

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

ICSID Case No. ARB/23/2

In the arbitration proceeding between

**Honduras Próspera Inc., St. John's Bay Development Company LLC, and
Próspera Arbitration Center LLC**

Claimants

and

Republic of Honduras

Respondent

PROCEDURAL ORDER No. 6
Decision on Bifurcation

Members of the Tribunal

Prof. Dr. Juan Fernández-Armesto, President of the Tribunal
Prof. Raúl E. Vinuesa, Arbitrator
Mr. David W. Rivkin, Arbitrator

Secretary of the Tribunal

Mr. Marco Tulio Montañés-Rumayor

Assistant to the Tribunal

Mr. Antonio Gordillo

Date of dispatch to the Parties: 19 March 2026

WHEREAS

1. This arbitration arises between Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC [collectively, "**Claimants**"] and the Republic of Honduras [**"Honduras"** or "**Respondent**"] [jointly, the "**Parties**"].
2. By Request for Arbitration dated 19 December 2022, Claimants initiated arbitration proceedings against Honduras under the Dominican Republic – Central America – United States Free Trade Agreement [the "**Treaty**" or "**DR-CAFTA**"], and pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [the "**ICSID Convention**"].
3. On 29 January 2024 the Tribunal was constituted pursuant to Article 10.19 of DR-CAFTA.
4. On 19 February 2024 Respondent filed a proposal for disqualification and the proceeding was suspended. Further to written submissions by the Parties, the proposal for disqualification was declined by the Chair of the ICSID Administrative Council and the proceedings were resumed on 7 August 2024.
5. On 30 August 2024 Respondent filed a preliminary objection under Article 10.20.5 of DR-CAFTA [the "**Preliminary Objection**"]. On 4 September 2024 the proceeding on the merits was suspended pursuant to Article 10.20.5 of CAFTA-DR. On 26 February 2025 the Tribunal rejected Respondent's Preliminary Objection and ordered the continuation of the proceedings.
6. On 14 May 2025, after consultation with the Parties, the Tribunal issued Procedural Order No. 5 with the procedural timetable [the "**Procedural Timetable**"]. The Procedural Timetable envisaged the possibility that Respondent request a bifurcation of the procedure to first address jurisdictional objections as an issue separate from the merits. The Procedural Timetable was amended on 28 October 2025.

7. On 15 October 2025 Claimants filed their Memorial, whereby they sought that the Tribunal, *inter alia*,
 - declare that Honduras has breached certain obligations under Chapter 10, Section A of DR-CAFTA, and
 - order Honduras
 - o to take certain steps as may be necessary for the restitution of Claimants' alleged property, or
 - o to pay monetary damages to Claimants in the amount of USD 1.63 billion.
8. On 7 January 2026 Respondent submitted its Request for Bifurcation [the "**Request**"], asking the Tribunal to hear and decide certain preliminary objections on jurisdiction as a separate, preliminary phase, prior to the merits.
9. On 18 February 2026 Claimants filed their Observations on Respondent's Request [the "**Observations**"], opposing the Request in its entirety.
10. In view of the above, the Tribunal issues the following Procedural Order No. 6, with its decision on Respondent's Request.

PROCEDURAL ORDER NO. 6

11. The Tribunal will start by providing a brief background of the dispute (1.), then summarize the positions of Respondent (2.) and Claimants (3.), and finally adopt its decision (4.).

1. BACKGROUND

12. The present dispute revolves around certain measures taken by Honduras that led to the repeal and declaration of unconstitutionality of what Claimants define as the “ZEDE Legal Framework”: a set of constitutional provisions and an organic law authorizing the establishment of *Zonas de Empleo y Desarrollo Económico*¹ in Honduras.
13. According to Claimants, Honduras’ measures have prevented them from developing their own ZEDE (Próspera ZEDE), in breach of Honduras’ obligations under
- the Treaty,
 - an alleged investment agreement (the Legal Stability Agreement between Honduras and Honduras Próspera [the “LSA”]), and
 - an alleged investment authorization (the Charter of Próspera ZEDE).
14. Claimants therefore seek either restitution of their property or payment of monetary damages in the amount of USD 1.63 billion.

2. HONDURAS’ POSITION

15. Respondent requests that the Tribunal bifurcate the proceedings in accordance with Article 41(2) of the ICSID Convention and Rules 42 and 44 of the 2022 ICSID Arbitration Rules [the “ICSID Rules”] to address, first, the followings six

¹ Employment and Economic Development Zones.

preliminary objections [the “**Objections**”]:

- Preliminary objection 1: the Tribunal lacks jurisdiction over the dispute as Honduras has invoked its essential security exception as per Article 21.2(b) of DR-CAFTA [“**Objection 1**”]².
- Preliminary objection 2: the Tribunal lacks jurisdiction over Claimants as they have not made a protected investment in accordance with Honduran law and DR-CAFTA [“**Objection 2**”]³.
- Preliminary objection 3: the Tribunal lacks jurisdiction to hear Claimants’ claim regarding the alleged violation of Most-Favored-Nation [“**MFN**”] treatment [“**Objection 3**”]⁴.
- Preliminary objection 4: the Tribunal lacks jurisdiction to rule on claims for breach of the LSA [“**Objection 4**”]⁵.
- Preliminary objection 5: the Tribunal lacks jurisdiction over Honduras Próspera Inc., as it does not have an investment authorization under DR-CAFTA [“**Objection 5**”]⁶.
- Preliminary objection 6: the Tribunal lacks jurisdiction to award restitution as a remedy [“**Objection 6**”]⁷.

16. According to Respondent, each of these Objections satisfies the requirements established by the ICSID Rules for ordering the bifurcation of the proceedings, for the following reasons:

² Request, Section II.A.

³ Request, Section II.B.

⁴ Request, Section II.C.

⁵ Request, Section II.D.

⁶ Request, Section II.E.

⁷ Request, Section II.F.

17. *First*, the Objections, if upheld, will significantly reduce the time and cost of the proceedings, as they will dispose of the entirety or, at least, a substantial part of the claims. Namely,
- if Objections 1 or 2 are upheld, the dispute before this Tribunal will be resolved in its entirety;
 - if Objection 6 is upheld, Claimants' principal claim for relief will be dismissed; and
 - if Objections 3, 4 or 5 are upheld, the scope of the remaining proceedings will be substantially reduced⁸.
18. *Second*, Respondent argues that its Objections can be resolved independently of the merits, as they concern factual and legal issues that fall outside the scope of the merits of the dispute. Accordingly, bifurcation would spare the Parties and the Tribunal the cost and complexity of full merits proceedings⁹.
19. *Finally*, Respondent argues that the ICSID Rules
- do not require the Tribunal to determine that the Objections are *prima facie* serious and substantial in order to bifurcate the proceedings,
 - but, in any event, all the Objections are serious and substantial, and far from frivolous¹⁰.

3. CLAIMANTS' POSITION

20. Claimants argue that Respondent has failed to prove that the Objections, individually or collectively, warrant bifurcation. Indeed, none of the three factors set out in ICSID Rule 44(2) in favour of bifurcation is satisfied with respect to any

⁸ Request, paras. 31 and 155-162.

⁹ Request, paras. 163-169.

¹⁰ Request, paras. 170-171.

of the Objections, because¹¹:

- bifurcation would not materially reduce the time and cost of the arbitration, as the Objections are not *prima facie* serious and substantial;
- bifurcation would not dispose of all, or even a substantial part, of the claims to be decided in these proceedings; and
- each of the Objections is inextricably intertwined with the merits of the case, making bifurcation impractical.

21. In addition, Claimants submit that

- this arbitration has already been ongoing for over three years due to Respondent's strategy to delay the proceedings by filing applications (such as the Preliminary Objection) that have consistently been rejected; in fact, the mere filing of the Request has already resulted in at least four additional months before Respondent's Counter-Memorial is due¹²;
- a bifurcated preliminary phase would unduly prolong the proceedings and increase their cost without any corresponding benefit¹³; and
- the Tribunal should apply a higher standard when assessing the Request, as Respondent has reserved the right to keep raising additional objections at a later stage¹⁴.

4. TRIBUNAL'S ANALYSIS

22. The Tribunal will first confirm the relevant criteria to bifurcate the proceedings, on which the Parties largely agree (**A.**). Then, the Tribunal will apply such criteria and conclude that the Objections do not warrant bifurcation (**B.**).

¹¹ Observations, pp. 3-4.

¹² Observations, paras. 4-10.

¹³ Observations, paras. 4-10.

¹⁴ Observations, para. 91.

A. Standard for bifurcation

23. One of the major improvements introduced by the 2022 version of the ICSID Rules is that they now provide extensive guidance to arbitral tribunals and parties on bifurcation. Particularly relevant to this decision, ICSID Rule 44(2) identifies certain circumstances that tribunals must consider when determining whether to bifurcate the proceedings in order to address preliminary objections first. These circumstances are the following:

“(a) bifurcation would materially reduce the time and cost of the proceeding;
(b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
(c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical”¹⁵.

24. Both Parties agree on the standard set out in ICSID Rules 42(4) and 44(2), which reflects the long-standing practice of ICSID tribunals. The only disagreement concerning this standard relates to two criteria that may affect its implementation¹⁶; however, in light of the Tribunal’s conclusions below, this disagreement is not material to the Tribunal’s decision.

B. Application of the relevant criteria

25. The Tribunal finds that the Objections – considered both individually and collectively – do not merit bifurcation.

¹⁵ The quoted text is from ICSID Rule 44(2), which addresses requests for bifurcation submitted together with preliminary objections. ICSID Rule 42(4), which addresses general requests for bifurcation, has a very similar wording: “In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether: (a) bifurcation would materially reduce the time and cost of the proceeding; (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical”.

¹⁶ Claimants argue that, when assessing whether bifurcation would materially reduce the time and cost of the proceedings, the Tribunal must consider if each Objection is *prima facie* serious and substantial. Respondent denies that such a requirement exists but asserts that its Objections are in any event *prima facie* serious and substantial. Moreover, Claimants oppose Respondent’s request to assess the Objections in the aggregate. According to Claimants, each Objection must independently satisfy the criteria of ICSID Rule 44(2).

a. Objection 1

26. In Objection 1, Respondent invokes its essential security interest under Article 21(2)(b) of DR-CAFTA, arguing that this principle deprives the Tribunal of jurisdiction over the entirety of the claims.
27. Without any prejudgment, the Tribunal tends to agree, *prima facie* and subject to hearing the Parties more fully on this issue in due course, with Claimants' contention that this is not a matter of jurisdiction, but rather of merits. It is therefore doubtful whether this Objection qualifies as a "preliminary objection" within the meaning given in ICSID Rule 43¹⁷, and, accordingly, whether it may be bifurcated at this stage pursuant to ICSID Rule 44, as invoked by Respondent.
28. More importantly, the Tribunal notes that, as pointed out by Claimants:
- Objection 1 might not dispose of Claimants' claims under the LSA; in fact, Respondent makes no reference to the LSA claims in its preliminary description of this Objection; and,
 - in any event, the question of whether Honduras' essential security interests are affected will likely require an in-depth analysis of the merits of the case.
29. Accordingly, Objection 1 does not warrant bifurcation.

b. Objection 2

30. In Objection 2, Respondent argues that Próspera ZEDE was not established in accordance with the ZEDE Legal Framework and that the investors do not have an investment in accordance with Honduran law.
31. Respondent submits that this Objection involves only a legal analysis of whether Próspera ZEDE was established in accordance with the applicable legal framework.

¹⁷ ICSID Rule 43, on "Preliminary Objections", provides that "A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal ('preliminary objection')".

32. The Tribunal is not persuaded that such analysis can be isolated from other questions going to the very merits of the dispute, such as the requirements for the establishment of a ZEDE and the relevance of Honduras' conduct at the material time. As Respondent itself concedes, "the analysis of the Respondent's objections may, in certain cases, require the review of some facts"¹⁸; this appears to be one such case, and the facts that may be relevant to the assessment of this Objection do not appear to differ significantly from those that will also be relevant to the merits of the case.
33. Since this Objection seems to be intertwined with the merits of the case, bifurcation would be impractical.

c. Objections 3 to 6

34. Respondent acknowledges that Objections 3 to 6 would not dispose of all of Claimants' claims. Therefore, even if the Tribunal were to uphold these Objections in a bifurcated phase, the remainder of Claimants' claims would still need to be addressed in a merits phase. There would therefore be no meaningful efficiency gain in bifurcating the proceedings.

d. An additional argument applicable to all Objections

35. A further argument of efficiency and justice also weighs against bifurcation. As noted above, this case has been ongoing for three years. Respondent already submitted a Preliminary Objection under Article 10.20.5 of DR-CAFTA, which the Tribunal rejected. Respondent now reserves its right "to raise additional jurisdictional objections in the future"¹⁹, as it is indeed entitled to do.
36. This background, together with Respondent's reservation of rights, does not support Respondent's contention that bifurcating would favour efficiency. In fact, if bifurcation were granted, the Parties and the Tribunal could face an unduly lengthy proceeding involving an unreasonable number of phases, namely:

¹⁸ Request, para. 166.

¹⁹ Request, para. 173.

- Procedure on the Preliminary Objection under Article 10.20.5 of DR-CAFTA
 - Tribunal's decision on the Preliminary Objection (dismissing them)
 - Procedure on bifurcated Objections
 - Tribunal's decision on bifurcated Objections (which would not dispose of the totality of the claims)
 - Procedure on the merits and, potentially, on new jurisdictional objections submitted by Respondent
 - Decision on the merits and on any new jurisdictional objection.
37. A proceeding of this nature would be inefficient and would undermine the deeper purpose of investment arbitration. Justice delayed is justice denied, regardless of the ultimate outcome of the proceedings.

C. Decision

38. In view of the above, the Tribunal rejects Respondent's Request for bifurcation.

* * *

39. The arbitration shall continue in accordance with Scenario 3 of the Procedural Timetable, unless the Parties agree otherwise. The Tribunal will instruct the Parties separately regarding the conditions for any modification of the Procedural Timetable.

On behalf of the Tribunal,

[Signed]

Prof. Dr. Juan Fernández-Armesto
President of the Tribunal