

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Orla Mining Ltd.

v.

Republic of Panama

(ICSID Case No. ARB/24/27)

PROCEDURAL ORDER NO. 5
Decision on Bifurcation

Members of the Tribunal

Mr. Yves Derains, President of the Tribunal
Prof. Dr. Horacio A. Grigera Naón, Arbitrator
Mr. Ignacio Torterola, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

7 January 2026

Abbreviations

Aurum	Aurum Exploration inc., a wholly owned subsidiary of Orla Mining Ltd in Panama.
Claimant	Orla Mining Ltd.
Claimant's Memorial	Claimant's Memorial of 28 March 2025
EIA or EsIA	Estudio de Impacto Ambiental, (Environmental Impact Study)
FTA	Free Trade Agreement between Canada and The Republic of Panama signed on 14 May 2010 and entered into force on 1 April 2013.
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
ICSID Arbitration Rules	The ICSID Arbitration Rules which came into effect on 1 July 2022
LAW 407	Panamian law of 3 November 2023, Exh. CL-0002.
MCQSA	Minera Cerro Quema S.A., a wholly owned subsidiary of Orla Mining Ltd in Panama.
MICI,	Ministry of Commerce and Industry of Panama.
MFN	Most Favored Nation
Notice of Intent	Written notice of Claimant to Submit Claims to Arbitration Pursuant to the Canada-Panama FTA, dated 28 March 2024 and delivered to Respondent, both for Claimant and on behalf of MCQSA,
Preliminary Objections	The five Respondent's preliminary objections to the jurisdiction of the Tribunal
Rejoinder	Claimant's Rejoinder to Respondent's Request for Bifurcation of 29 September 2025.
Réplica	Respondent's " <i>Réplica sobre Bifurcación</i> " of 18 July 2025.
Respondent	The Republic of Panama
Response	Claimant's Response to Respondent's Request for Bifurcation of 8 July 2025.
Solicitud	Respondent's " <i>Solicitud de Bifurcación</i> " of 12 May 2025.

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I. PROCEDURAL BACKGROUND

1. On 12 May 2025, Respondent filed a request to address the objections to jurisdiction as a preliminary question pursuant to Article 41(2) of the ICSID Convention and ICSID Arbitration Rule 44 (the “*Solicitud de Bifurcación*” or “*Solicitud*”) which requested that the Tribunal:
 - 1) order a stay of the proceedings on the merits until the Tribunal decides whether to bifurcate the proceedings;
 - 2) order the bifurcation of the proceedings to address Panama's Preliminary Objections (hereinafter the “Preliminary Objections”) in a separate stage before hearing the issues on the merits of the dispute;
 - 3) Order the bifurcation of the proceedings to address the issues relating to the State’s international liability in a separate phase before hearing the issues relating to the quantum of the dispute.
2. On 14 May 2025, the Tribunal invited Claimant to comment, by 24 May 2025, on Respondent’s proposal to deal with the *Solicitud*.
3. On 23 May 2025, Claimant opposed the *Solicitud* alleging it was inadmissible because the Parties had already agreed that the proceeding would not be bifurcated, as confirmed by the Procedural Calendar annexed to Procedural Order No. 1, and stating that, in any event, the Bifurcation timetable proposed by Respondent was unsuitable and would create significant delay. In the event the Tribunal were minded to admit the *Solicitud*, Claimant proposed an alternative procedural calendar.
4. On 26 May 2025, the Tribunal invited Respondent to reply to Claimant’s submission of 23 May 2025 by 28 May 2025, and invited Claimant to comment on Respondent’s reply by 3 June 2025, noting that it would decide on the issue after receiving those two last submissions.

5. On 28 May 2025, Respondent filed its reply to Claimant’s objection, noting that there was no agreement between the Parties regarding the Bifurcation of the proceeding and, as such, the Tribunal should apply the default rules set out in Arbitration Rules 44 and 42. Respondent further noted that the procedural calendar proposed by Claimant did not allow the State to properly present its case and exercise its right of defense.
6. On 3 June 2025, Claimant filed its comments on Respondent’s reply, reiterating its position that the *Solicitud* was inadmissible.
7. On 9 June 2025, the Tribunal informed the Parties that the issue of admissibility deserved special attention and invited Respondent to comment on the part of Claimant’s last submission addressing this issue by 16 June 2025, noting that any comment on any other issue would be disregarded.
8. Further to the Tribunal’s instructions, Respondent filed its comments on the issue of admissibility on 16 June 2025.
9. On 24 June 2025, the Tribunal issued its Procedural Order No. 3, admitting the *Solicitud*, suspending the merits phase of the proceeding until the Tribunal issues its Decision on Bifurcation, and reserving its decision on costs for a later stage of the proceeding. Procedural Order No. 3” adopted the following calendar to deal with it:

- Response to the “ <i>Solicitud</i> ”:	8 July 2025
- Reply to the “ <i>Solicitud</i> ”:	18 July 2025
- Rejoinder to the “ <i>Solicitud</i> ”:	28 July 2025
- Virtual half day hearing:	18 August 2025
- Tribunal’s decision:	17 September 2025
10. On 26 June 2025, Prof. Dr. Horacio A. Grigera Naón informed the Parties that he is a national of the United States of America and the Argentine Republic.
11. On 3 July 2025, Mr. Yves Derains conveyed a disclosure to the Parties.
12. Claimant filed its Response to the *Solicitud* (hereinafter the “Response”) on 8 July 2025.

13. Respondent filed its “*Réplica sobre Bifurcación*” (hereinafter the “*Réplica*”) on 18 July 2025.
14. On 24 July 2025, Claimant filed a proposal for disqualification of arbitrator Yves Derains pursuant to ICSID Arbitration Rule 22(1). The proceeding was suspended in accordance with ICSID Arbitration Rule 22(2).
15. On 14 August 2025, Respondent filed observations on the proposal for disqualification.
16. On 18 August 2025, Mr. Yves Derains filed a statement regarding the proposal for disqualification.
17. On 25 August 2025, Claimant filed further observations on the proposal for disqualification.
18. On 24 September 2025, the proposal for disqualification of arbitrator Yves Derains was declined by the co-arbitrators. The proceeding continued pursuant to ICSID Arbitration Rule 22(2).
19. On 25 September 2025, the Tribunal informed the Parties that, having resumed the proceeding, Claimant should file its Rejoinder on 29 September 2025.
20. On 29 September 2025, Claimant filed the Rejoinder on the Solicitud (hereinafter the “*Rejoinder*”).
21. On 2 October 2025, a draft Procedural Order on the organization of the virtual hearing on bifurcation was sent by the Secretariat for the Parties’ consideration and, on 10 October 2025, this hearing was fixed on 9 December 2025.
22. Further to a video conference held with the parties on 28 October 2025, the Tribunal issued on 7 November 2025 Procedural Order N° 4 which organized the hearing on

bifurcation and defined the various rules to be followed, particularly with respect to transparency and confidentiality, as well as data privacy.

23. A Hearing on Bifurcation was held online on 9 December 2025 (the “Hearing”). The following persons were present at the Hearing:

Tribunal:

Mr. Yves Derains	President
Prof. Dr. Horacio A. Grigera Naón	Arbitrator
Mr. Ignacio Torterola	Arbitrator

ICSID Secretariat:

Mr. Francisco Abriani	Secretary of the Tribunal
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For Claimant:

Mr. Michael Stepek	Winston & Strawn
Mr. Matthew Bate	Winston & Strawn
Mr. Imad Khan	Winston & Strawn
Ms. Charlotte Monroe	Winston & Strawn
Mr. Christopher Hull	Winston & Strawn
Mr. Brendan DePoe	Orla Mining Ltd.

For Respondent:

Ms. Margie-Lys Jaime	Republic of Panama
Mr. Guillermo Rojas Córdoba	Republic of Panama
Prof. Eduardo Silva Romero	Wordstone Dispute Resolution AARPI
Ms. Catalina Echeverri Gallego	Wordstone Dispute Resolution AARPI
Ms. Ruxandra Irina Esanu	Wordstone Dispute Resolution AARPI
Ms. Carolina Montemayor	Wordstone Dispute Resolution AARPI

Court Reporters:

Trevor McGowan

Lisa Gulland

Leandro Iezzi

D-R Esteno

Virginia Masce

D-R Esteno

Interpreters:

Silvia Colla

Monique Fernandez

Luis Eduardo Arango

II. THE ARBITRAL TRIBUNAL'S ANALYSIS

A. Preliminary matters

24. At the outset, the Tribunal emphasizes that this Decision is made on the basis of the Tribunal's understanding of the record as it presently stands. Nothing contained herein shall pre-empt any later or different finding of fact or conclusion of law.
25. The Tribunal also notes that the purpose of this Decision is, on the one hand, to decide whether to bifurcate the present proceedings between the five Preliminary Objections advanced by the Respondent, as well as determining, on the other hand, with regard to the merit of the case, whether liability and quantum should be dealt with in two different phases.
26. In particular, the Tribunal wants to stress that at this stage, it is neither to decide on the merits of the Preliminary Objections themselves nor to express any view as to the merits of the case.

B. Discussion

27. The Tribunal will deal first with the five Respondents Preliminary Objections (1) and then with Respondent's request that liability and quantum be addressed in two different procedural phases (2). It will also address the Parties' request for the cost relating to this Decision (3).
28. Whenever the Tribunal provides an overview of the Parties' respective positions, it is a summary and not an exhaustive description of the arguments presented in these proceedings. The Tribunal has duly considered the Parties' written and oral pleadings as well as the evidence proffered by the Parties at length. The fact that a particular submission is not expressly referenced below should not be taken as any indication that the Tribunal has not considered it.

1. Respondents' Preliminary Objections

29. Respondent has filed 5 Preliminary objections that it requests to be dealt with in a first procedural phase:
- A Preliminary Objection based on the denial of benefits;
 - A Preliminary Objection to Claimant's claims relating to Aurum;
 - A Preliminary Objection to MFN claims based on Annex II of the Canada-Panama FTA;
 - A Preliminary Objection based on time limitation;
 - A Preliminary Objection based on the alleged contractual nature of some of Claimant's claims.
30. Before determining whether the proceedings should be bifurcated to deal with these Preliminary Objections or some of them before dealing with the merits of the case ((b), (c), (d), (e) (f) and (g), the Tribunal will consider first the applicable legal standards (a).

a. Legal standards

31. The Tribunal's power to rule on Respondent's "*Solicitud*" derives from the ICSID Convention and the ICSID Arbitration Rules.

32. Regarding the procedural stage at which the Tribunal may address any objection to its jurisdiction, Article 41(2) of the ICSID Convention states that:

"Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute."

33. Likewise, Rule 43(4) of the ICSID Arbitration Rules reads as follows:

"The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4)."

34. In deciding whether to bifurcate the proceedings with regard to preliminary objections, the Tribunal must be guided by Rule 44 (2) of the Arbitration Rules which reads as follows:

"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."

35. The Tribunal is satisfied that neither Article 41(2) of the ICSID Convention nor Rule 43(4) and Rule 44(2) of the Arbitration Rules establish a presumption either in favor of or against bifurcation. This was recently confirmed by a Tribunal which observed:

"...there is no presumption, for or against bifurcation. In deciding whether an application for bifurcation is appropriate, the Tribunal must

assess the conditions of Rule 44(2), having regard to the particular circumstances of the case.”¹

36. Both Parties agree that these provisions establish the standard to be followed by the Tribunal to rule on the request for bifurcation submitted by Respondent.² However, their respective view of their implementation is not the same.

i. Respondent’s position

37. Respondent affirms that, once the *prima facie* seriousness and substantiality of a preliminary objection has been established, tribunals must grant bifurcation if it would allow for a significant reduction in the time and cost of the proceeding.³ It contends that *prima facie* seriousness and substantiality of a preliminary objection is established when there is a possibility that the preliminary objection will be upheld, being understood that such a possibility is non-existent only if, under a *prima facie* analysis, the objection is frivolous or clearly without merit.⁴
38. Respondent explains that it is not necessary that the possible decision on the preliminary objection be able to avoid the discussion on the merits altogether (i.e., to dismiss all the claims of Claimant) and that it is sufficient that it may lead to the dismissal of a substantial (i.e., “significant”) part thereof.⁵ It adds that bifurcation is advisable if a preliminary objection is severable from the merits, i.e. if, in order to resolve it, it is sufficient for the tribunal to resolve specific questions on the basis, primarily, of the information that the parties have provided to it up to the time of the request for bifurcation.⁶

¹ Exh. RL-0013, *Doups Holdings LLC v. Mexico*, ICSID Case No. ARB/22/24, Procedural Order No. 3, dated October 16, 2024, ¶ 50. Free translation of the original Spanish: “*El Tribunal considera que no existe ninguna presunción, a favor o en contra, de una bifurcación. Para decidir la procedencia de una solicitud de bifurcación el Tribunal debe evaluar las condiciones de la Regla 44(2), en atención a las circunstancias particulares del caso.*”; see also, RL-86-ENG, *Stratius Investments Limited v. Hungary*, ICSID Case No. ARB/24/6, Procedural Order No. 3, dated February 12, 2025.

² Solicitud, ¶ 23; Response, ¶ 15.

³ Solicitud, ¶ 26. Réplica, ¶ 23.

⁴ Réplica, ¶ 22.

⁵ Solicitud, ¶ 28; Réplica, ¶ 33.

⁶ Solicitud, ¶ 31. Réplica, ¶ 36.

39. Respondent underscores that the list of circumstances in Rule 44(2) is not exhaustive, as shown by the use of “including” and suggests that another relevant circumstance is the possibility of reducing the complexity of the case through bifurcation. It posits that in the instant case, even if the Tribunal were to accept not all, but only some of the Preliminary Objections, the complexity of the facts and law relevant to resolve the merits of the dispute would be significantly reduced as the Parties would no longer have to discuss and prove a number of factual and domestic law and/or international law issues, which are extensive and complex, allowing to dispense with entire sections of briefs and expert evidence. It goes as far as considering that, even if the Preliminary Objections were rejected in a bifurcated proceeding, the Parties would have exhausted the debate on jurisdiction with respect to those Preliminary Objections, simplifying the subsequent phases of the arbitration.⁷

ii. *Claimant’s position*

40. Claimant points out that in assessing whether bifurcation would materially reduce the time and cost of the proceeding, one question that tribunals need to consider is whether the objection must have a reasonable chance of success, which requires that it be serious and substantial.⁸ It underscores that *prima facie* does not mean that the Tribunal must assume that a preliminary objection is well-founded⁹ and it refers, to the *Eco Oro v. Colombia*¹⁰ tribunal which held that “*for an objection to be held to be ‘serious and substantial’ a higher threshold must be applied than merely requiring that the objection is not frivolous or vexatious*”.¹¹
41. Claimant is of the view that it does not suffice that merely a portion of the dispute may be disposed of if the preliminary objection is decided in favor of the respondent for bifurcation to be decided. Instead, the portion of the dispute to be disposed of must be

⁷ Solicitud, ¶¶ 33-34.

⁸ Response, ¶ 17.

⁹ Rejoinder ¶ 9.

¹⁰ CL-40, *Eco Oro Minerals Corp. v. The Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated September 9, 2021.

¹¹ Response, ¶ 18.

at least “*substantial*”.¹² Relying on the *Glencore Finance v. Bolivia*¹³ tribunal, it stresses that the fact that deciding the objection may bring the proceedings to an end does not necessarily justify bifurcation.¹⁴

42. With regard to the third circumstance mentioned under Rule 44(2) of the Arbitration Rules, Claimant explains, referring to international arbitration case law, that “*a jurisdictional objection is not intertwined with the merits if it concerns a self-contained, limited set of facts different from those relating to the merits of the dispute.*”¹⁵
43. Claimant is of the view that the three “*criteria*” under Rule 44(2) of the Arbitration Rules must be fulfilled cumulatively and that each element must be established by Respondent.¹⁶ Claimant stresses that it is a high standard which is not often satisfied.¹⁷ Once they are established, a tribunal has the discretion to consider bifurcation but any decision on bifurcation is not, however, automatic once the three criteria are shown to exist. Claimant considers that the tribunal then needs to exercise its discretion as to whether bifurcation would be fair and result in substantial efficiencies.¹⁸

iii. *The Tribunal’s analysis*

44. The Parties disagree as to the extent of the Tribunal’s power to order bifurcation of the proceedings. While Claimant is of the opinion that the Tribunal has the discretion to consider bifurcation only when Respondent has established the three criteria under Rule 44(2),¹⁹ the latter affirms that, once the *prima facie* seriousness of a preliminary objection has been established, the Tribunal must grant bifurcation if it would allow for a significant reduction in the time and cost of the proceeding.²⁰

¹² Response, ¶ 24.

¹³ Exh.t RL-0014, *Glencore Finance (Bermuda) Limited v. Plurinational State of Bolivia*, PCA Case No. 2016-39, Procedural Order No. 2 (Decision on Bifurcation), dated January 31, 2018, para. 39(b).

¹⁴ Response, ¶¶ 33-34.

¹⁵ Response, ¶25, with a specific reference to Exh. CL-0134-ENG, *Red Eagle Exploration v. Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, dated August 3, 2020, para. 43.

¹⁶ Response, ¶ 28.

¹⁷ Response, ¶ 28.

¹⁸ Response, ¶ 35.

¹⁹ Response, ¶ 35.

²⁰ Solicitud, ¶ 26.

45. Beyond their divergencies, the Parties concur in finding in Rule 44(2) limitations to the Tribunal’s power to decide in favor of or against bifurcation. The Tribunal agrees that rule 44(2) sets the boundaries for the decision on bifurcation. However, in applying Rule 44(2), the Tribunal shall not apply Rule 44(2) in isolation but also assess all relevant circumstances necessary to inform its decision, emphasizing the circumstances enumerated under letters a, b, and c in Rule 44(2) of the ICSID Arbitration Rules. The Tribunal agrees with learned authors that “*the choice between a preliminary decision and a joinder to the merits is a matter of procedural economy.*”²¹ Thus, when the assessment required by Rule 44(2) is made, a tribunal has discretion to adopt the procedural solution it considers appropriate to promote procedural economy. It is what the Tribunal will do, and it will do it in the particular circumstances of this case, since, as the *Apotex* tribunal, it considers that “*It serves no purpose for this Tribunal to follow blindly what other tribunals have or have not done in other circumstances, particularly with hindsight.*”²²
46. In particular, the Tribunal is not convinced of the relevance of a discussion on the burden and standard of proof in this regard. No fact is to be proved at this stage of the proceedings, where the Tribunal has not to decide any Preliminary Objection but only to organize the arbitral proceedings. By doing so, the Tribunal is not acting in the interest of any party but in their common interest, which explains that pursuant to Rule 43 of the ICSID Arbitration Rules, the Tribunal may decide to bifurcate or not, either at the request of a party or, at any time, on its own initiative. The Parties have not to prove a case for or against bifurcation but to draw the Tribunal’s attention to the elements of fact and law which, according to them and in the light of all relevant circumstances, with particular emphasis on the three circumstances enumerated in Rule 44(2), support a solution which favors procedural economy.

²¹ Exh. RL-2, Christoph Schreuer *et. al*, *The ICSID Convention. A Commentary*, Cambridge University Press, p. 537.

²² Exh. RL-9, *Apotex Holdings Inc. and Apotex Inc v. United States of America*, ICSID Case No. ARB(AF)/12/1, Procedural Order Deciding Bifurcation and Non-Bifurcation, dated 25 January 2013, ¶ 10.

47. As a general matter, the Tribunal follows the *Lighthouse Corporation* tribunal's approach which pointed out that "*it is good practice to deal with jurisdictional objections preliminarily, to avoid imposing full-fledged proceedings on a party disputing that it is subject to arbitration, whenever bifurcating such objections would likely result in increased efficiency in terms of both time and costs*" but "*if the bifurcation was unlikely to eliminate the need for a merits stage, either because the jurisdictional objections prima facie were not substantial, or because they were only directed to a few claims, a tribunal should be disinclined to bifurcate, unless there are other circumstances that would lead to a contrary conclusion.*"²³
48. Consequently, the Tribunal should not decide to bifurcate the proceeding to deal with a Preliminary Objection unless it is satisfied that its success would dispose of all the proceedings or of a substantial portion of them. However, the Tribunal must take into consideration that, in this case, the Respondent has raised no less than 5 Preliminary Objections. One Preliminary Objection, which, when taken in isolation, would not dispose of all the proceedings or of a substantial portion of them if successful, may participate in such a result when added to one or more other successful Preliminary Objections. Moreover, in case bifurcation is decided regarding one or more Preliminary Objections, it may be good practice to deal in the first phase of the proceedings with all other Preliminary Objections which would not justify it otherwise. Thus, the Tribunal will not make its final decision on the request of bifurcation regarding the Respondent's Preliminary Objections until it has assessed each of them individually.

b. The Preliminary Objection based on the denial of benefits

i. *Respondent's position*

49. Respondent purports to deny the benefits of Chapter NINE (INVESTMENT) of the FTA to Claimant and its investments on the basis of Article 9.15(2)²⁴ which reads as follows:

²³ Exh. RL-8, *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste* (ICSID Case No. ARB/15/2), Procedural Order No. 3, dated 8 July 2016, ¶ 19.

²⁴ Solicitud, ¶ 44.

“A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose domestic law it is constituted or organized.”

50. Contrary to the Claimant, the Respondent is of the opinion that its right to deny Orla benefits is not subject to any time limitation. It relies, in particular, on the *Zaur Leshkasheli y Rosserlane v. Republic of Azerbaijan* tribunal in its award of 21 March 2025.²⁵
51. According to Respondent, information available in the public domain indicates that Orla is a company organized under the laws of Canada but owned or controlled by investors from countries that are not party to the Treaty.
52. Respondent alleges that, at the time of the filing of the Request for Arbitration (3 July 2024), according to Orla’s filings with Canadian regulatory authorities, investors from countries not party to the Canada-Panama FTA (notably the United States), owned more than 51% of Orla’s shares with voting rights.²⁶ It stresses that, contrary to Claimant’s submission, Article 9.15(2) of the FTA does not refer to a 100% ownership and it is sufficient to verify that Orla’s owners include investors from a country that is not a party to the Treaty for the denial of benefits to take effect.²⁷
53. Respondent underscores that among such US shareholders was Newmont, with 13.70% of the shares, one of the four significant shareholders according to Respondent itself.²⁸ Respondent also points out that Newmont had a privileged position with respect to the control of Orla compared to the other shareholders of the company by virtue of an Investor Rights Agreement entered into between Goldcorp Inc. Newmont’s predecessor - and Orla.²⁹ Relying on Prof. Schreuer,³⁰ Panama’s case is that, in order to ascertain

²⁵ Réplica, ¶ 50, See, Exh.RL-71, *Zaur Leshkasheli y Rosserlane Consultants Limited v. República de Azerbaijan*, ICSID Case No. ARB/20/20, Award dated 21 March 2025.

²⁶ Solicitud, ¶ 59.

²⁷ Réplica, ¶ 57.

²⁸ Solicitud, ¶ 61.

²⁹ Solicitud, ¶ 62.

³⁰ Exh. RL-79, Christoph H. Schreuer, *The ICSID Convention: A Commentary*, “Article 25”, 2nd ed., 1402.

whether Orla is controlled by shareholders of a non-Treaty Party, the Tribunal must analyze “*several factors such as equity participation, voting rights and management [...] in conjunction*” and that this analysis must take place at a bifurcated jurisdictional stage, as, at this stage of the proceedings, the alleged facts, *prima facie*, indicate that Orla is controlled by shareholders of a State other than Canada.³¹

54. Moreover, Respondent alleges that Orla had no substantial business activities in Canada³² and that a substantial presence does not amount to substantial activities.³³ It sustains that, at the time of the filing of the Request for Arbitration, Claimant, a mining company, dedicated to “*acquiring, exploring, developing, and operating mineral properties,*” conducted all of its mining business activities outside of Canada.³⁴ It adds that Orla’s commercial activities in Canada were not “more significant than those required to maintain the company’s registration or corporate existence” and that there was no real and continuous link between Orla’s mining activities and the Canadian territory.³⁵
55. Respondent submits that it met its *prima facie* burden of proving that, as of the date of the Request for Arbitration, investors from countries not party to the Treaty owned and/or controlled Orla and that Orla did not carry out substantial business activities in Canadian territory.³⁶ Thus, it is of the view that the Tribunal must analyze whether, assuming that Panama’s allegations regarding Orla’s ownership and/or control and its lack of substantive business activity in Canada were true, Panama would be entitled to deny Orla the benefits of the Treaty. It stresses that it does not have the burden of developing (nor the Tribunal the task of deciding at this stage) the merits of the Preliminary Objection of denial of benefits.³⁷

³¹ Réplica, ¶ 80.

³² Réplica, ¶ 43.

³³ Réplica, ¶ 83.

³⁴ Solicitud, ¶ 64.

³⁵ Réplica, ¶¶ 84-85.

³⁶ Réplica, ¶ 53.

³⁷ Réplica, ¶ 46.

56. In the light of the alleged facts, Respondent concludes that the Preliminary Objection of denial of benefits is neither frivolous nor without merit, that its acceptance would result in the termination of the arbitration without proceeding to the merits stage, that the objection is not linked to the merits of the dispute in such a way as to prevent the bifurcation of the proceedings and that to perform this analysis, the Tribunal only needs to resort to the documentary evidence already in the file.³⁸ Therefore, the Preliminary Objection based upon denial of benefits meets the requirements outlined in Rule 44(2) and justifies the bifurcation of the proceedings.³⁹

ii. *Claimant's position*

57. Claimant stresses that Panama's burden of establishing a preliminary objection based upon denial of benefits includes demonstrating that the conditions for denying benefits under the Treaty are met. This is consistent with the principle *actori incumbit probatio*, according to which the burden of proof of an allegation rests on the party advancing it.⁴⁰

58. Claimant points out that Respondent's Preliminary Objection based upon denial of benefits would not materially reduce the time and cost of the proceeding.⁴¹ It denies that Orla is an enterprise "owned or controlled" by investors of a non-Party and that this enterprise has no substantial business activities in the territory of Canada.⁴² It explains that Article 9.15(2) of the FTA requires full ownership of the enterprise by investors of a non-Party and that the Respondent does not even suggest that it is the case of Orla.⁴³ Claimant adds that most of the companies which, according to Respondent, would together own 51.7% of Orla, are subsidiaries of Fairfax, a Canadian company ultimately owned by Mr. Prem Watsa, a Canadian citizen.⁴⁴ Claimant further explains that Article 9.15(2) of the FTA requires actual control⁴⁵ and denies that investors of a non-Party exercise actual control on Orla, a fact that Respondent does not even allege when it

³⁸ Solicitud, ¶¶ 70-72.

³⁹ Réplica, ¶ 96.

⁴⁰ Response, ¶ 37.

⁴¹ Response, ¶ 36.

⁴² Response, ¶ 41.

⁴³ Response, ¶¶ 45-46; Rejoinder, ¶ 33.

⁴⁴ Response, ¶ 47.

⁴⁵ Rejoinder, ¶¶ 46-55.

affirms that Newmont, as a “significant shareholder”, may exercise influence on the company.⁴⁶ Claimant’s conclusion is that it is an incontrovertible fact that Canadian nationals and enterprises own and control Orla.⁴⁷

59. Claimant also explains that Orla has substantial business activities in Canada, a concept that simply requires that the enterprise be more than a mailbox company or shell company.⁴⁸ With nearly all of Orla’s senior management sitting in Canada, █████ bank accounts in Canada, 25 employees in the country, and having raised hundreds of millions in the last five years in transactions on the Canadian debt and equity markets in order to support its development operations, Orla is meeting this requirement.⁴⁹
60. Claimant further sustains that the objectives of the FTA cannot be met if a denial of benefits has a retroactive effect, depriving an investor of protections under the Treaty long after the investment is made, the events giving rise to the dispute have occurred, and the claim has been formally submitted to arbitration.⁵⁰ It points out that Panama’s objection on the denial of benefits came some one year and two months after Orla filed its Notice of Intent, identifying itself as a Canadian investor and stating which Treaty protections it was intending to claim under; and some 10 months after Orla’s Request for Arbitration and waivers of domestic recourse were filed.⁵¹ Claimant argues that the date on which the Tribunal’s jurisdiction is to be assessed is the date on which jurisdiction is invoked, which is when the investor’s Request for Arbitration is registered by the Centre as consent to arbitration was perfected from that date. It relies on Article 25(1) of the ICSID Convention which provides that “[w]hen the parties have given their consent, no party may withdraw its consent unilaterally” to conclude that Panama cannot therefore deny the benefits of the FTA to Orla insofar as they relate to the present dispute.⁵²

⁴⁶ Response, ¶¶ 52-53.

⁴⁷ Response, ¶ 58.

⁴⁸ Response, ¶ 60.

⁴⁹ Response, ¶ 61; Rejoinder, ¶ 20.

⁵⁰ Response, ¶ 73; Rejoinder, ¶ 68.

⁵¹ Rejoinder, ¶ 72.

⁵² Response, ¶ 75.

61. Finally, Claimant is of the view that the determination of the Respondent's Preliminary Objection based on denial of benefits is so intertwined with the merits that bifurcation would be impractical.⁵³

iii. *The Tribunal's analysis*

62. It is not disputed and, in fact, it is not disputable that, in case the Tribunal would uphold the Respondent's Preliminary Objection based on denial of benefits, this would dispose of all of the dispute. Moreover, the Tribunal is not convinced that the determination of that Preliminary Objection is so intertwined with the merits that bifurcation would be impractical.⁵⁴ The issues of fact and law to be explored to determine the Preliminary Objection and those to be dealt with to decide the merits of the case are largely different. To determine the Preliminary Objection, the Tribunal must interpret Article 9.15(2) of the FTA and assess the nationality of Orla's ownership and control. It must also find whether Orla has substantial business activities in Canada. To decide the merits of the case, the Tribunal must consider Panama's conduct regarding the alleged investments of Orla in the light of the substantial provisions of the FTA and International Law.⁵⁵ It is possible that individuals who would give evidence on Orla's corporate structure and activities would also be called to testify in the merit phase, if any, but it would be on very different issues. Whatever it may be, there is no need for the Tribunal to enter in any part of the merit of the case to determine the Preliminary Objection which is a standalone issue. Consequently, the Tribunal is of the opinion that bifurcating the proceedings to deal first with the Respondent's Preliminary Objection based on denial

⁵³ Response, ¶¶ 88-91.

⁵⁴ Response, ¶¶ 88-91.

⁵⁵ The reasons hereafter used by the Gran Colombia Corp. tribunal on the same issue could be transposed, *i mutatis mutandis*, to the present case. Exh. RL-90, *Gran Colombia Gold Corp. v. Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3 (Decision on bifurcation), 17 January 2020: "... unlike the other objections, the denial of benefits objection is not likely to present factual issues overlapping with the merits. Part of the objection is entirely legal in nature, concerning when a denial of benefits must be declared in order to be effective (i.e., was the Respondent's denial of benefits timely as a matter of law?). While a second part of the objection is factual (i.e., were the FTA's grounds for denial of benefits met in this case?), the factual issues to be explored are quite limited, revolving around ownership and control of the Claimant and nature and substantiality of its business activities in Canada. These issues are entirely discrete from – and not intertwined with – the sequence of events underlying the challenged State measures").

of benefits would favor procedural economy, provided the seriousness and substantiality of such Preliminary Objection has been *prima facie* established.

63. Respondent invoked Article 9.15(2) of FTA for the first time in the Solicitud. The Parties disagree whether Respondent could invoke it after the commencement of this arbitration.⁵⁶ While Claimant sustains that the objectives of the FTA cannot be met if a denial of benefits is given retroactive effect,⁵⁷ Respondent is of the opinion that its right to deny Orla benefits is not subject to any time limitation.⁵⁸
64. As pointed out by the *Zaur Leshkasheli* tribunal, in its award of 21 March 2025, this question has been debated in arbitral proceedings, and no uniform case law has emerged.⁵⁹ This recent award makes a thorough analysis of the case law on the issue of the retrospective or prospective effect of a denial of benefits under a treaty, the conclusion of which deserves to be quoted:

*“On the one hand, ECT tribunals that have faced this question almost consistently took the position that Article 17(1) of the ECT can only be validly invoked before a dispute arose or before the commencement of arbitration and that a denial of benefits only operates prospectively. On the other hand, at least one ECT tribunal and several non-ECT tribunals have adopted a different position by allowing a respondent State to invoke the denial of benefits clause after the commencement of an arbitration, thus holding that a denial of benefits can operate retrospectively.”*⁶⁰

65. In the circumstances, none of the Parties’ positions concerning the timing of the denial of benefits by Respondent can be considered as *prima facie* lacking seriousness and substantiality. Respondent’s position corresponds to one of two conflicting trends in the case law. It cannot be disregarded without a deep analysis that the Arbitral Tribunal cannot make at this stage.

⁵⁶ Response, ¶ 75; Réplica, ¶ 50.

⁵⁷ Response, ¶ 73.

⁵⁸ Réplica, ¶ 49.

⁵⁹ *Zaur Leshkasheli y Rosserlane Consultants Limited v. República de Azerbaijan*, ICSID Case No. ARB/20/20, Award dated 21 March 2025, ¶ 529, RL-71.

⁶⁰ *Zaur Leshkasheli y Rosserlane Consultants Limited v. República de Azerbaijan*, ICSID Case No. ARB/20/20, Award dated 21 March 2025, ¶ 529., RL-71.

66. It results from the wording of Article 9.15(2) of FTA, that two cumulative conditions must be fulfilled for the denial of benefits to be invoked by the host State: (1) investors of a non-Party must own or control the enterprise and (2) the enterprise must have no substantial business activities in the territory of the Party under whose domestic law it is constituted or organized.
67. Considering the undisputed fact that individuals or enterprises of a non-Party own a significant part of Orla's shares⁶¹ and that at least one of them may exert influence over the direction of the company's business,⁶² the Tribunal concludes that Respondent raises genuine and legitimate questions relating to the first condition, which does not *prima facie* lack seriousness and substantiality. However, the conclusion differs regarding the second condition.
68. In a nutshell, Respondent alleges that Orla's business activities in Canada are no "*more significant than those required to maintain the company's registration or corporate existence*" and that there is no real and continuous link between Orla's mining activities and the Canadian territory.⁶³ However, the present record of this case does not support such an assessment.
69. According to its Annual Information Form (AIF) for the year ending 31 December 2024,⁶⁴ Orla was incorporated in Alberta under the Business Corporations Act in 2007, then continued in Ontario in 2015, becoming a federal company under the Canada Business Corporations Act in 2016. Its registered office and its head and principal office are located in Vancouver. The same AIF, which covers the year when the Request of Arbitration was filed,⁶⁵ states that Orla is "*...a Canadian company listed on the Toronto Stock Exchange ("TSX") under the symbol "OLA" and on the NYSE American LLC (the "NYSE American") under the symbol "ORLA". Orla's corporate strategy is to acquire, explore, develop, and operate mineral properties where its expertise can substantially increase stakeholder value.*"⁶⁶

⁶¹ Between 21.3% and 51.7%, (Response, ¶ 47).

⁶² Response, ¶ 52.

⁶³ Réplica, ¶¶ 84-85.

⁶⁴ Exh. C-0483, p.9.

⁶⁵ The Request of Arbitration was filed on 3 July 2024.

⁶⁶ Exh. C-0483, p.9.

70. For the year ending 31 December 2024, the present record shows that Orla had 27 employees in Canada⁶⁷ and that, out of 18 Directors and Executive Officers, 14 were based in Canada.⁶⁸ It is *inter alia* the case of Orla’s CEO, Mr. Jason D. Simpson, of its CFO, Mr. Etienne Morin, of its Chief Operating Officer, Mr. Andrew Cormier, of its Senior Vice President Exploration, Mr. Sylvain Guerard, etc. It is worthwhile noting that Mr. Cormier and Mr. Guerard take responsibility for the scientific and technical information relating to the Company’s mineral properties provided in the AIF for the year ending 31 December 2024⁶⁹, which denotes that they do perform material activities.
71. The present record also shows that, on the date of the Request for Arbitration, Orla had two material gold projects, one in Zacatecas, Mexico, the other one in Nevada, USA,⁷⁰ described as “*Foreign Operations*” in the AIF which warns that “*[T]he locations of the Company’s Camino Rojo Project in Mexico and South Railroad Project in Nevada expose the Company to certain risks, including currency fluctuations and possible political or economic instability that may result in the impairment or loss of mining titles or other mineral rights and opposition from environmental or other non-governmental organizations.*”⁷¹
72. Based on the present record of this case, it seems that Orla Canada’s activities in Canada are not limited to maintaining the company's registration or corporate existence, as alleged by the Respondent, but consist in defining and implementing a strategy of acquisition of mineral properties.⁷² The fact that these mineral properties were exclusively located outside of Canada at the date of the Request of Arbitration is not incompatible, as suggested by Respondent, with the existence of a real and continuous link between Orla’s mining activities and the Canadian territory,⁷³ a conclusion

⁶⁷ Exh. C-0483, p.16.

⁶⁸ Exh. C-0483, pp.91-94.

⁶⁹ Exh. C-0483, p.17.

⁷⁰ Exh. C-0483, p.9; see also Exh. R-0006, p.8.

⁷¹ Exh. C-0483, p.17.

⁷² See, Exh. C-0483, p.9.

⁷³ Réplica, ¶¶ 84-85.

confirmed by the description of such mining activities as “*Foreign Activities*” of the company in its AIF.⁷⁴

73. The observations of the *Gran Colombia Gold Corp* tribunal, dealing with the treaty between Canada and Colombia which contains an article identical to Article 9.15(2) of the FTA are applicable to the instant case:

*“Nothing in the Treaty suggests, for example, that a company engaged overseas in natural resource exploration and development must conduct similar resource exploration or development at home, in order to satisfy the requirement of having substantial business activities there. It is entirely consistent with the Treaty text for such a company to locate coordinating or support functions in its home State, or to use its home State as a hub for investment and financing activities that make operational activities in other places possible.”*⁷⁵

74. Based on the above and in the light of the present record of this case, the Tribunal finds the seriousness and substantiality of Respondent’s arguments that Orla has no substantial business activities in Canada has not been *prima facie* established.
75. Consequently, since after a *prima facie* analysis, one of the two cumulative conditions for the success of this Respondent’s Preliminary Objection does not appear likely to be met and although such a *prima facie* assessment should in no way be understood as prejudging how the Tribunal will decide this Preliminary Objection after a full briefing and an evidentiary hearing where the factual situation can be assessed in more detail, the Tribunal finds that this Preliminary Objection, standing alone, does not justify bifurcating the proceedings.

⁷⁴ Exh. C-0483, p.17.

⁷⁵ *Gran Colombia Gold Corp.) v. Republic of Colombia*, ICSID No. ARB/18/23, Decision on the bifurcated jurisdictional issue, 23 november2020, RL-80- EENG, ¶138.

c. Preliminary objection to Claimant’s claims relating to Aurum

i. *Respondent’s position*

76. According to Respondent, the Tribunal must declare that it lacks jurisdiction to rule on the Aurum Claims for three alternative reasons:

- Claimant would have not demonstrated that Aurum and its concessions were a “covered investment” as it did not establish that it owned Aurum as of the date of the Request for Arbitration and, therefore, that the Aurum Claims constitute “*a claim that the other Party has breached: (a) an obligation under [Chapter 9 of the FTA]*” (which only applies to “covered investments”). Consequently, the Tribunal must declare that it lacks jurisdiction to rule on the Aurum Claims.⁷⁶
- Claimant does not claim to have suffered loss or damage as required by Article 9.22(e)(i) and (f) of the FTA which only authorizes the Tribunal to hear and decide claims in which it is alleged that the investors or their enterprise in the territory, as the case may be, have incurred loss or damage as a result of violations attributed to the State.⁷⁷
- Claimant did not notify Panama of any claim relating to Aurum in its Notice of Intent, in breach of Article 9.22 (2)(c)(iii) of the FTA,⁷⁸ with the consequence that Panama’s consent to arbitration was nullified pursuant to Article 9.24 (1) of the FTA.⁷⁹

77. Respondent explains that its Preliminary Objection relating to Aurum and its concessions is *prima facie* serious and substantial⁸⁰ and that its bifurcation would significantly reduce the time and cost of the procedure.⁸¹ It stresses that Rule 44(2) does not provide that only those objections that would dismiss the entire dispute if upheld

⁷⁶ Solicitud, ¶¶ 76- 84.

⁷⁷ Solicitud, ¶ 91.

⁷⁸ Solicitud, ¶ 103, ¶109.

⁷⁹ Solicitud, ¶ 104.

⁸⁰ Réplica, ¶102.

⁸¹ Réplica, ¶115.

may (or must) be bifurcated and that it is sufficient that the objection could dismiss “*a substantial portion of the dispute*”, as indicated in Rule 44(2).⁸²

ii. Claimant’s position

78. Claimant first points out that Respondent’s arguments in relation to Aurum would not dispose of anything resembling even a substantial portion of the parties’ dispute, let alone all of it.⁸³ It recalls that it has not brought a free-standing damage claim in relation to the Aurum concessions and that Aurum is part of the matrix of facts that have been pled in support of its claims for violation of Articles 9.06 and 9.11 of the FTA for Panama’s treatment towards the totality of investments in Panama.⁸⁴
79. Moreover, Claimant considers that Respondent’s three arguments with regard to Arum are frivolous.
80. Concerning the Respondent’s first argument, Claimant argues that Respondent submits no evidence that might cause one to doubt Orla’s ownership of Aurum as of the date of the filing of the Request for Arbitration, let alone evidence that Orla divested itself of its shares in Aurum prior to such filing.⁸⁵ It adds that Aurum is a Panamanian company and that a share certificate of 15 June 2023 showing that Orla is the owner of 100% of Aurum shares is on the record.⁸⁶
81. As to the Respondent’s second argument, Claimant explains that its Quantum experts in this procedure opined that the Aurum concessions had positive economic value and that it showed the loss relating thereto.⁸⁷
82. Claimant observes that the Respondent’s argument based on the fact that Aurum was not mentioned in its Notice of Intent, is not supported by any legal precedence and must

⁸² Réplica, ¶118.

⁸³ Rejoinder, ¶ 79.

⁸⁴ Rejoinder, ¶ 80.

⁸⁵ Rejoinder, ¶ 85.

⁸⁶ Rejoinder, ¶ 86.

⁸⁷ Rejoinder, ¶ 87-88.

fail when Aurum is so clearly a part of the factual matrix of Orla's claims for violation of the FTA. It adds that it would be uneconomical to decline jurisdiction and compel the Claimant to start new proceedings after the waiting period has passed.⁸⁸

iii. The Tribunal's Analysis

83. Respondent does not suggest that if the Tribunal upholds its Preliminary Objection based on the Claimant's Aurum claims, this will dispose of all of the dispute. It contends that this objection could dismiss a substantial portion of it.⁸⁹ The Tribunal is not satisfied that it is so. While the Aurum concessions are part of the investment that Claimant alleged to have been the object of breaches of the FTA by the Respondent, it is a relatively minor part of Claimant's claims since no claim for damages is attached to it, as pointed out by Respondent, while Claimant is claiming at least [REDACTED] for alleged breaches of the FTA. These claims for damages allegedly attached thereto should be dealt with even if the Claimant's Aurum claims would not exist.

84. In the circumstances, bifurcating regarding this objection would not result in increasing the efficiency of these proceedings in terms of both time and costs. Consequently, the Tribunal finds that, standing alone, the Respondent's Preliminary Objection relating to Claimant's Aurum claims does not justify bifurcating the proceedings.

d. Preliminary Objection to MFN claims based on Annex II of the Canada-Panama FTA

i. Respondent's position

85. Respondent argues that the Tribunal lacks jurisdiction to adjudicate the Claimant's claims regarding the alleged denial of treatment to Orla under the UK-Panama FTA, incorporated through the MFT clause of Article 9.05 of the FTA. Respondent sustains that the UK-Panama FTA is inapplicable based on Annex II of the FTA which provides

⁸⁸ Rejoinder, ¶ 88-89.

⁸⁹ Réplica, ¶ 118.

as follows: “Panama reserves the right to adopt or maintain a measure that accords differential treatment to countries under a bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement”, bearing in mind that the UK-Panama FTA is anterior to the FTA.⁹⁰

86. Respondent points out that the Claimant is just playing with words when it suggests that the Annex II reservation would not apply to “investors” or “investments” and instead would apply only to “countries.”⁹¹ It recalls that this reservation explicitly states that it applies to the provision on “Most-Favored-Nation Treatment (Article 9.05)” in the chapter on “Investment” of the Agreement (i.e., Chapter 9) and that Article 9.05, in turn, provides for the obligation of the Contracting Parties to grant MFN treatment to investors of the other Party and to covered investments. This interpretation would be confirmed by another provision of Annex II which states that the reservation will not apply to “investors of Canada” in matters relating to the Panama Canal.⁹² Respondent concludes that the treatment granted by Panama in accordance with its obligations under the treaty with the United Kingdom is not covered by Article 9.05 of the FTA.⁹³
87. Respondent indicates that its Preliminary Objection is not only serious and substantial but that its success would eliminate from the debate an entire line of Claimant’s arguments and that such preliminary objection is in no way intertwined with the substance of the dispute.⁹⁴

ii. Claimant’s position

88. Claimant argues that the Respondent’s Preliminary Objection to its MFN claims would not dispose of all or even a substantial portion of the dispute before the Tribunal. Even if it were upheld, Claimant’s expropriation claims (including its claims for a direct expropriation in breach of Article 9.11 and its claim for an indirect expropriation under

⁹⁰ Solicitud, ¶¶ 118-125.

⁹¹ Réplica, ¶ 124.

⁹² Réplica, ¶ 131.

⁹³ Réplica, ¶ 125.

⁹⁴ Réplica, ¶¶ 135-138.

Annex 9.11) would remain untouched. Nor would such preliminary objection dispose of (or even substantially reduce) Orla’s claim for breach of the minimum standard of treatment in Article 9.06 as that claim would still proceed on the merits regardless, as the MFN treatment only impacts whether Orla could bring in a more favorable FET standard of treatment into the treaty.⁹⁵ The same facts and issues supporting Orla’s umbrella clause claim would need to be dealt with in the context of Orla’s other claims under Articles 9.11 (expropriation), 9.06 (MST) and 9.04 (national treatment).⁹⁶

89. Concerning the reservation by Panama to the scope of the MFN clause of the FTA expressed in its Annex II, Claimant explains that, far from playing with words, it is simply applying the “*ordinary meaning*” of the terms of the reservation in their context, in accordance with the interpretation requirements in Article 31(1) of the Vienna Convention on the Law of Treaties. Claimant stresses that it is undisputed that the reservation at issue uses the term “*country*” and not the terms “*investor*” or “*investments*”, unlike several other reservations included by Panama in the FTA (which are not invoked in this arbitration), which specifically apply to “*investors*” and “*investments*”. Thus, the reservation does not apply to Orla and its investments.⁹⁷
90. Claimant further sustains that the Respondent’s Preliminary Objection to the MFN claims cannot be separated from the merits of the dispute: the substantial overlap in the factual and legal issues to be considered in the different proposed phases would make bifurcation impractical.⁹⁸

iii. The Tribunal’s analysis

91. Respondent does not suggest that if the Tribunal upholds its Preliminary Objection to MFN claims based on Annex II of the FTA, this would dispose of all of the dispute. It

⁹⁵ Rejoinder, ¶¶ 93-94.

⁹⁶ Rejoinder, ¶ 95.

⁹⁷ Rejoinder, ¶ 100.

⁹⁸ Rejoinder, ¶¶ 106-107.

contends that this objection could eliminate from the debate the disagreement over the merits of Orla's MFN claim and its quantification.⁹⁹

92. This is undoubtedly correct but while this claim for alleged breach of Article 9.05 of the FTA would be eliminated, the other claims for alleged breaches of Article 9.04 (obligation to accord national treatment), 9.06 (obligation to accord minimum standard treatment) and 9.11 (prohibition of unlawful expropriation) of the FTA would remain and both their merits and quantum would still have to be discussed. Since these claims rely in part or in totality on the same alleged factual matrix as the claim based on Annex II of the FTA, granting the Respondent's Preliminary Objection to MFN claims based on Annex II of the FTA would not dispel most of the evidentiary hearing.
93. In the circumstances, bifurcating regarding this Preliminary Objection would not result in increasing the efficiency of these proceedings in terms of both time and costs. Consequently, the Tribunal finds that, standing alone, the Respondent's Preliminary Objection to MFN claims based on Annex II of the FTA does not justify bifurcating the proceedings.

e. Preliminary Objection based on the limitations period

i. *Respondent's position*

94. Respondent alleges that a series of Claimants' claims are time-barred pursuant to Article 9.22 (e)(i) and (f)(i) of the FTA which restricts the submission of claims under Article 9.20 or Article 9.21 to a time limitation of three years from the date on which the disputing investor or the enterprise, as the case may be, first acquired, or should have acquired, knowledge of the alleged breach and knowledge of the loss or damage incurred thereby,¹⁰⁰ these two requirements being cumulative.¹⁰¹ It adds that, pursuant to Article 9.23(3) of the FTA, a claim shall be deemed to have been submitted when received by the Secretary-General of the ICSID and that, accordingly Claimant may not submit

⁹⁹ Réplica, ¶ 135.

¹⁰⁰ Solitud, ¶¶ 135-136.

¹⁰¹ Réplica, ¶ 146.

arbitration claims relating to violations and losses of which Orla and/or MCQSA were aware, or should have been aware, prior to 3 July 2021.¹⁰²

95. Respondent denies that time only begins to run for the purposes of a limitation period when the breach ceases to exist and contends that the Tribunal must ask itself when Orla (and/or MCQSA) first became aware (or should have become aware) of the existence of conduct allegedly in breach of the treaty and of the losses resulting therefrom.¹⁰³ It sustains that Orla (and/or MCQSA) had (or should have had) knowledge of the impact of the measures taken by Panama (in the unlikely event that it did) on its alleged investments on the same date that it became aware of the measures.¹⁰⁴
96. Respondent underscores that in any event, the foregoing confirms that the disagreement between the Parties as to the way article 9.22 of the FTA should be interpreted and applied raises a serious issue to be determined on the basis of the materials currently before the Tribunal and, therefore, is *prima facie* serious and substantial, which justifies the bifurcation it requests.¹⁰⁵
97. On the basis of the above, Respondent sustains that the claims based on the following acts or omissions by Panama are time-barred:
- the alleged delay and refusal to approve the EsIA (which, according to Respondent, occurred beginning in 2015);
 - the alleged failure to sign a pre-approved copper concession agreement with MCQSA (which, according to Respondent, occurred beginning in 2017);
 - the failure to enter into concession agreements and contract extensions with Aurum (which, according to Respondent, occurred from 2008 and 2012 onwards, and even earlier);
 - the refusal of the Ministry of Labor to authorize MCQSA to dismiss employees (which occurred, according to the Respondent in 2017); and

¹⁰² Solicitud, ¶¶ 139-140.

¹⁰³ Réplica, ¶ 149

¹⁰⁴ Réplica, ¶ 152.

¹⁰⁵ Réplica, ¶ 157.

- the non-renewal of the Concession Contracts (which occurred, according to the Respondent, as from 2016).¹⁰⁶

98. Respondent is of the view that the Tribunal must assume that its preliminary exception of lack of jurisdiction due to the statute of limitations, as presented, is well founded and, on this basis, determine whether it is appropriate to bifurcate the proceedings.¹⁰⁷ It explains that this exception is neither frivolous nor without reasonable merit, that it would clear up a significant part of the dispute raised by the Claimant and that it is not linked to the merits of the dispute in such a way as to prevent bifurcation.¹⁰⁸ It adds that the Tribunal's analysis does not require a determination of whether the conduct in dispute actually violated the FTA (since such a determination belongs to the stage of responsibility and only applies to conduct that is not time-barred).¹⁰⁹

ii. Claimant's position

99. Claimant explains that the Respondent's objection relies on a flawed interpretation of Article 9.22 of the FTA, as well as a mischaracterization of Orla's claims.¹¹⁰
100. According to Claimant, the plain terms of Articles 9.22(e)(i) and 9.22(f)(i) make it clear that the limitation period commences only when Claimant first acquired knowledge of both the breach and the loss or damage incurred which imposes a dual knowledge requirement. It points out that where a breach arises through a series of actions or omissions, it materializes when the last of the acts or omissions necessary to constitute a wrongful act under the treaty occurs, as provided by Article 15 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts and that where a continuing breach is concerned, time only begins to run for the purposes of a limitation period when the breach ceases to exist.¹¹¹ It adds that,

¹⁰⁶ Solicitud, ¶141.

¹⁰⁷ Réplica, ¶ 143.

¹⁰⁸ Solicitud, ¶¶ 142-150.

¹⁰⁹ Réplica, ¶ 162.

¹¹⁰ Response, ¶ 121.

¹¹¹ Response, ¶¶ 122-126.

with respect to the knowledge of the loss or damage incurred, where knowledge of the loss was acquired after knowledge of the breach, it is the later date – when knowledge of the loss arose – that marks the commencement of the limitation period.¹¹²

101. Claimant recalls that the provisions of Article 9.22 expressly refer to knowledge of the “alleged breach”, and not to knowledge of the “facts and omissions” that constitute the breach, as argued by Panama.¹¹³ In order to determine the point at which Orla first acquired (or should have first acquired) knowledge of each specific breach of the FTA, the Tribunal must inevitably begin by identifying the date on which the alleged breach crystallized.¹¹⁴
102. Claimant wishes to clarify that, contrary to Respondent’s characterization of its claims, it has not alleged a violation of Article 9.06 based on an artificial fragmentation of Panama’s conduct into individual acts but relies on a continuous and interrelated course of conduct which constitutes a composite violation of Article 9.06.¹¹⁵ Given that Panama’s unlawful conduct continued, the limitations period did not begin to run until just before Claimant filed its Notice of Intent and its Request for Arbitration in spring 2024.¹¹⁶ Further, the loss caused by Respondent’s unlawful conduct started to accrue on 31 January 2022 and it was not possible for Orla to know Panama’s unlawful conduct would affect its project until this date at the earliest.¹¹⁷ Claimant insists that the same applies with respect to Respondent’s violation of its obligation to grant Orla MFN treatment in respect of its obligation to accord FET to Orla.¹¹⁸
103. Claimant is of the view that the lack of substance in the Respondent’s Preliminary Objection based on Article 9.22 is even more glaring when examined in the light of its Article 9.11 and Annex 9.11 claims. As set out in the Memorial, Orla’s Article 9.11 and Annex 9.11 arose after the passage of Law 407 in November 2023.¹¹⁹ Claimant alleges

¹¹² Response, ¶ 128.

¹¹³ Rejoinder, ¶ 115.

¹¹⁴ Rejoinder, ¶ 117.

¹¹⁵ Response, ¶ 132.

¹¹⁶ Response, ¶ 133.

¹¹⁷ Response, ¶ 134.

¹¹⁸ Response, ¶ 136.

¹¹⁹ Response, ¶ 137.

that it is continuing to suffer incremental losses as a direct result of the expropriation, plus the tax gross-up and pre-award interest on these amounts as from 15 December 2023.¹²⁰

104. With respect to the violation of the umbrella clause under Article 9.05 of the FTA, Claimant considers that it could not have knowledge of Panama's violation or its loss prior to May 2023, which is well within any time period required by Article 9.22.¹²¹
105. With respect to Panama's violation of Article 9.04 of the FTA, Claimant explains that it could not have acquired knowledge of Panama's violation or of its loss prior to 15 December 2023.¹²²
106. Claimant points out that Panama failed to make out any case as to when Orla knew either of Panama's violation of Article 9.06 of the FTA, or Article 9.11 and Annex 9.11, or Article 9.04 or Article 9.05, or the damages that each caused and that, consequently its application necessarily fails.¹²³
107. Claimant concludes that Respondent's attempt to rely on Article 9.22 is neither serious nor substantial as such that it would materially save time and cost. On the contrary, it would increase time and cost, requiring the Parties to go through a pointless exercise.¹²⁴ In any event, a determination on the time-bar objection will require substantial and detailed analysis of the facts of all the State measures, a legal assessment of the nature of each measure and an evaluation of the damages or loss caused by each measure, which would make bifurcation impractical.¹²⁵ The evidence required to resolve the time limitation objection is precisely the same evidence that will be adduced to establish liability and damages.¹²⁶

¹²⁰ Response, ¶ 138.

¹²¹ Response, ¶ 139.

¹²² Response, ¶ 140.

¹²³ Rejoinder, ¶ 110.

¹²⁴ Response, ¶ 141.

¹²⁵ Response, ¶ 147.

¹²⁶ Rejoinder, ¶ 121

iii. The Tribunal's Analysis

108. Respondent does not suggest that, if upheld, the Preliminary Objection based on the limitation period would dispose of all Claimant's claims but contends that it would result in savings in time and costs associated with issues of liability and damages, including, at a minimum, those corresponding to sections of briefs on the merits, legal and factual expert reports, and days of the hearing on the merits that would be devoted to the time-barred claims.¹²⁷ The Tribunal does not doubt it and is thus satisfied that, if this objection were upheld, a substantial part of the dispute would be disposed of.

109. However, the Tribunal agrees with Claimant that in order to determine the point at which Orla first acquired (or should have first acquired) knowledge of each specific alleged breach of the FTA, the Tribunal must inevitably begin by identifying the date on which the alleged breach crystallized.¹²⁸ This could not be done without entering into an analysis of the facts and the evidence needed would be largely the same evidence as that to be adduced in the merits phase of the proceedings. Bifurcating in circumstances where the preliminary objection and the merits are so intertwined presents no benefits with regard to the efficiency of the proceedings and, as observed by Rule 44(2)(c) of the Arbitration Rules, it is impractical.

110. Consequently, the Tribunal finds that, standing alone, the Respondent's Preliminary Objection based on the limitation period does not justify bifurcating the proceedings.

f. Preliminary Objection based on the alleged contractual nature of Claimant's claims

i. Respondent's position

111. Respondent explains that claims based on Panama's contractual conduct cannot be resolved through the dispute resolution mechanism of the FTA and stresses that

¹²⁷ Réplica, ¶ 159.

¹²⁸ Rejoinder, ¶ 117.

Claimant's attempt to import an umbrella clause amounts to an admission of the contractual nature of its claims.¹²⁹

112. Respondent notes that the core of Claimant's claims, as described by it, is the non-renewal of the Concession Agreements under Article 2 thereof, by virtue of Resolutions of the MICI, which Claimant characterizes as expropriatory and in violation of the minimum standard of treatment established in the FTA. It adds that Claimant disguises purely contractual claims as claims for violations of the FTA as, although it insists that it filed claims (i) for direct expropriation under Article 9.11 of the Treaty, (ii) for indirect expropriation under Annex 9.11, (iii) for violation of the minimum standard of treatment under Article 9.06 and (iv) for violation of MFN treatment under Article 9.05, the "fundamental basis" of such claims is contractual in nature.¹³⁰

Respondent points out that only the Panamanian courts have jurisdiction to decide disputes relating to the annulment of administrative contracts such as the concessions.¹³¹

113. Respondents sustains that its exception due to the contractual nature of the claims, *prima facie*, is not frivolous or without reasonable merit, that its acceptance would result in savings in time and costs associated with the proceedings on various issues of liability and damages and that it is not linked to the merits of the dispute in such a way as to prevent bifurcation.¹³²

ii. Claimant's position

114. Claimant recalls that its claims that Panama directly expropriated Orla's investment is premised on MICI having issued three specific resolutions which simultaneously (1) denied the requested extension requests for concessions contract numbers 19, 20 and 21, (2) retroactively declared the concessions cancelled due to expiration, and (3) declared the area comprising the concessions to be a reserve area under the Panamanian

¹²⁹ Solicitud, ¶ 153.

¹³⁰ Réplica, ¶ 168.

¹³¹ Solicitud, ¶¶ 154-155.

¹³² Solicitud, ¶¶ 160-176.

Mineral Resources Code (collectively the Law 407 Measures). It argues that declaring a parcel a mineral reserve area serves to transfer the concession back to the State such that from that date MCQSA had no further legal concession rights. Thus, Orla's claims against Panama for its direct expropriation of Orla's concession is grounded in Article 9.11 of the FTA and international law.¹³³

115. Claimant adds that its claims are also based on indirect expropriation under Annex 9.11 of the FTA, violation of the minimum standard of treatment under Article 9.06 and violation of MFN treatment under Article 9.05.¹³⁴
116. Claimant observes that Respondent ignores each of the individual claims and the description of Panama's treatment of Orla's investments over the years, including how Panama approved or partially approved applications for the EsIA, as well as its conduct in relation to the Concession Contracts, taking steps to approve the extensions while at the same time the Comptroller General withheld his endorsement of the extensions without explanation, all the while accepting further and further investments from Orla¹³⁵.
117. Claimant is of the view that the obvious conclusion from the above is that Panama's Preliminary Objection is neither serious nor substantial and is doomed to fail.¹³⁶ It contends that, in case of bifurcation, there would be no material reduction of the proceedings in the next phase and that the process would not be worth it in terms of the reduction of costs at a subsequent phase as it could never succeed.¹³⁷ Finally, Claimant underscores that the determination of Panama's Preliminary Objection based on the alleged contractual nature of the claims is so intertwined with the merits so as to make bifurcation impractical.¹³⁸

¹³³ Response, ¶¶ 155-156.

¹³⁴ Response, ¶¶ 158-162.

¹³⁵ Rejoinder, ¶ 112.

¹³⁶ Response, ¶ 163.

¹³⁷ Response, ¶ 165.

¹³⁸ Response, ¶¶ 168-169.

iii. The Tribunal's Analysis

118. A *prima facie* analysis of Claimant's claims leads the Tribunal to conclude that they cannot be reduced to mere claims for breach of contract. This could be the case if Claimant had no other grounds to claim than the Respondent's decision not to extend the initial term of the concessions and declare that they had expired through Resolutions 82, 83 (Aurum),¹³⁹ 95, 96 and 97 (MCQSA)¹⁴⁰ of 27 November 2023. However, Claimant's claims for indirect expropriation of its investment as per Annex 9.11 of the FTA, its claim for denying it the minimum standard of treatment under Article 9.06 of the FTA, and its claims for denial of most favored nation treatment under Article 9.05 of the FTA rely on alleged facts which can hardly be assimilated to contractual breaches. Respondent refers expressly to some of these factual allegations to support its Preliminary Objection based on the limitation period, such as the alleged delay in approving the Category III EsIA, the Ministry of Labor's denials of layoff permit of local staff, the alleged failure to sign a pre-approved copper concession agreement with MCQSA and the failure to enter into concession agreements with Aurum.¹⁴¹

119. In the circumstances, bifurcating regarding this Preliminary Objection would not result in increasing the efficiency of these proceedings in terms of both time and costs, since, if upheld, it would only dispose of a limited portion of the dispute. Consequently, the Tribunal finds that, standing alone, the Respondent's Preliminary Objection based on the alleged contractual nature of the Claimant's claims does not justify bifurcating the proceedings.

g. Conclusion on the Preliminary Objections

120. The Tribunal has found that, taken in isolation, none of the five Preliminary Objections raised by the Respondent justified bifurcating the proceedings. The conclusion is the same when they are regrouped.

¹³⁹ Exh. C-0382 and Exh. C-0383.

¹⁴⁰ See Exh. C-0379, and also the edicts 01062023, 01162023 and 012-2023, Exh. C-0391.

¹⁴¹ Solicitud, ¶141.

121. The Preliminary Objection based on the denial of benefits, if upheld, would dispose of all the dispute. Still, it does not justify bifurcating the proceedings because the Tribunal determined that, *prima facie*, its seriousness and substantiality had not been established and that an evidentiary hearing is necessary to reach a final decision.¹⁴² The Preliminary Objection based on time limitation, which, if upheld, would dispose of a substantial part of the dispute, was found too intertwined with the merits of the case to present benefits regarding the efficiency of the proceedings as it would be impractical.¹⁴³ The three remaining Preliminary Objections, i.e. the Preliminary Objection to Claimant's claims relating to Aurum, the Preliminary Objection to MFN claims based on Annex II of the Canada-Panama FTA and the Preliminary Objection based on the alleged contractual nature of some of the Claimant's claims, if upheld, standing alone, would only dispose of a limited portion of the dispute, which deprive them of any benefit concerning the efficiency of the proceedings.¹⁴⁴ In case the three of them would be upheld, at least the Claimant's claims for alleged breaches of 9.06 (obligation to accord minimum standard treatment) and of Article 9.04 (obligation to accord national treatment) would remain, and both their merits and quantum would still have to be dealt with.
122. Based on the above, the Tribunal concludes that, in the circumstances of this case, bifurcating the proceedings to deal with one or more Respondents' Preliminary Objections would not dispose of all the proceedings or of a substantial portion of them. Consequently, Respondent's request of bifurcation of the proceedings to deal first with its Preliminary Objections will be denied.

¹⁴² See *supra*, ¶¶ 74- 75

¹⁴³ See *supra*, ¶¶ 109-110.

¹⁴⁴ See *supra*, ¶¶ 83-84, ¶¶ 109-110 ¶¶ 118-119.

2. The Request to bifurcate the proceedings on the merits

a. Respondent's position

123. Respondent explains that, after conducting a preliminary review of Claimant's Memorial, the expert mining report, the Secretariat expert quantum report and witness Statements, it requests that the Tribunal address the issues relating to the international responsibility of the State in a separate phase, before addressing the quantum issues in this dispute. It submits that such request is raised "as soon as possible", as required by Rule 42(3)(a) of the ICSID Arbitration Rules.¹⁴⁵
124. Respondent considers that bifurcating quantum from liability would significantly reduce the time and the costs of the proceedings.¹⁴⁶ Respondent explains that the decisions on the issues to be bifurcated would eliminate all or a substantial part of the dispute regarding the quantum: if the Tribunal were to declare that it has no jurisdiction or that the State has not violated the FTA, the debate on the quantum would become unnecessary and, if the Tribunal were to find that the State is liable for some violations of the FTA, but not for all those alleged by Claimant, this bifurcation would allow the quantification of damages to be limited to those caused by the violations declared by the Tribunal, which could significantly reduce the scope and complexity of the exercise.¹⁴⁷ Respondent points out that Orla does not demonstrate that having two hearings (on liability and on quantum) would be more costly than having a single hearing on both issues, in which matters would be discussed that could ultimately prove superfluous to the Tribunal's decision.¹⁴⁸
125. Respondent adds that the issues to be examined in the liability phase are not linked to those concerning quantum in such a way as to make bifurcation impractical, as none of

¹⁴⁵ Solicitud, ¶ 169.

¹⁴⁶ Solicitud, ¶ 171.

¹⁴⁷ Solicitud, ¶ 175.

¹⁴⁸ Réplica, ¶ 199.

Claimant's arguments relating to the international responsibility of the State are based on the technical expertise provided in the Mining Report and the Quantum Report.¹⁴⁹

b. Claimant's position

126. Claimant recalls that in the First Session, the Parties had agreed that the merits would be heard as a whole, as confirmed in Procedural Order No. 3. It contends that Panama should be held to its prior agreement because, whilst the Tribunal found in Procedural Order No. 3 that this record was not clear enough to establish that Panama waived its Rule 44 right to raise a preliminary objection, it does not seem that this same reasoning applies to the more ordinary Rule 42 which applies to a request to bifurcate liability and quantum. It relies on the *Siag v. Egypt* Tribunal which rejected Egypt's request for bifurcation of the merits phase of the arbitration, invoking the fact that it had been agreed at the first session that all merits and damages issued would be heard together.¹⁵⁰

127. Claimant points out that Respondent does not show that the damage calculation exercise is unusually novel or complex in this case, to warrant the extraordinary step of severing liability from quantum.¹⁵¹ It observes that the Respondent's argument that Orla has not demonstrated that having two hearings (one on liability and one on quantum) would be more costly than having a single hearing on both issues is entirely backwards as Panama has the burden to show that two hearings would be more efficient.¹⁵²

c. The Tribunal's analysis

128. Rule 42(3)(a) of the ICSID Arbitration Rules states that a "*request for bifurcation shall be filed as soon as possible.*" In Procedural Order No. 3, the Tribunal found that the Request for Bifurcation was admissible under that Rule.¹⁵³ Indeed, the Tribunal was, and remains, of the view that a respondent cannot be deemed to have waived its right to

¹⁴⁹ Solicitud, ¶ 176.

¹⁵⁰ Response, ¶¶ 182-183.

¹⁵¹ Response, ¶ 185.

¹⁵² Rejoinder, ¶ 169.

¹⁵³ Procedural Order n° 3, ¶ 16.

seek bifurcation by having agreed in the First Session that the merits would be heard as a whole. As stated in Procedural Order No. 3, to waive a right, a party must be aware of the consequences of its waiver. Before receiving the claimant's memorial on the merits and its annexes, a respondent cannot be aware of the implications of waiving a request for bifurcation for the duration and cost of the proceedings.

129. In this respect, the Tribunal finds that *Siag v. Egypt* on which the Claimant relies¹⁵⁴ must be distinguished. In that case, it had been decided that the jurisdictional objections of the respondent would be heard in the first phase and that the claimant's memorial on the merits would be filed in advance of the respondent's jurisdictional objections. A first phase on jurisdiction took place at the end of which the tribunal retained jurisdiction and decided that estoppel arguments raised by Egypt as objections to jurisdiction were more properly matters for the merits of the dispute. It is only after that decision that Egypt requested that the merits phase be bifurcated and its estoppel be dealt with first.¹⁵⁵ Such a situation is in no way comparable to the present case, where Respondent filed its Request for Bifurcation less than two months after the filing of the Claimant's Memorial.

130. As already indicated,¹⁵⁶ Rule 44(2) of the ICSID Arbitration Rules states that:

“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.”

131. In theory, bifurcating merits and quantum should be the rule in any proceedings since the questions to be bifurcated dispose of all or of a substantial portion of the dispute: when a claim fails on its merits, no calculation of damages is necessary. Yet, in practice

¹⁵⁴ See *supra*, ¶ 126 and Response, ¶ 182.

¹⁵⁵ Exh. CL-0136-ENG, *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID No. ARB/05/15, Award, dated June 1, 2009,

¹⁵⁶ *Supra*, ¶ 34.

bifurcation of merits and quantum remains an exceptional procedural solution for reasons that the *OOO Manolium Processing* tribunal clearly explained as follows:

*“The Tribunal acknowledges that, if the dispute were to be bifurcated, Respondent would in the first phase avoid the need for an expert report; and that if Respondent were successful on jurisdiction or merits, no expert report would ever be required. But this advantage is off set by the contrary scenario: if the Tribunal were to grant bifurcation and then find for Claimant on jurisdiction and merits (even if partially), the procedure would continue into a second phase, devoted exclusively to the calculation of damages. Such second phase would cause unnecessary delay and unwarranted increase in costs.”*¹⁵⁷

132. Thus, to decide bifurcation of merits and quantum, a tribunal must be *prima facie* satisfied that the claim is more likely to fail than to be successful on its merits, always provided that merits and quantum are not so intertwined that bifurcation is impractical. If these two conditions are not met, deciding bifurcation of merits and quantum with the aim to reduce the duration and cost of the proceeding amounts to betting on the outcome of the case without any material basis to do it.
133. In the instant case, the Tribunal is not in a position to have any *prima facie* view as to the merits of the case and Respondent does not suggest it is. Consequently, it cannot know whether bifurcation of merits and quantum would contribute to the efficiency of the proceedings by reducing its duration and its cost. Moreover, Respondent’s Preliminary Objection based on time limitation that the Tribunal has found to be intertwined with the merits of the case is also somehow intertwined with the damages¹⁵⁸ since Respondent relies on the dates on which Claimant acquired knowledge of the loss or damage to sustain this objection.¹⁵⁹ Thus, the Tribunal is not convinced that all the issues to be examined in the liability phase are not linked to those concerning quantum.

¹⁵⁷ Exh.CL-0180-ENG, *OOO Manolium Processing v. The Republic of Belarus*, PCA Case No. 2018-06, Decision on Bifurcation, dated August 1, 2018, para. 5. See also, Exh. CL-0179-ENG, *Churchill Mining PLC and Planet Mining Pty Ltd v. The Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 8, dated April 22, 2014, para. 14.

¹⁵⁸ See *supra*, ¶¶ 109-110.

¹⁵⁹ *Solicitud*, ¶¶ 135-136.

134. In such circumstances, Respondent's request to bifurcate merits and quantum will be denied.

3. Costs

135. Each side has requested that the costs incurred in relation to Respondent's Request for Bifurcation be borne by the other side.¹⁶⁰

136. The Tribunal will decide this issue in a further decision or award.

III. DECISION

137. For the reasons stated above, the Tribunal dismisses Respondent's Request for Bifurcation of the proceedings.

For and on behalf of the Tribunal,

[Signed]

Yves Derains
President of the Tribunal

Date: 7 January 2026

¹⁶⁰ Solicitud, ¶ 184 (e), Response, ¶ 197 ; Réplica, ¶ 2211 ; Rejoinder, ¶ 177.