INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

MIRIAN G. DEKANOIDZE AND T.G. TRADE LLC

Claimants

v.

GEORGIA

Respondent

(ICSID Case No. ARB/23/45)

PROCEDURAL ORDER NO. 5
ON RESPONDENT'S REQUEST FOR BIFURCATION

Members of the Tribunal
Ms Judith Levine, President of the Tribunal
Dr Hamid Gharavi, Arbitrator
Professor Attila Massimiliano Tanzi, Arbitrator

Secretary of the Tribunal
Ms Ella Rosenberg

Date of Dispatch: 1 August 2025

FREQUENTLY USED ABBREVIATIONS AND ACRONYMS

BIT or the Treaty	Treaty between the Government of the United States of America and the Government of Georgia Concerning the Encouragement and Reciprocal Protection of Investment signed on 7 March 1994
Citizenship Law	The Organic Law of Georgia on Georgian Citizenship
Civil Code	Civil Code of Georgia of 26 June 1997
Claimants	Mr Dekanoidze and T.G. Trade
Decree	Decree dated 30 January 2020, issued by the President of Georgia regarding the termination of Mr Dekanoidze's citizenship
Decision on Rule 41	The Tribunal's Decision on the Respondent's Rule 41 Objection, 20 January 2025
ECRF	Electric Carriage Repair Factory
Georgia or the Respondent	Georgia, the Respondent State in this arbitration
Hearing on Rule 41	Hearing on the Rule 41 Objection, held via videoconference on 19 November 2024
Hearing Tr.	Transcript of the Hearing on Rule 41
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966
ICSID Rules	ICSID Rules of Procedure for Arbitration Proceedings (effective 1 July 2022)
Memorial	The Claimants' Memorial on the Merits, 28 April 2025
Mr Dekanoidze	Mr Mirian G. Dekanoidze, the first Claimant
Ms Tsintsabadze	Ms Ketevan Tsintsabadze, the wife of Mr Dekanoidze and shareholder of T.G. Trade
Parties	The Claimants and the Respondent

PSDA	Public Service Development Agency
Rejoinder on Rule 41	The Claimants' Rejoinder to the Respondent's Reply, 7 November 2024
Reply on Bifurcation	The Claimants' Reply to the Respondent's Request for Bifurcation, 2 July 2025
Reply on Rule 41	The Respondent's Reply to the Claimants' Response, 21 October 2024
Request for Bifurcation	The Respondent's Request for Bifurcation under Rule 44 of the ICSID Arbitration Rules, 10 June 2025
Respondent	Georgia
Response on Rule 41	The Claimants' Response to Respondent's Objection under Rule 41(1) of the 2022 ICSID Arbitration Rules, 4 October 2024
Rule 41 Objection	The Respondent's Objection under Rule 41 of the ICSID Arbitration Rules, 19 July 2024 (initially filed on 22 April 2024)
RFA	The Claimants' Request for Arbitration, 15 September 2023
Supreme Court Judgment	Judgment of the Georgian Supreme Court, issued on 23 March 2019
T.G. Trade	Turkmenistan Georgia Trade LLC, the second Claimant
US	United States of America

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1. This Procedural Order No. 5 deals with the Respondent's request of 10 June 2025 to bifurcate proceedings under Rule 44 of the 2022 ICSID Arbitration Rules ("**Request for Bifurcation**"). The Tribunal has decided to grant the Request for Bifurcation, for the reasons that follow.

I. PROCEDURAL HISTORY

2. On 15 September 2023, ICSID received a request for arbitration dated 15 September 2023, from Mr Mirian G. Dekanoidze and T.G. Trade ("**Claimants**") against Georgia ("**Respondent**") together with factual exhibits C-001 through C-015 and legal authorities CL-001 through CL-006 ("**RFA**").

3. On 3 October 2023, the Secretary-General of ICSID registered the Request, as supplemented by the Claimants' correspondence of 28 September 2023, in accordance with Article 36(3) of the ICSID Convention.

4. On 8 March 2024, the Tribunal was constituted, composed of Ms Judith Levine, a national of Australia and Ireland, President, appointed by the co-arbitrators with the agreement of the Parties; Dr Hamid Gharavi, a national of France and Iran, appointed by the Claimants; and Professor Attila Massimiliano Tanzi, a national of Italy, appointed by the Respondent.

5. On 19 July 2024, the Respondent filed an Objection Under Rule 41(1) of the 2022 ICSID Arbitration Rules ("**ICSID Rules**") together with factual exhibits R-001 through R-015 and legal authorities RL-001 through RL-031 ("**Rule 41 Objection**").

6. On 5 September 2024, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties on procedural matters ("**PO1**") and Procedural Order No. 2 on Transparency and Confidentiality. Annex B to PO1 contained agreed procedural timetables for different scenarios, depending on whether the Respondent decided to request bifurcation and whether such a request was granted or denied. In the event bifurcation were requested but denied, Scenario 2 provided for a hearing on both jurisdiction and merits to take place the week of

15 June 2026. In the event bifurcation were requested and *granted*, Scenario 3 provided for a hearing on the bifurcated objections to occur the week of 12 January 2026 and envisaged a subsequent order would set the timetable for any later phase.

7. On 4 October 2024, the Claimants filed their Response to the Rule 41 Objection, together with a First Witness Statement of Mr Dekanoidze, factual exhibit C-014, and legal authorities CL-007 through CL-026 ("**Response on Rule 41**").

8. On 21 October 2024, the Respondent filed its Reply on the Rule 41 Objection, together with factual exhibit R-016, and legal authorities RL-032 through RL-048 ("**Reply on Rule 41**").[1]

9. On 7 November 2024, the Claimants filed their Rejoinder on the Rule 41 Objection, together with legal authorities CL-027 through CL-029 ("**Rejoinder on Rule 41**").

10. On 13 November 2024, the Tribunal issued Procedural Order No. 3 on hearing organisation.

11. The hearing on Rule 41 ("**Hearing on Rule 41**") took place via video conference on 19 November 2024.

12. On 25 November 2024, the Tribunal issued Procedural Order No. 4 ("**PO4**"), which addressed certain post-hearing matters and also formally adopted the updated procedural timetable for Scenario 3 that had been left open in PO1 and then agreed by the Parties. According to that updated timetable, in Scenario 3, the Tribunal's decision on the bifurcated objections would be rendered by the week of 13 July 2026. Following written pleadings, document production and case management conferences, a hearing on any remaining procedural objections as well as the merits and quantum would take place in Paris during the week of 6 September 2027.

13. On 20 January 2025, the Tribunal issue its Decision on the Respondent's Rule 41 Objection ("**Decision on Rule 41**") in which it rejected the Rule 41 Objection. The Tribunal noted that

[1] The Box folder also contained the Respondent's Factual Exhibits R-006, R-008 and R-011, and the Respondent's. Legal Authorities RL-009, RL-011, RL-017, RL-018, RL-021, RL-023, RL-024, and RL-025.

"the Respondent's Objection raises some serious questions as to jurisdiction, but these questions are not suitable for being summarily resolved within the framework of Rule 41" as the high threshold for Rule 41 had not been met.[2]

14. On 24 April 2025, the Parties agreed, pursuant to Paragraph 6.3 of PO1, to extend by one business day all deadlines in the procedural timetable, which they said "will not affect the hearing dates or otherwise materially affecting the overall schedule." The Tribunal noted the Parties' agreement by email dated 28 April 2025.

15. On 28 April 2025, the Claimants submitted their Memorial together with the Expert Reports of Professor Teimuraz Todria and GVC Valuation & Consulting, the Witness Statements of Ms Ketevan Tsintsabad, Mr Avtandil Sakvarelidze, and Mr David Abramashvili, the Second Witness Statement of Mr Dekanoidze, factual exhibits C-0015 through C-0035 and legal authorities CL-0035 through CL-0092 ("**Memorial**").

16. On 10 June 2025, the Respondent submitted its Request for Bifurcation under Rule 44 of the Arbitration Rules, together with factual exhibits R-017 through R-019 and legal authorities RL-052 through RL-061 ("**Request for Bifurcation**").

17. On 2 July 2025, the Claimants submitted their Reply to the Request for Bifurcation, together with legal authorities CL-0093 through CL-0105 ("**Reply on Bifurcation**").

II. THE PARTIES' REQUESTS ON BIFURCATION

A. DECISION REQUESTED BY THE RESPONDENT

18. In paragraph 51 of the Request for Bifurcation, the Respondent "requests the Tribunal to order that the Jurisdictional Objections be bifurcated and heard in a preliminary phase."[3]

19. While maintaining that there are "multiple preliminary jurisdictional flaws in the Claimants'

[2] Decision on Rule 41 ¶¶ 8 and 174.

[3] Request for Bifurcation ¶ 51.

case, including that the dispute crystallised well before Mr Dekanoidze became a US citizen, there are at least two which the Respondent submits merit determination in a preliminary phase."[4] The two "**Jurisdictional Objections**" that are the subject of the Request for Bifurcation, are defined by the Respondent to be:[5]

> a) *Mr Dekanoidze was a Georgian national at the time of the alleged breach and neither the ICSID Convention, nor the BIT, allow claims by individuals who are dual nationals. It is also improper for Mr Dekanoidze to take steps to renounce his Georgian nationality after the alleged date of breach of the BIT and then seek to commence a claim under the ICSID Convention. The Tribunal consequently lacks jurisdiction ratione personae ("**First Objection**"); and*
>
> b) *Mr Dekanoidze does not hold a qualifying "investment" under the BIT as he does not own TG Trade and, consequently, neither does TG Trade. Therefore, the Tribunal lacks jurisdiction ratione materiae ("**Second Objection**").*

20. In paragraph 52 of the Request for Bifurcation, the Respondent "reserves all its rights in relation to further objections under the ICSID Rules, including jurisdictional and admissibility objections not addressed in this Request for Bifurcation, as well as its position on all factual and substantive assertions made by the Claimants."[6]

B. DECISION REQUESTED BY THE CLAIMANTS

21. At paragraph 103 of the Reply on Bifurcation, the Claimants conclude that:[7]

> *Georgia's Request for Bifurcation is based on two jurisdictional objections that are neither serious nor substantial. Moreover, the merits of the case are relatively straightforward and favor a unified proceeding. As such, bifurcation would undermine, rather than promote, procedural economy. Fairness also weighs heavily against bifurcation, given the high likelihood*

4 Request for Bifurcation ¶ 5.
5 Request for Bifurcation ¶ 5.
6 Request for Bifurcation ¶ 52.
7 Reply on Bifurcation ¶103.

> *that Georgia's objections will be rejected and that bifurcation would delay an award on the merits of the case by an estimated 15 months.*

22. Accordingly, the Claimants submit, at paragraph 104, that "Georgia's Request for bifurcation therefore fails to meet the established criteria and should be denied."[8]

III. THE LEGAL FRAMEWORK AND STANDARD FOR BIFURCATION

23. The ICSID Arbitration Rules (2022) apply to the present proceedings.

24. Rule 42(1) of the ICSID Rules allows a party to request that a question be addressed in a separate phase of the proceeding. If such a request for bifurcation relates to a preliminary objection, Rule 42(2) provides that "Rule 44 shall apply".[9]

25. Rule 43 defines preliminary objection as an objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons not within the competence of the Tribunal. Rule 43(4) confirms that:[10]

> *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).*

26. Rule 44 thus contains the relevant procedures for requests for bifurcation relating to preliminary objections. Pursuant to Rule 44(1)(e), the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request.

27. Rule 44(2) provides the following guidance to tribunals in deciding bifurcation requests on preliminary objections:[11]

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8 Reply on Bifurcation ¶104.

9 ICSID Arbitration Rules 2022, Rule 42(1) and (2).

10 ICSID Arbitration Rules 2022, Rule 43(4).

11 ICSID Arbitration Rules 2022, Rule 44(2).

> *(2) 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.*

28. The ICSID Rules do not provide for a presumption in favour of or against bifurcation.[12] The decision to bifurcate proceedings is a discretionary one, to be applied on a case-by-case basis considering "all relevant circumstances".[13] As such, decisions of other arbitral tribunals are not binding, but nevertheless may be helpful or persuasive in considering the application of the criteria in Rule 44(2). Indeed, Rule 44(2) was introduced in the 2022 version of the ICSID Rules with a view to codifying elements used by prior tribunals in considering when bifurcation is appropriate.[14] As explained by the ICSID Working Group that produced the 2022 Rules:[15]

> *Several States suggested that AR444(2) add criteria developed in case law when deciding on a request for bifurcation of preliminary objections. As in AR42(4), WP#3 proposes to add the most widely-adopted criteria in AR44(2), while maintaining tribunal discretion to consider the specific circumstances of the case.*

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12 See, e.g. *Naftiran Intertrade Co. (NICO) Limited v. Kingdom of Bahrain*, ICSID Case No. ARB/22/34, Procedural Order No. 4 on Respondent's Request for Bifurcation, 12 August 2024, **RL-052 (**"***NICO v. Bahrain***"), ¶ 42. In this connection, the ICSID Rules differ from Art. 21 of the 1976 UNCITRAL Rules, which creates a presumption in favour of bifurcation (see, e.g. *Resolute Forest Products v. Canada*, Procedural Order No. 4, Decision on Bifurcation, 18 November 2016, **RL-055** ("***Resolute v. Canada***"), ¶ 4.3; cf. Art. 23 of the 2010 UNCITRAL Rules, which dispensed with the presumption, see *Philip Morris Asia Limited v. The Commonwealth of Australia,* PCA Case No. 2012-12, Procedural Order No. 8 Regarding Bifurcation of the Procedure, 14 April 2014, **RL-056** ("***Philip Morris v. Australia***"), ¶¶ 62, 101). See also Reply on Bifurcation ¶ 18, citing *Mainstream Renewable Power and others v. Federal Republic of Germany,* ICSID Case No. ARB/21/26, Procedural Order No. 3 Decision on Bifurcation, 7 June 2022, **CL-095** ("***Mainstream v. Germany***"), ¶ 40; *Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited,* ICSID Case No. ARB/10/20, Procedural Order No. 5, 29 May 2012, **CL-097**, ¶ 22.

13 See also *NICO v. Bahrain*, **RL-052**, ¶ 45.

14 Request on Bifurcation ¶ 11; Reply on Bifurcation ¶ 13.

15 ICSID Working Paper #3, Proposals for Amendment of the ICSID Rules, Volume 1, August 2019, ¶ 115, **CL-093**.

29. Thus both Parties have cited decisions of other arbitral tribunals in support of their positions, as well as leading commentaries.[16] The Parties have relied on these authorities to argue that the Tribunal should, in conjunction with the three circumstances expressly enumerated in Rule 44(2), take into account (i) whether the preliminary objections are *prima facie* "serious and substantial"[17] as well as (ii) overarching considerations of fairness and procedural economy.[18]

IV. ANALYSIS OF THE RELEVANT CIRCUMSTANCES

30. The Tribunal will proceed to consider the relevant circumstances, starting with the *prima facie* seriousness and substantiality of the Respondent's two Jurisdictional Objections, then an analysis of each of the three factors listed in Rule 44(2), and finally addressing any remaining overarching factors of procedural economy and fairness raised by the Parties.

A. WHETHER THE JURISDICTIONAL OBJECTIONS ARE *PRIMA FACIE* SERIOUS AND SUBSTANTIAL

(1) Respondent's Position

31. The Respondent notes that as part of the analysis of the procedural economy of bifurcation, tribunals have considered whether, on a *prima facie* basis, the "jurisdictional objection is serious and substantial or whether it is frivolous – in other words, whether the objection has a reasonable chance of success."[19]

32. Reiterating many of the arguments made in the Rule 41 Objection, the Respondent submits

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16 E.g., SY Koh and A Yeo, "Part 3: ICSID Arbitration Rules, Chapter VI: Special Procedures", in R Happ and S Wilske (eds), *ICSID Rules and Regulations 2022: Article-by-Article Commentary*, **RL-021** ("**Koh and Yeo**"). See, e.g. Request on Bifurcation n.14; Reply on Bifurcation n.5. See also Stephan W. Schill et al, *Schreuer's Commentary on the ICSID Convention* (Third Edition) (CUP 2022), "ICSID Convention, Article 41", **RL-054** and **CL-104** ("**Schreuer**").

17 Request on Bifurcation ¶ 16 citing *NICO v. Bahrain,* **RL-052**, *Resolute v. Canada,* **RL-055**; Reply on Bifurcation ¶¶ 34-80.

18 Request on Bifurcation ¶¶ 14-16; Reply on Bifurcation, ¶¶ 97-102.

19 Request for Bifurcation ¶ 16, citing Koh and Yeo, **RL-021** and *NICO v. Bahrain,* **RL-052**, ¶ 43.

that both of its Jurisdictional Objections are serious and substantial.[20]

33. With respect to the First Objection, the Respondent recalls its position that the Claimants fail to meet the cumulative requirements for consent found in the ICSID Convention and the BIT. That is because, according to the Respondent, Article 25(2)(a) of the ICSID Convention contains an absolute prohibition on nationals invoking ICSID jurisdiction against their home State, including at the moment of the legal dispute, the date of alleged breach.[21] The Respondent maintains that Mr Dekanoidze was a Georgian national at the date of the alleged breach, i.e., on 29 March 2019, the date of the Supreme Court Judgment.

34. The Respondent references arguments made in the Rule 41 proceedings, including that under the Citizenship Law, a Georgian citizen who acquires citizenship of another state can lose their Georgian citizenship, but this is not automatic and requires a process of requesting termination of citizenship and granting such request by presidential decree.[22] The Respondent additionally refers to a "Determination dated 27 January 2020" in which the Public Service Development Agency ("**PSDA**") examined the grounds of loss of citizenship to process the application for termination.[23] The PSDA observed that "During the case review, Mirian Dekanoidze's legal connection with Georgia was examined, and it was determined that he is considered a citizen of Georgia." The PSDA concluded:[24]

> *Based on all of the above, the Public Service Development Agency considers it appropriate, in accordance with Article 24 of the Organic Law of Georgia "On Citizenship of Georgia," to approve application/ notification №1000693922 dated November 22, 2019, and to terminate the Georgian citizenship of Mirian Dekanoidze, born on July 29, 1958, on the grounds of loss of Georgian citizenship.*

35. Thus, according to the Respondent, only on 30 January 2020 when the Presidential Decree

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20 Request for Bifurcation Section IV.

21 Request for Bifurcation ¶ 22, referring back to arguments in Reply on Rule 41 ¶¶ 35-37, 22-24.

22 Request for Bifurcation ¶ 23.

23 Request for Bifurcation ¶ 25.

24 The Public Service Development Agency of the Ministry of Justice of Georgia, Conclusion on the Termination of the Citizenship of Georgia of Mirian Dekanoidze, 27 January 2020, **R-017**.

was issued, did Mr Dekanoidze cease to be a Georgian national.[25] The Respondent also cites a decision of 21 March 2025, in which an investment treaty tribunal considered the loss of Georgian nationality, albeit in the context of a state trying to prove the investor did not have Georgian nationality for purposes of bringing a claim against Azerbaijan under the Energy Charter Treaty. The tribunal held that:[26]

> *The legal framework set out above confirms the Claimants' position, namely that the loss of Georgian citizenship is not automatic but requires an intervening act by the President of Georgia. In this case, Presidential Decree No. 144 dated 11 March 2011 terminated Dr. Leshkasheli's Georgian citizenship pursuant to Article 32(d) of the Organic Law. The use of the wording "to be terminated" in Decree No. 144 suggests that the loss of citizenship was prospective and had no retroactive effect.*

36. The Respondent concludes that it has a serious and substantial basis for objecting to jurisdiction *ratione personae* due to Mr Dekanoidze still possessing Georgian nationality at the relevant times under the ICSID Convention and BIT. In response to the Claimants' suggestion that the BIT did not prohibit dual nationality, the Respondent argues that the "BIT's incorporation of binding arbitration under ICSID for disputes brought by investors incorporates, by logical extension and proper interpretation, ICSID's prohibition on claims by dual nationals."[27] The Respondent notes that if the Tribunal accepts Mr Dekanoidze does not meet the necessary nationality requirements, then it would necessarily follow that the Tribunal would also lack jurisdiction *ratione materiae* over T.G. Trade.[28]

37. With respect to the Second Objection, the Respondent recalls that the BIT provides that each

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25 Request for Bifurcation ¶ 26, citing President of Georgia, Decree No. 34 regarding the termination of Georgian citizenship of Mr Mirian Dekanoidze, 30 January 2020, **R-008** ("**Decree**").

26 *Zaur Leshkasheli and Rosserlane Consultants Limited v. Republic of Azerbaijan*, ICSID Case No ARB/20/20, Award, 21 March 2025, **RL-059** ("***Leshkasheli v. Azerbaijan***"), ¶ 343 (footnote omitted) (Tribunal: Dr Laurent Lévy, Presiding, Mr David Haigh KC, Dr Eduardo Silva Romero).

27 Request ¶ 29, citing the BIT, Article IX(3)(a) and even submitting this position would extend to claims initiated under the UNCITRAL Rules, citing *Manuel Garcia Armas et al v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Award on Jurisdiction, 13 December 2019, **RL-060,** ¶¶ 722-723 and *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela,* PCA Case No. 2017-18, Award on Jurisdiction, 29 October 2019, **RL-061**, ¶¶ 413-419.

28 Request for Bifurcation ¶ 28.

party's substantive obligations apply in respect of a "covered investment" which is defined to be an "investment of a national or company of a Party in the territory of the other Party", and for investments that are companies or shares in companies, this means those which are "owned or controlled directly or indirectly by that national or company."[29]

38. The Respondent states that it is clear that for a Georgian company to qualify as a protected US investor, it must be owned or controlled by a US national. This requires showing Mr Dekanoidze was a US national at all relevant times and that he held an investment through his ownership or control over both T.G. Trade and, indirectly, ECRF.[30]

39. The Respondent refers to and reiterates arguments made in the Rule 41 objection phase that Mr Dekanoidze does not own or control T.G. Trade or its shareholding. The Respondent maintains that the Claimants' assertion that Mr Dekanoidze's ownership stems from Georgian law on matrimonial property is "misconceived".[31] That is for the following reasons:

    a. Marriage to a registered owner of shares does not equate to ownership of shares by the spouse under Georgian law.

    b. Share ownership requires registration of rights in the Public Registry of Georgia, any transactions involving intangible property only become effective upon registration, which has not happened here.

    c. The registered shareholders of T.G. Trade are two Georgian citizens. Mr Dekanoidze is not T.G. Trade's owner, nor did he own or control the shares in ECRF.

    d. The Claimants' reliance on Article 1158 of the Civil Code of Georgia involves an incorrect reading of the provision as it merely raises a presumption of joint matrimonial

[29] Request for Bifurcation ¶ 32.

[30] Request for Bifurcation ¶ 33.

[31] Request for Bifurcation ¶ 34, citing Rule 41 Objection ¶¶ 71-79; Reply on Rule 41 ¶¶ 47-53, as summarized in Decision on Rule 41 ¶¶ 151-154.

property and not rights that can be asserted vis-à-vis third parties. As clarified by the Georgian Supreme Court in 2022, the interest provided for under Article 1158 only materialises when property held by the spouse is divided.[32]

40. As such, the Respondent maintains that there is a *prima facie* serious and substantial argument that neither Mr Dekanoidze nor T.G. Trade own a "qualifying investment" under the BIT which leads to the Centre lacking jurisdiction *ratione materiae*.

(2) Claimants' Position

41. The Claimants agree that the Tribunal should consider if the Jurisdictional Objections are *prima facie* serious and substantial in deciding whether to bifurcate.[33] The Claimants submit that the Jurisdictional Objections raised in the Request for Bifurcation are "frivolous" and "*prima facie* unserious and unsubstantial", "unlikely to succeed" and therefore do not justify bifurcation.[34]

42. With respect to the First Objection, the Claimants maintain that Mr Dekanoidze was not a Georgian national at the time of the alleged breach and that in any event dual nationality at the time of breach is not an obstacle to the Tribunal's jurisdiction.[35]

43. The Claimants say the Respondent is mistaken in arguing that loss of Georgian nationality was not automatic upon acquisition of US nationality. That is because pursuant to Article 21 of the Citizenship Law, a Georgian "shall lose Georgian citizenship if he/she … (c) acquires foreign citizenship, except as provided for in Article 21 of this Law."[36] The exception

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32 Request for Bifurcation ¶ 34, citing Case No. AS-418-2020, Decision of the Supreme Court of Georgia (with English translation), 17 November 2022, **R-019**, ¶ 5.1.

33 Reply on Bifurcation ¶¶ 14, 33, citing *Glamis Gold, Ltd. v. United States of America*, UNCITRAL, Procedural Order No. 2 (revised), 31 May 2005, **CL-094** ("***Glamis Gold v. USA***"), ¶ 12(c), as setting out the most widely adopted criteria, including "(1) whether the objection is substantial inasmuch as the preliminary consideration of a frivolous objection to jurisdiction is very unlikely to reduce the costs of, or time required for, the proceeding."

34 Reply on Bifurcation ¶¶ 4, 33.

35 Reply on Bifurcation ¶¶ 33, 35-47.

36 Reply on Bifurcation ¶ 40, citing Organic Law of Georgia on Georgian Citizenship, **CL-021** ("**Citizenship Law**").

referred to provides for a Georgian national to retain Georgian nationality only by obtaining consent from Georgia prior to acquiring the foreign nationality. Mr Dekanoidze made no such application before acquiring US nationality.[37]

44. The Claimants insist that loss of citizenship is automatic if conditions in Article 21 are met, and that the recording by Presidential Decree (which entails no discretion) is "for domestic purposes" and as a "pure administrative formality – a rubber stamp – which does not change the fact for Mr Dekanoidze that he lost his Georgian nationality the moment when he acquired US nationality."[38]

45. The Claimants say that the new legal authority cited by the Respondent, *Zaur Leshkasheli and Rosserlane Consultants Limited v. Republic of Azerbaijan* ("***Leshkasheli v. Azerbaijan***"), is "of course not a source of Georgian law" and explain that the case arose from a "different factual matrix".[39] They also posit that the tribunal in that case "overlooked the President's lack of discretion when faced with the acquisition of a foreign nationality by a Georgian national", a key fact which in the Claimants' view is "nothing more than formal recognition for administrative purposes of an existing legal status."[40]

46. In any event, the Claimants maintain that even if the Tribunal were to determine that Mr Dekanoidze was technically still a Georgian national at the date of the Supreme Court decision, this would not affect the Tribunal's jurisdiction. In this connection, the Claimants argue that it is clear from Article 25(2)(a) of the ICSID Convention that there are only two relevant dates for purposes of assessing jurisdiction: (i) the date of consent to submit the dispute to arbitration and (ii) the date the request for arbitration is registered. Both occurred after the Presidential Decree confirming termination of Georgian citizenship.[41]

47. The Claimants state that nationality as the date of the breach is "strictly irrelevant for the

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37 Reply on Bifurcation ¶¶ 56-59.
38 Reply on Bifurcation ¶¶ 42-43.
39 Reply on Bifurcation ¶¶ 44-46.
40 Reply on Bifurcation ¶¶ 45-47.
41 Reply on Bifurcation ¶¶ 48-52.

purposes of the ICSID Convention" because the Convention is concerned with procedural, not substantive rights.[42] The Claimants accuse Georgia of conflating substantive coverage under the BIT (requirement for US nationality at time of breach) with jurisdiction to bring an ICSID Claim (lack of host state nationality at time of RFA and registration). The Claimants point out that Georgia cites no authorities considering lack of host state nationality at time of breach as a jurisdictional requirement under Article 25 of the ICSID Convention.[43]

48. The Claimants further submit that Georgia is wrong to contend the BIT prohibits claims by investors who were dual nationals at time of breach.[44] The Claimants submit their interpretation is better supported by the text and object and purpose of the BIT, which is to "reinforce confidence between US investors and Georgia."[45] The Claimants state that fact that the BIT offers investors the choice to resort to arbitration under the UNCITRAL Rules also makes it clear that the scope of protection under the BIT cannot be artificially limited by incorporating ICSID Convention Rules.[46] Mr Dekanoidze was indisputably a US national at the time of the breach, and thus clearly fulfils the definition of "national" under the BIT and meets the jurisdiction *ratione personae* requirements under the BIT.[47]

49. Finally, if Mr Dekanoidze were a dual national, the Claimants submit that in determining Mr Dekanoidze's "dominant and effective nationality" for purposes of coverage of the BIT, on the facts of this case, his US nationality would prevail.[48]

50. The Claimants conclude that the First Objection "is *prima facie* not serious or substantial".[49]

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42 Reply on Bifurcation¶ 53.

43 Reply on Bifurcation ¶¶ 55-63.

44 Reply on Bifurcation ¶¶ 57-66.

45 Reply on Bifurcation ¶ 60.

46 Reply on Bifurcation ¶ 60.

47 Reply on Bifurcation ¶ 62.

48 Reply on Bifurcation ¶ 63, citing *Islamic Republic of Iran v. USA,* IUSCT Case No. A-18, Decision No. DEC 32-A 18 FT, 6 April 1984, **CL-022**, p. 26; *Michael and Lisa Ballantine v. The Dominican Republic,* PCA Case No. 2016-17, Final Award, 3 September 2019, **CLA-023**, ¶ 550.

49 Reply on Bifurcation ¶ 66.

51. With respect to the Second Objection, the Claimants submit that both lines of argument relied on by the Respondent are misconceived.

52. First, the Claimants disagree that share ownership requires public registration. That argument by Georgia conflates the formal holding of "title" to the shares in a company with ownership rights arising under matrimonial law. The Claimants reiterate their argument raised in the Rule 41 proceedings citing Article 1158 of the Civil Code and the Court of Appeal decision which noted spouses have protectable ownership rights in the same shares.[50]

53. Second, the Claimants disagree with Georgia's portrayal of a 2022 Supreme Court decision that the matrimonial interest in property only materialises after division of spousal property. Rather, the Supreme Court "clearly stated that property acquired during marriage constitutes joint property under Article 1158, regardless of whether it has been divided or registered,"[51] quoting the Court's statement of the rule as follows:[52]

> *For the disputed property to be considered common property of the spouses, … spouses must have been in a registered marriage, and there must be common marital property between them. Therefore, under the legislation governing family relations, the realization of a spouse's property right depends on the fact that the disputed material asset was acquired during the period of registered marriage.*
>
> *… Accordingly, the Cassation Court concurs… that the disputed property clearly falls under the marital co-ownership regime and holds that pursuant to Article 1158 of the Civil Code… the property in question is to be considered common property.*

54. Thus, the Claimants say that the property right is "realized" as soon as the asset is acquired during a marriage and there is no need for further procedural action. They say Georgia collapses the distinction between the existence of co-ownership rights (under Article 1158(1)

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50 Reply on Bifurcation ¶ 72, citing Civil Code of Georgia ("**Civil Code**"), **TT-14**, Article 1158; *Badri Tsilosani v. TG Trade LLC*, Decision of the Tbilisi Court of Appeal, Case No. 2/3958-17 (with English Translation), 23 February 2018, **R-004**.

51 Reply on Bifurcation ¶ 76.

52 Reply on Bifurcation ¶¶ 76-77, citing Case No. AS-418, 2020, Decision of the Supreme Court of Georgia (with English translation), 17 November 2022, **R-019**, ¶¶ 5.1-5.2 (emphasis added by the Claimants).

of the Civil Code) and the procedural act of division (under Article 1164 of the Civil Code).[53]

55. The Claimants contend that Mr Dekanoidze's co-ownership right is established through his marriage to Ms Tsintsabadze under Article 1158 of the Civil Code. If he wanted to make his interest separate for some specific purpose, then he would need to first seek division of his shares from hers, but as co-owner of undivided shares through marriage, he is legally entitled to assert his interest in legal proceedings, including to protect, preserve, or challenge this treatment of the jointly held asset as recognised by the Georgian courts.[54]

56. The Claimants conclude that Georgia's Second Objection is neither serious nor substantial.[55]

(3) Tribunal's Analysis

57. Both Parties agree, and the Tribunal accepts, that in the context of deciding whether or not to bifurcate, an important consideration is whether or not the objections that form the subject of a request for bifurcation are "serious and substantial" on a *prima facie* basis.[56]

58. The Tribunal recalls that it already stated in its Decision on Rule 41 that:[57]

> *The Tribunal appreciates that the Respondent's Objection raises some serious questions as to jurisdiction, but these questions are not suitable for being summarily resolved within the framework of Rule 41.*

59. Later in the Decision on Rule 41, the Tribunal stated:[58]

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53 Reply on Bifurcation ¶¶ 77-80.

54 Reply on Bifurcation ¶ 79.

55 Reply on Bifurcation ¶ 80.

56 See *NICO v. Bahrain* **RL-052**; *Glamis Gold v. USA,* **CL-094**; *Aris Mining Corporation (formerly known as GCM Mining Corp. and Gran Colombia Gold Corp.) v. Republic of Colombia,* ICSID Case No. ARB/18/23, Procedural Order No. 3 (Decision on Respondent's Request for Bifurcation)**,** 17 January 2020, **CL-099** ("***Aris Mining v. Colombia***"), ¶ 27 ("whether on the basis of the record as it stands, an objection raises a serious issue requiring consideration in a separate procedural phase on the force of the allegations and legal arguments as currently formulated").

57 Decision on Rule 41 ¶ 8.

58 Decision on Rule 41 ¶ 197.

The Respondent's Rule 41 Objection has identified and illuminated significant jurisdictional issues which will need to be further addressed in due course.

60. In making those observations, the Tribunal recognised the potential seriousness and substantial nature of the Respondent's Jurisdictional Objections. The Parties' submissions in the present phase of the proceedings, relating to the appropriateness of bifurcation, have not changed the Tribunal's assessment that the Jurisdictional Objections are *prima facie* serious and substantial.

61. With respect to the First Objection, the Tribunal already set out why, on the face of the plain meaning of Articles 3, 19, and 21(1)(c) of the Organic Law on Citizenship, there was at least a genuinely arguable case that Mr Dekanoidze lost his Georgian citizenship when he acquired US citizenship in May 2018 and thus was not a dual national the date of the alleged Treaty breach in March 2019.[59] The Tribunal acknowledged that there was some tension with the procedural provisions in the same law, and uncertainty over the legal effect of the Presidential Decree.[60]

62. In the context of the submissions on bifurcation, new material has been drawn to the attention of the Tribunal which makes it even more difficult to characterise the First Objection as "frivolous". This includes a recent decision by another international tribunal which had to grapple with interpreting the Organic Law on Citizenship to determine whether Georgian nationality is automatically lost upon acquisition of a foreign nationality.[61] The Tribunal agree with the Claimants that the *Leshkasheli v. Azerbaijan* tribunal's decision does not constitute an authoritative statement of Georgian law and arose in a different factual matrix and legal context.[62] Nevertheless, the analysis and stance taken by that tribunal is relevant to the assessment that the objections issues raised are at least on a *prima facie* basis serious and substantial. Similarly, the new evidence in the record showing the PSDA considered

[59] Decision on Rule 41 ¶ 179.

[60] Decision on Rule 41 ¶ 180.

[61] *Leshkasheli v. Azerbaijan*, **RL-059** ¶ 343.

[62] Reply on Bifurcation ¶¶ 45-47.

Mr Dekanoidze to be a Georgian citizen as of 27 January 2020, serves as further support for the treatment of the First Objection as *prima facie* serious and substantial.[63]

63. The Tribunal also considers the Second Objection to be *prima facie* serious and substantial. It is not disputed that Ms Tsintsabadze, a Georgian national, is on the face of the T.G. Trade shares and the share register, the owner of the relevant investment. As noted in the Decision on Rule 41, the Tribunal considered that both sides' positions on the appropriate treatment of shares owned via marriage under domestic and international law to be "genuinely arguable positions",[64] which required further submissions and analysis. Nothing submitted in the course of the bifurcation proceedings causes the Tribunal to treat the Second Objection now as a frivolous one.[65]

64. The Tribunal therefore finds that both the Jurisdictional Objections are *prima facie* serious and substantial. In so doing, the Tribunal does not prejudge the outcome of those Jurisdictional Objections. Rather, in the context of deciding whether bifurcation is an appropriate course of action, the Tribunal needs to be satisfied that the preliminary objections have some realistic prospects of success in order to attain the cost efficiency benefits from having only one discrete preliminary phase, as weighed against the risk of lengthening the proceedings into two phases.

65. As Koh and Yeo explain:[66]

> *In order to facilitate procedural economy, one important question the Tribunal needs to ask is whether the jurisdictional objection is serious and substantial or whether it is frivolous – in other words, whether the objection*

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63 PSDA, Conclusion on the Termination of the Citizenship of Georgia of Mirian Dekanoidze, 27 January 2020, **R-017.**

64 Decision on Rule 41, ¶ 185.

65 Case No AS-418-2020, Decision of the Supreme Court of Georgia, 17 November 2022, **R-019**. The case cited by the Respondent shows that Article 1158 will be considered in the context of division of marital property after termination of a marriage, but it does not shed light on the significance of the marital property rules in the Civil Code on the ownership interest in shares vis-à-vis third parties while a marriage is still afoot, much less how they might apply in the context of a claim under an investment treaty.

66 Koh and Yeo, **RL-021**, ¶ 25, p. 20 (footnote omitted).

> *has a reasonable chance of success. If it is not, a separate jurisdictional phase is needless and wasteful.*

66. The Tribunal further considers the question of procedural economy in the next section.

B. WHETHER BIFURCATION WOULD MATERIALLY REDUCE TIME AND COST OF THE PROCEEDING

(1) Respondent's Position

67. Having laid out the reasons why the Respondent considers the Jurisdictional Objections to be serious and substantial, the Respondent submits that the preliminary phase would "very likely materially reduce the time and cost of the proceedings."[67] The Respondent observes that reduction of time and costs constitute the overarching factor that tribunals should consider when deciding bifurcation applications.[68] They quote the statement by the tribunal in *Lighthouse v Timor-Leste* that:[69]

> *it is good practice to deal with jurisdictional objections preliminarily, so as 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.*

68. The Respondent submits that a preliminary jurisdictional phase in this case would "very likely avoid the need for a detailed examination of the merits of the matter, including document production, the cross-examination of no less than four factual witnesses for the Claimants, as well as two experts, including a quantum claim."[70]

69. According to the Respondent, deciding the two discrete Jurisdictional Objections in a preliminary phase would "plainly reduce the scope, time and cost of this case" and

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67 Request for Bifurcation ¶ 38.

68 Request for Bifurcation ¶¶ 7, 12-16, citing Koh and Yeo, **RL-021**.

69 *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, Decision on Bifurcation and Related Requests, 8 July 2016, **RL-053** ("***Lighthouse v. Timor-Leste***"), ¶ 19.

70 Request for Bifurcation ¶ 39.

bifurcating from the merits and quantum would be in the interest of procedural economy.[71]

(2) Claimants' Position

70. The Claimants submit that procedural economy should be a "key factor" in considering a bifurcation request.[72] They note that any analysis of the procedural economy criterion begins with an assessment of whether the objection is serious and substantial on a *prima facie* basis.[73] Thus, if Jurisdictional Objections are "unlikely to eliminate the need for a merits stage" either because they are not substantial or because they were directed only to a few claims, then a "tribunal should be disinclined to bifurcate, unless there are other circumstances that would lead to a contrary conclusion."[74] The Claimants note that even a non-frivolous objection might not necessarily warrant bifurcation, it still has to "be likely to achieve time or cost savings."[75]

71. The Claimants refer to empirical studies which show that bifurcated cases take longer to complete than non-bifurcated cases, indicating that tribunals may over-estimate the possibility that cases will conclude at the first round.[76] The later study showed that where jurisdiction was upheld in bifurcated proceedings and there was a final award, it could take two years longer than non-bifurcated proceedings to conclude. The Claimants say that the author of that study considered, based on the data, that arbitrators should only order bifurcation where they can be reasonably certain that a jurisdictional challenge is

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71 Request for Bifurcation ¶¶ 7, 39.

72 Reply on Bifurcation ¶ 18, citing *Mainstream v. Germany,* **RL-050**, ¶ 40.

73 Reply on Bifurcation ¶ 19-22, citing Koh and Yeo, **RL-021**; *Philip Morris v. Australia;* **RLA-056**; *Lighthouse v. Timor-Leste;* **RL-053**; *Glencore Finance (Bermuda) Limited v. Plurinational State of Bolivia,* PCA Case No. 2016-39, Procedural Order No. 2, Decision on Bifurcation, 31 January 2018, **CL-098**; *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, 28 June 2018, **CL-96**.

74 Reply on Bifurcation, ¶ 20, citing *Lighthouse v. Timor-Leste,* **RL-053**.

75 Reply on Bifurcation ¶ 22, citing Lucy Greenwood, *Does Bifurcation Really Promote Efficiency?* Journal of International Arbitration, Kluwer, Vol. 28:2 (2011), **CL-100** (**"Greenwood 2011**"); and L Lucy Greenwood, *Revisiting Bifurcation and Efficiency in International Arbitration Proceedings* in Maxi Scherer (ed), Journal of International Arbitration, Kluwer, Vol. 36:4 (2019), **CL-101** ("**Greenwood 2019**").

76 Reply on Bifurcation ¶ 22, citing Greenwood 2011, **CL-100**; Greenwood 2019, **CL-101**.

meritorious.[77] The Claimants submit that in light of the likelihood for significant adverse impact on the item and cost of the proceedings, bifurcation should be granted only where Georgia has shown that the jurisdictional challenge is *prima facie* serious and substantial, otherwise it is simply not worth the additional time and cost it imposes. Additionally, where the expected costs of proceeding in two phases would exceed the expected costs of a combined proceeding, a Tribunal should decline to participate.[78]

72. Considering procedural economy in the present case, the Claimants point out that the merits phase in this case would raise "relatively limited or straightforward issues" justifying a "unified proceeding."[79] That is because in this case:[80]

    a. The Claimants' case on the merits turns primarily on the Tribunal's assessment of a single document – the Georgian Supreme Court Judgment. The damages claim is likewise dependent on a "straightforward valuation of real property" owned by ECRF, and not a complex damages model like a discounted cash flow analysis.

    b. Legally, while Claimants invoke three breaches of international law, all three are grounded in the "same limited factual matrix". A finding of even one breach suffices to establish liability and allow the Tribunal to proceed to analyze quantum. The legal issue at the core of the merits is also, according to the Claimants, "neither novel nor especially complex" – it concerns "whether a domestic court decision may constitute a breach of international law". Likewise the quantum case rests on what the Claimants say are "well established principles of full reparation" and an "expert valuation of the fair market value of ECRF's principal assets" in real estate.

73. The Claimants argue that in this case, the expected cost of proceeding in two phases would "surpass without a doubt that of a unified proceeding", where merits issues are narrow and

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77 Reply on Bifurcation ¶ 24, citing Greenwood 2019, **CL-101**, pp. 425-426.

78 Reply on Bifurcation ¶ 26.

79 Reply on Bifurcation ¶ 83.

80 Reply on Bifurcation ¶¶ 83-84.

can "easily be addressed alongside the jurisdictional objections, without adding significant complexity". By contrast, bifurcating would involve drawn-out phases of written pleadings and double the planning and costs of a hearing and the services connected with a hearing.[81]

74. The Claimants note that under Scenario 2 of the Procedural Timetable in Annex A of PO4, the hearing on all issues including jurisdiction and the merits, will happen in June 2026, with a decision likely by December 2026. Under Scenario 3, where bifurcation is granted, the hearing on bifurcated objections would happen in January 2026, with a decision on bifurcated objections likely by July 2026, and any second phase hearing not scheduled to take place until September 2027. The time loss between Scenarios 2 and 3 for a decision dealing with the Jurisdictional Objections would only by 5 months. This compares to a 15-month wait for a hearing on merits issues.[82] The Claimants therefore observe that the potential delay to a hearing on the merits is three times the potential time savings for a decision on jurisdiction, not to mention the additional costs of a second proceeding.

75. The Claimants warn that while bifurcation "may have promoted procedural economy in certain individual cases", it is "often overused" and "tends to prolong proceedings rather than shorten them".[83]

76. The Claimants describe the Request for Bifurcation as a "clear attempt to further delay the Tribunal's consideration of the merits of the case, increase costs and postpone the Award", noting the Rule 41 Objection already delayed the proceedings by five months and bifurcation of the case into two phases would lead to "even greater delay and increased costs."[84]

(3) Tribunal's Analysis

77. The Tribunal agrees with the Parties that procedural economy should be the "key factor" in

81 Reply on Bifurcation ¶ 86.
82 Reply on Bifurcation ¶ 90.
83 Reply on Bifurcation ¶¶ 92-93, citing Greenwood 2019, **CL-101**.
84 Reply on Bifurcation ¶ 5.

deciding whether or not to bifurcate a particular case.[85] The Tribunal thus turns to consider the factor in Rule 44(2)(a), namely whether "bifurcation would materially reduce the time and cost of the proceeding."[86]

78. With respect to reduction of time, under the timetables agreed in PO4, if the Jurisdictional Objections are bifurcated and the Respondent's arguments are accepted, then the Tribunal would find no jurisdiction and the case would end in its entirety by July 2026. By contrast, if the Jurisdictional Objections are joined to the merits and all issues heard together, the Tribunal could arrive at the same conclusion on the Jurisdictional Objections, leading to the same outcome being reached only in November 2026, some five months later.

79. In the same scenario, with respect to reduction of costs, a separate preliminary phase focused on the Jurisdictional Objections would entail less witness, documentary and expert testimony and be more focused on legal issues than if the Jurisdictional Objections were heard in a phase combined with the merits. The hearing would also likely be shorter.

80. However, as acknowledged by one of the authors of the empirical studies cited by the Claimants, "[i]n practice, it is almost impossible to estimate the costs involved in the different courses of action with any certainty."[87]

81. The Tribunal accepts that if bifurcation were to result in the Tribunal rejecting the Respondent's Jurisdictional Objections and upholding its jurisdiction, then it would proceed to a second phase and the overall time and costs of two proceedings could indeed be more extensive and expensive than if the Tribunal had not ordered bifurcation. That is a prospect in every case where bifurcation is considered, and why the other factors addressed in this decision are significant.

82. The Tribunal therefore considers that, for purposes of the first limb of the Rule 44(2) test, and

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85 See *Mainstream v. Germany*, **RL-050**, ¶ 40.

86 ICSID Arbitration Rules 2022, Rule 44(2)(a).

87 Greenwood 2019, **CL-101**, p. 426.

in light of the seriousness and substantiality of the Jurisdictional Objections, bifurcation in the present case could materially reduce the time and cost of the proceeding, and in conjunction with the other factors set out in Rule 44, the Tribunal is inclined to order bifurcation.

83. The Tribunal notes that both Parties have cited Schreuer's Commentary to the ICSID Convention, which contains the following proposition:[88]

> *The choice between a preliminary decision and a joinder to the merits is a matter of procedural economy… It does not make sense to go through lengthy and costly proceedings dealing with the merits of the case unless the tribunal's jurisdiction has been determined authoritatively.*

84. The Tribunal agrees with the intent of this paragraph but does recognise, for completeness, that in the event the Tribunal were to reject both of the Respondent's Jurisdictional Objections, some jurisdictional objections would still need to be considered in the subsequent phase. The Respondent has flagged that "there are multiple preliminary jurisdictional flaws in the Claimants' case, including that the dispute crystalised well before Mr Dekanoidze became a US citizen."[89] Therefore, while the Tribunal does believe bifurcation of the Jurisdictional Objections is ultimately an approach supported by procedural economy considerations, it acknowledges that the bifurcated phase will not necessarily lead to a situation where "the tribunal's jurisdiction has been determined authoritatively."[90] Yet, the fact that further jurisdictional objections could remain, should both of the Respondent's Jurisdictional Objections ultimately be dismissed, does not undermine the above conclusions as to the seriousness on a *prima facie* basis of the bifurcated objections. Nor does it detract from the Tribunal's conclusions about the procedural economy that could be achieved by bifurcating the Jurisdictional Objections, in light of them being capable of disposing of the entirety of the case, and not being intertwined with the merits.

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88 Schreuer, **RL-054** and **CL-104**, ¶¶ 158-159.

89 Request for Bifurcation, ¶ 5.

90 Schreuer, **RL-054** and **CL-104**, ¶ 159.

C. WHETHER DETERMINATION OF THE PRELIMINARY OBJECTIONS WOULD DISPOSE OF ALL OR A SUBSTANTIAL PORTION OF THE DISPUTE

(1) Respondent's Position

85. The Respondent submits that "each of the Jurisdictional Objections is capable of entirely disposing of the dispute, if successful".[91] It elaborates as follows:[92]

> *(a) First Objection: If the Tribunal determines that Mr Dekanoidze was. Georgian national on 29 March 2019 (i.e., the date of the alleged breach), and that a State's own nationals cannot bring claims under the ICSID Convention and/or the BIT, then this would dispose of the Claimants' entire case for lack of jurisdiction* ratione personae. *Mr Dekanoidze's actions to change his nationality after the alleged breach and then seek to bring an ICSID Claim also render the Claimants' case inadmissible.*
>
> *(b) Second Objection: If the Tribunal determines that Mr Dekanoidze does not have ownership of the shares in TG Trade through his marriage to Ms Tsintsabadze under Georgian law, then this would dispose of the Claimants' entire case for lack of jurisdiction* ratione materiae *as Mr Dekanoidze does not have a "*covered investment*".*

86. The Respondent observes that a finding on either of the above also automatically would result in a lack of jurisdiction over the claims of the Second Claimant, T.G. Trade, as jurisdiction over the Second Claimant is "entirely derived from and reliant on jurisdiction over Mr Dekanoidze."[93]

87. The Respondent refers to *Lighthouse v. Timor-Leste* tribunal having considered that "[w]hether the objections, if accepted, would result either in a dismissal of the entire case or at least a material reduction in the 'scope and complexity' of the proceeding" as a key consideration.[94] It also cites decisions by tribunals in *Philip Morris v Australia* and *NICO v*

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91 Request for Bifurcation ¶¶ 8, 40.

92 Request for Bifurcation ¶ 40.

93 Request for Bifurcation ¶ 40(c), citing the Tribunal's acknowledgement of this in the Decision on Rule 41, ¶ 195.

94 Request for Bifurcation ¶ 18, citing *Lighthouse v. Timor-Leste,* **RL-053** ¶ 20.

Bahrain as considering discrete questions of nationality as exactly the types of objection that are suitable for bifurcation.[95]

88. The Respondent concludes that if either of the Jurisdictional Objections were successful, the entirety of the dispute would be disposed of and satisfy the second limb of the test in Rule 44(2) in favour of bifurcating proceedings.

(2) Claimants' Position

89. The Claimants do not disagree with the Respondent that if either of the Jurisdictional Objections were accepted then the entirety of the dispute would be disposed of, and thus the second limb of the test in Rule 44(2) would be satisfied. Rather, the Claimants insist that all three of the limbs in Rule 44(2) must be satisfied, and the Respondent has failed to discharge its burden to meet the first and third criteria in this case.[96]

(3) Tribunal's Analysis

90. It is clear to the Tribunal, and uncontested by the Parties, that success on either of the Respondent's Jurisdictional Objections would result in the disposal of the dispute in its entirety.

91. As noted by the *Lighthouse* tribunal, bifurcation is appropriate even where upholding preliminary objections would lead to a material narrowing of the scope of issues to be briefed in a subsequent merits phase.[97] In this case, the efficiency gains are even greater as upholding preliminary objections would eliminate the need for a second phase all together. The *NICO v. Bahrain* tribunal agreed to bifurcate a "preliminary issue [that] has the potential to significantly reduce the cost of the proceeding, as it would entirely avoid the need for the

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95 Request for Bifurcation ¶¶ 41-43, citing *Philip Morris v. Australia,* **RL-056**, ¶ 120; *NICO v. Bahrain,* **RL-052**, ¶ 13.

96 Reply on Bifurcation ¶¶ 12, 27, 81 (with Heading B "Georgia Does Not Satisfy Two of the Three Criteria for Bifurcation").

97 See *Lighthouse v. Timor-Leste,* **RL-053**, ¶¶ 20, 24.

Parties to present positions on jurisdiction, merits, or quantum…."[98]

92. The factor set out in ICSID Rule 44 (2)(b) therefore points in favour of bifurcation.

D. WHETHER THE PRELIMINARY OBJECTIONS AND THE MERITS ARE SO INTERTWINED AS TO MAKE BIFURCATION IMPRACTICAL

(1) Respondent's Position

93. The Respondent submits that the Jurisdictional Objections are "self-standing, concern the jurisdiction of the Centre and Tribunal, and therefore, do not require consideration of the merits of the dispute" and that each objection "turns on isolated matters of law which do not touch on the merits."[99] As such, the Respondent maintains there will not be a duplication of witness testimony or detailed examination of the "same evidence that will ultimately need to be examined at the stage of determining the merits" or submissions on "same or similar matters".[100]

94. The Respondent emphasises that the Jurisdictional Objections that are subject of the Request for Bifurcation are "self-contained, exclusively jurisdictional nature" and do not require consideration of merits or quantum issues and can therefore be determined separately from and would not impact on merits or quantum. Rather, the Jurisdictional Objections relate to:[101]

> *a) Whether Mr Dekanoidze was, as a matter of Georgian law, a Georgian national on the date of the Supreme Court Decision and whether this precludes him from accessing ICSID arbitration under the ICSID Convention and the BIT as a matter of international law; and*
>
> *b) Whether, as a matter of Georgian law, Mr Dekanoidze is the owner of shares in T.G. Trade through his marriage to Ms Tsintsabadaze.*

95. The Respondent cites decisions by other tribunals which have held that jurisdictional

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98 *NICO v. Bahrain,* **RL-052**, ¶ 75.

99 Request for Bifurcation ¶ 9.

100 Request for Bifurcation ¶ 20, citing *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia,* ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015, **RL-058** ("***Gavrilovic v. Croatia***"), ¶ 93.

101 Request on Bifurcation ¶¶ 45-46 (footnote omitted).

objections concerning the foundation of jurisdiction that are "discrete and self-contained" and limited to the application of the relevant national law, to be "suitable for bifurcation."[102] The Respondent submits that the Tribunal would not be required to delve into substantive breaches, including the "nature and effects of the respective decisions of the Court of Appeal or the Supreme Court of Georgia."[103]

96. The Respondent concludes that the third limb in Rule 44(2) is accordingly satisfied and bifurcation is warranted.[104]

(2) Claimants' Position

97. The Claimants, by contrast, submit that the Jurisdictional Objections do overlap with the merits, at least with respect to one of the Respondent's objections, such that it would not be procedurally efficient to separate them from the merits issues.[105]

98. The Claimants refer to cases where tribunals have expressed concern that the jurisdictional requirements are so intertwined with the merits-related issues that there was a risk of prejudging factual and/or legal issues requiring proper consideration of evidence and arguments.[106] Other concerns about intertwinement of issues were expressed by the tribunal in *Gavrilovic*, which referred to "three of the four preliminary objections" requiring in all likelihood a "detailed examination of the same evidence that will ultimately need to be examined at the stage of determining the merits" and in those circumstances that tribunal found there was "no procedural or other advantage" to bifurcation.[107] Similarly, the tribunal in *CMC et al. v. Republic of Mozambique* rejected a bifurcation request because it found it

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102 Request on Bifurcation ¶¶ 47-48, citing *Philip Morris v. Australia*, **RL-056**, ¶ 113; and *NICO v. Bahrain,* **RL-052**, ¶ 74.

103 Request on Bifurcation ¶ 49.

104 Request on Bifurcation ¶ 50.

105 Reply on Bifurcation ¶ 6.

106 See Reply on Bifurcation ¶ 29, citing *Tayeb Benabderrahmane v. State of Qatar*, ICSID Case No. ARB/22/23, Procedural Order No. 6, **CL-103**; Koh and Yeo, **RL-021**; *Gavrilovic v. Croatia,* **RL-058**; *Schreuer*, **CL-104**, *Mainstream Renewable v. Germany*, **CL-095**.

107 Reply on Bifurcation ¶ 31, citing *Gavrilovic v. Croatia,* **RL-058**, ¶ 93.

first needed a "sufficiently developed set of facts to which to apply the objections."[108]

99. The Claimants submit that the facts underpinning the First Objection "are deeply intertwined with the merits" and thus duplication and delay would be introduced by bifurcation. They explain that the First Objection "includes the allegation that Mr Dekanoidze improperly renounced his Georgian nationality after the alleged breach in order to manufacture jurisdiction under the ICSID Convention."[109] The Claimants say this "abuse of process" claim was a "central theme to Georgia's Rule 41 Objection."[110]

100. The Claimants submit that evaluating the abuse of process claim will "necessarily require the Tribunal to consider the broader factual context in which Mr Dekanoidze fled Georgia – namely, the threats, violence, and persecution he faced in 2007 and 2008, which ultimately led him to seek refuge in the United States and apply for US nationality."[111] According to the Claimants these "very same facts" are also key to the merits of the case and will be presented to show that "but for the unlawful actions of the Supreme Court of Georgia, the Georgian judiciary would have confirmed the finding that the share transfer was coerced and ordered the recovery of TG Trade's shares in ECRF."[112] Bifurcation in these circumstances will therefore require the Tribunal to hear overlapping testimony from the same witnesses about the same events in two separate hearings, contrary to basic principles of procedural efficiency and international best practice.[113]

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108 Reply on Bifurcation ¶ 32, citing *CMC et al. v. Republic of Mozambique*, ICSID Case No. ARB/17/23, Procedural Order No. 3, 15 August 2018, **CL-105**, ¶ 6(g).

109 Reply on Bifurcation ¶¶ 8, 94-95, citing Request for Bifurcation ¶ 5(a).

110 Reply on Bifurcation ¶ 94, referring to Rule 41 Objection ¶¶ 32-37; Reply on Rule 41 ¶¶ 39-45.

111 Reply on Bifurcation ¶¶ 95-96.

112 Reply on Bifurcation ¶¶ 8, 96.

113 Reply on Bifurcation ¶ 96.

(3) Tribunal's Analysis

101. The Tribunal finds that the Respondent's Jurisdictional Objections are not "so intertwined with the merits as to make bifurcation impractical" within the meaning of Rule 44(2)(c).

102. To the contrary, the issues raised by both Jurisdictional Objections largely turn on questions of Georgian law completely separated from the factual and legal issues underlying the merits.

103. The First Objection, relating to Mr Dekanoidze's nationality, and the Second Objection, relating to whether he holds the investment, will require considerations of domestic legislation, including the Citizenship Law, the Civil Code (including provisions on marital law and share transactions) and possibly the Law of Georgia on Entrepreneurs. With respect to both Jurisdictional Objections, the Parties can be expected to submit authorities on Georgian domestic law, including relevant legislation, domestic court decisions, and possibly commentaries and expert legal opinions of Georgian lawyers or scholars.

104. By contrast, the types of evidence and legal authorities expected to be submitted on the merits will be quite distinct and not at all intertwined. It will include arguments on the applicability of Articles I(3)(a), II(4) and (III) of the BIT, and the types of facts concerning Georgia's conduct affecting Mr Dekanoidze and T.G. Trade that are laid out in Section III (Factual Background) of the Claimant's Memorial. The expert evidence on valuation of the real estate asset does not overlap at all on any issues that arise in the Jurisdictional Objections.

105. Preliminary objections relating to questions of nationality or application of national laws are precisely the kinds of discrete objections which tribunals have considered suitable for bifurcation. For example, in *Philip Morris v. Australia,* the Tribunal observed that the non-admission of investment objection in question was "suitable for bifurcation because it concerns the foundation of the Tribunal's jurisdiction under the Treaty…. It can be considered as a discrete and self-contained question both factually and legally limited to the application of Australian law concerning the invalidity of the decision to admit the

investment…."[114] With respect to questions of (corporate) nationality, the *NICO v Bahrain*, tribunal agreed to include in a bifurcated preliminary phase a discrete issue about the claimant's Malaysian nationality at the time of the breach.[115]

106. The only point on which the Claimants seriously suggest there could be overlap is the argument referred to by the Respondent in paragraph 5(a) of the Request for Bifurcation that "It is also improper for Mr Dekanoidze to take steps to renounce his Georgian nationality after the alleged date of breach of the BIT and then seek to commence a claim under the ICSID Convention".[116] The Claimants say that this "abuse of process" claim was a "central theme" of the Rule 41 Objection and evaluating it "will necessarily require the Tribunal to consider the broader factual context in which Mr Dekanoidze fled Georgia – namely, the threats, violence, and persecution in he faced in 2007 and 2008, which ultimately led him to seek refuge in the United States and apply for US nationality".[117] These facts, according to the Claimants, are the "very same facts" that are "key to the merits of the case", which will entail "significant overlap in witnesses being called upon to testify to the same events for both jurisdictional and merits issues."[118]

107. The Tribunal is not convinced by the Claimants' contentions that evaluating the abuse of process argument will necessarily entail considering the "broader factual context in which Mr Dekanoidze fled Georgia, namely threats, violence and persecution he faced in 2007 and 2008" which ultimately led him to apply for US nationality."[119] There is a gap of over a decade between those circumstances on the one hand, and on the other hand the dates when Mr Dekanoidze became a US national, when the Supreme Court decision was rendered and when Mr Dekanoidze filed an application to suspend his Georgian nationality. The latter event, in November 2019, is the primary concern of the abuse of process objection. The

114 *Philip Morris v. Australia,* **RL-056**, ¶ 113.
115 *NICO v Bahrain,* **RL-052**, ¶¶ 57-58.
116 Request on Bifurcation ¶ 5(a).
117 Reply on Bifurcation ¶ 95.
118 Reply on Bifurcation ¶ 96.
119 Reply on Bifurcation ¶¶ 95-96.

Respondent clarified at the Hearing on Rule 41 that it was not questioning the motives of Mr Dekanoidze for fleeing to the US or applying to become a US citizen, but rather the timing and motives for his application to "suspend" his Georgian citizenship.[120]

108. The Tribunal recalls that in Mr Dekanoidze's witness statement filed in the Rule 41 proceedings, he said he applied to suspend Georgian nationality because a consular official told him to do so as a "formality" after a phone call he had made out of concerns that "nobody would use my national ID card and numbers, for example to vote or to take my pension."[121] Even if such subjective factors were relevant to determining jurisdiction, there appears to be no risk of overlap of that evidence from 2019, with evidence about events of 2007 and 2008 or the content of any of the four witness statements or two expert reports filed with the Memorial. The Tribunal also observes that the Claimants' arguments in connection with this point are somewhat inconsistent with their submission that the merits phase involves "relatively limited or straightforward issues"[122] and that the claim "turns primarily on the Tribunal's assessment of a single document – the Georgian Supreme Court Judgment."[123]

109. Accordingly, for purposes of the third limb of Rule 44(2), the Tribunal is satisfied that the circumstances of the case point in favour of bifurcation of the Respondent's Jurisdictional Objections. The Tribunal is not concerned that the preliminary objections and the merits "are

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120 See Hearing on Rule 41, Hearing Tr., p. 9 ("That doesn't mean that it needs to be shown that there is bad faith, but the authorities are very clear: if a step is taken to change or improve a jurisdictional position [including for] *personae* jurisdiction and nationality questions, whether for individuals or for companies -- if that step is taken when a dispute is reasonably foreseeable in the future, prospectively, that is an abuse of process. A fortiori, it is obviously an abuse of process for that step to be taken after the dispute has actually arisen, and that's the case here. It's an extreme case, where a step is taken after a dispute has crystallised, on the Claimants' own case, in order to improve the jurisdictional position by purporting to suspend Georgian citizenship only afterwards, so as to avoid the double-barrelled aspects… of the negative nationality part of the ICSID test."); and p. 15 ("This does not go to impugn his motives, to be clear, for becoming a US national. [Respondent] doesn't accept the facts that he presents and the characterisation that he portrays about becoming a US national. But it doesn't go to that point. It goes to the step he's taking afterwards. … in the [Claimants'] demonstrative [exhibit] … there was a date that was missing, … because they want to airbrush out the fact that only after the dispute arose, on their case, did he apply for suspension of Georgian citizenship. And that is the step that is clearly, we say, an abuse of process….").

121 Witness Statement of Mr Dekanoidze, 4 October 2024, ¶ 64.

122 Reply on Bifurcation ¶ 83.

123 Reply on Bifurcation ¶ 84.1.

so intertwined as to make bifurcation impractical."

E. OTHER CONSIDERATIONS OF PROCEDURAL ECONOMY AND FAIRNESS

(1) Respondent's Position

110. The Respondent cites authorities which acknowledge the overarching considerations of procedural economy and fairness, for example, in Schreuer's commentary, it is noted that:[124]

> *The choice between a preliminary decision and a joinder to the merits is a matter of* ***procedural economy****… It does not make sense to go through lengthy and costly proceedings dealing with the merits of the case unless the tribunal's jurisdiction has been determined authoritatively.*

111. The Respondent also refers to authorities that haven taken note of the possibility of taking into account the implications of bifurcation decisions when making final decisions on costs.[125]

(2) Claimants' Position

112. The Claimants submit that separation of the arbitration into two phases would be "particularly unfair to the Claimants given their limited financial resources" and complain that "Georgia's raising of every procedural tool in the Rules for these baseless arguments is classically dilatory and wasteful behavior" that places "an unfair financial burden on Claimants whose lives (and finances) have been destroyed by Georgia's actions."[126]

113. Thus, beyond the factors enumerated in Rule 44(2) and previously in *Glamis Gold v USA*, tribunals also must "have regard to the fairness of the procedure to be invoked and the efficiency of the Tribunal's proceedings."[127]

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124 Request for Bifurcation ¶ 14 (emphasis added by the Respondent), citing Schreuer, **RL-054, ¶¶** 158-159.

125 Request for Bifurcation ¶ 15, citing Koh and Yeo, **RL-021**; and *Lighthouse v. Timor Leste,* **RL-053**, ¶ 19.

126 Reply on Bifurcation ¶¶ 9, 97-102.

127 Reply on Bifurcation ¶¶ 14, 15, 97, citing *Glamis Gold v. USA,* **CL-094**, ¶ 12(c); *Gavrilovic v. Croatia*, **RL-058**, ¶ 8.

114. The Claimants say they are "in a precarious financial position" and recalled that "[a]ll of the owners of T.G. Trade had to flee Georgia to save themselves and their families, depriving them of their financial resources."[128] For any individual such as Mr Dekanoidze, bearing the substantial financial burden of ICSID arbitration is daunting and particularly acute for him in light of his personal and financial vulnerability resulting from his flee from Georgia.[129] The financial pressure of bifurcation is substantial and "seriously risks denying Claimants meaningful access to justice, effectively forcing them to withdraw their claim due to financial exhaustion rather than legal merit."[130]

115. In this connection, the Claimants note that the Tribunal reserved its decision on costs following the Rule 41 Objection. They say it would be "inequitable to compel them to absorb yet another round of costly and duplicative proceedings, especially when bifurcation offers little to no benefit in terms of procedural economy and is unlikely to result in a successful outcome for Respondent."[131]

(3) Tribunal's Analysis

116. The Tribunal is not convinced that the concerns expressed by the Claimants about fairness and finances in particular should alter its view on whether or not bifurcation is appropriate in this proceeding. The Claimants' arguments are of course premised on the hypothesis that its position on jurisdiction will prevail.

117. However, if the Tribunal bifurcates, and ultimately rejects the Respondent's arguments on jurisdiction, it is likely that costs would follow the event and the Claimants could benefit from an interim costs order in their favour as soon as July 2026, which in fact would be five months earlier than any award on a unified jurisdiction/merits proceeding.

118. Even though some preliminary objections would be deferred to the second phase (including

128 Reply on Bifurcation ¶ 98.
129 Reply on Bifurcation ¶ 100, citing the Witness Statement of Mr Dekanoidze, 4 October 2024, ¶¶ 57-58.
130 Reply on Bifurcation ¶ 101.
131 Reply on Bifurcation ¶ 102.

those relating to nationality at the time the dispute crystalised), and the Respondent may yet be successful on such objections, by seeking bifurcation now of the two Jurisdictional Objections, the Respondent has taken on the risk of an interim adverse costs award for the preliminary phase in the event its Jurisdictional Objections are rejected. There is no reason to doubt that the Respondent would not comply with the same, failing which possible interest on the same could compensate Claimants for any default, while providing sufficient financial comfort for purposes of financing until eventual inclusion in the ultimate award.

V. THE TRIBUNAL'S CONCLUSIONS

119. On balance, the Tribunal is satisfied that it is appropriate in the circumstances of the present dispute (including having considered all three of the factors set out in Rule 44(2) and overarching concerns of fairness), to bifurcate these proceedings into two phases.

120. The first phase shall deal with the two Jurisdictional Objections, which will be the "Bifurcated Objections". If either of those Bifurcated Objections are upheld, the arbitration will come to an end. If the Tribunal rejects both of the Respondent's Bifurcated Objections, the Tribunal expects that it would make a costs order for the preliminary phase, and proceed to the subsequent phase. The subsequent phase shall address any remaining objections on admissibility or jurisdiction, merits of the claims for alleged breach of the BIT, and suitable remedies for any alleged damage suffered as a result of those breaches.

121. The Tribunal wishes to make clear that its findings for purposes of this decision on bifurcation do not constitute the Tribunal's final assessment of the Parties' arguments on the Bifurcated Objections, which shall be a matter for later decision to be taken once the Parties have had the opportunity to present their arguments fully in writing and at the hearing pursuant to the schedule set out in Annex A to PO4 and VI below.

VI. DECISION

122. For the reasons set out above, the Tribunal:

(1) GRANTS the Respondent's Request for Bifurcation under Rule 44, such that the following preliminary objections ("**Bifurcated Objections**") shall be heard in a separate preliminary phase:

(a) The Tribunal lacks jurisdiction *ratione personae* on the basis that Mr Dekanoidze was a Georgian national at the time of the alleged breach and neither the ICSID Convention, nor the BIT, allow claims by individuals who are dual nationals; and it was also improper for Mr Dekanoidze to take steps to renounce his Georgian nationality after the alleged date of breach of the BIT and then commence this arbitration.

(b) The Tribunal lacks jurisdiction *ratione materiae* on the basis that Mr Dekanoidze does not hold via his spouse (and therefore T.G. Trade does not hold) a qualifying "investment" under the BIT.

(2) DIRECTS that the procedural timetable set out in Scenario 3 in Annex A to PO4 shall apply to the next phase of the proceedings, taking into account also the extensions by one business day that were agreed on 24 April 2025. These steps will therefore include:

12 September 2025 – Respondent's Memorial on Bifurcated Objections

24 October 2025 – Claimant's Counter-Memorial on Bifurcated Objections

22 November 2025 – Respondent's Reply on Bifurcated Objections

23 December 2025 – Claimants' Rejoinder on Bifurcated Objections

Week of 12 January 2026 – Hearing on Bifurcated Objections

and the remaining steps shall follow items 18 to 32 of Scenario 3 in Annex A to PO4.

(3) RESERVES any decision on the costs associated with the Request for Bifurcation for a later stage of these proceedings.

(4) INVITES the Parties to confer and advise the Tribunal by **15 August 2025**:

(a) whether they wish for the Hearing on Bifurcated Objections to be held in person in Paris (as to which ICSID has provisionally secured Delos' Paris Arbitration Centre, in the event the World Bank's Paris hearing facilities are not available), *or* via video-conference; and

(b) whether they wish to reserve a time for a pre-hearing case management conference (if procedural issues connected with the hearing cannot be settled via email) and, if so, to indicate their availability for a video conference during either the week of 1 December 2025 or week of 5 January 2026.

[Signature]

Ms Judith Levine
Presiding Arbitrator
On behalf of the Tribunal

Date: 1 August 2025