

IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

BETWEEN:

SILVER BULL RESOURCES, INC.
(THE UNITED STATES OF AMERICA)

Claimant

-and-

THE UNITED MEXICAN STATES

Respondent

REQUEST FOR ARBITRATION

28 June 2023

BSF

Boies Schiller Flexner (UK) LLP
5 New Street Square
London EC4A 3BF

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1. INTRODUCTION

- 1.1 Silver Bull Resources, Inc. (“**SVB**” or the “**Claimant**”) submits this request for arbitration (the “**Request**” or the “**RFA**”) against the United Mexican States (“**Mexico**” or the “**Respondent**”) pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “**ICSID Convention**”),¹ Rules 1 and 2 of the ICSID Institution Rules,² Annex 14-C of the Agreement between the United States of America (the “**United States**” or the “**US**”), Mexico, and Canada (the “**USMCA**”),³ and Articles 1116.1, 1117.1, and 1120.1 of the North American Free Trade Agreement (the “**NAFTA**”).⁴
- 1.2 This dispute arises out of Mexico’s breaches of the NAFTA in relation to SVB’s investments in Mexico. SVB made those investments in certain concession areas in the Sierra Mojada region in Mexico, which it developed for the purposes of mining silver, zinc, and lead (the “**Project**”). As a result of Mexico’s breaches, the Claimant lost its entire investment.
- 1.3 The Claimant provides a description of the Claimant and the Respondent (the “**Parties**”) in **Section 2** and the factual background to its claims in **Section 3**. **Section 4** summarises Mexico’s breaches of the substantive standards under the NAFTA. The Claimant has complied with the relevant jurisdictional and other requirements under the USMCA, the NAFTA, and the ICSID Convention as set out in **Section 5**. In **Section 6**, the Claimant presents its procedural proposals as to the next steps in this proceeding, in accordance with the ICSID Arbitration Rules.⁵ The relief sought by the Claimant is set out in **Section 7**.
- 1.4 This Request is accompanied by factual exhibits **C-001** to **C-071** and by legal authorities **CL-001** to **CL-046**, listed in the attached Indices of Factual Exhibits and Legal Authorities.

¹ ICSID Convention, Regulations and Rules 2022, *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, signed on 18 March 1965, entered into force on 14 October 1966 (the “**ICSID Convention**”), Article 36, at **CL-002**.

² ICSID Convention, Regulations and Rules 2022, *ICSID Institution Rules*, Rules 1 and 2, at **CL-002**.

³ Agreement between the United States of America, the United Mexican States, and Canada, signed on 18 November 2018, entered into force on 1 July 2020, Annex 14-C (the “**USMCA**”), at **CL-044**.

⁴ North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, signed on 17 December 1992, entered into force on 1 January 1994 (the “**NAFTA**”), relevant extracts at **CL-004**, Chapter 11.

⁵ ICSID Convention, Regulations and Rules 2022, *ICSID Arbitration Rules*, at **CL-002**.

2. THE PARTIES

(A) The Claimant

- 2.1 The Claimant, SVB (formerly known as Metalline Mining Company),⁶ is a United States company incorporated under the laws of Nevada, with its principal executive offices at 777 Dunsmuir Street, Suite 1605, Vancouver, British Columbia, Canada V7Y 1K4.⁷ SVB is listed on the Toronto Stock Exchange (“**TSX**”) and trades on the OTCQB over-the-counter market.⁸
- 2.2 As required by Rule 2(1)(f) of the ICSID Institution Rules, the Claimant has obtained all necessary internal authorisations to file this RFA.⁹
- 2.3 SVB submits this RFA on its own behalf, pursuant to Article 1116 of the NAFTA, and on behalf of a Minera Metalín, S.A. de C.V. (“**Minera Metalín**”), pursuant to Article 1117 of the NAFTA.
- 2.4 Minera Metalín (formerly known as Minera Star Morning, S.A. de C.V.) is a Mexican corporation (Sociedad Anónima de Capital Variable) and has its corporate seat at Calle Mina No. 1, La Esmeralda, C.P. 27610 Sierra Mojada, Coahuila de Zaragoza, Mexico.¹⁰ Minera Metalín is 100% owned (directly and indirectly through SVB’s wholly owned subsidiary, Metalline, Inc.)¹¹ and controlled by SVB.

⁶ Restated Articles of Incorporation of Metalline Mining Company dated 22 June 2010, at **Exhibit C-015**; Certificate of Amendment to Articles of Incorporation of Metalline Mining Company confirming the change of name dated 21 April 2011, at **Exhibit C-017**.

⁷ Certificate of SVB’s existence with status in good standing dated 19 January 2023, at **Exhibit C-050**; SVB’s 2022 Annual Report, 26 January 2023, p. 23, at **Exhibit C-052**.

⁸ Silver Bull Resources, Inc. SEDAR profile, accessed on 17 June 2023, at **Exhibit C-063**.

⁹ Extract of the Resolutions of the Board of Directors of SVB dated 13 June 2023, at **Exhibit C-059**; Unanimous Written Resolutions by the shareholders of Minera Metalín dated 24 June 2023, at **Exhibit C-066**.

¹⁰ Minera Star Morning, S.A. de C.V. was constituted through Public Deed No. 37,150 granted on 10 July 1996 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District and registered under number 211349 in the Book of Commercial Companies of the Public Registry of Property of Mexico D.F., dated 22 August 1996, at **Exhibit C-005**; See also Public Deed No. 09031450 granted on 22 September 1997 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District, confirming the change of name of Minera Star Morning, S.A. de C.V. to Minera Metalín, S.A. de C.V., at **Exhibit C-068**.

¹¹ Metalline, Inc. is an investment holding company incorporated under the laws of Colorado, United States wholly-owned by SVB and in turn holds 0.04% of Minera Metalín’s shares. See also the organisational structure chart at para. 3.3 below.

2.5 Boies Schiller Flexner (UK) LLP and Boies Schiller Flexner LLP (together, “BSF”) represent SVB in these proceedings.¹² All correspondence addressed to the Claimant in connection with this matter should be sent to:

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(B) The Respondent

2.6 The Respondent is Mexico, a sovereign State, which is a Contracting State to the ICSID Convention, and a Party to both the NAFTA and the USMCA.

2.7 Under Article 1137.2 of the NAFTA, delivery of notices and documents to the Government of Mexico shall be made to the following address:

Secretaría de Economía

Dirrección General de Inversión Extranjera

¹² Power of Attorney from SVB to BSF dated 24 May 2023, at **Exhibit C-057**; Power of Attorney from Minera Metalín to BSF dated 24 May 2023, at **Exhibit C-056**.

Av. Insurgentes sur No. 1940, Piso 8,
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2.8 In the context of consultations required by the NAFTA, the Claimant has been in contact with:

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Mexico

3. FACTUAL BACKGROUND TO THE DISPUTE

3.1 This section begins with a summary of SVB’s investment in Mexico (**Section 3.A**). This is followed by an overview of Mineros Norteños’s unsuccessful and vexatious claims against Minera Metalín before local courts in Mexico (**Section 3.B**), which led to Mineros Norteños’s retaliatory and unlawful actions against the Project (**Section 3.C**) and the conduct of the Mexican police force and other government officials, which give rise to the present dispute (**Section 3.D**). The Mexican authorities’ continuing unlawful conduct deprived SVB of its major commercial partner and, ultimately, its entire investment in Mexico (**Section 3.E**). In fact, SVB and MM continue to face unjust and arbitrary treatment from the Mexican judiciary (**Section 3.F**).

(A) SVB’s investment in and development of the Project until the commencement of the illegal actions

(i) SVB acquired Minera Metalín in the 1990s

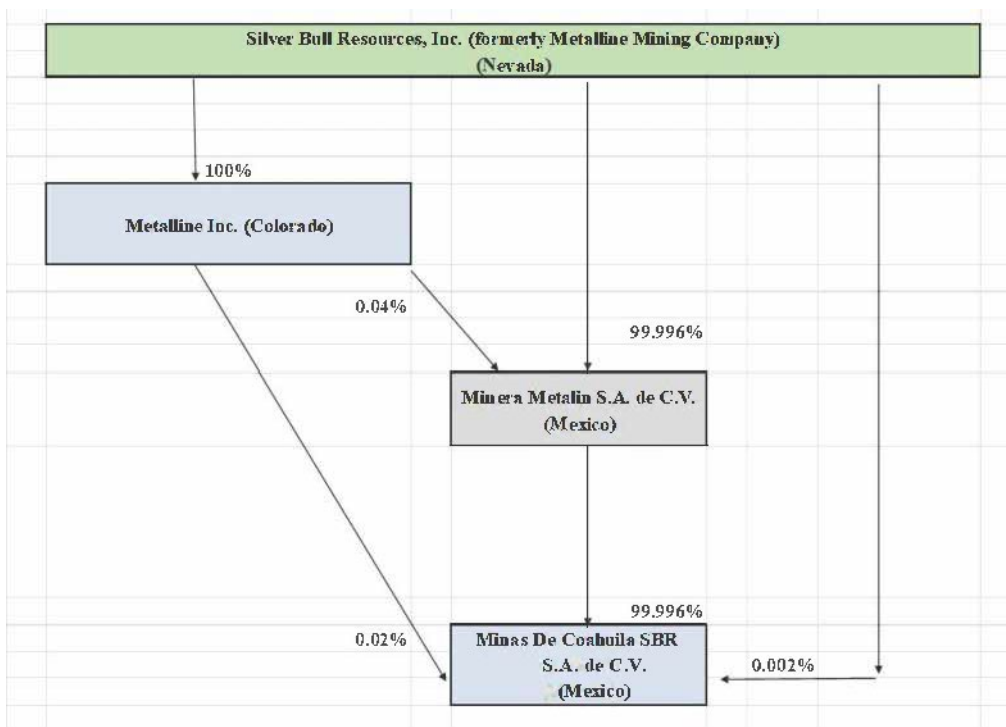
3.2 In July 1996, SVB incorporated Minera Metalín in Mexico.¹³ SVB has since remained a major shareholder of Minera Metalín and currently owns (directly and indirectly through SVB’s wholly-owned subsidiary, Metalline, Inc.) 100% of Minera Metalín’s shares.¹⁴

3.3 SVB conducted its operations in Mexico through its wholly-owned subsidiaries, Minera Metalín, Contratistas de Sierra Mojada, S.A. de C.V. (“**Contratistas**”) and Minas de Coahuila SBR, S.A. de C.V. (“**Minas**”).¹⁵ On 26 August 2021, Contratistas merged with Minera Metalín, with Minera Metalín emerging as the surviving entity.

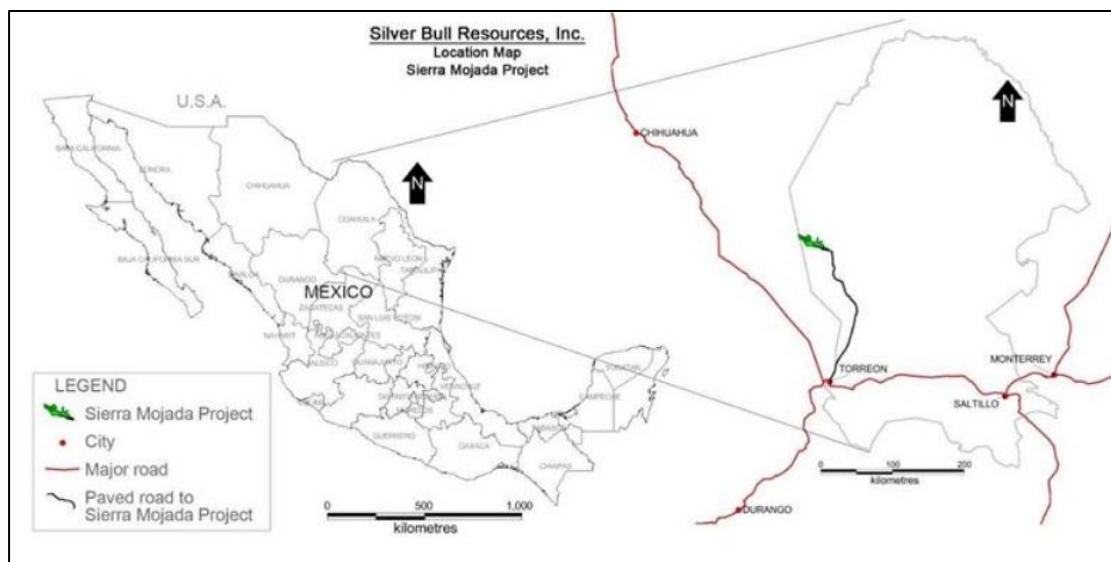
¹³ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 40, at **Exhibit C-051**.

¹⁴ SVB’s 2022 Annual Report, 26 January 2023, p. 64 (pdf), at **Exhibit C-052**; See also Minera Metalín’s share certificates bearing nos. 007, 008, and 009, each dated 1 April 2014 showing SVB and Metalline Inc.’s shareholding, at **Exhibit C-024**.

¹⁵ See Minas de Coahuila SBR, S.A. de C.V.’s incorporation documents dated 12 August 2011 at **Exhibit C-018**.



3.4 The Project is situated in the north-western part of the Coahuila state, close to the Chihuahua state border, as marked in green in the enlargement below.¹⁶



3.5 The Sierra Mojada region is well-known for its silver and zinc deposits and has a long history of successful exploration and exploitation activities dating back to 1879. Despite the long

¹⁶ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 29, at **Exhibit C-051**.

record of mining activity in the region, there is still significant potential for exploitation, particularly within the Project area.¹⁷

3.6 Minera Metalín holds the Project's concession areas, which include 20 registered mining concessions covering 9,530.4 hectares in the Sierra Mojada region, in the Mexican state of Coahuila.¹⁸ Other than the concessions, Minera Metalín owns surface rights in relation to several land plots located within the area covered by the concessions.¹⁹

(ii) SVB, through Minera Metalín, explored the Project and made further mineral discoveries

3.7 In August 2000, Minera Metalín acquired two mining concessions for the Project, including mine infrastructure, rail lines and power supplies, from Sociedad Cooperativa Mineros

¹⁷ E.g., S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 39, at **Exhibit C-051**; *Sierra Mojada District, Coahuila, Mexico*, undated, <https://portergeo.com.au/database/mineinfo.asp?mineid=mn1604> (last accessed 22 June 2023), at **Exhibit C-065**.

¹⁸ Exploitation Concession Title No. 160461 in relation to the Fortuna plot from 21 August 1974 to 20 August 2024, at **Exhibit C-002**; Unificacion Concession Title No. 169343 in relation to the Unificacion Mineros Norteños plot from 11 November 1981 to 10 November 2031, at **Exhibit C-003**; Exploitation Concession Title No. 195811 in relation to the Olympia plot from 22 September 1992 to 21 September 2042, at **Exhibit C-004**; Exploitation Concession Title No. 212169 in relation to the Esmeralda plot from 22 September 2000 to 21 September 2050, at **Exhibit C-010**; Exploitation Concession Title No. 220569 in relation to the La Blanca plot from 28 August 2003 to 27 August 2053, at **Exhibit C-011**; Exploration Concession Title No. 223093 in relation to the Los Ramones plot from 15 October 2004 to 14 October 2054, at **Exhibit C-012**; Exploitation Concession Title No. 224873 in relation to the Volcan Dolores plot from 16 June 2005 to 15 June 2055, at **Exhibit C-013**; Division Concession Title Nos. 235371, 235372, 235373, 235374, and 235375 in relation to the Sierra Mojada, Sierra Mojada Fracción I, Sierra Mojada Fracción II, Sierra Mojada Fracción III, and Sierra Mojada Fracción IV plots respectively, each from 30 November 1993 to 29 November 2043, at **Exhibit C-020**; Exploitation Concession Title No. 236714 in relation to the Vulcano plot from 25 August 2010 to 24 August 2060, at **Exhibit C-016**; Exploitation Concession Title No. 238678 in relation to the Esmeralda I plot from 31 March 2000 to 30 March 2050, at **Exhibit C-006**; Unificacion Concession Title No. 238679 in relation to the Esmeralda I Fracción I plot from 31 March 2000 to 30 March 2050, at **Exhibit C-008**; Unificacion Concession Title No. 238680 in relation to the Esmeralda I Fracción II plot from 31 March 2000 to 30 March 2050, at **Exhibit C-007**; Exploration Concession Title No. 239512 in relation to the Alote Fracción VI plot from 15 December 2011 to 14 December 2061, at **Exhibit C-021**; Reduccion Concession Title No. 245216 in relation to the Cola Sola plot from 23 August 2011 to 22 August 2061, at **Exhibit C-019**; Reduccion Concession Title No. 245217 in relation to the Dormidos plot from 10 April 2007 to 9 April 2057, at **Exhibit C-014**; Exploitation Concession Title No. 236837 in relation to the Veta Rica o La Inglesa plot from 3 November 1928 to 6 September 2060, at **Exhibit C-001**; See also S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 32, at **Exhibit C-051**.

¹⁹ Maps and appraisals in relation to Minera Metalín's titles to the surface rights totalling 126.95 hectares in the Project Area, each dated 8 August 2014, at **Exhibit C-067**; See S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, pp. 32-33, at **Exhibit C-051**.

Norteños S.C. (“**Mineros Norteños**”), a local mining cooperative that had previously carried out exploitation activities in the Sierra Mojada region.²⁰ As part of the transaction, the parties entered into an agreement (the “**2000 Agreement**”), which included Minera Metalín’s obligation to pay Mineros Norteños a 2% royalty on mineral production (based on the sales invoices of the mineral extracted from the concessions) subject to a cap of USD 6,875,000.²¹ Put another way, no royalty would be payable by Minera Metalín to Mineros Norteños until the mineral is extracted and sold to a third party.

3.8 Since its acquisition, SVB – through Minera Metalín – has invested no less than USD 50,000,000 on exploration activities at the Project. In addition, SVB has incurred indirect and corporate costs of approximately USD 32,500,000 in relation to the Project.

3.9 Over the course of nearly two decades, Minera Metalín’s exploration activities were successful and led to the discovery of 70.4 Mt of measured and indicated silver and zinc oxide resources, as shown in the table below.²²

CLASS	Tonnes (Mt)	Ag (g/t)	Cu (%)	Pb (%)	Zn (%)	NSR (\$/t)	Ag (Mozs)	Cu (Mlbs)	Pb (MLbs)	Zn (Mlbs)
Measured	52.0	39.2	0.04%	0.3%	4.0%	\$44.3	65.5	45.9	379.1	4,589.3
Indicated	18.4	37.0	0.03%	0.2%	1.9%	\$27.3	21.9	10.8	87.0	764.6
Total M&I	70.4	38.6	0.04%	0.3%	3.4%	\$39.8	87.4	56.8	466.1	5,353.9
Inferred	0.1	8.8	0.02%	0.2%	6.4%	\$52.3	0.02	0.04	0.4	10.7

3.10 In addition to the silver and zinc oxide resources, Minera Metalín discovered silver-zinc and silver-copper sulphide mineralisation at the Project.²³ The preliminary drilling programme

²⁰ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, pp. 39-45, at **Exhibit C-051**.

²¹ Agreement between Mineros Norteños and Minera Metalín dated 30 August 2000, at **Exhibit C-009**, Art. 7.

²² S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 19, at **Exhibit C-051**.

²³ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 16, at **Exhibit C-051**.

showed a sulphide mineralisation of a much higher grade for silver, zinc, and copper, meaning a significantly higher value per ton than the oxide deposit.²⁴

3.11 Notably, the sulphide mineralisation is far easier to process than the oxide, meaning that it would be easier and more cost-effective to extract metals from the ore.²⁵ Therefore, SVB and Minera Metalín’s work substantially expanded the known mineral resource system at the Project.

(iii) SVB secured additional financing for the Project through an option agreement with South32 in 2018

3.12 On 1 June 2018, SVB (together with its subsidiaries, Minera Metalín and Contratistas) entered into an option agreement with South32 International Investment Holdings Pty Ltd. (“**South32**”) (the “**Option Agreement**”).²⁶ South32, a spin-off of BHP Billiton (the largest mining company in the world), is a leading global mining and metals group with operations in Australia, Southern Africa, North and South America.²⁷

3.13 According to the terms of the Option Agreement, South32 agreed to provide USD 10,000,000 in financing for Minera Metalín’s exploration works to be paid in a series of instalments over the course of four years. In exchange, South32 had a four-year option to acquire a 70% shareholding in Minera Metalín for USD 100,000,000, less the aggregate of the funds advanced by South32 to Minera Metalín under the Option Agreement by the date on which the option was exercised.²⁸

²⁴ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 140, at **Exhibit C-051**.

²⁵ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, p. 16, at **Exhibit C-051**.

²⁶ Option Agreement between Silver Bull Resources, Inc., Minera Metalín, S.A. de C.V., Contratistas de Sierra Mojada, S.A. de C.V. and South 32 International Investment Holdings Pty Ltd. dated 1 June 2018 (the “**Option Agreement**”), at **Exhibit C-031**.

²⁷ See, South32 Annual Report 2022, at **Exhibit C-064**.

²⁸ Option Agreement, p. 92, at **Exhibit C-031**.

(B) Minera Metalín prevailed in frivolous local proceedings brought by Mineros Norteños before various Mexican courts

- 3.14 On 20 May 2014, Mineros Norteños initiated spurious local proceedings against Minera Metalín before the First Civil Court in the Judicial District of Morelos in the Mexican state of Chihuahua.²⁹ Mineros Norteños falsely claimed that Minera Metalín breached the 2000 Agreement and demanded the immediate payment of royalties. Further, Mineros Norteños sought the payment of wages by Minera Metalín to its members who were not hired by, nor performed works for, Minera Metalín under the 2000 Agreement. Both of Mineros Norteños's substantive contentions were frivolous.
- 3.15 Minera Metalín opposed these local proceedings on two grounds. First, Minera Metalín asserted that the limitations period for Mineros Norteños to bring the claim had expired. Second, Minera Metalín contended that since the Project was not in production, no revenue had been generated from the relevant mining concessions and thus no royalty payments were required to be made.
- 3.16 However, the First Civil Court declined jurisdiction on 27 November 2014 and referred the matter to the Eighth District Court in the Mexican state of Chihuahua which assumed jurisdiction on 23 January 2015.³⁰
- 3.17 On 4 October 2017, the Eighth District Court upheld Minera Metalín's limitations defence and rejected Mineros Norteños's claim on the basis that it was brought outside the 10-year limitations period for contractual claims. In so doing, the Eighth District Court pointed out internal contradictions in Mineros Norteños's claims.³¹
- 3.18 On 19 October 2017, Mineros Norteños appealed the decision. On 31 July 2019, the Federal Appeals Court upheld the dismissal of Mineros Norteños's claim against Minera Metalín.

²⁹ See, Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, p. 11, at **Exhibit C-040**.

³⁰ Decision of the Eighth District Court accepting jurisdiction dated 23 January 2015, at **Exhibit C-025**.

³¹ Judgment of the Eighth District Court of the State of Chihuahua, 4 October 2017, p. 49, at **Exhibit C-071**.

- 3.19 Mineros Norteños subsequently challenged the appellate decision through what is known as an *amparo* recourse in Mexican law.³² In March 2021, after almost seven years of frivolous local court proceedings, the Federal Circuit Court issued a final decision rejecting Mineros Norteños’s claim.³³
- 3.20 In parallel to these frivolous court proceedings, Mineros Norteños baselessly accused Mr Timothy Barry and other persons associated with SVB and Minera Metalín of fraudulently misleading SVB’s investors in the United States and Canada by misrepresenting the nature of the Option Agreement.³⁴ Mineros Norteños claimed that the accused persons were liable as they had never intended to develop the Sierra Mojada Project in the first place.
- 3.21 Consequently, the local District Attorney summoned Mr Juan Manuel López Ramírez, a Mexican citizen and the Project manager, and questioned him on Minera Metalín’s “real intentions” behind the Project. Mineros Norteños’s criminal complaints are meritless and have not progressed to date. It quickly became clear to SVB and Minera Metalín that Mineros Norteños was targeting their personnel to gain leverage in the proceedings under the 2000 Agreement.
- 3.22 But Minera Metalín’s vindication before various domestic courts did not make a difference. As explained below, from February 2016 onwards, Mineros Norteños took the law into its own hands by illegally blockading the Project on several occasions, and eventually doing so permanently without effective intervention from the Mexican State to end the blockade.

(C) Mineros Norteños forcibly ejected Minera Metalín and took over the Project

(i) Mineros Norteños blockaded the Project for the first time in 2016

- 3.23 In January 2016, Mr López learned from members of the Sierra Mojada municipality of Mineros Norteños’s plans to illegally blockade the Project. Mr López further learned that by

³² Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, p. 2, at **Exhibit C-040**. The “Amparo Recourse” is a constitutional remedy that provides for the judicial review of governmental actions to protect individuals’ constitutional rights.

³³ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, pp.106-107, at **Exhibit C-040**.

³⁴ See, for instance, summons in the criminal complaint no. 042/2014 addressed to T. Barry dated 3 February 2015, at **Exhibit C-026**.

doing so, Mineros Norteños sought to gain leverage against Minera Metalín in the ongoing litigation, albeit through extra-judicial means. Mr López verbally communicated Mineros Norteños's intentions to the police, the local prosecutor and the local Citizen Attention Office (the "CAO").³⁵ The Mexican authorities took note of the potential threat,³⁶ but did not take any further action as the blockade had not yet in fact been installed.

- 3.24 On 4 February 2016, at around 10:00 am, Mineros Norteños made good on its threat. Approximately 60 Mineros Norteños members led by Mineros Norteños's President, Mr Lorenzo Fraire, invaded the Project's premises and installed a guard contingent at the main gate of the Project's camp (the "Initial Blockade").
- 3.25 Mr López, along with two other employees who were present at the Project site, locked the gates to prevent the mob from invading the camp and alerted the company representatives, the local prosecutor and the CAO.
- 3.26 The blockaders were accompanied by the Mexican police and a representative of the Sierra Mojada municipality. Notwithstanding the presence of government officials, in the absence of a warrant, and considering Mineros Norteños's aggressive conduct, Mr López refused them access to the camp. The representative of the Sierra Mojada municipality left shortly thereafter, but a few police officers remained to ostensibly support the mob of Mineros Norteños members.
- 3.27 That same afternoon, Mineros Norteños's leaders demanded that Minera Metalín's staff abandon the Project. When Mr López continued to refuse opening the gate to allow the Mineros Norteños blockaders entry into the Project's camp, they placed chains on the gate and verbally threatened Minera Metalín's personnel.
- 3.28 The local prosecutor arrived at the camp later that evening and enquired about the locks and chains that Mineros Norteños had placed upon the gate. The local prosecutor warned Mineros Norteños of the legal consequences of their unlawful actions and ordered Mineros

³⁵ See, e.g., Letter from Minera Metalín to the President of the Municipality of Sierra Mojada dated 3 February 2016, at **Exhibit C-070**.

³⁶ The acknowledgement of receipt of the letter by the office of the President of the Municipality of Sierra Mojada is in Minera Metalín's offices at the Project camp. Minera Metalín's officials have been unable to access the Project camp due to the Continuing Blockade.

Norteños to unlock the chains.³⁷ The blockaders unlocked the chains and abandoned the Project area early the next morning after the local prosecutor's intervention.

(ii) The Mexican elections in 2018 led to considerable changes in the political landscape

- 3.29 On 1 July 2018, Andrés Manuel López Obrador ("**AMLO**") was elected the President of Mexico. Additionally, AMLO's political party, the Movement for National Regeneration ("**Morena**" for its Spanish acronym) won a majority in both the Senate and the Chamber of Deputies, Mexico's two legislative chambers. Morena is currently Mexico's ruling party.
- 3.30 AMLO's victory was a crucial turning point for foreign-owned mining projects in Mexico. AMLO has adopted an openly hostile position towards foreign mining companies and has reportedly stated that they "*had been treated too generously by previous governments, denying Mexicans their fair share of the benefits from the country's natural resources*".³⁸
- 3.31 Amongst other measures, AMLO has refused to offer any new mining concessions, arguing that too many concessions had been granted by previous governments.³⁹ He also nationalised Mexico's lithium mines and transferred the assets to a newly created State-owned producer,

³⁷ Police Complaint following the Initial Blockade dated 5 February 2016, p. 2, at **Exhibit C-027**.

³⁸ See, Reuters, *Mexican leftist plans change on "monopolies" mining* (<https://www.reuters.com/article/us-mexico-election-lopezobrador-idUSTRE80F1RR20120116>), dated 16 January 2012, last accessed on 27 June 2023, at **Exhibit C-022**.

³⁸ See, Reuters, *Mexican leftist plans change on "monopolies" mining* dated 16 January 2012 (<https://www.reuters.com/article/us-mexico-election-lopezobrador-idUSTRE80F1RR20120116>), last accessed on 27 June 2023, at **Exhibit C-022**.

³⁹ See, Reuters, *Mexican president says won't cancel mining concessions, or grant new ones* dated 12 August 2019 (<https://www.reuters.com/article/us-mexico-politics-mining/mexican-president-says-wont-cancel-mining-concessions-or-grant-new-ones-idUSKCN1V21CY>), last accessed on 27 June 2023, at **Exhibit C-033**.

LitioMX.⁴⁰ More recently, AMLO proposed a complete overhaul of Mexico’s mining laws, including shorter concessions and tighter rules for permits.⁴¹

3.32 Soon after AMLO took power in 2018, SVB and Minera Metalín began to experience, first-hand, Mexico’s hostile policy against foreign mining companies, as explained below.

(iii) Mineros Norteños orchestrated a second blockade in 2019 and seized the Project

3.33 On 4 September 2019, members of the Sierra Mojada municipality alerted Mr López of Mineros Norteños’s renewed plans to disrupt the Project. Again, Minera Metalín promptly notified the local prosecutor, Mr Elias Garay, and the Coahuila police.⁴²

3.34 Based on its experience with the Initial Blockade, Minera Metalín installed a checkpoint inside the Project area located approximately 200 metres from the camp’s main gate to prevent vehicles from crossing into the camp and to keep potential invaders at a safe distance from the camp (the “**Checkpoint**”).

3.35 On 8 September 2019, at around 1:00 pm, Mineros Norteños members trespassed onto the Project’s premises and, with initial impunity, installed a blockade at the Checkpoint, notwithstanding the fact that approximately ten police officers were present (the “**Continuing Blockade**”). This time, however, Mineros Norteños brought a larger force of approximately 120 blockaders.⁴³

⁴⁰ Government of Mexico, Decree published in the Diario Oficial de la Federación on 22 April 2022 promulgating the Law amending the Mining Law dated 19 April 2022, last accessed on 27 June 2023, at **Exhibit C-049**; Government of Mexico, Decree published in the Diario Oficial de la Federación on 23 August 2022 setting up LitioMx, last accessed on 17 June 2023, at **Exhibit C-047**; Financial Times, David Agren and Michael Scott, *Mexico nationalises lithium in populist president’s push to extend state control* dated 20 April 2022 (<https://www.ft.com/content/5e579b31-c6f0-4911-899a-e2894240ad85>), last accessed on 17 June 2023, at **Exhibit C-045**; Reuters, *Mexico’s Lopez Obrador orders ministry to step up lithium nationalization* dated 19 February 2023 (<https://www.reuters.com/world/americas/mexicos-lopez-obrador-orders-ministry-step-up-lithium-nationalization-2023-02-19/>), last accessed on 27 June 2023, at **Exhibit C-053**.

⁴¹ See Reuters, *Mexican president proposes tougher mining laws, shorter concessions* dated 29 March 2023 (<https://www.reuters.com/world/americas/mexican-president-proposes-tougher-mining-laws-shorter-concessions-2023-03-29/>), last accessed on 17 June 2023, at **Exhibit C-055**.

⁴² Criminal Complaint following the Continuing Blockade dated 12 September 2019, p. 3, paras. I to III, at **Exhibit C-034**.

⁴³ Criminal Complaint following the Continuing Blockade dated 12 September 2019, p. 2, para. V, at **Exhibit C-034**.

- 3.36 As with the Initial Blockade, Minera Metalín's on-site personnel, including Mr López along with six other members of staff and contractors, locked the gate in an effort to prevent the invaders from trespassing into the camp.
- 3.37 The police officers asked Mr López to exit the camp and come to the Checkpoint to hold discussions with Mineros Nortesños's leaders. Despite Mr López's act of good faith in following the police officers' instructions, and the presence of the police officers, the blockaders used the opportunity of Mr López's attempt at dialogue to cross the Checkpoint and further encroach upon the Project area.
- 3.38 The following night, 9 September 2019, two staff members – Mr Matthew Melnyk, an American geologist, and Mr José Velásquez Blanco, a Mexican geologist – escaped using an emergency exit in the rear of the Project's camp. When Mineros Nortesños learned that the geologists had escaped, they placed chains on all the gates of the camp, blocking anyone else from entering or leaving the camp, including for food and other essential supplies. The remaining six of Minera Metalín's personnel remained locked in the camp due to Mineros Nortesños's blockade. It took two weeks before Minera Metalín managed to evacuate its remaining employees, as discussed below.
- 3.39 Following the installation of the Continuing Blockade, Minera Metalín coordinated with the Mexican police to develop a plan to rescue the six remaining members of staff, which was effected through the camp's emergency exit in the middle of the night.
- 3.40 Ultimately, only one staff member remained in the camp to monitor the situation. Two weeks after the installation of the Continuing Blockade and with no resolution in sight, Minera Metalín discreetly evacuated the last remaining member of staff through the emergency exit, who managed to lock all doors to the rooms within the camp before leaving, in an effort to safeguard SVB's equipment.
- 3.41 To this day, Mineros Nortesños continues to prevent Minera Metalín from accessing its Project and thus Minera Metalín has been forced to halt all operations. Even more troubling, Mexico has failed to make any effort to restore its investment to the Claimant, as discussed in the section below.

(D) Mexico failed to end the Continuing Blockade

- 3.42 On 12 September 2019, Minera Metalín filed a criminal complaint against the perpetrators of the illegal Continuing Blockade.⁴⁴ The criminal complaint remains pending to this day, almost four years later, and no criminal charges have been filed by the prosecutor. Nor is there any evidence that the prosecutor took any steps in furtherance of the complaint.
- 3.43 Contrary to the “diligent” approach adopted by the Mexican authorities in dealing with the baseless allegations of criminal fraud against Mr Barry and other SVB officials,⁴⁵ the criminal complaint against Mineros Norteños has been met with silence. Not only has there been no further action to pursue the criminal complaint, the Mexican authorities have also been slow and obstructionist in their approach.
- 3.44 Further, Minera Metalín has sent numerous pleas for assistance to the local and federal police, the local prosecutor and federal government officials.⁴⁶
- 3.45 In addition to seeking engagement from the Mexican authorities, SVB sought the assistance of both the embassies of the United States (its country of incorporation) and Canada (the country of the stock exchange on which its shares are listed for trading) in Mexico to resolve the Continuing Blockade.
- 3.46 For instance, on 5 December 2019, SVB, through Minera Metalín, sent an urgent request for help to the Canadian Embassy in Mexico, copying: (i) the Governor of the Mexican state of Coahuila; (ii) the Ambassador of the United States in Mexico; (iii) the President of the Municipality of Sierra Mojada; (iv) the Director General of Mines at the Mexican Ministry of Economy; (v) the Agent of the Public Prosecutor’s Office in San Pedro de las Colonias, Coahuila; and (vi) the Canadian Chamber of Commerce in Mexico. In its letter, Minera Metalín

⁴⁴ Criminal Complaint following the Continuing Blockade dated 12 September 2019, p. 2, para. V, at **Exhibit C-034**.

⁴⁵ See paragraphs 3.20-3.21 above.

⁴⁶ See, e.g., Email exchanges between R. Hernández and J. Jabalera regarding Minera’s Metalín victory in local proceedings from 22 January 2021 to 29 March 2021 (without attachments), at **Exhibit C-041**; Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade dated 23 August 2021, at **Exhibit C-043**; Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade dated 26 August 2021, at **Exhibit C-044**.

informed the Canadian Embassy of the Continuing Blockade and requested immediate intervention from the Mexican authorities.⁴⁷

- 3.47 As a result of the Canadian Embassy's intervention, SVB met with Mexican officials, including the Undersecretary of Mining, Francisco Quiroga, and Antonio Leonardo Suárez Mejía at the offices of the Undersecretariat of Mining at the Ministry of Economy on 13 December 2019.⁴⁸ In that meeting, Mexican officials promised to take steps to clear the Continuing Blockade including by outlining "a work plan that can address the issues" raised by SVB at the meeting and conducting stakeholder consultation to resolve the Continuing Blockade.⁴⁹ SVB continued to follow-up with the Mexican Ministry of Economy, but received no constructive engagement.⁵⁰
- 3.48 Despite SVB's urgent requests, Mexican authorities did not take and still have not taken any effective steps to clear the Continuing Blockade.
- 3.49 Reportedly, in June 2023, Mineros Norteños moved the Continuing Blockade from within the Project premises to the access road outside the Project area. Notably, Mineros Norteños's relocation of the Continuing Blockade only occurred *after* a consultation meeting held on 30 May 2023 between representatives of SVB and Mexican officials and following SVB's service of its notice of intent on 2 March 2023 (the "**Notice of Intent**").⁵¹ It can reasonably be inferred that the only reason Mineros Norteños took this action – after maintaining the Continuing Blockade without any modification for nearly four years – is because of the belated intercession of the Mexican authorities. This suggests that Mexico had the power to remove Mineros Norteños from the Project and to restore law and order all along but, for reasons that remain unclear, refused to exercise any such authority until now.

⁴⁷ Letter from Minera Metalín to Embassy of Canada in Mexico dated 5 December 2019, at **Exhibit C-036**.

⁴⁸ See emails between T. Barry of SVB and G. Dompierre, First Secretary and Trade Commissioner at the Embassy of Canada in Mexico from 26 November 2019 to 9 December 2019, at **Exhibit C-046**.

⁴⁹ Email exchanges between T. Barry and Antonio Leonardo Suárez Mejía of the Mexican Ministry of Economy from 15 December 2019 to 8 January 2020, at **Exhibit C-037**.

⁵⁰ See e.g., Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade dated 23 August 2021, at **Exhibit C-043**; Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade dated 26 August 2021, at **Exhibit C-044**.

⁵¹ Notice of Intent to submit a claim to arbitration dated 2 March 2023 (without exhibits), at **Exhibit C-069**.

3.50 Of course, these actions came too late and were far from effective. Mineros Norteños maintains the Continuing Blockade, having just relocated it from within the Project premises to the access road outside the Project area. What is more, the Claimant could not advance the Project now if it even wished to – having been deprived of access to its Project for nearly four years without any assistance from the Mexican authorities, it would be impossible for SVB to raise funds to advance the Project. The Project has acquired the reputation of a “poisoned well”, as described further below.

(E) Mexico’s conduct caused the termination of SVB’s Option Agreement with South32 and ultimately the loss of the investment

(i) SVB notified South32 of the occurrence of a *force majeure* event

3.51 On 11 October 2019, approximately a month after Mineros Norteños installed the Continuing Blockade, SVB submitted a notice of *force majeure* to South32, informing it of the Continuing Blockade and of SVB’s inability to resume exploration works at the Project.⁵² SVB described the reasons for the existence of the *force majeure* as follows:⁵³

“Reason for Force Majeure: Since the start of the blockade’

- *MN effectively and illegally imprisoned 4 of our employees for 12 days until they escaped camp.*
- *MN has illegally blocked our access to our property and interrupted our lawful business.*
- *MN has illegally blocked Major Drilling, our drilling contractor, from access to its equipment that is worth hundreds of thousands of dollars.*
- *MN have refused all attempts by us to meet in Torreon to try and resolve this. We have offered to pay for all transportation,*

⁵² Letter from SVB to South32 dated 11 October 2019, at **Exhibit C-035**.

⁵³ Letter from SVB to South32 dated 11 October 2019, p. 2, at **Exhibit C-035**.

hotel and meal expenses in order to present a negotiated solution.”

3.52 In its letter, SVB set out all its efforts to remove the Continuing Blockade, including pleas made to various Mexican authorities:⁵⁴

“Measures and Remedies undertaken to date:

1. We have shut down the work program and removed all staff from site in the interests of safety.

2. We have alerted the appropriate authorities including the State Prosecutor, local and state police, the Coahuila state government, and the Mexican mining department. We have filed criminal charges against the leaders of MN with the State Prosecutor of Coahuila.

3. We have informed the Canadian Embassy and the Mexican Chamber of mines of the situation and asked for their support.

4. We have reached out MN both directly and indirectly in an attempt to meet and start a dialogue to resolve the situation.”

(ii) Mexico’s failure to end the Continuing Blockade caused the termination of the Option Agreement and ultimately destroyed SVB’s investment

3.53 On 31 August 2022, almost three years after Mineros Norteños installed the Continuing Blockade, South32, SVB and Minera Metalín terminated the Option Agreement by mutual agreement.⁵⁵ SVB thus lost its financing and development partner because Mexico continued to take no action to allow SVB to resume its operations at the Project.

3.54 SVB was unable to find alternative investors because none were interested in a mining project that was in the illegal possession of a third party. The Continuing Blockade and the Mexican

⁵⁴ Letter from SVB to South32 dated 11 October 2019, p. 3, at **Exhibit C-035**.

⁵⁵ Termination Agreement between Silver Bull Resources, Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd. dated 31 August 2022, at **Exhibit C-048**.

authorities' continuous failure and unwillingness to address the problem in an effective manner destroyed any hope of finding investors willing to invest funds needed to progress the Project.

3.55 The Continuing Blockade has continued and remains in place to this day. Mexican authorities have taken no overt steps to remove the Continuing Blockade.

3.56 Due to the nearly 4-year long failure by the Mexican authorities to take any action to restore the Project to Minera Metalín, a failure that continues to this day, SVB has lost its investment with no prospect of resuming mining operations.

(F) SVB has faced arbitrary treatment at the hands of the Mexican judiciary

3.57 In parallel to the Initial and Continuing Blockades, Mr Jaime Valdez, another former concession-holder with whom Minera Metalín had entered into an option agreement in April 2010 (the "**Valdez Option Agreement**")⁵⁶ brought vexatious claims against Minera Metalín in the local Mexican courts. The Valdez Option Agreement provided for biannual payments to Mr Valdez as long as SVB wished to continue exploration works in the relevant property.

3.58 Ultimately, SVB decided not to continue with the exploration works and issued a termination notice, which was served via an officer of the court who signed off on delivering the notice to the address provided in the Valdez Option Agreement.⁵⁷ Notwithstanding SVB following the appropriate procedures, Mr Valdez claimed spuriously that the notice was never served on him.

3.59 After two years, Mr Valdez brought claims for the full value of the Valdez Option Agreement,⁵⁸ being USD 5,900,000, despite not having demanded previous biannual payments that would have been due had the Valdez Option Agreement remained in place. Notably, Mr Valdez made no effort to contact SVB throughout those two years despite living less than 2 kilometres away from the Project.

⁵⁶ Option agreement between, among others, Mr Jaime Valdes Farias and Minera Metalín dated 21 April 2020 (the "**Valdez Option Agreement**"), at **Exhibit C-038**.

⁵⁷ Termination notice (Notificación Notarial sobre Terminación de Contrato de Promesa de La Perla La India y La India Dos) dated 3 June 2013 at **Exhibit C-023**.

⁵⁸ Valdez Option Agreement, clause 2(G), at **Exhibit C-038**.

- 3.60 Unsurprisingly, Minera Metalín prevailed in the court of first instance against Mr Valdez’s claims. In its judgment of 17 March 2017, the court concluded that Minera Metalín had a contractual right to terminate the contract and confirmed that Minera Metalín had duly notified Mr Valdez of its intention to terminate the contract in accordance with the provisions of the contract.⁵⁹ Mr Valdez failed to appeal this decision within the stipulated time limit for appeal and thus the decision became final and binding. Minera Metalín therefore sought to recover its legal costs.⁶⁰
- 3.61 Nevertheless, Mr Valdez obtained a highly irregular annulment decision from the same court declaring service of the decision of first instance null due to alleged deficiencies during the court official’s service of the decision upon Mr Valdez and ordering to effect service anew.⁶¹ As a result, Mr Valdez was granted an extemporaneous leave to appeal.
- 3.62 The appellate court suspiciously overturned the decision of first instance, declaring Minera Metalín’s contract termination invalid since it was not served on Mr Valdez’s legal representative but upon a third party (the security guard at Mr Valdez’s residence) and wrongly awarded Mr Valdez USD 5,000,000 on the basis that Minera Metalín had allegedly maintained occupancy of the relevant concessions under the Valdez Option Agreement.⁶² Minera Metalín filed an *amparo* recourse seeking to protect its due process rights, but it was dismissed.⁶³
- 3.63 Mr Valdez’s baseless lawsuit and the Mexican judiciary’s failure to follow any reasonable semblance of due process was shocking to SVB. The episode provides yet another example of the Mexican authorities’ failure to accord SVB’s investment with the protections under the NAFTA.

⁵⁹ Judgment of the First Judge of First Instance for Civil Matters of the Judicial District of Torreon dated 17 March 2017, at **Exhibit C-028**.

⁶⁰ Interlocutory Judgment of the First Judge of First Instance for Civil Matters of the Judicial District of Torreon on costs dated 25 January 2018, at **Exhibit C-030**.

⁶¹ Interlocutory Judgment of the First Judge of First Instance for Civil Matters of the Judicial District of Torreon on nullity dated 17 June 2019, at **Exhibit C-032**.

⁶² Judgment of the Regional Chamber of the Superior District Court of the State dated 1 October 2020, at **Exhibit C-029**.

⁶³ Judgment of the First Collegiate Court for Civil and Labour matters of the Eight Circuit dated 10 June 2021, at **Exhibit C-042**.

4. MEXICO BREACHED ITS OBLIGATIONS UNDER THE NAFTA RESULTING IN THE LOSS OF THE CLAIMANT'S INVESTMENT

4.1 As a result of the conduct described in Section 3 above, a legal dispute has arisen directly out of the investment made by SVB. In particular, Mexico breached its obligations under the NAFTA in relation to the Claimant's investment. These include, but are not limited to:

- (a) Mexico's obligation not to expropriate the Claimant's investment without satisfying the cumulative requirements of Article 1110 of the NAFTA (**Section 4.A**);
- (b) Mexico's obligations to accord the Claimant's investment fair and equitable treatment and full protection and security under Article 1105 of the NAFTA (**Section 4.B**); and
- (c) Mexico's obligation to accord the Claimant and its investment treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments under Article 1102 of the NAFTA (**Section 4.C**).

4.2 As a result of Mexico's conduct, the Claimant lost its investment (**Section 4.D**).

(A) Mexico expropriated SVB's investment

4.3 Mexico unlawfully expropriated SVB's investment in breach of Article 1110 of the NAFTA. Under Article 1110 of the NAFTA:

"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”.*⁶⁴

- 4.4 The failure to comply with any of these four cumulative criteria set out in Article 1110 of the NAFTA by the State renders its measure or set of measures, the effect of which is tantamount to expropriation, unlawful under the NAFTA.
- 4.5 Mexico’s failure to enforce its own laws and end the Continuing Blockade, as described in Section 3 above, caused the complete destruction of SVB’s investment in the Project. Mexico’s unlawful conduct rendered SVB unable to continue with its Project. SVB could not sell its rights to the Project or acquire additional funding for the Project because of Mexico’s conduct. Investment tribunals have confirmed that State conduct constitutes an indirect expropriation when it leads to the “irreparable cessation” of investment activity or effectively blights an owner’s ability to reasonably exploit the economic potential of an investment.⁶⁵
- 4.6 Mexico’s conduct was not in pursuit of any justifiable public purpose, was premised on a systematic discrimination against foreign mining companies following the election of AMLO, and failed to accord SVB with due process of law or pay it compensation.
- 4.7 Mexico’s conduct thus amount to an unlawful expropriation in breach of Article 1110 of the NAFTA.

⁶⁴ NAFTA, Art. 1110, at **CL-004**.

⁶⁵ *E.g. Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, at **CL-007**, p. 193 *et seq.* (paras. 76-81); *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, at **CL-034**, p. 66 *et seq.* (paras. 209-223); *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, at **CL-008**, p. 29 *et seq.* (paras. 107-112); *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, at **CL-040**, p. 87 (para. 346); *Antoine Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre and the Government of Ghana*, Award on Jurisdiction and Liability, 27 October 1989, at **CL-003**, p. 207 *et seq.* (para. 81); *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award, 20 August 2007, at **CL-022**, p. 232 *et seq.* (paras. 7.5.26-7.5.28, 7.5.33); *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, at **CL-013**, p. 26 (para. 107).

(B) Mexico failed to accord SVB’s investments fair and equitable treatment and full protection and security

4.8 Under Article 1105 of the NAFTA, Mexico has an obligation to accord fair and equitable treatment (“**FET**”) and full protection and security (“**FPS**”) to SVB’s investments in Mexico. Article 1105 of the NAFTA provides, in its relevant part:

*“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”.*⁶⁶

4.9 Article 1105 of the NAFTA adopts the customary international law minimum standard of treatment of aliens. Although the minimum standard has evolved to afford the same level of treatment as stand-alone FET and FPS provisions,⁶⁷ to the extent that the Tribunal were to find otherwise, Article 1103 of the NAFTA, which contains a most-favoured nation (“**MFN**”) provision, enables the Claimant to benefit from any more favourable standards of protection that Mexico affords in its investment treaties with other States.⁶⁸

⁶⁶ NAFTA, Art. 1105 (emphasis added), at **CL-004**.

⁶⁷ See e.g., *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, at **CL-039**, p. 117 (paras. 520-521); *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, at **CL-029**, p. 81 *et seq.* (para. 210-211); *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, at **CL-017**, p. 82 *et seq.* (para. 284); *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, at **CL-019**, p. 62 (para. 291); *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, at **CL-020**, p. 130 *et seq.* (paras. 361-372); *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, at **CL-024**, p. 176 (para. 592); *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, at **CL-025**, p. 162 (para. 611); *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, at **CL-032**, p. 117 *et seq.* (paras. 336-337); *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016, at **CL-038**, p. 92 (para. 319); *Thomas Gosling and others v. Republic of Mauritius*, ICSID Case No. ARB/16/32, Award, 18 February 2020, at **CL-042**, p. 76 *et seq.* (para. 243).

⁶⁸ See e.g., Agreement between the Government of the Italian Republic and the Government of the United Mexican States for the Promotion and Mutual Protection of Investments, signed on 24 November 1999, entered into force on 5 December 2002, at **CL-016**, Art. 2(2); Agreement between the Government of the United Mexican States and the Government of the Hellenic Republic for the Promotion and Reciprocal Protection of Investments, signed on 30 November 2000, entered into force on 26 September 2002, at **CL-015**, Art. 2(2); Agreement between the Government of the United Mexican States and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments, signed on 13 April 2000, entered into force on 24 September 2000, at **CL-009**, Art. 3(1).

- 4.10 Investment tribunals have held that the FET standard encompasses the protection of legitimate expectations, protection against discriminatory measures, the obligation to act consistently, in good faith, and with transparency,⁶⁹ to refrain from denial of justice,⁷⁰ and protection against unreasonable or arbitrary conduct.⁷¹ It is undeniable that the FPS standard extends to the physical protection and security of investors and covered investments.⁷² The FPS standard also requires the State to enforce its laws in a manner reasonably expected under the circumstances to protect covered investments, and to take all measures necessary to ensure the full enjoyment of protection and security of the investment.⁷³
- 4.11 Through the conduct summarised in Section 3 above, Mexico breached its FET and FPS obligations. In particular, but without limitation, Mexico:
- (a) failed to protect SVB's rights, including ownership rights and rights deriving from SVB's previous exploration and prospecting activities on the Project;

⁶⁹ *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, at **CL-028**, p. 123 (para. 450); *Electrabel S.A. v. The Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, at **CL-036**, p. 20 *et seq.* (para. 7.74); *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 October 2012, at **CL-035**, p. 156 *et seq.* (para. 405); R. Dolzer, U. Kriebbaum, and C. Schreuer, *Principles of International Investment Law* (Oxford, 2022), 3rd Edition (extracts), at **CL-006**, pp. 194-195.

⁷⁰ *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, at **CL-045**, p. 64 (para. 205); *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008, at **CL-027**, p.61 (para. 188); *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, Final Award, 23 April 2012, at **CL-033**, p. 73 (para. 272); *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011, at **CL-031**, p. 86 *et seq.* (para. 448); *Frontier Petroleum Services Ltd. v. The Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, at **CL-030**, p. 100 *et seq.* (para. 293).

⁷¹ *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, at **CL-025**, p. 181 *et seq.* (paras. 679-681); *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, at **CL-017**, p. 84 (para. 290); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, at **CL-026**, p. 53 *et seq.* (para. 175 *et seq.*); *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, at **CL-023**, p. 45 *et seq.* (paras. 73-76).

⁷² R. Dolzer, U. Kriebbaum, and C. Schreuer, *Principles of International Investment Law* (Oxford, 2022), 3rd Edition (extracts), at **CL-006**, pp. 234-235; *REENERGY S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/14/18, Award, 6 May 2022, at **CL-046**, p. 230 (para. 944); *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, at **CL-019**, p. 98 (para. 483).

⁷³ See e.g., *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, at **CL-005**, p. 28 *et seq.* (para. 6.05).

- (b) failed to accord SVB, its personnel, and its property protection and security against violent acts by from third parties; and
- (c) thereby caused SVB and Minera Metalín substantial harm.

(C) Mexico’s conduct violated the national treatment standard

4.12 Article 1102 of the NAFTA provides that Mexico must treat foreign investors and investments no less favourably than its own national investors and investments:

“1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.”⁷⁴

4.13 Mexico breached its national treatment obligation by treating SVB, a US company, and its investment less favourably as compared to Mexico’s nationals and their investments. Mexico’s inaction against the Continuing Blockade by Mineros Norteños, a Mexican investor which held the concessions to the Project area prior to SVB (through Minera Metalín) demonstrates that it treated SVB, a US investor less favourably than Mineros Norteños. Mexico violated the national treatment standard as provided in Article 1102 of the NAFTA.

4.14 The Claimant reserves its right to invoke Article 1103 of the NAFTA based on Mexico’s conduct, to the extent that Mexico has treated investors of other countries more favourably, including in the context of other investment treaties.

⁷⁴ NAFTA, Art. 1102, at **CL-004**.

(D) The Claimant suffered significant losses as a result of Mexico's conduct

- 4.15 Mexico's breaches of the NAFTA caused SVB substantial losses and damage. These damages include, without limitation: (a) compensatory damages for the lost value of the investment; (b) lost business opportunities; and (c) other incidental damages.
- 4.16 The harm that Mexico caused SVB and Minera Metalín includes the total loss of value of SVB's investment in the Project, which is no less than its sunk costs of USD 82,500,000 and will be further elaborated on and quantified in the course of the arbitration.
- 4.17 In addition to the pecuniary losses set out above, the Claimant reserves its right to seek an award of moral damages for non-pecuniary losses caused by Mexico's unlawful conduct.

5. THE CLAIMANT MEETS THE JURISDICTIONAL REQUIREMENTS UNDER THE USMCA, THE NAFTA, AND THE ICSID CONVENTION

5.1 All requirements under the USMCA (**Section 5.A**), the NAFTA (**Section 5.B**), and the ICSID Convention (**Section 5.C**) to commence this proceeding are met.

(A) The claim relates to a legacy investment under Annex 14-C of the USMCA

5.2 Mexico's consent to submit a claim with respect to a legacy investment to arbitration is contained in Annex 14-C of the USMCA. Specifically, Article 1 of Annex 14-C of the USMCA provides as follows:

"1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:

(a) Section A of Chapter 11 (Investment) of NAFTA 1994;

(b) Article 1503(2) (State Enterprises) of NAFTA 1994; and

*(c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994."*⁷⁵

5.3 Article 6 of the USMCA's Annex 14-C defines a "legacy investment" as:

"an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement".⁷⁶

⁷⁵ USMCA, Annex 14-C, Art. 1 (references omitted), at **CL-044**.

⁷⁶ USMCA, Annex 14-C, Art. 6, at **CL-044**.

- 5.4 The USMCA entered into force, and the NAFTA was terminated, on 1 July 2020.⁷⁷ Therefore, the opportunity to commence arbitration proceedings under Chapter 11 (*Investment*) of the NAFTA remains available in respect of “legacy investments” for three years after that date, i.e., until 1 July 2023.
- 5.5 SVB’s investment pre-dates the date of entry into force of the USMCA. As noted above, SVB made investments in Mexico in July 1996 when it incorporated Minera Metalín and in 2000 when it acquired two concessions (through Minera Metalín) from Mineros Norteños.⁷⁸ These investments remained in existence at the time when the USMCA was enacted and the NAFTA was terminated, i.e., on 1 July 2020.
- 5.6 Article 6 of the USMCA’s Annex 14-C provides that the terms “investor” and “investment”, in turn, have “the meanings accorded in Chapter 11 (*Investment*) of NAFTA 1994”.⁷⁹ As explained below, SVB satisfies the definition of “investor” and has a qualifying “investment” under the NAFTA.
- 5.7 SVB’s investment therefore qualifies as a “legacy investment” and the jurisdictional requirements under the USMCA are met.

(B) The jurisdictional requirements under the NAFTA are met

(i) Jurisdiction *ratione personae*

- 5.8 SVB brings claims on its own behalf, under Article 1116 of the NAFTA, and on behalf of Minera Metalín, under Article 1117 of the NAFTA. Articles 1116 and 1117 of the NAFTA state, in their relevant parts, the following:

“Article 1116: Claim by an Investor of a Party on Its Own Behalf

⁷⁷ Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada dated 30 November 2018, at **CL-041**.

⁷⁸ Agreement between Mineros Norteños and Minera Metalín dated 30 August 2000, at **Exhibit C-009**.

⁷⁹ USMCA, Annex 14-C, Art. 6, at **CL-044**.

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

[...]

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.”⁸⁰

5.9 Article 1139 of the NAFTA defines “investor of a Party” in the relevant part as:

⁸⁰ NAFTA, Arts. 1116(1), 1117(1), at CL-004.

“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.”⁸¹

5.10 The same provision defines “*enterprise of a Party*” as follows:

*“an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there”.*⁸²

5.11 In turn, the term “*enterprise*” has the meaning given in Article 201 (and a branch of any such entity). Article 201 of the NAFTA provides for the following definition of “*enterprise*”:

*“any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association”.*⁸³

5.12 SVB is a company duly incorporated in the United States under the laws of Nevada (see Section 1 above) and has made an investment in Mexico (see Section 2 above).⁸⁴ SVB therefore qualifies as an “*investor of a Party*” under Article 1139 of the NAFTA and is entitled to bring a claim on its own behalf pursuant to Article 1116 of the NAFTA.

5.13 Minera Metalín is a Mexican corporation fully owned and controlled by SVB (see Section 2 above).⁸⁵ As explained in Section 3 above, Minera Metalín carried out mining exploration activities in the Project area. Thus, Minera Metalín qualifies as an “*enterprise*” for the purposes of Articles 1139 and 1117 of the NAFTA.

⁸¹ NAFTA, Art. 1139, at **CL-004**.

⁸² NAFTA, Art. 1139, at **CL-004**.

⁸³ NAFTA, Art. 201, at **CL-004** (as referenced in the NAFTA, Art. 1139, at **CL-004**).

⁸⁴ Certificate of SVB’s existence with status in good standing dated 19 January 2023, at **Exhibit C-050**.

⁸⁵ Certificate of SVB’s existence with status in good standing dated 19 January 2023, at **Exhibit C-050**; Minera Metalín’s share certificates bearing nos. 007, 008, and 009, each dated 1 April 2014 showing SVB and Metalline Inc.’s shareholding, at **Exhibit C-024**.

(ii) Jurisdiction *ratione materiae*

5.14 Article 1139 of the NAFTA defines “investment” in the relevant part, to include:

“(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;

[...]

(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 [...]*⁸⁶

5.15 SVB invested significant financial and other resources in Mexico for the evaluation, acquisition, exploration, and development of the Project. Specifically, the Claimant and Minera Metalín’s investment in the Project includes (without limitation), the following elements, all of which fall within the definition of “investment” in Article 1139 of the NAFTA:

⁸⁶ NAFTA, Art. 1139, at CL-004.

- (a) the Claimant's indirect shareholding in Minera Metalín;⁸⁷
- (b) the Claimant's indirect ownership of Minera Metalín's assets and Minera Metalín's direct ownership of those assets, including (without limitation) 20 registered mining concessions and surface rights in relation to various land plots;⁸⁸
- (c) funds that the Claimant provided to Minera Metalín to finance exploration works, including (without limitation) drilling, assaying, and metallurgical tests;
- (d) the Claimant's and Minera Metalín's interests arising from commercial arrangements entered into with third parties subject to production operations, including, amongst other things, the Option Agreement;⁸⁹ and
- (e) Minera Metalín's equipment and infrastructure, including, amongst other things, movable and immovable as well as tangible and intangible property.

5.16 The Claimant has therefore made an investment under Article 1139 of the NAFTA.

- (iii) Jurisdiction *ratione temporis*

5.17 Article 1120.1 of the NAFTA provides the following:

"Article 1120: Submission of a Claim to Arbitration

1. [...] provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration [...]"⁹⁰

5.18 Notably, Article 1120.1 of the NAFTA does not impose any additional notice or consultation requirement. Investment tribunals have affirmed that the six-month period in Article 1120.1

⁸⁷ Minera Metalín's share certificates bearing nos. 007, 008, and 009, each dated 1 April 2014 showing SVB and Metalline Inc.'s shareholding, at **Exhibit C-024**.

⁸⁸ See paragraph 3.6 above and related footnotes.

⁸⁹ Option Agreement, at **Exhibit C-031**.

⁹⁰ NAFTA, Art. 1120, at **CL-004**.

of the NAFTA is a cooling-off period.⁹¹ In interpreting Article 1120.1 in line with the object and purpose of the NAFTA, the *Mesa Power* tribunal held that as long as some of the events giving rise to the claim have occurred more than six months before the start of the arbitration, the requirements of this provision are met.⁹²

5.19 In this case, it is beyond doubt that more than six months have elapsed since the events giving rise to the Claimant's claims as described in Section 3 above. This satisfies the timing requirement set out in Article 1120.1 of the NAFTA.

5.20 Further, Articles 1116.2 and 1117.2 of the NAFTA provide a three-year limitations period, as follows:

“Article 1116: Claim by an Investor of a Party on Its Own Behalf

[...]

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

[...]

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

[...]

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have

⁹¹ *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Interim Decision on Preliminary Jurisdictional Issues, 6 December 2000, at **CL-011**, p. 21 (para. 46); *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, UNCITRAL, Request for Bifurcation of Respondent United States of America, 29 August 2005, at **CL-018**, p. 7-8.

⁹² *Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Award, 24 March 2016, at **CL-037**, p. 57 *et seq.* (paras. 298, 299).

first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.”⁹³

- 5.21 It is pertinent to note that the requirements set out in Articles 1116.2 and 1117.2 require the Claimant to have knowledge of both: (a) the breach; and (b) the incurrance of loss or damage thereby.
- 5.22 Mexico’s ongoing unlawful conduct constitutes a continuing breach of the NAFTA. As noted in Section 3 above, the events giving rise to the claim are continuous and systematic, spanning from the Initial and Continuing Blockades to the Mexican authorities’ continued failure to end the Continuing Blockade.
- 5.23 Investment tribunals have consistently held that in the case of a continuing breach, time only begins to run for the purposes of a limitations period when that breach ceases to exist.⁹⁴ For instance, the NAFTA tribunal in *UPS v. Canada* held that a continuing breach could extend the limitations period:

“The generally applicable ground for our decision is that [...] continuing courses of conduct constitute continuing breaches of legal obligations and renew the limitation period accordingly.”⁹⁵

- 5.24 The International Law Commission adopted the same view in the context of its work on State responsibility, when it concluded that “in the case of a ‘continuing’ wrongful act (...) [the day from which the limitations period commences] can be established only after the end of the time of the commission of the wrongful act itself”.⁹⁶ Therefore, as Mexico’s breaches

⁹³ NAFTA, Arts. 1116(1), 1117(1), at **CL-004**.

⁹⁴ See, *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, 24 May 2007, at **CL-021**, p. 13 *et seq.* (para. 28); *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, at **CL-039**, p. 62 (para. 229); *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award, 27 March 2020, at **CL-043**, p. 126 *et seq.* (paras. 411-412); *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Interim Decision on Preliminary Jurisdictional Issues, 6 December 2000, at **CL-011**, p. 28 (para. 62).

⁹⁵ *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, 24 May 2007, at **CL-021**, p. 13 *et seq.* (para. 28).

⁹⁶ International Law Commission, “Report of the International Law Commission on the work of its thirtieth session, 8 May – 28 July 1978”, in Yearbook of the International Law Commission, 1978, vol. II, Part Two, A/33/10, p. 91, fn 437, at **CL-010**.

constitute continuing breaches of the NAFTA, the limitations period is extended until the cessation of the Mexico's unlawful conduct.

5.25 In light of Mexico's continuing breaches of the NAFTA, SVB's claim falls within the limitations period contained in Articles 1116 and 1117 of the NAFTA.

(iv) The Claimant has met the conditions precedent to submit a claim to arbitration under the NAFTA

(a) Delivery of the Notice of Intent pursuant to Article 1119 of the NAFTA

5.26 Article 1119 of the NAFTA refers to the requirement to file a Notice of Intent as follows:

"The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed."⁹⁷

5.27 On 2 March 2023, SVB delivered a Notice of Intent to Mexico, which complied with the requirements set out in Article 1119 of the NAFTA.⁹⁸ Mexico acknowledged receipt of the Notice of Intent by a letter dated 9 March 2023.⁹⁹

⁹⁷ NAFTA, Art. 1119, at **CL-004**.

⁹⁸ Notice of Intent to submit a claim to arbitration dated 2 March 2023 (without exhibits), at **Exhibit C-069**.

⁹⁹ Letter No. DGCI.511.80.189.2023 from Mexico to Squire Patton Boggs LLP dated 9 March 2023, at **Exhibit C-054**.

5.28 As stated above, the transition period to bring any legacy NAFTA claims under the USMCA expires on 1 July 2023.¹⁰⁰ It follows that any Notice of Intent for a legacy NAFTA claim should have been delivered 90 days prior to that date, i.e., 1 April 2023. SVB's delivery of its Notice of Intent met this timing requirement.

(b) *The Parties have held consultations pursuant to Article 1118 of the NAFTA*

5.29 Article 1118 of the NAFTA provides as follows:

"The disputing parties should first attempt to settle a claim through consultation or negotiation".¹⁰¹

5.30 In its Notice of Intent, SVB requested consultations with Mexico. On 30 May 2023, the Parties held a consultation meeting at the Ministry of Economy's offices located at Calle Pachuca No. 189, Col. Condesa, Demarcación Territorial Cuauhtémoc, Mexico City, Mexico, C.P. 06140. However, the Parties were unable to reach an agreement to settle the dispute amicably.

(c) *The Claimant has provided the requisite consents and waivers pursuant to Article 1121 of the NAFTA*

5.31 Articles 1121.1(a) and 1121.2(a) of the NAFTA provide as follows:

"1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

[...]

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

¹⁰⁰ USMCA, Annex 14-C, at **CL-044**.

¹⁰¹ NAFTA, Art. 1118, at **CL-004**.

*(a) consent to arbitration in accordance with the procedures set out in this Agreement; and [...]*¹⁰²

5.32 In relation to waiver, Articles 1121.1(b) and 1121.2(b) provide the following:

"1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

[...]

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

[...]

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment

¹⁰² NAFTA, Arts. 1121.1(a), 1121.2(a), at CL-004.

of damages, before an administrative tribunal or court under the law of the disputing Party.”¹⁰³

5.33 Article 1121.3 of the NAFTA in turn requires that:

“3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration”.¹⁰⁴

5.34 The relevant consent and waiver documents in accordance with Article 1121 are enclosed herewith.¹⁰⁵

(C) The jurisdictional requirements under the ICSID Convention are met

5.35 Article 1120 of the NAFTA provides, in its relevant part, as follows:

“1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

[...]

The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.”

¹⁰³ NAFTA, Arts. 1121.1(b), 1121.2(b), at **CL-004**.

¹⁰⁴ NAFTA, Arts. 1121.3, at **CL-004**.

¹⁰⁵ Consent and Waiver Letter by SVB dated 13 June 2023, at **Exhibit C-060**. Consent and Waiver Letter by Minera Metalín dated 13 June 2023, at **Exhibit C-058**.

5.36 SVB has elected to submit its arbitration claim under the ICSID Convention in accordance with Article 1120.1(a) of the NAFTA.¹⁰⁶ Both the United States and Mexico are Contracting States to the ICSID Convention.¹⁰⁷

5.37 Article 25(1) of the ICSID Convention sets forth the jurisdictional requirements for an investment dispute to be submitted to the ICSID as follows:

“The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.”¹⁰⁸

5.38 Thus, an investment dispute may be submitted to an arbitral tribunal under the ICSID Convention if: (i) it is a legal dispute; (ii) it is arising directly out of an investment; (iii) if it is between a national of a Contracting State and another Contracting State; and (iv) both Parties to the dispute have consented in writing to submit the dispute to ICSID. As explained the subsections below, the present dispute meets all these jurisdictional requirements.

(i) There is a legal dispute between SVB and Mexico

5.39 There is a *legal dispute* between SVB, on the one hand, and Mexico, on the other, with respect to Mexico’s breaches of its obligations under the NAFTA and international law and the compensation owed to SVB because of such breaches. This dispute arises out of the facts sets forth in Section 3 above.

5.40 The Permanent Court of International Justice defined a dispute in the seminal *Mavrommatis* case as a “*disagreement on a point of law or fact, a conflict of legal views or interests between*

¹⁰⁶ NAFTA, Art. 1120.1(a), at **CL-004**.

¹⁰⁷ The United States signed the ICSID Convention on 27 August 1965, and it entered into force for the United States on 14 October 1966. In turn, Mexico signed the ICSID Convention on 11 January 2018, and it entered into force for Mexico on 26 August 2018. See ICSID, List of Contracting States and Other Signatories of the Convention (as of October 25, 2022), ICSID/3, at **Exhibit C-061**.

¹⁰⁸ ICSID Convention, Art. 25(1), at **CL-002**.

*two persons.*¹⁰⁹ Investment tribunals have subsequently upheld this definition.¹¹⁰ *Legal disputes* have in turn been defined as “*controversies in which the [p]arties are in disagreement over a right.*”¹¹¹

5.41 As explained above, SVB and its legal representatives met with Mexico on 30 May 2023 to resolve the dispute amicably. But the meeting made it clear that Mexico disagrees with SVB’s claim that Mexico breached its obligations as set forth in the NAFTA and under international law and, as such, that it owes compensation to SVB. A legal dispute accordingly exists between SVB and Mexico within the meaning of Article 25(1) of the ICSID Convention.

(ii) The dispute between SVB and Mexico arises directly out of an investment

5.42 Given that the term “investment” within Article 25 of the ICSID Convention was left undefined intentionally, thereby leaving it to States to agree on a definition, Article 1139 of the NAFTA provides the operative definition of “investment”.¹¹² As explained in Section 3 above, SVB has made investments within the meaning of the NAFTA.

(iii) The dispute between SVB and Mexico is a dispute between a contracting State and a national of another contracting State

5.43 This dispute has arisen between SVB, a national of the United States, on the one hand,¹¹³ and Mexico, on the other hand. Because the United States and Mexico are both Contracting States to the ICSID Convention,¹¹⁴ the present dispute is “*between a Contracting State and a National of another Contracting State*” as required by Article 25 of the ICSID Convention.

¹⁰⁹ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, 30 August 1924, p. 11, at **CL-001**.

¹¹⁰ *E.g., El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, at **CL-012**, p. 19 (para. 61).

¹¹¹ *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, at **CL-012**, p. 19 (para. 61).

¹¹² NAFTA, Art. 1139, at **CL-004**.

¹¹³ For the sake of completeness, SVB declares that it does not have, or ever had Mexican nationality.

¹¹⁴ ICSID, List of Contracting States and Other Signatories of the Convention (as of October 25, 2022), ICSID/3, at **Exhibit C-061**.

(iv) SVB and Mexico consent in writing to submit their dispute to the ICSID

5.44 The Claimant has consented to the submission of this dispute to the jurisdiction of the ICSID by filing this RFA.

5.45 Mexico's consent arises through Article 1122 of the NAFTA, and the operation of Annex 14-C of the USMCA. Article 1122 of the NAFTA states the following:¹¹⁵

"Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement."

¹¹⁵

NAFTA, Art. 1122, at **CL-004**.

6. THE CLAIMANT’S PROCEDURAL PROPOSALS

6.1 With regard to Article 1123 of the NAFTA, Article 37 of the ICSID Convention, Rule 3(a)(i) of the ICSID Institution Rules, and Rules 15 and 16 of the ICSID Arbitration Rules, the Claimant requests the constitution of a tribunal consisting of three arbitrators (the “**Tribunal**”), one appointed by each party, and the President of the tribunal appointed by agreement of the parties or, failing such agreement, by the Secretary-General of ICSID.

6.2 Article 1130 of the NAFTA provides:

“Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention [...]”¹¹⁶

6.3 As this arbitration is under the ICSID Convention, in accordance with Article 62 of the ICSID Convention, the proceedings shall be held in Washington D.C., United States, the seat of the ICSID.

6.4 Pursuant to Rule 3(a)(ii) of the ICSID Institution Rules and Rule 7 of the ICSID Arbitration Rules, the Claimant proposes English as the language of the arbitration.

6.5 In accordance with Rule 4 of the ICSID Institution Rules, the Claimant files this Request electronically only. Hard copies will be made available to the Respondent as a courtesy upon the registration of this Request.

6.6 Pursuant to Regulation 18 of the ICSID Administrative and Financial Regulations, and the ICSID Schedule of Fees currently in force, this Request is accompanied by a wire transfer order demonstrating that the Claimant has paid ICSID’s non-refundable lodging fee of USD 25,000.¹¹⁷

¹¹⁶ NAFTA, Art. 1130, at **CL-004**.

¹¹⁷ ICSID Lodging Fee, Wire Transfer Order dated 21 June 2023, at **Exhibit C-062**.

7. REQUEST FOR RELIEF

7.1 The Claimant respectfully requests the Tribunal to:

- (a) **DECLARE** that Mexico has breached its obligation not to expropriate the Claimant's investment under Article 1110 of the NAFTA;
- (b) **DECLARE** that Mexico has breached its obligations to accord full protection and security and fair and equitable treatment to the Claimant's investment under Article 1105 of the NAFTA;
- (c) **DECLARE** that Mexico has breached its obligation to accord national treatment to the Claimant and its investment under Article 1102 of the NAFTA;
- (d) **ORDER** Mexico to pay compensation for the loss and damage sustained by the Claimant and Minera Metalín as a result of Mexico's breaches of its obligations under the NAFTA and international law, in an amount of not less than USD 82,500,000, or such other amount quantified during the course of this proceeding;
- (e) **ORDER** Mexico to pay pre-award and post-award interest compounded at a rate that ensures full reparation;
- (f) **ORDER** Mexico to bear the costs of the arbitration and compensate the Claimant for all its costs and expenses incurred in relation to this proceeding, including the fees and expenses of their counsel, in-house counsel, witnesses and experts and reasonable funding costs (as applicable), the fees and expenses of the Tribunal, and ICSID's other costs and fees; and
- (g) **AWARD** such other and further relief as the Tribunal deems appropriate.

7.2 For the reasons set out above, the Claimant respectfully requests the Secretary-General to register this Request in accordance with the ICSID Convention and the ICSID Institution Rules.

7.3 The Claimant reserves its rights further to amend, develop, and quantify its claims and requests for relief, assert additional claims and requests for relief, and to present further argument and evidence in the course of the arbitration, in accordance with the ICSID Convention and the ICSID Arbitration Rules.

Respectfully submitted,

28 June 2023

For and behalf of the Claimant

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