

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Espíritu Santo Holdings, LP and Libre Holding, LLC

Claimants

v.

United Mexican States

Respondent

(ICSID Case No. ARB/20/13)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

March 7, 2022

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Introduction

On January 26, 2022, Espiritu Santo Holdings, LP (“**ESH**”) filed a letter “seeking the Tribunal’s agreement to have the claims of the Claimant’s wholly owned subsidiary, L1bre Holding, LLC (“**L1bre Holding**”), heard together with those of [ESH] before this Tribunal”, indicating that it believed it had reached agreement with the Respondent in this regard, proposing a new procedural calendar, and requesting that the Tribunal: (i) accept the agreement reached by the parties to have L1bre Holding’s claims heard as part of the present proceedings; (ii) provide an updated declaration, pursuant to Rule 6 of the ICSID Arbitration Rules, together with any disclosures necessary to give effect to the parties’ proposal to add L1bre Holding as a party to these proceedings; and (iii) issue a revised procedural calendar reflecting the revised dates agreed by the parties.

On January 31, 2022, the United Mexican States (“**Mexico**”) informed the Tribunal that it had no objection to ESH’s proposal, subject to the Tribunal’s acceptance of the parties’ proposal and the Tribunal’s authorization of the proposed procedural calendar. In the same letter, Mexico stressed that its agreement did not amount to an acceptance of jurisdiction and admissibility of these cases, and the claimants’ claims. Mexico therefore reserved its right to bring objections as to jurisdiction and admissibility in due course.

On February 21, 2022, the Tribunal informed the parties how it proposed to proceed in order to implement the parties’ agreement, and circulated a draft procedural order on the addition of L1bre Holding as a claimant to this proceeding.

On March 1, 2022, L1bre Holding filed a letter consenting to having its claims heard together in this proceeding, confirming that it had no objections to the constitution of the Tribunal in this proceeding, and agreeing to adopt (i) all of the submissions made so far by ESH subject to its “Supplement to Claim Memorial” which the Tribunal understands was transmitted to Mexico on 28 January 2022, and (ii) all of the procedural steps taken in ICSID Case No. ARB/20/13.

On the same date, L1bre Holding filed a letter with the Secretary-General on behalf of the parties to ICSID Case No. ARB/21/55, copying the Tribunal, notifying the parties’ agreement to discontinue ICSID Case No. ARB/21/55 upon dispatch of the present order adding L1bre Holding as a claimant to ICSID Case No. ARB/20/13.

On March 1, 2022, Mexico informed the Tribunal that it did not have any comments on the draft Procedural Order No. 2.

On March 3, 2022, Mexico confirmed its agreement with the content of the submission made on March 1, 2022, by the representatives of L1bre Holding and ESH in ICSID Case No. ARB/21/55.

On March 4, 6 and 7, 2022, the Members of the Tribunal signed their respective updated declarations pursuant to ICSID Arbitration Rule 6(2).

Order

Further to the Parties' agreement, the Tribunal orders as follows:

1. Addition of L1bre Holding as a Claimant to this proceeding

- 1.1. In the light of the agreement reached between ESH, L1bre Holding and Mexico, as set out above, Espíritu Santo Holdings, LP and L1bre Holding, LLC shall be the Claimants in ICSID Case No. ARB/20/13, and the United Mexican States shall be the Respondent.
- 1.2. Further to L1bre Holding and Mexico's agreement, as set out above, ICSID Case No. ARB/21/55 shall be discontinued by the Secretary-General pursuant to ICSID Arbitration Rule 43 upon dispatch of this Order.
- 1.3. The Tribunal accepts the Procedural Calendar agreed upon by the parties, as reflected in **Annex A** to this Order.
- 1.4. Procedural Order No. 1 shall continue to apply unchanged to this proceeding, subject to the provisions below and to the amended Procedural Calendar.
- 1.5. The Tribunal notes that L1bre Holding accepts all procedural steps taken in ICSID Case No. ARB/20/13, as well as the submissions made by ESH, subject to the "Supplement to Claim Memorial" which the Tribunal understands was transmitted to Mexico on January 28, 2022 and is to be transmitted to the Tribunal upon dispatch of this Order.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on January 27, 2021 in accordance with Article 1123 of NAFTA, the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The parties agree to have L1bre Holding's claims heard by the Tribunal constituted in this proceeding on January 27, 2021.
- 2.3. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on January 27, 2021. Further to the parties' agreement to add L1bre Holding as a claimant to this proceeding, the

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Members of the Tribunal submitted updated declarations under Rule 6(2), which were distributed to the parties by the ICSID Secretariat on March 7, 2022.

- 2.4. The parties have no objections to the addition of L1bre Holding to this proceeding, or to the way that it has been implemented.
 - 2.5. The Members of the Tribunal confirmed that they are and shall remain impartial and independent of the parties. Each of the Members of the Tribunal confirmed that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
3. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
 - 3.1. The parties agree that the costs of the proceeding, including those related to the implementation of the agreement to add L1bre Holding as a claimant to this proceeding, shall be covered with the advance payments made by the parties in ICSID Case No. ARB/20/13.
4. References to Annex B in Procedural Order No. 1 (paragraphs 14.1, 20.3, 23.1, 24.3, 25.1 and 25.3)
Arbitration Rules 13, 20(1)(c), 20(1)(e), 29 and 31
 - 4.1. All of the references to Annex B in Procedural Order No. 1 shall be read as references to the modified Procedural Calendar jointly proposed by the parties on January 26, 2022, as reproduced in **Annex A** to this Order.

[Signed]

Mr. Eduardo Zuleta Jaramillo
President of the Tribunal
Date: March 7, 2022

ANNEX A

PROCEDURAL CALENDAR

Description	By	Days	Date
L1bre Holding brief supplement to Claim Memorial	L1bre Holding		January 28, 2022
Counter-Memorial	Respondent	189 days from Memorial + 6 weeks	May 6, 2022
Requests for Production of Documents	Claimants and Respondent	4 weeks from the date of the Counter Memorial	June 3, 2022
Production of Non-Objected Documents (on a rolling basis, if necessary); Objections to Document Requests	Claimants and Respondent	4 weeks from the Requests for Production of Documents	July 1, 2022
Reply to Objections to Document Requests	Claimants and Respondent	3 weeks from the Objections to Document Requests	July 22, 2022
Decision on Requests	Tribunal	2 weeks from Reply to Objections to Document Requests	August 5, 2022
Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	Claimants and Respondent	5 weeks from Decision on Requests	September 9, 2022
Reply	Claimants	42 days from Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	October 21, 2022
Rejoinder	Respondent	97 days from Reply	January 26, 2023
Submissions under NAFTA Article 1128	Non-disputing NAFTA Parties	2 weeks from Rejoinder	February 9, 2023
Comments to 1128 Submissions	Claimants and Respondent	2 weeks from Submissions under NAFTA Article 1128	February 23, 2023

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Notification of Witnesses and Experts (if necessary)	Claimants and Respondent	2 weeks from Comments to 1128 Submissions	March 9, 2023
Pre-Hearing Organizational Meeting (if necessary)	All	1 week from Notification of Witnesses and Experts	March 16, 2023
Hearing	All	8 weeks from last submission*. The Tribunal will hold in reserve six days.	Beginning April 24, 2023
Award	Tribunal		TBD

* The tribunal considers that it needs no less than eight (8) weeks between the last pleadings and the hearing to prepare for the hearing. If the parties agree on modifications to the procedural calendar that affect the aforesaid eight-week term the Tribunal may, after consulting the parties, modify the date of the hearing.