

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

TMA Australia Pty Ltd and others

v.

Republic of the Philippines

(ICSID Case No. ARB/24/41)

PROCEDURAL ORDER NO. 4

Decision on Bifurcation

Members of the Tribunal

Ms. Meg Kinnear, President of the Tribunal
Dr. Bernardo M. Cremades, Arbitrator
J. Christopher Thomas KC, Arbitrator

Assistant to the Tribunal

Dr. Randi Ayman

Secretary of the Tribunal

Mr. Yuichiro Omori

March 30, 2026

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I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. On August 30, 2024, TMA Australia Pty Ltd, TMA Philippines Joint Venture Investment Vehicle Pty Ltd, TMA Group of Companies Ltd, Anthony Karam, Corriene Karam, and TMA Group Philippines, Inc. (together “**TMA**” or the “**Claimants**”) ¹ submitted a Request for Arbitration (the “**Request**” or “**RfA**”) to the International Centre for Settlement of Investment Disputes (the “**Centre**” or “**ICSID**”) instituting this proceeding against the Republic of the Philippines (the “**Republic**” or “**Respondent**”).
2. The Request was made pursuant to Article 13 of the Agreement between the Government of Australia and the Government of the Republic of the Philippines on the Promotion and Protection of Investments (1995), which entered into force on December 8, 1995 (the “**Treaty**,” “**BIT**,” “**Australia-Philippines BIT**” or “**PH-AUS BIT**”).²
3. The Tribunal was constituted on December 16, 2024, and the First Session was held on March 19, 2025. At the First Session and in subsequent correspondence from the Claimants and the Respondent (the “**Parties**”),³ it became apparent that the Parties disagreed on whether to bifurcate preliminary objections.
4. The Claimants argued that the matter could best be addressed without bifurcation and advised that they would file their Memorial on Jurisdiction and Merits as the first pleading, regardless of whether bifurcation was ordered by the Tribunal.⁴ The Respondent argued that the matter should be bifurcated on numerous grounds with separate pleadings at each stage.⁵

¹ Request for Arbitration (the “**Request**” or “**RfA**”), August 30, 2024, paras 1-2.

² CL-001.

³ See the recording of the First Session at 59:00-1:32:30, 1:14; Parties’ emails of March 24, 2025; Request for Bifurcation of Respondent Republic of the Philippines dated December 5, 2025 (the “**Bifurcation Request**”); Claimants’ Observations on Request for Bifurcation dated February 27, 2026 (the “**Observations on Bifurcation**”).

⁴ See the recording of the First Session at 1:03:45-1:05:45; the Claimants’ letter dated March 24, 2025, page. 2; Claimants’ Observations on Bifurcation. Claimants’ Memorial on Jurisdiction and Merits was filed on September 3, 2025.

⁵ See the recording of the First Session at 59:00-59:45; Respondent’s email dated March 24, 2025; Respondent’s Bifurcation Request.

5. On March 28, 2025, the Tribunal issued Procedural Order No. 1 (“**PO1**”).⁶ PO1 established the schedule up to the date of the decision on bifurcation and noted that further directions on the procedural calendar would be issued following the decision on bifurcation.
6. On the same date, the Tribunal issued Procedural Order No. 2 (“**PO2**”)⁷ on confidentiality and transparency.
7. On July 14, 2025, the Claimants advised the Tribunal that they had experienced a cyberattack, which interfered with preparation of their Memorial on Jurisdiction and Merits, due July 23, 2025. The Claimants proposed a modified procedural calendar, to which the Respondent consented.⁸ On July 16, 2025, the Tribunal issued Procedural Order No. 3 (“**PO3**”) with the revised procedural calendar.
8. On September 3, 2025, TMA filed its Memorial on Jurisdiction and Merits (the “**Memorial on Jurisdiction and Merits**”) with the witness statement of Anthony Karam; an expert report of Richard Caldwell and its exhibits (BR-1 to BR-66); exhibits (C-0001 to C-0219); and legal authorities (CL-001 to CL-117).
9. On November 10, 2025, the Respondent asked for an extension of time to submit its Request for Bifurcation, to which the Claimants consented. On November 11, 2025, the Tribunal agreed to the revised schedule proposed by the Parties. As a result, the Request for Bifurcation became due on December 5, 2025, the Claimants’ Observations on the Request for Bifurcation were due on February 6, 2026, and the Tribunal’s decision on bifurcation was due on or before March 9, 2026.
10. On December 5, 2025, the Republic filed its Request for Bifurcation (the “**Bifurcation Request**”) pursuant to Rule 44 of the 2022 ICSID Arbitration Rules (“**AR 44**” or “**Rule 44**”).⁹ The Bifurcation Request was accompanied by the witness statement of

⁶ *TMA Australia Pty Ltd and others v. Republic of the Philippines*, ICSID Case No. ARB/24/41, Procedural Order No. 1, March 28, 2025.

⁷ *TMA Australia Pty Ltd and others v. Republic of the Philippines*, ICSID Case No. ARB/24/41, Procedural Order No. 2, March 28, 2025.

⁸ Parties’ emails of July 14, 2025.

⁹ Bifurcation Request, para 5.

Solomon Hermosura; an expert report of Rebecca Khan and its exhibits (RK-0001 to RK-0040); an expert report of Rowena Ruiz and its exhibits (RR-0001 to RR-0014); exhibits (R-0001 to R-0004); and legal authorities (RL-001 to RL-060).

11. On January 25, 2026, the Claimants requested an extension of time to file their Observations on the Respondent's Bifurcation Request, to which the Respondent agreed on January 26, 2026. On January 28, 2026, the Tribunal informed the Parties that the extension was granted and approved the revised calendar. As a result, the Claimants' Observations were due on February 27, 2026, and the Tribunal's Decision was due on or before March 30, 2026.
12. On February 27, 2026, the Claimants filed their Observations on the Request for Bifurcation (the "**Observations on Bifurcation**") with legal authorities (CL-0118 to CL-0129).

II. THE PARTIES' REQUESTS FOR RELIEF

13. The Respondent requests that the Tribunal:¹⁰
 - (a) *Order the bifurcation of these proceedings;*
 - (b) *Direct that the jurisdictional and admissibility objections be addressed and determined as a preliminary phase; and*
 - (c) *Suspend all proceedings on the merits pending the Tribunal's decision on jurisdiction and admissibility.*
14. The Claimants request that the Tribunal:
 - (a) *Reject the Request and join the Respondent's Objections to the merits.*¹¹

¹⁰ Bifurcation Request, IV.

¹¹ Observations on Bifurcation, para 52.

III. THE PARTIES' POSITIONS

A. THE RESPONDENT'S POSITION ON THE LEGAL STANDARD

15. The Respondent notes that the Tribunal's power to suspend the merits to address preliminary objections in a bifurcated phase derives from Article 41(2) of the ICSID Convention, as well as Rules 42(1) and (3), 43(1) and 44(2) of the 2022 ICSID Arbitration Rules.¹²
16. The Respondent also notes that tribunals governed by the 2022 ICSID Arbitration Rules "must apply the requirements as framed in Rule 44(2)"¹³ and asserts that bifurcation is warranted in the present case based on those criteria.¹⁴
17. The Respondent submits that its objections relate to jurisdiction and admissibility that should be addressed separately from the merits, as they are legal in nature and do not involve factual matters intrinsically linked to the merits.¹⁵ Accordingly, it argues that the objections in the Bifurcation Request are distinct from the merits and may each be addressed as a preliminary matter.¹⁶
18. The Respondent further submits that if it succeeds on its objections, bifurcation will have materially reduced the time and cost of the proceeding and enhanced procedural efficiency, as it could potentially dispose of the dispute entirely or substantially narrow its scope.¹⁷

¹² Bifurcation Request, paras 9-14.

¹³ Bifurcation Request, para 13, referring to the decisions on bifurcation in *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, para 59 (RL-003) and *Fotowatio Renewable Ventures S.L.U. FRV Solar Holdings III, S.L.U. and FRV Solar Holdings VI, S.L.U. v. United Mexican States*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, para 74 (RL-004).

¹⁴ Bifurcation Request, paras 5, 12-14.

¹⁵ Bifurcation Request, paras 131-135, citing *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, Respondent's Request for Bifurcation, March 1, 2024, paras 108-111 (RL-057).

¹⁶ *Ibid.*

¹⁷ Bifurcation Request, paras 4, 58, 102, 136-141.

B. THE RESPONDENT'S OBJECTIONS

19. The Respondent advances the following preliminary objections on jurisdiction and admissibility.

First Objection: The Republic did not give its written consent to the submission of the dispute to ICSID

20. The Respondent submits that the Tribunal lacks jurisdiction because the Republic did not consent to investor-state arbitration under Article 13 of the BIT.¹⁸
21. The relevant portions of Article 13 of the PH-AUS BIT read as follows:

2. If the dispute in question cannot be resolved through consultations and negotiations, either party to the dispute may:

(a) In accordance with the law of the Party which admitted the investment, initiate proceedings before that Party's competent judicial or administrative bodies;

(b) If both Parties are at that time party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the Convention"), refer the dispute to the International Centre for Settlement of Investment Disputes ("the Centre") for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention; 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the Convention"), refer the dispute to the International Centre for Settlement of Investment Disputes ("the Centre") for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention;

(c) If both Parties are not at that time party to the Convention, refer the dispute to an Arbitral Tribunal constituted in accordance with this Article, or by agreement, to any other arbitral authority.

(3). Where a dispute is referred to the Centre pursuant to paragraph 2(b) of this Article:

(a) Where that action is taken by an investor of one Party, the other Party shall consent in writing to the submission of the dispute to the Centre within forty-five days of receiving such a request from the investor; [...]

¹⁸ Bifurcation Request, paras 17-20.

22. In the Respondent's view, Article 13(3)(a) does not constitute a standing offer to arbitrate; rather, it requires the investor to request a "separate, explicit act of written consent" by the host State¹⁹ prior to submission of the dispute to ICSID arbitration.²⁰
23. The Respondent argues that this interpretation is consistent with Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the "VCLT").²¹ It also relies on an expert legal report,²² a review of similar provisions in Australian and Philippine BITs,²³ *travaux* generated in the course of the Philippines-Australia BIT negotiations,²⁴ and the tribunal's analysis in *Planet Mining Pty Ltd v. Republic of Indonesia*.²⁵

Second Objection: The Republic did not consent to arbitrate because it did not assume any contractual obligations under the Contractual Joint Venture Agreement (the "CJVA")

24. The Respondent argues that the Philippine Charity Sweepstakes Office (the "PCSO"), the government entity that concluded the CJVA with the Claimants, has its own legal personality under domestic law and enters into contracts in its own capacity. As a result, contractual obligations of the PCSO are not contractual obligations of the Respondent State,²⁶ and cannot be attributed to the Philippines under the International Law Commission ("ILC") draft Articles on Responsibility of States for Internationally Wrongful Acts.²⁷ Any

¹⁹ Bifurcation Request, paras 24, 25-35, relying on the Vienna Convention on the Law of Treaties (the "VCLT") Articles 31-32 and citing a Facsimile Message from Richard de Ferranti of the Australian Embassy, Manila, to Atty. Josie Patino of the Legal Services Department of the Philippine Board of Investments, Comments on Philippines Proposed Draft of Investment Promotion and Protection Agreement, July 6, 1994 (R-0001), previous cases where a similar wording was in question (*Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Cases No. ARB/12/14 and 12/40, Decision on Jurisdiction, February 24, 2014, paras 146, 198 (RL-012), other similarly worded BITs, and expert report of Dr. Rebecca Khan, December 4, 2025).

²⁰ Bifurcation Request, paras 19-20, quoting Article 13(3)(a) of the BIT: "3. Where a dispute is referred to the Centre pursuant to paragraph 2(b) of this Article: (a) where that action is taken by an investor of one Party, the other Party shall consent in writing to the submission of the dispute to the Centre within forty-five days of receiving such a request from the investor." (CL-001).

²¹ Bifurcation Request, paras 21-23, 28-30.

²² Expert report of Rebecca Khan, paras 10-52.

²³ Bifurcation Request, paras 24-27.

²⁴ Facsimile Message from Richard de Ferranti of the Australian Embassy, Manila, to Atty. Josie Patino of the Legal Services Department of the Philippine Board of Investments, Comments on Philippines Proposed Draft of Investment Promotion and Protection Agreement, July 6, 1994 (R-0001).

²⁵ *Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Cases No. ARB/12/14 and 12/40 (Decision on Jurisdiction) February 24, 2014.

²⁶ Bifurcation Request, paras 37-38.

²⁷ Bifurcation Request, paras 37-40.

questions of contractual attribution would be determined under the applicable domestic law rather than international law.²⁸

25. The Respondent adds that even if the acts of the PCSO were attributable to the State, no contractual relationship would exist between the Respondent State and the Claimants for ICSID jurisdictional purposes.²⁹

Third Objection: Consent cannot extend to illegal or fraudulent investments

26. The Respondent contends that even if the Tribunal were to find that the written consent requirement under the BIT had been satisfied, such consent could not extend to investments tainted by illegality, fraud or corruption.³⁰ In this regard, the Respondent alleges that the CJVA did not comply with the Philippines' mandatory procurement laws and was procured or implemented in violation of the host State's laws. This rendered the CJVA "illegal and void ab initio."³¹ As a result, the CJVA falls outside the scope of the BIT, including its consent to arbitration.³²

Fourth Objection: The pre-condition of good faith negotiations was not complied with by the Claimants

27. The Respondent submits that the BIT requires both Parties to make genuine, good faith efforts to resolve disputes amicably before initiating an arbitration.³³ The Respondent recounts that the Claimants sent a Request for Amicable Negotiation to multiple Philippine government agencies on July 3, 2023.³⁴ A one-day negotiation session took place on

²⁸ Bifurcation Request, paras 40-43.

²⁹ Bifurcation Request, paras 43-45.

³⁰ Bifurcation Request, paras 46-50. In support of these assertions, the Respondent relies on ICSID practice and case law (*Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, August 2, 2006 (RL-019); *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award, October 4, 2006 (RL-020)) and the expert report of Dr. Rebecca Khan, December 4, 2025.

³¹ Bifurcation Request, para 49.

³² Bifurcation Request, para 50.

³³ Bifurcation Request, paras 51-54.

³⁴ Bifurcation Request, para 108.

April 19, 2024 between the Claimants and the Office of the Government Corporate Counsel (the “**OGCC**”), acting as counsel for the PCSO.³⁵

28. Following that meeting, the Claimants circulated unilaterally drafted minutes to the Office of the Solicitor General (the “**OSG**”), which did not attend the meeting. The minutes reflected the Claimants’ position and proposed a settlement involving compensation and a new agreement as a form of reparation.³⁶ The Respondent rejected this settlement offer.³⁷
29. The Respondent asserts that these actions do not satisfy the treaty requirement of good faith amicable negotiations.³⁸ As a result, the Republic’s consent cannot be deemed to have been given.³⁹ If upheld, this objection would dispose of the Claimants’ entire case, materially reduce the time and cost of proceedings, and it is distinct from the merits of the case. Thus, it fits the criteria in Rule 44(2) and is apt for bifurcation.⁴⁰

Fifth Objection: The Claimants’ purported investments are not protected investments in the PH-AUS BIT

30. The Respondent submits that the Claimants do not have protected investments under the BIT.⁴¹ The Respondent first recalls that protected investments must satisfy the “double keyhole” definition of investment.⁴²
31. The definition of investment in the BIT includes a legality requirement that the investment be consistent with Philippine law, policies and practices.⁴³
32. The Respondent argues that the CJVA failed to comply with the Philippines’ procurement law requirements and procedures, including shared contributions and risk assumed by both

³⁵ Bifurcation Request, paras 55-56.

³⁶ Bifurcation Request, para 56.

³⁷ Letter from OSG to TMA, June 21, 2024 (C-0070).

³⁸ Bifurcation Request, paras 57-58.

³⁹ Bifurcation Request, paras 57-58.

⁴⁰ Bifurcation Request, para 58.

⁴¹ Bifurcation Request, paras 15, 59-70.

⁴² Bifurcation Request, paras 59 and 69-72.

⁴³ Article 1(a) provides: “(a) “investment” means every kind of asset, owned or controlled by investors of one Party and admitted by the other Party subject to its law and investment policies applicable from time to time [...]”

parties,⁴⁴ and a Multi-Year Obligation Authority or an equivalent Board Resolution required for the execution of a multi-year project.⁴⁵ This position is supported by the expert reports of Dr. Rebecca Khan⁴⁶ and Ms. Rowena Ruiz,⁴⁷ who both review procurement requirements in the Philippines.

33. Dr. Khan also addresses the May 2, 2025, Philippines Court of Appeal decision upholding the legality of the CJVA. Dr. Khan concedes that the Court of Appeal held that the CJVA was valid. However, Dr. Khan states that in her opinion the Court of Appeal decision is incorrect, and she notes it is currently on appeal and not yet final.⁴⁸ As a result, the Respondent claims that the purported investments do not meet the legality requirement under the BIT.⁴⁹
34. The Respondent further submits that the Tribunal lacks jurisdiction *ratione materiae* because none of the *Salini* test criteria are satisfied.⁵⁰ They note that the PCSO made no contribution to the investment, and that Claimants had a simple supply contract which did not benefit the economic development of the Republic.⁵¹
35. The Respondent contends that TMA did not meet the duration requirement of the *Salini* test as any investments were made after the Respondent cancelled the CJVA. It also notes that the duration of the CJVA was justified solely by the Claimants' objective of benefitting from low local labor costs and from investment incentives provided by the Respondent.⁵²
36. The Respondent further contends that the Claimants assumed no real risk, as the PCSO had committed to procure all thermal paper supplies for a period of 50 years or to mutually dissolve the CJVA should the PCSO no longer need thermal or specialized paper.⁵³

⁴⁴ Bifurcation Request, paras 60-66 and 80.

⁴⁵ Bifurcation Request, paras 67-68.

⁴⁶ Expert report of Dr. Rebecca Khan, paras 58-114.

⁴⁷ Expert report of Ms. Rowena Ruiz.

⁴⁸ Expert report of Dr. Rebecca Khan, paras 85-87.

⁴⁹ Bifurcation Request, paras 61-64, citing Article 1(1)(a) of the BIT and paragraph 3 of its Preamble (CL-001).

⁵⁰ Bifurcation Request, para 75.

⁵¹ Bifurcation Request, paras 75-96.

⁵² Bifurcation Request, paras 82-86.

⁵³ Bifurcation Request, paras 84-85.

The Respondent also notes that the Claimants acknowledged the absence of risk on the part of the PCSO.⁵⁴

37. The Respondent acknowledges that there is jurisprudential debate as to whether the *Salini* criteria of “contribution to the economic development of the host State” is required in assessing jurisdiction under Article 25 of the ICSID Convention, but it suggests that the Claimants cannot meet this criterion in any event.⁵⁵
38. The Respondent asserts that the CJVA was a 50-year commercial contract rather than an investment, a characterization confirmed by an OGCC opinion and alluded to in Supreme Court jurisprudence.⁵⁶ The Respondent also recalls the Claimants’ acknowledgment that their “substantial investments” only began in 2012, i.e., after the cancellation of the CJVA by the Respondent.⁵⁷ As such, TMA’s investments did not contribute to the economic development of the Republic.
39. The Respondent insists that the critical date for assessing the existence of a protected investment in this case is December 4, 2009, when the CJVA contract was executed. In the Respondent’s submission, all subsequent events are irrelevant to the discussion.⁵⁸ Hence it asserts that assets arising after the contract execution date cannot be considered as protected investments.⁵⁹
40. In particular, the Respondent argues that the thermal plant was not constructed within the period required under the CJVA and that relevant construction permits and an Environmental Compliance Certificate were only granted in July 2012.⁶⁰ As these steps

⁵⁴ Bifurcation Request, para 87, referring to Position of Claimant TMA Australia during the CJVA Negotiations that the CJVA is not an investment on the part of PCSO of July 2009 (R-0002).

⁵⁵ Bifurcation Request, paras 73-75.

⁵⁶ Bifurcation Request, paras 89-91.

⁵⁷ Bifurcation Request, para 92.

⁵⁸ Bifurcation Request, paras 77-78.

⁵⁹ Bifurcation Request, paras 76-82.

⁶⁰ Bifurcation Request, para 82.

were undertaken after the cancellation of the CJVA by the Respondent, they should be construed as unilateral acts by the Claimants and not as protected investment.⁶¹

41. The Respondent also states that the Claimants' assertion that they generated significant resources through the operation of the thermal paper plant and supply to the PCSO between January and July 2010 is misleading.⁶² According to the Respondent, these activities were carried out pursuant to a Memorandum of Agreement between the PCSO and MSA, a separate corporate entity whose rights and obligations were later transferred to TMA Australia by way of a Deed of Assignment.⁶³ These obligations are therefore distinct from the obligations under the CJVA and are purely contractual in nature.⁶⁴

Sixth Objection: The Claimants have not sufficiently proven that they are protected investors in the PH-AUS BIT

42. The Respondent submits that the Claimants have not demonstrated that they qualify as Australian nationals under Article 1(1)(c) and (d) of the BIT,⁶⁵ and that reliance solely on passports or incorporation documents is insufficient, absent proof of effective nationality, control, and a genuine link to the home State.⁶⁶

⁶¹ Bifurcation Request, paras 82-83.

⁶² Bifurcation Request, paras 93-95.

⁶³ Bifurcation Request, para 94.

⁶⁴ Bifurcation Request, paras 95-97, citing *SGS Societe Generale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, August 6, 2003 (RL-034) and *Joy Mining Machinery Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, August 6, 2004 (RL-035) as ICSID decisions supporting lack of jurisdiction in preliminary objections in contractual disputes

⁶⁵ Article 1(1)(c) states: "(c) 'investor' means: (i) in respect of Australia: (A) a company; or (B) a natural person who is a citizen or permanent resident of Australia; (ii) in respect of the Republic of the Philippines: (A) a company; or (B) a natural person who is a citizen of the Philippines within the meaning of its Constitution [...]"; Article 1(1)(d) states: "(d) 'company' means: (i) in respect of Australia - any corporation, association, partnership, trust or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised: (A) under the law of Australia; or (B) under the law of a third country and is owned or controlled by an entity described in paragraph 1(d)(i)(A) of this Article or by a natural person who is a citizen or permanent resident of Australia; regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability; and (ii) in respect of the Republic of the Philippines - legal entities, including corporations, partnerships, companies, trusts, associations of companies, trading corporate entities and other organisations that are incorporated or, in any event, are legally organised and actually doing business under the laws of the Philippines and which have their place of effective management in the Philippines; [...]"

⁶⁶ Bifurcation Request, paras 100-101.

43. The Respondent argues that TMA must show a substantial link between itself and the home State because the essence of an ICSID claim is to resolve disputes between a state and a foreign investor.⁶⁷
44. It submits that resolving this objection at a preliminary stage would result in dismissal of the case or substantially narrow the dispute and enhance procedural efficiency.⁶⁸

Seventh Objection: There was abuse of process/ratio temporis on the part of the Claimants

45. The Respondent asserts that the claims are inadmissible due to abuse of process, noting that the Claimants initiated multiple proceedings for specific performance and injunctive relief before domestic courts, domestic commercial arbitration based on the CJVA, and now an investment arbitration, all arising out of the same facts and claims under the CJVA.⁶⁹
46. According to the Respondent, this conduct constitutes “forum shopping” and “procedural manipulation”, creating risks of double recovery and imposing an undue burden on the Respondent.⁷⁰ If decided on a preliminary basis, this would dispose of a substantial part of the dispute, if not all of it, and it does not rely on facts that are intertwined with the merits.⁷¹

⁶⁷ Bifurcation Request, para 99.

⁶⁸ Bifurcation Request, para 102.

⁶⁹ Bifurcation Request, paras 103-113, referring to Claimants Memorial on Jurisdiction and Merits, pp. 82-83, proceedings before the Makati City Courts (Case No. 11-310), *Philippine Charity Sweepstakes Office v TMA Group of Companies Pty Ltd. G.R.*, Nos. 212143, 225457, 236888, August 28, 2019 (RL-038). [For detail on legal proceedings, see Expert report of Dr. Rebecca Khan, paras 85-89; Witness statement of Mr. Anthony Karam, paras 174-230; Claimants Memorial on Jurisdiction and Merits, paras 147-231].

⁷⁰ Bifurcation Request, para 110.

⁷¹ Bifurcation Request, para 112.

Eighth Objection: The dispute is a contractual dispute between the Claimants and PCSO and therefore not covered by the PH-AUS BIT

47. The Respondent asserts that at its core, the dispute is contractual in nature, arising between the Claimants and the PCSO. It therefore falls outside the scope of the BIT which contains no umbrella clause.⁷²

Ninth Objection: The Claimants cannot use the PH-AUS BIT's MFN clause to import the umbrella clause of the Philippine-Switzerland BIT

48. The Respondent rejects the Claimants' reliance on the MFN clause in the PH-AUS BIT to import an umbrella clause from the Philippines–Switzerland (**PH-SW**) BIT,⁷³ arguing that MFN provisions cannot be used to create new obligations beyond those consented to by the State. It notes that a consistent line of arbitral awards supports this view and encourages the Tribunal to adopt the approach in *SGS v Pakistan*.

Tenth Objection: The absence of an umbrella clause and the existence of an exclusive jurisdiction clause in Clause 14 of the CJVA precludes the Tribunal's jurisdiction over contract claims

49. The Respondent finally submits that the Tribunal lacks jurisdiction over contractual claims due to the absence of an umbrella clause in the PH-AUS BIT and the existence of an exclusive jurisdiction clause in the CJVA, which should be respected as per the “fundamental basis test” of the *Vivendi* Annulment case.⁷⁴

C. THE CLAIMANTS' POSITION ON THE LEGAL STANDARD

50. The Claimants reject the Respondent's Objections on the basis that they are overbroad, insufficiently developed, or inconsistent with the evidence on the record.⁷⁵ They submit that many of the objections are closely intertwined with the merits of the dispute and

⁷² Bifurcation Request, paras 114-117.

⁷³ Philippines-Switzerland Bilateral Investment Treaty, Article 10(2), (CL-091).

⁷⁴ Bifurcation Request, paras 125-130, citing *Compania de Aguas del Aconquillo S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, July 3, 2002 (RL-053).

⁷⁵ Observations on Bifurcation, para 2.

therefore unsuitable for determination in a preliminary phase.⁷⁶ In their view, bifurcation of any of the Objections would be inappropriate.⁷⁷

51. The Claimants submit that the Tribunal should be guided by considerations of fairness and procedural efficiency,⁷⁸ including whether the objections are so closely linked to the merits that bifurcation would be impractical.⁷⁹
52. The Claimants contend that the proceeding should be conducted in an expeditious manner, particularly given that it has been pending for approximately 18 months without a confirmed timetable for the evidentiary hearing.⁸⁰ They characterize the Respondent's bifurcation request as a "delaying tactic",⁸¹ and argue that bifurcation would increase time and cost⁸² and would not dispose of the dispute, either in whole or in part.⁸³
53. The Claimants agree that Rule 44(2) reflects prior case law and practice concerning bifurcation.⁸⁴ They note that the factors listed in the rule are interrelated⁸⁵ and non-exhaustive, as implied by use of the term "including."⁸⁶ Accordingly, they submit that

⁷⁶ *Ibid.*

⁷⁷ Observations on Bifurcation, para 2.

⁷⁸ Observations on Bifurcation, paras 3-4, 10-12, citing *Canepa Green Energy Opportunities I, S.á.r.l and Canepa Green Energy Opportunities II, S.á.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/19/4, Procedural Order No. 3, Decision on Bifurcation, August, 28, 2020, para 68 (CL-127) and *Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*, ICSID Case No. ARB/24/37, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, August, 8, 2025, paras 89, 92 (CL-121).

⁷⁹ Observations on Bifurcation, paras 3, 10, 14, citing *The Estate of Julio Miguel Orlandini-Agreda and Compañía Minera Orlandini Ltda. v. Plurinational State of Bolivia*, PCA Case No. 2018-39, Decision on the Respondent's Application for Termination, Trifurcation, and Security for Costs, July 9, 2019, paras 133-135 (CL-128).

⁸⁰ Observations on Bifurcation, para 5, citing the 2022 ICSID Arbitration Rule 3(1).

⁸¹ Observations on Bifurcation, para 4.

⁸² Observations on Bifurcation, para 5.

⁸³ Observations on Bifurcation, para 12.

⁸⁴ Observations on Bifurcation, para 8.

⁸⁵ Observations on Bifurcation, para 9.

⁸⁶ Observations on Bifurcation, para 8, citing *Fotowatio Renewable Ventures S.L.U., FRV Solar Holdings III, S.L.U. and FRV Solar Holdings VI, S.L.U., v. United Mexican States*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, April 14, 2025, para 74 (RL-004, also filed as CL-125); *Klesch Group Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, April 8, 2025, para 8 (CL-118); *Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*, ICSID Case No. ARB/24/37, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, August 8, 2025, para 85 (CL-121); *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, para 61 (RL-003, also filed as CL-122).

the Tribunal should consider all relevant circumstances, including whether the Respondent's objections are serious or substantial, as recognized in numerous prior decisions.⁸⁷

54. The Claimants assert that none of the Respondent's objections, whether taken individually or collectively, warrant bifurcation and that the request should therefore be rejected.⁸⁸

D. THE CLAIMANTS' OBSERVATIONS ON OBJECTIONS

First Objection: The Republic did not give its written consent to the submission of the dispute to ICSID.

55. The Claimants submit that no additional written consent was required beyond that expressed in the BIT.⁸⁹ In support, they rely on the *travaux préparatoires* relating to the intended meaning of Article 13(3)(a), which, in their view, confirms that the State's consent to arbitration pursuant to Article 13(2) was sufficient.⁹⁰
56. The Claimants further argue that the legal authorities and expert opinion relied upon by the Respondent are irrelevant.⁹¹ In particular, they argue that *Planet Mining v. Indonesia* concerned a different treaty and was decided without the benefit of relevant *travaux*. They state that other ICSID tribunals considering similar provisions in Australian BITs with the benefit of relevant *travaux* have rejected arguments similar to the Respondent's Objection 1.⁹²
57. TMA also note that the alleged absence of additional written consent was not invoked by the Respondent in its August 30, 2024 letter opposing registration of the RfA, which further demonstrates that the objection lacks merit.⁹³

⁸⁷ *Ibid.*

⁸⁸ Observations on Bifurcation, para 14.

⁸⁹ Observations on Bifurcation, para 16(ii)-(iii).

⁹⁰ Observations on Bifurcation, para 16(iii), referring to Facsimile Message from Richard de Ferranti of the Australian Embassy, Manila, to Atty. Josie Patino of the Legal Services Department of the Philippine Board of Investments, Comments on Philippines Proposed Draft of Investment Promotion and Protection Agreement, July 6, 1994 (R-0001).

⁹¹ Observations on Bifurcation, paras 16(iv) and 17.

⁹² Observations on Bifurcation, para 16.

⁹³ Observations on Bifurcation, para 16(i).

58. The Claimants argue that it would be procedurally inefficient and unfair to bifurcate Objection 1 in these circumstances, especially given the failure to raise this at the case registration phase, Respondent's reliance on authority under a different treaty reached without relevant *travaux*, and reliance on the expert report of Dr. Khan which purports to be proffered by a domestic law expert rather than an international law expert.⁹⁴

Second Objection: The Republic did not consent to arbitrate because it did not assume any contractual obligations under the CJVA.

59. The Claimants contend that the Respondent mischaracterizes their case as contract-based, relying on the CJVA between the PCSO and TMA, whereas their claims arise under the BIT.⁹⁵ They submit that the dispute concerns treaty breaches independent of the CJVA. Accordingly, the Claimants argue that bifurcation based on this objection would not dispose of the dispute nor materially reduce the time or cost of the proceedings, thus rendering bifurcation inappropriate.⁹⁶
60. The Claimants also submit that the objection based on determination of attribution under international law is closely intertwined with the merits, including claims related to the application of the umbrella clause.⁹⁷ The Claimants therefore submit that these issues should not be addressed in a bifurcated proceeding.⁹⁸

Third Objection: Consent Cannot Extend to Illegal or Fraudulent Investments

61. The Claimants argue that the Respondent's allegations of fraud and illegality go directly to the merits of the dispute and require a detailed examination of the evidentiary record.⁹⁹ They contend that the joint venture was concluded following an extended process including governmental scrutiny, and that allegations of illegality and fraud arose only after a change

⁹⁴ Observations on Bifurcation, para 17.

⁹⁵ Observations on Bifurcation, para 19.

⁹⁶ *Ibid.*

⁹⁷ Observations on Bifurcation, para 20.

⁹⁸ *Ibid.*

⁹⁹ Observations on Bifurcation, paras 22-23.

of government in 2010.¹⁰⁰ The Claimants also submit that domestic courts have rejected the Respondent's allegations of fraud and illegality.¹⁰¹

62. In the Claimants' view, "Objection 3 is entirely intertwined with the merits and manifestly inappropriate for bifurcation (Rule 44(2)(c))."¹⁰²

Fourth Objection: The pre-condition of good faith negotiations was not complied with by the Claimants

63. The Claimants assert that the record demonstrates numerous efforts to reach an amicable resolution. This included a series of meetings in January 2020 resulting in a draft memorandum of agreement that ultimately was not executed. It also included negotiations over approximately one year (July 2023 – June 2024), travel to Manila, and the submission of a settlement proposal, which the Respondent rejected.¹⁰³
64. The Respondent's witness statement of Mr. Solomon Hermosura of the OGCC acknowledges that such discussions were "cordial" showing "a willingness to listen",¹⁰⁴ notwithstanding disagreements concerning the meeting minutes and the proposed terms of settlement.¹⁰⁵
65. The Claimants therefore argue that Objection 4 is inconsistent with the factual record before the Tribunal and that no efficiencies could be gained by bifurcating this objection.¹⁰⁶ Relying on *Eco Oro v Colombia*, they submit that the objection concerning good faith negotiations is neither serious nor substantial and does not justify bifurcation.¹⁰⁷

¹⁰⁰ Observations on Bifurcation, para 22.

¹⁰¹ *Ibid.*

¹⁰² Observations on Bifurcation, para 23.

¹⁰³ Claimants Memorial on Jurisdiction and Merits, paras 32-34, 224-227; Observations on Bifurcation, para 25(i).

¹⁰⁴ Observations on Bifurcation, para 25(ii), referring to witness statement of Mr. Solomon Hermosura, November 25, 2025, para 5.

¹⁰⁵ Observations on Bifurcation, para 25(ii), referring to witness statement of Mr. Solomon Hermosura, November 25, 2025, paras 15-17.

¹⁰⁶ Observations on Bifurcation, paras 25(iii)-26.

¹⁰⁷ Observations on Bifurcation, para 27, citing *Eco Oro Minerals Corporation v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, para 58 (CL-126).

Fifth Objection: The Claimants' purported investments are not protected investment in the PH-AUS BIT.

66. The Claimants submit that the objection concerning the legality requirement is substantially intertwined with the merits of the dispute.¹⁰⁸ In their Memorial on Jurisdiction and Merits, the Claimants explain how they met all requirements imposed by the government when the investment was made, and that the project was approved by the PCSO, approved twice by the OGCC, and upheld by local courts.¹⁰⁹
67. The Claimants argue that the characterization of the CJVA as a mere supply contract rather than a joint venture arose only following a change of government and reflects a shift in position rather than an illegal process.¹¹⁰ In support of their position, the Claimants rely on the Respondent's court decisions to this effect.¹¹¹
68. Regarding the application of the *Salini* criteria, the Claimants contend that the Respondent incorrectly characterizes their claims as purely contractual.¹¹² They submit that, in addition to contractual rights, the investment included the establishment of a production facility and the acquisition of related movable assets and rights, which fall within the scope of a protected investment under the ICSID Convention and the BIT.¹¹³
69. The Claimants submit that even if the *Salini* test were to be applied, the Respondent's arguments concerning its application are closely linked to the merits of the dispute and cannot properly be bifurcated.¹¹⁴
70. The Claimants also dispute the Respondent's reliance on the "critical date" of December 4, 2009, the date of execution of the CJVA.¹¹⁵ They argue that their investment was not limited to the CJVA itself and that the temporal scope of the investment extends beyond

¹⁰⁸ Observations on Bifurcation, para 30.

¹⁰⁹ Observations on Bifurcation, para 30. Claimants Memorial on Jurisdiction and Merits, paras 71-201.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Observations on Bifurcation, paras 31-32.

¹¹³ Observations on Bifurcation, paras 32-34.

¹¹⁴ Observations on Bifurcation, paras 33-34.

¹¹⁵ Observations on Bifurcation, paras 32-34.

that date.¹¹⁶ According to the Claimants, the Respondent's assertions in this respect are unfounded.¹¹⁷

Sixth Objection: The Claimants have not sufficiently proven that they are protected investors in the PH-AUS BIT

71. The Claimants, relying on *Soufraki v. United Arab Emirates*, submit that passports and certificates of incorporation are sufficient for a *prima facie* determination of nationality.¹¹⁸ They argue that the Respondent has submitted no facts or legal argument to contradict the proof of nationality submitted by the Claimants, and hence bifurcation on this ground is unwarranted.¹¹⁹
72. The Claimants further note that the Respondent does not advance any argument challenging the nationality of the sixth claimant, a locally incorporated company which is to be treated as an Australian company pursuant to Article 13(3)(c) of the BIT.¹²⁰
73. In the view of TMA, the Respondent has not even raised a credible challenge in respect of investor nationality and so fails to present an objection that might reduce the time and cost of proceedings under Rule 44(2)(a). Alternatively, TMA suggest this is not a serious or substantial objection that could justify bifurcation.¹²¹

Seventh Objection: There was abuse of process/ratio temporis on the part of the Claimants

74. The Claimants submit that the Respondent mischaracterizes their claims in this arbitration as contractual and based solely on the CJVA.¹²² According to the Claimants, their case concerns breaches of the BIT, including violations of the fair and equitable treatment (**FET**) standard and unlawful expropriation.¹²³ They contend that the dispute arises from

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Observations on Bifurcation, para 36, citing *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, July 7, 2005, para 55 (CL-129).

¹¹⁹ Observations on Bifurcation, paras 36-37.

¹²⁰ Observations on Bifurcation, paras 37-38.

¹²¹ Observations on Bifurcation, para 37.

¹²² Observations on Bifurcation, para 40.

¹²³ Observations on Bifurcation, paras 40-41.

“politically motivated” measures that destroyed their investment and from the Respondent’s repeated disregard of decisions and orders issued by its own courts.¹²⁴ Accordingly, the Claimants argue that no abuse of process arises, as the treaty claims advanced in the present arbitration differ from the causes of action pursued in prior proceedings.¹²⁵

75. The Claimants further submit that any allegation of abuse of process based on an umbrella clause claim relating to breaches of the CJVA ignores that such a claim is a treaty-based claim and not contractual. Further, claims of FET and unlawful expropriation could not be made in domestic courts or domestic arbitration and thus bifurcation would not dispose of a substantial part of the dispute.¹²⁶
76. In any event, such a claim would require a detailed examination of the proceedings before the Philippine courts.¹²⁷ According to the Claimants, such an assessment would be closely intertwined with the merits of the dispute, again rendering bifurcation inappropriate, especially in relation to the umbrella clause.¹²⁸

Eighth Objection: The dispute is a contractual dispute between the Claimants and PCSO and therefore not covered by the PH-AUS BIT

77. The Claimants contend that their claims are treaty based and concern breaches of the FET and expropriation provisions of the BIT.¹²⁹ They argue that these claims are not contractual in nature and therefore are not addressed by the Respondent’s objection.¹³⁰ Accordingly, bifurcation would neither dispose of the dispute in whole nor in substantial part.¹³¹

¹²⁴ *Ibid.*

¹²⁵ Observations on Bifurcation, para 41.

¹²⁶ Observations on Bifurcation, para 43.

¹²⁷ Observations on Bifurcation, paras 42-43.

¹²⁸ *Ibid.*

¹²⁹ Observations on Bifurcation, para 45.

¹³⁰ Observations on Bifurcation, paras 45-46.

¹³¹ Observations on Bifurcation, para 46.

78. The Claimants further submit that even if certain elements were characterized as contractual, resolving the objection would require a detailed examination of the merits.¹³²

Ninth Objection: The Claimants cannot use the PH-AUS BIT's MFN clause to import the umbrella clause of the Philippines-Switzerland BIT

79. The Claimants argue that the Respondent's objection concerning the MFN clause is directed solely at the Claimants' reliance on an umbrella clause and does not extend to the FET or expropriation claims.¹³³ As such, determination of this objection would not substantially dispose of the dispute and bifurcation would therefore be inappropriate.¹³⁴

Tenth Objection: The absence of an umbrella clause and the existence of an exclusive jurisdiction clause in Clause 14 of the CJVA precludes Tribunal's jurisdiction over contract claims

80. Finally, the Claimants reiterate that the Respondent's objections rest on a mischaracterization of their claims as contractual or exclusively grounded in the CJVA.¹³⁵ They maintain that the treaty breaches fall outside the scope of the CJVA and its exclusive jurisdiction clause.¹³⁶ Therefore, bifurcation is not warranted.¹³⁷
81. In particular, the Claimants note that an FET or unlawful expropriation analysis would have to take place even if one considered the contractual aspects of the claim, and hence bifurcation would be intertwined with the merits and would not dispose of all or a substantial portion of the claim.¹³⁸

¹³² Observations on Bifurcation, paras 46-47.

¹³³ Observations on Bifurcation, para 48.

¹³⁴ *Ibid.*

¹³⁵ Observations on Bifurcation, paras 49-50.

¹³⁶ Observations on Bifurcation, paras 49-51.

¹³⁷ Observations on Bifurcation, paras 50-51.

¹³⁸ *Ibid.*

IV. THE TRIBUNAL'S ANALYSIS

A. LEGAL STANDARD

82. This Bifurcation Request is governed by Article 41 of the ICSID Convention and Rules 42-44 of the 2022 ICSID Arbitration Rules.
83. Article 41 of the Convention allows a Party to bring an objection that a dispute is not within the jurisdiction of the Centre or the competence of the Tribunal. The Tribunal may deal with the objection separately as a preliminary question or join it to the merits of the dispute.
84. Rules 42-44 of the 2022 ICSID Arbitration Rules establish the procedure and legal standard applicable on a motion for bifurcation of preliminary objections.
85. Rule 44(2) of the 2022 ICSID Arbitration Rules reads:

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 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.¹³⁹

86. Rule 44(2) reflects consistently accepted criteria applied by ICSID tribunals under the prior 2006 Rules,¹⁴⁰ although the 2022 Rules provide more detailed guidance for tribunals addressing bifurcation requests.¹⁴¹

¹³⁹ The same test applies to requests for bifurcation under AR 42.

¹⁴⁰ *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, paras 58-59, (RL-003, also filed as CL-122).

¹⁴¹ *Fotowatio Renewable Ventures S.L.U., RV Solar Holdings III, S.L.U. and FRV Solar Holdings VI, S.L.U. v. United Mexican States*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, April 14, 2025, para 73

87. While the criteria listed in Rule 44(2)(a)-(c) are the primary considerations in such an application, the word “including” allows for consideration of other relevant factors on a case-by-case basis.¹⁴² For example, some tribunals have also considered whether an objection was serious or substantial on a motion to bifurcate.¹⁴³
88. There is no presumption for or against bifurcation of a preliminary objection, and the Tribunal has discretion in each case to decide if bifurcation is warranted.¹⁴⁴
89. The overarching goal on a bifurcation motion is to seek to assure the most efficient and cost-effective conduct of the proceeding as a whole. Thus, the Tribunal will consider whether the objections raised, either individually or as a whole, assist or hinder procedural efficiency in this case.¹⁴⁵

(RL-004, also filed as CL-125); *Mario Noriega Willars v. United Mexican States*, ICSID Case No. ARB/23/29, Procedural Order No. 3, Decision on Bifurcation, March 24, 2025, para 77 (CL-124).

¹⁴² *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, para 61 (RL-003, also filed as CL-122); *Fotowatio Renewable Ventures S.L.U., and FRV Solar Holdings VI, S.L.U. v. United Mexican States*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, April 14, 2025, para 74 (RL-004, also filed as CL-125); *Klesch Group Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, April 8, 2025, paras 7-8 (CL-118); *EMS Shipping & Trading GmbH v. Republic of Albania*, ICSID Case No. ARB/23/9, Procedural Order No. 3, Bifurcation, February 23, 2024, para 35 (RL-005); *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, October 16, 2024, para 50 (CL-119); *Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*, ICSID Case No. ARB/24/37, Procedural Order No. 3, Decision on the Respondent’s Request for Bifurcation, August 8, 2025, para 85 (CL-121); *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent’s Request for Bifurcation, January 17, 2020, para 27 (CL-123).

¹⁴³ *Eco Oro Minerals Corporation v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, paras 58-60 (CL-126); *Canepa Green Energy Opportunities I, S.á r.l. and Canepa Green Energy Opportunities II, S.á r.l. v. Kingdom of Spain*, ICSID Case No. ARB/19/4, Procedural Order No. 3, Decision on Bifurcation, August 28, 2020, paras 70, 76, 82 (CL-127).

¹⁴⁴ *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, para 64 (RL-003, also filed as CL-122); *Fotowatio Renewable Ventures S.L.U., RV Solar Holdings III, S.L.U. and FRV Solar Holdings VI, S.L.U. v. United Mexican States*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, April 14, 2025, paras 72, 75 (RL-004, also filed as CL-125); *EMS Shipping & Trading GmbH v. Republic of Albania*, ICSID Case No. ARB/23/9, Procedural Order No. 3, February 23, 2024, para 39 (RL-005); *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, March 1, 2024, para 89 (RL-0057, also filed as CL-120).

¹⁴⁵ *Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v. United Mexican States*, ICSID Case No. ARB/24/21, Revised Procedural Order No. 3, Revised Decision on Bifurcation, August 25, 2025, Revision notified on September 26, 2025, para 66 (RL-003, also filed as CL-122); *Klesch Group*

90. In addressing this motion, the Tribunal has focused exclusively on whether the Respondent's preliminary objections should be bifurcated and nothing in this Procedural Order should be construed as pre-judgment of any other issues in dispute. The Tribunal expresses no opinion as to the sufficiency of the Respondent's objections as a matter of jurisdiction or admissibility, or on the substantive arguments raised by the Parties to date, all of which will be addressed in due course.
91. The Tribunal has fully considered the Parties' arguments and evidence presented in the Bifurcation Request and the Observations on Bifurcation in response. These arguments have been reproduced in abbreviated form in this Order for the sake of procedural economy. The summaries included in this Procedural Order are therefore not considered to be exhaustive descriptions of the Parties' submissions.
92. Applying this standard, the Tribunal finds that the criteria for bifurcation are met only with respect to Objection 1, and that Objections 2 to 10 do not warrant bifurcation.
93. The Tribunal addresses each of the Respondent's objections to jurisdiction and admissibility in Section B below, and how they individually do or do not meet the relevant test. The Tribunal then addresses the question of whether the objections as a whole warrant bifurcation in Section C below. Having considered the Parties' submissions, the Tribunal issues its decision on bifurcation as Section D and sets out a timetable for the next phase of the proceeding.

Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany, ICSID Case No. ARB/23/49, Decision on Bifurcation, April 8, 2025, paras 8-9 (CL-118); *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, October 16, 2024, paras 51-53 (CL-119); *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, January 17, 2020, para 28 (CL-123); *Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*, ICSID Case No. ARB/24/37, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, August, 8, 2025, para 88 (CL-121).

B. APPLICATION OF THE CRITERIA TO THE INDIVIDUAL OBJECTIONS

First Objection: The Republic did not give its written consent to the submission of the dispute to ICSID

94. The Respondent maintains that Article 13(3)(a) of the PH-AUS BIT requires a claimant to request the Republic's consent in writing before submitting a dispute to ICSID, and that failure to do so results in an absence of jurisdiction under the BIT and dismissal of the case.¹⁴⁶ The Claimants disagree, arguing that Article 13(2) of the PH-AUS BIT alone is sufficient to confer jurisdiction and that Article 13(3)(a) does not negate the consent to ICSID jurisdiction in Article 13(2).¹⁴⁷
95. There is no debate on the facts underlying this objection, as the Parties agree that the Claimants never requested a separate written consent from the Respondent and the Respondent never provided such consent.¹⁴⁸
96. In any event, it is clear from the submissions of both Parties that Objection 1 poses a pure question of treaty interpretation and does not depend on the factual background of this case. While addressing Objection 1 may require canvassing of relevant treaties and cases, it does not require factual evidence or argument on the merits of the case. Accordingly, Objection 1 is not so closely intertwined with the merits of the case as to make bifurcation impractical.
97. It is equally clear that Objection 1 poses a discrete question that could be addressed by the Parties in a focused and economic manner. The outlines of the argument are well canvased in the submissions on bifurcation, and the Parties should be able to corral the necessary legal authorities to make their arguments on jurisdiction comprehensively. As a result, treating this matter as a preliminary question should not add substantial time to the overall proceeding.

¹⁴⁶ Bifurcation Request, paras 19-20.

¹⁴⁷ Observations on Bifurcation, paras 16-17.

¹⁴⁸ Bifurcation Request, para 31. See also, Claimants Memorial on Jurisdiction and Merits, paras 28-34.

98. In sum, bifurcating Objection 1 would meet the criterion in Rule 44(2)(a) (material reduction of time and cost) and Rule 44(2)(b) (dispose of the entire dispute) if the Respondent succeeds on its arguments. Based on the Parties' submissions, these arguments seem serious and substantial, and deserving of further consideration at a preliminary stage. In respect of Rule 44(2)(c), it is clear that bifurcation would not be impractical as Objection 1 is not intertwined with the merits to a degree that would make bifurcation impossible.
99. In these circumstances, the Tribunal finds that Objection 1 should be bifurcated and argued as a preliminary objection.

Second Objection: The Republic did not consent to arbitrate because it did not assume any contractual obligations under the CJVA

100. The Respondent argues that "properly characterized, the Claimants' case rests on a purely commercial contract with a distinct juridical entity [PCSO]" which is governed by domestic law, and with respect to which the Republic did not consent to arbitrate under the PH-AUS BIT.¹⁴⁹ The Claimants deny that they are invoking contractual jurisdiction under the BIT, and thus Objection 2 is directed at a basis of jurisdiction on which the Claimants do not rely, thus rendering bifurcation futile.¹⁵⁰ In any event, the Claimants assert that these issues are inextricably intertwined with the merits.¹⁵¹
101. It is evident from a review of the pleadings and submissions to date that the characterization of the claim is essential to determining jurisdiction in this matter. The Respondent characterizes it as one solely about a breach of contract to be decided under domestic law, while the Claimants characterize it as a breach of treaty to be decided under the PH-AUS BIT and international law.
102. In the Tribunal's view, the proper characterization of the claim will depend on a full understanding of the facts and the legal basis for each claim. This question is substantially intertwined with the merits and not susceptible to determination on a bifurcated preliminary

¹⁴⁹ Bifurcation Request, paras 36-45.

¹⁵⁰ Observations on Bifurcation, para 19.

¹⁵¹ Observations on Bifurcation, para 20.

objection. No time or cost would be saved by bifurcation of this question as it would require essentially a full presentation of the evidence and legal argument. While the Respondent's characterization could lead to dismissal of the case in full if accepted, it is not a question that can be decided without substantial evidence and argument. As a result, it is not suited to bifurcation.

Third Objection: Consent cannot extend to illegal or fraudulent investments

103. The Respondent submits that TMA failed to follow mandatory domestic procurement laws and concluded the CJVA through fraud and corruption. As a result, it argues that there was no lawful investment, and no effective consent to arbitration.¹⁵² The Claimants reject this allegation, asserting they acted appropriately throughout, and that this was a politically motivated charge that was only raised after the 2010 change in government.¹⁵³
104. Determining the veracity of these allegations would be central to deciding this objection (and much of this arbitration) and will likely occupy a substantial portion of the proceeding. The pleadings to date demonstrate that the Parties strongly disagree on the relevant facts underlying this objection and on the conclusions to be drawn from those facts.
105. Determining this objection will require substantial evidence addressing Philippines law on procurement at the relevant dates. It will also require a thorough understanding of the conduct of the Parties throughout the procurement process and in the implementation of the CJVA so as to decide the allegations based on fraud or corruption.
106. The legal issues raised in Objection 3 are also relatively complex. It is well known that the law on corruption and when it vitiates consent to a treaty claim is often debated between disputing parties and in awards. Addressing fraud or corruption in this matter and its impact on consent to pursue this treaty claim will require substantial legal argument.

¹⁵² Bifurcation Request, paras 47-50.

¹⁵³ Observations on Bifurcation, paras 22-23.

107. As a result, bifurcation of Objection 3 would not materially reduce the time or cost of the proceeding and would be impractical given the extent to which the facts underlying the allegations are intertwined with the merits of the case.
108. While determination of this objection might ultimately dispose of all or a portion of the dispute, the time and cost of doing so outweighs the benefit of bifurcation. The Tribunal therefore finds that Objection 3 does not meet the standard for bifurcation in AR 44(2).

Fourth Objection: The pre-condition of good faith negotiations was not complied with by the Claimants

109. The Parties disagree as to whether the Claimants complied with the BIT requirement to attempt to resolve the dispute through good faith negotiations prior to commencing arbitration.¹⁵⁴
110. It is undisputed that at least one settlement meeting took place between the Parties and that the Claimants advanced a settlement proposal, which the Respondent rejected.¹⁵⁵ The Respondent's own witness called these discussions cordial and noted there was a willingness to listen.
111. The Claimants allege they made other attempts to negotiate the dispute over the years, including between January and June 2020, although evidently these did not resolve the dispute.
112. Nothing on the record suggests that the Respondent sought negotiations, and its rejection of the offer in 2024 and failure to initiate further negotiation might be construed as an indication that further negotiation w

¹⁵⁴ See Bifurcation Request, paras 51-58; Observations on Bifurcation, paras 24-27; Claimants Memorial on Jurisdiction and Merits, paras 32-34, 224-227; Letter from OSG to TMA, June 21, 2024 (C-0070); Witness statement of Mr. Soloman Hermosura.

¹⁵⁵ *Ibid.*

113. In light of these facts, the Tribunal is concerned about whether this objection is substantial enough to warrant bifurcation.
114. It is also clear that Objection 4 will depend on an assessment of what constitutes “sufficient efforts” at good faith negotiations and would necessarily involve consideration of the circumstances of the exchanges between the Parties and an assessment of the *bona fides* of each Party in pursuing negotiations. This would require evidence which by its very nature will be subjective and debated by the Parties.
115. Equally important, the evidence related to settlement negotiations arose in the context of the overall business relationship of the Parties and cannot be divorced from the factual matrix of this dispute.
116. Balancing all of these considerations, the Tribunal is concerned about the likely time and cost to argue this objection on a bifurcated basis. As a result, it concludes that Objection 4 does not warrant bifurcation. Should the Respondent wish to pursue this objection, it can be heard with the merits.¹⁵⁶

Fifth Objection: The Claimants’ purported investments are not protected investments under the PH-AUS BIT

117. The Respondent asserts that the purported investments are not protected investment under: (i) the “legality” condition in Article 1(1)(a) of the BIT; and (ii) the *Salini* test for investment in accordance with Article 25 of the ICSID Convention.
118. The Parties disagree both on the content of the legal test to assess a protected investment and on the relevant facts in this case that establish the existence of an investment.
119. If the Tribunal ultimately found that all of the alleged investment(s) were not protected under the Treaty or did not meet the requirements of Article 25 of the Convention, it would dispose of all or most of this arbitration.

¹⁵⁶ Observations on Bifurcation, paras 26-27. *Eco Oro Minerals Corporation v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, para 58 (CL-126).

120. On the other hand, it is clear that for the Parties to address this as a preliminary objection, they would have to present a substantial amount of evidence and make legal argument based on a complex area of law. In short, arguing a preliminary motion on illegality and protected investments under both the BIT and the ICSID Convention would be a time-consuming and costly exercise requiring evidence that is intertwined with the merits.
121. An additional complicating concern is that the Parties take issue with the relevant date to determine if there is an investment. The Respondent argues that the only relevant date is the execution of the CJVA on December 4, 2009. If this position were accepted, it would necessarily exclude a number of alleged investments on which the Claimants rely, which are dated both before and after the CJVA execution date. The Claimants argue that this cut-off date is incorrect in law and inappropriate. This argument, it appears to the Tribunal, is tied to the merits of the dispute.
122. In the Tribunal's view, the criteria in AR 44(2)(a) and (c) are not met and this objection is not apt for bifurcation.

Sixth Objection: The Claimants have not sufficiently proven that they are protected investors in the PH-AUS BIT

123. The Respondent argues that the Tribunal lacks jurisdiction *ratione personae* because the Claimants only rely on passports and incorporation documents to establish that they are protected investors under the BIT.¹⁵⁷
124. The Tribunal notes, however, that the Respondent has not provided any specific basis to suggest that these documents are incorrect or unreliable, and instead it merely advances the argument that the Claimants' nationality should be "put to the test" without identifying concrete reasons for doing so.¹⁵⁸

¹⁵⁷ Bifurcation Request, paras 15, 98-99.

¹⁵⁸ Bifurcation Request, paras 100-101.

125. The Tribunal further notes that it is widely accepted that passports and incorporation documents are sufficient *prima facie* evidence of nationality.¹⁵⁹
126. The Tribunal therefore finds that this objection does not, on its face and as presented at this stage, appear sufficiently substantial so as to warrant bifurcation.¹⁶⁰
127. If the Respondent has a substantive challenge to the Claimants' nationality, that issue can be addressed together with the merits on the basis of a more comprehensive evidentiary record.

Seventh Objection: There was abuse of process/ratio temporis on the part of the Claimants

128. The pleadings to date document a number of legal actions by both Parties arising in the context of the conclusion and implementation of the CJVA.
129. The Respondent concedes that the threshold for a finding of abuse of process is high but will be met in apt circumstances to prevent an abusive manipulation of the investment treaty system.¹⁶¹
130. The Claimants deny these allegations. Key to their reply is the "characterization of the claim" question. They maintain that their actions in the domestic courts and before another arbitral tribunal differ from their treaty claim and are not abusive.¹⁶²
131. It seems likely to the Tribunal that the evidence as to the court and tribunal proceedings taken by the Claimants will inform their FET and unlawful expropriation allegations, and that they are substantially intertwined with the merits of the dispute.¹⁶³ Characterizing the claim in this case as contract-based or treaty-based and considering the conduct of the Claimants from the perspective of abuse of process will require evidence of the entire

¹⁵⁹ *Hussein Nuaman Soufraki v The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, July 7, 2004, para 63 (CL-129).

¹⁶⁰ Observations on Bifurcation, para 37. *Eco Oro Minerals Corporation v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, para 58 (CL-126).

¹⁶¹ Bifurcation Request, paras 103, 111.

¹⁶² Observations on Bifurcation, paras 40-41.

¹⁶³ Observations on Bifurcation, para 40.

sequence of events and the interrelationship between the different legal proceedings. In short, this objection is so intertwined with the merits of the case that it would be impractical to bifurcate this proceeding.

132. Again, if accepted by the Tribunal, this objection has the potential to dispose of the entire claim, and thus to materially reduce the time and cost of the arbitration. On the other hand, if this objection were to fail, the Tribunal will have to review the factual record upon which it is based in the course of the proceedings at large, which of course will increase time and cost. The criteria in AR 44(2)(a) and (b) are thus very much outcome-dependent, and the Tribunal is not in a position at this point to know or even predict what the outcome might be.
133. It is also clear to the Tribunal that characterizing the claim in this case as contract-based or treaty-based and considering the conduct of the Claimants from the perspective of abuse of process will require evidence of the entire sequence of events and consideration of the motives of the persons involved. In short, this objection is so intertwined with the merits of the case that it would be impractical to bifurcate this proceeding.

Eighth Objection: The dispute is a contractual dispute between the Claimants and PCSO and therefore not covered by the PH-AUS BIT

134. The Respondent asserts that the Claimants' ICSID claims in this proceeding are in essence contract claims based on the CJVA between PCSO and TMA. As such, they are governed exclusively by domestic contract law and are inadmissible or beyond the jurisdiction of the Tribunal.¹⁶⁴ Once again, the Claimants answer that they allege treaty breaches pursuant to the BIT, albeit in the factual context of a contractual relationship, but that they are not claiming for breach of the contract. Rather, they are asserting a denial of fair and equitable treatment and unlawful expropriation.¹⁶⁵
135. As with several other of these objections, the characterization of the case as contract or treaty-based will depend on a full understanding of both the facts and the legal argument.

¹⁶⁴ Bifurcation Request, paras 114-117.

¹⁶⁵ Observations on Bifurcation, paras 44-45.

As a result, bifurcation is unlikely to save time or cost unless the Respondent fully succeeds on this argument. If not, the Tribunal will in any event have to canvass the facts and legal arguments thoroughly.

136. Even if the Claimants do not succeed in incorporating the umbrella clause through an MFN argument, the FET and expropriation claims would remain and would require a full recitation of the facts, and so bifurcation will not reduce time or cost. In this instance, the legal analysis is so intertwined with the merits that bifurcation becomes impractical.

Ninth Objection: The Claimants cannot use the PH-AUS BIT's MFN clause to import the umbrella clause of the Philippine-Switzerland BIT

137. The Respondent argues that the Claimants cannot use the MFN clause in the PH-AUS BIT to import an umbrella clause from the Philippines-Switzerland BIT and thus elevate a breach of the CJVA into an international treaty breach.¹⁶⁶
138. This question has been addressed by numerous tribunals, and the case law is not fully consistent. Much depends first and foremost on the precise wording of the applicable treaty, relevant cases, and possibly, any available *travaux* that shed light upon the treaty's terms, or evidence of State practice.
139. Even if the Claimants were to succeed in "importing" an umbrella clause, they would still have to advance the relevant facts about the contract and its alleged breach before the Tribunal could decide liability on this basis.
140. If the "importation" of an umbrella clause through MFN were to be decided in the Respondent's favor (i.e. refused), the Tribunal would still need to hear the evidence and legal argument on breach of the FET and expropriation clauses in the PH-AUS BIT.
141. Given these considerations, it does not appear that bifurcating this objection would substantially reduce time and cost, nor would it dispose of all or a substantial portion of the arbitration.

¹⁶⁶ Bifurcation Request, paras 118-124.

142. As a result, the Tribunal does not believe that bifurcation of this question is warranted as it does not meet the criteria in AR 44(2)(a) or (b). Additionally, a decision on this question will not avoid full consideration of the relevant facts and law under the FET and expropriation heads of claim, and so it will not materially reduce time or cost nor will it materially contribute to overall efficiency in the presentation of this case.

Tenth Objection: The absence of an umbrella clause and the existence of an exclusive jurisdiction clause in Clause 14 of the CJVA precludes Tribunal's jurisdiction over contract claims

143. This objection presupposes that the Tribunal finds that no umbrella clause can be “imported” by operation of the PH-AUS BIT and that the case can be characterized solely as a breach of contract case and not a treaty violation case.
144. As the Claimants note, the FET and expropriation claims could not be raised under Clause 14 of the CJVA,¹⁶⁷ and so bifurcating this objection would not reduce time and cost significantly, nor would it dispose of all or a substantial portion of the case. As a result, the test for bifurcation is not met under this objection.

C. APPLICATION OF THE CRITERIA FOR BIFURCATION CONSIDERING THE OBJECTIONS AS A WHOLE

145. Having addressed the ten objections individually, the Tribunal must also consider whether bifurcation of Objection 1 would serve the overall interests of an efficient and cost-effective resolution of the dispute.
146. As noted above, Objection 1 meets all the criteria for bifurcation under Rule 44: it poses a question of pure treaty interpretation that does not require proof of facts that are intertwined with the merits of the case; if the Respondent succeeds on this objection, it would dispose of the entire case; and hence would materially reduce the costs and time of the proceeding. Further, Objection 1 appears to be a serious and substantial objection, which can be addressed as a preliminary matter on an expedited basis. In these circumstances, the

¹⁶⁷ Observations on Bifurcation, paras 50-51.

Tribunal concludes that Objection 1 should be heard as a preliminary matter. Objections 2 to 10 will be joined to the merits of the case.

V. DECISION

146. For the foregoing reasons, the Tribunal orders as follows:

- (a) The Respondent's Bifurcation Request of Objection 1 is granted;
- (b) The Respondent's Bifurcation Request of Objections 2 to 10 are rejected;
- (c) The proceeding shall continue in accordance with the timetable at Annex B;
- (d) The decision on costs related to this Request is deferred to a later stage of the proceeding.

On behalf of the Tribunal,

[signed]

Ms. Meg Kinnear
President of the Tribunal
Date: March 30, 2026

**ANNEX B – SCHEDULE FOR BRIEFING AND HEARING OF THE
BIFURCATED OBJECTION**

Description	Party / Tribunal	Date
Memorial on the Bifurcated Objection	Respondent	20 April 2026 [21 days from Decision on Bifurcation]
Counter-Memorial on the Bifurcated Objection	Claimants	11 May 2026 [21 days from Memorial on the Bifurcated Objection]
Reply on the Bifurcated Objection	Respondent	18 May 2026 [7 days from Counter-Memorial on the Bifurcated Objection]
Rejoinder on the Bifurcated Objection	Claimants	25 May 2026 [7 days from Reply on the Bifurcated Objection]
Hearing on the Bifurcated Objection	Parties and Tribunal	June 11, 2026
Ruling on the Bifurcated Objection	Tribunal	In accordance with time limits in AR 44(3)(c)