INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Libra LLC and Others
Claimants

v.

Republic of Azerbaijan
Respondent

(ICSID Case No. ARB/23/46)

DECISION ON THE RESPONDENT'S REQUEST FOR BIFURCATION

Members of the Tribunal
Prof. Eduardo Zuleta, President of the Tribunal
Mr. D. Brian King, Arbitrator
Dr. Claus von Wobeser, Arbitrator

Secretary of the Tribunal
Leah W. Njoroge

Assistant to the Tribunal
María Marulanda Mürrle

May 2, 2025

TABLE OF CONTENTS

I. INTRODUCTION

1. The Claimants are three companies incorporated under the laws of the Republic of Azerbaijan – Libra LLC ("**Libra**"), Neptun Azerbaijan-British LLC ("**Neptun**"), Virgo Developments Ltd. ("**Virgo**") – and the Estate of Mr. Efruz Muduroglu (the "**Estate**"), who is a deceased national of the United Kingdom (the "**Claimants**").

2. The Respondent is the Republic of Azerbaijan (the "**Respondent**" or "**Azerbaijan**").

3. The Claimants and the Respondent are collectively referred to as the "**Parties**."

II. PROCEDURAL BACKGROUND

4. On March 3, 2025, the Respondent filed a request to address objections to jurisdiction as a preliminary question, together with Exhibits R-0040 and R-0041 and Legal Authorities RL-080 to RL-109 ("**Bifurcation Request**").

5. On March 26, 2025, the Respondent sought leave from the Tribunal to file an amended request for bifurcation ("**Amended Bifurcation Request**") after requesting additional information from the Claimants. On March 27, 2025, the Claimants objected to the Respondent's request to amend its request for bifurcation, adding that, if the Tribunal were to grant leave for the Respondent to do so, the Claimants would need a one-week extension to file their response to the Amended Bifurcation Request.

6. On March 28, 2025, the Respondent indicated that it was ready to file its Amended Bifurcation Request and stated that any extension granted to the Claimants should be limited to the new objection contained in the Amended Bifurcation Request and not to the objections contained in the original request of March 3, 2025.

7. On the same date, the Tribunal granted the Respondent leave to file its Amended Bifurcation Request and granted a one-week extension to the Claimants to submit their response.

8. On March 28, 2025, the Respondent filed its Amended Bifurcation Request, together with Exhibits R-0052 to R-0055 and Legal Authorities RL-115 to RL-119.

9. On April 9, 2025, the Claimants filed their observations on the Amended Bifurcation Request together with Exhibits C-0633 to C-0656 and Legal Authorities CL-0253 to CL-0299 ("**Response**").

III. THE PARTIES' POSITIONS

A. THE RESPONDENT'S POSITION

10. The Respondent submits six jurisdictional objections against Claimants' claims and requests that the Tribunal bifurcate the proceedings to address these objections preliminarily, in accordance with Article 41(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**") and Rule 42(6), 43(4) and 44 of the 2022 ICSID Arbitration Rules (the "**ICSID Arbitration Rules**").[1]

11. The Respondent's first jurisdictional objection concerns the standing of the Estate in the present proceedings. The Respondent contends that the Estate lacks standing as it is neither a "company" or a "national" entitled to the protections of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Azerbaijan Republic for the Promotion and Protection of Investments (the "**BIT**"). Specifically, the Respondent argues that (i) deceased natural persons are not nationals for the purposes of the BIT nor are the estates of the deceased covered by the BIT,[2] and (ii) the Estate lacks legal personality and is thus not protected under the BIT as a company.[3] Further, the Respondent asserts that the Estate is neither a "juridical person"

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[1] Amended Bifurcation Request, para. 1.

[2] Amended Bifurcation Request, paras. 32, 35.

[3] Amended Bifurcation Request, paras. 33, 36, 37.

nor a "natural person" of the UK as required to refer disputes to ICSID under the ICSID Convention.[4]

12. The Respondent's second, third and fourth jurisdictional objections concern the nationality of Libra, Neptun and Virgo, companies locally incorporated in Azerbaijan. The Respondent contends that the companies do not meet the ICSID Convention's foreign control and consent requirement in Article 25(2)(b), as well as the BIT's requirement in Article 8(2) for there to be UK ownership.[5] In this regard, the Respondent argues that the Claimants have not shown that Neptun, Libra and Virgo were directly majority owned and controlled by nationals or companies of the UK (i) prior to the dispute arising, and (ii) by the date the Request for Arbitration was filed.[6] The Respondent relies on *United Utilities v. Estonia* to submit that the Claimants must demonstrate that control existed over the locally incorporated companies both at the time of consent and before the dispute arose.[7]

13. The Respondent's fifth jurisdictional objection concerns the Estate's shares in Libra, Neptun and Virgo. The Respondent contends that the Claimants have failed to prove that any shares in these local companies are part of the Estate.[8] On this matter, the Respondent submits that the Claimants have failed to prove (i) that Mr. Efruz Muduroglu owned/controlled shares in Libra, Neptun and Virgo when the "investments" were allegedly made and the challenged measures took place, and (ii) that the same shares formed part of the Estate at the time of consent to arbitration.[9]

14. The Respondent's sixth jurisdictional objection concerns the authorization of Virgo to bring the present claim, as required by Rule 2 of the ICSID Institution Rules (2022). The

[4] Amended Bifurcation Request, para. 3.

[5] Amended Bifurcation Request, para. 4.

[6] Amended Bifurcation Request, paras. 52-53.

[7] Amended Bifurcation Request, paras. 58, 59.

[8] Amended Bifurcation Request, paras. 5, 82.

[9] Amended Bifurcation Request, para. 84.

Respondent contends that the Claimants have failed to demonstrate proper internal approval obtained in accordance with their by-laws and the laws of Azerbaijan.[10] The Respondent submits that (i) there is no evidence demonstrating that Mr. Eran Muduroglu is in the capacity to issue a Power of Attorney on behalf of Virgo,[11] and (ii) the decision to bring the claim on behalf of Virgo should have been made at a general meeting of the participants of the company in accordance with Azerbaijani law.[12]

15. The Respondent submits that pursuant to Article 41(2) of the ICSID Convention, the Tribunal has discretion to decide whether to hear the Respondent's objections in a preliminary phase. As for the standard governing the Tribunal's decision on a request for bifurcation, the Respondent invokes ICSID Arbitration Rule 44, which establishes that 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.[13]

16. The Respondent asserts that to decide upon a request for bifurcation, the Tribunal does not need to extensively examine the merits of the objections presented but rather determine whether the objection is "arguable" or prima facie plausible.[14] The Respondent relies on *Resolute Forest v. Canada* to submit that the Tribunal is only required to be satisfied that the objections are not frivolous or vexatious.[15]

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[10] Amended Bifurcation Request, paras. 6, 87.

[11] Amended Bifurcation Request, para. 90.

[12] Amended Bifurcation Request, para. 103.

[13] Amended Bifurcation Request, para. 13.

[14] Amended Bifurcation Request, para. 14.

[15] Amended Bifurcation Request, para. 15.

17. As for the second requirement, the Respondent contends that it is not necessary for a preliminary objection to result in the disposal of the entire case. The Respondent relies on *Suffolk Limited et al v. Portuguese Republic* to submit that bifurcation is appropriate if the preliminary objection would be likely to "at least narrow the scope of issues of merits and quantum."[16]

18. As for the third requirement, the Respondent submits that only a "substantial" overlap of issues would constitute an obstacle to bifurcation. Accordingly, the Respondent argues that some overlap between the issues is insufficient to deny bifurcation, as Rule 44 refers to issues "so intertwined" with the merits that they cannot be decided preliminarily.[17]

19. The Respondent asserts that bifurcation in the present case (i) would materially reduce time and cost, (ii) dispose of all or a substantial portion of the dispute, and (iii) the objections are not intertwined with the merits.[18]

20. With regard to the first jurisdictional objection, the Respondent holds that (i) it is not "frivolous or vexatious" but rather presents a serious and substantial question of law concerning the legal personality of the Estate; (ii) its determination in the Respondent's favor would dispose of all of the Estate's claims, which represents a significant part of the alleged claims; and (iii) it can be resolved on legal grounds unrelated to the merits with minimal factual inquiry as it relates purely to a question of jurisdiction.[19]

21. As for the second, third and fourth jurisdictional objections, the Respondent submits that (i) they are prima facie serious and substantial as they implicate the Tribunal's power to hear claims from entities that fail to meet the "foreign control" requirement; (ii) if upheld, these objections would eliminate all claims brought by Libra, Neptun and Virgo, which

[16] Amended Bifurcation Request, para. 16.

[17] Amended Bifurcation Request, para. 19.

[18] Amended Bifurcation Request, para. 19.

[19] Amended Bifurcation Request, para. 46.

constitute the majority of the claims in this dispute; and (iii) they can be determined without examination of the merits and without requiring the Tribunal to prejudge any aspect of the merits as the question of corporate nationality and control is "entirely separate" from whether an alleged treaty breach occurred.[20]

22. Regarding the fifth jurisdictional objection, the Respondent asserts that it (i) is prima facie serious and substantial, as it raises significant questions about the ownership of the alleged shareholding in the locally incorporated companies; (ii) if successful, the objection would narrow the scope because the claims brought in relation to Estate's alleged shareholding in the locally incorporated companies would be dismissed in their entirety; and (iii) requires no examination of the substantive merits but only an analysis of documents proving ownership over the shares.[21]

23. Lastly, the Respondent submits that the sixth jurisdictional objection (i) is prima facie serious and substantial as it raises "significant questions" about Virgo's compliance with both Azerbaijani law and its own by-laws; (ii) if successful, would eliminate Virgo's claims in their entirety, and the same claims cannot be made by the Estate; and (iii) does not require examination of the substantive merits, but only an analysis of corporate authorizations and relevant law provisions.[22]

B. THE CLAIMANTS' POSITION

24. The Claimants argue that Respondent's Amended Bifurcation Request should be denied, as the Respondent's preliminary objections do not meet the established test for bifurcation. The Claimants submit that none of the six jurisdictional objections meets the three-part test for the Tribunal to bifurcate the proceedings.[23]

[20] Amended Bifurcation Request, para. 81.

[21] Amended Bifurcation Request, para. 85.

[22] Amended Bifurcation Request, para. 109.

[23] Response, para. 2.

25. The Claimants assert that the standard a party must meet to warrant bifurcation under Rule 44 of the ICSID Arbitration Rules is "appropriately high."[24] On this point, the Claimants submit that a tribunal should grant bifurcation only upon the satisfaction of the following cumulative criteria:

(a) The respondent's objections to jurisdiction are substantial and have a strong likelihood of success;

(b) Bifurcation based on those objections would materially reduce the time and cost of the proceedings through either disposal of the entire case or the reduction of an essential element of the claimant's claim, rather than creating additional burdens by adding a separate phase to the arbitration; and

(c) Issues of jurisdiction and merits are so distinct that consideration of the former will not require substantial briefing or evidence of the latter.[25]

26. The Claimants submit that the standard to be applied by the Tribunal to grant bifurcation is not whether the jurisdictional objection is "arguable" or "*prima facie* plausible," as Azerbaijan contends, but rather whether the objection is "substantial" or has a strong likelihood of success.[26] Relying on *Eco Oro Minerals v. Colombia*, the Claimants contend that a higher threshold must be applied to asses a request for bifurcation than merely requiring that the objection is not frivolous or vexatious.[27]

27. As for the second criterion, the Claimants submit that whether a preliminary objection is likely to narrow the scope of issues of merits and quantum is not the applicable standard for the Tribunal's analysis. Conversely, the Claimants assert that the Tribunal's analysis must determine whether an objection, if successful, would dispose of the entirety of the case (or at the very least an essential portion of the case), as it has been held in *Suffolk v.*

[24] Response, para. 5.

[25] Response, para. 9.

[26] Response, paras. 11, 17.

[27] Response, para. 13.

Portugal, *Eyre v. Sri Lanka* and *Standard Chartered Bank v. Tanzania*, among other cases.[28]

28. As for the third criterion, the Claimants submit, invoking *Rand v. Serbia*, among other cases, that there is an overlap between the jurisdictional objections and the merits of the case when the facts likely to be involved in determining the jurisdictional objections appear wide ranging and intertwined with the merits, requiring the tribunal to assess the same evidence in sequential phases of the arbitration.[29]

29. It is the Claimants' submission that Azerbaijan's jurisdictional objections fail to meet these criteria and therefore the Tribunal should deny bifurcation.[30]

30. Regarding the Respondent's first jurisdictional objection concerning the standing of the Estate, the Claimants argue that (i) the Estate is a continuation of Mr. Efruz Muduroglu's status as a national of the UK and thus, it should be a protected investor,[31] and (ii) the Estate has legal personality under English Law, enabling the Estate to present a claim in the present proceedings, as confirmed by the Beddoe Order.[32] In any event, the Claimants submit that the most-favored-nation ("**MFN**") clause enshrined in Article 3 of the BIT would include the Estate within the definition of "company" by reference to the US-Azerbaijan BIT.[33]

31. The Claimants therefore submit that the first preliminary objection raised by the Respondent (i) is not a serious objection that would merit bifurcation, and (ii) does not meet the criteria for bifurcation as there is a significant overlap between the claims of Libra, Neptun and Virgo (the "**Corporate Claimants**"), on the one hand, and the Estate, on the

[28] Response, paras. 18-21.

[29] Response, paras. 24-26.

[30] Response, para. 27.

[31] Response, paras. 40, 42.

[32] Response, para. 43,

[33] Response, paras. 44, 46.

other, in respect of the Landmark Buildings, the Baku II Site and the Venetian Palace. By virtue of its ownership interest in the companies, the Estate claims for much of the same loss as the Corporate Claimants and thus, even if the Tribunal lacks jurisdiction over the Estate, the Parties will still need to brief the same claims before the Tribunal, gaining no efficiency. [34]

32. Regarding the Respondent's second, third and fourth jurisdictional objections, the Claimants contend that under Article 8(2) of the BIT there is no requirement for the local company to be directly owned by UK nationals, as Azerbaijan claims.[35] Therefore, investments made by way of intermediates are accepted as investments covered by the BIT.[36] In any event, the Claimants submit that the MFN clause would protect indirect investments by reference to the US-Azerbaijan BIT.[37]

33. Regarding the foreign control requirement under the ICSID Convention, the Claimants argue that the ICSID Convention does not determine at what time foreign control over the local company must have existed and Article 8(2) of the BIT requires foreign control to be satisfied before the dispute arises. Therefore, it is the Claimants' position that if a company is (i) a juridical entity with Azerbaijani nationality at the time of consent to arbitration, and (ii) was majority owned by nationals of the UK prior to the dispute arising, the requirement under Article 25 of the ICSID Convention is fulfilled.[38]

34. With respect to Libra, the Claimants assert that Libra was indirectly owned in its entirety by UK nationals prior to the dispute arising,[39] satisfying the requirement of Article 8(2) of the BIT. With respect to Article 25 of the ICSID Convention, the Claimants hold that Libra

[34] Response, paras. 29, 48-50.

[35] Response, para. 54.

[36] Response, para. 55.

[37] Response, para. 57.

[38] Response, para. 62.

[39] Response, paras. 79, 82.

satisfies the requirement of foreign control as the appropriate metric for assessment is Article 8(2) of the BIT.[40] In any event, the Claimants submit that Libra was controlled by UK nationals by the date of commencement of this arbitration as Mr. Eran Muduroglu, a UK national, exercises control over Libra.[41]

35. Regarding Neptun, the Claimants hold that the company was majority owned by UK nationals before the dispute arose,[42] satisfying the requirement under Article 8(2) of the BIT and the criterion of foreign control under the ICSID Convention.[43] Moreover, the Claimants assert that Neptun is under the control of Mr. Eran Muduroglu, a UK national, and the ultimate beneficial ownership of Neptun remains entirely held by UK nationals as well.[44]

36. As to Virgo, the Claimants hold that Mr. Efruz Muduroglu's indirect ownership satisfies the requirement of Article 8(2) of the BIT.[45] Further, the Claimants assert that Virgo was under the control of Mr. Eran Muduroglu, a UK national, at the date of consent, satisfying the requirement of foreign control under Article 25 of the ICSID Convention.[46]

37. Thus, the Claimants submit that Libra, Neptun and Virgo all qualify as protected investors for the purpose of this arbitration.[47]

38. The Claimants accordingly submit that the second, third and fourth preliminary objections (i) do not have a strong likelihood of success, (ii) would only remove certain of the Claimants' claims unless the Tribunal were to decide all of Azerbaijan's jurisdictional

[40] Response, para. 84.

[41] Response, para. 86.

[42] Response, para. 108.

[43] Response, para. 113.

[44] Response, paras. 114-116.

[45] Response, para. 124.

[46] Response, para. 126.

[47] Response, paras. 69, 106.

objections in its favour as the claims of the Corporate Claimants overlap "almost entirely" with the Estate's claims, and (iii) are deeply intertwined with the merits of the case.[48]

39. On this point, the Claimants submit that the preliminary objections concerning the Corporate Claimants overlap with the merits of the case as (i) the Tribunal would have to assess the First Lady's acquisition of assets and the effects on the Corporate Claimants' ultimate beneficial owners;[49] (ii) the Tribunal would need to make factual determinations and consider evidence and witness testimony that is core to the merits of the dispute;[50] and (iii) the Tribunal would need to address the conduct of Azerbaijan in the taking of assets among other conduct.[51]

40. Regarding the Respondent's fifth jurisdictional objection, the Claimants submit that this objection is a "rehash of Azerbaijan's objections *ratione personae*" which have already been addressed by the Claimants.[52] Further, the Claimants assert that they are and were at all times the rightful owners of the investments at issue.[53]

41. As regards the Respondent's sixth jurisdictional objection, the Claimants submit that Mr. Eran Muduroglu had the authority to execute the Power of Attorney to initiate this arbitration as he occupied a vacant Director seat.[54] Moreover, the Claimants argue that the requirements of Azerbaijani domestic law are irrelevant to this determination under international law, which should be assessed solely based on the BIT and the ICSID

[48] Response, paras. 51, 68, 91-94, 97-98, 103-104, 106, 118-120, 128, 130.

[49] Response, para. 68.

[50] Response, paras. 97-104.

[51] Response, para. 130.

[52] Response, para. 132.

[53] Response, para. 133.

[54] Response, para. 136.

Convention.[55] In any event, the Claimants hold that, under Azerbaijani law, the initiation of a legal claim does not require a general meeting of participants.[56]

42. The Claimants therefore submit that the sixth jurisdictional objection raised by the Respondent (i) would not change the scope of the merits claims before the Tribunal, and (ii) is inextricably tied to the merits of the dispute, as the assessment of this objection would require the Tribunal to make factual determinations regarding Azerbaijan's unlawful conduct, which are at the core of the Claimants' claims.[57]

IV. THE TRIBUNAL'S ANALYSIS

43. This arbitration is governed by the ICSID Convention and the ICSID Arbitration Rules.[58]

44. Both the ICSID Convention and the ICSID Arbitration Rules grant the Tribunal authority to order bifurcation to address preliminary objections in a separate phase of the proceedings.

45. Article 41(2) of the ICSID Convention provides:

> 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.

46. Rule 43(4) of the ICSID Arbitration Rules states:

> 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).

[55] Response, para. 138.

[56] Response, para. 139.

[57] Response, paras. 144-146.

[58] *See*, PO1, section 1.1.

47. Requests for bifurcation concerning preliminary objections, as in the present case, are governed by Rule 44 of the ICSID Arbitration Rules. Pursuant to 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.

48. The Parties generally agree that the party requesting bifurcation bears the burden of demonstrating that its request satisfies the three cumulative criteria set forth in subparagraphs (a) through (c) of Rule 44(2) of the ICSID Arbitration Rules.[59] However, they disagree on the threshold applicable to each of these criteria.

49. First, the Respondent argues that examining a bifurcation request does not require an extensive review of the merits of the objections raised by the party requesting bifurcation.[60] According to the Respondent, the Tribunal need only determine whether the objection is arguable or *prima facie* plausible, rather than frivolous or vexatious.[61] In any event, the Respondent asserts that each of its objections is serious and substantial.[62] The Claimants, on the other hand, contend that the Tribunal must be satisfied that the objections are substantial and have a strong likelihood of success, which the Claimants argue is not the case for any of the Respondent's objections.[63]

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[59] Amended Bifurcation Request, paras. 13 and 22; Response, paras. 9 and 27.

[60] Amended Bifurcation Request, para. 14.

[61] Amended Bifurcation Request, para. 14.

[62] Amended Bifurcation Request, paras. 46, 81, 85, 109.

[63] Response, paras. 9 and 17.

50. Second, the Respondent contends that "it is not necessary for a preliminary objection to result in the disposal of the entire case. Rather, the question is whether a preliminary objection, if upheld, would be likely to 'at least narrow the scope of the issues of merits and quantum requiring briefing and decision'."[64] Conversely, the Claimants contend that the relevant test is whether upholding the objection would dispose of the entire case, or at least an essential portion of it.[65]

51. Finally, the Respondent argues that bifurcation should only be denied when there is a substantial overlap between the preliminary objections and the merits.[66] The Claimants, in turn, submit that it must be shown that the jurisdictional objections are clearly separate from the evidence needed to assess the merits of the claims.[67]

52. In the Tribunal's view, the overarching objective of bifurcation within the ICSID framework is to enhance procedural efficiency. This is affirmed not only by Rule 44(2) of the ICSID Arbitration Rules, which expressly requires the Tribunal to consider whether bifurcation "would materially reduce the time and cost of the proceedings," but also by established ICSID arbitral practice.[68] Accordingly, the criteria for bifurcation and whether they are met in the case at hand must be assessed against the benchmark of procedural efficiency and with due regard for fairness.

53. The foregoing means that the analysis of the Tribunal should not be limited to whether the jurisdictional objection is *prima facie* frivolous or vexatious, but rather, without prejudging

[64] Amended Bifurcation Request, para. 16, citing *Suffolk (Mauritius) Limited et al v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3 dated 1 March 2024, RL-086, para. 93.

[65] Response, para. 17.

[66] Amended Bifurcation Request, para. 19.

[67] Response, para. 24.

[68] *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/122, Decision on Respondent's Application for Bifurcation, June 13, 2013, para. 37, RL-080; *Ayat Nizar Raja Sumrain and others v. State of Kuwait*, ICSID Case No. ARB/19/20, Procedural Order No. 2 (Decision on Bifurcation), 1 February 2021, para. 16, RL-081; *Accession Mezzanine Capital L.P. et al., v. Republic of Hungary*, ICSID Case No. ARB/12/3, Decision on Respondent's Notice of Jurisdictional Objections and Request for Bifurcation, August 8, 2013, para. 38, CL-0260; *Cargill, Inc. v. Mexico*, ICSID Case No. ARB(AF)/05/2, Procedural Order No. 3, July 18, 2007, paras. 8–9, CL-0261.

the merits of the objection, whether the objection (i) *prima facie* has a reasonable prospect of success; (ii) if successful, it would dispose of all or a substantial part of the dispute; and (iii) does not overlap with issues on the merits to the extent that determining it would require consideration of facts and evidence that are also relevant to the merits of the case. The Tribunal will now turn to the case at hand.

54. The Claimants in this arbitration are the Estate of Mr. Efruz Muduroglu, a deceased national of the UK, and three companies incorporated under the laws of Azerbaijan (Libra, Neptun, and Virgo), which, according to the Claimants, "were at all relevant times majority-owned by UK nationals or companies and are therefore entitled to be treated as UK companies for purposes of this arbitration."[69] The Claimants' purported investments in Azerbaijan as of June 2006, prior to the emergence of the dispute (as alleged by the Claimants), were structured through a complex arrangement involving the late Mr. Efruz Muduroglu, whose ownership interest in the Corporate Claimants has, according to the Claimants, become part of the Estate, and various companies operating at different levels.[70]

55. In its Request for Bifurcation, the Respondent raised six preliminary objections. Objections 1 through 4, characterized as *ratione personae* objections, challenge the status of each of the Claimants (the Estate, Libra, Neptun, and Virgo) as protected investors. Objection 5, classified as a *ratione materiae* objection, pertains to the ownership of the Corporate Claimants by Mr. Efruz Muduroglu or the Estate at the relevant times. Finally, Objection 6 addresses the alleged lack of authorization for Virgo to initiate this arbitration.

56. In the present case, the Tribunal finds no need to examine the substantiality of the objections or assess their likelihood of success, as it is not persuaded that the other necessary requirements for bifurcation are met.

[69] Claimants' Memorial on the Merits dated 17 January 2025 ("**Claimants' Memorial**"), para. 257.

[70] Fifth Witness Statement of Mr. Eran Muduroglu dated 17 January 2025, para. 67.

57. On the one hand, as mentioned earlier, the Claimants' purported investment was held through a complex corporate structure involving Mr. Efruz Muduroglu and various companies at different levels and in different jurisdictions. To dispose of all or a substantial portion of the dispute, the Tribunal would need to accept all or substantially all *ratione personae* jurisdictional objections concerning each of the Claimants. If any single objection were rejected, it is likely that the arbitration would continue with the remaining investor or investors, involving a similar scope of issues and evidence. Therefore, granting one or more, but less than all, *ratione personae* jurisdictional objections would not dispose of all or a substantial portion of the dispute.

58. On the other hand, the Respondent argues that the Corporate Claimants were not controlled and majority-owned by UK nationals or companies at all relevant times, as required by Article 8(2) of the BIT and Article 25(2)(b) of the ICSID Convention.[71] The Claimants, in turn, allege that their corporate structure, the representations they made regarding that structure, and their ownership of the assets were affected by conduct attributable to the Respondent, which is part of the dispute on the merits.[72] Accordingly, they argue that it is not possible to examine evidence concerning the corporate structure without also examining evidence relevant to the merits.[73]

59. The Tribunal agrees with the Claimants. In the present case, five of the six objections relate to the foreign control and ownership of the investors or their investments and appear to be closely linked to the conduct of the State that is at issue in this arbitration. As a result, it is not feasible to consider these objections without also addressing the merits and the related evidence. Therefore, the Tribunal finds that the objections are not completely or sufficiently separable from the merits to warrant bifurcation.

[71] *See*, Respondents' Request for Bifurcation, paras. 47-61.

[72] *See*, Response, paras. 97-105; 120; 129-130; 145-146.

[73] Response, paras. 97-105; 120; 129-130; 145-146.

60. For the reasons set out above, the Tribunal finds that the Request for Bifurcation does not satisfy the requirements expressly provided in subparagraphs (b) to (c) of Rule 44(2) of the ICSID Arbitration Rules, and that, in these circumstances, bifurcation would not promote procedural efficiency. Accordingly, the Tribunal will deny the Request for Bifurcation.

V. DECISION OF THE TRIBUNAL

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

a. Denies the Request for Bifurcation; and

b. Adopts the Procedural Timetable set forth in Annex B, Scenario 2 of PO1.

For and on behalf of the Tribunal,

[signed]

Professor Eduardo Zuleta
President of the Tribunal
May 2, 2025