

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Espíritu Santo Holdings, LP and Libre Holding, LLC

Claimants

v.

United Mexican States

Respondent

(ICSID Case No. ARB/20/13)

PROCEDURAL ORDER NO. 6

Members of the Tribunal

Mr. Eduardo Zuleta, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

15 September 2022

I. INTRODUCTION

1. On 4 August 2022, the Tribunal issued Procedural Order No. 4, where it ordered the Claimants in paragraph 21(f) “*to inform the Tribunal and Respondent no later than 10 August 2022 which documents required under the Respondent’s requests No. 45 and 46, are available in their original hard copy file and which are available in digital copy and to identify the geographical location where such originals are currently available. The Tribunal also invited the Parties to agree, once the aforementioned information was received, on a protocol for the review of such documents, and to inform the Tribunal on their agreement, or points of disagreement, no later than 29 August 2022.*”
2. On 11 August 2022, the Claimants requested the Tribunal an extension of the deadline set forth in paragraph 21(f) of Procedural Order No. 4 to 22 Monday 2022.
3. On 12 August 2022, the Tribunal granted the Claimants’ request for an extension to 22 August 2022 to comply with the order recorded in paragraph 21(f) of Procedural Order No. 4. Further, the Tribunal extended the deadline for the Parties to agree on a protocol for the review of the documents referenced in paragraph 21(f) of Procedural Order No. 4 from 29 August to 12 September 2022.
4. On 22 August 2022, the Claimants submitted a brief identifying the documents required by the Respondent under requests Nos. 45 and 46 that are available in their original hard copy, and suggesting a protocol for the corresponding inspection.
5. On 12 September 2022,¹ each Party submitted a brief recording their points of agreement and disagreement on the protocol for the inspection of the original hard copy documents.

¹ The Claimants’ “9.12.2022 Letter to Tribunal,” and the Respondent’s “220912 Comunicación Estados Unidos Mexicanos – Protocolo de Inspección V4”.

II. CONSIDERATIONS

6. The Tribunal refers to the written submissions filed in connection with the protocol to review the original hard copy documents identified by the Claimants, as required by paragraph 21(f) of Procedural Order No. 4.
7. The Tribunal notes that the Parties have reached an agreement on the following aspects of the protocol:
 - a. **Dates of the Inspection:** The week of Monday, 31 October 2022 – Friday, 4 November 2022.
 - b. **Supervision:** The inspection may be supervised by two legal representatives from each Party. Each Party may appoint one expert to participate in the inspection. For this purpose, no later than one week prior to the review, the Parties will provide a list identifying all persons that will participate and their specific role.
 - c. **Special Conditions:**
 - i. The inspection will take place in a specifically designated room with Internet access. No visual or audio recordings of the inspection will be taken. The Parties agree on the use of electronics (laptop, camera, scanner, copier, and printer) and any other devices required for the inspection of the documents.
 - ii. The experts may only use inspection techniques accepted in the practice of graphoscopy (“*grafoscopia*”) and document examination (“*documentoscopia*”). Under the supervision of the legal representatives of the Parties, the experts may take photographs and copies of the original documents.
8. The Tribunal has no objection to the protocol agreed upon by the Parties and will confirm it accordingly.
9. The only remaining point of disagreement is the location for the inspection.

10. In their latest submission, the Claimants assert that for purposes of the inspection they are willing to relocate the original documents from Miami to ICSID's facilities in Washington D.C. The Claimants further assert that conducting the inspection in Mexico City is not possible, since one of their legal representatives, Mr. Santiago León, is unable to travel to Mexico due to pending criminal proceedings and an extradition request filed against him by the Mexican authorities.
11. In its latest submission, the Respondent departs from its original alternative proposal to conduct the inspection at ICSID's facilities in Washington D.C. The Respondent now submits that the inspection must take place in Mexico City since its expert in graphoscopy ("*grafoscopia*") and document examination ("*documentoscopia*") is currently applying for a U.S. visa renewal, and is therefore unable to travel to Washington D.C. until April 2023.
12. The Tribunal is of the view that the circumstances presented by the Claimants, *i.e.*, the travel restrictions faced by their legal representative, amount to a sufficient justification for the inspection to take place outside of Mexico.
13. As part of the protocol, the Parties agreed that each one could have two legal representatives present during the inspection. In the case of the Claimants, conducting the inspection in Mexico may result in the legal representative of the Claimants facing the risk of detention pursuant to criminal proceedings, an allegation that has not been contested by the Respondent.
14. In the case of the Respondent, the Tribunal is not persuaded that the circumstances invoked by the Respondent to conduct the inspection in Mexico City are sufficient to counterbalance the circumstances invoked by the Claimants for the inspection to take place in the U.S. The fact that an expert, who has not been identified or appointed, does not have a U.S. visa, is not an insurmountable circumstance for the Respondent to perform the inspection. The Respondent has not demonstrated, or even argued, the impossibility of appointing a different expert who can travel to the U.S.

15. Moreover, the Respondent claims that its expert is not a state officer and, therefore, is not eligible for a diplomatic visa. However, the Respondent has not established that other mechanisms, such as an application for an emergency visa, have been exhausted or even contemplated.
16. On the basis of the foregoing, the Tribunal decides that the inspection will take place at ICSID's facilities in Washington D.C. on the dates and under the conditions agreed by the Parties, as referred to above.

III. DECISION OF THE TRIBUNAL

17. For the foregoing reasons, the Tribunal:
 - a. Approves the agreed protocol for the inspection of the Claimants' original hard copy documents, as referenced in Section II of this Procedural Order.
 - b. Decides that the inspection will take place at ICSID's facilities in Washington D.C.
 - c. Invites the Parties to coordinate the necessary arrangements for the inspection with the ICSID Secretariat.

On behalf of the Tribunal,

[Signed]

Mr. Eduardo Zuleta Jaramillo
President of the Tribunal
Date: 15 September 2022