

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/21/14

BETWEEN:

FIRST MAJESTIC SILVER CORP.

Claimant/Investor

- and -

GOVERNMENT OF UNITED MEXICAN STATES

Respondent/Contracting Party

CLAIMANT'S ANCILLARY CLAIM MEMORIAL

October 21, 2025

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GLOSSARY

TERM	DEFINITION
2010 Tax Reassessment	SAT assessment of the alleged tax deficiency of a total of [REDACTED] for Fiscal Year 2010
Ancillary Claim	Claim set forth in Claimant's Ancillary Claim Memorial, dated October 21, 2025
APA	Advance Pricing Agreement entered into by the SAT with PEM in 2012 to establish the methodology for transfer pricing
Banamex Account	Account held in the Banco Nacional de México, S.A. Integrante del Grupo Financiero Banamex
Banorte Account	Account held in the Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte
CFM	Corporación First Majestic, S.A. de C.V.
Claimant	First Majestic Silver Corp.
DTTs	Double taxation treaties
First Majestic	First Majestic Silver Corp.
Freeze Orders	Official Letters Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970 from the SAT, dated April 3, 2020, ordering the freezing of PEM's accounts held at HSBC, Banco Monex, BBVA, Banamex
FX	Foreign exchange
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ICSID Arbitration Rules	2006 Rules of Procedure for Arbitration Proceedings
ILC Articles on State Responsibility	International Law Commission's Articles on State Responsibility

Claimant's Memorial	<i>First Majestic Silver Corp. v. United Mexican States</i> , ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022
MAP	Mutual Agreement Procedure
Mexico	United Mexican States
NAFTA	North American Free Trade Agreement
PEM	Primero Empresa Minera S.A. de C.V.
PMC	Primero Mining Corporation
PM Decision	Decision on Provisional Measures, dated May 26, 2023
P.O. No. 7	Procedural Order No. 7
PSM	Primero Servicios Mineros S.A. de C.V.
Realized Price	The actual realized price on the sale of silver based on a long-term supply arrangement
Claimant's Request for Provisional Measures	<i>First Majestic Silver Corp. v. United Mexican States</i> , ICSID Case No. ARB/21/14, Claimant's Request for Provisional Measures, dated January 4, 2023
Respondent	United Mexican States
Revocation Request	Respondent's Request for Revocation of Decision on Provisional Measures
SAT	Servicio de Administración Tributaria
TFJA	Tribunal Federal de Justicia Administrativa
USMCA	United States-Mexico-Canada Agreement
VAT	Value Added Tax
VAT Impediment	Impediment imposed by the SAT denying PEM access to the Value Added Tax Refunds held in its Mexican bank accounts
VATL	<i>Ley del Impuesto al Valor Agregado</i> or Value Added Tax Law

VATLR	<i>Reglamento de la Ley del Impuesto al Valor Agregado</i> or Value Added Tax Law Regulations
VAT Refunds	Value Added Tax Refunds
VCLT	Vienna Convention on the Law of Treaties

I. INTRODUCTION

1. In accordance with the Tribunal’s Procedural Order No. 7 (“**P.O. No. 7**”) dated September 7, 2025, First Majestic Silver Corp. (“**First Majestic**” or the “**Claimant**”), on its own behalf and on behalf of its investment in Mexico, Primero Empresa Minera S.A. de C.V. (“**PEM**”), hereby submits this Memorial in support of its ancillary claim (the “**Ancillary Claim**”) against the United Mexican States (“**Mexico**” or the “**Respondent**”), pursuant to Article 1120(1) of the North American Free Trade Agreement (“**NAFTA**”), Article 46 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”), and Rule 40 of the 2006 ICSID Arbitration Rules (the “**ICSID Arbitration Rules**”).

2. The Ancillary Claim is advanced under Section B of NAFTA and the “legacy investment” provisions contained in Annex 14-C of the United States–Mexico–Canada Agreement (“**USMCA**”). It is undisputed that PEM is entitled to value-added tax refunds arising from its silver export activities connected to its San Dimas mining operation (the “**VAT Refunds**”). This Ancillary Claim arises from the Respondent’s unlawful refusal to allow PEM access to the VAT Refunds.

3. To impede PEM’s access to the VAT Refunds, the Respondent’s tax authority, on April 3, 2020, the *Servicio de Administración Tributaria* (“**SAT**”), froze all of PEM’s bank accounts in Mexico, including the bank account into which the VAT Refunds were being deposited, all of which are necessary for the conduct of PEM’s business operations.

4. The freezing measures on PEM’s accounts were implemented without regard to the operational consequences for a going concern engaged in large-scale mining activities in Mexico for over twenty years. These measures were taken despite PEM’s ongoing domestic legal challenges and recourse to international instruments available to address the underlying tax disputes.

5. The freeze orders—and related measures, including the SAT’s denials of PEM’s applications to provide a guarantee to release the funds from the frozen bank accounts (“**VAT Impediment**”), were confiscatory, arbitrary and discriminatory. They strangled PEM’s ability to operate in Mexico by cutting off access to working capital and routine cash management operations necessary for day-to-day business activities. These measures were imposed despite PEM’s active

pursuit of all available remedies to challenge the SAT's claims, including administrative appeals, constitutional challenges in Mexican courts, and invocation of the Mutual Agreement Procedure under Mexico's double taxation treaties ("MAP").¹ The measures were adopted in connection with the SAT's repudiation of an Advance Pricing Agreement (the "APA"), which the Respondent acknowledged remained binding unless and until revoked by a final judgment of the Mexican Supreme Court.²

6. The SAT froze PEM's operating accounts—even those with minimal balances—while PEM, a Canadian-owned mining enterprise with assets exceeding [REDACTED], was already subject to liens and charges imposed by the SAT. The scale and scope of the freezing measures bore no reasonable relationship to the alleged fiscal risk.

7. As detailed below, the blanket freeze of all PEM bank accounts was arbitrary and discriminatory, and very likely retaliatory.

8. The SAT's actions placed PEM's mining operations at perilous risk of immediate [REDACTED]. The freezes were implemented notwithstanding an injunction prohibiting such measures and in contravention of Mexican legal requirements that a taxpayer has to maintain continuous access to funds needed to meet payroll, payroll taxes, obligations pursuant to land access agreements with its surrounding Ejidos,³ license fees associated with mining concessions and other mandatory obligations.

9. These freezing measures formed part of a broader pattern of coercive and excessive measures pursued since 2015 in a campaign to force PEM to pay alleged tax liabilities purportedly relating to the 2010–2014 period—fiscal years that were the subject of the APA. These enforcement measures were not designed to secure legitimate tax collection within the bounds of due process, but rather to exert unlawful pressure while the validity of the asserted tax liabilities remained contested.

¹ See *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Memorial, dated April 25, 2022 ("Claimant's Memorial"), ¶¶ 108-124.

² See Claimant's Memorial, ¶¶ 81-85; see also *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Respondent's Counter-Memorial, dated November 25, 2022, ¶ 4.

³ Special protected group of individuals that hold communal ownership of the land.

10. The Claimant was singled out for coercive tactics because it declined to pay disputed amounts while the APA remained in force, even as other multinational companies operating in Mexico capitulated to governmental pressure and made payments characterized as back taxes. The Claimant’s principled refusal to pay amounts claimed by the SAT as owing, based on its legitimate reliance on its legal rights—particularly in light of the existence of the APA—prompted rebukes from the highest levels of government, including the President of Mexico.

11. A blanket freeze of all PEM bank accounts was unnecessary, disproportionate, and immediately destructive to the viability of PEM’s operations. Any legitimate collection interests could have been safeguarded through less intrusive, targeted, and lawful measures consistent with due process and proportionality.

12. The SAT implemented these measures without notice to PEM, despite the foreseeability that such actions could cripple PEM’s operations and irreparably harm the Claimant’s investment. The Respondent failed to calibrate its enforcement actions to avoid inflicting collateral damage unrelated to any legitimate, adjudicated tax claim.

13. These draconian measures violated Mexican law, as further discussed below, and breached multiple obligations under NAFTA Chapter 11, as extended via the legacy investment protections of the USMCA, including the obligation to afford fair and equitable treatment (Article 1105), free transfers (Article 1109), and compensation for expropriation (Article 1110).

14. The VAT Refunds are currently held in two Mexican bank accounts: (1) the account held in the Banco Nacional de México, S.A. Integrante del Grupo Financiero Banamex (“**Banamex Account**”) and (2) the account held in the Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte (“**Banorte Account**”).

15. As illustrated in Table 1 below, the total amount of VAT Refunds held in the Banamex Account is [REDACTED], or [REDACTED].

Table 1: Total VAT Refunds Deposited in Banamex Account

Year	Amount of the VAT Refunds owed to PEM (MXP)	Amount of the VAT Refunds owed to PEM (USD)
2021		
2022		
2023		
TOTAL		⁴

16. As further illustrated in Table 2 below, the total amount of VAT Refunds held in the Banorte Account currently is , or .

Table 2: Total VAT Refunds Deposited in Banorte Account

Year	Amount of the VAT Refunds owed to PEM (MXN)	Amount of the VAT Refunds owed to PEM (USD)
2024		
2025		
TOTAL		

17. This Ancillary Claim covers amounts of PEM’s VAT Refunds held in the Banamex Account from April 2020 to January 4, 2023, which remain inaccessible with no indication from the SAT that they will ever become accessible to PEM. The Ancillary Claim does not include VAT Refunds held in both the Banamex Account and the Banorte Account that, based on the same government measures, have accrued after January 4, 2023,⁵ the effective date of the Tribunal’s PM Decision. The PM Decision required the Respondent to deposit VAT Refunds in a new bank account, the Banorte Account, which was opened by PEM for that specific purpose and was required by the PM Decision to remain fully accessible to PEM. The Respondent has throughout the period starting in April 2020 until now been intransigent in refusing to release these VAT

⁴ This includes amounts accumulated after January 4, 2023, that the SAT has failed to transfer to the Banorte Account as required by the Tribunal’s Decision on Provisional Measures dated May 26, 2023 (“**PM Decision**”).

⁵ For a brief period of time, from March 1, 2024-August 29, 2024, the Respondent complied with the Tribunal’s Order on Provisional Measures and deposited VAT Refunds into PEM’s unfrozen Banorte account as well as transferred certain sums that had accumulated in the Banamex account from January 2023.

Refunds to PEM. It has unlawfully rejected offers from PEM to provide guarantees requiring it to pay if the SAT's position ultimately prevails (after PEM has exhausted all available legal challenges).

18. This illegal conduct of the Respondent which started in April 2020 and has since continued is causing ongoing losses to PEM and the Claimant. The severity and continuity of PEM's and the Claimant's losses can be mitigated at any time by the SAT, if it agrees to the immediate release of the funds that are in the Banamex Account and relate to the period April 2020 to January 2023.

19. It is patently evident that the Respondent's measures are not constrained by Mexico's own laws or international obligations. It is clearly willing, when it suits its political purposes, to blatantly violate binding international laws including orders issued by this Tribunal. This is confirmed by the fact that the Respondent had been refusing to release for over two years the VAT Refunds in the Banamex Account that accrued after January 4, 2023 (as required by the Tribunal's Decision on Provisional Measures). Additionally, it has kept additional VAT Refunds amounts frozen in the Banorte Account by the imposition on August 29, 2024, of the new and illegal freezing measure expressly prohibited by the Tribunal's Decision on Provisional Measures.

20. Accordingly, the Claimant reserves its right, pursuant to Rule 40 of the ICSID Arbitration Rules, to supplement its claim for damages, for the period as of January 4, 2023, i.e., the amounts held in the Banamex Account and Banorte Account as they continue to accrue as well as for related losses. This eventuality of supplementing its claim for damages will become necessary if the Respondent fails to comply fully and promptly with the Tribunal's Provisional Measures Order.

II. FACTS

A. The Respondent's Repudiation of the APA Led to the VAT Impediment

21. The VAT Impediment is part of the continuous pattern of coercive and continuous conduct used by the Respondent to pressure the Claimant into paying patently unreasonable and unlawful tax assessments, even while the SAT's attempts to repudiate the APA is ongoing.

22. The APA is a legally binding agreement between PEM and the SAT which establishes the methodology for calculating revenues from the sale of silver for a defined five-year period.⁶ It also confirmed that the actual realized price (“**Realized Price**”) on the sale of silver based on a long-term supply arrangement was consistent with the arm’s length principle.⁷ It is undisputed that PEM complied with the terms of the APA at all times.⁸ The terms of the APA concluded in 2012 are legally binding on the SAT and, therefore, must be respected when assessing any taxable business activity carried out within the covered 5-year period (2010-2014).

23. Beginning in 2015, Mexico and the SAT began an illegal campaign aimed at repudiating the APA with retroactive effect, including but not limited to initiating the *Juicio de Lesividad*,⁹ issuing illegal tax reassessments,¹⁰ engaging in the public naming and shaming of First Majestic by the former President Lopez Obrador and other senior government officials,¹¹ the freezing of PEM’s bank accounts, imposing charges and liens against PEM’s parcels of lands and mining concessions, rejecting PEM’s guarantee applications filed in order to unfreeze the bank accounts,¹² and as described in this Ancillary Claim Memorial, illegally refusing to grant First Majestic access to its VAT Refunds.

24. Specifically, as part of its campaign to repudiate the APA, the SAT undertook audits for the fiscal years 2010 to 2014 of PEM, followed by the imposition of capricious tax reassessments (plus penalties, interest and inflation adjustments) which fully ignored the transfer pricing methodology that was approved by the SAT in the APA.¹³ The Respondent also barred PEM from appealing these reassessments and seeking available remedies under the applicable provisions of the avoidance of double taxation agreements.

⁶ Claimant’s Memorial, ¶¶ 46, 69.

⁷ Claimant’s Memorial, ¶¶ 46, 70.

⁸ Claimant’s Memorial, ¶ 71.

⁹ Claimant’s Memorial, ¶¶ 91-92.

¹⁰ Claimant’s Memorial, ¶¶ 106-107.

¹¹ Claimant’s Memorial, ¶¶ 332-333, 338, 340; *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Claimant’s Request for Provisional Measures, dated January 4, 2023 (“**Claimant’s Request for Provisional Measures**”), ¶¶ 122(a), 122(f)-(g).

¹² Claimant’s Memorial, ¶¶ 6, fn. 11, 158(i).

¹³ Claimant’s Memorial, ¶¶ 47, 106.

25. Thereafter—and specific to the Ancillary Claim—as part of the enforcement measures to secure assets, the Respondent imposed a freeze on all of PEM’s operating bank accounts even those with minimal balances (notwithstanding that PEM offered to provide guarantees on two separate occasions to secure SAT’s collection actions after final adjudication of PEM’s tax liability, if any. Both offers to provide guarantees were illegally rejected by the SAT).¹⁴

26. The SAT’s freeze orders stated:

The taxpayer indicated in the following paragraph has tax debts that are disputed and are not properly guaranteed and is in the following situation:

d) When the seizure of goods has been carried out whose value is insufficient to satisfy the tax interest or the value of which is unknown, it is therefore appropriate for this Decentralized Collection Administration to exercise the immobilization procedure provided for in Article 156-Bis of the Federal Tax Code, for which reason the instructions detailed later are issued.¹⁵

27. Thus, the VAT Impediment was the Respondent’s means of effectuating and enforcing its illegal repudiation of the APA.

B. The Respondent’s VAT Impediment Is Unjustified and Unlawful

28. The Respondent’s VAT Impediment is unjustified and unlawful. First, this Section demonstrates that PEM is undisputedly entitled to all VAT Refunds at issue in this case, i.e., held in the Banamex Account. Not only is Mexican law clear on this point, but also the Respondent’s own actions and statements in these proceedings confirm this fact.

29. Second, this Section sets out the facts behind the Respondent’s gross misconduct in relation to the VAT Impediment, including; (1) the unlawful freezing of all of PEM’s bank accounts including those essential for its operations; (2) the unlawful denial of PEM’s applications to

¹⁴ Claimant’s Memorial, ¶ 142.

¹⁵ Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8, **C-0002, pp. 4952-4959**. The freeze order stated: “La contribuyente que se indica en el párrafo siguiente tiene adeudos fiscales que se encuentran impugnados y no están debidamente garantizados y se ubica en el siguiente supuesto:

d) Cuando se hubiera realizado el embargo de bienes cuyo valor sea insuficiente para satisfacer el interés fiscal o se desconozca el valor de éstos, por lo que procede que esta Administración Desconcentrada de Recaudación ejerza el procedimiento de inmovilización previsto en el artículo 156-Bis del Código Fiscal de la Federación, razón por la cual se emiten las instrucciones que más adelante de detallan.”

provide guarantees; (3) the Respondent's refusal to provide PEM access to all of its VAT Refunds owing from January 4, 2023 onwards, in contravention of the Tribunal's PM Decision; and (4) the public shaming of First Majestic by Respondent's senior government officials which targeted the company.

1. PEM Is Entitled to the VAT Refunds

30. PEM enjoys full rights to its VAT Refunds under Mexican law, as has been acknowledged repeatedly by the Respondent.

a. Mexican law establishes PEM's right to the VAT Refunds

31. Under Mexican law, PEM is legally entitled to the VAT Refunds. The Value Added Tax ("VAT") refund process is governed by various laws and regulations, including the Ley del Impuesto al Valor Agregado or Value Added Tax Law ("VATL"), the Reglamento de la Ley del Impuesto al Valor Agregado or Value Added Tax Law Regulations ("VATLR"), the Código Fiscal de la Federación or Federal Tax Code, and, procedurally, by the Resolución Miscelánea Fiscal (*i.e.*, the Miscellaneous Tax Resolution) published each year by the SAT.¹⁶

32. The VATL establishes that Mexican and foreign entities and individuals are required to pay VAT at a rate of 16% when engaged in commercial activities in Mexico, which includes the sale of goods and the rendering of services.¹⁷

33. Mexico, like most other countries that have VAT systems, applies preferential rates to some prescribed goods and services, including by making them either "exempt" or "zero rated." Regarding zero-rated goods, the law not only abstains from taxing the transaction resulting in the transfer of the goods, but it also allows the supplier to obtain credit for the VAT that it was required

¹⁶ See Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**; Reglamento de la Ley del Impuesto al Valor Agregado, initially published December 4, 2006, last revised September 25, 2014, **C-0088**; Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**; Resolución Miscelánea Fiscal para 2025, dated December 30, 2024, **C-0089**. The Resolución Miscelánea Fiscal published in 2024 is the most recent version.

¹⁷ See Art. 1, Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**.

to pay on inputs.¹⁸ This generally allows taxpayers carrying out zero-rated activities to recover all of the VAT previously paid by obtaining refunds, making the whole supply chain free of VAT.

34. According to the VATL, the tax is calculated on a monthly basis and reported and paid through the filing of a tax return.¹⁹ When filing the return, taxpayers declare the amount of VAT paid to suppliers on inputs, and can deduct this amount from the VAT collected when supplying their goods and services, before applying the applicable rate (16% or 0%) on the difference between those two amounts.²⁰

35. In the case of zero-rated goods, since the VAT on inputs can be credited against the VAT collected when selling such goods (at the rate of 0% in the case of exports), a favorable balance is generated which the taxpayer can request as a refund.²¹ Among the zero-rated activities set forth in the VATL are the export of goods and services which, in the present case, generated the VAT-favorable balances that were requested by PEM and whose validity was never questioned by the SAT.

36. To obtain a VAT refund under Mexican law, two essential requirements must be met. First, the refund must be requested within the prescribed time limit by the taxpayer (i.e., no later than 5 years from when the monthly tax return was filed for the relevant transaction, or had to be filed under Mexican law).²² Second, the VAT paid on inputs has to fulfill the following requirements:

- a) The VAT paid must correspond to taxable activities under the VATL (sale or rent of goods, rendering of independent services, or the import of goods or services).

¹⁸ See Arts. 2-A, 4, Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**.

¹⁹ See Arts. 1, 5-D, Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**.

²⁰ See Art. 5-D, Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**.

²¹ See Art. 6, Ley del Impuesto al Valor Agregado, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**.

²² See Art. 22, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

- b) The VAT paid must be expressly shown as being charged on a valid tax invoice.
- c) The VAT must have been paid by the taxpayer in the month in which it is claimed as a credit.
- d) The taxpayer must comply with withholding tax obligations (if applicable).²³

37. The VAT paid corresponds to an expense item for goods and services that qualifies for deductibility for income tax purposes. This means that the taxpayer also has to comply with the requirements for deductible expenses in the *Ley del Impuesto sobre la Renta* (i.e., Income Tax Law), including:

- a) That the expense be strictly necessary for the taxpayer's activities;
- b) That the expense be duly entered in the taxpayer's accounting records;
- c) That the expense be supported by a tax invoice and paid through a bank wire-transfer, check, credit or debit card;
- d) That the expense be considered as deductible only once; and
- e) That income tax withholding obligations are fulfilled.²⁴

38. To obtain a VAT refund, the taxpayer must file a request pursuant to the Miscellaneous Tax Resolution via the SAT's electronic portal.²⁵ In the refund procedure, the SAT may request the taxpayer to provide supporting information that the creditable VAT complies with the aforementioned requirements, which usually includes proof of VAT payments, proof that the expenses were duly entered in the taxpayer's accounting records, proof that the expenses are

²³ See Art. 5, Ley del Impuesto al Valor Agregado, initially published December 29, 1978, last revised November 12, 2021, **C-0087**.

²⁴ See Art. 27, Ley del Impuesto Sobre la Renta, initially published December 11, 2013, last revised April 1, 2024, **C-0093**.

²⁵ See Form 9/CFF, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, **C-0091**.

deductible (sometimes including evidence of materiality), and proof that the VAT refund was correctly calculated.²⁶

39. Where the SAT does not object, the VAT refund is considered payable and is directly deposited by the SAT into the company's designated bank account.²⁷

40. In this case, prior to January 4, 2023, in order to obtain its VAT Refunds, PEM filed its VAT returns through the SAT's Portal.

41. Because PEM's requests complied with all legal requirements, and, in some cases, responded in a satisfactory manner to specific information requests made by the SAT, all requests were authorized. Thereafter, the SAT deposited the amounts requested in PEM's designated bank account.²⁸

b. The Respondent Has Confirmed PEM's Entitlement to its VAT Refunds

42. The Respondent has acknowledged through its consistent prior and ongoing conduct, as well as through its various statements and actions in this proceeding, that PEM is entitled to its VAT Refunds.

43. With respect to PEM's undeniable right to VAT Refunds, first, the very act of the SAT depositing the VAT Refunds into each of PEM's Mexican accounts every month since April 2020 (and prior to that period over several years) demonstrates that the SAT not only endorses, but also, in fact, has facilitated PEM's entitlement to its VAT Refunds.²⁹

²⁶ See Form 9/CFF, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, **C-0091**; see also Art. 22, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

²⁷ See Form 9/CFF, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, **C-0091**.

²⁸ See Banorte Bank Statement of PEM, Account No. [REDACTED] dated July 31, 2024, [REDACTED]-0004.

²⁹ See Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated July 31, 2024, [REDACTED]-0001; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated January 31, 2025, [REDACTED]-0002; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated September 30, 2025, [REDACTED]-0003; Banorte Bank Statement of PEM, Account No. [REDACTED] dated July 31, 2024, [REDACTED]-0004; see also Banamex Monthly Statements, n.d., [REDACTED] 0085; Letter from Alan Bonfiglio to the Tribunal, dated September 9, 2025, p. 7 (informal translation) ("Regarding the second point, the Defendant considers it essential to clarify that on July 9, 2024, it promptly and fully complied with this point of the Provisional Measures Decision. On that date, the banking institution Banco Nacional de México,

Second, in this arbitration proceeding, Respondent’s counsel has made multiple admissions with respect to PEM’s entitlement to the VAT Refunds. Specifically:

- “Respondent is aware that none of the refund requests that PEM has submitted on a monthly basis has been denied.”³⁰
- “PEM has not been denied any of the VAT [R]efunds that it has requested month after month.”³¹
- “Claimant has acknowledged that SAT has not denied VAT [R]efunds.”³²

44. There is therefore no dispute as to the Claimant’s legal entitlement to the VAT Refunds. This is also consistent with the treatment accorded to other mining companies in Mexico engaged in the activity of exporting minerals.

45. As discussed in further detail below, despite acknowledging that the Claimant is entitled to its VAT Refunds, the Respondent has nonetheless impeded the Claimant’s access to these funds by unlawfully freezing PEM’s bank accounts and by refusing to accept PEM’s legitimate guarantees.

SA, a member of the Banamex Financial Group, informed the SAT that it had transferred funds in the amount of [REDACTED] to account number [REDACTED] of Banco Mercantil del Norte, SA, Multiple Banking Institution, Banorte Financial Group, in the name of Primero Empresa Minera, SA de CV.”) (Original: “Sobre el segundo punto, la Demandada considera indispensable precisar que el 9 de julio de 2024 dio puntual y cabal cumplimiento a este punto de la Decisión de Medidas Provisionales. En esa fecha, la institución bancaria Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, informó al SAT que había efectuado la transferencia de fondos por la cantidad de [REDACTED] a la cuenta número [REDACTED] de Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte, a nombre de Primero Empresa Minera, S.A. de C.V.”).

³⁰ *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Respondent’s Response to Claimant’s Request for Provisional Measures, dated February 10, 2023, ¶ 36 (emphasis omitted) (“Demandada tiene conocimiento de que no se le ha negado ninguna de las solicitudes de devolución que PEM ha presentado mensualmente.”).

³¹ *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Respondent’s Response to Claimant’s Request for Provisional Measures, dated February 10, 2023, ¶ 78 (“[A] PEM no se le ha negado ninguna de las devoluciones de IVA que mes con mes ha solicitado.”).

³² *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Transcript of the Request for Provisional Measures Hearing, dated March 13, 2023, p. 57:9-10 (Bonfiglio).

2. The Respondent Unlawfully Froze PEM's Accounts

46. Beginning in August 2019, the SAT engaged in an illegal series of measures that culminated approximately eight months later in the freezing of Claimant's bank accounts.

a. The Tax Reassessments Were Illegal

47. Specifically, on August 8, 2019, the SAT assessed the alleged tax deficiency of a total of [REDACTED] for Fiscal Year 2010 (the "2010 Tax Reassessment").³³ This prompted PEM, relying on the applicable domestic law dispute resolution process, to file an administrative appeal on September 25, 2019, with the legal department of the SAT.³⁴ This administrative appeal against the 2010 Tax Reassessment was unlawfully declared inadmissible by the SAT on December 5, 2019, thus effectively depriving PEM of its right to object to the amount being claimed as taxes owed by PEM.³⁵

48. On December 13, 2019, in response to the 2010 Tax Reassessment and the dismissal of the administrative appeal, PEM filed an annulment complaint before the Online Chamber of the Tribunal Federal de Justicia Administrativa ("TFJA").³⁶ PEM also resorted to international remedies by filing MAP³⁷ requests with the competent tax authorities of [REDACTED] in relation to the 2010 Tax Reassessment.³⁸

³³ The same events occurred for the 2011 tax reassessment as discussed in further detail in Claimant's Memorial, ¶¶ 47, 81, 106-107; *see also* Official Letter No. 900-06-04-00-00-2019-000682, dated September 24, 2019, pp. 1-269, C-0002, pp. 2218-2487.

³⁴ *See* Administrative Appeal, No. RRL2019008326, dated September 25, 2019, pp. 1, 3, C-0002, pp. 1677, 1679.

³⁵ *See* Official Letter, No. 900-09-02-2019-10302, dated December 5, 2019, pp. 1-12, C-0002, pp. 1850-1861; *see also* Witness Statement of [REDACTED], dated April 25, 2022, ¶ 53, [REDACTED] 0000.

³⁶ *See* Annulment Complaint, No. 19/3171-24-01-02-02-OL, dated December 13, 2019, pp. 1-280, C-0002, pp. 1862-2141.

³⁷ For a discussion on the Mutual Agreement Procedure, *see* Claimant's Memorial, ¶¶ 344-369. *See* MAP Request for Fiscal Year 2010, dated November 1, 2019, pp. 1-16, C-0002, pp. 4089-4104; MAP Request for Fiscal Year 2010, dated November 6, 2019, pp. 1-21, C-0002, pp. 4105-4125; MAP Request for Fiscal Year 2010, dated November 5, 2019, pp. 1-317, C-0002, pp. 4362-4678; MAP Request for Fiscal Year 2010, dated April 24, 2020, pp. 1-18, C-0002, pp. 4750-4767; MAP Request for the Fiscal Year 2010, dated May 20, 2020, pp. 1-14, C-0002, pp. 4804-4817; MAP Request for the Fiscal Year 2010, dated May 29, 2020, pp. 1-13, C-0002, pp. 4818-4830.

³⁸ Admission Resolution of the Claim and Provisional Suspension, dated January 3, 2020, p. 13, C-0002, p. 2142; *see also* Provisional Injunction No. 20/770-24-01-01-04-OL, dated May 7, 2020, pp. 1-4, C-0002, pp. 5810-5813.

49. On January 3, 2020, the TFJA accepted PEM's annulment complaint against the 2010 Tax Reassessment and granted PEM a provisional injunction against the execution of the alleged 2010 tax deficiency by the SAT.³⁹ The preliminary injunction was granted as under international tax law, and as incorporated into Mexican law, enforcement efforts must be suspended while a MAP is underway.⁴⁰ On February 14, 2020, the SAT unilaterally dismissed the MAP requests initiated by PEM. Without waiting for the TFJA to issue a resolution overturning the injunction (and providing PEM with the opportunity to make submissions), the SAT proceeded unilaterally with its enforcement procedure. The SAT maintained that it had the power to unilaterally dismiss the MAPs filed by PEM and, since those procedures had ended, PEM was required to post a guarantee covering its tax assessments.⁴¹

50. The 2011 and 2012 tax reassessments have been similarly challenged by PEM.⁴²

51. PEM's repeated attempts to offer guarantees and the Respondent's arbitrary dismissal of such applications are addressed in Section II.B.c below.

b. The April 3, 2020 Account Freeze Was Illegal

52. The SAT's freezing of PEM's bank accounts was improperly grounded on an illegal 2010 Tax Reassessment.

53. On April 3, 2020, Official Letters Nos. 400-24-00-02-00-2020-000968 (freezing HSBC account nos. [REDACTED]), 400-24-00-02-00-2020-000969 (freezing Banco Monex account no. [REDACTED] and 400-24-00-02-00-2020-000970 (freezing Banamex

³⁹ See Admission Resolution of the Claim and Provisional Suspension, dated January 3, 2020, p. 13, **C-0002, p. 2142**. As a result of the pending MAP requests, PEM was not required under Mexican law to offer a guarantee to the SAT at the time.

⁴⁰ Admission Resolution of the Claim and Provisional Suspension, dated January 3, 2020, p. 13, **C-0002, p. 2142**; see also Art. 144, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**; see also Witness Statement of [REDACTED], dated April 25, 2023, ¶ 56, [REDACTED] 0000.

⁴¹ See Official Letters Nos. 900-06-01-00-00-2020-000098, 900-06-01-00-00-2020-000102 and 900-06-01-00-00-2020-000103, dated February 14, 2020, pp. 1-9, **C-0002, pp. 2148-2156**; see also Witness Statement of [REDACTED], dated April 25, 2023, ¶ 57, [REDACTED] 0000.

⁴² For a full summary of the fact on the domestic and international proceedings surrounding each tax reassessment, see Chronology, **C-0002, pp. 6-13**.

account nos. [REDACTED]), the SAT ordered the freezing of PEM's accounts held at HSBC, Banco Monex, BBVA,⁴³ Banamex (together, the "**Freeze Orders**").⁴⁴

54. Specifically, the freezing order provided:

The taxpayer indicated in the following paragraph has tax debts that are disputed and are not properly guaranteed and is in the following situation:

d) **When the seizure of goods has been carried out whose value is insufficient to satisfy the tax interest or the value of which is unknown, it is therefore appropriate for this Decentralized Collection Administration to exercise the immobilization procedure** provided for in Article 156-Bis of the Federal Tax Code, for which reason the instructions detailed later are issued.⁴⁵

55. In other words, the "exercise of the immobilization procedure" abruptly halted PEM's access to the Banamex Account (and its other bank accounts) entirely.

56. These bank accounts were critical for sustaining PEM's operations. They were used for vendor, payroll, foreign exchange ("FX") trades, and other currency payments. Table 3 below shows the amounts in PEM's frozen bank accounts on April 3, 2020 as well as the specific purposes of each account.

⁴³ Note the BBVA account was frozen at a later date. However, PEM was not given access to the official letter freezing the account. See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 13, fn 3, [REDACTED] 0000.

⁴⁴ Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8, **C-0002, pp. 4952-4959**.

⁴⁵ Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8 (emphasis added), **C-0002, pp. 4952-4959**. The freeze order stated: "La contribuyente que se indica en el párrafo siguiente tiene adeudos fiscales que se encuentran impugnados y no están debidamente garantizados y se ubica en el siguiente supuesto:

d) Cuando se hubiera realizado el embargo de bienes cuyo valor sea insuficiente para satisfacer el interés fiscal o se desconozca el valor de éstos, por lo que precede que esta Administración Desconcentrada de Recaudación ejerza el procedimiento de inmovilización previsto en el artículo 156-Bis del Código Fiscal de la Federación, razón por la cual se emiten las instrucciones que más adelante de detallan."

Table 3: PEM's Frozen Bank Accounts⁴⁶

Bank	Purpose	Account Number	Frozen Amount (MXN)	Frozen Amount (USD)
Banamex	Vendor and payroll payments	██████████	██████████	██████████
		██████████	██████████	██████████
		██████████	██████████	██████████
		██████████	██████████	██████████
HSBC	Vendor payments	██████████	██████████	██████████
		██████████	██████████	██████████
		██████████	██████████	██████████
BBVA	This account was never used for payments as it was opened and immediately frozen by the SAT	██████████	██████████	██████████
Banco Monex	FX Trades and other currency payments	██████████	██████████	██████████

57. By barring PEM from accessing all of its bank accounts in Mexico, the SAT not only propelled the company into a financial crisis, but it also contravened Mexican tax law and policy.

58. Notably, Article 157 of the Federal Tax Code exempts “wages and salaries” from seizure.⁴⁷ The *Federal Court of Tax and Administrative Justice* has interpreted Article 157 as exempting wages and salaries from seizure and freezing measures (*i.e.*, “non-seizable”). Specifically, the Court held:

Although bank deposits may be subject to seizure and freezing to enforce **final tax credits owed by taxpayers**, the tax authority must consider that the law

⁴⁶ See Official Letter No. 400-72-00-04-02-2025-00800, dated January 8, 2025, C-0076. Note the numbers in Table 3 are slightly different than the ones provided for in the freezing order. The most accurate representation of the current amounts frozen in PEM's bank accounts are in Table 3 as reflected in ██████████ witness statement. See Witness Statement of ██████████, dated October 21, 2025, ¶ 42, ██████████ 0000.

⁴⁷ Art. 157, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, (informal translation) (“The following are exempt from seizure: [...] X. Wages and salaries. [...]”) (Original: “Quedan exceptuados de embargo: [...] X. Los sueldos y salarios. [...]”), R-0005.

provides exceptions to such actions, as established in Article 157, Section X, of the Federal Tax Code, which states that salaries and wages are exempt from seizure. Therefore, even if the plaintiff's salary is paid via bank deposits, such deposits do not lose their origin and nature. Consequently, **the collecting authority must recognize them as non-seizable, making the seizure, freezing of the bank account, and transfer of its funds illegal**, as this falls under an exception to the general rule.⁴⁸

59. While Article 157 appears to be focused on maintaining the character of salaries and wages if deposited into a bank account, the Federal Tax Code, clearly places the disbursement of wages and salaries above the freezing and seizure powers of the collecting authority, *i.e.*, the SAT. The reasoning for the priority of wages and salaries over the freezing of bank accounts, is because they are a means for survival for workers, so their disbursement is strictly necessary.⁴⁹

60. In the case of the freezing measures imposed against PEM, the SAT gave no consideration to the fact that the freezing measures would impede PEM from acting in accordance with its legal obligations to pay its employees "wages and salaries." The SAT, instead of excluding amounts of monies necessary for payment of "wages and salaries" to PEM's employees, imposed a blanket freeze. PEM made arguments to this effect in the extension to the amparo filed on May 25, 2020.⁵⁰

⁴⁸ Revista del Tribunal Federal de Justicia Fiscal y Administrativa, Seventh Epoch, Year V, No. 42, dated January 2015, p. 345, VII-CASR-CEI-5, "EMBARGO, INMOVILIZACIÓN DE CUENTA BANCARIA Y TRANSFERENCIA DE SUS FONDOS.- CUANDO SE EFECTÚA RESPECTO DE DEPÓSITOS EFECTUADOS EN LA CUENTA DEL DEMANDANTE POR CONCEPTO DE SUELDOS Y SALARIOS, RESULTA ILEGAL POR HABERSE REALIZADO SOBRE BIENES INEMBARGABLES EN TÉRMINOS DEL ARTÍCULO 157, FRACCIÓN X, DEL CÓDIGO FISCAL DE LA FEDERACIÓN," (emphasis added) (Original: "Si bien pueden ser objeto de embargo e inmovilización los depósitos bancarios para hacer efectivos los créditos fiscales firmes a cargo de los contribuyentes, la autoridad fiscal debe prever que existen en la ley excepciones para proceder a esos actos como es el caso previsto en el artículo 157, fracción X, del Código Fiscal de la Federación, que establece que quedan exceptuados de embargo, los sueldos y salarios, por lo que aun cuando el pago del sueldo o salario del demandante se efectúe a través de depósitos bancarios, estos no pierden su origen y naturaleza y por ello, la autoridad exactora debe entender que son inembargables resultando ilegal tanto el embargo, la inmovilización de la cuenta bancaria y la transferencia de sus fondos, pues se está en el caso de excepción a la regla general."), C-0096.

⁴⁹ Amparo 365/2020 Application Extension, dated May 25, 2020, pp. 48-49, 64, C-0105. Note the first amparo was filed on April 9, 2020, however the extension, which included arguments regarding the freezing order, was filed on May 25, 2020. See Amparo Application, dated April 9, 2020, pp. 1-101, C-0002, pp. 4960-5060.

⁵⁰ Amparo 365/2020 Application Extension, dated May 25, 2020, C-0105. Note that PEM's amparo action was not successful. See Judgment of Amparo 365/2020, Second District Court of the State of Durango, dated August 5, 2022, C-0106.

61. As the funds in the bank accounts remained frozen and inaccessible including to the SAT (as it was not lawfully in a position at that time to collect the taxes), the actions of the SAT in keeping approximately [REDACTED] as sequestered served no useful purpose. The blanket freeze was an arbitrary and irrational measure which was extremely disruptive and harmful to PEM.

62. Additionally, the freezing measures not only pushed PEM into a catastrophic business disaster, which not only was unnecessary and unreasonable, but placed PEM in serious legal jeopardy on several grounds. Specifically, without access to the funds in its bank accounts in Mexico, PEM would face the following severe challenges:

Operational Paralysis: PEM would have been unable to carry out routine transactions necessary to continue its business operations, threatening its ability to pursue its corporate purpose and potentially leading to the suspension of its activities or even the dissolution of the business.

Inability to Meet Payroll and Labor Obligations: If PEM were unable to make salary payments, the worker's union would mobilize the employees and contractors that work to maintain the mines to embark on a strike and cease operations.

Inability to comply with its land access agreements to the surrounding Ejidos: PEM leases land from several surrounding Ejidos located in the San Dimas town and surrounding towns, and the Ejido's principal revenues come from PEM's lease payments. Failure to pay the Ejidos would have resulted in additional legal and business challenges.

Impact on Community Health Services: PEM operates a health clinic to serve its miners, their families, and the local community around the San Dimas mine. The freeze orders impaired the company's ability to fund the clinic's operations, procure supplies, pay medical staff, and run crucial services (including ambulance operations). This would transpire at the very time that COVID-19 was quickly spreading in Mexico and therefore at a time that the services of the health clinic were indispensable for ensuring the well-being of PEM's employees and the local community that depend on the San Dimas mine for their livelihood.

Exposure to Criminal Liability: If PEM were to stop paying the tax authorities the amount required to be withheld as payroll taxes under Article 109, Section IV, of the Federal Tax Code, it would be exposed to being charged with a criminal offense. Additionally, if PEM were to stop withholding income tax (specifically regarding salaries), VAT, and social security contributions, it would be subject to criminal liability under Art. 1, 1-A, of the Value Added Tax Law, and Article 39 of the Social Security Law.

Impact on Concession Rights: If PEM were to stop paying annual fees and taxes for the mining concessions it would lose its right to the concessions (which is what gives the company the right to exploit the resources at PEM's mine) under the relevant Mexican laws.⁵¹

63. As explained in the witness statement of Mr. [REDACTED], the [REDACTED] at First Majestic, submitted in support of this Ancillary Claim, PEM would be incapable of continuing its operations in Mexico under the Freeze Orders, without access to the necessary liquid funds required to operate its business. The Claimant had to step in to avoid a disastrous outcome for PEM as a result of the Freeze Orders.

64. The drastic and urgent steps taken by the Claimant—namely, to provide PEM critical life support by paying its operating costs through Canadian banks—is discussed in Section II.C below.

c. The Respondent's Denials of the Claimant's Guarantee Applications Was Illegal

65. The Respondent has repeatedly and unjustifiably denied the Claimant's applications to provide a guarantee to secure the release of its VAT Refunds, even after PEM had pledged the entirety of the assets of its business as security.

66. The SAT's denials of PEM's guarantee applications were blatantly illegal under Mexican law. Specifically, the SAT conjured up purportedly legal conditions that did not exist under Mexican tax law—that is, that PEM, among other things, was prohibited from pledging any company assets that were encumbered. These conditions were arbitrary because they were not only extra-legal, but also made it simply impossible for PEM ever to be able to post a guarantee. This is because the SAT's guarantee demands far exceeded PEM's value of assets of its business (once the value of the assets that were secured were removed from the calculation for arriving at the net value of the business assets).

⁵¹ Witness Statement of [REDACTED], dated October 21, 2025, ¶ 25, [REDACTED] 0000; *see also* Art. 42, Ley de Minería, initially published June 26, 1992, last revised May 8, 2023 (informal translation) (“Mining concessions must be cancelled for the following reasons: [...] III. Failure to make timely payments of tax contributions for two consecutive tax years;”) (Original: “Las concesiones mineras se deben cancelar por: [...] III. No realizar, oportunamente, los pagos de las contribuciones por dos ejercicios consecutivos;”), C-0095.

67. The SAT's mistreatment also had the practical effect of completely blocking PEM's access to funds held in all of its Mexican bank accounts that were essential for meeting its operational expenses. Thus, until PEM put up more assets than it owned (which would have to be unencumbered) as security for its guarantee—which was a practical impossibility—the company would never be able to post guarantees. It would therefore never have access to sufficient liquidity to be able to continue its business in Mexico. The SAT's denials of PEM's guarantee applications thus, without additional capital being injected, would shut the company down.

i. First Guarantee Application

68. On May 27, 2021, PEM agreed to offer a guarantee for an amount sufficient to cover the alleged 2010 and 2011 tax deficiencies and to cause the suspension of the administrative procedure of execution on the alleged tax liabilities.⁵² To cover the alleged tax deficiencies, PEM offered as a guarantee an administrative attachment on the entirety of its business encompassing all of its assets valued at approximately [REDACTED] (approximately [REDACTED]).⁵³ The general requirements for this type of guarantee are set forth in Article 85 of the Reglamento del Código Fiscal de la Federación or Federal Tax Code Regulations and are the following:

- (1) The taxpayer is required to voluntarily offer this guarantee and must fulfill the requirements set forth by the SAT in the Miscellaneous Tax Resolution;
- (2) The taxpayer must indicate which assets are offered as part of the guarantee;
- (3) The legal representative of the taxpayer (in the case of legal entities) shall be the legal depositary of the assets;
- (4) The guarantee must be registered in the Public Registry; and
- (5) The taxpayer must pay the execution and extraordinary expenses corresponding to the legal attachment procedure.⁵⁴

⁵² See Writ, No. 900-06-04-00-2019-000545, dated May 27, 2021, pp. 1-16, C-0002, pp. 2157-2172.

⁵³ See Writ, No. 900-06-04-00-2019-000545, dated May 27, 2021, pp. 1-16, C-0002, pp. 2157-2172.

⁵⁴ See Art. 85, Reglamento del Código Fiscal de la Federación, published April 2, 2014, C-0090.

69. Article 87 of the Federal Tax Code Regulations establishes that in case the value of the guarantee is not adequate to cover the complete amount of the tax deficiencies, the SAT may initiate enforcement procedures for the outstanding amount.⁵⁵ However, Article 145 of the Federal Tax Code establishes that this enforcement procedure shall not take place where the taxpayer has offered all of its assets as a guarantee and declares under oath that no additional assets exist.⁵⁶

70. In the present case, PEM offered as its guarantee the totality of its assets and declared under oath that it had no additional assets to offer.⁵⁷ Therefore, even if the SAT considered that their value did not cover the full amount of the deficiencies, the SAT was required to accept the guarantee as offered.

71. As previously discussed, Article 85 of the Federal Tax Code Regulations establishes that the SAT may set forth requirements and specific information that the taxpayer must provide under the Miscellaneous Tax Resolution.⁵⁸

72. Table 32 of Annex 1-A of the Miscellaneous Tax Resolution published by the SAT establishes that the type of guarantee offered by PEM must include the following documents:

- (1) Original or certified copy of the entity's articles of incorporation;
- (2) Proof of payment of the execution/extraordinary expenses;
- (3) Valuation of the assets with a detailed description according to the characteristics of each asset;
- (4) Financial statements and general balance that reflect the economic situation of the entity;

⁵⁵ See Art. 87, Reglamento del Código Fiscal de la Federación, published April 2, 2014, **C-0090**.

⁵⁶ See Art. 145, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁵⁷ See Section II.B.2.c; *see also* Writ, No. 900-06-04-00-2019-000545, dated May 27, 2021, pp. 1-16, **C-0002**, pp. **2157-2172**; *see also* Guarantee Application (fiscal year 2010), dated July 14, 2023, **C-0052**; *see also* Guarantee Application (fiscal year 2011), dated July 14, 2023, **C-0053**; Guarantee Application (fiscal year 2012), dated July 14, 2023, **C-0054**.

⁵⁸ See Art. 85, Reglamento del Código Fiscal de la Federación, published April 2, 2014, **C-0090**.

- (5) Declaration under oath stating if the assets that are being offered also guarantee other debts;
- (6) Certified copy of the power of attorney for ownership acts granted to the entity's legal representative; and
- (7) Original of the free of encumbrances certificate issued by the Public Registry, a certificate that details all the encumbrances and attachments on a certain asset.⁵⁹

73. In the four months following PEM's first guarantee application, the SAT requested a significant volume of additional documentation not required by Mexican law.⁶⁰ In other words, the SAT requested PEM to provide information not required by either the Federal Fiscal Code Regulations or Table 32 of Annex 1-A of the Miscellaneous Tax Resolution published by the SAT itself. This is clear from the fact that the SAT failed to specify which particular legal provisions obligated PEM to submit this extraneous information.

74. Nonetheless, the Claimant and PEM cooperated with the SAT's demands and provided all the documents requested. The documents provided by PEM are shown in Table 4 below, which is reproduced from Claimant's Reply to Respondent's Request for Revocation of the Tribunal's Decision on Provisional Measures dated May 26, 2023 ("**PM Decision**"):

Table 4 3: Additional Documentation or Requirements Requested by the SAT not Provided by Law

Additional Documentation or Requirements Requested by the SAT not Provided by Law	Relevant Comments	PEM's Response
Financial statements for 2016, 2017, 2018, 2019 and 2020.	The Federal Tax Code only requires financial statements that reflect the situation of the company and not the last 5 years.	Filed.
Balance sheet for 2016, 2017, 2018, 2019, and 2020.	The Federal Tax Code only requires the balance sheet that	Filed.

⁵⁹ See Table 32, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, pp. 295-301, C-0091.

⁶⁰ See Table 4 for explanation as to why the additional documents were not required under Mexican law.

	reflects the situation of the company and not the last 5 years.	
Original for comparison and legible copies of the invoices of all the goods of the business offered as a guarantee of the fiscal interest that prove the ownership of the same	The Federal Tax Code refers only to “documentation proving ownership of the good” and only requires specifying the invoice number, not that the original and copy be exhibited for comparison.	An integration was conducted at the invoice level of about 80% of the total invoices. Samples of invoices (both originals and copies) were provided, as well as sales contracts where acquired assets are listed
Original appraisal in which it includes general information of the company, such as type of articles, number of establishments, market to which it focuses, and number of workers, with a description of all its assets and liabilities, identifying them with the invoice number, quantity, brand, model, color, serial number, engine number, plates, type of material, as well as a photographic report of a minimum of three photographs of each good and record the invoice number, prepared by a public broker, or expert with a professional appraiser issued by the Ministry of Public Education		Filed.
Declaration under oath to tell the truth of whether the asset offered as a guarantee of the tax interest has any limitation of exception.		Declaration made.
Declaration under oath to tell the truth of whether the business conducts		Declaration made.

operations and if it has workers and also manifest the periodicity of income of the negotiation: daily, weekly, biweekly, bimonthly, quarterly, semi-annual or annual		
Declaration under oath to tell the truth if it has branches, agencies, offices, factories, workshops, facilities.		Declaration made.
That in the event that the guarantee offered is accepted, the information and documentation exhibited is analyzed, in the terms in which it does, in order to evaluate the effectiveness of the same, for which it would be necessary to carry out the intervention of the negotiation, which is unfeasible, given that, from the study carried out, it is possible to warn that the percentage established in the Tax Code of the Federation for the Recovery of Secured Credit.	The authority confuses the requirements for the acceptance of the administrative attachment as a form of guarantee (contained in articles 141, section V of the Federal Tax Code, 85 and 87 of its Regulations, as well as table 32 and file 134/CFF, of Annex 1-A of the Miscellaneous Tax Resolution for 2021) with the various provisions governing the attachment of negotiations during an administrative enforcement procedure (Articles 164, 165, 167 and 172 of the Federal Tax Code).	
That WHEATON PRECIOUS METALS INTERNATIONAL LTD and THE BANK OF NOVA SCOTIA have priority over their assets and taking into account the amount of the guarantees granted in their favor, the total value of the company indicated in the appraisal would not cover such amounts, hence it would be insufficient to cover the amount of the tax assessments to be	The authority confuses the requirements for the acceptance of the administrative attachment as a form of guarantee, contained in articles 141, section V of the Federal Tax Code, 85 and 87 of its Regulations, as well as table 32 and file 134/CFF, of Annex 1-A of the Miscellaneous Tax Resolution for 2021, with the provisions governing the guarantee of pledge or mortgage. The	

guaranteed. With the foregoing, it does not comply with article 85, section II of the Regulations of the aforementioned Code, in relation to the various numeral 81, of the same regulatory system, in that the goods offered are free of encumbrance.	defendant authority sought to substantiate the requirements of Article 81 of the Regulations of the Federal Tax Code, an article which is obviously inapplicable, since the requirements contained in the aforementioned paragraph are only applicable to the type of pledge or mortgage guarantee and not to the administrative attachment.	
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75. The guarantee offered by the Claimant was ample to cover any potential liability. Whereas the alleged tax reassessments for Fiscal Years 2010, 2011, and 2012 totaled [REDACTED],⁶¹ the Claimant provided a guarantee of its business assets valued at [REDACTED],⁶² almost five times the amount of PEM's alleged tax-related debt.

76. On September 24, 2021,⁶³ the SAT rejected PEM's guarantee application on the following bases:

- (1) PEM had not submitted 100% of the original and apostilled copies of the invoices of all the assets offered as a guarantee;
- (2) PEM's balances reflected that 10% of its monthly income would be insufficient to cover 24% of the tax deficiencies within a period of three months; and
- (3) legal attachments were included on some of the assets offered as part of the guarantee.⁶⁴

⁶¹ Based on the conversion rate of May 27, 2021. Mexican Peso (MXN) To US Dollar (USD) Exchange Rate History for 2021, accessed on September 22, 2025, C-0077.

⁶² Based on the conversion rate of May 27, 2021. Mexican Peso (MXN) To US Dollar (USD) Exchange Rate History for 2021, accessed on September 22, 2025, C-0077.

⁶³ Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003061, dated September 24, 2021, pp. 1-14, C-0002, pp. 2173-2186; Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003062, dated September 24, 2021, C-0085; Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003063, dated September 24, 2021, C-0086.

⁶⁴ Certain assets offered under the guarantee were subject to encumbrances by third parties including GoldCorp, Inc, Silver Wheaton (Caymans) Ltd, Wheaton Precious Metals International Ltd and the Bank of Nova Scotia.

77. The reasoning for the SAT’s rejection of the guarantees offered are outside the scope of the relevant Mexican law.

78. First, as demonstrated above, under Table 32 of Annex 1-A of the Miscellaneous Tax Resolution, as PEM was offering its entire business as a guarantee (rather than specific assets), it was not required to submit original and apostilled copies of the invoices of all the assets offered as a guarantee.⁶⁵ Where a taxpayer is offering the entire business, an inventory with a description of each asset is sufficient under Mexican law.⁶⁶ This is logical, since it is unlikely that a taxpayer, especially a large taxpayer like PEM, would maintain copies of invoices for each individual asset that it owns.

79. Second, under Mexican law, PEM was not required to prove that it can satisfy an amount equaling 24% of the tax deficiencies within a period of three months, using only 10% of its monthly income. Instead, the SAT, again, made reference to a requirement under a different portion of Mexican law that is not relevant to the offering of the entire business as a guarantee.⁶⁷ Specifically, in the letter rejecting the guarantee, the SAT cited Articles 164, 165, 167 and 172 of the Federal Tax Code.⁶⁸ First, Articles 164, 165, 167, and 172 fall under Chapter III of Title V of the law which regulates the “coercive collection procedure”—not the procedure for guarantees.⁶⁹ The coercive collection procedure provides that where the SAT is carrying out the attachment of a taxpayer’s business (with the purpose of collecting an enforceable debt), a “receiver” must be named who will proceed to separate 10% of the company’s income in order to pay the tax

⁶⁵ See Table 32, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, pp. 295-301, C-0091; see also *supra* ¶ 72.

⁶⁶ See Table 32, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, pp. 295-301, C-0091.

⁶⁷ See Arts. 164, 165, 167, 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁶⁸ See Arts. 164, 165, 167, 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁶⁹ See Arts. 164, 165, 167, 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

deficiencies.⁷⁰ Where the amounts collected in a three-month period are not enough to satisfy 24% of the tax deficiency, the SAT shall proceed to auction the taxpayer's business and assets.⁷¹

80. In the present case, PEM's tax deficiencies are not enforceable since they are currently being challenged before the Federal Courts. Only in the event that the SAT were to prevail, would they become enforceable and a coercive collection procedure could be initiated in terms of Chapter III of Title V of the Federal Tax Code that establishes coercive collection measures for enforceable tax deficiencies. Due to the fact that PEM offered an attachment on its business as a form of guarantee and not as a form of payment, it is evident that the requirements set forth in articles 164, 165, 167 and 172 that only apply in coercive collection procedures do not apply in this matter.⁷² This is because these requirements are not contained in the specific provisions that regulate the requirements with which this type of guarantee must comply.

81. In addition, the rejection by the SAT is illegal because there is no provision under Mexican law that requires assets offered as part of a guarantee to be free of encumbrances or attachments. Table 32 of Annex 1-A of the Miscellaneous Tax Resolution only establishes that the taxpayer has to declare under oath whether the assets also serve to guarantee other debts.⁷³ Table 32 does not establish that the taxpayer must offer assets that are free of any attachment or encumbrance.

82. This reasoning is further supported by the contents of Article 149 of the Federal Fiscal Code, which establishes that the SAT will have priority over the payment on tax deficiencies, except in the case of debts guaranteed with a pledge or mortgage.⁷⁴ In these cases, the creditor will have preference over the SAT, unless the pledge or mortgage is not recorded in the Public

⁷⁰ See Art. 165, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁷¹ See Art. 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁷² See Arts. 164, 165, 167, 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁷³ See Table 32, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, pp. 295-301, **C-0091**.

⁷⁴ See Art. 149, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

Registry.⁷⁵ Therefore, assets that have pledges or mortgages may be offered as part of a guarantee, and the SAT will have a preference to collect a tax deficiency over other debtors (but not employees owed salaries and secured creditors).

83. However, even assuming *arguendo* that pledges or mortgages cannot be offered as part of a guarantee, the SAT would not be able to deny the guarantee on that basis. As previously mentioned, Article 145 of the Federal Tax Code establishes that the SAT cannot initiate a collection procedure, when the taxpayer has offered all of its assets and declared under oath that no additional assets exist.⁷⁶ Because this did, in fact, take place, even if the SAT considered that the assets covering other debts could not form part of the guarantee, it was nonetheless required to accept the guarantee backed by assets (regardless of whether such assets had pre-existing encumbrances or attachments).

84. In its rejection of the guarantee application, the SAT acknowledged that its reasons for rejection were outside the scope of what is required under Mexican law. Therefore, the SAT tacitly acknowledged that it was acting illegally in requesting the additional information, since it is unlawful to request documents that taxpayers are not required by law to provide. Specifically, in its decision, the SAT conceded:

Notwithstanding the arguments made by the Company in the writ filed on September 20, 2021 in the sense that, **the Company is not obligated to provide the information and documents that were requested** in the numbers set forth in the previous paragraph **due to the type of guarantee that is being offered, consisting in the administrative attachment of an ongoing business, instead of movable or immovable assets**, this authority indicates that, **according to its criteria**, said information is indispensable to know in detail the economic reality of the negotiation offered as guarantee and to have full knowledge of the patrimony of the functioning business, having knowledge that the Company has the necessary and sufficient elements to keep functioning in order to be able to, in any case, make

⁷⁵ See Art. 149, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁷⁶ See Art. 145, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

effective the tax reassessment that is being covered, as well as any ancillary charges that are caused.⁷⁷

85. The SAT's decision rejecting the guarantee violates the principles of legality required under Mexican law—namely that governmental authorities are not permitted under any circumstances to advance their own criteria, assessment or “judgment” to invent new prescribed legal requirements based on their own rationale. The principle of legality is contained in Article 16 of the Mexican Constitution which in essence, establishes that every act emanating from the Mexican authorities must include the applicable legal basis and reasons; a requirement known in Spanish as “*debida fundamentación y motivación*.”⁷⁸ The decision of the SAT rejecting the guarantee application, reproduced in part above, fails to provide legal authority to support the use of its own “criteria,” which therefore makes the decision illegal.

86. The Second Chamber of the Mexican Supreme Court has issued a binding precedent explaining in more the detail the reach of this requirement.⁷⁹ Under that precedent, the Supreme Court states that for the authorities to comply with the principle of legality set forth in Article 16 of the Mexican Constitution, they are required to cite the legal provision (or provisions) that support their action and express the reasoning that led it to the conclusion that the matter in question coincides with a statutory scheme.⁸⁰

⁷⁷ Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003061, dated September 24, 2021, p. 5 (emphasis added), **C-0002, p. 2177**. The letter stated: “Sin que obste a lo antes apuntado la manifestación vertida en su escrito presentado con fecha 20 de septiembre de 2021, en el sentido de que la información y documentación que fuera requerida en los numerales indicados en el párrafo que precede no se encuentra obligada a presentarla debido al tipo de garantía ofrecida, ya que se trata del ofrecimiento de la negociación en marcha y no de bienes muebles o inmuebles, es de indicarle que, a juicio de esta autoridad resultan indispensables a fin de conocer más a detalle la realidad económica de la negociación que ofrece como garantía y tener un pleno conocimiento del haber con el que se encuentra en funcionamiento, teniendo la certeza de que cuenta con los elementos necesarios y suficientes a fin de mantenerse en funcionamiento para estar en posibilidad, en su caso, de hacer efectivo el crédito fiscal que se encuentra garantizando, así como los accesorios que se causen.”

⁷⁸ Art. 16, Constitución Política de los Estados Unidos Mexicanos, initially published February 5, 1917, last revised October 9, 2025, **C-0092**.

⁷⁹ Tesis, Digital Registration No. 238924, Semanario Judicial de la Federación, 7th Epoch, Volume 30, Third Part, p. 57, “FUNDAMENTACION Y MOTIVACION, GARANTIA DE.,” **C-0094**.

⁸⁰ Art. 16, Constitución Política de los Estados Unidos Mexicanos, initially published February 5, 1917, last revised October 9, 2025, **C-0092**.

87. The principle of legality applies to the tax authorities not only in terms of Article 16 of the Mexican Constitution, but also pursuant to Article 38, Section IV of the Federal Tax Code.⁸¹ This provision establishes that resolutions notified to taxpayers must include the legal basis, the reasons, as well as their objective or purpose. Consequently, every act issued by the tax authorities that is formally notified to taxpayers (such as a resolution accepting or denying a guarantee) must contain the applicable legal provisions and the reasoning for their application.

88. In sum, the SAT violated this foundational stricture when issuing a resolution that denied the guarantees offered by PEM, on the basis of an alleged lack of compliance with requirements that were not set forth by the law—*e.g.*, that encumbered assets could not form the basis of a taxpayer’s security for a guarantee.

PEM challenged the SAT’s denial of the guarantees before the High Chamber of the Federal Administrative Courts on November 11, 2021.⁸² A decision on PEM’s challenge made five years ago has yet to be served on PEM.

ii. Second Guarantee Application

89. Notwithstanding the SAT’s arbitrary denial of PEM’s first guarantee application, on July 14, 2023, the company made a second application in which it proposed a new guarantee for Fiscal Years 2010 and 2012, with the aim of accessing its blocked VAT Refunds.⁸³ On November 28, 2023, the Respondent again rejected the guarantee on the basis that some of PEM’s assets were subject to encumbrances in favor of secured creditors.⁸⁴

⁸¹ See Art. 16, Constitución Política de los Estados Unidos Mexicanos, initially published February 5, 1917, last revised October 9, 2025, **C-0092**; Art. 38.IV, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

⁸² Annulment Complaint, No. 0003-2021-02-C-10-01-03-03-L, dated November 11, 2021, **C-0078**.

⁸³ See Guarantee Application (fiscal year 2010), dated July 14, 2023, **C-0052**; *see also* Guarantee Application (fiscal year 2011), dated July 14, 2023, **C-0053**; Guarantee Application (fiscal year 2012), dated July 14, 2023, **C-0054**.

⁸⁴ See Official Letter No. 400-72-00-01-01-2023-27679 (Informal Translation), dated November 28, 2023, p. 5, **C-0104**. The creditors are GoldCorp, Inc, Silver Wheaton (Caymans) Ltd, Wheaton Precious Metals International Ltd, and the Bank of Nova Scotia.

90. As stated above, Mexican law does not allow the SAT to reject a guarantee on the ground that an ongoing business has attachments and/or encumbrances in favor of secured credits.⁸⁵

91. PEM did not file a second challenge before the High Chamber of Federal Administrative Courts on this matter as its arguments had already been submitted as part of the November 11, 2021 filing made five years ago, in the proceeding related to the first guarantee application denial.⁸⁶

iii. Third Request for a Guarantee

92. On October 13, 2025, in response to PEM requesting the unfreezing of its Banorte Account as required by the PM Decision, the SAT sent PEM Official Letter No. 400-72-00-01-01-2025-27908 requesting PEM to submit a third guarantee application in order to unfreeze the Banorte Account, frozen on August 29, 2024.⁸⁷ In the letter, the SAT stated that the unfreezing of the Banorte Account could only be accomplished by PEM offering a guarantee for fiscal years 2010, 2011, and 2012 in the amount of [REDACTED].⁸⁸ Specifically, in the Official Letter, the SAT stated in relevant part:

3. It should also be noted that the debts for which **tax interest must be guaranteed** are those determined by the following resolutions:

Resolution	Date of decision	Date of notification	Determining authority	Historical amount	Amount to be guaranteed
900-06-04-00-00-2019-000545	08/08/2019	08/13/2019	Central Administration of Transfer Pricing Control	[REDACTED]	[REDACTED]
900-06-04-00-00-2019-000682	11/25/2019	09/26/2019	Central Administration for Price Control of Transfer	[REDACTED]	[REDACTED]
900-06-04-00-00-2019-000773	11/25/2019	11/27/2019	Central Administration for Price Control of Transfer	[REDACTED]	[REDACTED]
TOTAL				[REDACTED]	[REDACTED]

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⁸⁵ See *supra* ¶ 81.

⁸⁶ Annulment Complaint, No. 0003-2021-02-C-10-01-03-03-L, dated November 11, 2021, C-0078.

⁸⁷ Official Letter No. 400-72-00-01-01-2025-27908, dated October 13, 2025, C-0079.

⁸⁸ Official Letter No. 400-72-00-01-01-2025-27908, dated October 13, 2025, C-0079.

⁸⁹ Official Letter No. 400-72-00-01-01-2025-27908, dated October 13, 2025, p. 2, C-0079.

93. As previously explained, the Banorte Account was set up by PEM to ensure that it would be able to access future VAT Refunds, after the Tribunal's PM Decision. In the PM Decision, the Tribunal ordered the Respondent to:

[N]ot block payments of VAT refunds owed by Mexican tax authorities to PEM since the date of the Claimant's Request for Provisional Measures (4 January 2023) and those accruing to PEM in the future while the arbitration is pending, **and that such payments be made into accounts to be indicated by PEM and to be maintained freely available to PEM**[.]⁹⁰

94. As a result, the request by the SAT for a guarantee of over [REDACTED] in order to unfreeze the Banorte Account directly contravenes the Tribunal's Order that requires that the Banorte Account be "maintained freely" available to PEM.⁹¹

95. As with its previous applications, the only way that PEM would have been able to offer a guarantee for the amount requested by the SAT would be to provide as collateral far more than it owned beyond its encumbered assets.

* * *

96. In sum, the SAT's mistreatment of PEM's guarantee applications was both blatantly illegal and practically devastating to PEM's business in Mexico. In PEM's first and second guarantee applications in connection with the Banamex Account, the SAT unjustifiably rejected the guarantee backed by the value of the entire business because of encumbrances on various assets owned by the business.⁹² The SAT's third request, again for an exorbitant amount in connection with the Banorte Account, clearly demonstrates that the SAT has no intention to permit PEM access to any of its Mexican bank accounts.

⁹⁰ PM Decision, ¶ 143(1) (emphasis added).

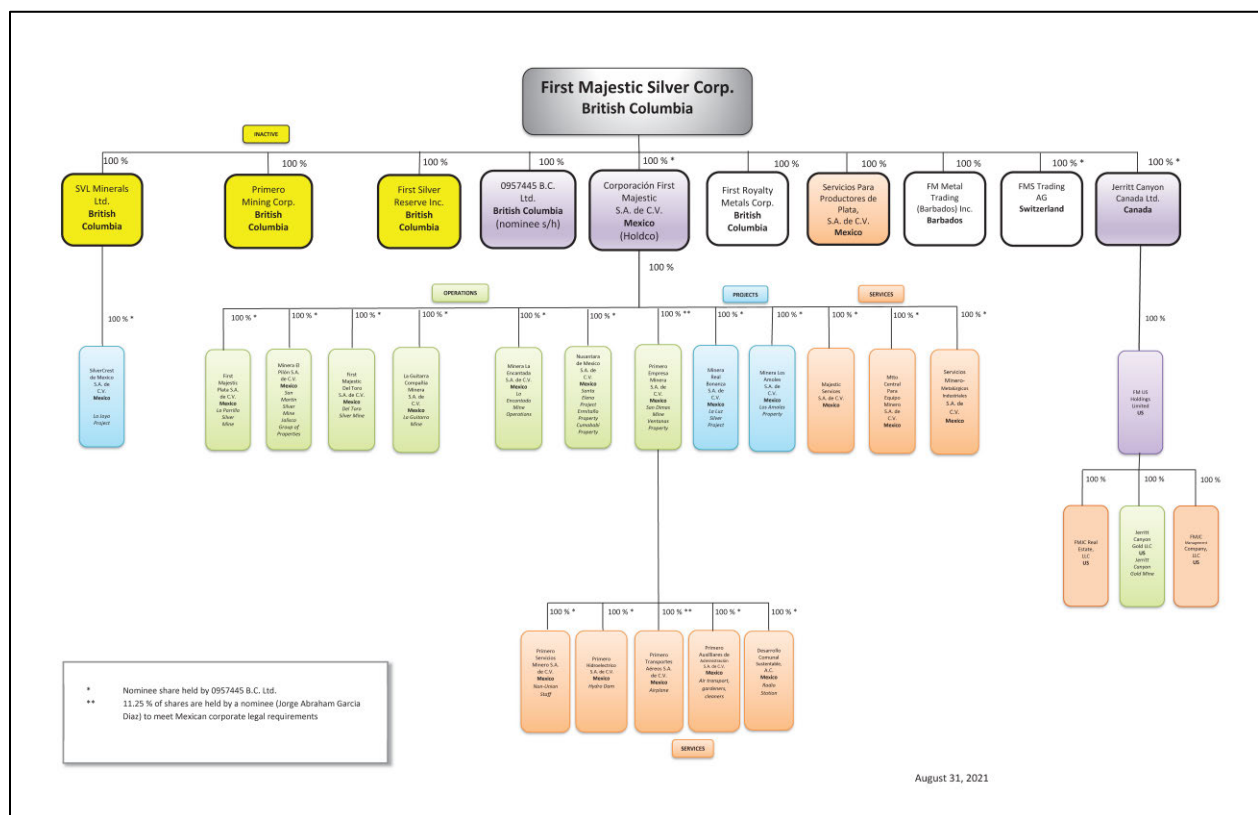
⁹¹ Writ, No. AC202573166879, dated October 17, 2025, C-0097. PEM took this position in response to the SAT in its letter dated October 17, 2025.

⁹² See *supra* ¶¶ 76, 89.

C. The Claimant Has Been Forced to Implement an Inefficient and Costly Workaround Because PEM Is Unable to Transfer Funds Relating to the Investment

97. As a result of the freezing of PEM's Mexican bank accounts—and, in particular, the denial of funds to pay PEM's critical operational costs—PEM faced an existential threat to its business operations. Because the company has been unable to transfer funds within Mexico or to send or receive funds to and from its Canadian parent, First Majestic,⁹³ the Claimant has been forced to pursue an inefficient and costly workaround in Canada to keep PEM out of [REDACTED]

98. By way of background, the Claimant has invested in Mexico through the corporate structure depicted in the chart below:



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⁹³ Note Corporación First Majestic is PEM's Canadian parent. First Majestic wholly owns PMC.

⁹⁴ First Majestic Organizational Chart, dated August 31, 2021, **RP-0004**.

99. PEM is wholly owned by Corporación First Majestic, S.A. de C.V. (“CFM”), a Mexican holding company, which in turn is wholly-owned by First Majestic, a Canadian company.⁹⁵

100. Notably, PEM has been funded through a combination of equity and debt from CFM.⁹⁶ Prior to the freezing of PEM’s accounts, PEM had been repaying its debt to CFM which it was unable to continue after the bank accounts were frozen.⁹⁷ Had PEM’s accounts not been frozen, the company would likely have been able to satisfy the debts owed to CFM by now.⁹⁸

101. In turn, CFM, as a wholly owned subsidiary of First Majestic, based on PEM making payments of debt, would have been able to transfer surplus funds to First Majestic in Canada.⁹⁹ Continuation of such transfers would have enabled First Majestic to increase its working capital, thereby reducing its external debt or equity financing.¹⁰⁰

102. In addition, the VAT Impediments has prevented the Claimant from transferring funds to PEM in Mexico. As explained, any new funds wired to an existing account (as was the case with the Banamex Account) owned by PEM in Mexico would be frozen.¹⁰¹

103. Consequently, instead of transferring funds to a Mexican bank account, PEM and the Claimant have been forced to implement a very costly financial workaround to continue supporting its domestic operations, including maintaining payroll. Specifically, PEM first needed to involve a third-party payroll provider, Labor Mexicana, to comply with the 2021 Mexican Labor Reform Laws. Later, PEM signed a contract for the provision of specialized services with Primero Servicios Mineros S.A. de C.V. (“PSM”), a company owned by PEM, to effectuate payments on its behalf. To this day, PSM, in return for a payment of a monthly fee, receives advanced payments

⁹⁵ See First Majestic Organizational Chart, dated August 31, 2021, [REDACTED]-0004.

⁹⁶ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 36, [REDACTED]0000.

⁹⁷ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 37, [REDACTED]0000.

⁹⁸ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 38, [REDACTED]0000.

⁹⁹ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 39, [REDACTED]0000.

¹⁰⁰ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 38, [REDACTED]0000.

¹⁰¹ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 40, [REDACTED]0000.

from PEM's Canadian bank accounts, and subsequently makes payments on PEM's behalf in Mexico to employees, vendors, and other parties to which PEM owes payment.

104. The workaround, as explained by Mr. [REDACTED], [REDACTED], is as follows:

Under the Contract, PSM was authorized to act on PEM's behalf to make payments and issue invoices under Mexican tax rules relating to third-party disbursements.¹⁰²

For PSM to make such payments on a regular basis based on the applicable legal obligations of PEM, PSM was transferred from PEM's funds as needed from PEM's bank accounts maintained in Canada.¹⁰³

For each payment made by PSM on behalf of PEM, the latter was charged approximately 0.3% of total payments per month. The Contract directs PEM to pay PSM a monthly fee of 0.3% of the amount of the third-party disbursements PSM will make on behalf of PEM.¹⁰⁴

PSM also provided business support services to ensure that PEM's suppliers were paid for goods and services provided. Again, PEM was charged for these payment services.

105. In other words, without access to and use of Canadian accounts, all funds held by PEM in Mexican banks to cover the company's operation expenses would become inaccessible due to the SAT's freezing measures.

106. The process of paying for supply of goods and services, leases, equipment, payroll, taxes, and other operating costs has become very costly and time-consuming and has interfered with the previous arrangements in place, and has resulted in PEM's business management and operations becoming unnecessarily inefficient and costly.

¹⁰² Rule 2.7.1.12, Resolución Miscelánea Fiscal para 2022, dated December 30, 2021, p. 75, [REDACTED]-0007.

¹⁰³ See Banamex Bank Statement of PSM, Account No. [REDACTED] dated July 31, 2024, [REDACTED]-0008.

¹⁰⁴ Contract for the Provision of Specialized Services between PEM and PSM, dated October 4, 2022, p. 6, [REDACTED]-0090.

D. The Respondent Continues to Disregard the Tribunal's Order to Grant PEM Access to the VAT Refunds.

107. For over two years, the Respondent has engaged in dilatory and obstructive tactics to avoid granting PEM access to its VAT Refunds in clear defiance of the Tribunal's **PM Decision**.¹⁰⁵

108. In the PM Decision, the Tribunal ordered the following:

*[T]hat the Respondent not block payments of VAT refunds owed by Mexican tax authorities to PEM since the date of the Claimant's Request for Provisional Measures (4 January 2023) and those accruing to PEM in the future while the arbitration is pending, and that **such payments be made into accounts to be indicated by PEM and to be maintained freely available to PEM**[.]*¹⁰⁶

109. Shortly after the PM Decision was rendered, on June 15, 2023, the Claimant, via letter, requested the Respondent to deposit the VAT Refunds accruing from January 4, 2023 into a new Banorte bank account which was to remain freely available to PEM.¹⁰⁷

110. The Respondent has steadfastly refused to comply with the PM Decision, despite: 1) the Claimant providing eight reminders requesting the Respondent to comply with the Tribunal's Decision;¹⁰⁸ 2) the Respondent's promises and assurances that it intends to comply, but with no follow through on those commitments;¹⁰⁹ and 3) the Tribunal repeatedly issuing correspondence urging the Respondent to "complete the steps needed to release to PEM the amounts of the VAT

¹⁰⁵ *First Majestic Silver Corp. v. United Mexican States*, ICSID Case No. ARB/21/14, Claimant's Request for Admission of Ancillary Claims, dated June 24, 2024, ¶¶ 20-64.

¹⁰⁶ PM Decision, ¶ 143(1) (emphasis added).

¹⁰⁷ See Letter from Riyaz Dattu to Alan Bonfiglio, dated June 15, 2023, **C-0060**.

¹⁰⁸ The eight reminders are: Letter from Riyaz Dattu to Alan Bonfiglio, dated June 15, 2023, **C-0060**; Letter from Riyaz Dattu to Alan Bonfiglio, dated August 11, 2023, **C-0061**; Letter from Riyaz Dattu to Alan Bonfiglio, dated September 12, 2023, **C-0067**; Letter from Riyaz Dattu to Alan Bonfiglio, dated October 18, 2023, **C-0068**; Letter from Riyaz Dattu to Sara Marzal, dated January 2, 2024, **C-0080**; Letter from Riyaz Dattu to Sara Marzal, dated March 25, 2024, **C-0081**; Letter from Riyaz Dattu to Alan Bonfiglio, dated April 25, 2024, **C-0071**; Letter from Riyaz Dattu to Alan Bonfiglio, dated May 23, 2024, **C-0074**.

¹⁰⁹ Letter from Alan Bonfiglio to Riyaz Dattu, dated September 14, 2023, **C-0069**; Letter from Alan Bonfiglio to Riyaz Dattu, dated April 30, 2024, **C-0072**; Letter from Alan Bonfiglio to Riyaz Dattu, dated August 18, 2025, **C-0082**.

Refunds pertaining to the months from January to July 2023 in full compliance of the Decision and report promptly to the Tribunal.”¹¹⁰

111. Finally, after over a year of directions from this Tribunal, on July 9, 2024 for a brief two-month period, the Respondent finally began transferring a portion of the VAT Refunds from the Banamex Account to the Banorte Account.¹¹¹ Additionally, the SAT deposited PEM the VAT returns corresponding to the periods of August, September, October, November and December 2023 and January and February 2024. Once PEM gained access to some of the frozen VAT refunds, it immediately transferred the funds to PSM.¹¹²

112. However, on August 29, 2024, PEM’s treasury team attempted to transfer the amount corresponding to March 2024 VAT return, but Banorte informed PEM that the bank account was subject to a freezing order. This was confirmed several months later on January 8, 2025 through Official Letter No. 400-72-00-04-02-2025-00800.¹¹³ This happened even after the Respondent provided multiple assurances to the Tribunal that it would not do so and in violation of the PM Decision instructing the Respondent to have the VAT Refunds “remain freely available to PEM.”¹¹⁴

¹¹⁰ Email from Sara Marzal to the Parties, dated June 4, 2024, **C-0083**.

¹¹¹ Letter from Riyaz Dattu to Alan Bonfiglio, dated June 15, 2023, **C-0060**; *see also* Procedural Order No. 8, dated September 22, 2025, ¶ 14, fn. 13.

¹¹² *See* Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated July 31, 2024, [REDACTED]-0001; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated January 31, 2025, [REDACTED]-0002; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated September 30, 2025, [REDACTED]-0003; Banorte Bank Statement of PEM, Account No. [REDACTED] dated July 31, 2024, [REDACTED]-0004; *see also* Banamex Monthly Statements, n.d., [REDACTED]-0085; Letter from Alan Bonfiglio to the Tribunal, dated September 9, 2025, p. 7 (informal translation) (“Regarding the second point, the Defendant considers it essential to clarify that on July 9, 2024, it promptly and fully complied with this point of the Provisional Measures Decision. On that date, the banking institution Banco Nacional de México, SA, a member of the Banamex Financial Group, informed the SAT that it had transferred funds in the amount of [REDACTED] to account number [REDACTED] of Banco Mercantil del Norte, SA, Multiple Banking Institution, Banorte Financial Group, in the name of Primero Empresa Minera, SA de CV.) (Original: “Sobre el segundo punto, la Demandada considera indispensable precisar que el 9 de julio de 2024 dio puntual y cabal cumplimiento a este punto de la Decisión de Medidas Provisionales. En esa fecha, la institución bancaria Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, informó al SAT que había efectuado la transferencia de fondos por la cantidad de [REDACTED] a la cuenta número [REDACTED] de Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte, a nombre de Primero Empresa Minera, S.A. de C.V.”).

¹¹³ Official Letter No. 400-72-00-09-02-2024-24590, dated August 20, 2024, **C-0084**.

¹¹⁴ PM Decision, ¶ 143(1) (emphasis added).

113. As a result, between January 4, 2023, and the date of this filing, as demonstrated in 5 & 6 below, the SAT has blocked PEM from accessing a total of [REDACTED] of VAT Refunds in its Banamex¹¹⁵ and Banorte¹¹⁶ accounts that are required to be released by the Tribunal's PM Decision. This amount is in addition to approximately [REDACTED] that had accumulated in PEM's Banamex account before January 4, 2023, and will be added to the damages claim if the Respondent continues to refuse to comply with the PM Decision.

Table 54: PEM's Frozen Banamex Account Balance Consisting of VAT Refunds Between January 4, 2023 and October 6, 2025

Month	Request Date	Status	Bank Account	Deposit Date	Deposit Amount (Pesos)	Deposit Amount (USD)
May-23 ¹¹⁷	3-Jul-23	Refunded	BANAMEX	21-Aug-23	[REDACTED]	[REDACTED]
Jun-23 ¹¹⁸	1-Aug-23	Refunded	BANAMEX	14-Sep-23	[REDACTED]	[REDACTED]
Jul-23 ¹¹⁹	1-Sep-23	Refunded	BANAMEX	16-Oct-23	[REDACTED]	[REDACTED]
TOTAL					[REDACTED]	[REDACTED]

Table 65: PEM's Banorte Account Balance of Frozen VAT Refunds Between June 13, 2023 and October 6, 2025

Month	Request Date	Status	Bank Account	Deposit Date	Deposit Amount (Pesos)	Deposit Amount (USD)
Mar-24	2-May-24	Refunded	BANORTE	29-Aug-24	[REDACTED]	[REDACTED]
Apr-24	4-Jun-24	Refunded	BANORTE	30-Aug-24	[REDACTED]	[REDACTED]
May-24	3-Jul-24	Refunded	BANORTE	31-Oct-24	[REDACTED]	[REDACTED]
Jun-24	12-Aug-24	Refunded	BANORTE	21-Nov-24	[REDACTED]	[REDACTED]
Jul-24	3-Sep-24	Refunded	BANORTE	13-Nov-24	[REDACTED]	[REDACTED]
Aug-24	3-Oct-24	Refunded	BANORTE	31-Jan-25	[REDACTED]	[REDACTED]
Sep-24	6-Nov-24	Refunded	BANORTE	25-Feb-25	[REDACTED]	[REDACTED]

¹¹⁵ [REDACTED]

¹¹⁶ [REDACTED]

¹¹⁷ Control # [REDACTED]

¹¹⁸ Control # [REDACTED]

¹¹⁹ Control # [REDACTED]

Oct-24	4-Dec-24	Refunded	BANORTE	26-Mar-25	██████████	██████████
Nov-24	7-Jan-25	Refunded	BANORTE	24-Apr-25	██████████	██████████
Dec-24	29-Jan-25	Refunded	BANORTE	9-Apr-25	██████████	██████████
Jan-25	28-Feb-25	Refunded	BANORTE	13-Jun-25	██████████	██████████
Feb-25	3-Apr-25	Refunded	BANORTE	10-Jun-25	██████████	██████████
Mar-25	28-Apr-25	Requested to SAT				
Apr-25	30-May-25	Requested to SAT				
May-25	2-Jul-25	Requested to SAT				
TOTAL					██████████	██████████

114. Currently, PEM’s VAT Refunds are being deposited by the SAT into PEM’s Banorte Account and are not freely accessible to PEM due to the freezing of the account in August 2024. These deposits total approximately ██████████ *each month* (depending on the cost of inputs from PEM’s suppliers and the amount of recoverable VAT Refunds). The Tribunal has made clear that the Respondent is not complying with the PM Decision, finding in Procedural Order No. 8, dated September 22, 2025, “the Tribunal cannot but restate that the Respondent’s conduct is in direct breach of the Order.”¹²⁰

115. Withholding PEM’s VAT Refunds thus violates the Tribunal’s PM Decision and continues to severely harm the Claimant’s ability to run its operations.

E. The Respondent Has Targeted the Claimant through its VAT Impediment

116. The Respondent’s VAT Impediments—destroying PEM’s ability to operate independently in Mexico—is among the latest in a long campaign to target the Claimant unfairly because of its ownership by a Canadian foreign investor in Mexico.

117. Beginning in June 2020, shortly after the filing of Claimant’s Notice of Intent in this arbitration, the Respondent very publicly sought to force First Majestic to abandon its APA and acquiesce to the SAT’s exorbitant and illegal tax reassessments.¹²¹ In particular, the former President Lopez Obrador and his administration engaged in repeated public shaming of the

¹²⁰ Procedural Order No. 8, dated September 22, 2025, ¶ 18.

¹²¹ See Claimant’s Request for Provisional Measures, ¶ 122.

Claimant and deliberate leaking of confidential tax information in an effort to force the Claimant to settle the dispute with the SAT concerning the tax reassessments. Specifically:

- President Lopez Obrador in his daily *mañanera* claimed that “there are Canadian mining companies that want to go to international courts over their differences with the Mexican State over the payment of taxes.”¹²² He then indicated that he had encouraged Canada’s Ambassador to Mexico to try to persuade such companies to avoid such international proceedings.¹²³ He is quoted as saying “What are we going to court for? ***It’s very clear that they have these debts with the SAT.*** Hopefully they’ll help us to convince them [to pay].”¹²⁴
- In early 2021, Raquel Buenrostro intentionally leaked confidential financial information about First Majestic to the Mexican media. Specifically, on February 1, 2021, a *Reforma* article reported that the “Mexican government plans to collect more than [REDACTED] from Canadian mining company First Majestic Silver Corp. in what it says is a debt for taxes stemming from keeping silver prices artificially low over the past decade.”¹²⁵
- Raquel Buenrostro, the former head of the SAT under President Lopez Obrador, also stated: ***“[T]hey do not want to pay their taxes,*** because there was a person who worked in the SAT and had a brother who worked in an office, and they gave them an interpretation according to criteria.”¹²⁶

¹²² Pedro Dominguez, AMLO dice que pidió ayuda a Trudeau para que mineras de Canadá paguen impuestos, Milenio, dated June 17, 2020, p. 1 (“[H]ay empresas mineras canadienses que quieren ir a tribunales internacionales por sus diferencias con el Estado mexicano por el pago de impuestos.”), C-0003, p. 212; see Claimant’s Memorial, ¶ 332; see also Witness Statement of [REDACTED], dated April 25, 2022, ¶ 135, [REDACTED]-0000.

¹²³ Witness Statement of [REDACTED] dated April 25, 2022, ¶ 135, [REDACTED]-0000.

¹²⁴ AMLO asks Canada to persuade mining company to pay their taxes, Mexico News Daily, dated June 10, 2020, pp. 1 (emphasis added), C-0039.

¹²⁵ Claimant’s Request for Provisional Measures, ¶ 122(c); see Reuters, Busca SAT cobrar [REDACTED] a minera canadiense, Reforma, dated February 1, 2021, p. 1 (reporting on the Reforma article) (Original: “El Gobierno de México planea obtener más de 500 millones de dólares de la minera canadiense First Majestic Silver Corp en lo que dice ser un adeudo por impuestos derivados de mantener artificialmente bajos los precios de la plata durante la última década.”), [REDACTED]-0027; see also Reuters, Mexican tax chief Raquel Buenrostro named as next economy minister, dated October 7, 2022, pp. 1-2, C-0040.

¹²⁶ See Sector minero no tributa y es corrupto: Economía, El Economista, dated December 7, 2022, p. 2 (emphasis added) (“[N]o quieren pagar sus impuestos, porque había una persona que trabajaba en el SAT y tenía un hermano que trabajaba en un despacho, y les hicieron una interpretación de criterio a modo.”), C-0047.

- In February 2022, in his *mañanera*, former President Lopez Obrador re-iterated that First Majestic *does not “want to pay taxes”*¹²⁷ and that he *expected the Mexican Supreme Court to act with “rectitude”* and rule in accordance with his expectations that PEM will be required to pay the amounts the SAT claims it is owed.¹²⁸

118. The Claimant has previously referenced additional harmful statements made by public officials against First Majestic and PEM in its Request for Provisional Measures.¹²⁹ These statements are clear proof of discriminatory treatment by the Respondent targeting the Claimant and its wholly owned subsidiary, PEM, simply because First Majestic is a foreign investor that was exercising its legal rights. While these statements were being made, there was absolutely no basis for claiming that PEM had an obligation to pay the Mexican government taxes since there were ongoing legal proceedings to determine whether PEM owed any taxes. These proceedings required adjudication on SAT’s ability to set aside the APA, and whether the imposition of tax on a retroactive basis was permitted by the Mexican constitution.¹³⁰ These were novel issues for the Mexican legal system, and SAT’s actions are unprecedented and inconsistent with its position as stated and recorded by the OECD.¹³¹

119. The freezing of PEM’s Mexican bank accounts can therefore be viewed as the continuance or extension of the pattern of discriminatory actions of the Respondent, almost always outside Mexico’s legal framework, targeting the Claimant and PEM and harming the operation of the San Dimas mine.

120. Simply put, the SAT’s actions in barring access to all of PEM’s bank accounts in Mexico, including by denying legitimate guarantee offers, unless the SAT’s high ransom was paid, is indicative of the Respondent’s willingness to neutralize all of PEM’s business activities. It was willing to do this even if this meant that the SAT would not recover the ransom amount (since

¹²⁷ Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 16 (emphasis added), C-0003, p. 104; see also Claimant’s Memorial, ¶ 338.

¹²⁸ See Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador, dated February 7, 2022, p. 16 (emphasis added), C-0003, p. 104; see also Claimant’s Memorial, ¶ 413.

¹²⁹ See Claimant’s Request for Provisional Measures, ¶ 122.

¹³⁰ See Claimant’s Memorial, Section III.H.1.

¹³¹ See Expert Report of [REDACTED], dated April 25, 2022, ¶¶ 101-109, [REDACTED] 0000.

under Mexican law the payroll obligations and secured creditor’s priority would prevail over any of SAT’s claims).

III. THE TRIBUNAL HAS JURISDICTION TO DECIDE THE ANCILLARY CLAIM

121. The Ancillary Claim satisfies all of the jurisdictional requirements under the NAFTA and the ICSID Convention for resolution by this Tribunal.

122. The Tribunal rendered a decision on July 15, 2024, to admit the Ancillary Claim, finding that, in accordance with Article 46 of the ICSID Convention, the claim is “within the scope of the parties’ consent” and is otherwise within the jurisdiction of the Centre.¹³² This Part summarizes the Claimant’s position that all jurisdictional requirements have been met.

A. The Tribunal’s Decision to Admit the Ancillary Claim

123. To admit ancillary claims, an ICSID Tribunal must determine that it possesses jurisdiction over the claims that a party seeks to admit. This fundamental criterion is set out in Article 46 of the ICSID Convention which provides:

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute *provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.*¹³³

124. ICSID Arbitration Rule 40 reiterates the requirement of jurisdiction from the moving party’s perspective. It indicates that a party may only present an ancillary claim if “such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre.”¹³⁴

125. On July 15, 2024, the Tribunal, after receiving submissions from both parties, granted Claimant’s request to admit the Ancillary Claim, with the following explanation:

The discussions revealed that the ancillary claim is intimately related to the broader dispute between the Claimant and the Respondent, which is the focus of the current

¹³² Tribunal’s Order on Claimant’s Request to Admit Ancillary Claims, dated July 15, 2024, point 2.

¹³³ Art. 46, ICSID Convention, dated October 14, 1966 (emphasis added), **CL-0012**.

¹³⁴ Rule 40, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

arbitration. Consequently, the Tribunal finds the ancillary claims proposed by the Claimant to be admissible, as they appear to arise directly from the dispute’s subject matter and *fall within the scope of the parties’ consent, in accordance with Article 46 of the ICSID Convention and ICSID Arbitration Rule 40*.¹³⁵

126. Therefore, by admitting the Ancillary Claim the Tribunal determined not only that such claim arises directly out of the subject-matter of the ongoing dispute, but also—and critically—that it falls “within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.”¹³⁶

B. First Majestic is Entitled to Bring its Claims Against Respondent Under Chapter 11 of NAFTA

127. Article 1101 (Scope and Coverage) provides, in relevant part, that Chapter 11 of NAFTA “applies to measures adopted or maintained by a Party relating to: [...] (b) investments of investors of another Party in the territory of the Party.”¹³⁷

128. The Claimant has raised the Ancillary Claim regarding matters within the scope of Chapter 11 and has satisfied all the jurisdictional requirements and other conditions contained in that Chapter for bringing such a claim against the Respondent. The Claimant’s positions in so far as they relate to the Ancillary Claim are set out below. All other positions of the Claimant reflected in the Claimant’s Memorial are incorporated herein, as determined to be relevant or necessary.

1. First Majestic is an “Investor of a Party” that has Made an “Investment” in Mexico

129. The NAFTA protects an “investor of a Party,” defined in Article 1139 as “a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment.”¹³⁸ The Claimant is an “enterprise” of Canada. The term “enterprise” is defined under the NAFTA as “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any

¹³⁵ Tribunal’s Order on Claimant’s Request to Admit Ancillary Claims, dated July 15, 2024, point 2 (emphasis added).

¹³⁶ Rule 40, ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), dated 2006, **CL-0012**.

¹³⁷ Art. 1101(1), NAFTA, dated January 1, 1994, **CL-0001**.

¹³⁸ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**.

corporation, trust, partnership, sole proprietorship, joint venture or other association.”¹³⁹ The Claimant is a corporation duly incorporated in the Province of British Columbia, Canada.

130. The Claimant has made significant “investments” in Mexico for a period of twenty years. Article 1139 (Definitions) defines “investment” as including, in relevant part:

(a) an enterprise;

(b) an equity security of an enterprise;

[...]

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor’s property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;¹⁴⁰

131. According to the tribunal in *Marvin Feldman v. United Mexican States*, “[t]he term ‘investment’ is defined in Article 1139, in exceedingly broad terms. It covers almost every type of financial interest, direct or indirect, except certain claims to money.”¹⁴¹

132. Tribunals have also held that monies, such as revenue, profits, and other claims to interests arising from the investment of capital are “investments,” provided they are linked to the

¹³⁹ Art. 201(1), NAFTA, dated January 1, 1994, **CL-0001**.

¹⁴⁰ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**.

¹⁴¹ *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated December 16, 2002, ¶ 96, **CL-0002**.

main investment. In *EnCana Corporation v. Ecuador*, for example, the tribunal found that tax refunds, which had been denied, could constitute an investment if the right to them has already accrued. In the context of assessing whether a right to a tax refund could be expropriated, the tribunal found:

[O]nce a right to a refund has accrued in respect of past transactions (so that all that remains is the question of accounting for receipts and payments) ***the corresponding right to be paid is capable of falling within the broad scope of “amounts yielded by an investment”***¹⁴²

133. The Claimant, through PEM and other subsidiaries, which it wholly owns and controls, has made numerous “investments” in Mexico. These include ownership since 2004 of several mining companies, including PEM, which the Claimant indirectly acquired in 2018 by purchasing all of the shares of PMC.¹⁴³ The Claimant’s investments also include its shareholdings of █████ of PEM’s stocks.¹⁴⁴ PEM’s contractual rights under the APA also constitute “investments.”¹⁴⁵ Finally, the Claimant’s protected assets include all lands and all other assets, tangible or intangible, acquired in connection with its mining businesses in Mexico.¹⁴⁶

134. Additionally, PEM’s VAT Refunds held in the Banamex Account (and subsequently the Banorte Account) are also “investments” within the meaning of Article 1139(h) of the NAFTA. Such funds result from capital invested in PEM by the Claimant. Such initial capital generated investment proceeds which were then used to purchase inputs critical for PEM’s exports, which as explained,¹⁴⁷ entitled PEM to VAT Refunds. In other words, the VAT Refunds emanated from the export activities of the Claimant’s investments. As such, the VAT Refunds are “interests arising

¹⁴² *EnCana Corporation v. Republic of Ecuador* (“*EnCana v. Ecuador*” or “*EnCana*”), LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶ 183 (emphasis added), **CL-0007**.

¹⁴³ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**. See subpart (a) of the definition of “investment.”

¹⁴⁴ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**. See subparts (e)-(f) of the definition of “investment.”

¹⁴⁵ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**. See subpart (h) of the definition of “investment.”

¹⁴⁶ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**. See subpart (g) of the definition of “investment.”

¹⁴⁷ The critical inputs claimed by PEM related to supplies, energy and chemicals, contractors, and services. See Witness Statement of █████, dated October 21, 2025, ¶ 6, █████ **0000**.

from the commitment of capital or other resources in the territory of a Party to economic activity in such territory....”¹⁴⁸

135. It follows therefore that the Claimant is an “investor of a Party” that has “made an investment” in Mexico, including in relation the VAT Refunds which are among the many assets owned by PEM, on whose behalf the Claimant may claim.

2. Mexico’s Acts at Issue are “Measures... Relating to” First Majestic’s Investments

136. Article 201 of the NAFTA defines the term “measure” as “any law, regulation, procedure, requirement or practice.”¹⁴⁹ As explained in *Ethyl Corporation v. Canada*, the meaning of the term is broad: “Clearly something other than a ‘law,’ even something in the nature of a ‘practice,’ which may not even amount to a legal stricture, may qualify [as a measure].”¹⁵⁰

137. The acts underlying the Respondent’s misconduct and omissions in this case are clearly measures “relating to” the Claimant’s investments. As determined in *Methanex Corp. v. United States of America*, the term “relating to,” as used in Article 1101(1), only requires that there be a “legally significant connection” between the “measures” and the “investments” at issue.¹⁵¹ Such a “legally significant connection” clearly exists in this case with respect to the measures of the Respondent.

138. In addition to the measures set out in Paragraph 158 of the Claimant’s Memorial, the VAT Impediment, *i.e.*, the SAT’s deposit of PEM’s VAT Refunds in frozen accounts, its ongoing refusal to release these VAT Refunds which belong to PEM, and its continuing refusal to approve

¹⁴⁸ Article 1139, NAFTA, dated January 1, 1994, **CL-0001**. See *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶183 (finding “once a right to a refund has accrued in respect of past transactions (so that all that remains is the question of accounting for receipts and payments) the corresponding right to be paid is capable of falling within the broad scope of ‘amounts yielded by an investment’”), **CL-0007**.

¹⁴⁹ Art. 201, NAFTA, dated January 1, 1994, **CL-0001**.

¹⁵⁰ *Ethyl Corporation v. The Government of Canada*, UNCITRAL, Award on Jurisdiction, dated June 24, 1998, ¶ 66, **CL-0003**; see also *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America* (“*Loewen v. United States*”), ICSID Case No. ARB(AF)/98/3, Decision on Jurisdiction, dated January 5, 2001, ¶ 40 (noting the “breadth of this inclusive definition” of “measure” in Art. 201 of NAFTA), **CL-0004**; *SAUR International S.A. v. Argentine Republic*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, dated June 6, 2012, ¶ 364, **CL-0005**.

¹⁵¹ *Methanex Corp. v. United States of America*, UNCITRAL (NAFTA), Partial Award on Jurisdiction, dated August 7, 2002, ¶ 147, **CL-0006**.

PEM’s guarantee applications” are clearly “measures” within the meaning of Article 201 of the NAFTA. As explained above,¹⁵² these measures have severely and negatively impacted PEM’s legal entitlement to the VAT Refunds, as well as the Claimant’s ability to do business in Mexico. There is thus a “legally significant connection” between this measure and the Claimant’s “investments.”

C. The Claimant is Entitled to Bring Its Claims Against Mexico Under the ICSID Convention

139. The Tribunal’s Order on Claimant’s Request to Admit Ancillary Claims, dated July 15, 2024, states that the Ancillary Claim falls “within the scope of the parties’ consent, in accordance with Article 46 of the ICSID Convention and ICSID Arbitration Rule 40.”¹⁵³ The Claimant’s positions in so far as they relate to the Ancillary Claim meeting the requirement of Article 46 of the ICSID Convention are set out below. It has already been established in this proceeding that (1) Mexico and Canada are both Contracting Parties to the ICSID Convention; and (2) the Claimant and the Respondent have “consent[ed] in writing” to submit claims to ICSID.

140. Accordingly, the remainder of these Sections address the existence of “a legal dispute arising directly out of an investment.” All other positions are incorporated, as necessary, by reference to the Claimant’s Memorial.

1. There is a “Legal Dispute”

141. The Ancillary Claim unquestionably concerns a protracted legal dispute between the Claimant and the Respondent. The term “dispute” has been defined as “a disagreement on a point of law or fact, a conflict of legal views or interests between parties.”¹⁵⁴ To be a “legal dispute,” the

¹⁵² See *supra* S. II.C.

¹⁵³ Tribunal’s Order on Claimant’s Request to Admit Ancillary Claims, dated July 15, 2024, point 2.

¹⁵⁴ See, e.g., Christoph H. Schreuer, THE ICSID CONVENTION: A COMMENTARY, dated 2009, Article 25 - Jurisdiction, ¶ 42 (quoting *Mavrommatis Palestine Concessions*, Judgment No. 2, P.C.I.J., Series A, No. 2, dated 1924, p. 11), CL-0013.

controversy “must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.”¹⁵⁵

142. The Ancillary Claim involves a disagreement between the parties about the Claimant’s rights and the Respondent’s obligations under NAFTA and international law, and the nature and extent of the compensation payable by the Respondent because of the Respondent’s VAT Impediment and associated harm to PEM and the Claimant.

2. The Dispute “Arises Directly Out of an Investment”

143. As explained in Section III.C of the Claimant’s Memorial, the Claimant has made significant “investments” in Mexico within the meaning of Article 25(1) of the ICSID Convention. In addition, the Claimant’s VAT Refunds also constitute an “investment” under the NAFTA provisions. They are “interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory....”¹⁵⁶

144. The legal dispute relating to the VAT Impediment clearly arises out of the Claimant’s “investment.” As stated in *Tokios Tokelés v. Ukraine*, “[i]n order for the directness requirement to be satisfied, the dispute and investment must be ‘reasonably closely connected.’”¹⁵⁷ Such is the case here. As previously explained¹⁵⁸, the VAT Refunds are proceeds that are derivative of the main “investment” and thus themselves “investments.” The SAT’s order to freeze the Banamex Account directly impacted PEM’s ownership rights to the VAT Refunds by denying the company access to the funds.

¹⁵⁵ See, e.g., Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, in HISTORY OF THE ICSID CONVENTION, Volume II-2, dated March 18, 1965, p. 1078, **CL-0014**.

¹⁵⁶ Art. 1139, NAFTA, dated January 1, 1994, **CL-0001**. See *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, dated February 3, 2006, ¶ 183 (finding “once a right to a refund has accrued in respect of past transactions (so that all that remains is the question of accounting for receipts and payments) the corresponding right to be paid is capable of falling within the broad scope of ‘amounts yielded by an investment’”), **CL-0007**.

¹⁵⁷ *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, dated April 29, 2004, ¶ 88, **CL-0120**.

¹⁵⁸ See *supra* ¶ 131.

145. As a result, the dispute is unquestionably “reasonably closely connected” to the investment at issue.¹⁵⁹

IV. ARGUMENT

146. The VAT Impediment, imposed by the SAT against PEM, completely deprived PEM of its access to, and use and enjoyment of, valuable financial resources, the VAT Refunds. In so doing, the Respondent violated numerous investment protections set out in Section A of Chapter 11 of NAFTA which gives rise to significant damages. These breaches include violations of: Article 1109 on free transfers; Article 1105 on the minimum standard of treatment; and Article 1110 on expropriation. The amount of damages arising out of the Respondent’s breaches (for which the Claimant is currently claiming) totals [REDACTED].¹⁶⁰

147. The Claimants arguments on the merits and damages are set forth below.

A. Applicable Law

148. Article 42(1) of the ICSID Convention provides that the “Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties.”¹⁶¹ According to Article 1131 of NAFTA, the Tribunal “shall decide the issues in dispute in accordance with [NAFTA] and applicable rules of international law.”¹⁶² Accordingly, the provisions of NAFTA and other rules of international law, including customary international law, govern this arbitration.¹⁶³ Mexican law while it may be relevant, as a factual matter, in demonstrating the Claimant’s rights under domestic law and regulation, cannot constrain this Tribunal’s application of international law rules including NAFTA.

¹⁵⁹ Although not a requirement for directness, the fact that the SAT directly targeted PEM confirms that the directness requirement has been satisfied. *Metalpar S.A. and Buen Aire S.A. v. Argentine Republic*, ICSID Case No. ARB/03/5, Decision on Jurisdiction, dated April 27, 2006, ¶ 95 (finding the directness requirement “does not mean ... that the measures adopted by the State must be directed specifically against the investment”), **CL-0121**.

¹⁶⁰ The Claimant reserves its right to include additional claims at a later stage for damages accruing after January 4, 2023 that continue to compound in the Banorte Account as a result of the VAT Impediment.

¹⁶¹ Art. 42(1), ICSID Convention, dated October 14, 1966, **CL-0012**.

¹⁶² Art. 1131, NAFTA, dated January 1, 1994, **CL-0001**.

¹⁶³ Art. 31(1), Vienna Convention on the Law of Treaties (“VCLT”), dated May 23, 1969, [REDACTED]-0001.

B. Violation of NAFTA Chapter 11, Section A

1. Mexico Breached Article 1109 of NAFTA on Free Transfers

149. The Respondent breached the broad and absolute protections of Article 1109 of the NAFTA, which guarantees the free flow of investment-related funds between bank accounts into and out of Mexico.

a. NAFTA Free Transfers Standard

150. The core of the transfers protection is established in the first sentence of Article 1109(1), which provides:

Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay.¹⁶⁴

151. Despite limited treatment of this provision by NAFTA tribunals, an interpretation of Article 1109, based on the principles enshrined in the Vienna Convention on the Law of Treaties (“VCLT”),¹⁶⁵ yields a meaning that provides for expansive protection to be accorded under Article 1109, as explained below.

i. “all transfers relating to an investment”

152. Importantly, the phrase “all transfers relating to an investment” is all-encompassing, covering any kind of transfer.

153. The word “all” means “every one (of), or the complete amount or number (of), or the whole (of).”¹⁶⁶ The word “transfers,” as used in the context of international business, means the movement or conveyance of money, assets, or rights from one person, account, or entity to another, including intra-account or intra-group movements. For instance, the *Investopedia* website defines a transfer as “the movement of assets, monetary funds, or ownership rights from one

¹⁶⁴ Art. 1109(1), NAFTA, dated January 1, 1994, CL-0001.

¹⁶⁵ Specifically, Article 31(1) of the VCLT provides: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” See Art. 31(1), VCLT, dated May 23, 1969, ■-0001.

¹⁶⁶ Definition of “all,” Cambridge Dictionary, accessed on September 24, 2025, C-0098.

account to another.”¹⁶⁷ In other words, “transfers” include any movement of funds through the financial system.

154. Thus, the phrase “all transfers” covers any type of movement of funds connected to an investment—such as, but not limited to, capital contributions, dividends, interest, fees, royalties, loan proceeds and repayments, intercompany remittances, repatriation of profits, and proceeds of sale—whether by wire, electronic or book entry, or other payment mechanism, and whether domestic or cross-border.

155. The phrase “relating to an investment” contains terms that are well understood in NAFTA practice and are broad in scope. The ordinary meaning of the words “relating to” is “connected with something.”¹⁶⁸ Thus, under Article 1109, there must only be a “connection” between the “transfers” and the “investment.” Obviously, a transfer in relation to funds in a bank account, such as VAT refunds, would meet the definition.

156. The term “investment” is defined in Article 1139 of the NAFTA. As discussed, the Claimant has made “investments” in many forms, including by ownership of several Mexican mining companies, its █████ shareholding in PEM, PEM’s contract rights under the APA, all lands and other tangible and intangible assets acquired in connection with its Mexican mining operations and PEM’s VAT Refunds.¹⁶⁹ PEM’s VAT Refunds also qualify as an “investment” because they are derived directly from the Claimant’s capital contributions to PEM, and the latter’s mining activities leading to the exporting of silver.

157. Notably, Article 1109(1) contains no geographical limitations. In other words, the protection mandates free transfers between bank accounts, writ large, and imposes no requirement that a transfer be cross-border in nature, *i.e.*, leaving or arriving into the territory of the NAFTA Party in which the investment is located. While, in any event, these types of transfers fit squarely

¹⁶⁷ See Julia Kagan, Transfer: Definition in Finance and Types, Investopedia, dated July 29, 2020, **C-0100**; see also, definition of “transfer,” Jonathan Law, A Dictionary of Business and Management, 5th ed., Oxford University Press, dated 2009 (defining “transfer” as “1. The movement of money from one bank account to another. 2. The movement of funds through the banking system’s clearing house. 3. A large movement of dollars in the USA through the fedwire system. 4. The conveyance of property ownership by the transfer of deeds. 5. See share transfer.”), **C-0099**.

¹⁶⁸ Definition of “relating to,” Cambridge Dictionary, accessed on September 24, 2025, **C-0101**.

¹⁶⁹ See *supra* S. III.B.2.

within the scope of Article 1109, so too would intra-territory transfers that are connected to an investment, such as the transfer of funds between Mexican bank accounts. In sum, as a starting point, Article 1109 applies whenever a movement of funds is “connected with” an “investment”—no matter whether the destination of the transfer is foreign or domestic.

ii. “made freely and without delay”

158. Article 1109(1) also requires that all covered transfers be “made freely and without delay.”¹⁷⁰ In context, “freely” denotes the absence of restrictions and the ability to convert and transfer funds in a freely usable currency at the prevailing market rate on the date of transfer, as Article 1109(2) itself specifies.¹⁷¹ The term “without delay” has been considered by eminent NAFTA scholars as meaning within a “reasonable time.”¹⁷² Although NAFTA does not specify a fixed deadline for such transfers, in practice, a reasonable time is typically understood to allow for the completion of routine procedures, such as verifying documentation or processing currency conversion, but does not permit the State to impose unnecessary or arbitrary delays.¹⁷³ The period allowed must be strictly limited to what is objectively required for the necessary formalities, and any delay that goes beyond this point in time would be inconsistent with Article 1109.

159. Thus, the text of Article 1109 reflects a clear aim of allowing investors to access and move their funds as quickly as is reasonably possible so as to avoid any harmful consequences.

iii. Non-exclusive list of examples of “transfers”

160. Article 1109(1) includes an “illustrative (rather than exhaustive) list” of types of “transfers” that may fall within the scope of protection.¹⁷⁴ The relevant text provides:

Such transfers **include**:

¹⁷⁰ See Art. 1109(1), NAFTA, dated January 1, 1994, **CL-0001**.

¹⁷¹ See Art. 1109(2), NAFTA, dated January 1, 1994, **CL-0001**.

¹⁷² See Meg Kinnear, Andrea Kay Bjorklund, et al., Article 1109 – Transfers, in *INVESTMENT DISPUTES UNDER NAFTA: AN ANNOTATED GUIDE TO NAFTA CHAPTER 11*, Supplement No. Main work, Kluwer Law International, dated 2006, pp. 1109-1-1109-13, **CL-0065**.

¹⁷³ *Id.* at 1109-8.

¹⁷⁴ See Chester Brown, Article 1109: Transfers, in *COMMENTARIES ON SELECTED MODEL INVESTMENT TREATIES*, Oxford, dated 2013, p. 492, **CL-0122**.

- (a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) payments made pursuant to Article 1110; and
- (e) payments arising under Section B.¹⁷⁵

161. The ordinary meaning of the term “include,” as used in the definition of “investment” in Article 1109 of NAFTA, means “to have something or someone as part of something larger.”¹⁷⁶ This definition supports the interpretation that the types of transfers enumerated in Article 1109 are merely examples. They do not form a closed set.

162. The non-exhaustive approach in Article 1109(1)(a)-(e) reinforces the conclusion that the provision establishes a broad free transfers protection in relation to inward and outward transfers, *i.e.*, transboundary transfers, as well as domestic transfers, limited only by the need for a connection between a “transfer” and an “investment.”

iv. Exceptions

163. Article 1109(4) includes certain limited exceptions to the transfers protection that are not applicable in the present case. That provision provides:

Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the ***equitable, non-discriminatory and good faith application*** of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses;
- (d) reports of transfers of currency or other monetary instruments; or

¹⁷⁵ Art. 1109(1), NAFTA, dated January 1, 1994 (emphasis added), **CL-0001**.

¹⁷⁶ Definition of “include,” Cambridge Dictionary, accessed on September 25, 2025, **C-0103**.

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.¹⁷⁷

164. All exceptions are subject to the application of the chapeaux, which requires “the equitable, non-discriminatory, and good faith application of [the NAFTA Party’s] laws.”¹⁷⁸ Thus, none of the exceptions can apply where a domestic tax authority recognizes a taxpayer’s right to a tax refund but simultaneously denies access to the refund unlawfully as a means of coercion or harassment.

b. Mexico’s Conduct Violated the Free Transfers Standard

165. The Respondent has violated the transfers obligation in Article 1109 in respect of outbound, inbound and domestic flows of investment-related funds.

166. First, the VAT Impediment has barred PEM from moving its VAT Refunds *around and out of Mexico* in order to service its debts owed to CFM, and to share profits with its parent company, First Majestic, in Canada, or to protect those funds from subsequent seizure as occurred in the present case with respect to the Banorte Account. That account was frozen just over a year after it was opened, in violation of the Tribunal’s PM Decision. Second, the VAT Impediment, including the freezing of all of PEM’s bank accounts, has prevented the Claimant from moving funds *into Mexico* in order to pay its operational expenses, including the payment of employee salaries, vendor bills, and regulatory agency fees. As a result, the Respondent has been forced to create and rely on a network of Canadian banks to support PEM’s operations remotely, at great expense and inconvenience.¹⁷⁹

167. A description of the Respondent’s multiple violations of Article 1109(1) are set forth below:

168. ***PEM cannot transfer any VAT Refunds to CFM to service its debt.*** The VAT Refunds represent a significant amount of capital—approximately [REDACTED] in the Banamex Account alone¹⁸⁰ that would have been available to PEM to satisfy its critical expenses and other

¹⁷⁷ Art. 1109(4), NAFTA, dated January 1, 1994 (emphasis added), CL-0001.

¹⁷⁸ Art. 1109(4), NAFTA, dated January 1, 1994, CL-0001.

¹⁷⁹ See *supra* S. II.C.

¹⁸⁰ This does not include amounts that have been accrued after January 4, 2023.

obligations but for the VAT Impediments. Chief among these is servicing PEM's debt to CFM, the Mexican entity that wholly owns PEM. As explained, PEM was capitalized through a combination of equity and debt serviceable to CFM and had been repaying its debt through dividends and the return of paid capital.¹⁸¹

169. The VAT Impediment barred PEM from transferring money from its Banamex Account or any other account to a bank account held by CFM. As explained,¹⁸² a transfer of funds relating to an "investment" between Mexican bank accounts is protected under Article 1109(1). Accordingly, the Respondent violated its free transfer obligation under NAFTA.

170. ***PEM cannot transfer any VAT Refunds to First Majestic as profit.*** If PEM were able to repay its debts to CFM, it would have completed that process by now.¹⁸³ Because CFM is wholly owned by First Majestic, CFM would have returned any surplus funds post-debt repayment to First Majestic in Canada.¹⁸⁴

171. The VAT Impediment barred PEM from transferring money from its Banamex Account or any other account to a bank account held in Mexico by CFM. Therefore, PEM's debt repayment could not proceed to completion and, thus, no surplus could ever be transferred to First Majestic. As explained,¹⁸⁵ a transfer of funds relating to an "investment" between a Mexican bank and a Canadian account is clearly within the scope of Article 1109(1). Accordingly, the Respondent violated the free transfers obligation.

172. ***PEM cannot transfer any VAT Refunds to a safer jurisdiction.*** A short window of time existed (between March 1, 2024-August 29, 2024) when the SAT did not block PEM's access to its VAT Refunds in the Banorte Account, PEM was able to and did transfer VAT Refunds that had accrued into the frozen Banamex Account (as of January 4, 2023), to the Banorte account.¹⁸⁶ The Banorte Account was created shortly before June 15, 2023, in compliance with the Tribunal's

¹⁸¹ See *supra* ¶ 99.18

¹⁸² See *supra* ¶ 131.

¹⁸³ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 38, [REDACTED] 0000.

¹⁸⁴ See Witness Statement of [REDACTED], dated October 21, 2025, ¶ 39, [REDACTED] 0000.

¹⁸⁵ See *supra* ¶¶ 160-161.

¹⁸⁶ See *supra* fn 5.

PM Decision. Having been subjected to a prior seizure of the Banamex account on April 3, 2020, PEM withdrew funds from the Banorte Account and transferred them to PSM account and PEM accounts in Canada. However, the Banorte¹⁸⁷ has been frozen since August 29, 2020, eliminating PEM's ability to remove additional funds out of Mexico.¹⁸⁸

173. The VAT Impediment therefore barred PEM from transferring money from any of its accounts to a safer jurisdiction, such as Canada. As explained,¹⁸⁹ a transfer of funds relating to an “investment” between a Mexican bank and a non-Mexican account is clearly within the scope of Article 1109(1). Accordingly, the Respondent violated the free transfers obligation.

174. *First Majestic cannot transfer funds to PEM due to the VAT Impediment.* The VAT Impediment has blocked PEM's ability to draw on its VAT Refunds held in Mexican bank accounts. Because the SAT's freeze applies to all bank accounts held by PEM, there is no way that PEM can continue to satisfy its operational expenses without First Majestic's intervention and support. At the same time, because of the VAT Impediment there is no way the Claimant can move money into Mexico without having it immediately frozen. As a result,¹⁹⁰ the Claimant has been forced to use a network of Canadian banks through which First Majestic pays for PEM's in-country expenses, such as salaries, lease obligations, supplier bills, and regulatory fees. The workaround,

¹⁸⁷ See Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated July 31, 2024, [REDACTED]-0001; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated January 31, 2025, [REDACTED]-0002; Banamex Bank Statement of PEM, Account No. Contrato [REDACTED] dated September 30, 2025, [REDACTED]-0003; Banorte Bank Statement of PEM, Account No. [REDACTED] dated July 31, 2024, [REDACTED]-0004; see also Banamex Monthly Statements, n.d., [REDACTED]-0085; Letter from Alan Bonfiglio to the Tribunal, dated September 9, 2025, p. 7 (informal translation) (“Regarding the second point, the Defendant considers it essential to clarify that on July 9, 2024, it promptly and fully complied with this point of the Provisional Measures Decision. On that date, the banking institution Banco Nacional de México, SA, a member of the Banamex Financial Group, informed the SAT that it had transferred funds in the amount of \$ [REDACTED] to account number [REDACTED] of Banco Mercantil del Norte, SA, Multiple Banking Institution, Banorte Financial Group, in the name of Primero Empresa Minera, SA de CV.”) (Original: “Sobre el segundo punto, la Demandada considera indispensable precisar que el 9 de julio de 2024 dio puntual y cabal cumplimiento a este punto de la Decisión de Medidas Provisionales. En esa fecha, la institución bancaria Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, informó al SAT que había efectuado la transferencia de fondos por la cantidad de [REDACTED] a la cuenta número [REDACTED] de Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte, a nombre de Primero Empresa Minera, S.A. de C.V.”).

¹⁸⁸ Official Letter No. 400-72-00-09-02-2024-24590, dated August 20, 2024, C-0084.

¹⁸⁹ See *supra* ¶¶ 131, 160-161

¹⁹⁰ See *supra* S. II.C.

which is very time-intensive, inefficient and costly, demonstrates that the Claimant has no ability to transfer funds into Mexico freely.

175. The VAT Impediment therefore bars the Claimant from transferring funds into Mexico. A transfer of funds relating to an “investment” between a Canadian bank account and a Mexican bank account is clearly within the scope of Article 1109(1). Accordingly, the Respondent violated the free transfers obligation.¹⁹¹

* * *

176. In sum, the Respondent committed multiple breaches of Article 1109 of NAFTA.

2. Mexico Breached Article 1105 of NAFTA (Minimum Standard of Treatment)

177. The Respondent also breached the fair and equitable treatment protection of Article 1105 of NAFTA when: (1) the SAT froze the Banamex Account in violation of Article 157 of the Federal Tax Code (2) the SAT arbitrarily rejected PEM’s guarantee application; and (3) the SAT discriminatorily targeted PEM with the VAT Impediment.

a. NAFTA Minimum Standard of Treatment

178. Article 1105 of NAFTA on the “minimum standard of treatment” provides the applicable standard of treatment. Specifically, Article 1105(1) provides:

Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.¹⁹²

179. It is well established that arbitral decisions, which themselves do not create customary international law, may reflect customary international law.¹⁹³ With respect to the customary standard of fair and equitable treatment, the overwhelming number of investor-State

¹⁹¹ See *supra* ¶ 156.

¹⁹² Art. 1105(1), NAFTA, dated January 1, 1994, CL-0001.

¹⁹³ See *Cargill, Incorporated v. United Mexican States* (“*Cargill*”), ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 277 (finding that “the writings of scholars and the decisions of tribunals may serve as evidence of custom”), CL-0018; see also *Mercer International, Inc. v. Government of Canada*, ICSID Case No. ARB(AF)/12/3, Submission of Mexico Pursuant to Article 1128 of NAFTA, dated May 8, 2015, ¶ 18, CL-0019.

arbitration tribunals have followed the standard articulated in *Waste Management, Inc. v. United Mexican States*.¹⁹⁴

180. In that case, applying Article 1105 of NAFTA, the tribunal articulated the standard as follows:

[T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.¹⁹⁵

181. Under the *Waste Management* standard, different types of State misconduct may produce a result or outcome that is so fundamentally unfair, unjust or prejudicial as to fall below the minimum standard of fair and treatment. These types of misconduct roughly fall into four distinct, yet potentially overlapping categories, namely arbitrariness, lack of due process, discrimination and a breach of legitimate expectations.

182. Notably, the Respondent has supported the formulation of the fair and equitable treatment standard in *Waste Management*. For example, in its pleadings in *GAMI Investments, Inc. v. United Mexican States*, Respondent recalled the *Waste Management* standard and affirmed that “[i]ts analysis is consistent with the arguments of the respondent.”¹⁹⁶

¹⁹⁴ See, e.g., *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada* (“*Bilcon v. Canada*”), UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶¶ 427, 442, **CL-0020**; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, dated December 19, 2013, ¶¶ 262, 455 (adopting *Waste Management* standard in principal part), **CL-0021**; *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated June 29, 2012, ¶ 219, **CL-0022**.

¹⁹⁵ *Waste Management, Inc. v. United Mexican States* (“*Waste Management*”), ICSID Case No. ARB(AF)/00/3, Award, dated April 30, 2004, ¶ 98, **CL-0023**.

¹⁹⁶ *GAMI Investments, Inc. v. United Mexican States*, (UNCITRAL) Ad hoc, Mexico’s Post-Hearing Brief (Unofficial English Translation), dated May 24, 2004, ¶¶ 48, 50 (Original: “Su análisis concuerda con los argumentos de la demandada.”), **CL-0024**.

183. Generally, NAFTA tribunals have interpreted the fair and equitable treatment standard in line with *Waste Management*. Many have adopted the standard wholesale.¹⁹⁷ Others have added their own gloss on the types of misconduct that can trigger a fair and equitable treatment violation within the factual context of a particular case.

184. In *Cargill, Incorporated v. United Mexican States*, for example, the tribunal observed:

To determine whether an action fails to meet the requirement of fair and equitable treatment, a tribunal must carefully examine whether the complained of measures were grossly unfair, unjust or idiosyncratic; arbitrary beyond a merely inconsistent or questionable application of administrative or legal policy or procedure so as to constitute an unexpected and shocking repudiation of a policy's very purpose and goals, or to otherwise grossly subvert a domestic law or policy for an ulterior motive; or involve an utter lack of due process so as to offend judicial propriety.¹⁹⁸

185. The *Cargill* tribunal thus fleshed out aspects of the *Waste Management* standard, observing that State conduct that unjustifiably repudiates the essential purpose and objectives of a State's domestic law or policy violates the fair and equitable treatment standard.

186. In *International Thunderbird Gaming Corporation v. United Mexican States*, the tribunal described the standard of fair and equitable treatment similarly, though more efficiently, using more concise terminology:

[T]he Tribunal views acts that would give rise to a breach of the minimum standard of treatment prescribed by the NAFTA and customary international law as those that, weighed against the given factual context, amount to a gross denial of justice or manifest arbitrariness falling below acceptable international standards.¹⁹⁹

¹⁹⁷ See, e.g., *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶¶ 427, 442, **CL-0020**; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, dated December 19, 2013, ¶¶ 262, 455 (adopting *Waste Management* standard in principal part), **CL-0021**; *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated June 29, 2012, ¶ 219, **CL-0022**.

¹⁹⁸ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 296, **CL-0018**.

¹⁹⁹ *International Thunderbird Gaming Corporation v. United Mexican States* ("International Thunderbird"), (UNCITRAL) Ad hoc, Arbitral Award, dated January 26, 2006, ¶ 194, **CL-0017**.

187. The *International Thunderbird* tribunal’s statement of the fair and equitable treatment standard thus groups various concepts identified in *Waste Management*—such as lack of due process, unjustness, unfairness, and discrimination, determined in light of the given factual context, under the single rubric of “denial of justice.”²⁰⁰ It identifies two basic elements of the fair and equitable treatment standard: manifest arbitrariness and denial of justice.

188. Notably, Respondent has expressed the standard in similar terms. For example, in *Windstream Energy LLC v. Government of Canada*, Mexico intervened to take the position that Article 1105(1) covered “egregious conduct, such as serious malfeasance, manifestly arbitrary behaviour or denial of justice.”²⁰¹ More recently, the standard set out in *Waste Management* has been explicitly accepted by Mexico in its submissions in the *Odyssey Marine* case.²⁰² Respondent’s position on the scope of the fair and equitable treatment standard thus generally corresponds to the approaches in *Waste Management*, *Cargill*, and *International Thunderbird*.

189. Thus, the decisions of arbitral tribunals and Mexico’s well-established positions confirm that the minimum standard of fair and equitable treatment guards against various types of State misconduct, which are roughly grouped into four distinct, yet potentially overlapping categories: arbitrariness; lack of due process; discrimination; and legitimate expectations.

190. As explained below, numerous tribunals have found breaches of the customary standard of fair and equitable treatment based on State conduct falling into one or more of the categories—particularly (i) arbitrariness and (ii) discrimination—which are directly implicated in the present case.

²⁰⁰ Notably, in *Iberdrola Energia S.A. v. Republic of Guatemala*, the tribunal aptly defined “denial of justice” as follows: “[U]nder international law a denial of justice could constitute: (i) the unjustified refusal of a tribunal to hear a matter within its competence or any other State action having the effect of preventing access to justice; (ii) undue delay in the administration of justice; and (iii) the decisions or actions of State bodies that are evidently arbitrary, unfair, idiosyncratic or delayed.” *Iberdrola Energia S.A. v. Republic of Guatemala*, ICSID Case No. ARB/09/5, Award (Unofficial English Translation), dated August 17, 2012, ¶ 432, **CL-0025**.

²⁰¹ *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Submission of Mexico Pursuant to NAFTA Article 1128, dated January 12, 2016, ¶ 7 (citation omitted), **CL-0026**.

²⁰² See *Odyssey Marine Exploration, Inc. v. United Mexican States* (“*Odyssey Marine*”), ICSID Case No. UNCT/20/1, Counter Memorial, dated February 23, 2021, ¶ 451 (“Recently the tribunal in the *Vento v. Mexico* recognized that the interpretation of the *Waste Management II v. Mexico* case regarding the legal standard applicable to Article 1105 turns out to be the most appropriate,”), **CL-0123**.

i. Arbitrariness

191. Mexico has in prior cases fully accepted that arbitrariness in State decision-making can give rise to a breach of the fair and equitable treatment standard under NAFTA.²⁰³ In *Cargill, Incorporated v. United Mexican States*, for example, the Respondent cited the judgment of a chamber of the International Court of Justice in the *ELSI* case as defining the concept.²⁰⁴ That decision provided, in relevant part:

Arbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law. This idea was expressed by the Court in the *Asylum* case, when it spoke of “arbitrary action” being “substituted for the rule of law”. It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety.²⁰⁵

192. In other words, a State acts arbitrarily, in violation of international law, when it conducts itself not on the basis of a system of law, but rather based on its own unrestricted will.

193. One NAFTA Tribunal observed that arbitrariness breaches Article 1105 “when the State’s actions move beyond a merely inconsistent or questionable application of administrative or legal policy or procedure to the point where the action constitutes an unexpected and shocking repudiation of a policy’s very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive.”²⁰⁶

194. Similarly, another NAFTA tribunal observed that a determination of arbitrariness often depends on context. It posited: “The imposition of a new license requirement may for example be viewed quite differently if it appears on a blank slate or if is an arbitrary repudiation

²⁰³ See, e.g., *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Second Article 1128 Submission of Mexico, dated July 22, 2002, ¶¶ 2-3, **CL-0027**; *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Second Article 1128 Submission of Mexico, dated November 9, 2001, ¶ 19, **CL-0028**.

²⁰⁴ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Rejoinder of the Respondent, dated May 2, 2007, ¶ 328, **CL-0029**.

²⁰⁵ *Elettronica S.p.A. (“ELSI”) (United States v. Italy)*, Judgment, I.C.J. Reports 1989, p. 15, dated July 20, 1989, ¶ 128 (citation omitted), **CL-0030**.

²⁰⁶ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 293, **CL-0018**.

of a preexisting licensing regime upon which a foreign investor has demonstrably relied.”²⁰⁷ Accordingly, an abrupt change in the treatment of a foreign investor contrary to law breaches Article 1105.

195. Tribunals applying the customary standard of fair and equitable treatment have often found that a breach has occurred when the host State’s conduct is unsupported by a reasonable and established policy rationale. Two cases decided under NAFTA are illustrative.

196. In *Cargill, Incorporated v. United Mexican States*, the tribunal found a breach of Article 1105 based on Mexico’s arbitrary treatment of U.S. producers of high fructose corn syrup. Following NAFTA’s entry into force, U.S. producers of high fructose corn syrup made significant inroads into Mexico’s sweetener market, to the detriment of Mexico’s struggling sugar cane industry. In response, Mexico demanded greater access to U.S. sugar markets. Unhappy with the U.S. response, Mexico levied a heavy tax on soft-drink bottlers that used high fructose corn syrup and subjected U.S. imports of high fructose corn syrup to a new import permit requirement. These measures had the effect of eliminating Cargill from the Mexican market and destroying its investment in Mexico.

197. The tribunal found that Mexico’s actions breached, among other obligations, the fair and equitable treatment standard because they were arbitrary. As the tribunal ruled:

[T]he sole purpose of the import permit requirement was to change the trade policy of the United States; while the sole effect was to virtually remove Claimant from the Mexican HFCS market. ***There is no other relationship between the means and the end of this requirement.***²⁰⁸

198. According to the tribunal, this “complete lack of objective criteria put forth by the Mexican government by which a company could obtain a permit” made the process not only

²⁰⁷ *GAMI Investments, Inc. v. United Mexican States*, (UNCITRAL) Ad hoc, Final Award, dated November 15, 2004, ¶ 91, CL-0031.

²⁰⁸ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 299 (emphasis added), CL-0018.

“manifestly unjust,” but also so egregious as to “surpass the standard of gross misconduct [required for a breach of Article 1105] and be more akin to an action in bad faith.”²⁰⁹

199. Similarly, in *Bilcon v. Canada*, the tribunal found that Canada’s arbitrary acts in connection with its consideration of a proposed quarry and marine terminal project breached Article 1105.²¹⁰ That case focused on the actions of an advisory body tasked by law with advising Canadian authorities on the environmental soundness of the quarry project. Under intense pressure from the local community, the advisory body recommended against the project—a recommendation that Canadian authorities ultimately adopted. Notably, the decision was reached not on the basis of any of the environmental factors established under the law, but rather on a novel and vague concept of “core community values.”

200. The tribunal found that the advisory body acted arbitrarily in breach of Article 1105 because its denial of the project was based on an “unprecedented”²¹¹ and “fundamentally novel and adverse approach.”²¹² As the tribunal observed, the advisory body “effectively created, without legal authority or fair notice to Bilcon, a new standard of assessment rather than fully carrying out the mandate defined by the applicable law.”²¹³

201. Two cases applying the customary standard of fair and equitable treatment under the CAFTA-DR similarly found the State’s arbitrary conduct as the decisive factor for establishing a breach.

202. In *Railroad Development Corporation v. Republic of Guatemala*, the tribunal found that Guatemala’s arbitrary application of its *lesivo* process violated the fair and equitable treatment standard. After Railroad Development Corporation was granted a 50-year concession to run

²⁰⁹ *Id.* at ¶¶ 298-299, 301.

²¹⁰ *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶ 604, **CL-0020**.

²¹¹ *Id.* at ¶ 450.

²¹² *Id.* at ¶ 573.

²¹³ *Id.* at ¶ 591; *see also Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated August 30, 2000, ¶¶ 91-92 (Mexico denied claimant a permit at a hearing “of which Metalclad received no notice, to which it received no invitation, and at which it was given no opportunity to appear” and for reasons unrelated to “the physical construction of the landfill or to any physical defects therein.”), **CL-0032**.

Guatemala's national railway system, Guatemala's President declared one of the project's critical contracts to be *lesivo* or legally injurious to the state. The tribunal found not only that the *lesivo* process "may be easily abused in its application,"²¹⁴ but also that it was, in fact, abused in that instance. According to the tribunal, "the *lesivo* remedy has been used under a cloak of formal correctness in defense of the rule of law, in fact for exacting concessions unrelated to the finding of *lesivo*."²¹⁵ The tribunal therefore found a breach of the fair and equitable treatment standard because Guatemala had arbitrarily applied the *lesivo* remedy to seek to undo what it perceived to be unfavorable contract terms.

203. Likewise, in *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, Guatemala's arbitrary conduct was again found in breach of the standard of fair and equitable treatment. That case centered on the establishment of electricity rates by the Guatemalan government, which the investor disputed. Although the law required the government to consider the views of an Expert Commission under those circumstances, the government failed to do so. The tribunal found that the government's decision to "ignor[e] without reasons" the views of the Expert Commission was "manifestly inconsistent with the regulatory framework."²¹⁶ Namely, the government had "repudiated the ... fundamental principles upon which the regulatory framework bases the tariff review process."²¹⁷

ii. Discrimination

204. Discriminatory treatment by a NAFTA Party is prohibited by Article 1105 under certain circumstances. Whereas Articles 1102 (National Treatment) and 1103 (Most-Favored-Nation Treatment) address nationality-based discrimination relative to the treatment of domestic and third-party nationals, Article 1105 precludes unjustified targeting of investors and their investments. According to UNCTAD, "[a] measure is likely to be found to violate the FET standard

²¹⁴ *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated June 29, 2012, ¶¶ 222, 233, CL-0022.

²¹⁵ *Id.* at ¶ 234.

²¹⁶ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, dated December 19, 2013, ¶ 708, CL-0021.

²¹⁷ *Id.* at ¶ 710.

if it evidently singles out (de jure or de facto) the claimant and there is no legitimate justification for the measure.”²¹⁸

205. NAFTA tribunals have recognized this aspect of the customary fair and equitable treatment standard. In *Waste Management, Inc. v. United Mexican States*, the tribunal observed that “a deliberate conspiracy—that is to say, a conscious combination of various agencies of government without justification to defeat the purposes of an investment agreement—would constitute a breach of Article 1105(1).”²¹⁹ It added: “A basic obligation of the State under Article 1105(1) is to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means.”²²⁰

206. In *Cargill, Incorporated v. United Mexican States*, discussed above, the tribunal found that Mexico violated Article 1105, in large part, because it unjustifiably targeted Cargill’s investment for destruction in retaliation for the U.S. government’s refusal to grant Mexican companies increased access to U.S. sugar markets. The tribunal adamantly found Mexico’s “willful targeting, by its nature, to be a manifest injustice.”²²¹

Importantly, the tribunal underscored that Cargill’s U.S. nationality was irrelevant to the assessment of wrongdoing:

The fact that the targeted investors are corporations with U.S. nationality is of no significance in the Tribunal’s view. If the import permit requirement had been instituted to influence the trade policy of a country other than the country of the nationality of the investors, the manifest injustice is, in the Tribunal’s view, patent.²²²

²¹⁸ UNCTAD, FAIR AND EQUITABLE TREATMENT: UNCTAD SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS II, dated 2012, p. 82, **CL-0038**; see also Martins Paparinskis, THE INTERNATIONAL MINIMUM STANDARD AND FAIR AND EQUITABLE TREATMENT, dated 2013, p. 247 (“[D]iscrimination is still a part of the international standard, requiring reasonable justification for different treatment of similar cases.”), **CL-0039**.

²¹⁹ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, dated April 30, 2004, ¶ 138, **CL-0023**.

²²⁰ *Id.*

²²¹ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 300, **CL-0018**.

²²² *Id.*

207. The Tribunal found that Mexico’s conduct in the case “surpass[ed] the standard of gross misconduct and is more akin to an action in bad faith....”²²³

208. Similarly, in *Loewen v. United States*, described above, the tribunal found that a state court’s unjustified singling out of a Canadian investor and subjecting it to “discrimination” on the basis of “sectional or local prejudice” violated Article 1105.²²⁴ The tribunal’s finding, as a reflection of customary international law, was later incorporated into the fair and equitable treatment standard set forth in *Waste Management, Inc. v. United Mexican States*; to recall, that standard provides, in relevant part, that “the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct ... is discriminatory and exposes the claimant to sectional or racial prejudice....”²²⁵

209. More recently, the tribunal in *Nelson v. Mexico* reiterated the position taken by the *Waste Management* and *Cargill* tribunals, noting that “[s]ubsequent NAFTA tribunals have found, under th[e minimum standard of treatment], that discrimination exists if the State willfully targets the investor.”²²⁶

b. Mexico’s Conduct Violated the Minimum Standard of Treatment

210. The Respondent’s misconduct in connection with the VAT Impediment violated the fair and equitable treatment protection under Article 1105 because it was (i) arbitrary and (ii) discriminatorily targeted the Claimant and PEM, as explained below.

i. Mexico Acted in An Arbitrary Manner

211. The conduct of the SAT in relation to PEM and the Claimant has been arbitrary in several important respects. First, the SAT took measures to freeze all of PEM’s bank accounts (even those with limited funds but essential for operational purposes). Second, the Respondent

²²³ *Id.* at ¶ 301.

²²⁴ *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Second Article 1128 Submission of Mexico, dated November 9, 2001, ¶ 19, **CL-0028**.

²²⁵ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, dated April 30, 2004, ¶ 98, **CL-0023**.

²²⁶ *Joshua Dean Nelson v. United Mexican States* (“*Nelson v. Mexico*”), ICSID Case No. UNCT/17/1, Final Award, June 5, 2020, ¶ 351, **RL-0048**.

arbitrarily dismissed PEM's legitimate guarantee applications on grounds outside the scope of Mexican law and in doing so severely jeopardized PEM's mining operations.²²⁷ Third, the SAT blatantly acted outside the rule of law by carrying out a sustained and coercive campaign against the Claimant and PEM demanding payment based on tax reassessments, even while the proceedings for determination of PEM's eventual liability (if any) were ongoing, which culminated with the VAT Impediment.²²⁸

(a) The SAT's application of Article 157, Section X, of the Federal Tax Code is arbitrary

212. The SAT's freezing measures against PEM's bank accounts arbitrarily disregarded Article 157, Section X, of the Federal Tax Code.²²⁹ That provision requires the SAT, when adopting measures such as immobilizations, *i.e.*, account freezes, to guarantee taxpayers continued access to funds required to satisfy essential obligations, such as the payment of wages and salaries. The text and purpose of Article 157 are based on principles of necessity and proportionality. Namely, it allows the SAT to take measures when a taxpayer's after-tax liability has been adjudicated to secure amounts owing as taxes while prohibiting measures that paralyze a going concern or deprive workers of their pay.²³⁰

213. The governing interpretation in Mexico confirms the scope of this protection. The Federal Court of Tax and Administrative Justice has held that, under Article 157, Section X, salaries and wages remain exempt from seizure, even when transferred by bank deposit—*i.e.*, the SAT “must recognize them as non-seizable, making the seizure, freezing of the bank account, and transfer of its funds illegal.”²³¹ This jurisprudence underscores the requirement that the SAT must

²²⁷ See *supra* S. II.2.B.c.

²²⁸ See *supra* S. II.2.E.

²²⁹ Art. 157, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, (informal translation) (“The following are exempt from seizure: [...] X. Wages and salaries. [...]”) (Original: “Quedan exceptuados de embargo: [...] X. Los sueldos y salarios. [...]”), **R-0005**.

²³⁰ *Id.*

²³¹ Revista del Tribunal Federal de Justicia Fiscal y Administrativa, Seventh Epoch, Year V, No. 42, dated January 2015, p. 345, VII-CASR-CEI-5, “EMBARGO, INMOVILIZACIÓN DE CUENTA BANCARIA Y TRANSFERENCIA DE SUS FONDOS.- CUANDO SE EFECTÚA RESPECTO DE DEPÓSITOS EFECTUADOS EN LA CUENTA DEL DEMANDANTE POR CONCEPTO DE SUELDOS Y SALARIOS, RESULTA ILEGAL POR HABERSE REALIZADO SOBRE BIENES INEMBARGABLES EN TÉRMINOS DEL ARTÍCULO 157,

moderate any freeze of bank accounts to ensure that a taxpayer's payroll obligations are not impacted.

214. The SAT did the opposite here: it imposed a blanket freeze that foreclosed to PEM any mechanism to continue to meet its wage and salary obligations. Specifically, the SAT imposed a freeze beginning on April 3, 2020, which prohibited PEM from accessing any bank accounts to meet its payroll commitments, contravening Article 157, Section X. The SAT took these measures even while PEM's liability for taxes was still under adjudication.

215. By way of relevant background: On April 3, 2020, the SAT imposed a blanket immobilization of PEM's operating accounts under Article 156-Bis through Official Letters Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970.²³² The freezing measures captured PEM's payroll and vendor accounts—most notably its Banamex payroll/vendor account—together with currency exchange and other payment accounts, and by design and effect deprived PEM of the ability to fund its payroll.²³³ A measure that leaves a company with no means to pay wages and salaries is precisely contrary to Article 157, Section X.

216. The SAT's blatant disregard for the law and policy behind Article 157, Section X, represents an arbitrary application of the tax regulator's enforcement powers. Under the minimum standard of treatment, NAFTA tribunals have emphasized that arbitrariness arises when State action goes beyond a questionable application of policy to become an unexpected repudiation of

FRACCIÓN X, DEL CÓDIGO FISCAL DE LA FEDERACIÓN,” (emphasis added) (Original: “Si bien pueden ser objeto de embargo e inmovilización los depósitos bancarios para hacer efectivos los créditos fiscales firmes a cargo de los contribuyentes, la autoridad fiscal debe prever que existen en la ley excepciones para proceder a esos actos como es el caso previsto en el artículo 157, fracción X, del Código Fiscal de la Federación, que establece que quedan exceptuados de embargo, los sueldos y salarios, por lo que aun cuando el pago del sueldo o salario del demandante se efectúe a través de depósitos bancarios, estos no pierden su origen y naturaleza y por ello, la autoridad exactora debe entender que son inembargables resultando ilegal tanto el embargo, la inmovilización de la cuenta bancaria y la transferencia de sus fondos, pues se está en el caso de excepción a la regla general.”), **C-0096**.

²³² Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8, **C-0002**, pp. **4952-4959**.

²³³ Witness Statement of [REDACTED], dated October 21, 2025, ¶ 25, [REDACTED] 0000.

the policy’s purpose, or when measures lack any reasonable connection to a legitimate objective and are implemented without objective criteria.²³⁴

217. Here, the SAT’s blanket freeze—imposed while PEM’s alleged liability was still under adjudication and the law required the preservation of taxpayer funds for payment of wages and salaries—was an unjustified departure from the governing regulatory regime. By preventing PEM from meeting its payroll obligations, the SAT not only violated Article 157’s express exemption for wages and salaries, but it also nullified the provision’s core purpose of proportionality and continuity of a taxpayer’s essential obligations. The SAT’s conduct left no ability for PEM to pay wages and salaries, or to even continue as a going concern without emergency intervention from the Claimant.

218. In short, the SAT’s freeze measures were neither grounded in the governing legal standards nor proportionate to any legitimate regulatory purpose. The Respondent thus breached Article 1105 of NAFTA.

(b) Mexico arbitrarily dismissed PEM’s guarantee applications.

219. The SAT’s unjustifiable rejection of PEM’s guarantee applications exemplifies arbitrariness within the meaning of Article 1105. Namely, the SAT repudiated the transparent, criteria-bound process mandated by Mexican law in favor of its own untethered discretion. Such conduct is arbitrary, as explained in *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, because it is “manifestly inconsistent with the regulatory framework”²³⁵ and, as explained in *Bilcon v. Canada*, because the regulator “effectively created, without legal authority or fair

²³⁴ See *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶¶ 293, 299 (discussing the lack of objective criteria), **CL-0018**; see also *GAMI Investments, Inc. v. United Mexican States*, (UNCITRAL) Ad hoc, Final Award, dated November 15, 2004, ¶ 91, **CL-0031**; *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶¶ 450, 573, 591, **CL-0020**.

²³⁵ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, dated December 19, 2013, ¶ 708, **CL-0021**.

notice ... a new standard of assessment rather than fully carrying out the mandate defined by the applicable law....”²³⁶

220. As explained in Sections II.B.2.c.i and II.B.2.c.ii above, the SAT arbitrarily dismissed two of PEM’s guarantee applications for reasons outside of Mexican law. Specifically, PEM made two guarantee applications, respectively, on May 27, 2021 and July 14, 2023.²³⁷ Both guarantee applications pledged as collateral the entire company—*i.e.*, at almost five times the alleged tax reassessments—and fully complied with all requirements for guarantee applications under Mexican law.²³⁸

221. Notwithstanding PEM’s compliance with these requirements, the SAT rejected PEM’s two guarantee applications, respectively, on September 24, 2021 and November 29, 2023.

222. The SAT’s September 24, 2021 reasoning for the rejection was based on three grounds:

- (1) PEM had not submitted 100% of the original and apostilled copies of the invoices of all the assets offered as a guarantee;
- (2) PEM’s balances reflected that 10% of its monthly income would be insufficient to cover 24% of the tax deficiencies within a period of three months; and
- (3) legal attachments were included on some of the assets offered as part of the guarantee.²³⁹

²³⁶ *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶ 591, **CL-0020**; *see also Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated August 30, 2000, ¶¶ 91-92 (Mexico denied claimant a permit at a hearing “of which Metalclad received no notice, to which it received no invitation, and at which it was given no opportunity to appear” and for reasons unrelated to “the physical construction of the landfill or to any physical defects therein.”), **CL-0032**.

²³⁷ *See supra* S. II.B.2.c.

²³⁸ *See supra* ¶ 75.

²³⁹ Certain assets offered under the guarantee were subject to encumbrances by third parties including GoldCorp, Inc, Silver Wheaton (Caymans) Ltd, Wheaton Precious Metals International Ltd, and the Bank of Nova Scotia. Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003061, dated September 24, 2021, pp. 1-14, **C-0002**, pp. **2173-2186**; Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003062, dated September 24, 2021, **C-0085**; Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003063, dated September 24, 2021, **C-0086**.

223. However, as explained, none of these grounds for rejection existed under Mexican law. *First*, where a business is offering the entirety of its business as a guarantee—as PEM had offered—it is not required to submit original and apostilled copies of invoices of assets offered. Instead, a description of each asset is sufficient for the guarantee application.²⁴⁰

224. *Second*, PEM was not required to prove that it can satisfy an amount equaling 24% of the tax deficiencies using only 10% of its monthly income.²⁴¹ The requirement cited by the SAT for this requirement was under a different portion of Mexican law that is not relevant to the offering of an entire business under a guarantee.²⁴² Instead, the SAT cited a requirement under the attachment of a taxpayer’s business (for the purpose of collecting an enforceable debt), whereby a receiver must be identified to collect on the owed tax deficiencies.²⁴³ PEM is not subject to this receivership process as the illegal tax reassessments are currently being challenged before the Federal Courts.²⁴⁴ If the SAT ultimately prevails in the Federal Courts, only then would the collection procedure be initiated.²⁴⁵

225. Under the standards articulated in the NAFTA cases interpreting Article 1105, the SAT’s decisions are arbitrary.

226. As in *Bilcon v. Canada*, the SAT departed from the established criteria and introduced “fundamentally novel” considerations that had no basis in the law.²⁴⁶ There, the Canadian regulator departed from the applicable statutory factors for consideration and invented and applied a new assessment standard. The tribunal found that because the regulator “effectively

²⁴⁰ See *supra* ¶ 78; see also Table 32, Annex 1-A, Resolución Miscelánea Fiscal para 2025, published January 13, 2025, pp. 295-301, **C-0091**.

²⁴¹ See *supra* ¶ 79.

²⁴² See *supra* ¶ 79; Arts. 164, 165, 167, 172, Código Fiscal de la Federación, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

²⁴³ See *supra* ¶ 79.

²⁴⁴ See *supra* ¶ 79.

²⁴⁵ See *supra* ¶ 79.

²⁴⁶ *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated March 17, 2015, ¶ 573, **CL-0020**.

created, without legal authority or fair notice ... a new standard of assessment rather than fully carrying out the mandate defined by the applicable law,” the regulator breached Article 1105.²⁴⁷

227. In this case, instead of applying the legal criteria for guarantee sufficiency and acceptance, as set out in Mexican law, the SAT created and applied its own newly established criteria based on its own discretion.²⁴⁸ Notably, the Respondent has admitted this fact.²⁴⁹ Such a departure from the regulatory framework breaches Article 1105.

228. Similarly, in *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, the government reached a decision that disregarded an expert commission’s views without reason, an approach the tribunal found “manifestly inconsistent with the regulatory framework.”²⁵⁰ Here, the SAT did the same. It “ignor[ed] without reasons” the applicable conditions under Mexican law that prescribe the acceptance of guarantees.²⁵¹

229. Further, the arbitrariness in the Respondent’s conduct is confirmed by the absence of any reasonable policy rationale linking the means adopted in rejecting the guarantee applications to a legitimate end. In *Cargill*, Mexico’s import-permit device breached Article 1105 because it bore “no other relationship between the means and the end” than to achieve a collateral policy objective.²⁵² Here, similarly, the SAT’s extra-statutory requirements had the sole effect of defeating PEM’s access to the VAT Refunds to which it was legally entitled, without advancing any legally

²⁴⁷ *Id.* at ¶ 591.

²⁴⁸ *Id.* at ¶ 591.

²⁴⁹ See *supra* ¶ 83; see also Guarantee Rejection Letter, No. 400-24-00-02-00-2021-003061, dated September 24, 2021, p. 5 (emphasis added), **C-0002**, p. 2177. The letter stated: “Sin que obste a lo antes apuntado la manifestación vertida en su escrito presentado con fecha 20 de septiembre de 2021, en el sentido de que la información y documentación que fuera requerida en los numerales indicados en el párrafo que precede no se encuentra obligada a presentarla debido al tipo de garantía ofrecida, ya que se trata del ofrecimiento de la negociación en marcha y no de bienes muebles o inmuebles, es de indicarle que, a juicio de esta autoridad resultan indispensables a fin de conocer más a detalle la realidad económica de la negociación que ofrece como garantía y tener un pleno conocimiento del haber con el que se encuentra en funcionamiento, teniendo la certeza de que cuenta con los elementos necesarios y suficientes a fin de mantenerse en funcionamiento para estar en posibilidad, en su caso, de hacer efectivo el crédito fiscal que se encuentra garantizando, así como los accesorios que se causen.”

²⁵⁰ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, dated December 19, 2013, ¶¶ 708, 710, **CL-0021**.

²⁵¹ *Id.*; see also *supra* S. II.B.c.

²⁵² *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 299, **CL-0018**.

cognizable objective. The rejection was a means of achieving the Respondent's collateral political objective of extorting large sums of money from the Claimant. By nullifying PEM's offer of guarantees that met the law's requirements, the SAT grossly subverted the domestic legal scheme for an ulterior purpose, thereby meeting the *Cargill* threshold for arbitrariness.²⁵³

230. In sum, the SAT's refusal to accept PEM's guarantees—despite their compliance with the applicable legal requirements and solely by reference to criteria not found in Mexican law—constitutes an arbitrary repudiation of the governing legal framework (such as discussed in *Bilcon* and *TECO*) and a contrived misapplication of domestic law for collateral ends within the meaning of *Cargill*.

231. Accordingly, the Respondent has breached its obligation to provide fair and equitable treatment under NAFTA Article 1105.

(c) Mexico blatantly disregarded the rule of law.

232. The SAT's arbitrary rejection of PEM's guarantee applications did not occur in isolation. Rather, it forms part of a broader pattern of shocking and lawless coercion in which Mexican authorities have subordinated legal process and the rule of law to a campaign aimed at pressuring and penalizing the Claimant and PEM for their refusal to pay illegitimate "taxes." Under the ICJ's *ELSI* standard, arbitrariness is "a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety," reflecting action "opposed to the rule of law" rather than merely contrary to a rule of law.²⁵⁴ That is precisely what the record shows here, with the VAT Impediment representing the current phase of a long harassment campaign.

233. As explained in further detail in Claimant's Memorial, a long history of arbitrary, coercive and punitive measures taken by the Respondent in blatant disregard of the rule of law predate the VAT Impediment. Specifically, these measures include:

²⁵³ *Id.* at ¶ 293.

²⁵⁴ *Elettronica Sicula S.p.A. ("ELSI") (United States v. Italy)*, Judgment, I.C.J. Reports 1989, p. 15, dated July 20, 1989, ¶ 128, CL-0030.

- a) Repudiating the APA, entered by PEM in 2012 with the SAT, which provided the legal framework for certainty and stability for investments made in Mexico by PEM and First Majestic;²⁵⁵
- b) Blocking PEM's challenge of SAT's reassessments under the administrative process demanding amounts purportedly as taxes, penalties and interest;²⁵⁶
- c) Rejecting PEM's requests for resolution of the disputes pursuant to the universally accepted process set out in avoidance of double taxation treaties ("DTTs") known as the MAP, which is binding on Mexico and provided for in each of the [REDACTED] Mexico Tax Treaty, the [REDACTED] Mexico Tax Treaty and the [REDACTED] Mexico Tax Treaty;²⁵⁷
- d) Violating the Mexican Federal Court on Administrative Matters injunctions ordered in January 2020, for the 2010 and 2012 taxation years of PEM, prohibiting SAT from engaging in collections while the MAP requests were pending;²⁵⁸
- e) Unlawfully interfering with the operation of PEM's business, and the management activities of its executives and its personnel (including during the exceedingly difficult period at the start of the COVID-19 pandemic);²⁵⁹
- f) Unjustifiably encumbering, attaching, and freezing PEM's bank accounts and other assets.²⁶⁰
- g) Seizing and encumbering over [REDACTED].²⁶¹

²⁵⁵ Claimant's Memorial, ¶ 5(a).

²⁵⁶ Claimant's Memorial, ¶ 5(b).

²⁵⁷ Claimant's Memorial, ¶ 5(c).

²⁵⁸ Claimant's Memorial, ¶ 5(d).

²⁵⁹ Claimant's Memorial, ¶ 5(e).

²⁶⁰ Claimant's Memorial, ¶ 5(f).

²⁶¹ Claimant's Memorial, ¶ 5(g).

- h) Using collateral powers of the Government of Mexico including [REDACTED] provisions to interfere with the core business activities of PEM and to create conditions for coercion;²⁶²
- i) Interfering with contractual agreements of PEM with its workforce and suppliers by limiting PEM's ability to meet its legal obligations, critical for generating revenues from its mining activities and for maintaining the health and welfare of its workforce;²⁶³
- j) Impeding First Majestic's ability to further invest and expand in PEM and in Mexico;²⁶⁴
- k) Restricting First Majestic's ownership rights as the exclusive shareholder of PEM, including in its ability to transfer the ownership of PEM and its assets;²⁶⁵
- l) Prohibiting First Majestic from receiving dividends and other returns from PEM;²⁶⁶
- m) Targeting, ostracizing and censuring First Majestic and PEM in the Mexican and international media as a Canadian mining company engaged in [REDACTED] conduct, for failing to pay its taxes, and resorting to an arbitration proceeding before an international tribunal to avoid its legal obligations;²⁶⁷
- n) Unlawfully publicizing confidential tax related information of First Majestic and PEM and asserting that [REDACTED] are owed by PEM to the SAT, while there are ongoing legal proceedings relating to the claims of the SAT;²⁶⁸ and

²⁶² Claimant's Memorial, ¶ 5(h).

²⁶³ Claimant's Memorial, ¶ 5(i).

²⁶⁴ Claimant's Memorial, ¶ 5(j).

²⁶⁵ Claimant's Memorial, ¶ 5(k).

²⁶⁶ Claimant's Memorial, ¶ 5(l).

²⁶⁷ Claimant's Memorial, ¶ 5(m).

²⁶⁸ Claimant's Memorial, ¶ 5(n).

- o) Violating the protections and the constitutional due process rights afforded to PEM, its executives and workforce by the Federal Constitution of the United Mexican States and Mexican domestic law.²⁶⁹

234. The Respondent's sustained and coercive campaign offends the basic tenets of legality and the rule of law. As explained previously in the Claimant's Memorial, none of the measures enumerated above is rooted in lawfulness. Rather, they are designed to intimidate and harass the Claimant into paying exorbitant sums under the pretext of a "tax reassessment." Accordingly, they support the conclusion that by pursuing the VAT Impediment, the latest and arguably one of the most potent measures in this campaign, the Respondent "substituted [arbitrary action] for the rule of law," within the meaning of *ELSI*.²⁷⁰ Therefore, the Respondent's conduct meets the *ELSI* standard for arbitrariness and independently establishes a breach of Article 1105 of NAFTA.

ii. The Respondent Targeted the Claimant Discriminatorily

235. The Respondent's targeted discrimination of the Claimant and its Mexican subsidiary, PEM, also breached Article 1105. As explained,²⁷¹ a fair and equitable treatment violation occurs when a NAFTA Party "singles out"²⁷² or "willfully target[s]"²⁷³ a protected investor for mistreatment. In other words, a violation of Article 1105 occurs when a NAFTA Party inflicts harm on an investor of another Party, regardless of its nationality, without a reasonable basis in public governance, such as through coercive or retaliatory acts.²⁷⁴

²⁶⁹ Claimant's Memorial, ¶ 5(o).

²⁷⁰ *Elettronica Sicula S.p.A. ("ELSI") (United States v. Italy)*, Judgment, I.C.J. Reports 1989, p. 15, dated July 20, 1989, ¶ 128 (citing *Asylum*, Judgment, I.C.J., Reports, dated 1950, p. 284), **CL-0030**.

²⁷¹ *See supra* ¶ 204.

²⁷² *See* UNCTAD, FAIR AND EQUITABLE TREATMENT: SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS II, dated 2012, p. 82, **CL-0038**; *see also* Martins Paparinskis, THE INTERNATIONAL MINIMUM STANDARD AND FAIR AND EQUITABLE TREATMENT, dated 2013, p. 247 ("[D]iscrimination is still a part of the international standard, requiring reasonable justification for different treatment of similar cases."), **CL-0039**.

²⁷³ *See Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 300, **CL-0018**.

²⁷⁴ *Id.* ("The Tribunal finds this willful targeting, by its nature, to be a manifest injustice. The fact that the targeted investors are corporations with U.S. nationality is of no significance in the Tribunal's view. If the import permit

236. As explained, the Respondent's blocking of the VAT Refunds is the tip of the spear in its long campaign to single out the Claimant for harassment. The Respondent has previously and very publicly sought to force the Claimant to abandon its APA through, among others, (1) imposing exorbitant and illegal tax reassessments (2) naming and shaming First Majestic in the press; (3) initiating a [REDACTED] against PEM; (4) seizing and encumbering over [REDACTED]; (5) initiating [REDACTED] against PEM personnel, and (6) unlawfully publicizing confidential tax-related information of First Majestic and PEM.²⁷⁵

237. While the VAT Impediment constitutes measures among many other measures aimed at unduly pressuring the Claimant into paying illegitimate "taxes," notably it stands on its own as among the most damaging. The freezing of all of PEM's bank accounts in Mexico, regardless of their purpose, effectively took the company hostage, holding it for ransom in the amount of the SAT's unjustified tax reassessments. No other measure in the Respondent's arsenal is as coercive because the VAT Impediment is meant to bring PEM to its knees financially so that the company submits to the SAT's improper and excessive demands.

The decision to freeze all of PEM's bank accounts in order to place a stranglehold on the company's ability to operate in Mexico is among the clearest manifestations of the Respondent's targeted discrimination against the Claimant and breaches Article 1105.

* * *

238. In sum, the Respondent's conduct constituted multiple violations of Article 1105 of NAFTA.

3. Mexico Breached Article 1110 of NAFTA (Expropriation and Compensation)

239. The evidence in this case demonstrates that the Respondent has unlawfully expropriated the Claimant's investments in breach of Article 1110 of NAFTA.

requirement had been instituted to influence the trade policy of a country other than the country of the nationality of the investors, the manifest injustice is, in the Tribunal's view, patent.).

²⁷⁵ See Claimant's Memorial, ¶ 5; *see also supra* ¶¶ 191-202.

240. Article 1110(1) prohibits unlawful expropriation:

No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 1105(1); and
- (d) on payment of compensation in accordance with paragraphs 2 through 6.²⁷⁶

241. Accordingly, a NAFTA Party commits an unlawful expropriation when it takes an investment without satisfying any one of the conditions set forth in Article 1110(1)(a)-(d).

242. By its own terms, Article 1110 prohibits all acts of unlawful expropriation, regardless of form. Namely, a NAFTA Party may not unlawfully expropriate “directly or indirectly” or “take a measure tantamount to ... expropriation.” Article 1110 thus covers direct expropriation, indirect expropriation, and measures “tantamount to expropriation.”²⁷⁷ As explained in *Marvin Roy Feldman Karpa v. United Mexican States*, the misapplication or abuse of taxation measures may give rise to an indirect expropriation sometimes in the form of a “creeping expropriation”:

By their very nature, tax measures, even if they are designed to and have the effect of an expropriation, will be indirect, with an effect that may be tantamount to expropriation. If the measures are implemented over a period of time, they could also be characterized as “creeping,” which the Tribunal also believes is not distinct in nature from, and is subsumed by, the terms “indirect” expropriation or “tantamount to expropriation” in Article 1110(1). [...] The Restatement defines “creeping expropriation” in part as a state seeking “to achieve the same result [as

²⁷⁶ Art. 1110(1), NAFTA, dated January 1, 1994, **CL-0001**.

²⁷⁷ For discussion on the various forms of expropriation, see August Reinisch, Chapter 11: Expropriation, in *THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW* (Peter Muchlinski, Federico Ortino, and Christoph Schreuer eds.), Oxford University Press, dated June 26, 2008, pp. 407-458, **CL-0042**.

an outright taking] by taxation and regulatory measures designed to make continued operation of a project uneconomical so that it is abandoned.”²⁷⁸

243. The tribunal went on to note that a creeping expropriation, as defined in the Restatement, is a form of indirect expropriation, and may accordingly constitute measures “tantamount to expropriation.”²⁷⁹

244. On the plains terms of Article 1110, in determining the existence of an unlawful expropriation, “the practice of NAFTA tribunals has been to follow a three-step approach focusing on (i) whether there is an investment capable of being expropriated, (ii) whether that investment has in fact been expropriated, and (iii) whether the conditions set forth in Article 1110(1)(a)-(d) have been satisfied.”²⁸⁰ Further, to prove a breach of Article 1110, there is no requirement that an investor establish a State’s bad faith or intent.²⁸¹

245. Applying the three-step approach demonstrates conclusively that Respondent unlawfully expropriated the Claimant’s investments in breach of Article 1110. As explained further below: (1) PEM, on whose behalf the Claimant is claiming, acquired an entitlement to VAT Refunds under Mexican law in its role as a Mexican taxpayer that engages in commercial activities in Mexico (including the sale of goods and rendering of services) that exports goods and services outside of the country; (2) the SAT expropriated PEM’s VAT Refunds when it froze PEM’s bank accounts holding the VAT Refunds after denying Claimant’s lawful guarantee applications; (3) the SAT’s expropriation was unlawful because it considered elements outside of the law, as well as incorrect portions of the law, in its denial of PEM’s guarantee applications and subsequent denial of PEM’s entitlement to its VAT Refunds.

²⁷⁸ *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated December 16, 2002, ¶ 101 (citing Restatement, Section 712, Reporter’s Note 7), **CL-0002**.

²⁷⁹ *Id.*

²⁸⁰ *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, dated August 2, 2010, ¶ 242, **CL-0047**.

²⁸¹ See *Fireman’s Fund Insurance Co. v. United Mexican States* (“*Fireman’s Fund v. Mexico*”), ICSID Case No. ARB(AF)/02/01, Award, dated July 17, 2006, ¶ 176(f) (“The effects of the host State’s measures are dispositive, not the underlying intent, for determining whether there is expropriation.”), **CL-0048**; see also *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated August 30, 2000, ¶ 111 (“The Tribunal need not decide or consider the motivation or intent of the adoption of the Ecological Decree.”), **CL-0032**.

a. PEM's VAT Refunds Were Capable of Being Expropriated

246. PEM's VAT Refunds readily meet the first step of the three-step approach, which involves establishing whether the company had an "investment" capable of being expropriated.

247. As explained,²⁸² PEM was legally entitled to the VAT Refunds. Specifically, PEM is entitled to VAT Refunds under the laws and procedures set out in the VATL, the VATLR, the Income Tax Law, the Federal Tax Code, and the Miscellaneous Tax Resolutions published by the SAT each year.²⁸³ PEM's entitlement to the VAT Refunds is undisputed; the SAT not only has authorized all of PEM's requests for VAT Refunds by depositing the amounts requested into PEM's blocked bank accounts, but it has also admitted to PEM's entitlement to such refunds in these proceedings.²⁸⁴

248. It also cannot be disputed that, under Mexican law, once the VAT is issued and wired to the taxpayer, the taxpayer has full rights to the funds.²⁸⁵

249. Further, as explained,²⁸⁶ the VAT Refunds constitute an "investment" under Article 1139 of NAFTA. The Claimant injected significant capital into PEM to create an "investment," which capital PEM used in its operations, including to purchase inputs for PEM's exports for which it was granted the VAT Refunds. The VAT Refunds thus are "investments" because they are "interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory ..."²⁸⁷

²⁸² See *supra* S. II.B.1.

²⁸³ See *supra* ¶ 31; see also *Ley del Impuesto al Valor Agregado*, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**; *Reglamento de la Ley del Impuesto al Valor Agregado*, initially published December 4, 2006, last revised September 25, 2014, **C-0088**; *Código Fiscal de la Federación*, initially published December 31, 1981, last revised November 12, 2021, **R-0005**; *Ley del Impuesto Sobre la Renta*, initially published December 11, 2013, last revised April 1, 2024, **C-0093**; *Resolución Miscelánea Fiscal para 2025*, dated December 30, 2024, **C-0089**. The *Resolución Miscelánea Fiscal* published in 2024 is the most recent version.

²⁸⁴ See *supra* S. II.B.1.

²⁸⁵ See Art. 6, *Ley del Impuesto al Valor Agregado*, initially published on December 29, 1978, last revised November 12, 2021, **C-0087**; see also Art. 22, *Código Fiscal de la Federación*, initially published December 31, 1981, last revised November 12, 2021, **R-0005**.

²⁸⁶ See *supra* ¶¶ 131-133.

²⁸⁷ Art. 1129, NAFTA, dated January 1, 1994, **CL-0001**. See *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶183 (finding "once a right to a refund has accrued in

250. In addition, it is established under international investment law that tax refunds, including VAT refunds, in particular, are capable of being expropriated.²⁸⁸ For instance, in *EnCana v. Ecuador*, the tribunal explained:

[A] law which cancels a liability the State already has to an investor, including an investor of a third State which is owned or controlled by an investor of a State Party, is capable of amounting to expropriation. ***The right under the law of the host State to refunds of VAT in respect of the past acquisition of goods and services is a material benefit, and it does not matter whether refunds take the form of tax credits or rights to actual payment of the amount due.***²⁸⁹

251. A VAT refund is capable of being expropriated because it is derivative of the “investment”. On this point, the *EnCana* Tribunal continued to explain:

[O]nce a right to a refund has accrued in respect of past transactions (so that all that remains is the question of accounting for receipts and payments) the corresponding right to be paid is capable of falling within the broad scope of “amounts yielded by an investment”²⁹⁰

252. Thus, once the SAT transferred the VAT Refunds into PEM’s Banamex Account (and Banorte Account), PEM possessed a vested right in the funds that was capable of being expropriated.

respect of past transactions (so that all that remains is the question of accounting for receipts and payments) the corresponding right to be paid is capable of falling within the broad scope of “amounts yielded by an investment”), **CL-0007**.

²⁸⁸ See *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶ 183 (“[A] law which cancels a liability the State already has to an investor ... is capable of amounting to expropriation [...] [O]nce a right to a refund has accrued in respect of past transactions ... the corresponding right to be paid is capable of falling within the broad scope of “amounts yielded by an investment” On that basis the right itself would be covered by Article VIII [Expropriation] of the BIT”) (emphasis added), **CL-0007**; see also UNCTAD, EXPROPRIATION UNCTAD SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS II, dated 2012, p. 24 (“The *EnCana v. Ecuador* arbitration discussed above illustrates that **even such a discrete entitlement as a right to VAT refunds can be seen as an investment capable of being expropriated.**”) (emphasis added), **CL-0124**.

²⁸⁹ *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶ 183 (emphasis added), **CL-0007**.

²⁹⁰ *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, dated February 3, 2006, ¶ 183, **CL-0007**.

b. PEM's VAT Refunds Have been Expropriated

253. The facts of this case clearly evidence an expropriation of PEM's VAT Refunds and, thus, readily satisfy the second prong of the three-prong test in determining whether Respondent breached Article 1110.²⁹¹

254. According to *Burlington Resources v. Ecuador*, “[w]hen assessing the evidence of an expropriation, international tribunals have generally applied the sole effects test and focused on substantial deprivation.”²⁹² The tribunal continued:

When a measure affects the environment or conditions under which the investor carries on its business, what appears to be decisive, in assessing whether there is a substantial deprivation, is the loss of the economic value or economic viability of the investment.²⁹³

255. Finally, the tribunal concluded:

In this sense, some tribunals have focused on the use and enjoyment of property. The loss of viability does not necessarily imply a loss of management or control. What matters is the capacity to earn a commercial return. After all, investors make investments to earn a return. If they lose this possibility as a result of a State measure, then they have lost the economic use of their investment.²⁹⁴

256. Similarly, in *Glamis Gold v. United States*, the tribunal held: “[A] State is responsible, and therefore must provide compensation, for an expropriation of property when it subjects the property of another State Party’s investor to an action that is confiscatory or that ‘unreasonably interferes with, or unduly delays, effective enjoyment’ of the property.”²⁹⁵

²⁹¹ *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, dated August 2, 2010, ¶ 242, **CL-0047**.

²⁹² *Burlington Resources Inc. v. Republic of Ecuador* (“*Burlington Resources v. Ecuador*”), ICSID Case No. ARB/08/5, Decision of Liability, dated December 14, 2012, ¶ 396, **CL-0055**.

²⁹³ *Id.* at ¶ 397.

²⁹⁴ *Id.* (citation omitted).

²⁹⁵ *Glamis Gold, Ltd. v. United States of America* (“*Glamis Gold v. United States*” or “*Glamis*”), (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 354 (citing Rudolf Dolzer, Expropriation and Nationalization, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Vol. 4, Rudolf Bernhardt ed., dated 1995, p. 319), **CL-0041**. In one non-NAFTA case, the tribunal similarly provided that “[a] necessary condition for expropriation is the neutralisation of the use of the investment.” *El Paso Energy International Co. v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated October 31, 2011, ¶ 233(2), **CL-0056**.

According to the tribunal in *Grand River Enterprises v. United States*, “expropriation involves the deprivation or impairment of all, or a very significant proportion of, an investor’s interests.”²⁹⁶

257. An expropriation may occur in relation to only an asset or assets that comprise a part of an investment enterprise. In *Fireman’s Fund v. Mexico*, the tribunal found that a “taking must be a substantially complete deprivation of the economic use and enjoyment of the rights to the property, **or of identifiable distinct parts thereof** (i.e., it approaches total impairment).”²⁹⁷ Similarly, the *Waste Management* tribunal ruled:

It is open to the Tribunal to find a breach of Article 1110 in a case where certain facts are relied on to show the wholesale expropriation of an enterprise **but the facts establish the expropriation of certain assets only**. Accordingly the Tribunal will consider first the standard set by Article 1110, in particular for conduct tantamount to an expropriation, then whether the enterprise as a whole was subjected to conduct in breach of Article 1110, and finally **whether (even if there was no wholesale expropriation of the enterprise as such) the facts establish a partial expropriation**.²⁹⁸

258. The substantial deprivation test set forth by NAFTA tribunals involves consideration of two factors: the severity of the economic impact and its duration.²⁹⁹ An expropriation involves “the deprivation or impairment of all, or a very significant proportion of, an investor’s interests.”³⁰⁰ In addition, “[t]he taking must be permanent, and not ephemeral or temporary.”³⁰¹ In making this

²⁹⁶ *Grand River Enterprises Six Nations, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated January 12, 2011, ¶ 147, **CL-0057**.

²⁹⁷ *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated July 17, 2006, ¶ 176(c) (emphasis added) (citation omitted), **CL-0048**.

²⁹⁸ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, dated April 30, 2004, ¶ 141, **CL-0023**; *S.D. Myers, Inc. v. Government of Canada*, (UNCITRAL) Ad hoc, Partial Award, dated November 13, 2000, ¶ 283 (finding an expropriation may be “**partial or temporary**”) (emphasis added), **CL-0061**.

²⁹⁹ See *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 359, **CL-0018**; *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 356, **CL-0041**.

³⁰⁰ *Grand River Enterprises Six Nations, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated January 12, 2011, ¶ 147, **CL-0057**; see also *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 360 (“It is widely accepted that a finding of expropriation of property under customary international law requires a radical deprivation of a claimant’s economic use and enjoyment of its investment.”), **CL-0018**.

³⁰¹ *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated July 17, 2006, ¶ 176(d), **CL-0048**; see also *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated September 18, 2009, ¶ 348, **CL-0018**; *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 360, **CL-0041**.

determination, tribunals may consider the full panoply of State action or inaction against an investor and whether multiple events taken in concert amount to expropriation.³⁰²

259. The key factor is not the nominal duration of the State’s measures but rather their effect on the investment’s fundamental attributes—ownership, control, use, and the ability to derive economic value. Measures that are styled as temporary can nevertheless satisfy the permanence requirement where they precipitate a lasting or irreversible loss. The analysis is fact-specific, focusing on whether, taken as a whole, the interference extinguishes the investment’s core value or the investor’s effective control in a manner that is not merely fleeting or reversible.

260. *Phillips Petroleum v. Iran* presents a foundational approach. There, the Iran-United States Claims Tribunal emphasized that, in the context of a creeping expropriation, a taking occurs when the interference crosses the threshold to a fundamental deprivation that is not “ephemeral” and becomes “irreversible.”³⁰³ For example, in that case, the Tribunal found that where temporary managerial appointments later ripened into a transfer of title, the earlier date marks the taking if, at that time, there was “no reasonable prospect of return of control.”³⁰⁴

261. As explained, Article 1110 of NAFTA covers direct expropriation, indirect expropriation, and measures “tantamount to expropriation.”

262. A direct expropriation entails an “open, deliberate and acknowledged taking[] of property, such as outright seizure or formal or obligatory transfer of title in favour of the host

³⁰² See *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 356, **CL-0041**; see also *Pope & Talbot Inc. v. Government of Canada*, (UNCITRAL) Ad hoc, Interim Award, dated June 26, 2000, ¶ 99, **CL-0058**.

³⁰³ See *Phillips Petroleum Co. Iran v. The Islamic Republic of Iran* (“*Phillips Petroleum v. Iran*”), Iran-United States Claims Tribunal, IUSCT Case No. 39, Award (Award No. 425-39-2), dated June 29, 1989, ¶ 101 (citation omitted), **CL-0125**.

³⁰⁴ See *Phillips Petroleum Co. Iran v. The Islamic Republic of Iran*, Iran-United States Claims Tribunal, IUSCT Case No. 39, Award (Award No. 425-39-2), dated June 29, 1989, ¶ 101 (citation omitted), **CL-0125**; see also *Azurix Corp. v. Argentine Republic* (“*Azurix*”), ICSID Case No. ARB/ 01/ 12, Award, July 14, 2006, ¶¶ 285, 295, 313, 322, **CL-0126**. In *Azurix*, the tribunal emphasized that permanence turns on the measure’s cumulative impact and the specific circumstances, not on an algorithmic measure of time. It is a qualitative assessment of whether the investor’s core rights and value are durably impaired.

State”³⁰⁵ It consists of “the forcible appropriation by the State of the tangible or intangible property of individuals by means of administrative or legislative action.”³⁰⁶ Direct expropriation “usually involves a transfer of ownership to another person (frequently the government authority concerned), but that need not necessarily be so in certain cases (e.g., total destruction of an investment due to measures by a government authority without transfer of rights).”³⁰⁷

263. An indirect expropriation, by contrast, constitutes conduct that, in the absence of a forced transfer or destruction of title, nevertheless has the effect of significantly devaluing the investment. In the *Glamis* case, the tribunal observed:

In an indirect expropriation, the property is still “taken” by the host government in that the economic value of the property interest is radically diminished, but such an expropriation does not occur through a formal action such as nationalization. Instead, in an indirect expropriation, some entitlements inherent in the property right are taken by the government or the public so as to render almost without value the rights remaining with the investor.³⁰⁸

264. Similarly, according to UNCTAD, an indirect expropriation occurs when measures short of a direct expropriation nevertheless “result in the effective loss of management, use or control, or a significant depreciation of the value, of the assets of a foreign investor.”³⁰⁹

265. Article 1110 also contains a third category of expropriation—“measures tantamount to . . . expropriation”—which generally has been regarded as consistent in content with the concept of indirect expropriation.³¹⁰ As the *Glamis* Tribunal explained: “‘Tantamount’ means equivalent

³⁰⁵ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated August 30, 2000, ¶ 103, **CL-0032**; see also *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 355, **CL-0041**.

³⁰⁶ *LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, dated October 3, 2006, ¶ 187, **CL-0059**.

³⁰⁷ *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated July 17, 2006, ¶ 176(e), **CL-0048**.

³⁰⁸ *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 355, **CL-0041**.

³⁰⁹ UNCTAD, TAKING OF PROPERTY, UNCTAD SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS, dated 2000, p. 2, **CL-0060**.

³¹⁰ *Pope & Talbot Inc. v. Government of Canada*, (UNCITRAL) Ad hoc, Interim Award, dated June 26, 2000, ¶ 104, **CL-0058**; see also *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated December 16, 2002, ¶ 101, **CL-0002**; see also *S.D. Myers, Inc. v. Government of Canada*, (UNCITRAL) Ad hoc, Partial Award, dated November 13, 2000, ¶ 286, **CL-0061**.

and thus the concept should not encompass *more* than direct expropriation; it merely differs from direct expropriation which effects a physical taking of property in that no actual transfer of ownership rights occurs.”³¹¹

266. Regardless of its form, a NAFTA Party’s conduct constitutes an expropriation when it destroys the value or commercial viability of an investment, including by depriving investors of their “capacity to earn a commercial return” on their investment or their ability to use, enjoy or otherwise benefit from his investment.³¹²

* * *

267. The facts present a clear case of expropriation or, at a minimum, “measures tantamount to expropriation,” within the meaning of Article 1110 of NAFTA—namely because the Respondent completely deprived PEM of its VAT Refunds on a permanent basis.

c. PEM has been completely deprived of its rights to the VAT Refunds

268. The SAT’s actions have completely neutralized PEM’s ability to use, enjoy, or derive any economic value from its VAT Refunds.

269. On April 3, 2020, by Official Letters Nos. 400-24-00-02-00-2020-000968 (freezing HSBC Account Nos. [REDACTED]), 400-24-00-02-00-2020-000969 (freezing Banco Monex Account No. [REDACTED] and 400-24-00-02-00-2020-000970 (freezing Banamex Account Nos. [REDACTED]), the SAT ordered the “immobilization procedure” under Article 156-Bis of the Federal Tax Code, citing disputed assessments that were purportedly not “properly guaranteed.”³¹³ The effect of this measure was to establish a legal

³¹¹ *Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 355, **CL-0041**.

³¹² *See Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, dated December 14, 2012, ¶ 397, **CL-0055**; *see also Glamis Gold, Ltd. v. United States of America*, (UNCITRAL) Ad hoc, Award, dated June 8, 2009, ¶ 354, **CL-0041**.

³¹³ Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8, **C-0002, pp. 4952-4959**.

impediment that completely deprived PEM of access to its VAT Refunds and, in turn, precluded PEM from using and enjoying those monies for the benefit of its operations.³¹⁴

270. The legal bar established by the Freeze Orders—compounded by the SAT’s unreasonable denial of PEM’s guarantee applications—is undisputed in this case. Undoubtedly, the aim of the Official Letters imposing the freeze was to bar PEM completely from its VAT Refunds in order to prevent the company from withdrawing those funds, pending the outcome of the SAT’s tax reassessment process. For the same reasons, the SAT denied PEM’s guarantee applications, finding that the company was prohibited from receiving the VAT Refunds until it provided adequate security. In other words, there can be no question that the Respondent agrees that PEM is now completely deprived of all access, use and enjoyment of its VAT Refunds because that is precisely the SAT’s stated regulatory goal.

271. The facts of this case clearly meet the “sole effects” test for substantial deprivation as set out in *Burlington*. The VAT Impediment clearly “affect[ed] the environment [and] conditions under which [PEM] carries on its business” because the “economic value” and “economic viability” of the VAT Refunds were diminished so substantially so as to deprive PEM of “the capacity to earn a commercial return.”³¹⁵ Because of the VAT Impediment PEM had no ability whatsoever to use the VAT Refunds to satisfy its operational expenses that would have allowed the company to carry on its business.

272. Consequently, on these undisputed facts, the Respondent completely deprived PEM of its use and enjoyment of the VAT Refunds and, thus, the first prong of the expropriation test is satisfied.

³¹⁴ Official Letters, Nos. 400-24-00-02-00-2020-000968, 400-24-00-02-00-2020-000969, and 400-24-00-02-00-2020-000970, dated April 3, 2020, pp. 1-8 (citing Article 156-bis of the Federal Tax Code), **C-0002, pp. 4952-4959**. The freeze order stated: “La contribuyente que se indica en el párrafo siguiente tiene adeudos fiscales que se encuentran impugnados y no están debidamente garantizados y se ubica en el siguiente supuesto:

³¹⁵ See *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, dated December 14, 2012, ¶ 397, **CL-0055**.

d. The deprivation of PEM's rights is effectively permanent

273. The record shows that Respondent's infringement of PEM's rights to its VAT Refunds is also permanent, not "ephemeral or temporary."³¹⁶

274. As explained in Section IV.B.2.b.i.(a), the SAT denied PEM's guarantee applications in connection with the Banamex Account because, in principal part, because the regulator determined that PEM could not use as collateral company assets that were encumbered—despite the absence of such a condition under the Federal Tax Code.³¹⁷ Thus, even though PEM had pledged the entire company as security, certain assets that it owned were encumbered, thus completely barring any possibility that PEM could ever satisfy the guarantee requirements. There was—and continues to be—no way in which PEM could offer as security more assets than comprise the entire portfolio of the assets of the company.

275. Further, PEM has tried on multiple occasions for over five years to satisfy the SAT's demands so the VAT impediment would be lifted, but to no avail. It has submitted multiple guarantee applications that pledge all assets that the company owns and pursued every available avenue focused on securing acceptance of those guarantees.

276. Among other things, PEM has:

- offered an administrative guarantee over the entirety of its ongoing business as collateral;³¹⁸
- provided extensive documentation and appraisals in response to successive SAT information demands;³¹⁹

³¹⁶ See *supra* ¶ 267.

³¹⁷ See *supra* ¶ 81.

³¹⁸ See *supra* S. II.2.c; see also *supra* ¶¶ 7676, 8989.

³¹⁹ See *supra* ¶ 74, Table 4.

- sought reversal of the September 24, 2021 guarantee denials before the High Chamber; re-filed a second set of guarantee applications in July 2023 for the disputed fiscal years;³²⁰ and
- after the freeze of the Banorte account in August 2024, engaged with the SAT's October 13, 2025 demand for a third guarantee tied to the same assessments, notwithstanding the Tribunal's order that the Banorte account be maintained freely available to PEM.³²¹

277. The record thus shows that PEM has expended considerable efforts to release its VAT Refunds over a sustained period of time, without success, demonstrating that the SAT's position vis-à-vis the guarantee application process is immutable and enduring.³²²

278. The facts of this case thus satisfy the permanence factor because the SAT's conduct left for PEM no outcome other than the loss of access, use and enjoyment of the VAT Refunds on a continual basis. Thus, as in *Phillips Petroleum*, because of the SAT's impossible demands there is “no reasonable prospect of return of control” of the VAT Refunds.³²³ They will remain frozen until PEM satisfies a condition which it can never satisfy—namely provide for more collateral for the release of the VAT Refunds than it owns.

279. Consequently, the deprivation of PEM's entitlement to the VAT Refunds meets the threshold for permanence and, thus, satisfies the second prong of the expropriation test.

e. Mexico's Expropriation Was Unlawful

280. The Respondent may only lawfully expropriate PEM's VAT Refunds if the express conditions set forth in Article 1110(1)(a)-(d) of NAFTA have been met. These include the taking of property on payment of compensation, for a public purpose, on a non-discriminatory basis, and in accordance with due process and the fair and equitable treatment standard. Respondent has

³²⁰ See *supra* ¶ 0; see also Annulment Complaint, No. 0003-2021-02-C-10-01-03-03-L, dated November 11, 2021, **C-0078**.

³²¹ See *supra* S. II.2.iii; see also Official Letter No. 400-72-00-01-01-2025-27908, dated October 13, 2025, **C-0079**.

³²² See *supra* S. II.2.c; see also *supra* ¶ 0; Annulment Complaint, No. 0003-2021-02-C-10-01-03-03-L, dated November 11, 2021, **C-0078**.

³²³ See *Phillips Petroleum Co. Iran v. The Islamic Republic of Iran*, Iran-United States Claims Tribunal, IUSCT Case No. 39, Award (Award No. 425-39-2), dated June 29, 1989, ¶ 101, **CL-0125**.

failed to satisfy any of these conditions in connection with its expropriation of PEM's VAT Refunds. Its expropriation is therefore unlawful, as explained below.

i. Mexico Has Paid No Compensation

281. Payment of compensation for an expropriation, pursuant to the terms of Article 1110(2)-(6), is a fundamental prerequisite for a lawful expropriation. This rule is well established in international practice. As explained in *Feldman v. Mexico*, “[i]f there is a finding of expropriation, compensation is required, *even* if the taking is for a public purpose, non-discriminatory and in accordance with due process of law and Article 1105(1).”³²⁴

282. At no time has the Respondent ever offered payment or made payment to the Claimant in compensation for the confiscation of the VAT Refunds, or any other “investment” for that matter. Quite the contrary, as of the time of this filing, PEM's accounts remain frozen and the company is still subject to exorbitant tax reassessments which continue to rise due to adjustments made by the SAT for interest, penalties and inflation. Having failed to compensate the Claimant for its losses in connection with the expropriation of its investments, the Respondent committed an unlawful expropriation in breach of Article 1110.

ii. Mexico Acted Without Public Purpose

283. According to Article 1110(1)(a), an expropriation is only lawful if it is pursued for a public interest.³²⁵ As observed in *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, international tribunals should “accept the policies determined by the state for the common good, except in situations of blatant misuse of the power to set public policies.”³²⁶

284. As explained in the Claimant's Memorial and throughout this submission, there was no legitimate public purpose behind the VAT Impediment. Rather, the SAT's actions in this case, including its assessment of PEM's guarantee applications, either ignored or directly contravened

³²⁴ *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated December 16, 2002, ¶ 98, CL-0002.

³²⁵ See *Guaracachi America, Inc. v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, dated January 31, 2014, ¶ 437, (“If the expropriation had not been made ‘for a public purpose and for a social benefit related to the internal needs of that Party’ it would have then been illegal per se.”), CL-0062.

³²⁶ *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated April 15, 2016, ¶ 294, CL-0063.

Mexico's tax laws, its Constitution, and its obligations under international tax law. Under the pretext of enforcing its tax laws, the SAT has acted unlawfully to extract enormous sums in the form of disguised taxes, interest, inflation adjustments, and penalties.³²⁷ Such misconduct is clearly not in the public interest.

iii. Mexico Acted Discriminatorily

285. Pursuant to Article 1110(1)(b), to be lawful an expropriation must also be non-discriminatory.³²⁸

286. The Respondent's expropriation of the Claimant's investments was discriminatory. As explained in detail in Section IV.B.2.b.ii above, Mexico acted discriminatorily when it unlawfully blocked the VAT Refunds as part of a targeted and sustained campaign against the Claimant for refusing to comply with the SAT's unjustified tax demands.

iv. Mexico Breached Due Process and Fair and Equitable Treatment Standards

287. Finally, for Respondent's expropriation to be lawful, pursuant to Article 1110(1)(c), it must also be pursued in accordance with due process and the standards of fair and equitable treatment.³²⁹

288. As explained in Section II.B.2.b above, Respondent has failed to afford PEM due process and fair and equitable treatment when it denied PEM its VAT Refunds by unlawfully freezing PEM's Banamex Account. Specifically, the SAT arbitrarily and discriminatorily denied PEM's legitimate guarantee applications based on factors outside the Mexican regulatory regime.

* * *

³²⁷ See Claimant's Memorial, dated April 25, 2022, ¶¶ 446-452.

³²⁸ See, e.g., *Eureko B.V. v. Republic of Poland*, (UNCITRAL) Ad hoc, Partial Award, dated August 19, 2005, ¶ 242 (finding expropriation where the state's actions were "clearly discriminatory" in order to prevent foreign investor from obtaining control of investment company), **CL-0043**; see also *El Paso Energy International Co. v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated October 31, 2011, ¶ 241 (finding discriminatory conduct may constitute an expropriation), **CL-0056**.

³²⁹ Art. 1110(1)(c), North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

289. Based on the foregoing arguments, the record demonstrates that the Respondent has committed multiple breaches Articles 1105, 1109 and 1110 of NAFTA which give rise to damages, as set forth below.

V. DAMAGES

290. As a result of the Respondent's breaches of Articles 1105, 1109 and 1110 of Section A of NAFTA, the Claimant, in its own right and on behalf of PEM, "has incurred loss or damage by reason of, or arising out of, th[ose] breach[es]" in accordance with Articles 1116(1) and 1117(1) of Section B of NAFTA, respectively. Namely, PEM has lost the entire value of its VAT Refunds, which remain frozen and inaccessible in the Banamex Account (and Banorte Account). Under NAFTA, the Claimant is entitled to damages that will place it in the position in which it would have been but for the Respondent's breaches of its NAFTA obligations.

291. The Claimant claims compensation of [REDACTED] equal to the amount of the frozen VAT Refunds and consequential damages, plus pre-award interest.

A. Legal Standard

292. The standard of damages in the event of breach of NAFTA is governed by international law. As the Permanent Court of International Justice declared in the *Chorzów Factory* case, damages must compensate for the injuries caused by the internationally unlawful act by placing the aggrieved party in the position it would have been in but for the wrongful act:

[R]eparation, must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if the act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.³³⁰

³³⁰ *The Factory at Chorzów (Germany v. Poland)* (Claim for Indemnity) (Merits), PCIJ Rep. Ser. A, No. 17, dated September 13, 1928, p. 47, **CL-0072**.

293. Article 31 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopts the principle of full reparation set forth in *Chorzów Factory* case.³³¹ The commentary to Article 31 explains that full reparation means compensation for any injury caused by the State in connection with its breach of international law:

The responsible State's obligation to make full reparation relates to the "injury caused by the internationally wrongful act". The notion of "injury" ... is to be understood as including any damage caused by that act. In particular, ... "injury" includes any material or moral damage caused thereby.³³²

294. The *Chorzów Factory* standard is widely recognized in investor-State arbitration: "Many tribunals have applied this principle in deciding on damages due for breach of the standard of fair and equitable treatment."³³³ For example, in *S.D. Myers, Inc. v. Canada*, a NAFTA arbitration, the tribunal stated, "[t]he principle of international law stated in the *Chorzów Factory* (Indemnity) case is still recognized as authoritative on the matter of general principles."³³⁴ Further, the tribunal in *ADC Affiliate Ltd. v. Hungary* also stated in 2016, "[t]hus there can be no doubt about the present vitality of the *Chorzów Factory* principle, its full current vigor having been repeatedly attested to by the International Court of Justice."³³⁵

295. Accordingly, the prevailing rule in investor-State arbitration is that "compensation must take into account 'all financially assessable damage' or 'wipe out all the consequences of the illegal act.'"³³⁶

³³¹ ILC Articles on State Responsibility, dated 2002, Art. 31 (Article 31 provides: "1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."), **CL-0073**; *see also id.*, Art. 36, commentary (3) ("The fundamental concept of 'damages' is ... reparation for a loss suffered; a judicially ascertained compensation for wrong. The remedy should be commensurate with the loss, so that the injured party may be made whole.") (quoting *Lusitania* case, UNRIAA, vol. VII (Sales No. 1956.V5), p. 32, at p. 39 (1923)), **CL-0127**.

³³² ILC Articles on State Responsibility, dated 2002, Art. 31, **CL-0073**

³³³ *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15 Award, dated October 31, 2011, ¶ 701, **CL-0056**.

³³⁴ *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, dated November 13, 2000, ¶ 311, **CL-0061**.

³³⁵ *ADC Affiliate Ltd. v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, dated October 2, 2006, ¶ 493, **CL-0074**.

³³⁶ *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated January 17, 2007, ¶ 352 (citation omitted), **CL-0075**; *see also Petrobart Ltd. v. Kyrgyz Republic*, SCC Case No. 126/2003, Award, dated March 29,

296. This standard of full reparation applies in determining the compensation owed to the Claimant based on the Respondent's breach of Articles 1105, 1109, and 1110. NAFTA establishes no *lex specialis* regarding the measure of damages or compensation with respect to breaches of the fair and equitable treatment standard. Accordingly, the general international law principles reflected in *Chorzów Factory* apply.³³⁷

297. In addition, the compensation owed to the Claimant based on the Respondent's breach of Article 1110 also requires full reparation under international law beyond the express standard set forth in NAFTA. Article 1110(2) establishes a *lex specialis* that applies only in the case of lawful expropriation. That provision provides: "[c]ompensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place [and may include] going concern value . . . to determine fair market value."³³⁸ However, the Respondent's breach of Article 1110(1) constitutes an unlawful expropriation.

298. Accordingly, in addition to the fair market value of their investments, the Claimant is entitled to supplemental damages for all post-expropriation expenses. As the tribunal in *Siemens A.G. v. Argentine Republic* stated: "The Tribunal considers that the claim on account of post-expropriation costs is justified in order to wipe out the consequences of the expropriation."³³⁹

299. Article 1110(2) provides that for lawful expropriation, damages shall be calculated "immediately before the expropriation took place." However, damages for unlawful expropriation need not be calculated as of that date. Instead, as described above, a state responsible for an illegal expropriation is obliged to put the injured party into the position it would be in if the wrongful act

2005, pp. 77-78, (holding that "in so far as it appears that Petrobart has suffered damage as a result of the Republic's breaches of the Treaty, Petrobart shall so far as possible be placed financially in the position in which it would have found itself, had the breaches not occurred"), **CL-0076**; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶ 8.2.7 (providing that "regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state's action"), **CL-0050**; *Biwater Gauff (Tanzania) Ltd. v. Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated July 24, 2008, ¶ 774 (observing that "compensation is to cover 'any financially assessable damage including loss of profits insofar as it is established'") (emphasis omitted), **CL-0077**.

³³⁷ Art. 1131, NAFTA, dated January 1, 1994 ("A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law."), **CL-0001**.

³³⁸ Art. 1110(2), NAFTA, dated January 1, 1994, **CL-0001**.

³³⁹ *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated January 17, 2007, ¶ 387, **CL-0075**.

had not taken place – an obligation of restitution that applies as of the date when the award is rendered. Tribunals have adopted this approach because compensation for unlawful expropriation and other treaty breaches must take into account events that follow the initial taking or breach, as they may affect the extent of the damage caused by the illegal act and hence must be reflected in the calculation. As Professor Marboe states:

It follows, thus, from the principle of full reparation as formulated by the PCIJ in *Chorzów Factory*, that the valuation is not normally limited to the perspective of the date of the illegal act or some other date in the past. An increase in value of the valuation object, consequential damage, subsequent events and information, at least up until the date of the judgment or award, must be taken into account in the evaluation of damages.³⁴⁰

300. Tribunals have also held that, just as investors should enjoy the benefits of unanticipated events that increase the value of an expropriated asset up to the date of the award, they should not bear the risk of unanticipated events decreasing the value of an expropriated asset over that time period. Consequently, an investor that has been subject to an unlawful expropriation is entitled to elect the date of valuation between either the expropriation date or the date of the award.³⁴¹

301. This applies equally to damages arising from Mexico's breaches of Articles 1105, 1109, and 1110 of NAFTA.³⁴²

302. First Majestic is entitled to damages in an amount sufficient to eliminate the consequences of Mexico's breaches of Articles of NAFTA. As set out in Section II.B.1.a, the Claimant through PEM has a legal entitlement under Mexican law to VAT Refunds accrued through its business in Mexico and export of goods and services. The Claimant has been denied this entitlement through the unlawful rejection of PEM's guarantee applications, for reasons outside the scope of Mexican law, and through the subsequent unlawful freezing of PEM's bank

³⁴⁰ Irmgard Marboe, "Compensation and Damages in International Law – The Limits of 'Fair Market Value,'" 7 J. World Investment & Trade, dated 2006, p. 753, **CL-0083**.

³⁴¹ See *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated July 18, 2014, ¶ 1763, **CL-0009**.

³⁴² Arts. 1105, 1109, 1110, NAFTA, dated January 1, 1994, **CL-0001**.

accounts—in particular, PEM’s Banamex bank account which contains its frozen VAT Refunds.³⁴³ Thus, First Majestic is entitled to be put in the position it would have been in had these steps not been taken.

B. Methodology

1. “But-For” Scenario

303. As noted above, the prevailing rule in investor-State arbitration is that “compensation must take into account ‘all financially assessable damage’ or ‘wipe out all the consequences of the illegal act.’”³⁴⁴ In other words, the governing principle for the quantification of damages is to determine a monetary amount that would place the damaged party (in this case, the Claimant and PEM as the investment) in the same economic position that it would otherwise have enjoyed had the alleged breaches not occurred.

304. In these circumstances, the Claimant quantifies its damages relative to a hypothetical where the Respondent did not undertake the measures that breached NAFTA in this case, a methodology known as the “But-For Scenario.” According to this methodology, the Claimant compares its economic position in the “But-For Scenario” (where the measures would not have occurred) with its corresponding economic position in the “Actual Scenario,” where the measures have (and continue to be) implemented. Put simply, this approach determines the Claimant’s damages by calculating its economic position in the (“but for”) scenario (that Mexico had not imposed its crippling measures) and compares it to Claimant’s actual position. The extent to which that Claimant’s economic position is higher in the “but for” scenario than in the actual scenario represents the Claimant’s damages.

³⁴³ See *supra* ¶¶ 52-56, 68-96.

³⁴⁴ *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated January 17, 2007, ¶ 352 (citation omitted), **CL-0075**; see also *Petrobart Ltd. v. Kyrgyz Republic*, SCC Case No. 126/2003, Award, dated March 29, 2005, pp. 77-78, (holding that “in so far as it appears that Petrobart has suffered damage as a result of the Republic’s breaches of the Treaty, Petrobart shall so far as possible be placed financially in the position in which it would have found itself, had the breaches not occurred”), **CL-0076**; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶ 8.2.7 (providing that “regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state’s action”), **CL-0050**; *Biwater Gauff (Tanzania) Ltd. v. Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated July 24, 2008, ¶ 774 (observing that “compensation is to cover ‘any financially assessable damage including loss of profits insofar as it is established’”) (emphasis omitted), **CL-0077**.

2. Causation

305. A NAFTA tribunal may award compensation only when an injury is caused by the internationally wrongful act of a State. According to Article 1117(1)(b) of the NAFTA, an investor of a Party may act on behalf of an enterprise of another party, where said enterprise “has incurred loss or damage by reason of, or arising out of, that breach.”³⁴⁵ The ordinary meaning of the terms “by reason of, or arising out of” in this provision requires the demonstration of a causal nexus between the alleged breach and the claimed loss or damage.

306. Similarly, Article 31(1) of the International Law Commission’s Articles on State Responsibility (“**ILC Articles on State Responsibility**”) provides that the responsible State is under an obligation to make full reparation for the injury “caused by the internationally wrongful act.” According to the commentary to Article 31:

This phrase is used to make clear that the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act.³⁴⁶

307. In the circumstances of the present case, the economic damage suffered by the Claimant was the direct, foreseeable and intended consequence of the Respondent’s wrongful conduct. As explained above, the confiscation of PEM’s VAT Refunds would not have occurred, “but for” the Respondent’s wrongful conduct. The Respondent’s wrongful conduct consists of unlawfully rejecting PEM’s guarantee applications, subsequently unlawfully freezing PEM’s bank accounts, and denying PEM its VAT Refunds.

308. Thus, there is a direct and certain causal nexus between the Respondent’s measures and the economic injury suffered by the Claimant as a result of the substantial deprivation of PEM’s VAT Refunds and of any reasonably-to-be-expected economic benefit.

³⁴⁵ Art. 1117(1)(b), North American Free Trade Agreement, dated January 1, 1994, **CL-0001**.

³⁴⁶ James Crawford, ILC Articles on State Responsibility, dated 2002, Art. 31, commentary (9), **CL-0073**.

C. Calculation

1. Calculation of Nominal Damages owed to Claimant

309. As explained in [REDACTED] Ancillary Claim Report, the quantification of the nominal damages owed to the Claimant comprises three components: (i) the balance of funds blocked in the Banamex Account as of January 4, 2023 (net of the July 2024 transfer), (ii) additional payroll service provider fees incurred to meet local payroll obligations while the account remained blocked, (iii) and incremental banking fees arising from the freeze of PEM's bank account.³⁴⁷

310. **Blocked funds.** As explained in [REDACTED] Ancillary Claim Report, the Claimant's damages are directly and contemporaneously verifiable from Banamex's monthly statements. [REDACTED] confirmed that, as shown in the December 2022 statement, the Banamex Account held a balance of [REDACTED] as of December 31, 2022.

311. [REDACTED] confirmed that, as shown in the December 2022 statement, the Banamex Account held a balance of [REDACTED] as of December 31, 2022. PEM then received two small deposits on January 4, 2023, of [REDACTED], respectively, which [REDACTED] treated as part of the blocked balance as of that date. Accordingly, the total balance of PEM's blocked Banamex funds as of January 4, 2023, is [REDACTED] (approximately [REDACTED] using the January 4, 2023 exchange rate).³⁴⁸

312. On July 9, 2024, in compliance with the Tribunal's PM Decision, PEM received a transfer of [REDACTED] from the frozen account. [REDACTED] deducted that amount from the blocked balance in quantifying nominal damages.³⁴⁹

313. **Additional payroll fees.** In addition to the blocked balance, [REDACTED] calculated the incremental payroll-related fees necessitated by the account freeze. PEM incurred [REDACTED] in third-party payroll provider fees from October 2021

³⁴⁷ See [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶¶ 29-34, **Expert Report-[REDACTED] Valuation-Ancillary Claims Memorial-Second Report-ENG.**

³⁴⁸ See [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 31, **Expert Report-[REDACTED] Valuation-Ancillary Claims Memorial-Second Report-ENG.**

³⁴⁹ *Id.*

through September 30, 2025, reflecting the transition from Labor Mexicana to Primero Servicios Mineros and the ongoing need to administer payroll outside of the blocked account infrastructure.³⁵⁰

314. **Additional banking fees.** [REDACTED] also quantified PEM's incremental banking fees. Prior to the freeze, PEM's average monthly bank fees (January–April 2020) were approximately [REDACTED]; after the freeze, the average increased to [REDACTED]. [REDACTED] therefore computes nominal damages as the difference between actual fees incurred from May 2020 to the present and but-for fees of [REDACTED] per month over the same period. This yields [REDACTED].³⁵¹

315. For ease of reference, [REDACTED] calculation in Table 3 of its report is reproduced below in Table 8 below:

Table 8: Nominal Damages as of September 30, 2025

Component	MXN
Banamex Blocked Funds, January 4, 2023	[REDACTED]
Withdrawal, July 2024	[REDACTED]
Payroll Service Provider Costs	[REDACTED]
Incremental Bank Fees	[REDACTED]
Nominal Damages	[REDACTED] ³⁵²

2. Calculation of interests owed to Claimant

316. First Majestic is entitled to interest, compounded annually, applied pre- and post-award, including on costs.

³⁵⁰ See [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 32, Table 1, **Expert Report-Valuation-Ancillary Claims Memorial-Second Report-ENG**.

³⁵¹ See [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 33, Table 2, **Expert Report-Valuation-Ancillary Claims Memorial-Second Report-ENG**.

³⁵² [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 34, Table 3, **Expert Report-Valuation-Ancillary Claims Memorial-Second Report-ENG**.

317. It is an “accepted legal principle” that, absent treaty terms to the contrary, tribunals may include an award of interest in the Claimant’s favor.³⁵³ The purpose of an award of interest is “to compensate the damage resulting from the fact that, during the period of non-payment by the debtor, the creditor is deprived of the use and disposition of that sum he was supposed to receive.”³⁵⁴

318. In the context of lawful expropriation, Article 1110(4) of NAFTA provides that compensation must include interest at a commercially reasonable rate. The Article provides: “If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.”³⁵⁵ It is even “more appropriate” for a tribunal to order interest on compensation for wrongful expropriation.³⁵⁶ In the context of expropriation, “interest has invariably been calculated from the date of the taking.”³⁵⁷

319. In applying the *Chorzów Factory* standard of full reparation, it is appropriate for the Tribunal to award compound rather than simple interest.³⁵⁸ Compound interest reflects the

³⁵³ See *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶ 9.2.1, **CL-0050**; see also James Crawford, ILC Articles on State Responsibility, dated 2002, Art. 38(1) (“Interest on any principal sum . . . shall be payable when necessary to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.”), **CL-0127**.

³⁵⁴ See *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶ 9.2.3, **CL-0050**; see also James Crawford, ILC Articles on State Responsibility, dated 2002, Art. 38(1) (“Interest on any principal sum payable under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.”), **CL-0073**.

³⁵⁵ Art. 1110(4), NAFTA, dated January 1, 1994, **CL-0001**.

³⁵⁶ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶ 9.2.2, **CL-0050**.

³⁵⁷ See *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated July 18, 2014, ¶ 1669, **CL-0009**.

³⁵⁸ See *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award, dated October 5, 2012, ¶ 840 (which describes compound rates as “the norm” in recent ICSID cases), **CL-0078**; see also *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 27, 2007, ¶ 9.2.4 (“To the extent there has been a tendency of international tribunals to award only simple interest, this is changing, and the award of compound interest is no longer the exception to the rule”), **CL-0050**; *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, October 31, 2011, ¶ 746 (“The Tribunal shares the view expressed by these awards that compound interest reflects economic reality and will therefore better ensure full reparation of the Claimant’s damage.”), **CL-0056**.

additional sum that an investor would have earned if the money had been reinvested each year at the prevailing rate of interest.³⁵⁹

320. Simple interest provides inappropriate reparation because it “fail[s] to account accurately for the time value of money until the date of payment.”³⁶⁰ Compound interest, in contrast, is consistent with the *Chorzów* principle of full reparation because it more often reflects the actual damages suffered.³⁶¹ Contrary to simple interest, compound interest ensures that the amount of compensation reflects the additional sum that an investor would have earned if the money had been reinvested each year at generally prevailing rate of interest.

321. Tribunals that have awarded compound interest have predominantly ordered the annual compounding of interest.³⁶² Tribunals have also generally granted interest “until the date of full payment of the award.”³⁶³ In practice, this “automatically turns pre-award interest into post-award” interest.³⁶⁴

322. As explained in [REDACTED] Ancillary Claim Report, the contemporaneous Banamex account statements confirm that the blocked balances have earned no interest over the relevant period. Economically, this results in a loss because of the time value of money due to inflation and the foregone ability to deploy cash productively.³⁶⁵

³⁵⁹ See *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, dated December 8, 2000, ¶ 129, **CL-0079**; see also *Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award, dated February 17, 2000, ¶ 104, **CL-0080**; *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated July 18, 2014, ¶ 1689, **CL-0009**.

³⁶⁰ *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award, dated June 11, 2012, ¶ 1337, **CL-0081**.

³⁶¹ See *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated August 20, 2007, ¶¶ 8.3.20, 9.2.4, 9.2.6, 9.2.8, **CL-0050**.

³⁶² See *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated July 18, 2014, ¶ 1671, **CL-0009**.

³⁶³ *Id.* at ¶ 1672.

³⁶⁴ Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW*, British Institute of International and Comparative Law, dated November 2008, p. 387, ¶ 9.5, **CL-0082**.

³⁶⁵ See [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 35, **Expert Report-[REDACTED] Valuation-Ancillary Claims Memorial-Second Report-ENG**.

323. To restore Claimant to the position it would have occupied absent the freeze, ████████ applied a commercially reasonable, market-based pre-award interest rate that reflects the time value and opportunity cost of money. Specifically, ████████ applied the Bank of Mexico's 28-day fixed-term deposit rate to the monthly blocked balance in the Banamex account. ████████ considers this rate conservative and commercially appropriate because it mirrors the return PEM could have earned on unblocked term deposits in Mexico over the same period, and longer-tenor deposit rates could reasonably be used given the multi-year immobilization. Consistent with financial practice and the compounding nature of returns and borrowing costs, ████████ calculated interest on a compound basis.³⁶⁶

324. ████████ applied pre-award interest to Claimant's incremental bank fees and third-party payroll service costs at a U.S. Prime-based commercial rate. Because the Prime Rate functions as a base rate available primarily to the most creditworthy borrowers, ████████ added a 1% premium to approximate a market-available lending rate for an investor in PEM's position. Interest on these ancillary cash outflows is likewise compounded to reflect economic reality and to ensure full reparation for the time value of money.³⁶⁷

325. Applying these methodologies, ████████ calculated Claimant's total damages for the Ancillary Claim to be ████████ as of September 30, 2025. The calculation reflected: (i) compound pre-award interest on the monthly blocked balance using the Bank of Mexico 28-day fixed-term deposit rate; and (ii) compound pre-award interest on incremental bank fees and payroll service costs at U.S. Prime + 1%.³⁶⁸

326. For ease of reference, ████████ calculation is summarized in the Table 8 below which appears as Table 4 in ████████ report.

³⁶⁶ See ████████ Ancillary Claim Report, dated October 21, 2025, ¶ 40, **Expert Report-██████████Valuation-Ancillary Claims Memorial-Second Report-ENG**.

³⁶⁷ *Id.*

³⁶⁸ See ████████ Ancillary Claim Report, dated October 21, 2025, ¶ 41, **Expert Report-██████████Valuation-Ancillary Claims Memorial-Second Report-ENG**.

Table 8: Total Ancillary Claim Damages (with Interest through September 30, 2025)³⁶⁹

Calc.	Component	Currency	Nominal Losses	Pre-Award Interest	Damages
[A]	Banamex Blocked Funds				
[B]	Exchange Rate (September 30, 2025)				
[C] = A / B	Banamex Blocked Funds				
[D]	Payroll Service Provider Costs				
[E]	Incremental Bank Fees				
[F] = C + D + E	Total				

VI. COSTS

327. The Claimant seeks compensation for the reasonable costs of making this ancillary claim application, which will be quantified at the proper time as directed by the Tribunal.

VII. REQUEST FOR RELIEF

328. On the basis of the foregoing, Claimant respectfully requests that the Tribunal:

- a. DECLARE that the Respondent has breached NAFTA and applicable principles of international law in violation of Articles 1105, 1109, and 1110;
- b. DETERMINE that these breaches have caused the Claimant to suffer damages;
- c. ORDER the Respondent to compensate the Claimant for its losses resulting from these breaches, in accordance with NAFTA and customary international law, in an amount of [REDACTED], plus interest, subject to amendment to account for the accrual of continuing damages.
- d. ORDER the Respondent to pay the costs and expenses of this arbitration proceeding, including the costs of the Tribunal and the legal and other costs incurred by the Claimant, on a full indemnity basis, together with interest on such costs, in an amount to be determined by the Tribunal; and

³⁶⁹ [REDACTED] Ancillary Claim Report, dated October 21, 2025, ¶ 41, Table 4, Expert Report-[REDACTED] Valuation-Ancillary Claims Memorial-Second Report-ENG .

- e. AWARD such other relief as the Tribunal considers appropriate
329. The Claimant reserves its right to amend or supplement this Ancillary Claim Memorial.

Date: October 21, 2025

Respectfully submitted,



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