

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

*Legacy Vulcan, LLC*

v.

*United Mexican States*

**(ICSID Case No. ARB/19/1)**

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**PROCEDURAL ORDER NO. 9**

*Members of the Tribunal*

Prof. Albert Jan van den Berg, President of the Tribunal

Prof. Sergio Puig, Arbitrator

Prof. Guido Santiago Tawil, Arbitrator

*Secretary of the Tribunal*

Ms. Sara Marzal

*Assistant to the Tribunal*

Ms. Emily Hay

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13 July 2023

**I. INTRODUCTION**

1. On 14 June 2023, the Tribunal received correspondence from Mr. Quetzal Tzab Gonzáles on behalf of “hundreds of residents from marginalized and indigenous communities in Playa del Carmen, state of Quintana Roo, Mexico”, forwarded to the Parties the following day.
2. Upon invitation of the Tribunal, on 22 June 2023, the Parties provided comments on the correspondence of Mr. Tzab.
3. On 24 June 2023, the Tribunal informed Mr. Tzab that the potential for *amicus curiae* or non-disputing party (“**NDP**”) participation in this arbitration is governed by Section 27 of Procedural Order No. 1 dated 26 November 2019, ICSID Arbitration Rule 37(2), and the NAFTA Statement of the Free Trade Commission on Non-Disputing Party Participation of 7 October 2003 (“**FTC Statement**”), providing links to the relevant documents online, and informing Mr. Tzab of the deadline of 30 June 2023 for filing applications for leave to file NDP submissions.
4. On 30 June 2023, Mr. Tzab filed an “Application seeking authorization for Mr. Quetzal Tzab González, in representation of communities from Playa del Carmen, Quintana Roo, Mexico, to act as *amicus curiae* in Arbitration proceedings Legacy Vulcan, LLC v. United Mexican States (ICSID Case No. ARB/19/1)” (“**Letter of 30 June 2023**”). Attached to the Letter of 30 June 2023 was a document being a class action filed before the Mexican courts by Mr. Tzab in the matter *Quetzal Tzab Gonzáles y Otros, Todo Integrantes de la Colectividad Actora vs Calizas Industriales del Carmen, S.A. de C.V. (SAC TUN) y Rancho Piedra Caliza S.A. de C.V.* (“**Class Action Filing**”).
5. On 7 July 2023, the Parties provided their comments on the Letter of 30 June 2023 and Class Action Filing.

**II. APPLICABLE RULES AND DISCUSSION**

6. As reflected in Section 1 of Procedural Order No. 1, these proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006, except to the extent that they are modified by Section B of NAFTA Chapter Eleven.

7. With regard to the ICSID Arbitration Rules, Rule 37(2) provides:

*(2) After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the “non-disputing party”) to file a written submission with the Tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the Tribunal shall consider, among other things, the extent to which:*

*(a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;*

*(b) the non-disputing party submission would address a matter within the scope of the dispute;*

*(c) the non-disputing party has a significant interest in the proceeding.*

*The Tribunal shall ensure that the non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their observations on the non-disputing party submission.*

8. With respect to *amicus curiae* participation, Procedural Order No.1 provides at Section 27.1 and 27.2 as follows:

*27.1 If a request for the submission of an amicus curiae brief is filed by the date indicated in Annex A, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 37(2) and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003.*

*27.2 By the relevant dates indicated in Annex A, the disputing parties shall have the opportunity to: (1) make submissions on any*

*request for the submission of an amicus curiae brief; and (2) file simultaneous observations on issues raised in any amicus curiae brief submitted pursuant to a decision of the Tribunal.*

9. In exercise of its powers under the above provisions, the Tribunal shall take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003 which sets out considerations on the interpretation of NDP participation.
10. Claimant opposes the admission of the Class Action Filing as an NDP submission, arguing that the criteria for its admission are not fulfilled. In support, Claimant specifically refers to: (i) an unfair prejudice against Claimant should it be admitted, as Claimant will lack an opportunity to controvert it; (ii) the lack of proof of Mr. Tzab's independence from Respondent; and (iii) the lack of a significant interest of Mr. Tzab in the arbitration. According to Claimant, the Class Action Filing would not bring any unique or different perspective, nor does it fall within the scope of the dispute.
11. Respondent argues in favor of admitting the Class Action Filing, contending that all formal requirements are fulfilled, including that the Class Action Filing falls into the scope of the dispute. According to Respondent, Mr. Tzab has a significant interest in this arbitration, since the legitimacy of the collective action presented by the local communities he represents has been discussed in this proceeding. Respondent denies any unfair burden on Claimant, since the Class Action Filing contains information that already forms a part of the record. In Respondent's view, the Class Action Filing brings new perspectives on the relevance of international human rights and environmental law.
12. The Tribunal does not consider it necessary or appropriate to admit the Class Action Filing as an NDP submission under ICSID Arbitration Rule 37(2) and the FTC Statement, as it already figures among the exhibits on the record of the proceedings (see C-0283-SPA).
13. On the other hand, the Tribunal does consider it appropriate to admit the Letter of 30 June 2023 as an NDP submission for the following reasons: (i) the Class Action Filing has been referred to by both Parties in their prior submissions, and as such, the Letter of 30 June 2023 describing its context falls within the scope of the dispute; (ii) as a representative of

the local communities in the proximity of Claimant's operations in Mexico, Mr. Tzab has a significant interest in the proceedings; (iii) as the community representative that filed the Class Action Filing, Mr. Tzab brings a particular perspective on the Class Action Filing that neither of the Parties to this arbitration provides; (iv) while Mr. Tzab is a former official of the Municipality of Solidaridad, the Tribunal does not consider that to constitute a current direct or indirect affiliation with the Parties; (v) there is no unfair burden or prejudice on the Parties, since they will both be afforded the opportunity to provide written comments on the Letter of 30 June 2023 within the existing procedural calendar, which the Tribunal considers to be sufficient to protect the Parties' rights; and (vi) the Letter of 30 June 2023 otherwise satisfies the formal requirements of Section B.3 of the FTC Statement.

14. The Tribunal notes that as per item XV of the Parties' comments on various procedural and organisational matters conveyed to the Tribunal on 7 July 2023, the Parties agree on a deadline of 24 September 2023 for comments on any NDP submissions (both relating to NAFTA Article 1128 submissions and *amicus* submissions). Accordingly, the Parties will be entitled to provide their written comments on the Letter of 30 June 2023 by that date.

### **III. DECISION**

15. On the basis of the above, the Tribunal hereby decides as follows:
  - (a) The application for leave to file the Letter of 30 June 2023 as an NDP submission is granted.
  - (b) The Parties may provide any written comments on the Letter of 30 June 2023 on 24 September 2023, in accordance with the procedural calendar.

On behalf of the Tribunal,

[Signed]

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Prof. Albert Jan van den Berg  
President of the Tribunal  
Date: 13 July 2023