

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Goldgroup Resources, Inc.
Claimant

v.

United Mexican States
Respondent

(ICSID Case No. ARB/23/4)

PROCEDURAL ORDER NO. 4
Decision on Document Production

Members of the Tribunal

Prof. Eduardo Zuleta, President of the Tribunal
Mr. Henri C. Álvarez, Arbitrator
Ms. Jean E. Kalicki, Arbitrator

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

Assistant to the President

Ms. María Marulanda Mürrle

August 21, 2024

I. INTRODUCTION

1. Pursuant to Section 16 of Procedural Order No. 1, dated November 9, 2023 (“**PO1**”), and in accordance with the revised procedural calendar adopted in Procedural Order No. 3 (the “**Procedural Calendar**”), the Claimant and the Respondent (collectively, the “**Parties**”) exchanged requests for document production, objections to these requests, and responses to the objections between July 10, and August 7, 2024, all in the form of a modified Redfern schedule.
2. On August 7, 2024, each Party submitted its modified Redfern Schedule to the Tribunal, together with accompanying legal authorities.¹
3. This order and the annexed modified Redfern Schedules contain the Tribunal’s decisions on the Parties’ requests for document production.

II. APPLICABLE RULES

4. This arbitration is governed by (i) the ICSID Convention, (ii) the 2022 ICSID Arbitration Rules (the “**Arbitration Rules**”), (iii) Chapter 11 of the NAFTA, and (iv) the procedural rules set out in PO1.
5. Article 43 of the ICSID Convention provides, in relevant part, that “[e]xcept as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence (...).”
6. Similarly, Arbitration Rule 36(3) provides that “[t]he Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.”
7. Arbitration Rule 37 further provides that:

“In deciding a dispute arising out of a party’s objection to the other party’s request for production of documents, the Tribunal shall consider all relevant circumstances, including:

 - (a) the scope and timeliness of the request;
 - (b) the relevance and materiality of the documents requested;
 - (c) the burden of production; and
 - (d) the basis of the objection.”
8. PO1 set out the applicable rules for document production in this arbitration. Section 16.1 of PO1 provides as follows:

¹ The Claimant submitted Annexes A to N, and the Respondent submitted Annexes A1 to A21.

“Each Party may request the production of a reasonable number of documents, or narrow categories of documents, relevant and material to the outcome of the dispute from the other Party in accordance with the procedural calendar for the arbitration. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the applicable time limit.”

9. Additionally, Section 16.2.4 of PO1 provides that:

“The Tribunal shall rule on any outstanding requests and may for this purpose refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 [(the “**IBA Rules**”)] in regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this procedural order, the Arbitration Rules or NAFTA Chapter 11. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.”

10. The Tribunal has duly considered the Parties’ respective positions as reflected in their modified Redfern Schedules. In deciding the document requests, the Tribunal assessed compliance with the parameters specified in Section 16 of PO1 and took guidance from the relevant provisions of the IBA Rules and the Arbitration Rules.

11. The Tribunal’s decisions on the Parties’ document requests are enclosed as:

- (a) Annex A in respect of the Claimant’s requests; and
- (b) Annex B in respect of the Respondent’s requests.

12. In no event should the Tribunal’s decision on a request be taken or construed as an indication of the Tribunal’s views on the merits of the Parties’ arguments, nor as an indication that the Tribunal is satisfied that either Party has discharged its burden of proof.

III. DECISION

13. Having considered the Parties’ submissions and the applicable rules discussed above, the Tribunal decides on each of the Parties’ document requests as indicated in the modified Redfern Schedules attached to this Procedural Order as Annex A and Annex B.

14. Pursuant to the Procedural Calendar, the Parties shall produce the documents ordered by the Tribunal by September 4, 2024.

On behalf of the Tribunal,

[Signed]

Prof. Eduardo Zuleta
President of the Tribunal
Date: August 21, 2024