



**ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE  
AGREEMENT AND THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES  
BETWEEN STATES AND NATIONALS OF OTHER STATES**

GOLDGROUP RESOURCES, INC.

**Claimant**

v.

UNITED MEXICAN STATES

**Respondent**

---

**REQUEST FOR ARBITRATION**

---

February 17, 2023

DLA PIPER LLP (US)  
Gabriela Álvarez Ávila  
Kate Brown de Vejar  
Kiera Gans  
Joshua Wan  
Santiago Palomo Vila  
Carlos Enrique Guerrero Alarcón

*Counsel for Claimant*



## CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>THE PARTIES.....</b>	<b>3</b>
	<b>A. Claimant .....</b>	<b>3</b>
	<b>B. Respondent .....</b>	<b>5</b>
<b>III.</b>	<b>JURISDICTIONAL AND PROCEDURAL REQUIREMENTS .....</b>	<b>6</b>
	<b>A. The Parties Have Consented to Arbitrate GG Resources’ Claims Pursuant to the ICSID Convention and the ICSID Arbitration Rules.....</b>	<b>6</b>
	<b>B. GG Resources is a Protected Investor under NAFTA with Protected Investments in Mexico.....</b>	<b>8</b>
	<b>C. All Other Conditions to Commence Arbitration Have Been Satisfied.....</b>	<b>10</b>
<b>IV.</b>	<b>ADDITIONAL PROCEDURAL MATTERS.....</b>	<b>11</b>
	<b>A. Applicable Procedural Rules .....</b>	<b>11</b>
	<b>B. Constitution of the Arbitral Tribunal .....</b>	<b>11</b>
	<b>C. Place and Language of the Arbitration.....</b>	<b>11</b>
<b>V.</b>	<b>FACTUAL BACKGROUND TO THE DISPUTE .....</b>	<b>12</b>
	<b>A. Disputes Between Other Dyna Mex Shareholders and GG Resources After the Acquisition.....</b>	<b>12</b>
	<b>1. Dispute Regarding GG Mining’s Public Disclosures.....</b>	<b>12</b>
	<b>2. Disputes Regarding the Improper Shareholder Actions .....</b>	<b>13</b>
<b>VI.</b>	<b>FACTUAL BASIS FOR THE CLAIMS.....</b>	<b>14</b>
	<b>A. GG Resources’ Opposition Lawsuit Challenging the Outcome of the March 15, 2013 Dyna Mex Shareholder Meeting.....</b>	<b>14</b>
	<b>B. Annulment Proceeding .....</b>	<b>16</b>
	<b>C. The US\$48 Million Lawsuit.....</b>	<b>17</b>



<b>VII.</b>	<b>MEXICO VIOLATED ITS OBLIGATIONS UNDER NAFTA.....</b>	<b>23</b>
<b>A.</b>	<b>Mexico Breached Its Minimum Standard of Treatment Obligation.....</b>	<b>24</b>
<b>B.</b>	<b>Mexico Unlawfully Expropriated Claimant’s Investment .....</b>	<b>25</b>
<b>VIII.</b>	<b>CLAIMANT’S REQUEST FOR RELIEF .....</b>	<b>26</b>
<b>IX.</b>	<b>RESERVATION OF RIGHTS .....</b>	<b>27</b>



1. Goldgroup Resources, Inc. (“**GG Resources**” or “**Claimant**”),<sup>1</sup> a company incorporated under the laws of British Columbia, Canada, hereby submits this request for arbitration (“**RFA**”) to the Secretary General of the International Centre for Settlement of Investment Disputes (“**ICSID**”) and, thereby, commences arbitration proceedings against the United Mexican States (“**Mexico**” or “**State**” or “**Respondent**”) on its own behalf pursuant to Chapter 14, Annex 14-C of the Agreement between the United States of America, the United Mexican States, and Canada (“**USMCA**”),<sup>2</sup> Chapter 11 of the North American Free Trade Agreement (“**NAFTA**” or the “**Treaty**”),<sup>3</sup> Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“**ICSID Convention**”), and Article 4 of the ICSID Institution Rules.
2. This RFA is accompanied by 22 factual exhibits, numbered **C-1** through **C-22**, and 7 legal authorities, numbered **CL-1** through **CL-7**. Electronic versions of such exhibits have been submitted via the document sharing platform, Box.<sup>4</sup>

## **I. INTRODUCTION**

3. This dispute concerns Respondent’s unlawful expropriation of Claimant’s investment in Mexico through a series of acts by the Mexican judiciary that stripped Claimant of the shares that backed Claimant’s protected investment in the San José de Gracia gold mining project. The alarming acts undertaken by the Mexican judiciary, that form the basis of Respondent’s breaches of the Treaty in this case, are a textbook example of a shocking and “*willful disregard of due process of law.*”<sup>5</sup>
4. This case involves three distinct, but related, proceedings in the Mexican courts that relate to Claimant’s investment in Mexico. Claimant commenced two judicial proceedings to protect its

---

<sup>1</sup> GOLDGROUP HOLDINGS CORP. changed its name to GOLDGROUP RESOURCES, INC. on April 11, 2012 (**Exhibit C-1**, Certificate of Change of Name from Goldgroup Holdings Corp. to Goldgroup Resources Inc., issued by the Registrar of Companies of the Province of British Columbia, Canada, dated April 11, 2012).

<sup>2</sup> **Exhibit CL-1**, Agreement between the United States of America, the United Mexican States, and Canada, which entered into force on July 1, 2020 (hereinafter “**USMCA**”), Annex 14-C, paragraphs 1(a), 5 and 6(a) (as explained with further detail below, GG Resources’ investments constitute legacy investments under the referred USMCA provisions and, hence, NAFTA Chapter 11 (Investment), Section B, is applicable to this dispute).

<sup>3</sup> **Exhibit CL-2**, North American Free Trade Agreement, which entered into force on January 1, 1994 (hereinafter “**NAFTA**” or the “**Treaty**”), Article 1120, paragraph 1(a) (providing that the dispute may be submitted to arbitration under the ICSID Convention, which, in turn, provides in its Article 44 that any arbitration proceeding shall be conducted in accordance with the provisions of Section 3 of the ICSID Convention and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration). Therefore, the ICSID Arbitration Rules are applicable to this arbitration.

<sup>4</sup> BOX link: <https://app.box.com/folder/194963746167>.

<sup>5</sup> **Exhibit CL-3**, *Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, I.C.J. Reports 1989, International Court of Justice, Judgment, July 20, 1989, paragraph 128.



investment in Mexico, and even though those proceedings have been pending for close to a decade, the two Mexican courts have, to this day, still failed to reach any decision on the merits. As a result, Claimant has been deprived of the opportunity to obtain justice or relief from the Mexican courts.

5. Further demonstrating the absurdity and irrationality of the timeline of the two cases commenced by GG Resources, in the third case, which was filed against GG Resources and its parent company, the Mexican judiciary issued a judgment in a mere 10 months. This third case has likewise resulted in a violation of Claimant's rights under NAFTA. This third proceeding has been plagued with incomprehensible procedural defects and has resulted in an extraordinarily shocking ruling that has no basis in law. Among the most flagrant of a plethora of procedural violations in this third case have been that (i) Claimant was never properly served, (ii) the court did not have jurisdiction to render a judgment, and (iii) the judgment was executed without real notification to Claimant. Moreover, the judgment in the third proceeding is evidently improper because (i) the court expressly acknowledged that the principle of *res judicata* bars the issuance of a contradictory judgment on claims that have already been adjudicated, yet ignored that very principle by awarding US\$48 million damages in direct contradiction to a prior judgment denying damages on the same claims, and (ii) the judgment resulted in an incoherent and irrational damages award.
6. These actions of the Mexican judiciary ("**Measures**") taken together, amount to a denial of justice and are tantamount to expropriation. Each of the Measures will be explained in greater detail below in **Section VI** of this RFA.
7. The Measures violate Mexico's obligations to Claimant, a Canadian investor, under NAFTA. The obligations violated include, but are not limited to, those established in:
  - 7.1 NAFTA Article 1105, paragraph 1, "Minimum Standard of Treatment" ("*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*");<sup>6</sup> and

---

<sup>6</sup> **Exhibit CL-2**, NAFTA, Article 1105.



7.2 NAFTA Article 1110, paragraph 1, “Expropriation and Compensation” (“*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*”).<sup>7</sup>

8. Claimant gave Mexico written notice of its claims under NAFTA Article 1118 by notice dated November 18, 2022 (the “**Notice of Intent**”).<sup>8</sup>

9. In this RFA, Claimant sets forth the jurisdictional and substantive bases for its claims under the Treaty. Claimant reserves its right to further specify, supplement or amend the factual and legal claims and arguments herein.

## II. THE PARTIES

### A. Claimant

10. **GG Resources** is a company incorporated under the laws of British Columbia, Canada that is engaged in developing, exploring and exploiting gold resources. GG Resources qualifies as a protected investor under NAFTA Article 1139.<sup>9</sup> Canada is a Contracting Party to the Treaty, the USMCA and the ICSID Convention:

(a) Canada signed the Treaty on December 17, 1992, and ratified it on June 23, 1993, with an effective date of January 1, 1994.<sup>10</sup>

---

<sup>7</sup> **Exhibit CL-2**, NAFTA, Article 1110.

<sup>8</sup> **Exhibit C-2**, Letter from Goldgroup Resources, Inc. (Gabriela Álvarez Ávila) to the General Directorate of Foreign Investment (*Dirección General de Inversión Extranjera*) and the General Directorate of International Trade Legal Consultancy (*Dirección General de Consultoría Jurídica de Comercio Internacional*) of Mexico’s Ministry of Economy (*Secretaría de Economía*), dated November 18, 2022 (hereinafter, the “**Notice of Intent**”); **Exhibit CL-2**, NAFTA, Article 1118.

<sup>9</sup> **Exhibit C-3**, GG Resources Inc. Annual Report, British Columbia Registry Services, dated April 30, 2022, (Anthony Balic acts as GG Resources’ President).

<sup>10</sup> North American Free Trade Agreement Implementation Act (S.C. 1993, c. 44, Assented to June 23, 1993), available in *Justice Laws Website*, Government of Canada, [3](https://laws-lois.justice.gc.ca/eng/acts/n-23.8/FullText.html#:~:text=Agreement%20means%20the%20North%20American,its%20ratification%20by%20Canada%3B%20(Accord (last consulted on February 15, 2023)).</a></p></div><div data-bbox=)



- (b) Canada signed the USMCA and its Protocol of Amendment on November 30, 2018, and December 10, 2019, respectively, and ratified them on March 13, 2020, with an effective date of July 1, 2020.<sup>11</sup>
- (c) Canada signed the ICSID Convention on December 15, 2006, and ratified it on November 1, 2013, with an effective date of December 1, 2013.<sup>12</sup>

11. The business address of GG Resources is:

Suite 1201, 1166 Alberni Street  
Vancouver, BC  
V6E 3Z3 Canada  
Email: abalic@goldgroupmining.com  
Tel: 1.604.682.1943  
Fax: 1.604.682.5596

12. GG Resources is represented in this matter by DLA Piper LLP (US), as specified in the power of attorney attached hereto (**Exhibits C-4 and C-5**).<sup>13</sup> All communications and notifications in relation to this matter must be sent to the following persons at the following address or by email as indicated below:

Gabriela Álvarez Ávila  
Kate Brown de Vejar  
Carlos Enrique Guerrero Alarcón  
DLA Piper México, S.C.  
Paseo de los Tamarindos No. 400 A, Piso 31  
Bosques de las Lomas, Mexico City, 05120  
Email: gabriela.alvarezavila@us.dlapiper.com  
kate.browndevejar@us.dlapiper.com  
carlos.guerrero@us.dlapiper.com

13. All communications and notifications in relation to this matter must also be sent to the following persons only by email as indicated below:

Kiera Gans  
Joshua Wan  
Santiago Palomo Vila

---

<sup>11</sup> Canada–United States–Mexico Agreement Implementation Act (S.C. 2020, c. 1, Assented to March 13, 2020), available in *Justice Laws Website*, Government of Canada, <https://laws-lois.justice.gc.ca/eng/acts/C-10.65/FullText.html> (last consulted on February 15, 2023).

<sup>12</sup> Database of ICSID Member States, <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last consulted on February 14, 2023).

<sup>13</sup> **Exhibit C-4**, Authorization to Institute Arbitration and Power of Attorney, dated November 16, 2022 and **Exhibit C-5**, Articles of Goldgroup Resources Inc, dated April 2010.



DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY, 10020  
United States of America  
Email: kiera.gans@us.dlapiper.com  
joshua.wan@us.dlapiper.com  
santiago.palomovila@us.dlapiper.com

14. Furthermore, pursuant to ICSID Institution Rule 2(1)(f), GG Resources has obtained all necessary internal authorizations to file this RFA, as specified in the Articles of Goldgroup Resources Inc. attached hereto (**Exhibits C-4 and C-5**).<sup>14</sup>

**B. Respondent**

15. The Respondent in these proceedings is **Mexico**, a sovereign State. Mexico is a Contracting Party to the Treaty, the USMCA and the ICSID Convention:
- (a) Mexico signed the Treaty on December 17, 1992, and ratified it on November 22, 1993, with an effective date of January 1, 1994.<sup>15</sup>
  - (b) Mexico signed the USMCA and its Protocol of Amendment on November 30, 2018, and December 10, 2019, respectively, and ratified them on June 19 and December 12, 2019, with an effective date of July 1, 2020.<sup>16</sup>
  - (c) Mexico signed the ICSID Convention on January 11, 2018, and ratified it on July 27, 2018, with an effective date of August 26, 2018.<sup>17</sup>

---

<sup>14</sup> **Exhibit C-4**, Authorization to Institute Arbitration and Power of Attorney, dated November 16, 2022 and **Exhibit C-5**, Articles of Goldgroup Resources Inc, dated April 2010.

<sup>15</sup> Decree enacting the North American Free Trade Agreement (published in the Official Gazette of the Federation on December 20, 1993), available in *Información de Tratados Comerciales Internacionales de México*, Ministry of Economy (*Secretaría de Economía*), <http://www.economia-snci.gob.mx/sicait/5.0/doctos/TLCAN.pdf> (last consulted on February 15, 2023).

<sup>16</sup> Decree enacting the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, concluded in Buenos Aires, on November 30, 2018; the Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada, concluded in Mexico City on December 10, 2019; six parallel agreements between the Government of the United Mexican States and the Government of the United States of America, concluded by exchange of letters dated November 30, 2018, in Buenos Aires, and of two parallel agreements between the Government of the United Mexican States and the Government of the United States of America, concluded in Mexico City, on December 10, 2019 (published in the Official Gazette of the Federation on June 29, 2020), available in *Diario Oficial de la Federación*, Ministry of the Interior (*Secretaría de Gobernación*), [https://dof.gob.mx/2020/SRE/T\\_MEC\\_290620.pdf](https://dof.gob.mx/2020/SRE/T_MEC_290620.pdf) (last consulted on February 15, 2023).

<sup>17</sup> Database of ICSID Member States, ICSID, <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last consulted on February 14, 2023).





16. Respondent's contact information is:

**Subsecretaría de Comercio Exterior**  
**Dirección General de Consultoría Jurídica de Comercio Internacional**  
Secretaría de Economía  
Calle Pachuca No. 189, piso 19  
Col. Condesa, Demarcación Territorial Cuauhtémoc  
Ciudad de Mexico C.P. 06140  
Mexico  
Alan Bonfiglio Rios  
Email: alan.bonfiglio@economia.gob.mx

**Dirección General de Inversión Extranjera**  
Secretaría de Economía  
Avenida de los Insurgentes Sur 1940, piso 8  
Col. Florida  
Mexico D.F. 01030  
Mexico

### **III. JURISDICTIONAL AND PROCEDURAL REQUIREMENTS**

17. Pursuant to NAFTA Chapter 11, Section B, USMCA Chapter 14, Annex 14-C, and ICSID Convention Article 36, GG Resources submits to arbitration its claims that Mexico has breached its obligations under NAFTA and international law.

18. As set forth below, all jurisdictional and other requirements have been met.

#### **A. The Parties Have Consented to Arbitrate GG Resources' Claims Pursuant to the ICSID Convention and the ICSID Arbitration Rules**

19. Pursuant to USMCA, Annex 14-C, paragraph 2(a), Mexico has consented to arbitrate this dispute pursuant to the ICSID Arbitration Rules, except to the extent modified by NAFTA Chapter 11, Section B.

20. NAFTA Article 1120 states:

#### ***Article 1120: Submission of a Claim to Arbitration***

*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;*

*(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or*

*(c) the UNCITRAL Arbitration Rules.*

*2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.<sup>18</sup>*

21. NAFTA Article 1122, paragraph 1 states: “[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.”<sup>19</sup>
22. Accordingly, Mexico has consented to the submission of GG Resources’ claims to arbitration before a tribunal established pursuant to the ICSID Convention, as modified or supplemented by NAFTA Chapter 11, Section B.
23. Mexico’s consent to arbitrate remains effective despite the termination of NAFTA on July 1, 2020. Pursuant to USMCA Chapter 14, Annex 14-C , with respect to “*legacy investments*,”<sup>20</sup> Mexico has consented “*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 [ ... ] Section A of Chapter 11 (Investment) of NAFTA.*”<sup>21</sup> This consent remains in force “*three years after the termination of NAFTA.*”<sup>22</sup> The three-year period has not yet expired, therefore Mexico’s consent to arbitrate GG Resources’ claims remains effective.

---

<sup>18</sup> **Exhibit CL-2**, NAFTA, Article 1120.

<sup>19</sup> **Exhibit CL-2**, NAFTA, Article 1122, paragraph 1.

<sup>20</sup> **Exhibit CL-1**, USMCA, Annex 14-C, paragraphs 1(a), 5 and 6(a). A “*legacy investment*” is defined 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.*” GG Resources’ investments, including the property rights and interests in relation to the Mexican enterprise Dyna Mex, were acquired between January 1, 1994, and NAFTA’s termination, and were in existence on the date of the entry into force of the USMCA on July 1, 2020; therefore, NAFTA Chapter 11 (Investment), Section B, is applicable to this dispute.

<sup>21</sup> **Exhibit CL-1**, USMCA, Chapter 14, Annex 14-C, paragraphs 1(a) and 2(a).

<sup>22</sup> **Exhibit CL-1**, USMCA, Chapter 14, Annex 14-C, paragraph 3.



24. GG Resources has consented to submit its claims to arbitration under NAFTA and the ICSID Convention as indicated in the document attached to this RFA.<sup>23</sup>
25. Under ICSID Convention Article 25, ICSID has jurisdiction over “*any legal dispute arising directly out of an investment*” between a State party to the ICSID Convention and a national of another State party to the Convention, if both Parties to the dispute have consented in writing to submit the dispute to ICSID.
26. Claimant is — *vis à vis* the Respondent — a “*national of another Contracting State*” as defined by ICSID Convention Article 25(2)(b). GG Resources is a national of Canada because it is a company organized and existing under the laws of that country.<sup>24</sup>

**B. GG Resources is a Protected Investor under NAFTA with Protected Investments in Mexico**

27. GG Resources qualifies as a protected investor that has made protected investments in Mexico.
28. GG Resources is a protected investor under NAFTA Article 1139 because it is a company incorporated under the laws of Canada.<sup>25</sup> GG Resources is a subsidiary of Goldgroup Mining Inc. (“**GG Mining**”), a publicly traded company also incorporated under the laws of Canada. Both companies are engaged in developing, exploring and exploiting gold resources, with an important mining project portfolio in Mexico. GG Resources was formed for the purpose of exploring, developing and expanding mining projects.
29. GG Resources’ investment at issue in this case arose from the execution in 2006 of a share purchase option agreement entered into between GG Resources, Dyna Resources Inc. (“**Dyna Inc.**”) and DynaResource de Mexico, S.A. de C.V. (“**Dyna Mex**” or the “**Company**”),<sup>26</sup> to purchase the shares of Dyna Mex, which is a company organized under the laws of Mexico. Pursuant to this agreement,

---

<sup>23</sup> **Exhibit C-4**, Authorization to Institute Arbitration and Power of Attorney, dated November 16, 2022.

<sup>24</sup> **Exhibit C-3**, GG Resources Inc. Annual Report, British Columbia Registry Services, dated April 30, 2022, (Anthony Balic acts as GG Resources’ President).

<sup>25</sup> **Exhibit C-3**, GG Resources Inc. Annual Report, British Columbia Registry Services, dated April 30, 2022; **Exhibit CL-2**, NAFTA, Article 1139.

<sup>26</sup> **Exhibit C-6**, Earn In/Option Agreement (by and between Goldgroup Resources Inc., DynaResource de México, S.A. de C.V. and DynaResource, Inc.), dated September 1, 2006, (hereinafter “**Option Agreement**”).



on March 2011, GG Resources acquired 50% of the shares of Dyna Mex in exchange for US\$18 million (the “**Acquisition**”).

30. GG Resources invested in Dyna Mex because Dyna Mex owns 100% of the San José de Gracia gold-mining project, located in Sinaloa, Mexico (the “**Project**”). The Project comprises 33 mining concessions covering approximately 9,920 hectares.
31. As a result of the Acquisition, GG Resources acquired, *inter alia*, the following rights:
  - (a) The right to be recognized as 50% owner of Dyna Mex and to maintain that participation in the Company;
  - (b) The right to appoint two of the five members of Dyna Mex’s board of directors, and to agree with Dyna Inc. on the fifth member to be appointed; and
  - (c) The right to appoint two of the three members of Dyna Mex’s management committee.
32. NAFTA Article 1139 provides that “*investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party.*”<sup>27</sup> The same provision defines “*investment*” to include, *inter alia*:
  - (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;*

---

<sup>27</sup> Exhibit CL-2, NAFTA, Article 1139.



*(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);*<sup>28</sup>

33. In turn, under NAFTA Article 1139, “*equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants.*”<sup>29</sup>
34. GG Resources’ investments include, *inter alia*, its shareholding in Dyna Mex and its indirect share in the Company’s property rights and interests, which qualify as investments under NAFTA Article 1139 subparagraphs (a), (b), (e) and (f).
35. Further, GG Resources is entitled to bring this claim on its own behalf under NAFTA Article 1116 (“*Claim by an Investor of a Party on Its Own Behalf*”).<sup>30</sup>

### **C. All Other Conditions to Commence Arbitration Have Been Satisfied**

36. GG Resources has the right to submit its claims to arbitration as all other conditions under NAFTA have been satisfied:
  - (a) In accordance with NAFTA Article 1119, Claimant delivered its Notice of Intent to Mexico on November 18, 2022, thus triggering the 90-day cooling-off period provided for in NAFTA Article 1119, paragraph 2.<sup>31</sup> Mexico acknowledged receipt of the Notice of Intent by return letter to Claimant dated January 4, 2023.<sup>32</sup>
  - (b) In accordance with NAFTA Article 1118, the Parties attempted to settle GG Resources’ claims through consultation and negotiation by holding one in-person consultation in Mexico City on January 13, 2023. However, to date, the Parties have not resolved GG Resources’ claims.

---

<sup>28</sup> **Exhibit CL-2**, NAFTA, Article 1139.

<sup>29</sup> **Exhibit CL-2**, NAFTA, Article 1139.

<sup>30</sup> **Exhibit CL-2**, NAFTA, Article 1116.

<sup>31</sup> **Exhibit C-2**, Notice of Intent.

<sup>32</sup> **Exhibit C-7**, Letter No. DGCJCL511.84.19.2023 from Mexico’s Ministry of Economy (*Secretaría de Economía*) to Goldgroup Resources Inc., dated January 4, 2023.



- (c) In accordance with NAFTA Article 1119, more than 90 days have elapsed since Claimant provided its Notice of Intent to Mexico on November 18, 2022.<sup>33</sup>
- (d) In accordance with NAFTA Article 1120, more than six months have elapsed since the events giving rise to a claim.<sup>34</sup>
- (e) In accordance with NAFTA Article 1121, Claimant submits its Consent to Arbitration and Waiver with this RFA.<sup>35</sup>

#### **IV. ADDITIONAL PROCEDURAL MATTERS**

##### **A. Applicable Procedural Rules**

- 37. This arbitration is brought under the ICSID Convention, the ICSID Institution Rules and the ICSID Arbitration Rules.
- 38. Pursuant to ICSID Institution Rule 1(1), ICSID Administrative and Financial Regulations Article 18 and the ICSID Schedule of Fees, effective July 1, 2022, Article I(1), Claimant paid to ICSID the US\$25,000 lodging fee. A copy of the lodging fee wire transfer has been sent to the ICSID Secretariat.

##### **B. Constitution of the Arbitral Tribunal**

- 39. Pursuant to NAFTA Article 1123, three (3) arbitrators shall be appointed to settle this dispute.
- 40. Upon registration of the RFA by ICSID's Secretary General, Claimant will communicate to the ICSID Secretariat and Mexico the appointment of its arbitrator and a proposal regarding the appointment of the President of the Tribunal.

##### **C. Place and Language of the Arbitration**

- 41. NAFTA does not specify the place or language for these proceedings. Claimant proposes that the place of arbitration be Washington, D.C., and that the language of the proceeding be English.

---

<sup>33</sup> Exhibit CL-2, NAFTA, Article 1119.

<sup>34</sup> Exhibit CL-2, NAFTA, Article 1120.

<sup>35</sup> Exhibit CL-2, NAFTA, Article 1121; Exhibit C-8, Consent & Waiver pursuant to Article 1121 of NAFTA, signed by Anthony Balic, dated February 17, 2023.



## V. FACTUAL BACKGROUND TO THE DISPUTE

42. This **Section V** discusses the factual background relating to the disputes that gave rise to the three Mexican judicial proceedings at issue in this arbitration. **Section VI** then discusses the specific circumstances relating to those three Mexican judicial proceedings that form the basis of Respondent's treaty breaches.

### A. Disputes Between Other Dyna Mex Shareholders and GG Resources After the Acquisition

43. Following the Acquisition, despite the rights GG Resources acquired (as discussed above), Mr. Koy Wilber Diepholz ("**Mr. Wilber**"), CEO/President and CFO of Dyna Mex (and 1% shareholder of Dyna Mex), who was the controlling shareholder of Dyna Inc. (which was a 49% shareholder of Dyna Mex), began challenging GG Resources' involvement in the decision-making processes of Dyna Mex. The disputes between Dyna Mex's shareholders ultimately gave rise to the judicial proceedings at issue in this arbitration.

#### 1. Dispute Regarding GG Mining's Public Disclosures

44. The first shareholder dispute involved the disclosure, in accordance with Canadian law, to the public by GG Mining—the Canadian parent company of GG Resources—of its indirect ownership in the Project. Following the disclosure, Mr. Wilber commenced two separate lawsuits, purportedly on behalf of Dyna Mex: one against GG Mining in the city of Mazatlán, and a second against GG Mining, GG Resources and the American Arbitration Association ("**AAA**") in Mexico City, which, as GG Resources will show, was not the proper venue to bring the claim. Both lawsuits are discussed in greater detail below.

45. In April 2012, Mr. Wilber and Dyna Inc. filed a lawsuit on behalf of Dyna Mex against GG Mining under file number 289/2012 ("**Juicio de Jactancia**") before the First Court of First Instance of the Civil Branch of the Judicial District of Mazatlán, Sinaloa ("**First Judge in Mazatlán**" or "**Judge 1**").

46. In the *Juicio de Jactancia*, Dyna Mex claimed that GG Mining failed to comply with one of its obligations under the Memorandum of Understanding dated July 29, 2008 (the "**MOU**"), entered into between GG Resources, Dyna Mex and Dyna Inc. The purported obligation stated that "*any*



reference to the San José Gracia Project (“SJG”) must necessarily mention the Company as the owner of 100% of the mining project concessions.”<sup>36</sup> Dyna Mex alleged that GG Mining breached that obligation “by publishing on its website that it owned the Project” and by virtue of a separate magazine article that reported GG Mining’s shareholding interest in the Project.

47. Contrary to Dyna Mex’s allegations, the MOU did not establish any such obligation. Specifically, Article 3 of the MOU, which Dyna Mex alleged was breached, described how disclosures about Dyna Mex would be made by the board. Article 3 makes no reference whatsoever to the shareholders’ obligations.
48. Nevertheless, Judge 1 rendered a judgment in the *Juicio de Jactancia*, incorrectly interpreting the scope of Article 3 of the MOU and finding that GG Resources had breached the MOU by disclosing its ownership interest in the Project. Judge 1, notably, declined to award Dyna Mex any damages. Dyna Mex appealed Judge 1’s denial of damages to the 2<sup>nd</sup> Chamber of the Supreme Tribunal of the State (“**2<sup>nd</sup> Chamber**”), but the appellate court denied the appeal on the grounds that the arguments set forth by Dyna Mex were too broad and generic to establish any right to recover damages.

## **2. Disputes Regarding the Improper Shareholder Actions**

49. On March 15, 2013, while the *Juicio de Jactancia* proceeding was ongoing, Dyna Mex’s shareholders held an ordinary general assembly in which GG Resources proposed that the powers of attorney of Mr. Wilber, CEO/President and CFO of Dyna Mex, as well as controlling shareholder of Dyna Inc., be revoked and that powers of attorney instead be granted both to Mr. Wilber and Dustin VanDoorselaere, a representative of GG Resources. The proposal was consistent with the contractual agreements between GG Resources and Dyna Inc., and the rights secured by GG Resources as a result of the Acquisition. However, the proposal was rejected by Dyna Inc., and thus was not approved by the Company’s shareholders.
50. Subsequently, at a Dyna Mex shareholders’ meeting held on May 17, 2013, of which GG Resources was not given notice, Dyna Inc. — the only attendee at the meeting — capitalized, in favor of itself, an alleged debt with Dyna Mex, through the issuance of 300 Series “B” shares. As a result, Dyna

---

<sup>36</sup> **Exhibit C-9**, Judgment issued by Judge 1 in Mazatlán in the *Juicio de Jactancia*, dated August 22, 2013.





Inc., through this unilateral action, diluted GG Resources' shareholding in Dyna Mex from 50% to 20%.

## VI. FACTUAL BASIS FOR THE CLAIMS

51. The Claimant's claims under the Treaty derive from: (i) two proceedings that GG Resources initiated in Mazatlán, Sinaloa, to protect its investment in Dyna Mex, where no decision on the merits has been rendered after almost a decade; (ii) a proceeding brought against GG Resources, GG Mining and the AAA before the Thirty Sixth Judge of the Civil Branch of the Supreme Tribunal of Mexico City ("**Judge 36**") by Dyna Mex, in which GG Resources was ordered to pay US\$48 million in damages and where, ultimately, GG Resources' share certificates evidencing its ownership in the Company were transferred by Judge 36 to Dyna Mex, without the court ever giving GG Resources notice, let alone properly summoning GG Resources, to challenge the transfer of the shares at any point in the proceedings.

### A. GG Resources' Opposition Lawsuit Challenging the Outcome of the March 15, 2013 Dyna Mex Shareholder Meeting

52. In April 2013, GG Resources commenced an opposition lawsuit against Dyna Inc. and Mr. Wilber, contesting the outcome of Dyna Mex's general shareholder meeting of March 15, 2013. The claim was filed under docket number 254/2013 ("**Opposition Lawsuit**") before the Judge 1 in Mazatlán, that same Judge who presided over the *Juicio de Jactancia* brought by Dyna Mex against GG Resources, as discussed above in **Section V**.

53. In the *Opposition Lawsuit*, GG Resources sought an order from Judge 1 approving the shareholder resolution that attempted to revoke the individual powers of attorney held by Mr. Wilber and to grant joint powers of attorney to Mr. Wilber and Dustin VanDoorselaere, a representative of GG Resources.

54. As evidence to substantiate its position as a shareholder of Dyna Mex, and as required under Mexican law,<sup>37</sup> GG Resources produced and deposited before Judge 1 the original share certificates

---

<sup>37</sup> **Exhibit C-10**, General Law of Negotiable Instruments and Credit Operations (published in the Official Gazette of the Federation on August 27, 1932, amended as of June 22, 2018), Article 17:

of Dyna Mex numbered B2, B3 and B4, which corresponded to 50% of the shareholding in Dyna Mex.<sup>38</sup> As required by law, the share certificates were to be held in Judge 1's courthouse throughout the duration of the proceeding as proof of GG Resources' standing.

55. In accordance with Mexican law, Judge 1 was responsible for safeguarding any negotiable instruments or securities submitted before him, and the Court Clerk was responsible for keeping “*the negotiable instruments and securities [...] informing the Judge thereof and leaving a certified record therefrom in the docket.*”<sup>39</sup>
56. The *Opposition Lawsuit* has been subject to excessive and inexplicable delays. On December 9, 2015, the evidentiary hearing took place and evidence was offered by GG Resources to support its claims. In that hearing, Dyna Inc. and Mr. Wilber were declared *confesos* to the positions formulated by GG Resources (*i.e.*, they were legally presumed to have accepted the positions

---

“**Article 17.-** *The holder of a negotiable instrument has the obligation to produce it in order to exercise the right that is consigned therein. When it is paid, it must be reinstated. If it is paid only partially or regarding its ancillary claims, the payment shall be mentioned in the negotiable instrument. In case of theft, loss, destruction or serious deterioration, the provisions of articles 42 to 68, 74 and 75 shall apply.*” (added emphasis)

<sup>38</sup> **Exhibit C-11.** General Commercial Entities Law (published in Section Two of the Official Gazette of the Federation on August 4, 1934, amended as of December 15, 2011), Article 201:

“**Article 201.-** *Shareholders representing thirty-three per cent of the capital stock may judicially oppose the resolutions of the General Assembly, provided that the following requirements are met:*

*I.- That the claim be filed within fifteen days following the date of the closing of the Assembly*

*II.- That the claimants have not attended the Assembly or have cast their vote against the resolution, and*

*III.- That the claim indicate the clause of the corporate contract or the legal precept infringed and the violation of their rights.*

*No legal challenge may be filed against resolutions relating to the liability of the Directors or the Examiners.”* (added emphasis)

<sup>39</sup> **Exhibit C-12.** Internal Regulation for the Courts of First Instance of the State of Sinaloa (published in the Official Gazette of the State of Sinaloa on July 15, 2019), Articles 7, 20 and 25:

“**Article 7. General Administrative Policies**

*In the Courts of First Instance, the following are general administrative policies for all judicial officials: [...]*

**III. Custody and protection of the documentation and information that, by reason of his/her position or commission, they keep under their protection or to which they have access, preventing or avoiding the use, removal, destruction, concealment or improper use thereof:** [...]

**Article 20.** *Of the Judge or Female Judge [...]* They shall ensure that the applicable regulations contained in the General Constitution of the Republic, the Political Constitution of the State, the Organic Law, the other secondary laws, this Regulation, the official writs and circulars of the Supreme Tribunal, being able to dictate the administrative measures that are deemed pertinent and that are not contrary to the regulations already specified.

*Likewise, he or she shall be responsible for the proper handling and management of the Courthouse, for the information technology and statistics that are generated. He/she shall also be responsible for safeguarding the securities that for any reason enter the Courthouse. [...]*

**Article 25. Responsibilities**

*The responsibilities of the Court Clerks are: [...]*

**V. Keep under their strict responsibility, the papers, pleadings, documents, negotiable instruments, securities and certificates of deposit, informing the Judge thereof and leaving a certified record therefrom in the docket.”** (added emphasis)



formulated by GG Resources because they did not file an answer to the complaint). Based on Dyna Inc.'s and Mr. Wilber's default, Judge 1 should have entered judgment in favor of GG Resources.

57. However, Judge 1 declined to render a judgment in favour of GG Resources, citing the frivolous technicality that the court was awaiting the submission of one remaining document, the original minutes of the Dyna Mex's shareholders' meeting dated April 23, 2012. GG Resources has requested on multiple occasions that Judge 1 render a decision on the merits based on the available evidence to no avail.
58. After almost **10 years**, Judge 1 has refused to adjudicate the merits of GG Resources' claim. The judiciary's conduct in the *Opposition Lawsuit* has thus frustrated any attempt by GG Resources to obtain justice in breach of Mexico's obligations under NAFTA.

#### **B. Annulment Proceeding**

59. In February 2014, GG Resources commenced an annulment proceeding before the Tenth District Court in the State of Sinaloa ("**Judge 10**"), under file number 8/2014 (the "***Annulment Proceeding***"). In the *Annulment Proceeding*, GG Resources sought an order nullifying the actions taken by Mr. Wilber and Dyna Inc. at the extraordinary shareholder meeting, improperly held on May 17, 2013, during which Dyna Inc. unlawfully diluted GG Resources shareholding from 50% to 20% by unilaterally capitalizing an alleged debt with Dyna Mex without giving GG Resources notice of the meeting, let alone seeking GG Resources' approval of the shareholder action.
60. Although service of process for Mr. Wilber in the United States was completed in 2015, the Mexican judge in 2016 arbitrarily decided that the summons was "illegal" because it did not comply with the Mexican Commercial Code — legislation that does not apply to service of process in the United States. GG Resources has repeatedly requested that Judge 10 proceed with the service of process to Mr. Wilber, without any result. On October 21, 2021, GG Resources filed an *amparo* lawsuit (a constitutional protection appeal) challenging Judge 10's decision invalidating the first service of process. This *amparo* lawsuit has not yet been served on Mr. Wilber and Dyna Inc., effectively nullifying this potential means of recourse.



61. It is due to the wilful neglect of its duty by the Mexican judiciary that approximately 9 years after the *Annulment Proceeding* was commenced, the courts have failed to acknowledge that service on Mr. Wilber has been made, and the proceedings have stalled as a result.
62. This egregious delay has caused irreparable damage to GG Resources, as it has precluded GG Resources from accessing justice and seeking protection of its investment in Mexico. For almost 10 years, GG Resources has been deprived of its rights as an investor in Dyna Mex, including its expected profits.

**C. The US\$48 Million Lawsuit**

63. In December 2014, Dyna Mex filed a lawsuit against GG Resources, GG Mining and the AAA, before Judge 36 under file 1120/2014 (the “**US\$48 Million Lawsuit**”). In this new proceeding before Judge 36, Dyna Mex brought claims that were nearly identical to those raised, and adjudicated, by Judge 1 in the *Juicio de Jactancia* proceeding. Dyna Mex once again made the spurious argument that GG Resources was contractually prohibited from reporting publicly that it was the owner of the Project. Notably, this lawsuit was filed in Mexico City, which was an improper venue because the alleged breaches occurred in Mazatlán, where Dyna Mex’s has its corporate address, and where its operations are located.
64. Despite the fact that Judge 1, the competent judge to hear the claim, had already denied Dyna Mex damages for the same alleged breach, and such judgment was affirmed on appeal, Judge 36 improperly admitted Dyna Mex claim. Moreover, Judge 36 ignored the *res judicata* effect of Judge 1’s judgment and rendered a contradictory judgment against GG Resources. Whereas Judge 1 had awarded zero damages in connection with GG Mining’s disclosure of its indirect ownership interest in the Project, which was affirmed on appeal, Judge 36 entered judgment in favor of Dyna Mex in the absurd amount of US\$48 million for the same alleged disclosure.
65. Relevantly, Judge 36, while presiding over the lawsuit, committed numerous procedural violations to the detriment of GG Resources’ due process rights. In fact, Judge 36 was removed from his



duties as a result of complaints against him that led the Mexican judiciary to deem him unfit to perform judicial functions.<sup>40</sup>

66. The first serious procedural violation by Judge 36 related to the unlawful service of process to GG Resources and GG Mining at an address in Mexico City, which evidently did not correspond to their corporate addresses in Canada, included in the Option Agreement, a piece of evidence available to Judge 36. At no point during the proceedings did Judge 36 make any effort to determine whether Claimant was properly served and summoned in accordance with Mexican law. This omission was all the more glaring in light of the fact that an appellate court determined that service of process was incorrectly performed with regards to GG Mining, the other respondent in that case.
67. Upon learning of the lawsuit, approximately four months after its initiation, GG Mining appeared in court to assert its rights and requested that the actions in the proceeding be declared null and void due to defects in service of process and Dyna Mex's failure to give notice of the lawsuit to GG Mining. Judge 36 issued an interim judgment declaring GG Mining's request inadmissible.
68. GG Mining appealed the interim judgment, and on September 11, 2015, the 8<sup>th</sup> Chamber of the Supreme Tribunal of Mexico City (*Octava Sala Civil del Honorable Tribunal Superior de Justicia del Distrito Federal* or "**Court of Appeals**") reversed the interim judgment issued by Judge 36. The Court of Appeals declared the prior service on GG Mining invalid and ineffective, ruled that Dyna Mex must properly serve GG Mining, and ordered Judge 36 to direct Dyna Mex to properly serve GG Mining in order to reinstate the proceeding against GG Mining.<sup>41</sup>
69. On September 19, 2015, the judgment of the Court of Appeals was transmitted to Judge 36. On September 30, 2015, Dyna Mex (evidently due to the appellate court decision) withdrew its claims against GG Mining. On October 5, 2015, Judge 36 added both the Court of Appeals judgment and Dyna Mex's withdrawal to the docket.

---

<sup>40</sup> **Exhibit C-13**, Letter from the Technical Secretary of the Judicial Discipline Commission of the Judicial Council of Mexico City (*Secretaría Técnica de la Comisión de Disciplina Judicial del Consejo de la Judicatura de la Ciudad de México*), dated August 20, 2018 (informing that former Judge 36, Julio Gabriel Iglesias Gómez, was sanctioned in 6 procedures, 2 administrative complaints and 4 *ex officio* procedures).

<sup>41</sup> **Exhibit C-14**, Interim Judgment issued by the Court of Appeals, dated September 11, 2015.



70. In direct violation of the order of the Court of Appeals (superior in hierarchy under Mexican law), Judge 36 did not order Dyna Mex to restart the proceeding by correctly serving GG Mining at its corporate address, and instead simply accepted Dyna Mex’s withdrawal of its claims against GG Mining, without giving notice to GG Mining or obtaining its consent to the withdrawal of claims; thus, violating what is expressly established by Mexican law.<sup>42</sup>
71. The consequence of the court’s acceptance of Dyna Mex’s withdrawal of its claims against GG Mining should have been the immediate dismissal of the claims against GG Resources. This outcome follows from the fact that Dyna Mex’s claim was based on GG Mining’s alleged acts, and there was therefore no possible basis to hold GG Resources liable for those acts. Nevertheless, and in a shocking and extraordinary turn of events, Judge 36 instead abruptly, and simultaneously—indeed, on the very same day as the withdrawal of Dyna Mex’s claims against GG Mining—issued a judgment ordering GG Resources to pay a whopping US\$48 million.<sup>43</sup> Notably, Judge 36 acknowledged in his judgment that the principle of *res judicata* bars the issuance of a judgment on claims that have already been adjudicated. Judge 36 therefore found that in light of the ruling by Judge 1 in the *Juicio de Jactancia* proceeding that GG Mining’s disclosure of its interest in the Project was a breach of GG Resources’ contractual obligations under the MOU, Dyna Mex’s breach of contract claim was *res judicata*. But then, despite the fact that Judge 1 had *also* rendered a judgment in the *Juicio de Jactancia* proceeding denying Dyna Mex’s damages claims, which was affirmed on appeal, Judge 36 chose not to give *res judicata* effect to Dyna Mex’s damages claims, and awarded Dyna Mex US\$48 million in damages. Moreover, the timing of this judgment was not only highly irregular, but it also directly prejudiced GG Resources’ right to properly address the impact on its own rights of the appeal court’s decision and/or Judge 36’s decision to accept Dyna Mex’s withdrawal of the claims against GG Mining.
72. What is more, Judge 36’s reasoning is wholly incoherent, and the final damage amount (US\$48 million) had no legal basis and, perhaps even more fundamentally, was completely disproportionate to any possible harm to Dyna Mex. That criticism is hardly surprising given that a sister court, the

---

<sup>42</sup> **Exhibit C-15**, Federal Code of Civil Procedures (published in Section Two of the Official Gazette of the Federation on Wednesday, February 24, 1943, amended as of June 7, 2021), Article 373:

“**Article 373.**- *The process lapses in the following cases: [...]*

*II.- By abandonment of the prosecution of the lawsuit, accepted by the defendant. The acceptance is not necessary when the withdrawal is verified before the service of process is made;”* (added emphasis)

<sup>43</sup> **Exhibit C-16**, Judgment issued by Judge 36 in the US\$48 Million Lawsuit, dated October 5, 2015.

only court of competent jurisdiction, as well as the appellate court, had reached the conclusion that no damages were due, only over a year and half prior. At its most basic, Judge 36 never explained, nor could he, any possible link between (i) the alleged wrongful act, GG Mining’s disclosure of its indirect ownership in the Project, (ii) the alleged harm to Dyna Mex owing from such act, and (iii) its order that GG Resources must pay US\$48 million as a result.

73. On October 17, 2016, Judge 36 sent Judge 1 in Mazatlán a warrant requesting that Judge 1 extract GG Resources’ share certificates from the Mazatlán judicial file (254/2013) and to deliver them in deposit to the representative of Dyna Mex or, otherwise, to send them to Judge 36.<sup>44</sup> Judge 1 in Mazatlán wilfully did not notify GG Resources of the receipt of the warrant, nor did he incorporate, at the time he received it, the warrant into the record of the *Opposition Lawsuit* (254/2013).
74. Contrary to provisions of Mexican law,<sup>45</sup> under which Judge 1 in Mazatlán had an obligation to safeguard the share certificates, Judge 1 sent the share certificates to Judge 36.<sup>46</sup> Unbeknownst to GG Resources, Judge 36 then delivered the certificates in deposit to Dyna Mex’s representative.
75. Evidencing the scandalous manner in which GG Resources’ shares were illegally expropriated, it is relevant to outline each step of the arbitrary execution and adjudication process that took place with Judge 36’s assistance and at Judge 36’s direction:
  - (a) On January 22, 2020, Dyna Mex filed a motion requesting that the ownership of GG Resources’ shares be transferred in its favour, based on an evidently deficient appraiser valuation report, which valued GG Resources’ share certificates at one Mexican peso (approximately five cents in US dollars).
  - (b) The procedural order purporting to give GG Resources the opportunity to comment on Dyna Mex’s motion was “served” by posting it on the court’s notice board; rather than

---

<sup>44</sup> **Exhibit C-17**, Letter Rogatory issued by Judge 36’s Conciliatory Court Clerk to Judge 1 in Mazatlán, dated October 17, 2016, with attachment **Exhibit C-18**, Order issued by Judge 36, dated October 13, 2016.

<sup>45</sup> See **Exhibit C-12**, Internal Regulation for the Courts of First Instance of the State of Sinaloa (published in the Official Gazette of the State of Sinaloa on July 15, 2019), Articles 7, 20 and 25, cited in footnote 39 *above*.

<sup>46</sup> **Exhibit C-19**, Order issued by Judge 1 in Mazatlán to send the Company’s share certificates to Judge 36, dated January 24, 2017.



through personal service as required by binding precedent of the Mexican Supreme Court.<sup>47</sup> GG Resources did not receive personal service, or any other notice, of the order and, consequently, did not have the opportunity to contest the valuation report or the adjudication process itself.

- (c) On February 4, 2020, Judge 36 declared that since GG Resources did not file an answer to the motion, its right to contest the one Mexican peso valuation report and the request for direct adjudication had expired.
- (d) On February 18, 2020, Judge 36 enforced the US\$48 million judgment against GG Resources' shares in favour of Dyna Mex. Judge 36's order took legal effect on February 20, 2020.

76. It was only on February 6, 2020, after GG Resources' representative requested a copy of the record of the *Opposition Lawsuit* (254/2013), that the representative became aware that GG Resources' share certificates had "disappeared" from the docket in that case. Thereafter, on February 12, 2020, GG Resources requested information from Judge 1 in Mazatlán on the whereabouts of the share certificates, all the while kept in the dark to the aforementioned events, which coincidentally were transpiring at the same time.

77. It was not until September 3, 2020—seven months after GG Resources' inquiry—that Judge 1 in Mazatlán noted that it had searched in the First and Second Secretaries and Archives of the Court and confirmed, based on that search, that the share certificates were not at the Court.<sup>48</sup> Immediately thereafter, GG Resources submitted a request to Judge 1 in Mazatlán to cancel and replace its share certificates with new ones.

78. It would then take another several months before the court responded in earnest. After its earlier communication suggesting the share certificates had simply (but incredulously) been lost, GG

---

<sup>47</sup> **Exhibit C-20**, Jurisprudence. First Chamber of the Supreme Court of Justice, published in the Judicial Weekly Bulletin of the Federation, Tenth Epoch, Book 66, Volume II, May 2019, page 1555, digital record: 2019792, <https://sjf2.scjn.gob.mx/detalle/tesis/2019792> (last consulted on February 16, 2023). The relevant portion of the decision states: "*the notification of the order of admission of the interest liquidation incident, within the execution of an ordinary or executive mercantile procedure, must be provided in personal manner to the counterpart of the party who promoted it, since it is necessary to ensure that the liquidation proposal is delivered, so that he may be in a position to express any disagreement with regards to its content.*" (added emphasis).

<sup>48</sup> **Exhibit C-21**, Order issued by the Judge 1 in Mazatlán in the Opposition Lawsuit, dated September 3, 2020.



Resources now learned the true story. On April 30, 2021, Judge 1 issued an interim judgment, informing GG Resources that “*through a new search carried out in the archives of this court, it was possible to locate the antecedent of warrant number 10/2017 through which the Court Clerk of the Thirty-sixth Civil Court of Mexico City, ordered (sic) this Court [...] to put at the disposal of the judicial depository [...] the share certificates seized in the proceeding dated October 5, 2016 [and] it was ordered to remove the share certificates from this file [...] and they were sent by writ 250/2017 [...]*”. Incredibly, the court further held “*that the interim replacement proceeding was initiated by the mistaken belief that the share certificates in question were lost, which is not the case, since they were sent to the aforementioned exhorting Court by the reasons noted in previous lines, therefore this incident is declared without subject matter.*”<sup>49</sup> The court did not explain why it had undertaken a new search and why the request from Judge 36 to send him the shares was not notified in 2017 to the parties and included in the docket. In any event, the conclusion that the shares had simply been lost was not the result of a mistaken belief, but rather the fact that the court had purposely mislead GG Resources as to the true whereabouts of the share certificates, thus depriving it of the ability to take appropriate or effective action to safeguard its rights.

79. The timing of these surreptitious acts reveals the collusion between Judge 1 and Judge 36. In particular, the failure to notify GG Resources of these events allowed the transfer of the share certificates to take place without GG Resources’ knowledge. Once the shares were transferred, Judge 36 moved swiftly with the execution proceedings, again without real notification to GG Resources. These concerted acts of Judge 1 and Judge 36 resulted in the immediate taking of GG Resources’ shareholding interest in Dyna Mex and in the Project. As a result of the actions taken by the Mexican judiciary, Dyna Inc. in its 2020 and 2021 Annual Reports, informed the public that it “[r]ecovered all the shares of Goldgroup Resources.”<sup>50</sup>

---

<sup>49</sup> **Exhibit C-22**, Interim Judgment issued by the Judge 1 in Mazatlán in the Opposition Lawsuit, dated April 30, 2021. (added emphasis).

<sup>50</sup> Dyna Inc.’s 2020 Form 10-K filing dated March 31, 2021, [https://www.sec.gov/Archives/edgar/data/1111741/000165495421003661/dynr\\_10k.htm](https://www.sec.gov/Archives/edgar/data/1111741/000165495421003661/dynr_10k.htm) (last consulted on February 16, 2023): “1. On February 20, 2020, a México City court issued its Final Judgment, effectively foreclosing on all of the remaining shares in DynaMéxico held by Goldgroup Resources Inc. and awarding the shares to DynaMéxico (the “DynaMéxico Foreclosure Judgment”).

2. The DynaMéxico Foreclosure Judgment awarded to DynaMéxico 100% of the Shares of DynaMéxico previously owned by Goldgroup Resources Inc. (a Subsidiary Company in México owned 100% by Goldgroup Mining Inc., Vancouver, BC., “GGA.TO”). Prior to the DynaMéxico Foreclosure Judgment, Goldgroup Resources Inc. owned shares of DynaMéxico constituting 20% of the total outstanding shares of DynaMéxico (the “Goldgroup Shares of DynaMéxico”). The Goldgroup Shares of DynaMéxico were held under Lien by DynaMéxico since October 2016.



80. The foregoing is simply a brief summary of the violations suffered by GG Resources throughout approximately 10 years of litigation before Mexican courts. GG Resources has resorted to multiple judicial proceedings (including ordinary appeals and constitutional *amparo* actions), to remedy its situation and to seek recourse in the realm of fair and expeditious administration of justice. Instead, GG Resources has faced serious breaches of due process of law and illegal actions by the Mexican judiciary in clear violation of the minimum standard of treatment to which the State is obliged. The conduct of the Mexican judiciary has also resulted in the expropriation of GG Resources' investment in Mexico. After receiving notice of Judge 1's April 30, 2021 decision, GG Resources filed several appeals against the actions of Judge 1, but to date, no decision correcting these serious and egregious violations of GG Resource's fundamental rights has been rendered by the relevant judicial authorities in Mexico.

## **VII. MEXICO VIOLATED ITS OBLIGATIONS UNDER NAFTA**

81. Mexico, through the acts of the judiciary, failed to comply with its obligations under NAFTA Chapter 11. As a result of these breaches, GG Resources has incurred significant losses that continue to increase.

82. Mexico's actions violate multiple provisions of NAFTA, including:

- (a) NAFTA Article 1105(1) (*Minimum Standard of Treatment*) which accords GG Resources' investments treatment in accordance with international law, including fair and equitable treatment ("**FET**"); and
- (b) NAFTA Article 1110 (*Expropriation and Compensation*) which prohibits the State from nationalizing or expropriating, directly or indirectly, the investment of GG Resources, nor adopting any measure equivalent to the expropriation or nationalization of that investment, unless it is: (i) for a public purpose; (ii) on a non-discriminatory basis; (iii) in accordance

---

3. DynaUSA owns 80% of the outstanding shares of DynaMéxico. The remaining 20% of the outstanding shares of DynaMéxico are held by DynaMéxico as treasury shares."

See also Dyna Inc.'s 2021 Form 10-K filing dated March 31, 2022, [https://www.sec.gov/ix?doc=/Archives/edgar/data/1111741/000165495422003737/dynr\\_10k.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1111741/000165495422003737/dynr_10k.htm) (last consulted on February 16, 2023).

with due process of law and Article 1105 (1); and (iv) on payment of compensation in accordance with paragraphs 2 through 6 of Article 1110.

83. As a result of the above, under Article 36(2) of the ICSID Convention and Article 2(2)(a) of the ICSID Institution Rules, there is an on-going legal dispute between the Parties arising directly out of GG Resources' investment.

**A. Mexico Breached Its Minimum Standard of Treatment Obligation**

84. NAFTA Article 1105(1) (Minimum Standard of Treatment) states:

*“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.”*<sup>51</sup>

85. The tribunal in *Tecmed v. Mexico* set out the most comprehensive and often-cited definition of the FET standard:

*“The Arbitral Tribunal considers that [the fair and equitable treatment provision] requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations [...]. The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities. The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments, and not to deprive the investor of its investment without the required compensation.”*<sup>52</sup>

86. Thus, there are five general components of the standard recognized by tribunals: (a) a stable and predictable legal framework in accordance with the investor's legitimate expectations,

---

<sup>51</sup> **Exhibit CL-2**, NAFTA, Article 1105 paragraph 1, “Minimum Standard of Treatment.”

<sup>52</sup> **Exhibit CL-4**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003, paragraph 154 (added emphasis).

(b) reasonableness and proportionality, (c) transparency and consistency, (d) lack of arbitrariness, and (e) due process. In this context, the Tribunal in *Azinian v. Mexico* found that “[a] denial of justice could be pleaded if the relevant courts refuse to entertain a suit, if they subject it to undue delay, or if they administer justice in a seriously inadequate way [...]”<sup>53</sup>

87. Mexico violated all of these precepts. Fundamentally, Respondent violated Claimant’s due process rights given that its judiciary refused to properly oversee and administer a number of lawsuits filed by Claimant seeking legal recourse against acts that violated its corporate rights, subjected numerous proceedings to excessive delays, colluded to strip GG Resources of its investment and, overall, administered justice in a seriously egregious and inadequate manner which offends a sense of judicial propriety. Mexico further violated its FET obligation by treating GG Resources in a manner which was arbitrary, wholly disproportionate, and lacking in transparency.

#### **B. Mexico Unlawfully Expropriated Claimant’s Investment**

88. NAFTA Article 1110(1) (*Expropriation and Compensation*) states:

*“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.”*<sup>54</sup>

89. NAFTA Article 1110 thus protects an investor’s investments from takings by the host State consistent with customary international law and widespread treaty practice. Tribunals have found action of the judiciary to constitute judicial expropriation. By example, in *Karkey Karadeniz v. Pakistan*, the Tribunal found:

---

<sup>53</sup> **Exhibit CL-5**, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB(AF)/97/2, Award, November 1, 1999, paragraph 102.

<sup>54</sup> **Exhibit CL-2**, NAFTA, Article 1110, paragraph 1, “Expropriation and Compensation.”

*“In view of the foregoing, the Tribunal finds that Pakistan has expropriated Karkey’s investment through the Judgment which declared the Contract to be void ab initio. This is because through its Supreme Court, whose acts Pakistan accepts are attributable to it, Pakistan deprived Karkey of the use and enjoyment of its contractual rights, including Karkey’s right to terminate the Contract and, as stated below, interfered with the free transfer of Karkey’s investment.”<sup>55</sup>*

90. Furthermore, in *Sistem v. Kyrgyzstan*, the Tribunal found that “[i]t is well established that the abrogation of contractual rights by a State, in the circumstances which obtained in this case, is tantamount to an expropriation of property by that State. The Court decision deprived the Claimant of its property rights in the hotel just as surely as if the State had expropriated it by decree. If the Claimant has been deprived of its property rights by an act of the State, it is irrelevant whether the State itself took possession of those rights or otherwise benefited from the taking.”<sup>56</sup>
91. Accordingly, Mexico has expropriated GG Resources’ shares in Dyna Mex through various acts of its judiciary; specifically, the rendering of a shocking and arbitrary US\$48 million judgment and the resulting illegal taking of GG Resources’ shares, which were subsequently transferred to Dyna Mex. Not only did Mexico illegally deprive Claimant of its investment but it did so in blatant violation of due process and without any compensation.

### **VIII. CLAIMANT’S REQUEST FOR RELIEF**

92. On the basis of the foregoing, without limitation and reserving Claimant’s right to supplement this request for relief, Claimant respectfully requests that the arbitral tribunal:
- 92.1 DECLARE that Mexico has breached its obligations under NAFTA Articles 1105 and 1110;
- 92.2 ORDER Mexico to pay to Claimant:
- (a) compensation in accordance with Mexico’s obligations under Article 1110 of the Treaty; or

---

<sup>55</sup> **Exhibit CL-6**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, August 22, 2017, paragraph 648 (added emphasis).

<sup>56</sup> **Exhibit CL-7**, *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, ICSID, Award, September 9, 2009, paragraph 118 (added emphasis).



(b) full reparation for all loss and damage caused by Mexico’s breaches of Article 1105 of the Treaty;

which amounts shall be properly quantified during the course of these proceedings, but which are preliminary estimated at approximately at least US\$100 million; plus

(c) pre-award and post-award interest.

92.3 AWARD such other relief as the arbitral tribunal considers appropriate; and

92.4 ORDER Mexico to pay all of the costs and expenses of this arbitration, including Claimant’s legal and expert fees and expenses, the fees and expenses of any experts appointed by the arbitral tribunal, the fees and expenses of the arbitral tribunal and any other costs and fees.

**IX. RESERVATION OF RIGHTS**

93. Claimant hereby reserves the right to submit such additional claims, defenses, evidence and arguments as they may deem appropriate, either to supplement or augment the claims presented herein or to respond to any allegation or claim made by Respondent in connection with this arbitration.

February 17, 2023

Respectfully submitted

[signed]

.....

Gabriela Álvarez Ávila  
DLA PIPER LLP (US)

*Counsel for Claimant*



## APPENDIX 1: LIST OF FACTUAL EXHIBITS

Exhibit	Description	Date
C-1	Certificate of Change of Name from Goldgroup Holdings Corp. to Goldgroup Resources Inc., issued by the Registrar of Companies of the Province of British Columbia, Canada	April 11, 2012
C-2	Letter from Goldgroup Resources, Inc. (Gabriela Álvarez Ávila) to the General Directorate of Foreign Investment ( <i>Dirección General de Inversión Extranjera</i> ) and the General Directorate of International Trade Legal Consultancy ( <i>Dirección General de Consultoría Jurídica de Comercio Internacional</i> ) of Mexico's Ministry of Economy ( <i>Secretaría de Economía</i> )	November 18, 2022
C-3	GG Resources Inc. Annual Report, British Columbia Registry Services	April 30, 2022
C-4	Authorization to Institute Arbitration and Power of Attorney	November 16, 2022
C-5	Articles of Goldgroup Resources Inc	April 2020
C-6	Earn In/Option Agreement (by and between Goldgroup Resources Inc., DynaResource de México, S.A. de C.V. and DynaResource, Inc.)	September 1, 2006
C-7	Letter No. DGCJCI.511.84.19.2023 from Mexico's Ministry of Economy ( <i>Secretaría de Economía</i> ) to Goldgroup Resources Inc.	January 4, 2023
C-8	Consent & Waiver pursuant to Article 1121 of NAFTA, signed by Anthony Balic	February 17, 2023
C-9	Judgment issued by Judge 1 in Mazatlán in the <i>Juicio de Jactancia</i>	August 22, 2013
C-10	General Law of Negotiable Instruments and Credit Operations (published in the Official Gazette of the Federation on August 27, 1932, amended as of June 22, 2018), Article 17	June 22, 2018
C-11	General Commercial Entities Law (published in Section Two of the Official Gazette of the Federation on August 4, 1934, amended as of December 15, 2011), Article 201	December 15, 2011



Exhibit	Description	Date
C-12	Internal Regulation for the Courts of First Instance of the State of Sinaloa (published in the Official Gazette of the State of Sinaloa on July 15, 2019)	July 15 2019
C-13	Letter from the Technical Secretary of the Judicial Discipline Commission of the Judicial Council of Mexico City ( <i>Secretaria Técnica de la Comisión de Disciplina Judicial del Consejo de la Judicatura de la Ciudad de Mexico</i> )	August 20, 2018
C-14	Interim Judgment issued by the Court of Appeals	September 11, 2015
C-15	Federal Code of Civil Procedures (published in Section Two of the Official Gazette of the Federation on Wednesday, February 24, 1943, amended as of June 7, 2021), Article 373	June 7, 2021
C-16	Judgment issued by Judge 36 in the US\$48 Million Lawsuit	October 5, 2015
C-17	Letter Rogatory issued by Judge 36's Conciliatory Court Clerk to Judge 1 in Mazatlán	October 17, 2016
C-18	Order issued by Judge 36	October 13, 2016
C-19	Order issued by Judge 1 in Mazatlán to send the Company's share certificates to Judge 36	January 24, 2017
C-20	Jurisprudence. First Chamber of the Supreme Court of Justice, published in the Judicial Weekly Bulletin of the Federation, Tenth Epoch, Book 66, Volume II, May 2019, page 1555, digital record: 2019792	May 3, 2019
C-21	Order issued by the Judge 1 in Mazatlán in the Opposition Lawsuit	September 3, 2020
C-22	Interim Judgment issued by the Judge 1 in Mazatlán in the Opposition Lawsuit	April 30, 2023





## APPENDIX 2: LIST OF LEGAL AUTHORITIES

Exhibit	Description	Date
CL-1	Agreement between the United States of America, the United Mexican States, and Canada, which entered into force on July 1, 2020	July 1, 2020
CL-2	North American Free Trade Agreement, which entered into force on January 1, 1994	January 1, 1994
CL-3	<i>Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)</i> , I.C.J. Reports 1989, International Court of Justice, Judgment	July 20, 1989
CL-4	<i>Técnicas Medioambientales Tecmed S.A. v. United Mexican States</i> , ICSID Case No. ARB(AF)/00/2, Award	May 29, 2003
CL-5	<i>Robert Azinian, Kenneth Davitian, &amp; Ellen Baca v. The United Mexican States</i> , ICSID Case No. ARB(AF)/97/2, Award	November 1, 1999
CL-6	<i>Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan</i> , ICSID Case No. ARB/13/1, Award	August 22, 2017
CL-7	<i>Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic</i> , ICSID Case No. ARB(AF)/06/1, ICSID, Award	September 9, 2009