

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

First Majestic Silver Corp.

v.

United Mexican States

(ICSID Case No. ARB/21/14)

Procedural Order No. 8

Members of the Tribunal

Prof. Giorgio Sacerdoti, President of the Tribunal

Prof. Stanimir A. Alexandrov, Arbitrator

Prof. Yves Derains, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

22 September 2025

I. Claimant's requests of 19 August 2025

1. In its letter of 19 August 2025, the Claimant asserts that the Respondent continues to violate “the Tribunal’s Decision dated May 26, 2023 (the “**Order**”) in relation to the Claimant’s Request of Provisional Measures made on January 4, 2023,”¹ and requests the Tribunal to order the Respondent to take certain measures to remedy such violations (the “**Request**”).
2. The Claimant first recalls that “the Order requires that *all* VAT refunds as of January 4, 2023, onwards to be made freely available to the Claimant and prohibits SAT from taking any measures against the new bank account for the deposit of VAT refunds.”² The Claimant quotes the relevant part of the Order, whereby the Tribunal:

*1. RECOMMENDS as provisional measure pursuant to Article 47 of the ICSID Convention, Rule 39 of the ICSID Arbitration Rules and Article 1134 of the NAFTA that 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;*³

3. The Claimant complains that SAT is withholding VAT refunds owed to PEM, totaling [REDACTED], in violation of the Order. This amount includes [REDACTED] deposited in PEM’s Banamex account, corresponding to three monthly VAT refunds made by SAT between 21 August 2023 and 16 October 2023. This account has remained frozen and inaccessible to PEM since before the Order.⁴ The remaining [REDACTED] corresponds to the monthly VAT deposits made by SAT from August 2024 to June 2025 into PEM’s Banorte account. This account was opened by PEM specifically for SAT to deposit these monthly refunds, which would be freely accessible by PEM as provided in the Order (“that such payments be made into accounts to be indicated by PEM and to be maintained freely available to PEM;”).
4. Furthermore, the Claimant alleges that on 29 August 2024 the Respondent imposed a freeze also on the Banorte account in “brazen violation” of the Order, as this account “was required by the Order to remain free of any such measure.”⁵
5. In view of the above, the Claimant asks the Tribunal to order the Respondent:
 1. To immediately make available to PEM the amounts that have been blocked in its two frozen accounts;
 2. To immediately lift the freezing measure imposed by SAT on 29 August 2024 on the Banorte account, to make the amounts deposited there available to PEM;

¹ Claimant’s letter dated 19 August 2025, p. 1.

² *Id.*, p. 1 (footnotes removed).

³ Decision on the Claimant’s Request for Provisional Measures, 26 May 2023 (“**Order**”), para. 143.1.

⁴ See Claimant’s letter dated 19 August 2025, Appendix C.

⁵ *Id.*, p. 1.

3. To refrain from freezing the Banorte account or any other account opened by PEM in substitution of such account “if PEM provides the usual advance and customary notice to SAT of the opening of the new account (for the deposit of the VAT refunds) as an alternate account to the Banorte account”; and
4. To immediately take all necessary steps to transfer [REDACTED] from PEM’s Banamex account to the Banorte account (once unfrozen) or a substitute bank account designated by the Claimant.”⁶

II. The Respondent’s Reply of 9 September 2025

6. The Respondent states that, “*en ánimo de buena fe, se encuentra en coordinación con el SAT a efecto de agotar los procedimientos internos necesarios para poder dar cumplimiento a la Medida Provisional*”.⁷ The Respondent stresses that compliance with the applicable Mexican regulation is essential to avoid exposing the involved public officials to civil, criminal and patrimonial liability.
7. The Respondent recalls further the development of the ICSID dispute between the Parties since the Order, including the introduction of a new case by the Claimant on 29 June 2023, the subsequent Request for Consolidation by the Respondent, the constitution thereafter of the Consolidation Tribunal, and its order on 16 July 2024 suspending both arbitration proceedings.
8. Specifically, the Respondent explains that to comply with the Order, it is indispensable to verify “*que el contribuyente haya garantizado debidamente el interés fiscal derivado de los créditos fiscales (tax liabilities) determinados por la autoridad*”.⁸ This interest, which results from the determination of PEM’s tax liabilities for the years 2010, 2011, 2012, 2013, was prejudiced, in the Respondent’s opinion, by the substantive effect (“*efecto real*”) of the Provisional Measure.⁹ Moreover, PEM’s opposition to the determination of these tax liabilities (notably by the indirect *amparo* 1159/2024, now 328/2025) also entails an obligation for the taxpayer to give appropriate guarantees. In light of the above legal framework, the blocking of the Banorte account was not *discretionary*. On the contrary, “*se trata de un mandato legal expreso, general y de cumplimiento obligatorio que la legislación mexicana impone a todo contribuyente sin excepción*”.¹⁰
9. As to the amounts blocked on the Banamex account, the Respondent relies on the Tribunal’s conclusion in its letter to the Parties of 29 March 2024, by which the Tribunal was called to decide on the scope of its Order in respect of the unfreezing of certain monthly VAT refunds deposited by SAT in the blocked Banamex account. The conclusion, quoted by the Respondent, is as follows: “The Tribunal CONCLUDES, therefore, that in order to fully comply with the Decision, Respondent must make the amounts of VAT refunds paid to PEM from 4 January 2023 to July 2023 on its blocked account at Banamex freely available to PEM, by depositing those amounts on PEM’s

⁶ *Id.*, pp. 3-4.

⁷ Respondent’s letter dated 9 September 2025, p. 2.

⁸ *Id.*, p. 2.

⁹ See *Id.*, footnote 3 at p. 3.

¹⁰ *Id.*, p. 5.

freely accessible account at Banorte or otherwise.”¹¹

10. The Respondent relies on this text to assert that the Claimant’s request to unblock [REDACTED] is not covered by the Respondent’s obligation because these amounts were deposited by SAT from August 2023 to October 2023, that is, after the date of July 2023 set in the Tribunal’s letter of 29 March 2024. Moreover, the Respondent states that the amounts were deposited into the Banamex account instead of the newly opened Banorte account due to the Claimant’s delayed notification of the Banorte account.

III. Decision of the Tribunal

11. First of all, the Tribunal expresses its dismay that the Parties continue to debate the proper and full compliance with the Order more than two years after it was issued, notwithstanding the detailed clarifications provided by the Tribunal in its letter of 29 March 2024. This letter was issued to resolve certain divergences of views between the Parties and focused on some of the monthly VAT refunds that had been blocked.
12. In this respect, the Tribunal points out that its clarification of the Order in its 29 March 2024 letter is not limited to the conclusions quoted by the Respondent but extends to the entirety of “observations” 1 to 6 preceding the conclusion.¹²
13. The Tribunal believes that the Order, as quoted above, is clear in the sense that “the Respondent [must] 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”. This is not the proper context to revise the Order, nor has any Party asked the Tribunal to do so.
14. The following and last sentence of the Order (“and that such payments be made into accounts to be indicated by PEM and to be maintained freely available to PEM”) specifies the appropriate way to make the monthly VAT refunds available to PEM, as PEM’s Banamex account had been frozen at the moment the Order was issued. To this effect, PEM opened a new account at Banorte, which was to be kept free from any freezing, and informed SAT of such account for the purpose of future monthly payments. It is uncontested that SAT complied with that instruction from a certain date and has continued to pay the monthly VAT refunds to which PEM is entitled into this account, which was, however, blocked on 24 August 2024.¹³
15. Two issues must be resolved. First, the Respondent does not deny that the monthly VAT refunds paid in August, September and October 2023 (amounting to [REDACTED]) were made to the blocked Banamex account and are therefore not freely available to PEM.

¹¹ *Id.*, p. 6 (emphasis removed).

¹² See in particular point 1. of the Tribunal’s letter dated 29 March 2024 at p. 3: “1. The thrust of the Decision is that VAT refunds owed by SAT to PEM after 4 January 2023 must not be blocked by Respondent and must be made freely available to PEM.”

¹³ See point 2. at p.7 of the Respondent’s letter dated 9 September 2025 and the second following paragraph there: “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” namely by having the funds which were deposited on the (blocked) Banamex account transferred to the (free) Banorte account.

In this respect, the Respondent claims that it has acted correctly and was not obligated to make such funds available to PEM under the Order, as these deposits were made before the Claimant indicated the Banorte account to SAT for such purposes. The Respondent points out that the conclusion of the Tribunal's letter of 29 March 2024 concerning its obligations not to block the VAT refunds refers only to the monthly deposits made until July 2023, while the amounts currently blocked in the Banamex account were deposited by SAT subsequently (*"Respondent must make the amounts of VAT refunds paid to PEM from 4 January 2023 to July 2023 on its blocked account at Banamex freely available to PEM"*¹⁴).

16. The Tribunal cannot accept this "defense" by the Respondent. The Order is clear that all outstanding and future monthly VAT refunds were (and are) to be made freely available to PEM. The letter of 29 March 2024 was not meant to reduce the scope of Respondent's obligation but to clarify the Order in respect of the amounts on which the parties expressed divergent views as to the Respondent's obligation. The fact that the Claimant (PEM) may not have been diligent in promptly notifying SAT of the new account (a circumstance that the Claimant however contests¹⁵), does not relieve the Respondent from its obligation to unblock these amounts as well. When Banamex transferred [REDACTED] to Banorte on 9 July 2024, informing SAT thereof, it should have also transferred the amounts corresponding to the August-October 2023 refunds. The fact that such a transfer was made on 9 July 2024, presumably as directed or authorized by SAT, shows that any existing obligation concerning the guarantee of tax liabilities does not prevent transfers such as the one requested by the Claimant.
17. The second issue pertains to the subsequent blocking by SAT of the Banorte account on 24 August 2024, which the Claimant also asserts is in violation of the Order. In this respect, the Tribunal observes that neither Party has filed the decision, order or other type of measure by which this blocking has been effected. The Tribunal does not know (but ultimately does not need to know) which authority has ordered such blocking nor the reasons thereof. The Respondent's arguments in its letter of 9 September 2025, that under Mexican law tax liabilities must be guaranteed, especially when a taxpayer asks for the suspension and annulment of a tax assessment, are vague in this respect. The emphasis that the Respondent puts in its letter on the rigorous formalities and lack of discretion which characterize Mexican tax proceedings points, however, to the issuance of some specific reasoned decision by SAT or other Mexican tax authorities having blocked PEM's Banorte account on 29 August 2024.
18. The Tribunal cannot but restate that the Respondent's conduct is in direct breach of the Order, as it is clear from its wording that the Respondent must not block the availability of the VAT refunds to which PEM is entitled, and that they must be made "into accounts to be indicated by PEM and to be maintained freely available to PEM." The Tribunal cannot accept at this stage the defence put forward by the Respondent that the compliance with the Order would entail "*un daño irreparable al fisco de la Nación*"¹⁶. Any obligation of PEM to guarantee its tax liabilities, whose amount and import the Respondent, by the way, has not specified, should and can most likely be ensured by other means, considering that

¹⁴ Tribunal's letter dated 29 March 2024, p. 4.

¹⁵ See footnote 1 in the Claimant's letter dated 19 August 2025.

¹⁶ Respondent's letter dated 9 September 2025, p. 3.

the record of the present case shows that PEM has sizeable assets in Mexico, consisting principally of several mines.

19. Finally, the Tribunal notes the somewhat contradictory arguments made by the Respondent in its letter of 9 September 2025. On the one hand, the Respondent relies on a partial reading of the Tribunal's letter of 29 March 2024 and on the need for unspecified guarantees for PEM's tax liabilities to contest its obligation to comply with the Order. On the other hand, on page 2 of its letter, the Respondent implicitly recognizes its obligation to release the amounts claimed by the Claimant, stating that it "*desea señalar que, en ánimo de Buena fe, se encuentra en coordinación con el SAT a efecto de agotar los procedimientos internos necesarios para poder dar cumplimiento a la Medida Provisional*".
20. The Tribunal cannot however accept the argument that after more than two years from the issuance of the Order, the Respondent still needs to coordinate with SAT as to how to comply with the Order. Firstly, this is contradicted by the fact that a partial transfer from the frozen Banamex account to the then freely available Banorte account occurred on 9 July 2024, as stated by the Respondent itself. Secondly, substantially the same "justification," i.e., that the Respondent was coordinating with SAT in order to determine the proper internal proceedings to comply with the Order, was already proffered by the Respondent in its letter to the Claimant of 30 April 2024.¹⁷ This justification is clearly not acceptable again 16 months later in order to explain why the Respondent has not yet fully complied with the Order.

ORDER

21. In view of the above, the Tribunal:
 - A. Confirms that full compliance with its Order requires that all monthly VAT refunds by SAT in favor of PEM, already effected or to be made in the future while the present arbitration is pending, must be freely available to PEM, by SAT depositing or transferring them to accounts to be maintained freely available to PEM.
 - B. Accordingly:
 - (i) The Respondent must promptly ensure that the amount of about [REDACTED], corresponding to the VAT refunds made by SAT to PEM in August, September and October 2023, currently blocked on PEM's Banamex account, be made available to PEM;
 - (ii) The blocking of PEM's Banorte account on 29 August 2024, which was opened by PEM for the purpose of receiving VAT refunds from SAT, is contrary to the

¹⁷ Appendix A to the Claimant's letter of 19 August 2024, p. 2, last sentence: "*la Demandada reitera [emphasis added] que se encuentra realizando consultas con el SAT sobre el mecanismo idóneo para atender las observaciones y conclusiones del Tribunal en su comunicación del 29 de marzo de 2024, con la finalidad de cumplir cabalmente con la recomendación emitida por el Tribunal en la Decisión sobre Medidas Provisionales*". These consultations must have been carried out successfully, at least in part, and an appropriate procedure must have been found, considering that, as mentioned above, on 9 July 2024 the amounts deposited on the blocked Banamex account until July 2023 were transferred to the freely available Banesto new account of PEM.

Order. This blocking must be appropriately remedied by the Respondent (through SAT or otherwise) to ensure that the amounts of VAT refunds deposited therein, as well as any future VAT refund payments, are freely available to PEM.

For and on behalf of the Tribunal,

A handwritten signature in blue ink, reading "G. Sacerdoti", is displayed on a light blue rectangular background.

Prof. Giorgio Sacerdoti
President of the Tribunal
Date: 22 September 2025