 1000, 81 Metcalfe Street
Ottawa, Ontario K1P 6K7
Canada

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I. INTRODUCTION AND PARTIES

1. This arbitration is about the alleged unlawful taking by the United Mexican States (“Respondent” or “Mexico”) of beachfront hotels and other assets, over which Claimants claim to have rights, in violation of the obligations of Respondent contained in the North American Free Trade Agreement (“NAFTA”) and the bilateral investment treaties that Respondent has with Argentina, France and Portugal.
2. Claimants in this arbitration are Mr. Carlos Esteban Sastre, Mr. Renaud Jacquet, Mr. Graham Alexander, Ms. Mónica Galán Ríos, Mr. Eduardo Nuno Vaz Osorio dos Santos Silva and Ms. María Margarida Oliveira de Abreu (“Claimants”).

II. PROCEDURAL HISTORY

A. INITIATION OF THE ARBITRATION AND COMPOSITION OF THE ARBITRAL TRIBUNAL

3. On 15 June 2017, Mexico received a Notice of Intent (“NOI #1”) from Carlos Esteban Sastre and Constructora Ecoturística, S.A. de C.V. (“CETSA”) under the Agreement for the Reciprocal Promotion and Protection of Investments Between the United Mexican States and the Kingdom of Spain and the Agreement between the Government of the United Mexican States and the Government of the Republic of Argentina for the Reciprocal Promotion and Protection of Investments (“Mexico-Argentina BIT”).
4. On 6 September 2017, Mexico received a second Notice of Intent (“NOI #2”) from Carlos Esteban Sastre adding an additional claim related to *Hamaca Loca S.A. de C.V.* (“HLSA”) and the *Hotel Hamaca Loca* pursuant to the Agreement between the Swiss Confederation and the United Mexican States on the Promotion and Reciprocal Protection of Investments.
5. On 29 December 2017, Mexico received its first Notice of Arbitration (“NOA #1”) from Carlos Esteban Sastre in relation to the claims notified in NOI #1 and NOI #2.

6. On 17 January 2019, Mexico received a Notice of Intent (“NOI #3”) from Renaud Jacquet under the Agreement between the Government of the Republic of France and the Government of the United Mexican States on the Reciprocal Promotion and Protection of Investments (“Mexico-France BIT”); Graham Alexander and Mónica Galán Ríos and Rancho Santa Monica Developments under NAFTA; and Eduardo Nuno Vaz Osorio dos Santos Silva and Margarida Oliveira Azevedo de Abreu and O.M. del Caribe S.A. de C.V. under the Agreement between the Portuguese Republic and the United Mexican States on the Reciprocal Promotion and Protection of Investments (“Mexico-Portugal BIT”).
7. On 14 June 2019, Claimants submitted an Amended Notice of Arbitration (“NOA #2”) with Exhibits C-0001 to C-0034. In their Amended Notice of Arbitration, Claimants appointed Dr. Charles Poncet as arbitrator.
8. On 24 September 2019, ICSID received a letter from Claimants requesting that the ICSID Secretary-General appoint the remaining two arbitrators (the “Appointment Request”), pursuant to her designation as Appointing Authority in NAFTA, the Mexico-Argentina BIT; the Mexico-France BIT; and the Mexico-Portugal BIT.
9. On 27 September 2019, ICSID notified the Parties that it had started the Appointment Request process and was identifying candidates for the arbitrator appointments.
10. On 7 October 2019, Respondent appointed Mr. Christer Söderlund as arbitrator in this case.
11. On 11 February 2020, after considering the candidates proposed by the Acting Secretary-General on 24 January 2020, the Parties agreed to appoint Prof. Eduardo Zuleta as presiding arbitrator.
12. On 3 March 2020, ICSID accepted its appointment as the Administering Authority.

B. FIRST SESSION

13. On 26 May 2020, the following persons participated in the First Session held by videoconference:

Tribunal:

Prof. Eduardo Zuleta, President of the Tribunal

Dr. Charles Poncet, Arbitrator

Mr. Christer Söderlund, Arbitrator

ICSID Secretariat:

Ms. Geraldine R. Fischer, Secretary of the Tribunal

For Claimants:

Counsel:

Mr. Carlos F. Concepción, Partner, B.C.S., Shook, Hardy & Bacon, L.L.P.

Mr. Ricardo A. Ampudia, Of Counsel, B.C.S. Shook, Hardy & Bacon, L.L.P.

Mr. Giovanni Angles, Of Counsel, Shook, Hardy & Bacon, L.L.P.

Ms. Alicia M. Menéndez, Of Counsel, Shook, Hardy & Bacon, L.L.P.

Mr. Erick Rodríguez, Paralegal, Shook, Hardy & Bacon, L.L.P.

Parties:

Mr. Carlos Esteban Sastre

Mr. Renaud Jacquet

Mr. Graham Alexander

Ms. Monica Galán Ríos

Mr. Eduardo Nuno Vaz Osorio dos Santos Silva

For Respondent:

Mr. Orlando Pérez Gárate, Director General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Cindy Rayo Zapata, Directora General de Comercio Internacional de Servicios e Inversión, Secretaría de Economía

Mr. Antonio Nava Gómez, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Mr. Jorge Avilés Cerezo, Subdirector de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Ellionehit Sabrina Alvarado Sánchez, Jefa de Departamento de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Pamela Hernández Mendoza, Secretaría de Economía

Mr. Greg Tereposky, Tereposky & DeRose LLP

Ms. Graciela Jasa, Tereposky & DeRose LLP

14. During the First Session, the Parties discussed procedural issues and Respondent's jurisdictional objections. On the basis of these exchanges, the Tribunal directed the Parties to make two rounds of written submissions on the following issues: (1) bifurcation, and (2) whether the present proceeding is a multiparty arbitration or a consolidation of claims and any procedural or substantive implications.

15. On 28 May 2020, the Tribunal issued **Procedural Order No. 1** in which the Parties confirmed that the Members of the Tribunal had been duly and validly appointed. In addition to other procedural matters, this Order also memorialized that the place of arbitration is Washington, D.C., and English and Spanish are the procedural languages of the arbitration. The Tribunal deferred its decision on the applicable arbitration rules and the procedural timetable.

C. RESPONDENT'S BIFURCATION APPLICATION

16. Further to the briefing schedule set by the Tribunal on 26 May 2020, the Parties made the following written submissions:

- On 10 June 2020, Respondent filed its Bifurcation Application, Exhibits R-001 through R-009 and Legal Authorities RL-001 through RL-029.
- On 24 June 2020, Claimants submitted their Written Submission in Opposition to Bifurcation and Brief in Support of a Multiparty Proceeding and Legal Authorities CLA-001 through CLA-050.
- On 1 July 2020, Respondent presented its Bifurcation Application Reply, Exhibit R-010 and Legal Authorities RL-030 through RL-040.
- On 8 July 2020, Claimants filed their Rejoinder in Opposition to Bifurcation and in support of a Multiparty Proceeding, Exhibit C-036 and Legal Authorities CLA-051 to CLA-057.

17. On 13 August 2020, the Tribunal issued **Procedural Order No. 2**, bifurcating the proceedings to address Respondent's preliminary objections in a preliminary phase.

D. INITIAL PHASE ADDRESSING RESPONDENT'S PRELIMINARY OBJECTIONS

18. On 17 September 2020, the Tribunal issued **Procedural Order No. 3**, adopting the Parties' proposed procedural calendar and agreement that the 1976 UNCITRAL Arbitration Rules govern these proceedings.
19. On 23 December 2020, Respondent filed its **Memorial on Jurisdiction** accompanied by the following documents:
 - Expert Report of Pablo Gutiérrez de la Peza Gutiérrez, dated 23 December 2020;
 - Exhibits R-011 to R-042; and
 - Legal Authorities RL-040 to RL-100.
20. On 31 March 2021, Claimants filed their **Counter-Memorial on Jurisdictional Objections**, together with the following documents:
 - Witness Statement of Mónica Galán Ríos, dated 31 March 2021;
 - Witness Statement of Eduardo Nuno Vaz Osorio Dos Santos Silva, dated 31 March 2021;
 - Witness Statement of Renaud Jacquet, dated 31 March 2021;
 - Witness Statement of Carlos Esteban Sastre, dated 31 March 2021;
 - Expert Report of Sergio Bonfiglio Macbeath, dated 31 March 2021;
 - Exhibits C-037 to C-074; and
 - Legal Authorities CLA-058 to CLA-114.
21. On 16 June 2021, the Tribunal issued **Procedural Order No. 4**, concerning the production of documents requested by the Parties.
22. On 26 and 27 August 2021, the Parties agreed to the Tribunal's proposal that the Hearing on Preliminary Objections be held virtually between 28 March and 1 April 2022.
23. On 1 September 2021, Respondent filed a **Reply on Jurisdictional Objections**, which was accompanied by the following documents:

- Witness Statement of Marcelino Miranda Aceves, dated 1 September 2021;
 - Second Expert Report of Pablo Gutiérrez de la Peza Gutiérrez, dated 1 September 2021;
 - Exhibits R-043 a R-077; and
 - Legal Authorities RL-101 a RL-224.
24. On 2 September 2021, the Tribunal issued **Procedural Order No. 5**, containing the modified procedural calendar.
25. On 17 November 2021, Claimants filed a **Rejoinder on Jurisdictional Objections**, which was accompanied by the following documents:
- Second Expert Report of Sergio Bonfiglio Macbeath, dated 17 November 2021;
 - Exhibits C-075, C-077 to C-126, C-128 to C-139; and
 - Legal Authorities CLA-0115 to CLA-0133.
26. On 17 December 2021, the United States and Canada filed Non-Disputing Party Submissions pursuant to NAFTA Article 1128.
27. On 30 December 2021, the Parties filed observations on the Non-Disputing Parties' submissions. Claimants' submission was accompanied by Legal Authorities CLA-134 to CLA-145.
28. On 12 January 2022, the Parties exchanged witness notifications.
29. On 9 February 2022, the President of the Tribunal and the Secretary of the Tribunal held a **Pre-Hearing Organizational Meeting** with the Parties by videoconference, which was attended by the following persons:

For Claimants:

Counsel:

Mr. Carlos F. Concepción, Shook, Hardy & Bacon, L.L.P.

Mr. Ricardo A. Ampudia, Shook, Hardy & Bacon, L.L.P.
Mr. Giovanni Angles, Shook, Hardy & Bacon, L.L.P.
Ms. Alicia M. Menéndez, Shook, Hardy & Bacon, L.L.P.
Mr. Erick Rodríguez, Shook, Hardy & Bacon, L.L.P.

Parties:

Mr. Carlos Esteban Sastre
Mr. Renaud Jacquet
Mr. Graham Alexander
Ms. Monica Galán Ríos
Mr. Eduardo Nuno Vaz Osorio dos Santos Silva

For Respondent:

Mr. Orlando Pérez Gárate, Secretaría de Economía
Ms. Cindy Rayo Zapata, Secretaría de Economía
Mr. Antonio Nava Gómez, Secretaría de Economía
Ms. Ellionehit Sabrina Alvarado Sánchez, Secretaría de Economía
Ms. Pamela Hernández Mendoza, Secretaría de Economía
Ms. Erin Mireille Castro Cruz, Secretaría de Economía
Ms. Imelda Aime Anaid Silva Pacheco, Secretaría de Economía
Mr. Greg Tereposky, Tereposky & DeRose LLP
Mr. Umair Azam, Tereposky & DeRose LLP

30. On 25 February 2022, the Tribunal issued **Procedural Order No. 6**, concerning the organization of the Hearing on Preliminary Objections.
31. A **Hearing on Preliminary Objections** was held virtually from 28 March - 1 April 2022 with the following persons present:

Tribunal:

| | |
|------------------------|------------------------|
| Prof. Eduardo Zuleta | President ¹ |
| Dr. Charles Poncet | Arbitrator |
| Mr. Christer Söderlund | Arbitrator |

ICSID Secretariat:

| | |
|------------------------------|---------------------------|
| Ms. Geraldine Rebeca Fischer | Secretary of the Tribunal |
|------------------------------|---------------------------|

For Claimants:

Counsel:

¹ As agreed by the Parties, Ms. María Camila Rincón assisted the President of the Tribunal during the Hearing on Preliminary Objections.

Mr. Carlos F. Concepción, Shook, Hardy & Bacon, L.L.P.
Mr. Ricardo A. Ampudia, Shook, Hardy & Bacon, L.L.P.
Mr. Giovanni Angles, Shook, Hardy & Bacon, L.L.P.
Ms. Alicia M. Menéndez, Shook, Hardy & Bacon, L.L.P.
Mr. Erick Rodríguez, Shook, Hardy & Bacon, L.L.P.

Parties:

Mr. Graham Alexander
Ms. Mónica Galán Ríos
Mr. Renaud Jacquet
Mr. Carlos Sastre
Mr. Nuno Silva

For Respondent:

Counsel:

Mr. Orlando Pérez Gárate, Secretaría de Economía
Ms. Cindy Rayo Zapata, Secretaría de Economía
Mr. Antonio Nava Gómez, Secretaría de Economía
Ms. Ellionehit Sabrina Alvarado Sánchez, Secretaría de Economía
Ms. Pamela Hernández Mendoza, Secretaría de Economía
Ms. Erin Mireille Castro Cruz, Secretaría de Economía
Ms. Imelda Aime Anaid Silva Pacheco, Secretaría de Economía
Mr. Greg Tereposky, Tereposky & DeRose LLP
Mr. Umair Azam, Tereposky & DeRose LLP

Non-Disputing Parties:

Azeem Manghat (Canada)
Nathaniel Jedrey (United States of America)
Nicole Thornton (United States of America)
Elizabeth Donnelly (United States of America)
Matthew Hackell (United States of America)
Susie Hodge (United States of America)
Catherine Gibson (United States of America)

Court Reporters:

Dawn Larson, B&B Reporters
David Kasdan, B&B Reporters
Leandro Iezzi, D-R Esteno
Dante Rinaldi, D-R Esteno

Interpreters:

Silvia Colla
Daniel Giglio
Charles Roberts

32. The following persons were examined during the Hearing:

On behalf of Claimants:

Witnesses:

Ms. Mónica Galán

Mr. Renaud Jacquet

Mr. Carlos Sastre

Mr. Nuno Silva

Expert:

Mr. Sergio Bonfiglio Macbeath

On behalf of Respondent:

Witness:

Mr. Marcelino Miranda Aceves, Secretaría de Relaciones Exteriores

Experts:

Mr. Pablo Gutiérrez de la Peza Gutiérrez, O’Gorman & Hagerman

Mr. Ricardo Sánchez Núñez, O’Gorman & Hagerman

33. On 12 April 2022, the Parties submitted their Statements on Costs.
34. Further to the Tribunal’s directions, on 20 April 2022, Respondent presented its comments on Claimants’ Statement of Costs, and Claimants replied to Respondent’s comments on 22 April 2022.
35. On 6 May 2022, as requested by the Tribunal, the Parties made further submissions on certain questions regarding the “multi-party arbitration” issue.

III. FACTUAL BACKGROUND

36. The Tribunal will summarize the relevant facts as presented by the Parties. The fact that the Tribunal does not mention or include other facts in the summary does not mean that it did not consider such facts in its analysis for deciding the claims presented by the Parties.
37. For the sake of clarity and consistency, the Tribunal will divide the factual background into the following sections: (A) the *ejido* regime, (B) the restricted property regime (C) Mr.

Carlos Sastre's alleged investments (encompassing the HLSA investment as well), (D) Mr. Jacquet's alleged investments, (E) Ms. Abreu and Mr. Silva's alleged investment, and (F) Ms. Galán and Mr. Alexander's alleged investment.

A. THE *EJIDO* REGIME

38. Claimants alleged that their investments were situated on beachfront property located in the *Ejido José María Pino Suárez* (the “*Ejido*”) in the Mexican state of Quintana Roo.²
39. Mexican law divides real estate property into public, private, and community property. An *ejido* is community property.
40. *Ejidos* are semiautonomous communities governed by Mexican law, including Agrarian Law, and they are situated on a specified area of land. They are created by decree and have legal personality, internal rules, governing bodies, and individual members. The *Ejido José María Pino Suárez* was created by the Mexican government on 8 October 1973.
41. The *ejido* has the right to appoint its representatives and to administer as well as determine the use, transfer and release *ejido* lands. *Ejidos* have an internal governance system. As opposed to other property regimes, *ejidos* fall exclusively under federal jurisdiction.³ The *ejido* is also responsible for assigning each type of *ejido* property to individuals that fulfill the requirements provided for in the law and applicable regulations.⁴
42. The governing bodies of the *ejido* are the Ejido Assembly (*La Asamblea Ejidal*), the Ejido Commissariat (*El Comisariado Ejidal*), and the Ejido Oversight Council (*El Consejo de Vigilancia*). The Assembly is the supreme, decision-making body of the *Ejido*, made up of the *Ejido* members, adopting decisions on all matters pertaining to the administration, management, and disposition of the *ejido* assets. The Commissariat implements decisions

² Rejoinder on Jurisdiction, ¶ 47.

³ Exhibit PGP-0016, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 9, 10 and 12.

⁴ Exhibit PGP-0016, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 56.

taken by the Assembly, adopts decisions when delegated by the Assembly, and represents the *ejido* in relation to third parties.⁵ The Council supervises the actions undertaken by the Commissariat and verifies their compliance with decisions taken by the Assembly.

43. The *Registro Agrario Nacional* (“RAN”) is the organ responsible for maintaining the records of *ejido* and communal lands. The RAN provides documentary legal certainty by registering legal rights over *ejido* and communal property as well as any modifications to land ownership.⁶
44. RAN registration constitutes evidence both in and out of court. When the acts referred to in the Agrarian Law must be registered in the RAN and they are not registered, those acts only have effect as between the parties to the acts, but those acts cannot be detrimental to third parties.⁷
45. The system only allows as subjects and holders of *ejido* rights natural persons who have the status of “*ejidatarios*”, “*avecindados*” or “*posesionarios*” of the *ejido*, and exceptionally third parties (“*terceros*”) may hold land use rights only, when certain conditions are met.⁸
46. The *ejidatarios* are holders of *ejido* rights.⁹ To become an *ejidatario*, a person must be (i) a Mexican national, (ii) (a) of legal age, or (b) regardless of age, have a dependent family or be an heir of an *ejidatario*, and (iii) be resident of the *ejido* and admitted by the Assembly, except in the case of an *ejido* heir, or comply with the requirements established in the *ejido*’s internal regulations. The *ejidatario* status is proven by (i) a certificate of

⁵ **Exhibit PGGP-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 32.

⁶ **Exhibit PGGP-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 148.

⁷ **Exhibit PGGP-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 150.

⁸ **Exhibit PGGP-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 13, 15, 45, 56.

⁹ **Exhibit PGGP-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 12.

agrarian rights issued by the agrarian authorities, or (ii) a certificate of land parcel or common rights, or (iii) a ruling from the Agrarian Tribunal.¹⁰

47. The *avecindados* are individuals who meet the following requirements: (i) Mexican nationals, (ii) of legal age, (iii) who have resided for one year or more on *ejido* lands, and (iv) have been recognized as such by the Assembly or by the competent Agrarian Tribunal. The *ejidatarios* may transfer their parcel rights to other *ejidatarios* and *avecindados*.¹¹
48. The *posesionarios* are natural persons who have possession of *ejido* land. They must be recognized by the Assembly. If they are not recognized as *ejidatarios*, they only have the rights of use and enjoyment of their parcel. The *posesionarios* may acquire land rights through assignment by the Assembly or by prescription.¹² The Agrarian Law establishes that whoever has possessed *ejido* lands, as holder of *ejido* rights, in a peaceful, continuous and public manner for a period of five years, if the possession is in good faith, or ten years if in bad faith, will acquire the same rights over such lands as any *ejidatario*. The possessor may go before the agrarian court so that it may issue a resolution on the acquisition of the rights over the parcel or lands in question, such decision will be communicated to the RAN, so that it may immediately issue the corresponding certificate.¹³
49. A third party, or *tercero*, is a natural or legal person who, without being an *ejidatario* or *avecindado*, enters into a contract granting him/her the right to use *ejido* lands under any legal act or contract not prohibited by law, such as a lease or association. In the case of (a) *tierras de uso común*, the contract must be executed by the *ejido*, represented by the *Ejidal* Commissariat and with the approval of the Assembly,¹⁴ or, in the case of (b) parceled lands,

¹⁰ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 15, 16.

¹¹ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 80.

¹² **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 48, 57.

¹³ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 48.

¹⁴ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 23.

the contract must be executed by the *ejido* owner of the respective parcel.¹⁵ The contract must have a duration in accordance with the anticipated period of exploitation, no longer than 30 years, which may be extended. Contracts must be registered in the RAN, in order to have effect *vis-à-vis* third parties.¹⁶

50. The acts through which *ejido* rights may be created or transferred are: (i) Assignment by the Assembly: this consists of the assignment of rights by the Assembly and complying with the requirements established in the Agrarian Law and its Regulations regarding certification of *ejido* rights and titling of lots.¹⁷ (ii) Alienation or assignment of rights: *ejidatarios* may transfer their parcel and common use land rights exclusively to other *ejidatarios* and *avecindados* of the *ejido* by means of a contract or assignment of rights which must be notified to the RAN.¹⁸ (iii) Succession: upon the death of an *ejidatario*, his/her agrarian rights are transmitted by succession to the person he/she designates.¹⁹ (iv) Acquisitive prescription: natural persons who possess *ejido* lands delimited as parcels for a period of five years when the possession is in good faith, or ten years if the possession is in bad faith.²⁰ (v) Contract for use by third parties: *ejidatarios*, in the case of parcels, and the *ejido*, represented by the Ejidal Commissariat and with the approval of the Assembly, in the case of common use lands, may enter into any type of contract to grant third parties (including Mexican legal entities and foreign individuals or legal entities) the use of their lands for the duration of the anticipated period of exploitation, for up to thirty years, which

¹⁵ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 45.

¹⁶ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 45, 56, 80, 83.

¹⁷ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 56, 57, 58.

¹⁸ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 80; **Exhibit PGPG-0023**, Thesis and Jurisprudence.

¹⁹ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 17.

²⁰ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 48.

may be extended. In this case, they may only transfer temporary rights of use and enjoyment.²¹

B. RESTRICTED PROPERTY REGIME

51. Mexico's property regime as regards ownership of land contains specific regulations regarding the acquisition of property by foreigners. Specifically, Article 27, Section I of the Mexican Constitution establishes restrictions on the acquisition of direct ownership ("dominio directo") of real estate by foreigners in the restricted zone.²² The restricted zone is defined as: "[t]he strip of national territory of one hundred kilometers along the borders and fifty kilometers along the beaches [...]."²³

52. Particularly, Article 27, Section I of the Mexican Constitution establishes:

*Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters and their accessions or to obtain concessions for the exploitation of mines or waters. The State may grant the same right to foreigners, provided that they agree before the Ministry of Foreign Affairs to consider themselves as nationals with respect to said property and not to invoke the protection of their governments with respect thereto; the penalty for a failure to comply with the agreement, is forfeiting such property to the benefit of the Nation. In a strip of one hundred kilometers along the international borders and fifty kilometers along the beaches, foreigners may not acquire direct ownership over lands and waters for any reason whatsoever.*²⁴

53. In this regard, Article 10 of the Mexican Foreign Investment Law provides that:

²¹ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Articles 23(V), 33(I) and 45.

²² **Exhibit SB-0003**, Constitution of the United Mexican States. Translation by the Tribunal. **Exhibit MMA-001**, Political Constitution of the United Mexican States "[t]he legal capacity to own Nation's lands and waters shall be governed by the following provisions: [...] Within the zone that covers one hundred kilometers along the international borders and fifty kilometers along the beaches, under no circumstances may foreigners acquire direct ownership of land and water."

²³ **Exhibit PGPG-0057**, Mexican Foreign Investment Law, published in the DOF on 27 December 1993, in its version in force as of 20 August 2008, Article 2.

²⁴ Translation by the Tribunal. **Exhibit MMA-001**, Political Constitution of the United Mexican States.

Pursuant to the provisions of Section I of Article 27 of the Political Constitution of the United Mexican States, Mexican companies without a foreigner exclusion clause or those which have entered into the agreement referred to therein, may acquire ownership of real property in Mexican territory.

In the case of companies whose bylaws include the agreement provided for in Section I of Article 27 of the Constitution, the following shall apply:

I.- They may acquire ownership of real estate in the restricted zone, allocated to the conduct of non-residential activities, but they must give notice of such acquisition to the Ministry of Foreign Affairs within sixty working days following the day on which the acquisition is made, and

II.- They may acquire rights over real estate in the restricted zone, which are intended for residential purposes, in accordance with the provisions of the following chapter.²⁵

54. The Foreign Investment Law provides mechanisms for the acquisition of indirect ownership of property in the restricted zone by foreigners (for residential and non-residential activities). In all cases the investment must be made through a *fideicomiso* or a trust agreement, in accordance with the applicable provisions of the Mexican Foreign Investment Law and the Mexican Foreign Investment Registry.²⁶
55. Specifically, the Foreign Investment Law provides that:

ARTICLE 11.- Permission from the Ministry of Foreign Affairs is required for credit institutions to acquire, as trustees, rights over real estate located within the restricted zone, when the purpose of the trust is to allow the use and exploitation of such property without constituting rights in rem over it, and the trustees are

²⁵ Translation by the Tribunal. **Exhibit PGPG-0057**, Mexican Foreign Investment Law, published in the DOF on 27 December 1993, in its version in force as of 20 August 2008, Article 10.

²⁶ **Exhibit PGPG-0057**, Mexican Foreign Investment Law, published in the DOF on 27 December 1993, in its version in force as of 20 August 2008; **Exhibit PGPG-0058**, Regulations of the Mexican Foreign Investment Law, published in the DOF on 8 September 1998, in its version in force as of 28 April 2009.

I.- Mexican companies without a foreigner exclusion clause as provided for in section II of article 10 of this Law; and

II.- Foreign individuals or legal entities.

ARTICLE 12.- Use and exploitation of the real property located in the restricted zone shall mean the rights to the use or enjoyment thereof, including, as the case may be, the obtaining of fruits, products and, in general, any yield resulting from the lucrative operation and exploitation, through third parties or the trust institution.

ARTICLE 13.-The duration of the trusts referred to in this Chapter shall be for a maximum period of fifty years, which may be extended upon request of the interested party.²⁷

56. In a real estate trust within the restricted zone, a credit institution acts as trustee and acquires title to the real estate in trust. The beneficiaries (foreign individuals or corporations) only acquire the use and enjoyment of the real estate, without obtaining any real right over the property, for a maximum term of 50 years, which may be extended.²⁸ The real estate subject to the trust can only be used for the activities listed in Mexico's Foreign Investment Law Regulations, among them, hotels and motels.²⁹
57. The trust agreement must be executed in the form of a public deed, and the foreign beneficiaries must agree to consider themselves Mexican nationals with respect to their rights as trustees, and they cannot invoke the protection of their governments, under penalty of losing their rights in favor of Mexico.³⁰

²⁷ Translation by the Tribunal. **Exhibit PGPG-0057**, Mexican Foreign Investment Law, published in the DOF on 27 December 1993, in its version in force as of 20 August 2008, Articles 11, 12, 13.

²⁸ **Exhibit PGPG-0057**, Mexican Foreign Investment Law, published in the DOF on 27 December 1993, in its version in force as of 20 August 2008, Articles 11, 12 and 13.

²⁹ **Exhibit PGPG-0058**, Regulations of the Mexican Foreign Investment Law, published in the DOF on 8 September 1998, in its version in force as of 28 April 2009, Article 10.

³⁰ **Exhibit PGPG-0058**, Regulations of the Mexican Foreign Investment Law, published in the DOF on 8 September 1998, in its version in force as of 28 April 2009, Article 11.

58. Claimants affirm that their investments were on beachfront property located in the Ejido José María Pino Suárez in Quintana Roo,³¹ a fact which is confirmed by Respondent.
59. The Tribunal will now summarize the alleged facts related to each of Claimants' alleged investments.

C. MR. CARLOS SASTRE'S ALLEGED INVESTMENTS

60. Mr. Sastre was born and raised in Argentina.³²
61. In 1996, Mr. Sastre travelled to Mexico. He established a marketing business broadcasting advertisements to tourists in Cancun.³³
62. On 7 June 2000, Mr. Sastre obtained an FM3 visa to stay in Mexico.³⁴ On 27 May 2009, he became a naturalized Mexican citizen.³⁵ On that same date, and as a condition of being granted Mexican nationality, Mr. Sastre renounced his Argentinian nationality in the following terms:

I expressly renounce my ARGENTINE nationality and any other nationality to which I may be entitled, as well as all submission, obedience and fidelity to any other foreign government, especially to that OF THE ARGENTINE REPUBLIC. I likewise renounce all foreign protection from Mexican laws and authorities and all rights that international treaties or conventions grant to foreigners. I affirm my adherence, obedience and submission to Mexican laws and authorities.³⁶

³¹ Transcript, Day 1, page 85, lines 5- 15; page 136, lines 17-19; **Exhibit RJ-0006**, Transfer of Rights Agreement between Rogelio Novelo Balam and Irma Villarreal (Contrato Privado de Cesión de Derechos), dated 6 April 1999, with addendum dated 2 June 1999; **Exhibit NS-0003**, Transfer of Rights Agreement between Cástulo Jiménez Figueroa and Karla Gutiérrez (Contrato Privado de Cesión de Derechos Ejidales), 15 December 2000.

³² **Exhibit C-0004**, Argentine Passport of Carlos Sastre (Redacted); Witness Statement of Carlos Sastre, ¶ 2.

³³ Witness Statement of Carlos Sastre, ¶ 4.

³⁴ **Exhibit R-030**, Sastre's FM3 Visa.

³⁵ **Exhibit R-022**, Sastre's Mexican Naturalization Letter, 27 May 2009; Witness Statement of Carlos Sastre, ¶ 6.

³⁶ Translation by the Tribunal. **Exhibit R-032**, Letter Renouncing Sastre's Argentine Nationality, 27 May 2009; Witness Statement of Carlos Sastre, ¶ 6.

63. Further, on 31 July 2009, Mr. Sastre declared to the Mexican Ministry of Foreign Affairs:

I am aware of the penalties incurred by persons who make false declarations before an authority other than a judicial authority, under the terms of the provisions of article 247, section I, of the Criminal Code for the Federal District, [...] I declare that I will not use any passport other than the Mexican one, since I would fall under one of the grounds for loss of Mexican nationality by naturalization, as provided for in Article 37, Section B of the Political Constitution of the United Mexican States.³⁷

64. On 25 August 2000, Mr. Sastre and his partner, Mr. Daniel Carlos Marana (“Mr. Marana”), created a Mexican company by the name of Constructora Ecoturistica S.A. de C.V. to acquire and develop property for tourism, housing, and commercial purposes. The contract stated that Mr. Marana and Mr. Sastre agreed to create, in accordance with the laws of Mexico, a variable capital corporation of Mexican nationality. In the contract, they also included a clause for the admission of foreigners:

[t]he partners adopt the clause referred to in Article 14 of the regulations of the foreign investment law, which, in its relevant part, reads as follows: ‘When the corporate bylaws do not include a foreigner exclusion clause, the parties thereto must execute an express agreement or covenant that forms an integral part of the bylaws, whereby the company’s current or future foreign partners, are bound before the Ministry of Foreign Affairs to consider themselves as nationals with respect to the following:

I.- The shares, equity interests or rights any such companies acquire;

II.- The goods, rights, concessions, holdings or interests owned by such companies, and

³⁷ Translation by the Tribunal. **Exhibit R-032**, Letter Renouncing Sastre’s Argentine Nationality, 27 May 2009.

III.- The rights and obligations deriving from the contracts to which the companies themselves are a party.^{,38}

65. On 12 October 2000, CETSA and Mr. Lorenzo Novelo Pacheco (“Mr. Novelo”) executed a transfer of rights agreement. Under the agreement, Mr. Novelo, an *ejidatario* of the Ejido José María Pino Suárez,³⁹ transferred the use and enjoyment of “Lot 19-A”, an 1,873.84 square meter lot located on the Tulum -Boca Paila Highway, kilometer 10.5, in the *Ejido José María Pino Suárez*.⁴⁰ This lot was described as part of Lot 19, which measured 18,000 square meters. Lot 19-A was identified with the following borders and measurements: to the north, adjacent to the parcel of Mr. Novelo; to the east, adjacent to the Federal Caribbean Sea Zone; to the south, adjacent to the Casa Magna parcel; to the west, adjacent to the common lands of the Ejido José María Pino Suárez.⁴¹

(1) *Tierras del Sol*

66. According to Mr. Sastre, he developed the property and built a hotel on Lot 19-A named *Tierras del Sol*.

67. On 21 December 2002, members of the Ejido Commissariat issued an Ejidal certificate of Possession and Usufruct to Mr. Sastre.⁴²

68. Mr. Sastre alleges that by 2011, the Hotel *Tierras del Sol* had four buildings with eight private suites, a restaurant, and several common areas.⁴³ Mr. Sastre also asserts that *Tierras*

³⁸ **Exhibit C-0002**, Partnership Agreement (Contrato de Sociedad) for Constructora Eco Turistica S.A. de C.V. (CETSA), 25 August 2000, pp. 1- 2.

³⁹ **Exhibit C-0045**, Assembly Resolution of the Ejido José María Pino Suárez; **Exhibit CS-0019**, Certificate of Possession issued by Ejido to Lorenzo Novelo P.

⁴⁰ **Exhibit C-0012**, Transfer of Rights Agreement between Lorenzo Novelo Pacheco and CETSA. On this point, Respondent asserts that Claimants have not demonstrated that Claimant had or has full control over Constructora Eco Turistica S.A. de C.V., the company that appears as the asset designee, and that acquired the lots on Plot 19-A on which *Hotel Tierras del Sol* was built. (Transcript, Day 1, page 48, lines 12-16).

⁴¹ **Exhibit C-0012**, Transfer of Rights Agreement between Lorenzo Novelo Pacheco and CETSA.

⁴² **Exhibit CS-0005**, Certificate of Possession, Use and Enjoyment issued by the Ejido to Carlos Sastre, 21 December 2002.

⁴³ NOA #2, ¶ 24; Witness Statement of Carlos Sastre, ¶ 15.

del Sol had six employees.⁴⁴ Throughout its development, CETSA obtained multiple licenses and permits from various government agencies, including a Commercial Land Use License,⁴⁵ among others.⁴⁶

(2) ***Hamaca Loca***

69. On 2 February 2001, Swiss nationals created a Mexican company named *Hamaca Loca S.A. de C.V.* (“HLSA”) to develop and manage their tourism business.⁴⁷ On 1 March 2001, HLSA executed a transfer of rights Agreement with Mr. Lorenzo Novelo Pacheco, by which Mr. Novelo granted possessory rights to HLSA of 2,999 square meters of beachfront land within Lot 19, identifying the portion of land as “*Hamaca Loca*.⁴⁸”
70. On 24 May 2006, the Ejido Commissariat certified that Mr. Alvaro Antonio Urdiales Bonfiglioli (“Mr. Urdiales”) was the possessor of a portion of the parcel that originally belonged to Mr. Lorenzo Novelo Pacheco, this parcel was identified as *Ejido* lot 1235 located at the beachfront of the *Ejido José María Pino Suárez*. In the same document, Mr. Urdiales recognized that “[t]he land he receives was common use land whose use and beneficiaries can only be determined by the *Ejido Pino Suárez49 Thereafter, HLSA developed this parcel and built the *Hamaca Loca* hotel. The hotel included five bungalows, a bar-restaurant, a garden, a pool, and beachfront common areas.⁵⁰*

⁴⁴ Witness Statement of Carlos Sastre, ¶ 19.

⁴⁵ **Exhibit CS-0008**, Commercial Land Use License for Tierras del Sol, 6 April 2011.

⁴⁶ E.g. **Exhibit CS-0009**, Various Licenses / Permits issued to Constructora Eco Turistica: Receipt for payment of right to ZOFEMAT (2 March 2010), SAT Declarations re same (2009, 2011), SEMARNAT receipt of request for concession for use of beach / federal zone (22 May 2009); SAT payment declaration (2006); Operating Licenses (25 February 2011, 12 March 2010, 19 November 2004, 23 March 2004), Commercial Land Use Licenses (6 April 2011); **Exhibit CS-0021**, Tax Administration Service, General Declaration of Payment by Constructora Eco Turistica for Rights of Use of ZOFEMAT, paid to the Ministry of the Environment and Natural Resources (Declaración General de Pago por Constructora Ecoturistica de Derechos por uso de ZOFEMAT, Secretaria del Medio Ambiente); Witness Statement of Carlos Sastre, ¶ 16.

⁴⁷ **Exhibit CS-0013**, Incorporation for Hamaca Loca, S.A. de C.V. (Acta Constitutiva), 2 February 2001.

⁴⁸ **Exhibit C-0014**, Transfer of Rights Agreement (Contrato de Cesión de Derechos) between Lorenzo Novelo Pacheco and HLSA (Resubmitted), 1 March 2001.

⁴⁹ Translation by the Tribunal. **Exhibit C-0015**, Ejido Certificate of Possession issued by Ejido to Alvaro Urdiales, 24 May 2006.

⁵⁰ Claimants’ Rejoinder on Jurisdiction, ¶ 81.

71. On 29 January 2008, Mr. Urdiales, an Argentinian national, subsequently joined as a shareholder of HLSA with 0.5% of the shares.⁵¹
72. On 12 June 2017, Mr. Sastre contacted his neighbour Ms. Danila Marchetti, one of the HLSA owners, to ask if she and her associates would be interested in filing an international lawsuit against Mexico together. They declined but offered to assign their rights to their company to Mr. Sastre.⁵²
73. On 12 June 2017, HLSA and its shareholders, including Mr. Urdiales, signed an agreement in which they assigned their rights over Lot 19-A to Mr. Sastre.⁵³

(3) The Alleged Takeover of *Tierras del Sol* and *Hamaca Loca*

74. Mr. Sastre claims that on 19 October 2011, approximately fifty men who identified themselves as agents of the Federal Attorney General's Office, agents of the Deputy Attorney General's Office specializing in the Investigation of Organized Crime ("SEIDO"), and members of the Mexican marines had shown up at the *Tierras del Sol* hotel.⁵⁴ One of the agents told Mr. Sastre that the lands had been confiscated in 1997 for drug trafficking offenses, and they had come to deliver possession of the properties to an individual by the name of Mr. González Nuño. After a few hours, the agents left the hotel area.⁵⁵
75. On 24 October 2011, Mr. Sastre received a summon from the Federal Attorney General's Office in Mexico City.⁵⁶

⁵¹ **Exhibit C-0013**, Notarized Minutes of Extraordinary General Shareholders Meeting (Protocolización del Acta de Asamblea General Extraordinaria de Accionistas) for Hamaca Loca S.A. de C.V. (HLSA); Witness Statement of Carlos Sastre, ¶ 33.

⁵² Witness Statement of Carlos Sastre, ¶ 59.

⁵³ **Exhibit C-0003**, Hamaca Loca S.A. de C.V.'s Special Shareholders Meeting Resolution and Transfer of Rights to Carlos Sastre (Cesión de Derechos y Resolución), 12 June 2017; Witness Statement of Carlos Sastre, ¶ 59.

⁵⁴ Witness Statement of Carlos Sastre, ¶ 35. *See also* Claimants' Rejoinder on Jurisdiction, ¶ 116.

⁵⁵ Witness Statement of Carlos Sastre, ¶ 35.

⁵⁶ Witness Statement of Carlos Sastre, ¶ 36.

76. On 31 October 2011, Mr. Sastre went to the Quintana Roo's Public Prosecutor's Office in Tulum to file a complaint about what had happened and the seizure that he expected would take place.⁵⁷ Mr. Sastre alleges that on the same day a large group of police officers and armed persons again arrived at *Tierras del Sol* and *Hamaca Loca* to take over the hotels.⁵⁸
77. On 22 November 2011, Mr. Sastre, CETSA and HLSA filed an *amparo* (a constitutional injunction) before the Second District Court in Quintana Roo, a federal court in that State. Claimants asserted violations of their rights under Articles 14 (due process) and 16 (right to receive an order written by a competent authority before being deprived of their property) of the Mexican Constitution.⁵⁹
78. Later, in May 2012, Mr. Sastre's Agrarian Law attorney, Mr. Álvaro López Joers, was murdered. Mr. Sastre submits that all his documentation that was being held in his attorney's office was confiscated by the Public Prosecutor's Office of the State of Quintana Roo.⁶⁰
79. Afterwards, Mr. Sastre stayed in Mexico to receive updates on the legal proceeding and to manage a new hotel business.⁶¹
80. On 2 October 2015, the Second District Court in Quintana Roo dismissed the *amparo* application. The Court determined that none of the evidence proffered by the claimants proved that their lots were in the same area where the seizure was performed on 31 October 2011. According to the Court, the evidence needed to prove that the land was in the same location was a topographical expert's report. Consequently, the Court appointed an official expert to prepare this report. However, the Court declared this evidence void, because, despite being duly notified, the claimants did not attend the topographic test. As a result,

⁵⁷ Witness Statement of Carlos Sastre, ¶ 37.

⁵⁸ Witness Statement of Carlos Sastre, ¶ 37.

⁵⁹ **Exhibit C-0116**, Indirect Amparo Petition relating to the seizure of *Tierras del Sol*, 22 November 2011; **Exhibit C-0117**, Indirect Amparo Petition relating to the seizure of *Hamaca Loca*, 22 November 2011.

⁶⁰ Witness Statement of Carlos Sastre, ¶ 53.

⁶¹ Witness Statement of Carlos Sastre, ¶ 57.

the Court did not find a violation of the claimants' rights, an indispensable requisite for an *amparo*, nor did the Court find that the claimants had a legitimate right to be protected under the Constitution or any law.⁶²

81. At the end of 2015, Mr. Sastre returned with his family to Rio Cuarto, Argentina.⁶³

D. MR. JACQUET'S ALLEGED INVESTMENTS

82. Mr. Jacquet was born and raised in France,⁶⁴ and he is a French national.
83. On 24 March 2004, Mr. Jacquet and his wife, Ms. Lori Michelle Buksbaum, formed a Mexican corporation under the name of Abodes Mexico S.A. de C.V. ("Abodes Mexico") to acquire and develop property in Mexico.⁶⁵ On 31 March 2004, Mr. Jacquet registered Abodes Mexico in Mexico's national registry of foreign investments.⁶⁶
84. Mr. Jacquet alleges that Mr. Ed Villareal Cueva ("Mr. Villareal") told him that he was selling a lot on behalf of his daughter,⁶⁷ Ms. Irma Guadalupe Villareal de Elias ("Ms. Villareal").⁶⁸ The lot, identified as Lot 10-A, measures 6,000 square meters as follows: to the north, a 120-meter border with Juan Tun Mis; to the south, a 120-meter border with Rogelio Novelo Balam; to the east, a 50-meter border with the Federal Caribbean Sea Zone; to the west, a 50-meter border with lands of the Ejido José María Pino Suárez.⁶⁹

⁶² **Exhibit C-0029**, Mexican Federal Court Dismissal of Amparo relating to Constructora Eco Turistica and Hamaca Loca (Sobreseimiento, Juzgado Segundo de Distrito en Quintana Roo), 2 October 2015.

⁶³ Witness Statement of Carlos Sastre, ¶ 57.

⁶⁴ **Exhibit C-0005**, French Passport of Renaud Jacquet (Redacted), 19 November 2015; Witness Statement of Mr. Jacquet, ¶ 3.

⁶⁵ **Exhibit RJ-0003**, Articles of Incorporation for Abodes Mexico S.A. de C.V., 24 March 2004.

⁶⁶ **Exhibit RJ-0004**, Notary Notice, Ministry of Foreign Relations (Aviso Notarial, Secretaria de Relaciones Exteriores) authorizing the formation of Abodes Mexico S.A. de C.V. pursuant to the foreign investment law and the national registry of foreign investments, 24 March 2004.

⁶⁷ **Exhibit RJ-0005**, Power of Attorney from Irma Villareal to Ed Villarreal, 20 May 2003.

⁶⁸ Witness Statement of Mr. Jacquet, ¶ 9.

⁶⁹ **Exhibit RJ-0006**, Transfer of Rights Agreement between Rogelio Novelo Balam and Irma Villarreal (Contrato Privado de Cesión de Derechos), dated 6 April 1999, with *addendum* dated 2 June 1999.

85. Ms. Villareal had acquired Lot 10-A from Mr. Rogelio Novelo Balam (“Mr. Balam”) on 6 April 1999.⁷⁰ Mr. Balam, *ejidatario* of the Ejido, had a certificate of possession, use and enjoyment of Lot 10 (allegedly Lot 10-A was part of Lot 10), which measures 18,000 square meters and is identified as follows: to the north, a 120-meter border with Juan Tun Mis; to the south, a 120-meter border with Salvador Guerrero; to the east, a 150-meter border with the Federal Caribbean Sea Zone; to the west, a 150-meter border with the lands of the Ejido José María Pino Suárez.⁷¹
86. On 26 April 2004, Ms. Villarreal assigned the rights of possession and usufruct over Lot 10, a 900 square meter lot, to Abodes Mexico. The land that was transferred was identified as follows: to the north, a 45-meter border with Juliana Lira property; to the south, a 45-meter border with Irma Villarreal property; to the east, a 20-meter border with the Federal Maritime-Land Zone; to the west, a 20-meter border with lands of the seller.⁷² In the contract, Abodes Mexico recognizes that “[i]t knows the modalities to which the Ejido property is subject and what the Agrarian Law provides for with respect to the execution of the present contract, as well as the legal history of the establishment of the Ejido, and the litigious state in which it currently finds itself, under File 234/2002 before the Agent of the Public Ministry of Tulum, City Hall of Solidaridad.”⁷³
87. On 1 May 2006, Abodes Mexico and Ms. Villareal (represented by Mr. Villareal), concluded an addendum to the private contract of assignment of possession and usufruct

⁷⁰ **Exhibit RJ-0006**, Transfer of Rights Agreement between Rogelio Novelo Balam and Irma Villarreal (Contrato Privado de Cesión de Derechos), dated 6 April 1999, with *addendum* dated 2 June 1999.

⁷¹ **Exhibit RJ-0007**, Certificate of Possession issued by Ejido to Rogelio Novelo Balam (untitled Constancia), 30 April 1994; **Exhibit C-0047**, Certificate of Agrarian Rights issued by the United Mexican States to Rogelio Novelo Balam, 25 July 1990.

⁷² **Exhibit PGPG-0071**, Private agreement of transfer of possession and usufruct rights, executed between Mrs. Villarreal, represented by Mr. Villarreal Cueva, and AMSA, represented by Mr. Jacquet, 26 April 2004.

⁷³ Translation by the Tribunal. The original Spanish text provides: “*Que conoce las modalidades a las cuales esta sujeta la propiedad Ejidal y lo que dispone la Ley Agraria en lo relativo a la celebración del presente contrato, así como los antecedentes de la constitución del Ejido, y el carácter litigioso en que se encuentra actualmente, bajo el Expediente 234/2002 ante el Agente del Ministerio Público de Tulum, Ayuntamiento de Solidaridad*”. **Exhibit PGPG-0071**, Private agreement of transfer of possession and usufruct rights, executed between Mrs. Villarreal, represented by Mr. Villarreal Cueva, and AMSA, represented by Mr. Jacquet, 26 April 2004.

rights signed on 26 April 2004 (“the Addendum”).⁷⁴ The Addendum specified that the measures and borders of the lot were: to the north, an 85-meter border the property of Juliana Lira; to the east, a 22-meter border the Federal Maritime-Land Zone; to the south, a 45-meter border with land acquired by the seller, to the west, an 11-meter border with the transferor-seller’s property. Consequently, in the Addendum, the lot was expanded as follows: to the south, 40 meters with property of the seller, to the west, an 11-meter border with the Tulum-Boca Paila Highway. The buyer’s land totalled approximately 1,430 square meters. To compensate for this increase in surface area, Abodes Mexico agreed to pay US\$75,000.⁷⁵ This lot was referred to as the “North Lot” by Mr. Jacquet.⁷⁶

88. Further, the Addendum contained an option to acquire an additional adjacent lot with the following measurements: to the north, 40 meters with land acquired by the buyer; to the east, 11 meters with land acquired by the buyer; to the south, 40 meters with land owned by the seller, to the west, an 11-meter border with the Tulum-Boca Paila Highway. This area was identified in the contract as the “expanded field.”⁷⁷
89. On 5 August 2006, the Ejido Commissariat issued a Certificate of Possession certifying that Mr. José Mauricio Román Lazo’s (Mr. Román) “[i]s currently the beneficiary and possessor of a fraction of the economic parcel that originally belonged to Mr. Rogelio Novelo Balam, who in accordance with the agreement of the Ejidatarios’ Assembly that took place on 28 April 1994, materially received the possession of the Ejido Lot No. 1496 [...].”⁷⁸ The Certificate stated that Mr. Román “[u]nderstands and accepts that the lands he receives are common use lands, the use and beneficiaries of which can only be determined by the Ejido Pino Suárez, therefore, any modification he intends to perform

⁷⁴ **Exhibit RJ-0008**, Addendum to Transfer of Rights Agreement between Irma Villarreal and Abodes México S.A. de C.V (North Lot), 1 May 2006.

⁷⁵ **Exhibit RJ-0008**, Addendum to Transfer of Rights Agreement between Irma Villarreal and Abodes México S.A. de C.V (North Lot), 1 May 2006.

⁷⁶ Witness Statement of Mr. Jacquet, ¶ 10.

⁷⁷ **Exhibit RJ-0008**, Addendum to Transfer of Rights Agreement between Irma Villarreal and Abodes México S.A. de C.V. (North Lot), 1 May 2006.

⁷⁸ **Exhibit C-0049**, Certificate of Possession, Use and Enjoyment issued by the Ejido to José Mauricio Román Lazo, 5 August 2006.

must be notified and a prior ejidal authorization must be obtained [...]”⁷⁹ (emphasis in original). Mr. Román paid the Ejido José María Pino Suárez \$38,229 Mexican pesos for the issuance of a certificate of possession.⁸⁰

90. On 15 May 2007, Abodes Mexico, represented by Mr. Jacquet, signed a “Contrato privado de Promesa de Compraventa” (private promissory sale agreement) with Mr. José Mauricio Román Lazo, over the lot described in the Addendum with a surface area of 1,870 square meters with the following boundaries: to the north, an 85-meter border with the property of Juliana Lira; to the east, a 22-meter border with the Federal Maritime-Land Zone, to the south, an 85-meter border with the seller; to the west, 22-meter border with the Tulum-Boca Paila Highway. The contract was a promise to sell to Abodes Mexico the property rights previously acquired by Mr. Román related to the property. In the same contract, Mr. Román transferred the possession of the property to Abodes Mexico.⁸¹
91. On 15 August 2007, Abodes Mexico executed a Transfer of Rights Agreement with Mr. Román. This Agreement clarified that the lot described in the Addendum was expanded and identified by the letter “B” with the following measurements: to the north, an 85-meter border with Juliana Lira’s property, to the east, a 22-meter border with the Federal Maritime-Land Zone.⁸²
92. On 2 January 2008, Mr. Villareal, on behalf of his daughter,⁸³ executed a private Transfer of Rights Agreement with Mr. Román by means of which Ms. Villareal transferred the

⁷⁹ Translation by the Tribunal. The original Spanish text provides: “*Entiende y acepta que las tierras que recibe son tierras de uso común, cuyo destino y beneficiarios sólo pueden ser determinados por el Ejido Pino Suárez, por lo tanto, de cualquier modificación que pretendan realizar, deberá informar y obtener previamente la autorización ejidal correspondiente [...]*”. **Exhibit C-0049**, Certificate of Possession, Use and Enjoyment issued by the Ejido to José Mauricio Román Lazo, 5 August 2006.

⁸⁰ **Exhibit RJ-0010**, Receipt for payment for Ejido’s Certificate of Possession issued to José Mauricio Román Lazo, 5 August 2006.

⁸¹ **Exhibit C-0017**, Promissory Sale agreement (Contrato Privado de Promesa de Compraventa) between José Mauricio Román Lazo and Abodes Mexico S.A. de C.V. (Abodes Mexico), dated 15 May 2007.

⁸² **Exhibit RJ-0009**, Transfer of Rights Agreement (Contrato Privado de Cesión de Derechos) between Abodes México S.A. de C.V and José Mauricio Román Lazo (North Lot), 15 August 2007.

⁸³ **Exhibit RJ-0005**, Power of Attorney from Irma Villareal to Ed Villarreal, 20 May 2003.

possessory rights of the remaining part of Lot 10-A (which allegedly had not been transferred under any agreement) to Mr. Román. The lot was described as having 2,565.36 square meters and the following borders: to the north, 86.75 meters with territory of José Mauricio Román Lazo, to the east, 19.50 meters to the Federal Maritime-Land Zone, to the south, 88 meters with Hotel Paraíso, and to the west, 36.33 meters with Tulum -Boca Paila Highway.⁸⁴ This Lot was referred to as the “South Lot” by Mr. Jacquet.⁸⁵

93. Later, on 10 January 2008, Mr. Román executed two commodatum agreements with Mr. Jacquet.⁸⁶ Under these agreements, Mr. Jacquet did not have to pay compensation, monetary or otherwise, for the use of the North Lot or the South Lot. He was only required to comply with the obligations established in the contract for the use of the property without compensation. Also, under the agreement, Mr. Jacquet was authorized by Mr. Román to use the property for commercial purposes and manage permits and licenses for construction. Mr. Román was authorized to terminate the agreements at any time with prior notice.

(1) ***Behla Tulum and La Tente Rose***

94. Mr. Jacquet completed construction of a villa that measured approximately 3,500 square feet on the North and South Lots.⁸⁷ In 2011, Mr. Jacquet opened *La Tente Rose*, a specialty liquor store.⁸⁸ Mr. Jacquet also built three additional villas and four buildings on the combined lot.⁸⁹

⁸⁴ **Exhibit C-0051**, Transfer of Rights Agreement Between Irma Villareal and José Mauricio Román Lazo (South Lot), 2 January 2008.

⁸⁵ Witness Statement of Mr. Jacquet, ¶ 14.

⁸⁶ **Exhibit C-0052**, Commodatum Agreement Between José Mauricio Román Lazo and Renaud Jacquet (South Parcel), 10 January 2008; **Exhibit C-0053**, Commodatum Agreement Between José Mauricio Román Lazo and Renaud Jacquet (North Parcel), 10 January 2008; **Exhibit C-0018**, Commodatum Agreement between José Mauricio Román Lazo and Renaud Jacquet (South Lot), 10 January 2008.

⁸⁷ NOA #2, ¶ 30.

⁸⁸ NOA #2, ¶ 30.

⁸⁹ NOA #2, ¶ 30.

95. On 1 July 2010, Mr. Román executed a power of attorney for Mr. Jacquet to act on Mr. Román's behalf with respect to litigation and collection matters.⁹⁰ Later, in May 2012, Mr. Jacquet's Agrarian Law attorney, Mr. Álvaro López Joers, was murdered.⁹¹ Mr. Jacquet alleges that all the documents, including information regarding Mr. Jacquet's lots, were confiscated by the Public Ministry of Quintana Roo.⁹²
96. Later, on 5 October 2012, the Urban Development Office issued a Construction Regularization License to Mr. Román, who appeared as the owner of the property.⁹³
97. The Urban Development Office also issued a Commercial Land Use License authorizing Mr. Jacquet to use the property for *La Tente Rose* as a lodging business.⁹⁴ Mr. Jacquet also received a provisional alcoholic beverage permit authorizing the sale of liquor at *La Tente Rose*,⁹⁵ an Operating License for *La Tente Rose*,⁹⁶ a Municipal Sanitation License,⁹⁷ a Civil Protection License,⁹⁸ and a permission to re-open the property after receiving environmental clearance.⁹⁹
98. Further, the municipal treasury of Tulum issued tax payment receipts regarding this Lot under the name of Mr. Román.¹⁰⁰

⁹⁰ **Exhibit RJ-0011**, Power of Attorney from José Mauricio Román Lazo to Renaud Jacquet, 1 July 2010.

⁹¹ Witness Statement of Mr. Jacquet, ¶ 28.

⁹² Witness Statement of Mr. Jacquet, ¶ 28.

⁹³ **Exhibit RJ-0012**, Construction Regularization License (Regularización de Obra) issued to José Mauricio Román Lazo, 5 October 2012; **Exhibit RJ-0013**, Certificate of Land Use (Constancia de Uso de Suelo) issued to José Mauricio Román Lazo, 5 October 2012.

⁹⁴ **Exhibit RJ-0014**, Commercial Land Use License (Licencia de Uso de Suelo Commercial) issued to Renaud Jacquet, 5 October 2012.

⁹⁵ **Exhibit RJ-0015**, Provisional Permits for sale of beer, wine and liquor in closed containers, issued to Renaud Jacquet on 20 December 2013 and 19 September 2014.

⁹⁶ **Exhibit RJ-0017**, Operating License (Licencias de Funcionamiento), and Operating License with Alcoholic Beverage License, issued to Renaud Jacquet on 31 December 2012 and 2013

⁹⁷ **Exhibit RJ-0018**, Sanitary License issued to Renaud Jacquet, 8 May 2014.

⁹⁸ **Exhibit RJ-0019**, Certificate of Security Measures Concerning Civil Protection, 7 May 2014.

⁹⁹ **Exhibit RJ-0021**, Records of Lifting Closure Seals (Acta de Levantamiento de Sellos de Clausura) relating to Renaud Jacquet, 3 July 2013.

¹⁰⁰ **Exhibits RJ-0016 and RJ-0020**, Tulum Municipality's Receipt issued to José Mauricio Román Lazo for payment for contributions, 17 June 2016 and 18 June 2012.

99. Mr. Jacquet alleges that by 2016 he had a luxury vacation property featuring five private villas with thirteen bedrooms. That same year, Mr. Jacquet claims that he had further enhanced *Behla Tulum* by constructing a swimming pool and adding walls.¹⁰¹

(2) The Alleged Seizure of Mr. Jacquet's Business

100. On 17 June 2016, Mexican authorities seized the business he operated.¹⁰² Mr. Jacquet claims that he had most of his business documents at the site and was unable to retrieve them.¹⁰³ He claims further that he had to find substitute lodging for guests, cancel future reservations, return deposits, and pay legal fees.¹⁰⁴
101. After the seizure, Mr. Jacquet decided to file an *amparo* in the Mexican courts, asking for protection of his due process rights given that the purported lawsuit that was the basis for the seizure was between two unrelated parties that never included or even mentioned Mr. Román, Abodes Mexico, or himself. Later, the courts dismissed his *amparo* request.¹⁰⁵

E. Ms. ABREU AND MR. SILVA'S ALLEGED INVESTMENT

102. Mr. Eduardo Nuno Vaz Osorio dos Santos Silva ("Mr. Silva") was born and raised in Portugal.¹⁰⁶ He became a naturalized Mexican citizen on 8 April 2016.¹⁰⁷ On 6 May 2016, he expressly renounced his Portuguese nationality to the Ministry of Foreign Affairs of Mexico stating:

I expressly renounce the PORTUGUESE nationality and any other nationality to which I may be entitled, as well as all submission,

¹⁰¹ Witness Statement of Mr. Jacquet, ¶ 31; NOA #2, ¶ 31.

¹⁰² Witness Statement of Mr. Jacquet, ¶ 34.

¹⁰³ Witness Statement of Mr. Jacquet, ¶ 39.

¹⁰⁴ Witness Statement of Mr. Jacquet, ¶¶ 41-42.

¹⁰⁵ Witness Statement of Mr. Jacquet, ¶¶ 44-46; **Exhibit C-0116**, Indirect Amparo Petition relating to the seizure of Tierras del Sol, 22 November 2011; **Exhibit C-0117**, Indirect Amparo Petition relating to the seizure of Hamaca Loca, 22 November 2011.

¹⁰⁶ **Exhibit NS-0002**, Portuguese Passport of Nuno Silva; **Exhibit C-0008**, Portuguese Passport of Nuno Silva (Redacted).

¹⁰⁷ **Exhibit R-024**, Silva's Mexican Naturalization Letter, 8 April 2016.

*obedience and fidelity to any other foreign government, especially to that OF THE PORTUGUESE REPUBLIC. I also renounce all foreign protection from Mexican laws and authorities and all rights that international treaties or conventions grant to foreigners. I promise commitment, obedience and submission to the Mexican laws and authorities.*¹⁰⁸

103. In 2000, Mr. Silva contacted Karla Lorena Gutiérrez Rodríguez (“Ms. Gutiérrez”), who lived in Mexico, to connect him with some potential properties to develop a hotel in Mexico.¹⁰⁹
104. Ms. Gutierrez introduced Mr. Silva to Mr. Palazuelos, who then introduced Mr. Castulo Jiménez Figueroa (“Mr. Jiménez”) to Mr. Silva. Mr. Jimenez was the seller of the beachfront Lot 8 located in the Ejido José María Pino Suárez in Solidaridad, Quintana Roo.¹¹⁰
105. On 15 December 2000, Mr. Jiménez and Ms. Gutiérrez signed a Transfer of Rights Agreement transferring the *ejido* rights of a portion of Lot 8 measuring 2500 square meters, located in the Ejido José María Pino Suárez, and with the following borders and measurements: to the north, a 100-meter border with the Lot Cabañas Ballena; to the south, a 100-meter border with the Lot of Mr. Jose Martín Amaro Maury; to the east, a 25-meter border with the Federal Caribbean Beach Zone; to the west, a 25-meter border with the Tulum-Boca Paila Highway. In the Agreement, Mr. Jiménez declares that he is an *ejidatario* allegedly proven by a certificate issued by the Ejidal authorities dated 30 April 1994.¹¹¹

¹⁰⁸ Translation by the Tribunal. **Exhibit R-037**, Silva’s Letter Renouncing his Portuguese Nationality, 6 May 2016.

¹⁰⁹ Witness Statement of Mr. Silva, ¶ 4.

¹¹⁰ Witness Statement of Mr. Silva, ¶ 4.

¹¹¹ **Exhibit NS-0003**, Transfer of Rights Agreement between Cástulo Jiménez Figueroa and Karla Gutiérrez (Contrato Privado de Cesión de Derechos Ejidales), 15 December 2000.

106. On 3 July 2003, Mr. Silva formed a Mexican corporation called O.M del Caribe S.A. de C.V. (“O.M”).¹¹² Mr. Silva appears as the majority shareholder with 85% of the shares and its sole administrator.¹¹³ He assigned 15% of the shares of O.M to his godmother María Margarida Oliveira de Abreu (“Ms. Abreu”), who was also born and raised in Portugal,¹¹⁴ and is a naturalized Mexican citizen.¹¹⁵
107. On 2 October 2000, Ms. Abreu renounced her Portuguese nationality to the Ministry of Foreign Affairs of Mexico.¹¹⁶ The document by means of which she renounced her Portuguese nationality is, *mutatis mutandi*, identical to the document of renunciation of Mr. Silva cited in paragraph 102.
108. On 22 October 2003, Mr. Jiménez signed a private contract with Ms. Abreu transferring to her the Lot 8 property and possessory rights. The Lot was identified with the number 8, located on Tulum-Boca Paila Highway at Km. 8, with an area of 2,500 square meters in the José María Pino Suárez locality, Quintana Roo. The Lot was described with the following boundaries: to the north, a border with the property of Karla Lorena Gutiérrez Rodríguez; to the south a border with the property of Mr. Jiménez; to the east, a border with the Federal Caribbean Sea Zone; to the west a border with the Federal Highway Tulum-Boca Paila.¹¹⁷

¹¹² **Exhibit C-0006**, Corporate Formation Document (Acta Constitutiva) for O.M Del Caribe S.A. de C.V. (OMDC)O.M, 25 June 2003.

¹¹³ **Exhibit C-0006**, Corporate Formation Document (Acta Constitutiva) for O.M Del Caribe S.A. de C.V. (OMDC)O.M, 25 June 2003; Witness Statement of Mr. Silva, ¶ 10.

¹¹⁴ **Exhibit NS-0004**, Portuguese Embassy’s Certificate Of Margarida Abreu’s’s Portuguese Nationality (Constancia), 16 February 2021; **Exhibit C-0007**, Portuguese Passport of Margarida Abreu (Redacted), 27 October 2011. Later on, Ms. Abreu also gave Mr. Silva a power of attorney to act on her behalf; **Exhibit NS-0005**, Power of Attorney from Margarida Abreu to Nuno Silva (Poder General), 30 April 2011.

¹¹⁵ **Exhibit NS-0009**, Commodatum Agreement between Margarida Abreu and O.M del Caribe (Contrato de Comodato)O.M, 25 June 2007. **Exhibit R-074**, Proof of Residence in Mexico for Abreu's naturalization application, 18 November 1999; Transcript, Day 2, page 274, lines 3-7 and page 279, lines 14-18.

¹¹⁶ **Exhibit R-041**, Letter Renouncing Abreu’s Portuguese Nationality, 2 October 2000.

¹¹⁷ **Exhibit C-0020**, Transfer of Rights Agreement (Contrato de Cesión de Derechos) between Cástulo Jiménez Figueroa and Margarida Abreu (South Lot), 22 October 2003.

109. On 28 November 2003, Ms. Gutierrez, through the representation of Mr. Silva, executed a private transfer of rights contract with Ms. Abreu. Under this agreement, Ms. Gutierrez transferred the property and possessory rights for “Lot 8-A” with an area of 2,500 square meters, and the following adjacent areas: to the north, with the property of Ms. Gutiérrez; to the south, with the property of Ms. Gutiérrez; to the east with the Federal Caribbean Sea Zone; to the west with the Federal Highway Tulum-Boca Paila. Ms. Gutierrez declared that she obtained the possession of the lot by means of an occupancy order authorization issued at an extraordinary general assembly meeting of *ejidatarios* on 28 April 1994.¹¹⁸
110. On 25 June 2006 the Ejido Commissariat of José María Pino Suárez certified that Ms. Abreu was granted material possession of Lot number 1181 (allegedly Lot 8 and Lot 8A) located in the coastal zone of the Ejido José María Pino Suárez. The document states that the lot originally belonged to Mr. Jiménez, who was granted material possession of Lot 1181 through the agreement of the general assembly of *ejidatarios* held on 28 April 1994. Additionally, Ms. Abreu accepted that “the land received is common use land, whose allocation and assignees can only be determined by the *Ejido* Pino Suárez.”¹¹⁹
111. On 25 June 2007, Ms. Abreu and O.M signed a commodatum agreement. This agreement granted O.M the free use of Lot 1181 measuring 5,000 square meters for 10 years at no cost.¹²⁰

¹¹⁸ **Exhibit C-0021**, Transfer of Rights Agreement (Contrato de Cesión de Derechos) bewteen Karla Gutiérrez and Margarida Abreu (North Lot), 28 November 2003.

¹¹⁹ **Exhibit NS-0007**, Certificate of Possession issued by Ejido to Margarida Abreu (Constancia), 25 June 2006; **Exhibit NS-0008**, Receipt for payment for Ejido’s Certificate of Possession issued to Margarida Abreu, 1 August 2006.

¹²⁰ **Exhibit NS-0009**, Commodatum Agreement between Margarida Abreu and O.M del Caribe (Contrato de Comodato), 25 June 2007.

(1) *Uno Astroodge*

112. Between the initial construction in 2001 and 2016, Mr. Silva claims to have developed a hotel into what became known as *Uno Astroodge*. According to Mr. Silva, it was an unconventional resort with twelve bungalows, a restaurant, a yoga center, and a spa.¹²¹
113. In 2005, the Ministry of the Environment and Natural Resources issued an environmental authorization permit to O.M for the purpose of restoring “Hotel Ecológico Uno”¹²² and later on a Commercial Land Use License for the Lots to O.M.¹²³ Further, the Urban Development Office issued a Construction Regularization License approving the construction on the Lots in the name of Ms. Abreu,¹²⁴ and a Land Use Certificate permitting the use of the property for tourism in the name of Ms. Abreu as the owner of the Lot.¹²⁵ Further, O.M received an operating License issued by the state of Quintana Roo,¹²⁶ and Provisional Municipal Permits from the Municipality of Tulum for operational purposes.¹²⁷ Additionally, the Tulum Municipal Treasury issued yearly property taxes receipts for the lot to Ms. Abreu.¹²⁸ Finally, O.M was issued a certificate for the use of the Federal Zone in front of the hotel property,¹²⁹ and for the collection of garbage from the property.¹³⁰

¹²¹ Witness Statement of Mr. Silva, ¶ 14; NOA #2, ¶ 35.

¹²² **Exhibit NS-0006**, Letter from the Office of the Ministry of the Environment and Natural Resources to Nuno Silva (as representative of O.M) with authorization to build, 7 December 2005.

¹²³ **Exhibit NS-0010**, Commercial Land Use Licenses (Licencias de Uso de Suelo Comercial) issued to O.M del Caribe, 14 April 2014.

¹²⁴ **Exhibit NS-0011**, Construction Regularization License (Regularizacion de Obra) issued to Margarida Abreu, 8 July 2015.

¹²⁵ **Exhibit NS-0012**, Land Use Certificate (Constancia de Uso de Suelo) issued to Margarida Abreu, 8 July 2015.

¹²⁶ **Exhibit NS-0013**, Operating Licenses (Licencias de Funcionamiento) issued to O.M del Caribe, 9 June 2014.

¹²⁷ **Exhibit NS-0014**, Provisional Permits / Operating License issued to O.M del Caribe, 22 March 2016.

¹²⁸ **Exhibit NS- 0015**, Tulum Municipality’s Receipt issued to Margarida Abreu for payment for contributions, 27 January 2016.

¹²⁹ **Exhibit NS-0016**, Tulum Municipality’s receipt issued to Margarida Abreu showing payment for federal zone, 10 March 2016.

¹³⁰ **Exhibit NS-0017**, Solidaridad Municipality’s Receipts issued to O.M del Caribe for garbage collection.

(2) The Alleged Seizure of *Uno Astroodge*

114. On 17 June 2016, a court representative from the Mexican government arrived at Uno Astroodge and told everybody to leave the premises, invoking a court order.¹³¹ According to Mr. Silva, prior to this day, neither O.M, Ms. Abreu, nor he had any notice of any eviction order directed at any of them.¹³² After the seizure, Mr. Silva claims that the property was demolished, and the hotel was replaced with another hotel.¹³³
115. Afterwards, Mr. Silva alleges that he moved back to Portugal in December 2016.¹³⁴
116. On 2 July 2016, Mr. Silva filed an *amparo* in the Mexican courts , asking the court to protect his due process rights.¹³⁵

F. Ms. GALÁN AND MR. ALEXANDER'S ALLEGED INVESTMENT

117. Ms. Monica Galán Rios ("Ms. Galán") was born in Coatzacoalcos, Veracruz, Mexico.¹³⁶ She has been issued four Mexican passports covering the time periods between 13 January 1989 and 11 March 2020.¹³⁷ On 22 February 2007, Ms. Galán became a permanent resident of Canada.¹³⁸ She has been a Canadian citizen since 26 June 2015.¹³⁹ Her Canadian passport was issued on 3 July 2015.¹⁴⁰

¹³¹ **Exhibit R-050**, Compensation process, execution of the transactional agreement of evacuation and delivery 326/2016 before Itinerant Oral Court of First Instance of the Judicial District of Solidaridad, Quintana Roo promoted by Erick Castello Meraz as legal representative of Mauricio Esteban, Ciro Miguel, José Rafael and Francisco Saveria, all surnamed Schiavon Magaña, against Fernando Fuentes de la Cruz, 24 May 2016.

¹³² Witness Statement of Mr. Silva, ¶ 39.

¹³³ Witness Statement of Mr. Silva, ¶ 43.

¹³⁴ Witness Statement of Mr. Silva, ¶ 40.

¹³⁵ Witness Statement of Mr. Silva, ¶ 42.

¹³⁶ **Exhibit C-0010**, Canadian Passport of Mónica Galán (Redacted), 3 July 2015; Witness Statement of Ms. Galán, ¶ 2.

¹³⁷ **Exhibit R-033**, Application Approvals and Mexican Passports of Galán.

¹³⁸ **Exhibit MG-0004**, Citizenship and Immigration Canada, Confirmation of Permanent Residence for Mónica Alexander a/k/a Mónica Galán Ríos, 22 February 2007.

¹³⁹ **Exhibit MG-0005**, Certificate of Canadian Citizenship, Mónica Alexander, 26 June 2015.

¹⁴⁰ **Exhibit C-0010**, Canadian Passport of Mónica Galán (Redacted), 3 July 2015.

118. Ms. Galán was married to Mr. Graham Gordon Alexander Aguilar (“Mr. Alexander”) for approximately a decade.¹⁴¹ Mr. Alexander was born in 1968 in Oaxaca, Mexico,¹⁴² and he is a Mexican by birth and a Canadian citizen.¹⁴³ Mr. Alexander has been issued Mexican passports for the periods 2 March 2012 to 2 March 2018 and from 23 September 2015.¹⁴⁴
119. On 28 April 2004, Ms. Galán executed a private transfer of rights contract with Mr. Balam. In the contract Ms. Galán appeared as “*originaria de Coatzacoalcos*” (Coatzacoalcos is a Mexican municipality of the State of Veracruz) and therefore as a Mexican national by birth, and received the possession of a portion of Lot 10, located at Km. 8, Highway Tulum -Boca Paila in the Ejido José María Pino Suárez, with the following measurements: 15 meters of waterfront by 80 meters deep by 38 meters wide, with a total area of 2,120 square meters.¹⁴⁵ Mr. Balam, in turn, had been recognized as an *ejidatario* in 1990, and he was issued a Certificate of Agrarian Rights granting him the possession, use, and enjoyment of Lot 10 with the following borders: to the north, a border with Juan Tun Miss; to the south, a border with Salvador Guerrero; to the east, a 150-meter border with the Federal Caribbean Sea Zone; to the west, a 150-meter border with the Ejido José María Pino Suárez.¹⁴⁶
120. On 28 May 2004, Mr. Alexander formed Rancho Santa Monica Developments, Inc. (“RSM”), a Nevada (U.S.A.) corporation with a place of business at 3104 Sunnyhurst Road North Vancouver, BC, Canada V7K 2G3.¹⁴⁷

¹⁴¹ **Exhibit MG-0003**, British Columbia Certificate of Marriage between Mónica Galán and Graham Alexander, 29 April 2015.

¹⁴² **Exhibit R-025**, Mexican Birth Certificate of Alexander, 10 February 2012.

¹⁴³ **Exhibit MG-0001**, Canadian Certificate of Registration of Birth Abroad for Graham Alexander; see also **Exhibit C-0009**, Canadian Passport for Graham Alexander (Redacted); **Exhibit MG-0002**, British Columbia Voter Identification Card for Graham Alexander, 1 May 1989.

¹⁴⁴ **Exhibit R-034**, Application Approvals and Mexican Passports of Alexander, 2 March 2012.

¹⁴⁵ **Exhibit C-0023**, Transfer of Rights Agreement (Contrato Privado de Cesión de Derechos) between Rogelio Novelo Balam and Mónica Galán, 28 April 2004.

¹⁴⁶ **Exhibit MG-0006**, Certificate of Agrarian Rights issued by the Mexican Secretary of Agrarian Reform to Rogelio Novelo Balam (Certificado de Derechos Agrarios), 25 July 1990.

¹⁴⁷ **Exhibit R-008**, Government of Nevada, “Rancho Santa Mónica Developments Inc.”, Business Entity Search (consulted on 6 June 2020); **Exhibit MG-0007**, Purchase Agreement between Mónica Galán Ríos and Rancho Santa Monica Developments Inc., 29 November 2004.

121. On 29 November 2004, Ms. Galán executed a purchase agreement with RSM by means of which Ms. Galán transferred to RSM her rights and title of the western portion of the fraction of Lot number 10, being that portion contained between the Tulum -Boca Paila Highway and a line drawn between the points which are approximately 39.8 meters east of each of the northwest and southwest corners of the property.¹⁴⁸
122. Later, on 25 June 2006, the Ejido Commissariat issued a Certificate of Possession and Usufruct to Ms. Galán of Lot 1192.¹⁴⁹

(1) Hotel Parayso

123. Hotel Parayso was located in Lot 10 and opened for business in 2007.¹⁵⁰
124. On 8 March 2006, the Urban Development Office issued a Construction Regularization License to Ms. Galán approving the construction on Lot 10.¹⁵¹ It also issued a Certificate of Land Use permitting the use of the property for tourist lodgings.¹⁵² Later, on 13 February 2007, the Mexican federal government granted Ms. Galán a Concession Title stating that the hotel project complied with Mexican environmental law.¹⁵³ On 11 September 2009, the Urban Development Office issued a Construction Regularization License to Ms. Galán.¹⁵⁴

¹⁴⁸ **Exhibit MG-0007**, Purchase Agreement between Mónica Galán Ríos and Rancho Santa Monica Developments Inc., 29 November 2004.

¹⁴⁹ **Exhibit C-0060**, Certificate of Possession, Use and Enjoyment issued by the Ejido to Mónica Galán, 25 June 2006.

¹⁵⁰ NOA #2, ¶ 38.

¹⁵¹ **Exhibit MG-0008**, Construction Regularization License (Regularizacion de Obra) issued to Mónica Galán Ríos, 8 March 2006.

¹⁵² **Exhibit MG-0009**, Certificate of Land Use (Constancia de Uso de Suelo) issued for Mónica Galán, 8 March 2006.

¹⁵³ **Exhibit MG-0010**, Concession Title (Titulo de Concesión) issued by Mexico's Ministry of the Environment and Natural Resources to Mónica Galán Ríos, 13 February 2007.

¹⁵⁴ **Exhibit MG-0011**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 11 September 2009.

It further issued a Land Use License,¹⁵⁵ and two Commercial Land Use Licenses to Ms. Galán.¹⁵⁶

125. On 26 January 2015, Ms. Galán paid contributions corresponding to property taxes for Lot 10 and Hotel Parayso.¹⁵⁷
126. On [REDACTED] Ms. Galán and Mr. Alexander concluded a Separation Agreement in which they agreed, among other things, that the purchase agreement of 29 November 2004, transferring the property to RSM, be considered null and void; that Ms. Galán deregister all Parayso accounts in the name of Ms. Galán and re-register all accounts in the name of RSM; that the new administrator of Parayso is Mr. Alexander; that Ms. Galán is the director and equal shareholder as Mr. Alexander in RSM; that all income generated by Hotel Parayso shall be deposited into the RSM bank account; that all profit and expenses derived from Parayso shall be split 50/50 between Ms. Galán and Mr. Alexander; that Parayso shall change the name to Amelie Tulum; that Mr. Alexander is the owner of half of the property of Lot 10 identified as part “B” and Ms. Galán shall transfer to Mr. Alexander via the Ejido Pino Suárez this fraction of Lot 10.¹⁵⁸
127. On 21 September 2015, Mr. Alexander declared that “[t]he sale of the property [to RSM] as attached as Exhibit ‘A’ [referring to the 29 November 2004 purchase agreement] shall be declared null, void, and cancelled.”¹⁵⁹

¹⁵⁵ **Exhibit MG-0012**, Land Use License (Licencia de Uso de Suelo) issued to Mónica Galán Ríos, 11 September 2009.

¹⁵⁶ **Exhibit MG-0013**, Commercial Land Use License (Licencias de Uso de Suelo Comercial) issued to Mónica Galán Ríos, 10 September 2009.

¹⁵⁷ **Exhibit MG-0019**, Tulum Municipality’s Receipt issued to Mónica Galán Ríos for payment for contributions, 26 January 2015.

¹⁵⁸ **Exhibit C-0024**, Separation Agreement between Mónica Galán and Graham Alexander (Redacted), [REDACTED]
[REDACTED] **Exhibit MG-0023**, British Columbia, Certificate of Divorce between Mónica Alexander a/k/a Mónica Galán Ríos and Graham Alexander, [REDACTED] **Exhibit MG-0024**, Resolution of Rancho Santa Monica Development’s Sole Director, 21 September 2015.

¹⁵⁹ **Exhibit MG-0024**, Resolution of Rancho Santa Monica Development’s Sole Director, 21 September 2015.

128. On 14 October 2015, the Urban Development Office approved the additional constructions on the Lot 10, issuing a Construction Regularization License¹⁶⁰ a Land Use License to Ms. Galán.¹⁶¹ During this time Ms. Galán received other licenses including, the Operating Licenses issued by the municipality authorizing the operation of the hotel and the restaurant,¹⁶² and the Permanent Signage License issued by the Urban Development Office.¹⁶³
129. By 2016, Ms. Galán alleges that Hotel Parayso grew to include eleven ocean-front rooms, thirteen cabanas, two bars/restaurants, a pool and spa, among other amenities.¹⁶⁴ She also alleges that by 2015, Ms. Galán hired two housekeepers, two maintenance workers, two caretakers, three receptionists, a security guard, a plumber, and a driver.¹⁶⁵
130. After Ms. Galán and Mr. Alexander entered into the Separation Agreement,¹⁶⁶ Ms. Galán alleges that she began using the name “*Amelie Tulum*” for marketing her half of the hotel. Mr. Alexander used the commercial name “*Villas Alex*” for his half. However, the buildings did not change.¹⁶⁷

(2) The Alleged Seizure of Hotel Parayso

131. Ms. Galán asserts that on 17 June 2016, a court representative, accompanied by about two hundred armed Mexican police and other men, asked Ms. Galán, her employees and hotel

¹⁶⁰ **Exhibit MG-0014**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 14 October 2015.

¹⁶¹ **Exhibit MG-0015**, Land Use Certificate (Constancia de Uso de Suelo) issued to Mónica Galán Ríos, 14 October 2015.

¹⁶² **Exhibit MG-0016**, Tulum Municipality Operating Licenses, 29 November 2010, and 19 August 2015 issued to Mónica Galán Ríos.

¹⁶³ **Exhibit MG-0018**, Permanent Signage License (Licencia de Anuncio Permanente) issued to Mónica Galán Ríos, 9 August 2010-9 August 2011.

¹⁶⁴ NOA #2, ¶ 39; Witness Statement of Ms. Galán, ¶ 34.

¹⁶⁵ Witness Statement of Ms. Galán, ¶ 35.

¹⁶⁶ **Exhibit C-0024**, Separation Agreement between Mónica Galán and Graham Alexander (Redacted), [REDACTED]
[REDACTED] **Exhibit MG-0023**, British Columbia, Certificate of Divorce between Mónica Alexander a/k/a Mónica Galán Ríos and Graham Alexander, [REDACTED] **Exhibit MG-0024**, Resolution of Rancho Santa Monica Development’s Sole Director, 21 September 2015.

¹⁶⁷ Witness Statement of Ms. Galán, ¶ 40.

guests to leave the premises.¹⁶⁸ According to Ms. Galán, most of the documents relating to the hotel were lost in the seizure.¹⁶⁹

132. Ms. Galán alleges that she had to cancel guest reservations, return deposits, pay severance to the employees, and unwind other hotel matters.¹⁷⁰ In September 2016, Ms. Galán flew back to Canada.¹⁷¹
133. Later, Mr. Alexander and Ms. Galán filed separate *amparo* actions with the courts in Mexico, asking for protection of their due process rights. The Courts dismissed these *amparo* actions.¹⁷²

IV. THE PARTIES' REQUESTS FOR RELIEF

A. RESPONDENT'S REQUEST FOR RELIEF

134. Respondent presented the following Request for Relief in its latest submission:

Respondent respectfully requests that this Tribunal to:

1. Decline jurisdiction over the claims in their entirety;
 - a. On the basis that the investment treaties from which this Tribunal derives its jurisdiction do not allow for self-consolidation in these circumstances and the Respondent did not otherwise consent to it; or
 - b. In the alternative, if this Tribunal determines that it can proceed to hear this self-consolidated arbitration, it should still decline jurisdiction over the claims in their entirety because the legal

¹⁶⁸ Witness Statement of Ms. Galán, ¶ 41.

¹⁶⁹ Witness Statement of Ms. Galán, ¶ 45.

¹⁷⁰ Witness Statement of Ms. Galán, ¶ 46.

¹⁷¹ Witness Statement of Ms. Galán, ¶ 47.

¹⁷² Witness Statement of Ms. Galán, ¶ 50.

requirements under the four invoked treaties apply cumulatively and one or more of those requirements have not been fulfilled.

2. If the Tribunal does not decline jurisdiction over the claims in their entirety, the Respondent respectfully requests that the Tribunal decline jurisdiction over those claims for which the jurisdictional requirements for arbitration are not fulfilled. In this regard, the Respondent requests that the Tribunal find that the Claimants:

Mexico-Argentina BIT

- a. Have not proven that Sastre was a qualified “investor” at all relevant times, specifically, that he was a national of Argentina and that his dominant and effective nationality was not Mexican;
- b. Have not proven that Sastre was an investor in qualified “investments” at all relevant times, specifically: (i) that he was a *bona fide* investor in the Hamaca Loca Investments, that the transfer of rights related to those investments was not an abuse of process, and that the investments were made in accordance with the Respondent’s laws; and (ii) that he was an investor in the Tierras del Sol Investments and that the investments were made in accordance with the Respondent’s laws;
- c. Have not proven that Sastre was not domiciled in Mexico when the alleged violations occurred, as required under Article 2(3) of the BIT;
- d. Have not proven that Sastre filed his claims within the four-year limitation period prescribed in Annex Article 1(2) of the BIT;
- e. Have not proven that Sastre notified the Respondent in writing of his intention to submit to arbitration the claims related to the Hamaca Loca Investments as required by Article 10(4) of the BIT; and
- f. Have not proven that, in the course of naturalization into a Mexican national, Sastre did not expressly waive his rights to the Investor-State dispute settlement procedure under the BIT, and, consequently, Sastre had the right to use this procedure and the Respondent consented to this right.

NAFTA

- a. Have not proven that Galán and Alexander were qualified “investors” at all relevant times, specifically, that they were nationals of Canada, and that their dominant and effective nationalities were not Mexican;
- b. Have not proven that Galán and Alexander were investors in qualified “investments” at all relevant times, specifically that they were investors in the Parayso Investments and the investments were made in accordance with the Respondent’s laws; and
- c. Have not proven that Galán and Alexander submitted adequate written notice of their intention to submit a claim to arbitration at least 90 days before the claim is filed as required by Articles 1122(1) and 1119 of the NAFTA.

Mexico-France BIT

- a. Have not proven that Jacquet was a qualified “investor” at all relevant times in accordance with the Mexico-France BIT, specifically, that he was a national of France; and
- b. Have not proven that Jacquet was an investor in qualified “investments” at all relevant times in accordance with the BIT, specifically, that he was an investor in the Behla Tulum, and that the investments were made in accordance with the Respondent’s laws.

Mexico-Portugal BIT

- a. Have not proven that Silva and Abreu were qualified “investors” at all relevant times, specifically, that they were nationals of Portugal, and that their dominant and effective nationalities were not Mexican;
 - b. Have not proven that Silva and Abreu were investors in qualified “investments” at all relevant times, specifically, that they were investors in the Astroodge Investments and that the investments were made in accordance with the Respondent’s laws; and
 - c. Have not proven that, in the course of naturalization into as Mexican nationals, Silva and Abreu did not expressly waive their rights to the investor-state dispute settlement procedure under the BIT.
3. Order Claimants to cover the costs of this phase of the proceeding and indemnify Respondent for the fees, legal costs, Mexico’s share of the expenses related to the Tribunal and ICSID, and order Claimants to pay those costs in solidarity form.¹⁷³

B. CLAIMANTS’ REQUEST FOR RELIEF

135. Claimants presented the following Request for Relief in their latest submission:

Claimants respectfully request that the Tribunal:

- a. Find that the Claims are within its jurisdiction;
- b. Dismiss all of Respondent’s jurisdictional objections;
- c. Award Claimants all professional fees and costs arising from these proceedings;

¹⁷³ Reply on Jurisdiction, ¶ 585 (Courtesy translation provided by Respondent).

- d. Grant Claimants any other remedy that the arbitral tribunal deems appropriate.¹⁷⁴

V. PRELIMINARY OBJECTIONS

A. BURDEN OF PROOF AND STANDARD OF PROOF

(1) Position of the Parties

a. *Respondent's Position*

136. According to Respondent, when jurisdiction is based on the existence of certain facts, these facts must be proven in the jurisdictional phase.¹⁷⁵ Therefore, it is Claimants' burden to prove at the jurisdictional stage the facts and conditions to establish the Tribunal's jurisdiction under each of the treaties.¹⁷⁶ To Respondent, the burden of proof must be met on a balance of probabilities, contrary to the *prima facie* standard proposed by Claimants.¹⁷⁷ Respondent submits that Claimants must prove that these requirements have been met at the time the Amended Notice of Arbitration was filed.¹⁷⁸

b. *Claimants' Position*

137. Claimants accept that they bear the burden to prove their case-in-chief, including the Tribunal's jurisdiction. Respondent, in turn, must prove its own objections and defences, including issues regarding illegality, domicile, dual nationality, multiparty arbitration, among others.¹⁷⁹

¹⁷⁴ Counter-Memorial on Jurisdiction, ¶ 266; Rejoinder on Jurisdiction, ¶ 475.

¹⁷⁵ Transcript, Day 1, page 15, lines 16-22 and page 16, line 1.

¹⁷⁶ Memorial on Jurisdiction, ¶ 25.

¹⁷⁷ Reply on Jurisdiction, ¶ 8; Transcript, Day 1, page 16, lines 10-21.

¹⁷⁸ Memorial on Jurisdiction, ¶ 27.

¹⁷⁹ Transcript, Day 1, page 93, lines 15-21.

138. To Claimants, the Tribunal should apply the “Higgins test” by which each Claimant must set forth a *prima facie* case showing that the elements of jurisdiction are satisfied.¹⁸⁰ Also, Claimants agree with the application of a balance of probabilities standard, however, the exception is for allegations of illegality which must be held to an elevated standard of clear and convincing evidence.¹⁸¹
139. To Claimants, Respondent’s position that Claimants were required to prove all jurisdictional elements in its Amended Notice of Arbitration is extreme, and Respondent offers no relevant support for it. In any event, Claimants’ Amended Notice of Arbitration complied with all the requirements indicated by the UNCITRAL Rules.¹⁸²

(2) Tribunal’s Considerations

140. The Tribunal first recalls its Procedural Order No. 3, which confirms that “[t]hese proceedings will be governed by the 1976 version of the UNCITRAL Arbitration Rules.”¹⁸³ Article 24(1) of the 1976 UNCITRAL Arbitration Rules states that “[e]ach party shall have the burden of proving the facts relied on to support his claim or defence.”
141. Further, Procedural Order No. 1, Article 11.1 provides that:

For matters concerning the gathering or taking of evidence that are not otherwise covered by a procedural order issued by the Tribunal and the UNCITRAL Arbitration Rules, the Tribunal may refer to the IBA Rules on the Taking of Evidence in International Arbitration (2010) for guidance as to the practices commonly accepted in international arbitrations, but it shall not be bound to apply them.

142. In this regard, the IBA Arbitration Committee Commentary to Article 3 of the IBA Rules on the Taking of Evidence in International Arbitration states that:

¹⁸⁰ Counter-Memorial on Jurisdiction, ¶¶ 29 -33.

¹⁸¹ Transcript, Day 1, page 93, lines 9-13.

¹⁸² Counter-Memorial on Jurisdiction, ¶¶ 44-45.

¹⁸³ Procedural Order No. 3, 17 September 2020.

*The IBA Rules of Evidence begin with the principle that each party shall introduce those documents available to it and on which it wants to rely as evidence. This provision reflects the principle, generally accepted in both civil law and common law countries, that parties have a burden to come forward with the evidence that supports their case.*¹⁸⁴

143. Accordingly, the applicable rules to this proceeding support the general rule “*actori incumbit probatio*”, or that a party to an international arbitration has the burden of proving the facts necessary to establish its claim or defence.
144. Thus, Claimants have the burden of proving the jurisdictional basis of their claims, that is to say, the circumstances establishing the Tribunal’s jurisdiction under each of the treaties, namely, the Mexico-Argentina BIT, the Mexico-France BIT, the Mexico-Portugal BIT, and the NAFTA. Respondent, in turn, must prove the facts and circumstances underlying its jurisdictional objections.
145. Furthermore, the Tribunal finds that there is no general disagreement between the Parties as to the applicable standard of proof. The Parties agree that for most jurisdictional matters, the applicable standard is the “balance of probabilities.” However, for Claimants, each party must make its *prima facie* case, and the tribunal will then apply the balance of probabilities standard to determine if jurisdiction exists. Also, for Claimants, allegations of illegality must be held to an elevated standard such as clear and convincing evidence.¹⁸⁵
146. In the light of the applicable rules of the proceeding, the Tribunal agrees that the applicable standard of proof to the essential requirements of jurisdiction is the balance of probabilities.
147. This standard requires an evaluation by the Tribunal of all the evidence produced by Claimants and Respondent on the issues at hand to determine which party’s claims are more likely to be true. Thus, Claimants must present persuasive evidence of the facts to establish jurisdiction for the Tribunal to be satisfied that the burden of proof has been

¹⁸⁴ *Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration*, January 2021.

¹⁸⁵ Transcript, Day 1, page 93, lines 7-10.

discharged, and not a *prima facie* case as proposed by Claimants. Respondent, in turn, must provide persuasive evidence of the facts that make out its objections to jurisdiction.

148. As to the proposed application of a clear and convincing evidence standard for illegality allegations, this Tribunal notes that there are some investment treaty decisions which have applied higher standards of proof for certain types of serious wrongdoing, such as corruption, fraud, and conspiracy. However, tribunals may choose to apply these higher standards at their discretion, depending on the evidentiary circumstances of each case. For instance, in *Fraport v. Philippines I*, the tribunal rejected applying a higher standard of proof regarding a criminal matter, asserting that:

[w]hatever standard of proof is required under Philippine law to prove a criminal act, the jurisdictional question before this Tribunal, which is seized of an international investment dispute, is not a determination of a crime but whether an economic transaction by a German company was made ‘in accordance’ with Philippine law and thus qualifies as an ‘investment’ under the German Philippine BIT.¹⁸⁶

149. The Fraport (I) tribunal continued by expressing:

[e]ven assuming, however, that the ‘preponderance of evidence’ test which applies in civil law must yield in the instant case to a ‘beyond a reasonable doubt’ test because the subject of the ‘in accordance’ inquiry is a Philippine criminal statute, this is a case in which res ipsa loquitur. The relevant facts, all of which are found in Fraport’s own documents, are incontrovertible.¹⁸⁷

150. In the present case, the Tribunal does not deal with corruption, fraud, conspiracy, criminal issues, nor matters that are extremely difficult to prove. The jurisdictional question presented to this Tribunal include whether Claimants were *qualified investors* who had a

¹⁸⁶ **Exhibit CLA-0098**, *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*, ICSID Case No. ARB/03/25, ¶ 399, Award, 16 August 2007.

¹⁸⁷ **Exhibit CLA-0098**, *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*, ICSID Case No. ARB/03/25, ¶ 399, Award, 16 August 2007.

qualified investment under the requirements of the applicable treaties. This analysis does not necessitate the application of a heightened standard of proof by this Tribunal.

151. All things considered, as the applicable rules indicate, and as both Claimants and Respondent have agreed, the burden of establishing jurisdiction lies primarily upon Claimants, and Respondent in turn, has the burden to demonstrate its objections. This burden must be met on a balance of probabilities standard of proof.

B. RELEVANT DATES

(1) Position of the Parties

a. *Claimants' Position*

152. Claimants maintain that the Tribunal should separately determine which moments of time are relevant to Claimants' jurisdictional elements and Respondent's defences.¹⁸⁸
153. Overall, Claimants consider that the requirements for jurisdiction must be met at the moment of the alleged non-compliance and at the moment of the filing of the Notice of Arbitration.¹⁸⁹
154. Regarding Article 2 (3) of the Argentina – Mexico BIT, Claimants assert that the domicile limitation on consent applies only on the date of filing the Notice of Arbitration.¹⁹⁰

b. *Respondent's Position*

155. Respondent asserts that for the Tribunal to have jurisdiction Claimants would have to show that they were "investors" holding an "investment" at three relevant times: (a) at the time the investment was made¹⁹¹; (b) at the time of the alleged breach; and (c) at the moment of filing the Notice of Arbitration.¹⁹² Moreover, the time when the investment was made is

¹⁸⁸ Counter-Memorial on Jurisdiction, ¶ 53; Rejoinder on Jurisdiction, ¶ 149.

¹⁸⁹ Rejoinder on Jurisdiction, ¶ 146; Transcript, Day 1, Page 124, lines 21-22, to page 125, lines 1-3.

¹⁹⁰ Counter-Memorial on Jurisdiction, ¶ 157.

¹⁹¹ Transcript, Day 1, page 19, lines 18-19; page 20, lines 4-5.

¹⁹² Transcript, Day 1, page 19, lines 14-16.

related to the requirements of the acquisition of the *Ejido* properties¹⁹³ and therefore to the legality or illegality of the investment. According to Respondent, the Tribunal has no jurisdiction because Claimants were not able to prove that they were investors and there was an investment at the relevant times.

156. Regarding Article 2(3) of the Mexico-Argentina BIT, Respondent asserts that the domicile of the person must be assessed at the time when the investment was made, when the alleged treaty breach occurred, and at the time of the submission of the claim to arbitration.¹⁹⁴

(2) **Tribunal's Considerations**

157. Overall, during the second round of memorials and during the hearings,¹⁹⁵ the Parties accepted what multiple tribunals have stated; that is to say, that generally the relevant dates for assessing issues of jurisdiction are: (i) the date when the alleged breach took place,¹⁹⁶ and (ii) the date when the request for arbitration was lodged.¹⁹⁷ Respondent, however, insisted that the Tribunal must also consider the date when the investment was made. The Tribunal agrees with Respondent that certain issues related to jurisdiction debated in this arbitration must consider the date when the investment was made. Such is the case with respect to objections related to the alleged illegality of the investment.

¹⁹³ Transcript, Day 1, page 19, lines 19-22, to page 20, line 1.

¹⁹⁴ Transcript, Day 1, page 19, lines 15-20.

¹⁹⁵ Transcript, Day 1, page 19, lines 11-16; Reply on Jurisdiction, ¶ 18.

¹⁹⁶ **Exhibit RL-0069**, *Blusun S.A., Jean-Pierre Lecorciere and Michael Stein v. Italian Republic*, ICSID Case No. ARB/14/3, Award, 27 December 2016; **Exhibit RL-071**, *Libananco Holdings Co. Ltd. v. Republic of Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011; **Exhibit RL-072**, *Europe Cement Investment & Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009; **Exhibit RL-0074**, *Link-Trading Joint Stock Company v. Republic of Moldova*, UNCITRAL, Final Award, 18 April 2002; **Exhibit RL-038**, *Cementownia "Nowa Huta" S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009; **Exhibit RL-039**, *GEA Group Aktiengesellschaft v. Ukraine*, ICSID Case No. ARB/08/16, Award, 31 March 2011; **Exhibit RL-040** and **CLA-0069**, *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015.

¹⁹⁷ **Exhibit RL-075** and **CLA-0067**, *Vladislav Kim and others v. Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017; **Exhibit RL-076**, *Capital Financial Holdings Luxembourg S.A. v. Republic of Cameroon*, ICSID Case No. ARB/15/18, Award, 22 June 2017 [French]; **Exhibit RL-078**, *David R. Aven and others v. Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Final Award, 18 September 2018.

158. Where the relevant investment treaty is silent, arbitral tribunals have adopted different approaches with respect to the date when the Tribunal's jurisdiction needs to be established. Consequently, in this case, the Tribunal will address the "relevant dates" issue on an objection-by-objection basis, considering the provisions of the relevant treaty and the applicable legal framework.

C. THE JURISDICTIONAL OBJECTIONS SUBMITTED BY RESPONDENT

159. Respondent has submitted two categories of jurisdictional objections: those that apply to all Claimants (general objections) and those that apply only to a particular Claimant or group of Claimants (particular objections). Respondent also claims that all jurisdictional requirements provided for in all the treaties should apply cumulatively.
160. The Tribunal will take a straightforward approach to the resolution of this case. If an argument has convinced the Tribunal, the Tribunal will not engage with other arguments that have been brought forward in favour of the same or a similar solution. The Tribunal will, in principle, not discuss arguments or decisions in prior investment arbitration cases that it does not find applicable. It is to be understood that arguments that the Tribunal has not discussed, have been rejected or deemed irrelevant.
161. If a general or a particular objection succeeds with respect to one of the Claimants, the Tribunal, in principle, will not analyse other jurisdictional objections that apply to the same Claimant, unless the Tribunal finds that such objection applies to more than one Claimant – as is the case of the renunciation of nationality – or that a particular objection merits additional comments from the Tribunal.
162. One of the objections that apply to all Claimants that the Parties have heavily debated in this jurisdictional phase is whether hearing all claims of all Claimants in a single arbitration constitutes an impermissible case of consolidation or a permitted case of multi-party arbitration. The Tribunal decided, without opposition from the Parties, that the Tribunal

was authorized, in the bifurcated jurisdictional phase, to address all jurisdictional objections in one single proceeding.¹⁹⁸

163. While the Tribunal considered whether it had to address this jurisdictional objection first, as a practical matter, the Tribunal determined that this issue will only become relevant if the Tribunal has jurisdiction over more than one of the Claimants. If the Tribunal decides, as it does in the present matter, that it has no jurisdiction to hear any of the claims submitted by any of the Claimants, the issue becomes moot as there will be no proceedings to consolidate or claims to hear in a multi-party arbitration.
164. Another objection that applies to all Claimants is the challenge made by Respondent to the documents submitted by all Claimants as evidence of their rights to their alleged investments. Based on the opinion of its expert in Agrarian Law, Respondent presented a detailed explanation of the reasons for considering that there was no evidence of title under Mexican law.
165. Claimants and their expert, in turn, insisted that the documents submitted in their Statement of Claim and in their Reply were more than sufficient to prove their rights related to the land under Mexican law.
166. Even though the experts had significant disagreements in their analysis, they agreed on one fundamental concept: the need to register title before RAN as a requirement for the transfer of title to be enforceable against third parties and admitted in court.¹⁹⁹ Further, during cross-examination and in response to the questions posed by the Tribunal during the Hearing, Mr. Bonfiglio, Claimants' Agrarian law expert, confirmed that the registration before RAN was a requirement *ad probationem*, and without such registration the alleged titles may only be invoked between the parties to the respective agreement.²⁰⁰

¹⁹⁸ Procedural Order No. 2, ¶ 28.

¹⁹⁹ Transcript, Day 4, page 419, lines 8-22; page 442, lines 1-11.

²⁰⁰ Transcript, Day 4, page 417, lines 3-4; page 419, lines 8-22; page 420, lines 1-4.

167. Regardless of whether the absence of registration before the RAN may or may not be invoked against Mexico, the fact is that a certificate of registration before RAN could have served as evidence of the chain of title for each one of the Claimants. However, the Tribunal was not provided with a certificate from the RAN or evidence of registration before the RAN.
168. The reports of the Agrarian Law experts raise serious doubts as to issues such as the consent of the parties to the different contracts, and whether the assignor of rights was validly entitled to transfer such rights.
169. Notwithstanding the above, the Tribunal will take a more practical and efficient approach by first addressing the objections not related to land rights and address the topic only as regards those Claimants with respect to whom other objections either do not apply or have no merit.

D. WHETHER MR. SASTRE WAS DOMICILED IN MEXICO DURING THE RELEVANT TIMES AND IS THUS EXCLUDED FROM INVOKING THE DISPUTE SETTLEMENT SYSTEM UNDER ARTICLE 2(3) OF THE MEXICO – ARGENTINA BIT.

(1) Position of the Parties

a. Respondent's position

170. According to Respondent, Article 2(3) of the Mexico-Argentina BIT neither defines the term “domicile” nor the relevant time for assessing when a national of the other Contracting Party is domiciled in the Contracting Party.
171. Respondent interprets this provision in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties (“VCLT” or “Vienna Convention”). Under this interpretation, Articles 2 and 10 of the Mexico-Argentina BIT are immediate contexts of Article 2(3). Article 10 and its Annex establish the investor-State dispute settlement procedure in the Mexico-Argentina BIT. According to Respondent, that procedure can be invoked immediately upon an investor becoming aware of the presumed breach and the losses or damages suffered. It is at that time that “[a] natural person who is a national of

a Contracting Party and who is domiciled in the territory of the other Contracting Party where the investment is situated,” first acquires the right to invoke the dispute settlement mechanism contained in Article 10. Accordingly, Respondent contends that the domicile of the Claimant, Mr. Sastre, must be assessed at the time of the investment, at the time that the alleged treaty breach occurred as well as at the time of the submission of the claim to arbitration.²⁰¹

172. Further, Respondent asserts that Article 2(1) of the Mexico-Argentina BIT, which is the proximate context to Article 2(3), confirms this interpretation. Article 2(1) of the Mexico-Argentina BIT provides that the Mexico-Argentina BIT applies to “measures taken or maintained by a Contracting Party in respect of investors of one Contracting Party in respect of their investments and the investments of such investors made in the territory of the other Contracting Party.” (emphasis in original). To Respondent, “measures taken or maintained” by a Contracting Party are the focal point of the BIT and, thereby, the focal point of the Investor-State dispute settlement procedure. Accordingly, to Respondent, the date on which those measures occurred is vital to the operation of the dispute settlement procedure. To Respondent this is also confirmed by the fact that the four-year limitation period for invoking the procedure begins with knowledge of the measures and the losses or damages suffered.²⁰² Thus, according to Respondent’s interpretation, the domicile of an investor must be assessed at the time of the alleged breach of the treaty and the submission of the claim.²⁰³
173. Moreover, in the light of Article 31(1) of the Vienna Convention, Respondent interprets the word “domicile” in Article 2(3) of the Mexico-Argentina BIT as “*the place where the natural person lives with the intention of remaining there and that permanence in one place for a certain period of time provides a presumption of domicile.*”²⁰⁴ Also, according to its context, Respondent asserts that “domicile” is used as a measurement to equate a natural

²⁰¹ Memorial on Jurisdiction, ¶ 217.

²⁰² Memorial on Jurisdiction, ¶ 218.

²⁰³ Memorial on Jurisdiction, ¶¶ 216-227; Reply on Jurisdiction, ¶ 87.

²⁰⁴ Memorial on Jurisdiction, ¶ 223.

person to a domestic national, in this arbitration, a national of Mexico. Thus, facts that indicate the “domicile” of a natural person include facts that indicate a natural person is a national.²⁰⁵

174. Respondent submits that the evidence in this arbitration demonstrates that Mr. Sastre was domiciled in Mexico at the time of the alleged investments and at the time of the alleged breaches as he obtained a foreigner FM3 visa from the Mexican immigration authorities on 7 June 2000; declared himself as domiciled in Mexico when incorporating CETSA on 31 August 2000; signed the CETSA Transfer of Rights Agreement in Tulum, on 12 October 2000; extended his FM3 visa three times between 7 June 2000 and 2 October 2009; requested to become a naturalized Mexican national on 24 April 2006; renounced his Argentinian nationality on 27 May 2009; became a naturalized Mexican citizen and Mexican national on 27 May 2009; was present in the hotel Tierras del Sol on 19 October 2011, prior to the seizure; was residing in the hotel Tierras del Sol at the time of the seizure; continued to be domiciled in Mexico after the alleged measures.²⁰⁶
175. Not having a domicile in Mexico is a requirement of Respondent’s consent to arbitration. Accordingly, Respondent alleges that Article 2(3) of the Mexico-Argentina BIT disqualifies Sastre from invoking the Investor-State dispute settlement procedures in the BIT.²⁰⁷
176. Finally, Respondent claims that the Most Favoured Nation (“MFN”) provision of the Mexico – France BIT cannot be used to import the treatment granted in that treaty and thereby circumvent the condition of Respondent’s consent, *ratione voluntatis*.²⁰⁸

²⁰⁵ Memorial on Jurisdiction, ¶ 225.

²⁰⁶ Memorial on Jurisdiction, ¶ 226.

²⁰⁷ Memorial on Jurisdiction, ¶ 227.

²⁰⁸ Transcript, Day 1, page 71, lines 15-18.

b. *Claimants' Position*

177. According to Claimants, Respondent is wrong regarding the domicile requirement for various reasons. Respondent's reference to Article 2(1) of the Mexico-Argentina BIT is not relevant. Besides being in the same Article, the two provisions are unrelated and serve different purposes. Also, the reference in Article 2(3) of the Mexico-Argentina BIT to Article 10 suggests that Article 2(3) applies at the moment of filing the claim. Article 10 of the Mexico-Argentina BIT covers how an investor can bring a claim in case of a dispute. It discusses what investors can do at the moment of filing that claim, not before. It is thus a procedural article – not a substantive one.²⁰⁹
178. Claimants refer to Respondent's argument that the reference in Article 2(3) of the Mexico-Argentina BIT to Article 10 means that Article 2(3) applies at the moment of the alleged treaty violations. To Claimants, simply because an investor “can” bring a claim immediately after a violation does not mean that the domicile requirement must apply at the moment of the violation. According to Claimants, if that were the intent of Article 2(3) of the Mexico-Argentina BIT, then the Contracting States could have written that Article 2(3) applies to substantive provisions covering such violations, like Article 3 and Article 5 (referring to fair and equitable treatment (“FET”), national treatment, most favored treatment and expropriation) instead of Article 10. Alternatively, the Contracting States could have included language indicating that Article 2(3) applies to the moment when the investments are made like in the Italy-Argentina BIT. But Argentina and Mexico did neither.²¹⁰ The only substantive provision referred to in Article 2(3) of the Mexico-Argentina BIT is Article 4, which covers currency transfers, which are not at issue here. To Claimants, it is clear that the domicile exclusion in Article 2(3) of the Mexico-Argentina BIT is meant to apply to currency transfers and to the moment of filing a claim, nothing else. It does not apply at the moment of the violation.²¹¹

²⁰⁹ Counter-Memorial on Jurisdiction, ¶ 171.

²¹⁰ Counter-Memorial on Jurisdiction, ¶ 173.

²¹¹ Counter-Memorial on Jurisdiction, ¶ 174.

179. Further, Claimants allege that Mr. Sastre was domiciled in Argentina at the moment of filing his claim on 29 December 2017. Claimants also agree with Respondent's proposed definition of the word "Domicile," defining it as the place where the "*physical person lives with the intent to remain there permanently.*"²¹² According to Claimants, Mr. Sastre only went to Mexico to develop and establish his business ventures. He intended to return to Argentina once this was completed, particularly because of the needs of his children.²¹³
180. In any event, Mr. Sastre invokes the MFN protection standard in Article 3(2) of the Mexico-Argentina BIT to import the same "treatment" afforded in Respondent's other treaties, for example the France-Mexico BIT, which does not include a domicile exclusion. Thus, even if Article 2(3) of the Mexico-Argentina BIT were to apply on the date of the breach, and Mr. Sastre was "domiciled" in Mexico, Mr. Sastre can access international arbitration without a domicile restriction by virtue of the broad language of the MFN clause in Article (3)2 of the Mexico-Argentina BIT.²¹⁴ On this point, Claimants argue that tribunals unanimously say that whenever an MFN Clause covers treatment of investors and investments, the clause includes the possibility of filing an arbitration as part of that treatment.²¹⁵

(2) Tribunal's Considerations

a. *The Relevant Dates for Assessing Mr. Sastre's Domicile*

181. The Parties differ as regards the scope and extent of Article 2(3) of the Mexico-Argentina BIT and what the relevant dates are for assessing Mr. Sastre's domicile.
182. To solve this question, the Tribunal must interpret Article 2(3) of the Mexico-Argentina BIT in light of Article 31 of the VCLT, which provides that:

a treaty shall be interpreted in good faith in accordance with the

²¹² Counter-Memorial on Jurisdiction, ¶ 177, citing Memorial on Jurisdiction, ¶ 223.

²¹³ Counter-Memorial on Jurisdiction, ¶ 178.

²¹⁴ Counter-Memorial on Jurisdiction, ¶ 185.

²¹⁵ Transcript, Day 1, page 114, lines 5-9; pages 115-116.

ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

183. Article 2 of the Mexico-Argentina BIT provides as follows:

Scope of Application

1.- This Agreement applies to the measures adopted or maintained by a Contracting Party in relation to investors of a Contracting Party regarding their investments and the investments of said investors, made in the territory of the other Contracting Party.

2.- This Agreement applies throughout the territory of the Contracting Parties as defined in Article One, paragraph (6). The provisions of this Agreement shall prevail over any incompatible rule that may exist in the domestic laws of the Contracting Parties.

3.- Regarding the provisions set forth in Articles Four and Ten, natural persons who are nationals of a Contracting Party and who have their domicile in the territory of the other Contracting Party where the investment is located, may only take advantage of the treatment granted by this Contracting Party to its own nationals.

4.-This Agreement shall apply to all investments made before or after the date of its entry into force, but the provisions of this Agreement shall not apply to any dispute, claim or disagreement arising prior to its entry into force.

5.-This Agreement shall not apply to:

(a) economic activities reserved to the State in accordance with the legislation of each Contracting Party;

(b) measures adopted by a Contracting Party for reasons of national security or public order;

(c) financial services, except to the extent authorized by the legislation of each Contracting Party.

6.-Article Three shall not apply to any measure still maintained by a Contracting Party in accordance with its legislation in force at the time of entry into force of this Agreement. As from that date, the inconsistent measure eventually adopted by a Contracting Party may not be more restrictive than those existing at the time of the entry into force of this Agreement.²¹⁶

184. As it follows from the text and title of Article 2 of the Mexico-Argentina BIT, this provision governs the scope of application of the BIT. Article 2(3) incorporates a specific limitation for natural persons presenting claims under this BIT. This provision states that when the

²¹⁶ Translation by the Tribunal. **Exhibit CLA-0003**, Mexico-Argentina BIT. The original Spanish text provides: “Ámbito de Aplicación: 1.- Este Acuerdo se aplica a las medidas que adopte o mantenga una Parte Contratante relativas a los inversores de una Parte Contratante por cuanto a sus inversiones y a las inversiones de dichos inversores, realizadas en el territorio de la otra Parte Contratante.

2.- Este Acuerdo se aplica en todo el territorio de las Partes Contratantes tal como se lo definió en el Artículo Primero, párrafo (6). Las disposiciones de este Acuerdo prevalecerán sobre cualquier norma incompatible que pudiese existir en las legislaciones internas de las Partes Contratantes.

3.- Respecto de las disposiciones previstas en los Artículos Cuarto y Décimo, las personas físicas que sean nacionales de una Parte Contratante y que tengan su domicilio en el territorio de la otra Parte Contratante donde está situada la inversión, solamente podrán prevalecer del tratamiento otorgado por esta Parte Contratante a sus propios nacionales.

4.- El presente Acuerdo se aplicará a todas las inversiones realizadas antes o después de la fecha de su entrada en vigor, pero las disposiciones del presente Acuerdo no se aplicarán a controversia, reclamo o diferendo alguno que haya surgido con anterioridad a su entrada en vigor.

5.- Este Acuerdo no se aplicará a:

a) las actividades económicas reservadas al Estado de acuerdo a la legislación de cada Parte Contratante;
b) las medidas que adopte una Parte Contratante por razones de seguridad nacional u orden público;
c) los servicios financieros, salvo en la medida que lo autorice la legislación de cada Parte Contratante.

6.- El Artículo Tercero no se aplicará a cualquier medida que todavía mantenga una Parte Contratante de conformidad con su legislación vigente al momento de entrada en vigor de ese Acuerdo. A partir de esta fecha, la medida incompatible que eventualmente adopte una Parte Contratante no podrá ser más restrictiva que aquellas existentes al momento de la entrada en vigor de este Acuerdo.”

natural person is domiciled in the host State of the investment, the application of Articles 4 (Transfers) and 10 (Dispute settlement between an investor and the host State of the investment) is limited to the treatment that the host State accords its own nationals.

185. Article 2(3) is part of Article 2 of the Mexico-Argentina BIT, entitled “Scope of Application” of the Treaty. The object and purpose of Article 2 and its sub-paragraphs is to define the scope of application of the Mexico-Argentina BIT; thus, Article 2(3) must be read within this context.
186. Article 2(1) of the Mexico-Argentina BIT states that:

1.- This Agreement applies to the measures adopted or maintained by a Contracting Party regarding investors of a Contracting Party regarding their investments and the investments of said investors, made in the territory of the other Contracting Party.²¹⁷

187. Accordingly, the treaty’s application is restricted to the measures adopted by the host State in relation to the investments made by an investor of the other contracting party in the territory of the host State. therefore, the relevant dates for assessing the application of the treaty for purposes of this debate are (i) the date in which the host State allegedly adopted the measures breaching the BIT, and (ii) the date of the claim’s filing.
188. Furthermore, Article 10(1) of the Mexico-Argentina BIT (dispute settlement between an investor and the host State of the investment) provides that the investor-state dispute settlement mechanism of the treaty is applicable regarding “[a]ny dispute relating to the provisions of this Agreement.”²¹⁸ Therefore, despite the fact that Article 2(3) of the Mexico-Argentina BIT does not refer to other substantive provisions of the treaty (Expropriation, FET, MFN, for example) Article 10 of the Mexico-Argentina BIT

²¹⁷ Translation by the Tribunal. **Exhibit CLA-0003**, Mexico-Argentina BIT. The original Spanish text provides: “*1.-[E]ste Acuerdo se aplica a las medidas que adopte o mantenga una Parte Contratante relativas a los inversores de una Parte Contratante por cuanto a sus inversiones y a las inversiones de dichos inversores, realizadas en el territorio de la otra Parte Contratante.*”

²¹⁸ Translation by the Tribunal. **Exhibit CLA-0003**, Mexico-Argentina BIT. The original Spanish text provides: “[t]oda controversia relativa a las disposiciones del presente Acuerdo”

considers these provisions by expressly stating that the dispute settlement mechanism applies to “[a]ny dispute related to the provisions of the BIT.” A different interpretation would render Article 2(3) practically useless.

189. Based on the foregoing, the Tribunal concludes first, that if the concerned individual is domiciled in Mexico, the Mexico-Argentina BIT does not apply in respect to money transfers (Article 4), a substantive issue, and dispute resolution (Article 10), a procedural issue. Therefore, even though such individual is still entitled to make claims for violation of the substantive obligations provided under the Mexico-Argentina BIT, the individual cannot use the dispute resolution clause of the Treaty but rather such individual has to file before the national courts of Mexico. Second, the relevant dates for assessing Mr. Sastre’s domicile are (i) the date on which the host State allegedly adopted the measures breaching the BIT; and (ii) the date when the claim was filed.
190. The Tribunal will examine the alleged dates of the seizures, 19 October 2011 (*Tierras del Sol*), and 31 October 2011 (*Tierras del Sol* and *Hamaca Loca*), as well as 2 October 2015, the date the Second District Court in Quintana Roo dismissed Mr. Sastre’s *amparo*. Also, the date of the filing the amended notice of arbitration, 14 June 2019. These relevant dates apply for this particular discussion, but the analysis is not applicable to the other issues that are being debated in this proceeding.

b. *Mr. Sastre’s Domicile at the Relevant Times*

191. The Tribunal will now establish Mr. Sastre’s domicile at the relevant dates.
192. Article 2(3) of the Mexico-Argentina BIT does not define the term “domicile,” thus, its meaning must be interpreted in accordance with its ordinary meaning in its context and in the light of its object and purpose as required by Article 31(1) of the Vienna Convention.

193. According to its ordinary meaning, Respondent and Claimants agree on the following definition proposed by Respondent: “[t]he place where the physical person lives with the intent to remain there permanently.”²¹⁹
194. The meaning of domicile must also be interpreted within its immediate context. Article 2(3) specifically states:

[w]ho are domiciled in the territory of the other Contracting Party where the investment is situated[...].²²⁰

195. The analysis of whether or not a person is domiciled in a given place requires the application of objective criteria based on the evidence submitted before the tribunal. This means that the determination of whether a person is domiciled in each jurisdiction must be made considering objective factors such as the principal and permanent place of residence, and the place where a person exercises his or her rights related to his or her business, rights, and obligations. Therefore, a purely subjective criterion, such as a person’s mere statement that, despite the evidence to the contrary, he or she had the “intent” to leave Mexico is clearly insufficient. In the specific circumstances of Mr. Sastre, the Tribunal must look at the facts under the relevant times to properly identify his domicile. The evidence confirming Mr. Sastre’s Mexican domicile is overwhelming.
196. Mr. Sastre obtained a foreigner FM3 visa from the Mexican immigration authorities which certified his legal stay on Mexico on 2005.²²¹ After three extensions, the visa expired in 2009.²²² However, on 27 May 2009, Mr. Sastre became a naturalized Mexican citizen and Mexican national.²²³ Mr. Sastre’s residence in Mexico allowed him to apply for the naturalization process as a Mexican resident.²²⁴ As part of the naturalization process, Mr.

²¹⁹ Counter-Memorial on Jurisdiction, ¶ 177.

²²⁰ **Exhibit CLA-0003**, Mexico-Argentina BIT. Translation by the Tribunal. The original Spanish text provides: “[q]ue tengan su domicilio en el territorio de la otra Parte Contratante donde está situada la inversión”

²²¹ **Exhibit R-030**, Sastre’s FM3 Visa .

²²² **Exhibit R-030**, Sastre’s FM3 Visa . Transcript, Day 2, page 208, lines 7-22.

²²³ **Exhibit R-022**, Sastre’s Mexican Naturalization Letter, 27 May 2009.

²²⁴ **Exhibit R-031**, Sastre’s Mexican Naturalization Application, 24 April 2006.

Sastre renounced his Argentinian nationality.²²⁵ According to Mr. Sastre's witness statement and cross-examination affirmations, “[t]he main [reason for] my naturalization [request] was for commercial reasons,”²²⁶ this is clear from various commercial agreements related to Mr. Sastre's investment, which confirm that his domicile was in Mexico at the time he made the investment.²²⁷

197. Mr. Sastre also confirmed that during the time Tierras del Sol continued to operate, he was domiciled in Quintana Roo, Mexico.²²⁸ During this period, Mr. Sastre did not apply to renounce his Mexican nationality.²²⁹ On 31 October 2011, Mr. Sastre filed a complaint with the Mexican authorities for attempt of dispossession and declared that his domicile was Tulum, Mexico.²³⁰ Further, in the same year, he was subpoenaed as a witness and received the subpoena at his domicile in Tulum.
198. Mr. Sastre arrived in Mexico in 2005 after having sold his business in Argentina, extended his resident permits, applied for and obtained the Mexican nationality, renounced his Argentine nationality, presented himself several times before different Mexican authorities, conducted business in Mexico and lived in Mexico for approximately ten years. In light of the evidence before this Tribunal, his declaration that after the alleged breaches in 2011 and 2015 he “[s]tayed in Mexico mainly to receive updates on the proceedings and administer the new hotel business”, and at the end of 2015 he “[d]ecided to go back with my family to Río Cuarto, Argentina”²³¹ is not persuasive.

²²⁵ **Exhibit R-032**, Letter Renouncing Sastre's Argentine Nationality, 27 May 2009.

²²⁶ Transcript, Day 2, page 214, lines 1-4.

²²⁷ **Exhibit C-0002**, Partnership Agreement (Contrato de Sociedad) for Constructora Eco Turistica S.A. de C.V. (CETSA), 25 August 2000; **Exhibit C-0012**, Transfer of Rights Agreement between Lorenzo Novelo Pacheco and CETSA.

²²⁸ Transcript, Day 2, page 210, lines 20-22; page 211, lines 1-7.

²²⁹ Transcript, Day 2, page 217, lines 20-22.

²³⁰ **Exhibit C-0097**, Criminal Complaint filed by Carlos Esteban Sastre before the Attorney General's Office in Quintana Roo relating to the seizure, 31 October 2011.

²³¹ Witness Statement of Carlos Sastre, ¶ 57.

199. Based on the above, the Tribunal concludes that Mr. Sastre was domiciled in Mexico at the time of the measures that allegedly breached the Mexico-Argentina BIT. The Parties do not dispute that Mr. Sastre's domicile was in Argentina at the time of the filing of the request for arbitration.
200. Now, the question the Tribunal must resolve is whether Article 2(3) of the Mexico-Argentina BIT precludes Mr. Sastre from presenting a claim against Mexico. As was previously stated, Article 2(3) of the Mexico-Argentina BIT confirms that when the natural person is domiciled in the host State of the investment, the application of Article 10 (Dispute settlement between an investor and the host State of the investment) is limited to the treatment accorded by the host State to its own nationals.
201. For the purposes of the Mexico-Argentina BIT, the Tribunal has established that Mr. Sastre was domiciled in Mexico at the time of the alleged breaches. Thus, Article 2(3) of the Mexico-Argentina BIT precludes Mr. Sastre from initiating the Dispute Settlement mechanism contained in the Treaty.
202. Lastly, Claimants argue that the MFN Clause excludes the application of the domicile provision as "*Mr. Sastre can be treated as French investors, [...] who are not subject to the domicile provision.*"²³²
203. The Tribunal recalls Article 3(2) of the Mexico-Argentina BIT (National treatment and MFN treatment) which establishes:

[e]ach Contracting Party, once it has admitted into its territory investments of investors of the other Contracting Party, shall provide full legal protection to such investors and their investments and shall accord them treatment no less favorable than that accorded to investors and investments of their own investors or investors from third States.²³³

²³² Transcript Day 1, page 113, lines 19-21.

²³³ Translation by the Tribunal. **Exhibit CLA-0003**, Mexico-Argentina BIT.

204. For the Tribunal, the reference to the MFN clause of the Mexico-Argentina BIT can only be understood to refer to substantive obligations related to the treatment granted to investors and not to procedural or jurisdictional questions, much less to issues of consent of the State. The consent of a State in a given treaty cannot be replaced by the consent of that same State under a different investment treaty.
205. Article 2(3) of the Mexico-Argentina BIT presents important limits to the Dispute Settlement mechanism contained in the Treaty. In this respect, the Contracting Parties envisaged the domicile condition in Article 2(3) as a requirement to accept the agreement in question. Therefore, the Tribunal considers that the consent to arbitration granted by Mexico in the Mexico-Argentina BIT is conditioned upon the investor not being domiciled in Mexico at the relevant times. Thus, Mexico conditioned its consent to arbitration only with respect to an investor whose domicile was not Mexico at the relevant times. This requirement cannot be circumvented by invoking the MFN Clause relating to a third-party agreement that does not contain this element.
206. In this regard, the tribunal in *Telenor v. Hungary* established:
- [I]n the view of this Tribunal its task is to interpret the BIT and for that purpose to apply ordinary canons of interpretation, not to displace, by reference to general policy considerations concerning investor protection, the dispute resolution mechanism specifically negotiated by the parties.²³⁴*
207. Thus, as the arbitration agreement vests the tribunal with jurisdiction and it determines the scope of its jurisdiction, resorting to an MFN clause to import provisions from a third-party treaty would circumvent the express terms that grant this Tribunal jurisdiction *ratione voluntatis*. Accordingly, this Tribunal dismisses the MFN argument presented by Claimants.

²³⁴ **Exhibit CLA-0044**, *Telenor Mobile Communications A.S. v. The Republic of Hungary*, ICSID Case No. ARB/04/15, ¶ 95, Award, 13 September 2006.

208. Based on the above, the consent of the Parties is an essential requisite for this Tribunal to have jurisdiction. In keeping with the purpose of the Treaty, the jurisdiction of this Tribunal is limited to Mexico's consent under the relevant provisions of the Treaty including Article 2(3) of the Mexico-Argentina BIT. As Mr. Sastre was domiciled in Mexico at one of the relevant times, this Tribunal does not have jurisdiction *ratione voluntatis* over Mr. Sastre's claims.

c. Statute of Limitations and Denial of Justice

209. Even though the Tribunal has already found that it has no jurisdiction to hear Mr. Sastre's claim, it will nevertheless (a) refer in Section V.E of this Award to the case of Mr. Sastre's renunciation of his Argentinian nationality given that the effects of such renouncement are the same as those that apply to the renouncements of Mr. Silva and Ms. Abreu; and (b) briefly refer hereunder to the claim related to *Hamaca Loca* given the particularities of that claim.

210. Mr. Sastre acquired the claim relating to *Hamaca Loca* from Swiss investors pursuant to an assignment on 12 June 2017.²³⁵ Therefore, the acquisition was made after the alleged takeover of 31 October 2011 and the *amparo* decision of 2 October 2015. Whatever treaty claims the Swiss investors may have had because of the alleged breaches related to *Hamaca Loca*, they can only rely on the Swiss-Mexico BIT, but not on the Mexico-Argentina BIT. But even if the Swiss-Mexico BIT were invoked, which it was not, it suffices to note that Article 4 of the Swiss-Mexico BIT provides for a three-year prescription period. Consequently, any claim under the Swiss-Mexico BIT would be moot. Likewise, and considering the same dates, the prescription period under the Mexican – Argentina BIT, invoked by Mr. Sastre, has expired, except for the claim related to denial of justice. However, in view of the fact that the Tribunal has already found on several

²³⁵ **Exhibit C-0003**, Hamaca Loca S.A. de C.V.'s Special Shareholders Meeting Resolution and Transfer of Rights to Carlos Sastre (Cesión de Derechos y Resolución), 12 June 2017.

grounds that it does not have jurisdiction over Mr. Sastre's claims, the Tribunal considers it unnecessary to entertain the matter of denial of justice.

E. WHETHER THE WAIVER OR RENUNCIATION OF THEIR NATIONALITIES OF ORIGIN AFFECTS THE TRIBUNAL'S JURISDICTION OVER THE CLAIMS OF MR. SILVA, MR. SASTRE AND MS. ABREU

(1) Position of the Parties

a. Respondent's Position

211. Respondent asserts that under Mexican law, for aliens to acquire Mexican nationality via naturalization, they must renounce any pre-existing foreign nationality, any foreign government protection, any rights that international treaties or conventions grant to foreigners and accept to be subject to the same treatment as Mexican nationals.²³⁶
212. Mexico recalls Article 19 of the Nationality Law according to which a foreigner who intends to become a Mexican national must formulate the renunciations and oaths referred to in Article 17. In turn, Article 17 provides the content and extent of such renunciations.²³⁷
213. Respondent asserts that the renunciations referred to in Articles 17 and 19 of the Nationality Law are only granted once the Government of Mexico has favorably approved the naturalization process initiated by the interested party, so that the request for naturalization itself does not imply a renunciation.²³⁸
214. According to Respondent, Mr. Sastre received a letter of Mexican naturalization on 27 May 2009, while Ms. Abreu received it on 2 October 2000, and Mr. Silva received it on 8 April 2016. This implies that they successfully initiated and concluded the naturalization process, and therefore they submitted the renunciation required by Article 19 of the Nationality Law. Mr. Sastre, Ms. Abreu and Mr. Silva signed a document in which they “[e]xpressly renounced the ARGENTINE / PORTUGUESE nationality and any other nationality” and

²³⁶ See Memorial on Jurisdiction, ¶¶ 242, 352.

²³⁷ Memorial on Jurisdiction, ¶ 244, citing **Exhibit R-027**, Nationality Law, Article 17.

²³⁸ Memorial on Jurisdiction, ¶ 355.

*“renounced any rights granted to foreigners by treaties or international conventions [...]”*²³⁹

215. Therefore, Respondent argues that, at the time of the alleged measures, Mr. Sastre, Ms. Abreu and Mr. Silva had expressly renounced *“any rights granted to foreigners by treaties or international conventions.”* This includes the right to invoke the Investor-State dispute settlement mechanism under the Mexico-Argentina BIT and the Mexico-Portugal BIT.²⁴⁰
216. Respondent argues that the logic behind the waiver is precisely to prevent naturalized Mexicans from choosing the nationality that best suits them according to any applicable law to access benefits that they would otherwise not have.²⁴¹ Thus, through the naturalization process, Mr. Sastre and Respondent, and Ms. Abreu and Mr. Silva and Respondent, respectively, agreed to a renunciation which is still effective and consequently this Tribunal must decline its jurisdiction over these Claimants.²⁴²
217. Respondent asserts that the Tribunal must consider the contradiction in which Claimants find themselves since, on the one hand, they allege having acquired *ejido* rights and beachfront rights, that are reserved for Mexican nationals, and, on the other, they invoke their foreign nationality to file claims against Mexico with respect to those same rights through protection mechanisms that otherwise are not available to them.²⁴³
218. Respondent further argues that even if Claimants were able to prove the legal acquisition of their investments as foreigners, Claimants’ case fails because in any event they agreed with Respondent to exclude the access of the protection of the treaties invoked. Respondent explains that persons who are Mexican nationals by naturalization may acquire real property in the restricted zone only because they are Mexicans. However, the acquisition by a naturalized person invoking a foreign nationality would imply losing Mexican

²³⁹ Memorial on Jurisdiction, ¶¶ 246; 356-357.

²⁴⁰ Transcript, Day 1, page 44, lines 14-22 to page 45, lines 1-2; Memorial on Jurisdiction, ¶ 358.

²⁴¹ Transcript, Day 1, page 45, lines 3-10.

²⁴² Memorial on Jurisdiction, ¶¶ 247-248, ¶¶ 358-359.

²⁴³ Transcript Day 1, Page 45, lines 11-19.

nationality, and losing, for the benefit of the Nation, the property for which the investor invoked the protection.²⁴⁴

219. Finally, Respondent asserts that Claimants' effort to adjust their nationality to the convenience of the forum before which they bring their claims is a clear abuse of rights. At a minimum, these waivers in the naturalization process confirm that Mr. Sastre, Ms. Abreu and Mr. Silva were exercising their Mexican nationality as their dominant and effective nationality at the relevant times.²⁴⁵

b. *Claimants' Position*

220. According to Claimants, under the Mexico-Argentina BIT, the nationality of an investor is determined by the laws of the State of origin of the investor. Claimants cite Article 1 of the Mexico-Argentina BIT in its relevant part:

*'Investor' designates any natural or legal person who, makes or has made an investment, and who a) being a natural person, is a national of one of the Contracting Parties, **in accordance with its legislation.**²⁴⁶ (emphasis in original)*

221. Similarly, under the Mexico-Portugal BIT, the nationality of an investor is determined by the laws of the investor's State of origin. Article 1 of the Mexico-Portugal BIT reads in its relevant part:

3. "Investor" means:

a) natural persons having the nationality of either Contracting Party, **in accordance with its laws and regulations.**²⁴⁷ (emphasis in original)

²⁴⁴ Transcript Day 1, page 45, lines 20-22 to page 46, lines 1-13.

²⁴⁵ Transcript, Day 1, page 46, lines 14-21.

²⁴⁶ Counter-Memorial on Jurisdiction, ¶¶ 141-143, citing **Exhibit CLA-0003**, Mexico-Argentina BIT, Article 1.

²⁴⁷ Counter-Memorial on Jurisdiction, ¶¶ 141-142.

222. Claimants allege that Respondent's reliance on Mexican law and Mexican naturalization documents is misplaced.²⁴⁸ The state of the investor has the final say in defining who is or is not a national of that state.²⁴⁹ Therefore, Respondent would have to analyse Argentine law on renunciation of nationality and submit convincing facts and evidence to prove that Mr. Sastre waived his nationality under Argentine law.²⁵⁰
223. Further, Respondent made no legal analysis evidencing that Ms. Abreu and Mr. Silva waived their Portuguese nationality under Portuguese law.²⁵¹ Portuguese law requires nationals seeking to waive their nationality to: (1) apply before the relevant Portuguese government agencies, and (2) pay a corresponding fee. Respondent has not shown that Ms. Abreu and Mr. Silva have done either.²⁵²
224. Claimants argue that the Treaties are silent on whether investors can waive the rights conferred to them by the Treaties. Only the Contracting Parties may waive treaty rights, because they are the ones who negotiate the investment treaties.²⁵³ Tribunals have also been concerned with the serious effects that such waivers would have on investors' rights, refusing to accept them unless they meet a very high bar.²⁵⁴
225. According to Claimants, Respondent presents no facts showing that Ms. Abreu and Mr. Silva intended to waive their rights under the Mexico-Portugal BIT,²⁵⁵ or that Mr. Sastre intended to waive his rights under the Mexico-Argentina BIT.²⁵⁶ Additionally, Claimants allege that the waivers included no reference to Claimants' specific investments, nor were these Claimants even aware of their treaty rights when they signed the form, and further

²⁴⁸ Rejoinder on Jurisdiction, ¶ 253 (c).

²⁴⁹ Rejoinder on Jurisdiction, ¶ 259.

²⁵⁰ Counter-Memorial on Jurisdiction, ¶ 151.

²⁵¹ Counter-Memorial on Jurisdiction, ¶ 155.

²⁵² Counter-Memorial on Jurisdiction, ¶ 155.

²⁵³ Counter-Memorial on Jurisdiction, ¶ 144.

²⁵⁴ Counter-Memorial on Jurisdiction, ¶ 145.

²⁵⁵ Counter-Memorial on Jurisdiction, ¶ 156.

²⁵⁶ Counter-Memorial on Jurisdiction, ¶ 152.

testified in this proceeding that they had no knowledge of the treaties at the time that they signed their waiver.²⁵⁷

226. Thus, according to Claimants, the focus of the analysis is on whether the investor freely, clearly, and *specifically intended* to waive his or her rights, being aware of the possibility of a future treaty dispute and the entitlement to arbitrate against Respondent in a neutral forum.²⁵⁸
227. Claimants argue that the purported waiver documents are blanket boilerplate statements that have no legal effect on treaty rights.²⁵⁹
228. As to the dominant and effective nationality test, Claimants stress that it applies to diplomatic protection and has no place in investment treaty law. Nothing in the Mexico-Argentina BIT nor the Mexico-Portugal BIT bar dual nationals from investment protection or restricts consent to only those investors whose dominant and effective nationality is that of the other Contracting State.²⁶⁰ Respondent cannot add restrictions not contemplated in the Treaties.²⁶¹

(2) Tribunal's Considerations

229. The Parties extensively debated whether the test of dominant and effective nationality is applicable and whether investors may renounce rights conferred to them under investment treaties.
230. The Parties debated the landmark cases on dominant and effective nationality – particularly *Nottebohm* – and various decisions from investment tribunals that have applied, or refused to apply, the aforesaid test. Moreover, the three States that are signatories of NAFTA – Mexico as Respondent and Canada and the United States of America as third parties –

²⁵⁷ Transcript, Day 1, page 121, lines 18-22; page 122, lines 1-14.

²⁵⁸ Counter-Memorial on Jurisdiction, ¶ 147.

²⁵⁹ Counter-Memorial on Jurisdiction, ¶ 156.

²⁶⁰ Counter-Memorial on Jurisdiction, ¶¶ 126-127; Rejoinder on Jurisdiction, ¶ 234.

²⁶¹ Counter-Memorial on Jurisdiction, ¶¶ 133, 138.

indicated that the test of dominant and effective nationality must be applied under NAFTA.²⁶² In the view of the Tribunal, in a situation where all State parties to the treaty are of the same opinion regarding the interpretation and scope of one of the terms used therein, if the Tribunal were to deviate from such consensus, it would need to explain the reasons for doing so. However, the cases of Ms. Abreu and of Messrs. Sastre and Silva are not merely cases of dual nationality. Even though they hold their nationalities of origin – Argentinian and Portuguese – and acquired Mexican nationality, they waived their nationalities of origin as a condition to obtain Mexican nationality. So, the Tribunal must focus on the effects of such waiver under the BITs that Mexico has concluded with Argentina and Portugal, rather than on the issue of dominant and effective nationality.

231. With respect to the waiver of treaty rights, the Parties invoked several decisions where arbitral tribunals have reached different conclusions as to whether investors can waive the rights conferred to them by investment treaties and have either expressed doubts as whether such pre-dispute waivers are possible or have established a high bar for such waivers.²⁶³
232. The facts of this case are substantially different from the ones invoked by the Parties in support of their respective pleadings. First, this is not a case where an individual acquires multiple nationalities and remains a national of all the corresponding States without renouncing one or more nationalities or losing one nationality because of the application of national law. Second, the cases of renunciation of the protection of investment treaties invoked by the Parties generally refer to situations where the investor, by contract or as a condition to invest, renounces generally the application of treaties or investment treaties or

²⁶² Submission of the United States of America, ¶¶ 13- 15.

²⁶³ The Parties referred, *inter alia*, to **Exhibit CLA-0037**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010. **Exhibit CLA-0078**, *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision on Jurisdiction, 29 January 2004. **Exhibit CLA-0079**, *Nissan Motor Co., Ltd. v. Republic of India*, PCA Case No. 2017-37, Decision on Jurisdiction, 29 April 2019. **Exhibit CLA-0080**, *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008. **Exhibit CLA-0081**, *TSA Spectrum de Argentina S.A. v Argentine Republic*, ICSID Case No. ARB/05/5, Award, 19 December 2008. **Exhibit CLA-0082**, *Aguas del Tunari, S.A., v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, 21 October 2005.

specifically the application of a given investment treaty. In the instant case, three Claimants renounced before Respondent their nationalities of origin and the national and international rights attached to such nationalities.

233. Mexico is not claiming that Messrs. Sastre and Silva and Ms. Abreu made an implicit waiver of their rights under the respective treaties. Not even that they made a general waiver to the application of treaties that should be deemed as including the protection granted under the treaties that Mexico entered with Argentina and Portugal. The case of Respondent is that to acquire their Mexican nationality Messrs. Sastre and Silva and Ms. Abreu waived their original nationalities and that such waiver expressly included all rights conferred by international treaties that were applicable because of their original nationalities, including the bilateral investment treaties with Argentina and Portugal.
234. Therefore, prior decisions of other tribunals as regards the renouncement of rights under investment treaties have little relevance, if any. The Tribunal in this case cannot analyze the waiver of treaty rights in isolation because such waiver is inextricably tied to the willingness of Messrs. Sastre and Silva and Ms. Abreu to obtain the nationality of Respondent and to the effects of such nationality with respect to their investments.
235. Article 19 of the Mexico's Nationality Law provides that the foreigner who intends to become a naturalised Mexican must:

I- Apply to the Ministry of Foreign Affairs indicating the will to acquire the Mexican nationality.

II- Formulate the renunciations and oaths referred to in article 17 of the [Nationality Law].

[...]

III- Prove that he/she speaks Spanish, knows the history of the country, and is integrated into the national culture.

IV- Prove that he/she has resided in the national territory for the

*term required under article 20.*²⁶⁴

236. Article 20 of the Mexican Nationality Law establishes:

The foreigner who intends to become a naturalized Mexican citizen must prove that he/she has resided in Mexican territory for at least the last five years immediately prior to the date of his/her application, except as provided for in the following sections [...].²⁶⁵

237. Article 17 of the Nationality Law, referred under Article 19 (II) of that law, provides that in order to be granted Mexican nationality the applicant must expressly renounce: (i) his or her nationality of origin; (ii) all submission, obedience and fidelity to any foreign State, especially the one of the other nationalities of the applicant; (iii) all protection alien to the Mexican laws and authorities; and (iv) all rights granted to foreigners by international conventions and treaties. In addition, the applicant must accept to commit to, obey, and submit to the laws and authorities of Mexico and abstain from any conduct that implies submission to a foreign State.²⁶⁶

²⁶⁴ Translation by the Tribunal. **Exhibit R-027**, Nationality Law. The original Spanish text provides: “**Artículo 19.-** El extranjero que pretenda naturalizarse mexicano deberá:

I. Presentar solicitud a la Secretaría en la que manifieste su voluntad de adquirir la nacionalidad mexicana;

II. Formular las renuncias y protesta a que se refiere el artículo 17 de este ordenamiento;

La Secretaría no podrá exigir que se formulen tales renuncias y protestas sino hasta que se haya tomado la decisión de otorgar la nacionalidad al solicitante. La carta de naturalización se otorgará una vez que se compruebe que éstas se han verificado.

III. Probar que sabe hablar español, conoce la historia del país y está integrado a la cultura nacional; y

IV. Acreditar que ha residido en territorio nacional por el plazo que corresponda conforme al artículo 20 de esta Ley.

Para el correcto cumplimiento de los requisitos a que se refiere este artículo, se estará a lo dispuesto en el reglamento de esta Ley.”

²⁶⁵ Translation by the Tribunal. **Exhibit R-027**, Nationality Law. “Artículo 20.- El extranjero que pretenda naturalizarse mexicano deberá acreditar que ha residido en territorio nacional cuando menos durante los últimos cinco años inmediatos anteriores a la fecha de su solicitud, salvo lo dispuesto en las fracciones siguientes [...].”

²⁶⁶ Translation by the Tribunal, **Exhibit R-027**, Nationality Law. The original Spanish text provides: “Artículo 17.- Los mexicanos por nacimiento a los que otro Estado considere como sus nacionales, podrán solicitar a la Secretaría el certificado de nacionalidad mexicana, únicamente para los efectos del artículo anterior. Para ello, formularán renuncia expresa a la nacionalidad que les sea atribuida, a toda sumisión, obediencia y fidelidad a cualquier Estado extranjero, especialmente de aquél que le atribuya la otra nacionalidad, a toda protección extraña a las leyes y autoridades mexicanas, y a todo derecho que los tratados o convenciones internacionales concedan a los extranjeros. Asimismo, protestarán adhesión, obediencia y sumisión a las leyes y autoridades mexicanas y se abstendrán de realizar cualquier conducta que implique sumisión a un Estado extranjero.”

238. The renunciations and oaths need not be made until a decision has been taken to grant the applicant Mexican nationality. The naturalisation letter shall be granted once it is established that renunciations and oaths have been made.²⁶⁷
239. Messrs. Sastre and Silva and Ms. Abreu have submitted evidence of their Argentinian and Portuguese nationalities, respectively, and they have asked the Tribunal to consider it as *prima facie* evidence of their nationality for purposes of jurisdiction and disregard the declarations and waivers that they made when they acquired Mexican nationality.
240. The evidence submitted by Claimants is *prima facie* evidence of their nationalities. However, the Tribunal must review and analyse the totality of the evidence and decide for itself whether Messrs. Sastre and Silva and Ms. Abreu may invoke their Argentinian and Portuguese nationality in relation to Mexico in the circumstances of this case.
241. Accordingly, what the Tribunal must determine is not whether Mr. Sastre is a national of Argentina and Mr. Silva and Ms. Abreu are nationals of Portugal, respectively, but whether in the light of the totality of the evidence submitted in this arbitration they can invoke their purported Argentinian and Portuguese nationalities for purposes of the investment treaties that Mexico entered with Argentina and Portugal, and specifically with respect to the claims submitted in this arbitration.
242. It is undisputed that Messrs. Sastre and Silva and Ms. Abreu voluntarily and willingly applied for Mexican nationality. Claimants have argued, as evidence of their allegation, that they acted in good faith and were advised by counsel. Even though Messrs. Sastre and Silva and Ms. Abreu have provided explanations to justify the application for Mexican nationality, it is not disputed that they applied for Mexican nationality of their own will and free from any external pressure.
243. The provisions of the Nationality Law leave no doubt that the Constitution and laws of Respondent do not permit dual nationality for naturalized Mexicans. Foreigners willing to

²⁶⁷ Exhibit R-027, Nationality Law, Article 19.

become Mexican nationals must renounce their nationality of origin as a condition to become Mexicans and they must do it on the terms and with the effects provided for under the Nationality Law.

244. Messrs. Sastre and Silva and Ms. Abreu did not simply follow a formality or sign a “*boilerplate*” document as they claim in this arbitration. The evidence on the record show that those Claimants were aware that individuals having Mexican nationality had significant advantages to invest in the *ejidos* and other areas subject to special regimes.²⁶⁸ They could not have ignored that when they applied for Mexican nationality, they had to renounce their nationalities of origin with the consequences provided for in the Nationality Law. The decision to renounce one’s nationality is not a decision that is taken lightly and at the very least they should have consulted about the effects of the change of nationality with counsel. Claiming that they are not lawyers so they are unable to understand what they were signing or that what they signed was a “*boilerplate form*” cannot serve as an excuse to ignore the renunciations and oaths included in their written declarations.
245. Following the requirements of the Mexican Nationality Law, each one of them, at the time of their naturalization as Mexicans signed a document renouncing (a) their nationalities of origin; (b) all submission, obedience, and fidelity to any other foreign government, especially to that of Argentina and Portugal, respectively; (c) all foreign protection to the laws and authorities of Mexico; and (d) all rights that international treaties or conventions grant to foreigners. In addition, they accepted to be subject to Mexican law and Mexican authorities and by obtaining the Mexican nationality they undertook to abstain from performing any conduct that would imply submission to a foreign State.²⁶⁹
246. After signing the document, they were conferred the nationality of Respondent. There was an agreement between the applicants (Messrs. Sastre and Silva and Ms. Abreu) and Respondent (Mexico) under which the latter will provide recognition to the former of all

²⁶⁸ See Transcript, Day 2, page 214, lines 3-4; page 241, lines 18-21.

²⁶⁹ **Exhibit R-027**, Nationality Law.

the rights and privileges of Mexican nationals and the former agreed not to invoke their nationalities of origin in their national and international relationships with Respondent.

247. Claimants are correct in that Mr. Sastre, Ms. Abreu and Mr. Silva would not lose their nationalities of origin unless they renounced their respective nationalities in accordance with the laws of Argentina and Portugal, respectively. But the Tribunal reiterates that the questions it must decide is whether in this arbitration Claimants can invoke such other nationalities before Mexico, with all the rights and privileges derived therefrom, notwithstanding the renunciation and oaths made in exchange for obtaining the Mexican nationality.
248. The renunciation was validly made. Nothing on the record suggests otherwise. Of course, since the waiver was made with respect to Mexico it has effects only with respect to the relationship between Respondent, on the one hand, and Mr. Sastre, Ms. Abreu and Mr. Silva, on the other. It does not necessarily invalidate the nationalities of origin of these three Claimants under the laws of Argentina and Portugal, but it does affect their entitlement to raise claims against Mexico under any international treaty, including the Mexico-Argentina BIT and Mexico-Portugal BIT, respectively. The effect of the wording of Article 17 of the Nationality Law and the text of the renunciation resulting therefrom is that Mr. Sastre, Ms. Abreu and Mr. Silva have agreed with Respondent that in, their mutual relationships, Respondent will treat them as Mexican nationals for all purposes, both at a local and at an international level, and in exchange they will have all the rights and privileges that Mexico grants to its nationals. This is not merely a waiver of treaty rights or a factual debate on dominant and effective nationality, but an agreement by an investor not to invoke his/her original nationality against a sovereign State in exchange for that sovereign State accepting the investor as its own national.
249. In sum, the effect of the acquisition of Mexican nationality by Mr. Sastre, Ms. Abreu and Mr. Silva with respect to the treaties is that even though they are Argentinian and Portuguese nationals, respectively, and therefore they may be considered investors under the Mexico-Argentina BIT and the Mexico-Portugal BIT, they cannot invoke these other

nationalities in their relationship with Mexico. Such relationship includes the rights derived from Mexico-Argentina and the Mexico-Portugal BITs. They voluntarily and willingly accepted to be treated as Mexicans by Mexico with respect to all their activities in Mexico, including their investments, and the effects of such activities at a national and international level,. Therefore, in respect of all international rights and obligations that they may have with respect to Mexico, Respondent can treat them as Mexican nationals.

250. The decisions invoked by the Parties as regards the waiver of rights under investment treaties refer to cases where the State has claimed an implicit waiver from the investor or where investors had signed contracts providing for such waivers or where a wide language in a document was alleged to include a waiver of treaty protection. The Tribunal has already found that the case here is different. But even if the Tribunal were to apply the high threshold pleaded by Claimants as the one adopted by some arbitral tribunals, such threshold would have been complied with. Mr. Sastre, Ms. Abreu and Mr. Silva voluntarily and willingly and expressly accepted to be treated by Mexico as Mexican nationals for all purposes related to their relationships with Mexico, with no exceptions whatsoever, and expressly renounced to invoke before Mexico all their rights and privileges as Argentinian and Portuguese national, including protection by their States of origin and the applicable international treaties. They cannot validly claim now that they were not aware of the effects of waiving their nationalities of origin.
251. Invoking their nationalities of origin despite the voluntary, clear and express waiver constitutes a violation of basic principles of international law that the Tribunal must apply to decide the dispute. The Mexico-Argentina BIT provides that the tribunal constituted to decide disputes between the investor of one Contracting Party and the other Contracting Party, as defined therein, shall apply the treaty and the rules and principles of international

law.²⁷⁰ The Mexico-Portugal BIT in turn provides that the tribunal shall apply the treaty, the applicable rules of law and principles of international law.²⁷¹

252. The Treaties do not contain provisions regarding waiver of rights by the investor, nor do they provide norms or guidance as to a situation like the one debated in this arbitration. The Parties, considering the absence of specific provisions or guidance on the issue at stake, have correctly invoked principles of international law as well as arbitral decisions applying such principles as the applicable law to decide the issues of double nationality and waiver. The application of such principles would lead to the same result: Mr. Sastre, Ms. Abreu and Mr. Silva cannot invoke their nationalities of origin before Mexico for purposes of their claims in this arbitration.
253. Good faith is undoubtedly one of the “general principles of law” referred to in the Statute of the International Court of Justice and as a fundamental principle of international law. The principle of good faith is at the crux of investment arbitration. Investment treaties and associated conduct by the parties must be interpreted in good faith, as required by the Vienna Convention on the Law of Treaties. Investments must be made in good faith and both the investor, and the State must act in good faith in their dealings with each other.
254. Two principles derive from the fundamental principle of good faith: *estoppel* and *pacta sunt servanda*. Both have been invoked by the Parties as applicable principles for the resolution of this dispute.
255. The Tribunal understands the principle of estoppel not as a mere transplantation of the rules of estoppel under jurisdictions of the common law tradition, particularly the United States of America, but as a principle of international customary law under which a party cannot

²⁷⁰ **Exhibit CLA-003**, Mexico-Argentina BIT- Article 10.5.- “The tribunal shall decide the disputes submitted to it on the basis of the provisions of the present Agreement as well as international law rules and principles on this subject.”

²⁷¹ **Exhibit CLA-0034/Exhibit RL-016**, Mexico-Portugal BIT Article 15.1- “A tribunal established under this Dispute Settlement Mechanism shall decide the submitted issues in dispute in accordance with this Agreement, the applicable rules of law and principles of International Law.”

go against its own acts. The *teoria de los actos propios* in civil law jurisdictions follows the same basic concept: a party cannot make an assertion at one time and deny it at another. As aptly indicated by Bin Cheng:

*It is a principle of good faith that ‘a man shall not be allowed to blow hot and cold—to affirm at one time and deny at another... Such a principle has its basis in common sense and common justice, and whether it is called estoppel or by any other name, it is one which courts of law have in modern times most usefully adopted. In the international sphere, this principle has been applied in a variety of cases.*²⁷²

256. Under the principle of estoppel, a party cannot behave in a manner that creates in the other party a legitimate expectation that such behaviour confirms the mutual understanding of the parties on a given matter, and then change course to adopt a different position. Legitimate expectations have been largely discussed in investment arbitration, but generally with respect to Fair and Equitable Treatment and in reference to the expectations that the State may create for the investor. States, however, are not the only ones that can create legitimate expectations. Investors through their conduct can also create legitimate expectations *vis-a-vis* the State, which may include, as in this case, the legitimate expectation that the common behaviour of the State and the investor represents the mutual understanding of the parties.
257. *Pacta sunt servanda* is one of the oldest and most basic principles that applies in international law. Agreements must be complied with. Of course, it refers to agreements that are not contrary to law or entered in a fraudulent manner. The Tribunal has already found that there is an agreement between Respondent and Mr. Sastre, Ms. Abreu and Mr. Silva pursuant to which the former grants these individuals Mexican nationality in exchange for the latter renouncing their right to invoke their nationalities of origin with respect to Mexico. There is no allegation, much less evidence, that such agreement is

²⁷² Exhibit CLA-0092, Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, (1953, 2009), pp.141-42.

contrary to law or is affected by fraud or corruption. Therefore, the parties to such agreement are under the obligation to comply with same.

258. Having set the framework for the decisions that the Tribunal will make with respect to the waivers of Mr. Sastre, Ms. Abreu and Mr. Silva, the Tribunal will apply such framework to each of these Claimants.

a. Renouncement of Mr. Sastre

259. On 27 May 2009, Mr. Sastre became a naturalized Mexican citizen²⁷³ and on that same date he signed a document with the following statement addressed to the Ministry of Foreign Affairs of Mexico:

I expressly renounce my ARGENTINE nationality and any other nationality to which I may be entitled, as well as all submission, obedience and fidelity to any other foreign government, especially to that OF THE ARGENTINE REPUBLIC. I likewise renounce all foreign protection from Mexican laws and authorities and all rights that international treaties or conventions grant to foreigners. I promise adherence, obedience and submission to Mexican laws and authorities.²⁷⁴

260. On 31 July 2009 Mr. Sastre declared in writing to the Ministry of Foreign Affairs of Mexico:

I received the letter of naturalization number 01577 issued on 27 May 2004 and I am aware of the penalties incurred by persons who make false declarations before an authority other than a judicial authority, under the terms of the provisions set forth in Article 247, section I of the Criminal Code for the Federal District, with respect to matters of common law and for the entire Republic in matters of federal law, I declare that I will not use any passport other than the

²⁷³ **Exhibit R-022**, Sastre's Mexican Naturalization Letter.

²⁷⁴ Translation by the Tribunal. **Exhibit R-032**, Letter Renouncing Sastre's Argentine Nationality, 27 May 2009. The original Spanish text provides: “(...) renuncio expresamente a la nacionalidad ARGENTINA y a cualquier otra nacionalidad a la que pudiera tener derecho, así como a toda sumisión, obediencia y fidelidad a cualquier otro gobierno extranjero, especialmente al DE LA REPÚBLICA ARGENTINA. Igualmente renuncio a toda protección extraña a las leyes y autoridades mexicanas y a todo derecho que los tratados o convenciones internacionales concedan a los extranjeros. Protesto adhesión, obediencia y sumisión a las leyes y autoridades mexicanas.”

*Mexican, since I would fall under one of the grounds for loss of Mexican nationality by naturalization, provided for in Article 37, section B of the Political Constitution of the United Mexican States.*²⁷⁵

261. On 25 August 2000, Mr. Sastre and his partner Mr. Marana incorporated CETSA, a Mexican corporation. Mr. Sastre was declared the sole administrator of the company. Mr. Sastre and Mr. Marana incorporated the following clause in the by-laws of CETSA:

[t]he partners adopt the clause referred to in Article fourteen of the regulations of the Foreign Investment Law, which , in its relevant part, reads as follows: 'When the corporate bylaws do not include a foreigner exclusion clause, the parties thereto must execute an express agreement or covenant that forms an integral part of the bylaws, whereby the company's current or future foreign partners are bound before the Ministry of Foreign Affairs to consider themselves as nationals with respect to the following:

I. The shares, equity interests or rights such company acquires;

II. The goods, rights, concessions, holdings or interests owned by such companies, and

*III. The rights and obligations deriving from the contracts to which the companies themselves are a party.*²⁷⁶

262. Mr. Sastre not only renounced his Argentinian nationality and made the renunciations and oaths required by the Nationality Law but reaffirmed thereafter his understanding that he could not invoke his Argentinian nationality and that doing so would result in losing his

²⁷⁵ Translation by the Tribunal. **Exhibit R-032**, Letter Renouncing Sastre's Argentine Nationality, 27 May 2009. The original Spanish text provides: “*Obtuve carta de naturalización número 01577 expedida el 27 de mayo de 2004 y con conocimiento de las penas en que incurren las personas que declaran con falsedad ante una autoridad distinta a la judicial, en los términos de lo dispuesto por el artículo 247, fracción I del Código Penal para el Distrito Federal en materia del fuero común y para toda la República en materia del fuero federal, manifiesto que no haré uso de ningún otro pasaporte distinto del mexicano, ya que incurriría en una de las causales de pérdida de nacionalidad mexicana por naturalización, previstas en el artículo 37, Sección B de la Constitución Política de los Estados Unidos Mexicanos*”.

²⁷⁶ Translation by the Tribunal. **Exhibit C-0002**, Partnership Agreement (Contrato de Sociedad) for Constructora Eco Turistica S.A. de C.V. (CETSA), 25 August 2000, pp. 1-2.

nationality and in the application of criminal penalties. Moreover, he reaffirmed at the time of the incorporation of CETSA that he agreed to be treated as a Mexican national and that his investment will be considered an investment made by a Mexican national.

263. There is no evidence that Mr. Sastre invoked his Argentinian nationality before the Mexican authorities in connection with his alleged investment. On the contrary, in his requests and applications for permits and licenses and generally in acts related to the investment where Mexican authorities were involved, he represented that he was a Mexican national. In sum, he complied with the undertakings made at the time of his naturalization as Mexican. He cannot now claim that the undertakings were merely “boilerplate” and that he must be treated as Argentinian in its relationships with Mexico derived from the BIT, without going against the principles of *estoppel* and *pacta sunt servanda*.
264. Because of the express declaration and the behaviour of Mr. Sastre, Mexico was fully justified in relying on that he would continue complying with his obligations as a Mexican national, including the obligation not to invoke his Argentinian nationality and the rights derived therefrom. Mr. Sastre cannot change course and invoke his Argentinian nationality.
265. The interpretation proposed by Claimants as regards Mr. Sastre leads to a contradiction. On the one hand, Mr. Sastre claims that he must be treated as a Mexican national for purposes of his alleged investment. This, of course, will allow him to overcome significant restrictions in Mexican law that apply to the areas where he invested. But on the other, with respect to the same investment, he asks to be treated as an Argentinian for purposes the alleged expropriation of the investment he made as a Mexican national.
266. Mr. Sastre cannot escape from the obligations acquired under his agreement with Mexico, much less after having taken advantage of his Mexican nationality for purposes of his investment. The obligation not to invoke his Argentinian nationality remains valid and binding and must be complied with.
267. In conclusion, at the time of the alleged breaches (19 October 2011 and 2 October 2015) and at the time of the filing of this arbitration (14 June 2019), Mr. Sastre remained a

Mexican national. His renunciation of his Argentinian nationality made in order to become a Mexican national, with all the consequences related thereto, had not been withdrawn or revoked. He remained an Argentinian national under Argentine law, but his Argentinian nationality cannot be invoked against Mexico for purposes of the Mexico-Argentina BIT. Mexico can validly object to Mr. Sastre's request for him to be considered a national of Argentina for purposes of his claim and the Tribunal must accept the objection.

268. Therefore, also for this reason, the Tribunal lacks jurisdiction *ratione personae* with respect to Mr. Sastre.

b. *Renouncement of Ms. Abreu and Mr. Silva*

269. The case of Ms. Abreu and Mr. Silva is not substantially different. Ms. Abreu and Mr. Silva voluntarily applied for and obtained Mexican nationality. In Ms. Abreu's application for Mexican nationality on 24 January 2000, after stating that she profoundly identified with Mexico and its culture, had been living in Mexico for eleven years and was Mexican in her heart and actions, Ms. Abreu requested to be officially recognized as a Mexican national. She also declared that she had been informed of the terms and conditions of the procedure and she therefore had no doubt and was in agreement with it.²⁷⁷ Similarly, on 8 April 2016, Mr. Silva received a Mexican Naturalization letter from the Ministry of Foreign Affairs of Mexico recognizing that he has “[p]romised commitment, obedience and submission to the laws and authorities of the United Mexican States and has complied with the requirements set forth in Articles 19 and 20, Section 1, Paragraph c) of the Nationality Law in force to obtain Mexican nationality by naturalization.”²⁷⁸
270. Further, Ms. Abreu (on 2 October 2000) and subsequently Mr. Silva (on 6 May 2016), signed the declaration required by Article 17 of the Nationality Law, which provides in its relevant part as follows:

I expressly renounce my PORTUGUESE nationality and any other

²⁷⁷ **Exhibit R-062**, Ms. María Margarida Oliveira de Abreu's Application for Naturalization to the Ministry of Foreign Affairs, 24 January 2000.

²⁷⁸ **Exhibit R-024**, Silva's Mexican Naturalization Letter, 8 April 2016.

*nationality to which I may be entitled as well as to any submission, obedience and fidelity to any foreign government, especially to that OF THE PORTUGUESE REPUBLIC. I also renounce all foreign protection from Mexican laws and authorities and all rights that international treaties or conventions grant to foreigners.*²⁷⁹

271. There is no evidence that Ms. Abreu nor Mr. Silva invoked their Portuguese nationality before the Mexican authorities in connection with their alleged investment, and, in all acts related to the investment where Mexican authorities were involved, they represented that they were Mexican nationals. Both had, as Mr. Sastre, an agreement with Mexico with the same mutual obligations, and they behaved in a manner such that Mexico would have every reliance that they would comply with the Nationality Law and their renouncement and oaths and would not invoke their Portuguese nationality.
272. Claiming their Portuguese nationality now would violate the legal principle of good faith and its derivatives of *pacta sunt servanda* and estoppel for the same reasons already developed in paragraphs 253 to 257 with respect to Mr. Sastre.
273. The interpretation proposed by Claimants as regards Ms. Abreu and Mr. Silva leads to a contradiction for the same reasons explained in paragraph 217.
274. The Tribunal will not resolve additional jurisdictional objections raised by Respondent regarding Messrs. Sastre and Silva and Ms. Abreu, nor their alleged investment considering that they are moot as the Tribunal already concluded that it does not have jurisdiction over his claims under the Mexico-Argentina BIT and the Mexico- Portugal BIT.

²⁷⁹ Translation by the Tribunal. **Exhibit R-041**, Letter Renouncing Abreu's Portuguese Nationality, 2 October 2000. **Exhibit R-037**, Silva's Letter Renouncing his Portuguese Nationality, 6 May 2016.

F. WHETHER MR. JACQUET HAD AN INVESTMENT UNDER THE MEXICO – FRANCE BIT

(1) Position of the Parties

a. Respondent's Position

275. Respondent argues that Mr. Jacquet has failed to prove, through the Promise of Purchase of Rights Agreement between Mr. Román Lazo and Abodes Mexico²⁸⁰ and the Commodatum Agreement between Mr. Román Lazo and Mr. Jacquet (South Lot)²⁸¹, that Mr. Jacquet was an investor in *Behla Tulum* and *La Tente Rose* on the relevant dates.²⁸²
276. According to Respondent, the Promise of Purchase of Rights Agreement dated 15 May 2007²⁸³ shows that Abodes Mexico, a Mexican corporation, had promised to acquire certain parcel rights from Mr. Román, but the document does not mention Mr. Jacquet or his interest in Abodes.²⁸⁴
277. Respondent further highlights Mr. de la Peza's expert report, submitting that the Promissory Sale Agreement dated 15 May 2007²⁸⁵ is not sufficient to prove that Mr. Jacquet is the holder of parcel or ejido rights regarding the AMSA Lot due to documentary and legal deficiencies.²⁸⁶ Alternatively, Mr. Jacquet failed to fulfill the legal requirements

²⁸⁰ **Exhibit C-0017**, Promissory Sale agreement (Contrato Privado de Promesa de Compraventa) between José Mauricio Román Lazo and Abodes Mexico S.A. de C.V. (Abodes Mexico), 15 May 2007.

²⁸¹ **Exhibit C-0018**, Commodatum Agreement between José Mauricio Román Lazo and Renaud Jacquet (South Lot), 10 January 2008.

²⁸² Memorial on Jurisdiction, ¶ 297.

²⁸³ **Exhibit C-0017**, Promissory Sale agreement (Contrato Privado de Promesa de Compraventa) between José Mauricio Román Lazo and Abodes Mexico S.A. de C.V. (Abodes Mexico), dated 15 May 2007.

²⁸⁴ Memorial on Jurisdiction, ¶ 297.

²⁸⁵ **Exhibit C-0017**, Promissory Sale agreement (Contrato Privado de Promesa de Compraventa) between José Mauricio Román Lazo and Abodes Mexico S.A. de C.V. (Abodes Mexico), dated 15 May 2007.

²⁸⁶ Memorial on Jurisdiction, ¶ 300. This is because it lacks the basic legal formalities to be enforceable between the parties themselves. It lacks the official documentation to prove the exact location of the AMSA Lot, the transfer of rights on 4 August 2006 in favor of Mr. José Mauricio Román Lazo as well as the official documentation to prove that an agreement of sale was concluded between Mr. Román Lazo and Abodes regarding the AMSA lot, among others.

under the Agrarian Law and the Ministry of Foreign Affairs requirements regarding the restricted zone, for the lot acquisition to be considered valid.²⁸⁷

278. Respondent also claims that the Commodatum Agreement between Mr. Román Lazo and Mr. Jacquet (South Lot) dated 10 January 2008,²⁸⁸ is insufficient to show Jacquet's rights in Lot 10-A as there is no evidence to show that he used the commodatum rights as the base to construct and operate the hotel and store.²⁸⁹ Moreover, Respondent alleges that the commodatums are insufficient to prove that Mr. Jacquet acquired *ejido* rights in Lot 10-A because the acts described therein contravene the Agrarian Law and lack the requirements and formalities needed under law to be effective against the *Ejido*;²⁹⁰ and, as a legal instrument, the commodatum agreement is insufficient as it lacks the basic legal formalities to have legal effect before the RAN and third parties. Alternatively, Mr. Jacquet was required to comply with Mexican legislation in restricted zones.²⁹¹
279. Respondent also asserts that Mr. Jacquet has not proven evidence of his rights in the hotel, the store or other “property interest.”²⁹² All documents presented in this arbitration show that Mr. Román and not Mr. Jacquet had interest in the lot/properties and that it was Mr. Román who paid the municipality taxes. Further, the Construction Regularization License [*Behla Tulum*] dated 5 October 2012;²⁹³ the Certificate of Land Use (*Constancia de Uso de Suelo*) dated 5 October 2012;²⁹⁴ the Tulum Municipal Treasury Receipt for payment of

²⁸⁷ Memorial on Jurisdiction, ¶¶ 302-303. This is because the Promissory Sale Agreement lacks the legal requirements to be enforceable before the RAN and third parties, and the ceded rights of use and enjoyment of land agreed in the Promissory Sale Agreement lack the legal requirements and formalities to be enforceable before the Ejido.

²⁸⁸ **Exhibit C-0018**, Commodatum Agreement between José Mauricio Román Lazo and Renaud Jacquet (South Lot), 10 January 2008.

²⁸⁹ Memorial on Jurisdiction, ¶ 305.

²⁹⁰ Memorial on Jurisdiction, ¶ 306.

²⁹¹ Memorial on Jurisdiction, ¶ 307.

²⁹² Memorial on Jurisdiction, ¶¶ 308-312.

²⁹³ **Exhibit RJ-0012**, Construction Regularization License (Regularización de Obra) issued to José Mauricio Román Lazo, 5 October 2012.

²⁹⁴ **Exhibit RJ-0013**, Certificate of Land Use (*Constancia de Uso de Suelo*) issued to José Mauricio Román Lazo, 5 October 2012.

property taxes (*aportaciones*);²⁹⁵ the Municipal Treasury Receipts (*Tesorería Municipal, Recibos Municipales*) dated 17 June 2016 and 18 June 2012;²⁹⁶ and the Record of Lifting Closure Seals (*Acta de Levantamiento de Sellos de Clausura*) dated 3 July 2013²⁹⁷ (all provided by Mr. Jacquet), show that the property interests are in the name of Mr. Román. Also, as shown in the Commodatum Agreements between Mr. Román and Mr. Jacquet for the South²⁹⁸ and North²⁹⁹ Parcels, dated 10 January 2008, the right to request or to present a claim for expropriation was Mr. Román's right.³⁰⁰

280. Neither Abodes Mexico nor Mr. Jacquet have complied with the Mexican legislation related to the alleged property rights, and, alternatively, they do not comply with the legal framework for property acquisition by non-Mexican nationals in restricted zones, in contravention of Article 2(1) of the Mexico-France BIT.³⁰¹
281. Finally, until March 2014, Mr. Jacquet only held 50% of the shares in Abodes Mexico as stated in the Articles of Incorporation document (*Acta Constitutiva*) of Abodes Mexico S.A. de C.V. dated 24 March 2004,³⁰² and Abodes Mexico is not a party to this arbitration.³⁰³

²⁹⁵ **Exhibit RJ-0016**, Tulum Municipality's Receipt issued to José Mauricio Román Lazo for payment for contributions, 17 June 2016.

²⁹⁶ **Exhibit RJ-0020**, Tulum Municipality's Receipt issued to José Mauricio Román Lazo for payment for contributions, 17 June 2016, 18 June 2012.

²⁹⁷ **Exhibit RJ-0021**, Records of Lifting Closure Seals (*Acta de Levantamiento de Sellos de Clausura*) relating to Renaud Jacquet, 3 July 2013.

²⁹⁸ **Exhibit C-0052**, Commodatum Agreement Between José Mauricio Román Lazo and Renaud Jacquet (South Parcel), 10 January 2008.

²⁹⁹ **Exhibit C-0053**, Commodatum Agreement Between José Mauricio Román Lazo and Renaud Jacquet (North Parcel), 10 January 2008.

³⁰⁰ Transcript, Day 1, page 50, lines 7-22; page 51, lines 1-13.

³⁰¹ Memorial on Jurisdiction, ¶¶ 313-315.

³⁰² **Exhibit RJ-0003**, Articles of Incorporation for Abodes Mexico S.A. de C.V., 24 March 2004.

³⁰³ Transcript, Day 1, page 50, lines 7-22; page 51, lines 1-13.

b. *Claimants' Position*

282. According to Claimants, Mr. Jacquet negotiated two commodatum agreements for the use and enjoyment of two contiguous beachfront lots, which were developed and known as *Behla Tulum* and *La Tente Rose*.³⁰⁴ Claimants submit that “*the possession, use and enjoyment of the lots, the business interests in the hotel and tourism enterprise and in the liquor shop are ‘assets’ and thus ‘investments’ under the France-Mexico BIT.*”³⁰⁵ Claimants further explain that until 2007, Mr. Jacquet and his late wife used Abodes Mexico to manage the investment. In 2008, however, Mr. Jacquet decided to manage the investment in his personal capacity.³⁰⁶
283. With respect to Respondent’s arguments that Mr. Jacquet has not demonstrated that he had individual rights over the *Behla Tulum* and *La Tente Rose* investment, Claimants allege that they have provided evidence of the licenses and permits issued to Mr. Jacquet by Mexican authorities,³⁰⁷ including operating licenses from the Urban Development Office and the State of Quintana Roo, a permit to use the Federal Maritime-Land Zone for which he paid several times each year, and authorizations from Respondent’s Ministry of Environment and Natural Resources. Claimants assert that throughout the development and operation of this investment for approximately one decade, no Ejido member, Ejido official, or agency of Respondent ever claimed that this investment was unlawfully established in the manner that Respondent now claims. The only time when this investment was penalized for non-compliance was in 2013, when the environmental authorities suspended construction activities in *Behla Tulum* for failure to obtain an environmental permit. However, after visits by inspectors and payment of a fine, the matter was resolved. Thus, Mr. Jacquet duly executed agreements to build his business in the *Behla Tulum* lots.³⁰⁸

³⁰⁴ Counter-Memorial on Jurisdiction, ¶ 71.

³⁰⁵ Counter-Memorial on Jurisdiction, ¶ 71; Rejoinder, ¶ 166(b) .

³⁰⁶ Counter-Memorial on Jurisdiction, footnote 102.

³⁰⁷ Rejoinder on Jurisdiction, ¶ 181; Witness Statement of Mr. Jacquet, ¶¶ 8, 10, 14, 15, 17 n. 16.

³⁰⁸ Rejoinder on Jurisdiction, ¶ 89.

284. Claimants explain that Mr. Jacquet originally formed Abodes Mexico S.A. de C.V. for his investment, but he received conflicting legal advice on how to structure the corresponding land acquisitions. Eventually, the agreements related to the land where the alleged investment is located were restructured as commodatum agreements, transferring rights over the lots in Jacquet's name. After executing the two commodatum agreements, Mr. Jacquet continued to operate his *Behla Tulum* and *La Tente Rose* business on the combined lots in an undisturbed manner for 8.5 years.³⁰⁹
285. Claimants submit that Respondent's expert and witness evidence confirm that non-nationals are not prohibited from holding possessory rights over *ejido* lands. First, restricted zone laws are irrelevant, because title remained with the *Ejido*.³¹⁰ Additionally, under Agrarian Law, Claimants are not prohibited from holding possession over *ejido* lands.³¹¹

(2) Tribunal's Considerations

286. The Parties dispute whether Mr. Jacquet is an investor of the *Behla Tulum* hotel and *La Tente Rose*, whether Mr. Jacquet has proven his rights over the portion of Lot 10, and whether the *Behla Tulum* and *La Tente Rose* investments were made in accordance with Respondent's relevant laws under the terms of the Mexico-France BIT. It is undisputed that Mr. Jacquet incorporated a company (Abodes Mexico) on 24 March 2004.³¹² However, as the Tribunal will analyse hereunder, the rights of use were granted to Mr. Jacquet personally and his claim is not based on his hypothetical loss of the company. Moreover, the aforesaid company is not a party to this arbitration. Therefore, the references made by Mr. Jacquet in his witness statement regarding Abodes Mexico are irrelevant for the purposes of this arbitration.

³⁰⁹ Rejoinder on Jurisdiction, ¶ 181; Witness Statement of Mr. Jacquet, ¶¶ 8, 10, 14, 15, 17 n. 16.

³¹⁰ Claimants' closing statement, p. 17, citing Mr. Marcelino Miranda Aceves' Witness Testimony.

³¹¹ Claimants' closing statement, p. 17.

³¹² **Exhibit RJ-0003.** Articles of Incorporation for Abodes Mexico S.A. de C.V., 24 March 2004.

287. The Tribunal recalls Article 1 of the Mexico-France BIT containing the definition of investment:

ARTICLE 1

Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset, such as goods, rights and interest of whatever nature, including property rights, acquired or used for the purpose of economic benefit or other business purposes, and in particular though not exclusively:

a) Movable and immovable property [...] as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights;

b) Shares, premium on share and other kinds of interest including minority or indirect forms, in companies constituted in the territory of one Contracting Party;

c) Title to money or debentures, or title to any legitimate performance having an economic value;

d) Intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models and mockups, technical processes, Know-how, tradenames and goodwill;

e) Rights derived from any concession conferred by any legal means.

288. Mr. Jacquet has the burden to prove that he was an investor at the time of the investment and at the time of the taking. As indicated by the tribunal in the *Cementownia* case, “[i]t is undisputed that an investor seeking access to international jurisdiction pursuant to an investment treaty must prove that it was an investor at the relevant time, i.e., at the moment

when the events on which its claim is based occurred.”³¹³ Mr. Jacquet also needs to prove that he was an investor at the time of the filing of his claim.

289. To determine whether Mr. Jacquet had an investment under the terms of Article 1 of the Mexico-France BIT, the Tribunal will begin by noting the timeline of the relevant facts related to the assets and rights claimed by Mr. Jacquet over the portion of Lot 10 and its constructions as well as the scarce evidence submitted. The Tribunal notes that some of the alleged facts present significant inconsistencies or irregularities that, when examined together with the precarious evidence provided, show that Mr. Jacquet did not have any rights over the lots nor rights to the hotel.
290. Mr. Jacquet claims that the laws of Mexico do not restrict foreigners from having possession of the property and that he has possession of the land. However, he does not provide evidence of possession, but instead submits a *comodato* agreement, that authorizes the use and enjoyment of the lots, and he does not convincingly explain how a *comodato* agreement, where he undertakes to return the property at any time at the request of the owner, grants him possession over such property.
291. The Tribunal recalls non-Mexican nationals cannot acquire *ejido* rights nor have ownership rights in *ejidos* or restricted areas. Foreign individuals, however, may have the use and enjoyment of land situated in restricted areas (such as beachfront property as is the case here) provided they enter into a trust agreement (*fideicomiso*) by means of a public deed. The foreign beneficiaries must agree with the Government of Mexico to consider themselves Mexican nationals with respect to their rights as beneficiaries, and they cannot invoke the protection of their governments, under penalty of losing their rights in favor of the Nation (see Section III.B).

³¹³ **Exhibit RL-038**, *Cementownia “Nowa Huta” S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2, ¶ 112 Award, 17 September 2009.

292. As regards the chain of transfers that ended in the *comodato* agreements, it raises unsurmountable doubts as to Mr. Jacquet's alleged rights of.
293. Ms. Villareal had acquired Lot 10 A, which forms part of a larger Lot 10, from Mr. Rogelio Novelo Balam (*Ejidatario*). On 1 May 2006, Ms. Villarreal transferred the possession and usufruct of a portion of Lot 10A to Abodes Mexico (represented by Mr. Jacquet) through a private contract and an Addendum.³¹⁴ Therefore, as of 1 May 2006, Ms. Villareal and Abodes Mexico shared rights over a portion of Lot 10 A.
294. On 5 August 2006, the *Ejido* Commissariat issued a Certificate of Possession stating that Mr. José Mauricio Román Lazo (Mr. Román) was the possessor of lot 1496 "that originally corresponded to [Mr.] Rogelio Novelo Balam."³¹⁵ Lot 1496 is also part of Lot 10. Claimants provide a map of the site,³¹⁶ even though there is no clarity as to the specific location and boundaries of the lot.
295. On 15 May 2007, Mr. Román executed a contract with Abodes promising to sell to Abodes the property rights previously acquired by Mr. Román in respect to the "AMSA lot" which is allegedly a portion of Lot 10 A.³¹⁷ The Tribunal notes that Section III, second part of the contract, provides that if the sale is prevented (because the buyer is not considered Mexican) the seller undertakes to constitute an irrevocable trust ("Fideicomiso Irrevocable Traslativo de Dominio") in order to address this issue. The measures of the AMSA lot are described in the promise, but there is no certainty as to its boundaries and specific location. Therefore, as of 15 May 2007 there were three different holders of rights over portions of

³¹⁴ **Exhibit PGPG-0071**, Private agreement of transfer of possession and usufruct rights, executed between Mrs. Villarreal, represented by Mr. Villarreal Cueva, and AMSA, represented by Mr. Jacquet, 26 April 2004; **Exhibit RJ-0008**, Addendum to Transfer of Rights Agreement between Irma Villarreal and Abodes México S.A. de C.V (North Lot), 1 May 2006.

³¹⁵ **Exhibit C-0049**, Certificate of Possession, Use and Enjoyment issued by the Ejido to José Mauricio Román Lazo, 5 August 2006.

³¹⁶ **Exhibit C-0049**, Certificate of Possession, Use and Enjoyment issued by the Ejido to José Mauricio Román Lazo, 5 August 2006.

³¹⁷ **Exhibit C-0017**, Promissory Sale agreement (Contrato Privado de Promesa de Compraventa) between José Mauricio Román Lazo and Abodes Mexico S.A. de C.V. (Abodes Mexico), dated 15 May 2007.

Lot 10: Ms. Villareal, Abodes and Mr. Román. The first two over Lot 10A and Mr. Román over Lot 1496.

296. On 15 August 2007, Abodes Mexico transferred to Mr. Román the lot previously acquired from Ms. Villarreal (see paragraph 91).³¹⁸ Therefore, as of 15 August 2007 Abodes Mexico had no rights on the lot. It had transferred to Mr. Román the portion of Lot 10 A acquired from Ms. Villareal and had executed a promise with Mr. Román. There is no evidence that the promise was actually performed.
297. On 2 January 2008, Ms. Villarreal transferred the “remaining part of lot 10 A” (also referred to as the “South Lot”) to Mr. Román.³¹⁹
298. Finally, on 10 January 2008, Mr. Román executed two *comodato* agreements with Mr. Jacquet over the free use of “fraction A of lot 10” and “fraction B of lot 10”.³²⁰ There is no allegation, let alone any evidence that a *fideicomiso* had been constituted, despite the fact that the Parties, as mentioned in paragraph 295 above, were fully aware of such requirement.
299. But even though the absence of a *fideicomiso* arrangement is dispositive of the matter of Mr. Jacquet’s lack of use rights in the beachfront land, the Tribunal also wishes to point to the circumstances discussed in the following paragraphs.
300. The documents submitted do not allow the Tribunal to conclusively determine that the transferors had the right to make the transfers and therefore that Mr. Jacquet has the rights that he claims. Aside from the debate as to the effects of not registering the transfers before

³¹⁸ **Exhibit RJ-0009**, Transfer of Rights Agreement (Contrato Privado de Cesión de Derechos) between Abodes México S.A. de C.V and José Mauricio Román Lazo (North Lot), 15 August 2007.

³¹⁹ **Exhibit C-0051**, Transfer of Rights Agreement Between Irma Villareal and José Mauricio Román Lazo (South Lot), 2 January 2008.

³²⁰ **Exhibits C-0052 and C-0053**, Commodatum Agreements between Mr. Román and Mr. Jacquet , 10 January 2008.

RAN, had Mr. Jacquet registered the transfers, the Tribunal would have had certainty as to the chain of title over the lots.³²¹ But he did not.

301. Moreover, the Tribunal did not find any evidence supporting Mr. Jacquet's rights over the properties of *Behla Tulum* and *La Tente Rose*. In this respect, the Urban Development Office issued a Construction Regularization License in the name of Mr. Román, in which he appeared as the owner of the property.³²² The Municipal Treasury of Tulum issued taxes payment receipts regarding Lot 10 under the name of Mr. Román as well.³²³ None of these documents present Mr. Jacquet as the owner or administrator or user of the properties or land. In fact, during the suspension of construction activities mentioned by Claimants, the Mexican authorities recognized that “[a]t the time of the diligence, the person [Mr. Jacquet] did not exhibit any document that accredits such personality [of responsible for the works and activities that are carried out in said property]”.³²⁴
302. Claimants allege that several licenses were issued to *La Tente Rose* and *Behla Tulum*. The Tribunal recognizes that the majority of the licenses were issued for purposes of operating *La Tente Rose*, but there is no evidence to support Mr. Jacquet's possible property interest in *Behla Tulum* or in *La Tente Rose*.³²⁵ Licenses and land use certificates serve to demonstrate that the municipal authority authorized the performance of the activities to

³²¹ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Arts. 148, 150, 152.

³²² **Exhibit RJ-0012**, Construction Regularization License (Regularización de Obra) issued to José Mauricio Román Lazo, 5 October 2012.

³²³ **Exhibits RJ-0016**, Tulum Municipality's Receipt issued to José Mauricio Román Lazo for payment for contributions, 17 June 2016.; **RJ-0020**, Tulum Municipality's Receipt issued to José Mauricio Román Lazo for payment for contributions, 18 June 2012.

³²⁴ **Exhibit RJ-0021**, Records of Lifting Closure Seals (Acta de Levantamiento de Sellos de Clausura) relating to Renaud Jacquet, 3 July 2013.

³²⁵ **Exhibit RJ-0014**, Commercial Land Use License (Licencia de Uso de Suelo Commercial) issued to Renaud Jacquet, 5 October 2012; **Exhibit RJ-0015**, Provisional Permits for sale of beer, wine and liquor in closed containers, issued to Renaud Jacquet on 20 December 2013 and 19 September 2014; **Exhibit RJ-0017**, Operating License (Licencias de Funcionamiento), and Operating License with Alcoholic Beverage License, issued to Renaud Jacquet on 31 December 2012 and 2013; **Exhibit RJ-0018**, Sanitary License issued to Renaud Jacquet, 8 May 2014; **Exhibit RJ-0019**, Certificate of Security Measures Concerning Civil Protection, dated 7 May 2014; **Exhibit RJ-0021**, Records of Lifting Closure Seals (Acta de Levantamiento de Sellos de Clausura) relating to Renaud Jacquet, 3 July 2013.

which they refer, but they do not grant property or related rights, nor do they serve as evidence of the existence of any investment as claimed by Mr. Jacquet.

303. In sum, the Tribunal considers that the evidence provided by Claimants to prove the existence of Mr. Jacquet's rights over the lots and hotel properties is insufficient and raises serious doubts as to the chain of transfer of rights. But most important, there is no evidence that Mr. Jacquet entered into a *fideicomiso* for the use of the lots as required by Mexican law, and therefore, he lacks evidence that he made an investment in accordance with the laws of Mexico.
304. For Mr. Jacquet to have an investment under Article 1 of the Mexico-France BIT, he must prove that his investments were made in accordance with Respondent's legislation based on the legal standards established under Article 2(1) of the Mexico-France BIT:

ARTICLE 2

Scope of the Agreement

1. It is understood that investments covered under the present Agreement are those which have already been made or may be made subsequent to the entering into force of this Agreement, in accordance with the legislation of the Contracting Party in the territory or in the maritime area of which the investment is made.³²⁶(emphasis added)

305. In this regard, the tribunal in the *Fraport* case specified that:

*[w]ith respect to a bilateral investment treaty that defines 'investment', it is possible that an economic transaction that might qualify factually and financially as an investment (i.e. be comprised of capital imported by a foreign entity into the economy of another state which is party to a BIT), falls, nonetheless, outside the jurisdiction of the tribunal established under the pertinent BIT, because legally it is not an "investment" within the meaning of the BIT. This will occur when the transaction that might otherwise qualify as an 'investment' fails *ratione temporis*, as occurred in*

³²⁶ Exhibit CLA-0015, France-Mexico BIT.

*Empresa Lucchetti S.A. et al v. Republic of Peru, or fails ratione personae, as occurred in Soufraki v. The United Arab Emirates. It will also occur when the transaction fails to qualify ratione materiae, as occurred in Inceysa Vallisoletana, S.L. v. Republic of El Salvador.*³²⁷

306. The previous examination of the facts suggests that the transfers did not meet the requirements of the Agrarian Law governing the *ejido* regime. These lots were “common land lots” and therefore the agreements and contracts executed by Ms. Villarreal and Mr. Román required approval from the *Ejido* Assembly.³²⁸ No evidence of such approval was provided. In addition, no *fideicomiso* was entered into. These two requirements form part of Mexico’s special legal regime of mandatory provisions that govern investments by non-Mexicans in *ejidos* and restricted zones. Mr. Jacquet made his alleged investment in clear violation of mandatory provisions of Mexican law.
307. For the reasons explained above, this Tribunal considers that Mr. Jacquet did not make an investment in accordance with Mexican law, as required by the Mexico-France BIT, and therefore, Mr. Jacquet cannot be considered an investor for purposes of the Mexico-France BIT. This Tribunal, thus, does not have jurisdiction over Mr. Jacquet’s claims.

G. WHETHER MS. GALÁN IS AN INVESTOR OF A QUALIFIED INVESTMENT IN MEXICO

(1) Position of the Parties

a. Respondent’s Position

308. According to Respondent, it is an established principle that investors must invest according to international principles, including good faith. Referring to the decision in *Phoenix Action, Ltd. v. Czech Republic*, Mexico claims that arbitral tribunals have the obligation to

³²⁷ **Exhibit CLA-0098**, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, ¶ 306, Award, 16 August 2007.

³²⁸ **Exhibit PGPG-0016**, Agrarian Law of Mexico published in DOF on 26 February 1992, in force since 27 February 1992, as amended, in its version in force as of 16 April 2008, Article 23.V.

not protect the abuse of the international system of investment protection under ICSID or investment treaties.³²⁹

309. Several arbitral tribunals have likewise concluded that to extend the protection provided for in international treaties to investments made in bad faith or in violation of local law would compensate the improper behaviour of investors in violation of the principle *nemo auditor propriam turpitudinem allegans*: no one may benefit from his or her own wilful misconduct.³³⁰ Therefore, it will be inappropriate for this Tribunal to accept jurisdiction over Claimants in this arbitration, because, in doing so, it will be violating the aforementioned principles.³³¹
310. The investments and Claimants' actions as regards the alleged investments violated the national and international principle of good faith and international public interest. They were deliberately structured to illegally obtain domestic rights over the land that otherwise would only be available to Mexican nationals. Later, some Claimants obtained Mexican nationality attempting to overcome the illegality. These illegal interests are at the core of the investments in which Claimants based their claim. The Tribunal cannot allow the improper use of the international arbitral system based on false affirmation of property or of investment rights.³³²
311. Mexico further claims that the Tribunal must apply the principle of dominant and effective nationality and consider Ms. Galán as Mexican for purposes of her alleged investment. NAFTA is silent on how to treat investors that are dual nationals. However, the law that the Tribunal must apply to decide this dispute are the provisions of the Treaty and principles of international law. According to Respondent, such principles are summarized in paragraph 8 of the United States' NAFTA Article 1128 submission in the *Feldman* arbitration and in the scholarly writing of Professor Zachary Douglas. Under this principle,

³²⁹ Reply on Jurisdiction, ¶ 241.

³³⁰ Reply on Jurisdiction, ¶ 246.

³³¹ Reply on Jurisdiction, ¶¶ 252-253.

³³² Reply on Jurisdiction, ¶ 257.

unless otherwise provided for in the corresponding treaty, if an individual claimant with the nationality of one contracting state also has the nationality of the other contracting state party, the tribunal has jurisdiction *ratione personae* only if the former nationality is the dominant of the two.³³³

312. For the Tribunal to have jurisdiction over the claim submitted by Ms. Galán, she must prove that at all relevant times - that is to say the time of the investment, the time of the alleged expropriation and the time of the filing - she was a Canadian national and that her dominant and effective nationality was Canadian.³³⁴
313. Ms. Galán was born in Coatzacoalcos, Mexico and exercises her Mexican nationality as she has at least been issued four Mexican passports covering the time period between 13 January of 1983 and 11 March of 2020.³³⁵ As a Mexican national, Respondent submits that she is excluded from seeking protection under NAFTA against Mexico unless she proves that her Canadian nationality was the dominant and effective nationality at all relevant times. She has not done so.³³⁶
314. Unlike Mr. Sastre, Mr. Silva and Ms. Abreu, Ms. Galán is Mexican by birth and therefore the legal effects of her nationality must be analysed in light of the Mexican legal provisions that govern juridical acts entered into by Mexican nationals within and outside Mexican territory.³³⁷
315. Article 13 of the Nationality Law³³⁸ clearly provides that Mexicans by birth, who have acquired or possess the nationality of another State, act as Mexican nationals with respect to (a) legal acts entered into within Mexican territory and the zones where the Mexican State exercises its jurisdiction under international law; and (b) legal acts entered into

³³³ Memorial on Jurisdiction, ¶¶ 76-78.

³³⁴ Memorial on Jurisdiction, ¶ 251; Reply on Jurisdiction, ¶ 487.

³³⁵ Memorial on Jurisdiction, ¶ 255.

³³⁶ Reply on Jurisdiction, ¶ 498.

³³⁷ Reply on Jurisdiction, ¶ 500.

³³⁸ **Exhibit R-077**, Nationality Law.

outside the limits of the Mexican jurisdiction, by means of which a Mexican by birth holds legal title over real estate located within Mexican national territory or other rights whose exercise is limited to Mexican territory.³³⁹ Article 14 of the Nationality Law adds that Mexicans by birth who are dual nationals may not invoke the protection of a foreign government or else they will lose, for the benefit of the Nation, the goods or any other rights over which they have asked for protection. Therefore Ms. Galán, a Mexican by birth, who acquired legal rights in Mexican territory may not invoke protection under NAFTA.³⁴⁰

316. In addition, at all relevant times, Ms. Galán kept her residency and centre of business in Mexico, and, in all acts related to her alleged investment, including acts that took place after the alleged taking, she invoked her Mexican nationality. Therefore, it is clear that Ms. Galán's dominant and effective nationality is Mexican, and therefore she is not entitled to protection under NAFTA as a Canadian.

b. *Claimants' Position*

317. Claimants contend that the arbitral decisions invoked by Respondent where tribunals denied protection to investments made fraudulently or through falsehoods and misrepresentations are not applicable in this arbitration. There is no evidence whatsoever that Claimants misrepresented or provided false information in the establishment or operation of their investments.³⁴¹
318. The accusation that Ms. Galán "intentionally" structured her investments to circumvent prohibitions of Mexican law or sought Mexican nationality later only to cure alleged illegalities is unfounded. Respondent alleged that Ms. Galán abused the arbitral system to present false property claims, but it is not clear which specific laws Respondent refers to. If Respondent is referring to Mexican laws that restrict ownership by foreign nationals in certain areas, the allegation is misplaced. Ms. Galán did not own the lands, so the point is

³³⁹ Reply on Jurisdiction, ¶ 501.

³⁴⁰ Reply on Jurisdiction, ¶ 503.

³⁴¹ Rejoinder on Jurisdiction, ¶¶ 405-406.

irrelevant. Even if those laws were applicable, they violate Respondent's National Treatment obligations in the treaties. Finally, Respondent has not provided evidence of any fraud whatsoever.³⁴²

319. Claimants have provided sufficient evidence to prove that they acted in good faith. On the contrary, Respondent has failed to produce evidence to support its allegation that Claimants acted in bad faith or fraudulently or that there were serious illegalities or that there was impropriety by Claimants.³⁴³
320. As regards the dominant and effective nationality test, Claimants consider that is a creature of diplomatic protection jurisprudence, which has no place in investment treaty law. The term has its origins in an International Court of Justice ("ICJ") decision, the *Nottebohm* case, and the subsequent *Mergé* case. However, the definition of "national" must be found in the corresponding treaty, which is *lex specialis*. NAFTA does not bar dual nationals from investment protection or restrict consent to only those investors whose dominant and effective nationality is that of the other Contracting State.³⁴⁴
321. Respondent cannot add restrictions not contemplated in NAFTA. Should it have been the Respondent's intent to impose such restrictions, it would have done so as it did in its free trade agreement with Panama.³⁴⁵
322. The Contracting State Party submission from the Government of the United States in connection with *Feldman v. Mexico* references the *Mergé* case, but otherwise does not explain how the test could be applicable when not referenced in the given Treaty. Moreover, Mexico neglects to reveal that the tribunal in the *Feldman* case rejected the approach proposed by the United States.³⁴⁶

³⁴² Rejoinder on Jurisdiction, ¶ 407.

³⁴³ Rejoinder on Jurisdiction, ¶¶ 408-409.

³⁴⁴ Counter-Memorial on Jurisdiction, ¶ 128; Rejoinder on Jurisdiction, ¶ 234.

³⁴⁵ Counter-Memorial on Jurisdiction, ¶ 133.

³⁴⁶ Counter-Memorial on Jurisdiction, ¶¶ 135, 136.

323. As to the reference to Professor’s Zachary Douglas writings, Claimants note that his analysis focuses on the language of the U.S. Model BIT, which expressly includes the dominant and effective requirement as a limitation to the definition of investor.³⁴⁷
324. But even if the Tribunal were to apply the dominant and effective nationality test, Ms. Galán is predominantly Canadian.³⁴⁸ She moved permanently from Mexico to British Columbia, Canada in 2004 and has lived there ever since. She then married Mr. Alexander, a Canadian resident and citizen by birth, in 2005, and she became a permanent resident of Canada on 22 February 2007. From 2004 until 2006, while living in Canada, Ms. Galán, together with Mr. Alexander, coordinated the construction of Hotel Parayso, negotiated with the *ejido* authorities for the certificate of possession for the lot, operated the Hotel Parayso investment remotely, mostly from Canada. They pay annual income taxes in Canada but not in Mexico.³⁴⁹
325. Respondent has produced no evidence to challenge Ms. Galán’s testimony and documents, nor has Respondent presented any documents relevant to this analysis such as income tax records filed or paid by Ms. Galán, Mexican voting records, or evidence that she kept a habitual residence in Mexico after her investment was expropriated nor evidence of her personal attachments to Mexico.³⁵⁰

(2) Tribunal’s Considerations

326. The Tribunal has reiterated that under Mexican law related to *ejidos* and restricted zones, the requirements for Mexicans and non-Mexicans to acquire rights in such areas are substantially different.

³⁴⁷ Counter-Memorial on Jurisdiction, ¶ 137.

³⁴⁸ Rejoinder on Jurisdiction, ¶ 247.

³⁴⁹ Rejoinder on Jurisdiction, ¶ 247.

³⁵⁰ Rejoinder on Jurisdiction, ¶ 250.

327. As a threshold matter, the Tribunal recalls that the date of the investment has particular relevance in the case of Ms. Galán, considering that she was the only Claimant having exclusively Mexican nationality on the date when the investment was made.
328. The Tribunal notes that Ms. Galán invoked her Mexican nationality to acquire rights in an area restricted to individuals who are Mexican nationals, to request permits from different Mexican authorities and to file judicial claims before the Mexican courts.
329. Ms. Galán submitted a certificate in this arbitration as support for her investment to evidence that she was granted possessory rights over the given land.³⁵¹ She could only have obtained the possessory rights, as reflected in the certificate, as a Mexican national. A non-Mexican national would have had to comply with the requirements mentioned in Section III.B, including the approval of the *Ejido* Assembly and the execution of a trust agreement (*fideicomiso*).
330. In fact, at the time when Ms. Galán acquired the possessory rights from Mr. Balam on 28 April 2004³⁵² and when she transferred part of the possessory rights to RSM,³⁵³ a Delaware company, she was a Mexican national and had not yet become a Canadian national.
331. Ms. Galán indicated that her domicile was in Mexico when she applied for and obtained the Construction Regularization License issued by the Urban Development Office, approving the construction on Lot 10³⁵⁴ and the Certificate of Land Use permitting the use of the property for tourist lodging.³⁵⁵ In the Concession Title granted by the Mexican federal government stating that the hotel project complied with Mexican environmental

³⁵¹ **Exhibit C-0060**, Certificate of Possession, Use and Enjoyment issued by the Ejido to Mónica Galán, 25 June 2006.

³⁵² **Exhibit C-0023**, Transfer of Rights Agreement (Contrato Privado de Cesión de Derechos) between Rogelio Novelo Balam and Mónica Galán, 28 April 2004.

³⁵³ **Exhibit MG-0007**, Purchase Agreement between Mónica Galán Ríos and Rancho Santa Monica Developments Inc., 29 November 2004.

³⁵⁴ **Exhibit MG-0008**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 8 March 2006.

³⁵⁵ **Exhibit MG-0009**, Certificate of Land Use (Constancia de Uso de Suelo) issued for Mónica Galán, 8 March 2006.

law, Ms. Galán is referred to as a national of Mexico domiciled in Mexico.³⁵⁶ Different Mexican authorities issued additional licenses and permits to Ms. Galán, and in all of them she is said to have a domicile in Mexico.³⁵⁷

332. Ms. Galán was present during the alleged taking of 17 June 2016. The court officer that led the group in charge of the taking specifically asked Ms. Galán for her ID, and she claimed not to have one.³⁵⁸ On 8 July 2016 after the alleged taking, Ms. Galán filed an *amparo* before the Mexican courts of Cancun, Quintana Roo seeking protection against both the order to occupy the land and the enforcement thereof. Again, in the *amparo*, Ms. Galán affirms that she is a Mexican national domiciled in Mexico.³⁵⁹
333. In sum, there is no evidence that, having acquired the Canadian nationality in 2015, Ms. Galán invoked such nationality during the events of 17 June 2016, in the filing of the *amparo* or thereafter.
334. Under Chapter II of the Mexican Nationality Law which applies to Mexican nationals by birth, and therefore applies to Ms. Galán, Ms. Galán is considered a Mexican national for purposes of her alleged investment. Article 13 of said law provides that it shall be understood that Mexicans by birth who acquire another nationality act as Mexican nationals, *inter alia*, with respect to (a) legal acts executed within the national territory of Mexico and within zones where the Mexican State exercises jurisdiction according to international law; and (b) legal acts executed outside the national jurisdiction of Mexico

³⁵⁶ **Exhibit MG-0010**, Concession Title (Titulo de Concesión) issued by Mexico's Ministryy of the Environment and Natural Resources to Mónica Galán Ríos, 13 February 2007.

³⁵⁷ **Exhibit MG-0011**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 11 September 2009; **Exhibit MG-0012**, Land Use License (Licencia de Uso de Suelo) issued to Mónica Galán Ríos, 11 September 2009; **Exhibit MG-0013**, Commercial Land Use License (Licencias de Uso de Suelo Comercial) issued to Mónica Galán Ríos, 10 September 2009; **Exhibit MG-0014**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 14 October 2015; **Exhibit MG-0015**, Land Use Certificate (Constancia de Uso de Suelo) issued to Mónica Galán Ríos, 14 October 2015; **Exhibit MG-0016**, Tulum Municipality Operating Licenses, 29 November 2010, and 19 August 2015 issued to Mónica Galán Ríos; **Exhibit MG-0018**, Permanent Signage License (Licencia de Anuncio Permanente) issued to Mónica Galán Ríos, 9 August 2010 – 9 August 2011.

³⁵⁸ **Exhibit C-0041**, Written Declaration of Court Representative María Elena Anaya Reyes, 17 June 2016.

³⁵⁹ **Exhibit R-047**, Ms. Mónica Galán Ríos' Indirect *Amparo* Petition before the Court of the Third District of the State of Quinanta Roo.

by means of which such Mexican nationals hold title to real estate located within Mexican territory or other rights the exercise of which is circumscribed to Mexican national territory.³⁶⁰

335. Article 14 of the Nationality Law adds that as regards to legal acts referred to under Article 13, Mexican nationals with dual nationality may not invoke the protection of a foreign government and if they do, they will lose, in favor of Mexico, the assets, or any other right over which the protection has been invoked.³⁶¹
336. The cited provisions, when applied to Ms. Galán, have two effects. First, they confirm that even if her investment had been made when she had dual nationality and in compliance with the laws applicable to foreigners, such investment would be considered under Mexican law as an investment made by a Mexican national. Second, had Ms. Galán invoked her Canadian nationality to seek protection from Canada, she would have lost the alleged investment to Mexico.
337. From the above set of facts, the Tribunal concludes that Ms. Galán could have not made the investment she claims in this arbitration as a Canadian national. She obtained the rights of possession, use and enjoyment of the property without complying with any of the Mexican law requirements for non-Mexicans to make investments in *ejidos* and restricted

³⁶⁰ **Exhibit R-077**, Nationality Law, Chapter II, Article 13. The original Spanish text provides: “*Artículo 13.- Se entenderá que los mexicanos por nacimiento que posean o adquieran otra nacionalidad, actúan como nacionales respecto a:*”

- I. *Los actos jurídicos que celebren en territorio nacional y en las zonas en las que el Estado Mexicano ejerza su jurisdicción de acuerdo con el derecho internacional; y*
- II. *Los actos jurídicos que celebren fuera de los límites de la jurisdicción nacional, mediante los cuales:*
 - a) *Participen en cualquier proporción en el capital de cualquier persona moral mexicana o entidad constituida u organizada conforme al derecho mexicano, o bien ejerzan el control sobre dichas personas o entidades;*
 - b) *Otorguen créditos a una persona o entidad referida en el inciso anterior; y*
 - c) *Detenten la titularidad de bienes inmuebles ubicados en territorio nacional u otros derechos cuyo ejercicio se circunscriba al territorio nacional.”*

³⁶¹ **Exhibit R-077**, Nationality Law, Chapter II, Article 14. The original Spanish text provides: **Artículo 14.-** “*Tratándose de los actos jurídicos a que se refiere el artículo anterior, no se podrá invocar la protección de un gobierno extranjero. Quien lo haga, perderá en beneficio de la Nación los bienes o cualquier otro derecho sobre los cuales haya invocado dicha protección.”*

zones. On the contrary, she made a purely Mexican investment in compliance with the requirements applicable to Mexican nationals. Therefore, if she is a Canadian national (as she claims in this arbitration) she could not have made her investment in Mexico in the manner in which she did. If she is a Mexican national as repeatedly claimed before Mexico, then she is not protected under NAFTA for her investments in Mexico.

338. To summarize, Ms. Galán made an investment in Mexico under the regime applicable to investments of Mexican nationals, and therefore she is not protected under NAFTA for purposes of such investment. The Tribunal therefore lacks jurisdiction to hear her claim.

H. WHETHER MR. ALEXANDER IS AN INVESTOR OF A QUALIFIED INVESTMENT IN MEXICO

(1) Position of the Parties

a. Respondent's Position

339. According to Respondent, it has not been proven that Ms. Galán and Mr. Alexander had qualified “investments” in accordance with NAFTA in the territory of Respondent.³⁶² To prove ownership of their investments, Ms. Galán and Mr. Alexander adduce the Transfer of Rights Agreement Between Rogelio Novelo and Mónica Galán dated 28 April 2004,³⁶³ and the Galán and Alexander Separation Agreement dated [REDACTED] [REDACTED] Respondent asserts that these documents are deficient as evidence because they are not related to Hotel Parayso and there is no evidence that the separation agreement has legal validity in Mexico to confirm Mr. Alexander’s rights over the Hotel Parayso or the plot of land on which it was built.³⁶⁵

³⁶² Memorial on Jurisdiction, ¶ 256.

³⁶³ **Exhibit C-0023**, Transfer of Rights Agreement (Contrato Privado de Cesión de Derechos) between Rogelio Novelo Balam and Mónica Galán, 28 April 2004.

³⁶⁴ **Exhibit C-0024**, Separation Agreement between Mónica Galán and Graham Alexander (Redacted), [REDACTED]

³⁶⁵ Transcript, Day 1, page 49, lines 5-12.

340. In any event, the documentation submitted by Claimants does not comply with Mexican law. The transfer of rights to Ms. Galán was not carried out in accordance with the laws of Respondent since it does not comply with any of the Agrarian Law requirements for it to be valid.
341. Further, as shown in the Purchase Agreement dated 29 November 2004,³⁶⁶ Ms. Galán entered into a sale and purchase agreement with RSM, which is not a party to this claim. Accordingly, Respondent argues that there is *prima facie* evidence that the Parayso Investments are owned by RSM, a United States company that is not a claimant in this arbitration.³⁶⁷
342. Finally, in regard to Ms. Galán and Mr. Alexander's "*property rights*" in Hotel Parayso, it is specified that the land use and operation licenses issued by the Municipality of Tulum cannot be considered proof of possession or ownership of the *ejido* parcel.

b. *Claimants' Position*

343. Claimants assert that Ms. Galán and Mr. Alexander, as representatives of RSM, rescinded their agreement to transfer the investment to RSM and agreed to share equally in the investment. Thus, upon their marital separation, they continued to own and control the investment individually.³⁶⁸
344. Even if RSM were the owner of the Parayso investment, Ms. Galán and Mr. Alexander would still be investors who own or control the investment "directly or *indirectly*." Respondent's claim that indirect ownership is "deficient" has no merit, as the Treaty expressly protects these investments.³⁶⁹

³⁶⁶ **Exhibit R-005**, United States Securities and Exchange Commission (SEC), "10-K, EX-10.6, Purchase Agreement between Mónica Galán-Ríos and Rancho Santa Mónica Developments Inc.", 29 November 2004.

³⁶⁷ Memorial on Jurisdiction, ¶ 263.

³⁶⁸ Counter-Memorial on Jurisdiction, ¶ 62.

³⁶⁹ Counter-Memorial on Jurisdiction, ¶ 64.

345. Respondent also insists that “*it has not been shown that RSM’s rights over Hotel Parayso were cancelled*” because Claimants’ document has not been “officialised”. Claimants submit that Respondent forgets that simply saying that something has not been formalized to *its* satisfaction is not the same as rebutting *prima facie* evidence. Claimants underscore that Respondent again fails to adduce any evidence to counter Claimants’ evidence on this point.³⁷⁰
346. Finally, Respondent argues that the rights of Mr. Alexander over the Parayso lot have not been demonstrated because the Galán-Alexander separation of property agreement “*is not a valid or sufficient document to show that Ms. Galán acquired rights over [the Parayso lot].*” Yet, according to Claimants, Ms. Galán acquired assets in Respondent’s territory including licenses, permits, contractual rights, and an *Ejido* Certificate of Possession. These assets constituted, among other things, an “enterprise” and “tangible and intangible” property for economic benefit under the NAFTA.³⁷¹

(2) Tribunal’s Considerations

347. The Parties dispute whether Ms. Galán and Mr. Alexander are considered investors that had an investment under the terms of NAFTA. Ms. Galán’s case was resolved by the Tribunal in Section V.G(2). Thus, the Tribunal will now assess Mr. Alexander’s individual situation and the questions of whether he is an investor of a qualified investment, and whether he has standing to file a claim against Mexico under the terms of the applicable Articles of the NAFTA.
348. The Tribunal recalls the terms of Article 1139 of the NAFTA that read as follows:

[i]nvestment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

[i]nvestor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is

³⁷⁰ Rejoinder on Jurisdiction, ¶ 184.

³⁷¹ Memorial on Jurisdiction, ¶¶ 267-270.

making or has made an investment.

349. Section B of the NAFTA concerning the “Settlement of Disputes between a Party and an Investor of Another Party” states:

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 [...].

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 [...]

350. To determine whether Mr. Alexander falls within the referred definitions and filed a claim as an investor, the Tribunal must place the alleged facts in proper context.
351. In 2004, Mr. Alexander formed Rancho Santa Monica Developments, Inc. appearing as its majority shareholder, sole director and administrator.³⁷² Later, on 29 November 2004, Ms. Galán transferred her rights and title of the western portion of the portion of Lot number 10 to RSM.³⁷³
352. In 2015, Ms. Galán and Mr. Alexander concluded a separation agreement establishing, *inter alia*, that the transfer of rights agreement dated 29 November 2004 was declared null and void. Also, the agreement specified that Ms. Galán “[s]hall transfer to Graham (‘Mr.

³⁷² **Exhibit R-008**, Government of Nevada, “Rancho Santa Monica Developments Inc.”, Business Entity Search (consulted on 6 June 2020).

³⁷³ **Exhibit MG-0007**, Purchase Agreement between Mónica Galán Ríos and Rancho Santa Monica Developments Inc., 29 November 2004.

Alexander') via the Ejido Pino Suárez and or the competent authority the portion of Parayso [...] property" (where Hotel Parayso was located).³⁷⁴

353. The Tribunal will focus its analysis on three issues. First, whether Mr. Alexander possesses rights over a portion of Lot 10; second, whether he owns or controls Hotel Parayso; and third, whether Mr. Alexander has standing as he filed the claim on his own behalf.
354. In relation to the first issue, there is *prima facie* evidence that RSM owns the rights over a portion of Lot 10. The RSM Sole Director Resolution dated 21 September 2015,³⁷⁵ establishing that the transfer of rights to RSM (Purchase Agreement between Rancho Santa Monica Developments Inc. and Mónica Galán Rios dated 29 November 2004)³⁷⁶ was declared null and void by Ms. Galán and Mr. Alexander. The original agreement was signed by RSM and Ms. Galán and the resolution purportedly annulling the agreement is only signed by Mr. Alexander as president and director of RSM, but it was not signed by Ms. Galán.
355. Further, even if the document made the transfer of rights null and void, there is no evidence showing that Ms. Galán executed the Separation Agreement and actually transferred 50% of the ownership of the portion of Lot 10-Hotel Parayso to Mr. Alexander; therefore, there is no evidence to confirm that Mr. Alexander has any rights over said property.
356. In regards the second issue, under the separation agreement, it was agreed that all accounts from Hotel Parayso be re-registered in the name of RSM, all income generated by Hotel Parayso be deposited into the RSM bank account and that Mr. Alexander oversee the management of the hotel.

³⁷⁴ **Exhibit C-0024**, Separation Agreement between Mónica Galán and Graham Alexander (Redacted), ¶ 11.

³⁷⁵ **Exhibit MG-0024**, Resolution of Rancho Santa Monica Development's Sole Director, 21 September 2015.

³⁷⁶ **Exhibit MG-0007**. Purchase Agreement between Mónica Galán Ríos and Rancho Santa Monica Developments Inc., 29 November 2004.

357. As Claimants argue, “*Ms. Galán acquired assets in Respondent’s territory including licenses, permits, contractual rights, and an Ejido Certificate of Possession. These assets constituted, among other things, an ‘enterprise’ and ‘tangible and intangible’ property for economic benefit under the NAFTA.*”³⁷⁷ The Tribunal observes that shortly after the separation agreement (October 2015), several licences and certificates (including the Construction Regularization License,³⁷⁸ a Land Use License,³⁷⁹ Authorization to the operation of the hotel and the restaurant,³⁸⁰ and Permanent Signage License³⁸¹) were issued by the Urban Development Office to Ms. Galán. None of these documents presented Mr. Alexander as the owner or administrator of the fraction lot in question, nor Hotel Parayso. Thus, as all income and economic interests of Hotel Parayso were agreed to be under the RSM accounts, and every single certificate and license related to Hotel Parayso was issued in the name of Ms. Galán, there is no evidence that Mr. Alexander owned or controlled Hotel Parayso.
358. Thirdly, Respondent argues that there is *prima facie* evidence that the Parayso Investments are owned by RSM, a United States company that is not a claimant in this arbitration.³⁸² Claimants challenge this position by arguing that even if RSM were the owner of the Parayso Investment, Ms. Galán and Mr. Alexander would still be investors who own or control the investment “*directly or indirectly*”, and the NAFTA expressly protects these investments.³⁸³

³⁷⁷ Rejoinder on Jurisdiction, ¶ 186.

³⁷⁸ **Exhibit MG-0014**, Construction Regularization License (Regularización de Obra) issued to Mónica Galán Ríos, 14 October 2015.

³⁷⁹ **Exhibit MG-0015**, Land Use Certificate (Constancia de Uso de Suelo) issued to Mónica Galán Ríos, 14 October 2015.

³⁸⁰ **Exhibit MG-0016**, Tulum Municipality Operating Licenses, 29 November 2010, and 19 August 2015 issued to Mónica Galán Ríos.

³⁸¹ **Exhibit MG-0018**, Permanent Signage License (Licencia de Anuncio Permanente) issued to Mónica Galán Ríos, 9 August 2010 – 9 August 2011.

³⁸² Memorial on Jurisdiction, ¶ 263.

³⁸³ Counter-Memorial on Jurisdiction, ¶ 64.

359. As it is expressly stated in the NAFTA, an investor may file a claim against the other Contracting Party on its own behalf or on behalf of an enterprise (Articles 1116 and 1117). To this Tribunal, the question is not whether Mr. Alexander had indirect control of RSM. Rather, this Tribunal considers that the issue rests in the fact that Mr. Alexander filed a claim as “an investor on its own behalf” and not on behalf of RSM, which, as was previously explained, appears to be *prima facie* the owner of the rights of the Parayso Investment.
360. As it is well established in international law, a company is legally distinct from its shareholders. In this case, RSM is considered an independent legal entity with rights and its own assets. Thus, Mr. Alexander has no standing to pursue claims directly over the assets of RSM, as he filed the claim on his behalf.
361. Based on the above, the Tribunal finds that all documents and licenses invoked by Mr. Alexander were in the name of Ms. Galán or at a given point in time, in the name of RSM, which is not a party to this arbitration. There is no document or other evidence that mentions Mr. Alexander as holder of the rights he now claims. Therefore, there is no evidence that Mr. Alexander is an investor of a qualified investment under the terms of NAFTA. Mr. Alexander could have invoked purported investments he made himself as the subject of his claim or investments made by RSM, a company in which he was a shareholder. But he did not. Even if RSM owned the rights, he filed a claim on his own behalf and not on behalf of RSM. Thus, the Tribunal finds that it does not have jurisdiction over Mr. Alexander’s claims in the present arbitration.

VI. OTHER RELIEF

362. Claimants have, additionally, requested that the Tribunal order such other remedy that the Tribunal “deems appropriate”. The Tribunal finds that it cannot entertain such claims for patent lack of specificity, let alone grant any relief thereunder.

VII. COSTS

363. Claimants, collectively, and Respondent have requested that costs and fees be paid by the other side.
364. Claimants have submitted the following claim for costs:³⁸⁴

| | |
|--|------------------------|
| 1. Total fees accrued by Partners | \$ 2,709,032.75 |
| 2. Total fees accrued by non-partner lawyers | \$ 7,453,377.50 |
| 3. Total fees accrued by paralegals and other Shook, Hardy & Bacon, LLP, staff | \$ 1,063,189.00 |
| 4. ICSID and Tribunal fees | \$ 400,000.00 |
| 5. Expert and consultant fees | |
| a. Agrarian Law Expert | \$ 87,683.53 |
| b. Damages Expert | \$ 44,599.04 |
| c. Mexican Law Consultants | \$ 142,583.67 |
| d. Private Investigator | \$ 82,318.11 |
| 6. Transportation, meals, and lodging | \$ 21,927.45 |
| 7. Translation services | \$ 8,164.03 |
| 8. Other expenses (copies, delivery, etc.) | \$ 38,729.90 |
| Total | \$12,051,604.98 |

365. Respondent has submitted the following claims for costs:³⁸⁵

| | | |
|---------------------|-------------------------------|----------------|
| ICSID Advances | ICSID | USD 400,000.00 |
| External Consultant | Tereposky and De Rose, LLP | USD 603,955.00 |

³⁸⁴ Claimants' Statement of Costs, p. 1.

³⁸⁵ Respondent's Statement of Costs, p. 1.

| | | |
|--------|-------------------|------------------|
| Expert | OH Abogados, S.C. | USD 51,176.47 |
| Total | | USD 1,055,131.47 |

366. The Tribunal's decision on costs is governed by Articles 38 to 40 of the UNCITRAL Rules.
367. Further to Article 38 of the UNCITRAL Rules, the Tribunal's fees and expenses and ICSID's administrative fee and direct expenses amount to (in USD):

Arbitrators' fees and expenses

| | |
|-----------------------------|--------------------------|
| Prof. Eduardo Zuleta | 215,000.00 |
| Dr. Charles Poncet | 34,937.50 |
| Mr. Christer Söderlund | 123,875.00 |
| ICSID's administrative fees | 126,000.00 |
| Direct expenses (estimated) | 84,207.10 |
| Total | <u>584,019.60</u> |

368. The above costs have been paid out of the advances made by the Parties in equal parts.
369. Article 40 of the UNCITRAL Rules provides as follows:

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

370. Article 40(1) does not impose on the Tribunal the obligation to apply the principle of “loser pays” as regards costs of the arbitration, but rather sets a rule from which the Tribunal may depart at its discretion if it determines that a different apportionment is reasonable *“taking into account the circumstances of the case.”* As regards costs of legal representation and assistance, Article 40(2) grants the Tribunal ample discretion to reasonably apportion such costs considering the particular circumstance of the case.
371. In the present case, even though the Tribunal concluded that it lacked jurisdiction over Claimants’ claims, the Tribunal had to deal with sophisticated, complex and new legal issues alleged by Claimants. Moreover, in evaluating the facts and evidence presented, the Tribunal has found no procedural misconduct, frivolous claims, or abuses of the arbitral proceedings. On the contrary, the Parties behaved professionally and efficiently.
372. Based on the above the Tribunal decides that Claimants, collectively, and Respondent bear in equal share the costs of the arbitration and that they bear their own legal and assistance costs expended in connection with this arbitration.

VIII. DECISION

373. For the reasons set forth above, the Tribunal decides as follows:
- (1) The Tribunal does not have jurisdiction over the claims filed by Claimants Mr. Carlos Esteban Sastre, Mr. Renaud Jacquet, Mr. Graham Alexander, Ms. Mónica Galán Ríos, Mr. Eduardo Nuno Vaz Osorio dos Santos Silva and Ms. María Margarida Oliveira Azevedo de Abreu.
 - (2) All other requests for relief are rejected.
 - (3) Claimants and Respondent shall bear the costs of the arbitration in equal share and each Claimant and Respondent shall bear their respective costs for legal and other assistance expended in connection with this arbitration.

Place of Arbitration: Washington, D.C., United States

Date: 21 November 2022

[signed]

Dr. Charles Poncet
Arbitrator

Mr. Christer Söderlund
Arbitrator

Prof. Eduardo Zuleta
President of the Tribunal

Place of Arbitration: Washington, D.C., United States

Date: 21 November 2022

[signed]

Dr. Charles Poncet
Arbitrator

Mr. Christer Söderlund
Arbitrator

Prof. Eduardo Zuleta
President of the Tribunal

Place of Arbitration: Washington, D.C., United States

Date: 21 November 2022

Dr. Charles Poncet
Arbitrator

Mr. Christer Söderlund
Arbitrator

[signed]

Prof. Eduardo Zuleta
President of the Tribunal