

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN
CANADA AND THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE
PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS AND THE
UNCITRAL ARBITRATION RULES 1976**

Volga-Dnepr Airlines LLC

v.

Government of Canada

(PCA Case No. 2025-09)

PROCEDURAL ORDER NO. 3 ON BIFURCATION

Members of the Tribunal

Professor Lawrence Boo, President of the Tribunal,
Professor Georges Affaki, Arbitrator
Ms. Jean E. Kalicki, Arbitrator

9 August 2025

I. INTRODUCTION

1. This decision deals with the question of whether the Tribunal should exercise its power to bifurcate the proceedings such that certain jurisdictional objections raised by the Respondent would be heard separately in a preliminary phase, ahead of all other issues.

II. PROCEDURAL BACKGROUND

2. On 11 March 2025, the Tribunal issued Procedural Order No.1 (“**PO1**”) setting out the timelines for the Parties’ filing of pleadings on the matter of bifurcation, as well as two alternative timetables for the following scenarios: “*Should the proceedings be bifurcated*” and “*Should the proceedings not be bifurcated*”.
3. On 22 April 2025, the Respondent filed its Request for Bifurcation of Certain Jurisdictional Objections (“**Request for Bifurcation**”) with accompanying factual exhibits and legal authorities in accordance with PO1.
4. On 2 June 2025, the Claimant filed its Response to Request for Bifurcation (“**Response**”) with accompanying factual exhibits and legal authorities in accordance with PO1.
5. On 27 June 2025, after considering the Parties’ submissions, the Tribunal invited the Parties to attend a short oral hearing on bifurcation via Zoom, during which each Party would be allotted up to 45 minutes for oral submissions with an additional 10 minutes reserved for rebuttal. The Tribunal proposed 8, 17 or 21 July 2025 as potential hearing dates and requested the Parties to confer and agree on one of them.
6. On 28 June 2025, the Parties replied with their agreed hearing date of 21 July 2025.
7. On 21 July 2025, the hearing was held as planned.

III. THE POSITIONS OF THE PARTIES

A. The Respondent’s Position

8. In its Request for Bifurcation, the Respondent requests that the Tribunal hear the following jurisdictional objections as preliminary questions:
 - (i) As the lessee of the Aircraft, the Claimant has no legal standing to raise a claim on behalf of

the lessor and owner of the Aircraft (the “**Objection *ratione personae***”);¹ and

(ii) The Claimant does not have a qualifying investment within the meaning of Article I(b) of the Canada-USSR BIT (the “**Objection *ratione materiae***”).²

9. Should the Tribunal find in the Claimant’s favor on the foregoing objections, the Respondent requests that the Tribunal also hear as a preliminary matter its “subsidiary jurisdictional objection” that the most-favoured-nation treatment (“**MFN**”) clause in the Canada-USSR BIT does not allow the Claimant to import substantive protections from the Agreement Between the Government of Canada and the Government of the Republic of Moldova for the Promotion and Protection of Investments dated 12 June 2018 (the “**Canada-Moldova BIT**”) (the “**MFN Claim Objection**”, referred to collectively with the Objection *ratione personae* and Objection *ratione materiae*, as the “**Respondent’s Objections**”).³ The Respondent submits that bifurcation in the present case would be “the fairest and most efficient method of proceeding”.⁴
10. *First*, the Respondent argues that there exists “a presumption in favour of bifurcating jurisdictional questions” under Article 21(4) of the UNCITRAL Rules 1976,⁵ which aims to “increase the fairness and efficiency of arbitration proceedings”.⁶
11. *Second*, the Respondent contends that bifurcation would be appropriate if a jurisdictional objection “(1) is *prima facie* serious and substantial; (2) if successful, would dispose of all or an essential part of the claims raised, and (3) can be examined without prejudging or entering the merits”.⁷ The Respondent submits that its Objections warrant bifurcation because they meet each of the three criteria (the “**Bifurcation Criteria**”).⁸
12. With respect to its Objections *ratione personae* and *ratione materiae*, the Respondent submits that they are *prima facie* serious and substantial because they are not “frivolous or vexatious”,⁹ i.e., they

¹ Request for Bifurcation, ¶ 1.

² Request for Bifurcation, ¶ 1.

³ Request for Bifurcation, ¶ 1.

⁴ Request for Bifurcation, ¶ 2.

⁵ Request for Bifurcation, ¶ 3.

⁶ Request for Bifurcation, ¶ 4, citing *Mesa Power Group LLC v. Government of Canada* (UNCITRAL, PCA Case No. 2012-17), Procedural Order No. 2, 18 January 2013, ¶ 16 (**RL-002**); *President Allende Foundation, Victor Pey Casado and Coral Pey Grebe v. Republic of Chile II* (UNCITRAL, PCA Case No. 2017-30), Decision on Respondent’s Request for Bifurcation, 27 June 2018 (“*Pey Casado* – Decision on Request for Bifurcation”), ¶ 100 (**RL-003**); and *Resolute* – Procedural Order No. 4 (**RL-004**), ¶ 4.3.

⁷ Request for Bifurcation, ¶ 5, citing *Philip Morris* – Procedural Order No. 8 (**RL-001**), ¶ 109.

⁸ Request for Bifurcation, ¶ 5.

⁹ Request for Bifurcation, ¶ 7, quoting *Resolute* – Procedural Order No. 4 (**RL-004**), ¶ 4.4.

are “credible and not frivolous, made in good faith, and go to the very basis of the Tribunal’s authority to hear the Claimant’s claim”.¹⁰ The Respondent contends that the Objection *ratione personae* crosses this threshold, because the Claimant is [REDACTED] pursuant to the express terms of the Aircraft’s lease agreement, and has no *locus standi* [REDACTED]

[REDACTED]¹¹
As regards the Objection *ratione materiae*, the Respondent contends that it is likewise serious and substantial because the Claimant’s alleged investment fails to meet the “inherent definition” of an investment under the Canada-USSR BIT, which the Respondent says requires proof of “(i) the contribution or commitment of capital or resources to an economic venture, (ii) the element of risk, and (iii) duration”.¹² Applying this three-pronged test, the Respondent argues that “[n]one of the assets referred to” in the Claimant’s Notice of Arbitration, *i.e.*, [REDACTED]
[REDACTED]
[REDACTED] constitutes a qualifying investment under the Canada-USSR BIT for the following reasons:¹³

- (i) The Claimant made no capital contribution within the Canadian territory; to the contrary, its [REDACTED]
[REDACTED]¹⁴ The leased aircrafts do not constitute assets that the Claimant invests in Canada with the expectation of investment returns as the Claimant recoups the costs of the leases through the air service contracts.¹⁵ Nor does the License or FAOC involve any contribution of capital to an economic venture in Canada, as they require no [REDACTED]
[REDACTED]
[REDACTED]¹⁶
- (ii) The Claimant’s “air transportation business” and its interests in the Aircraft involve only “normal commercial risk” that does not rise to the level of risk required for a qualifying investment under the Canada-USSR BIT, while its License and FAOC carry no risk;¹⁷ and

¹⁰ Request for Bifurcation, ¶ 16.

¹¹ Request for Bifurcation, ¶ 8.

¹² Request for Bifurcation, ¶ 10 (footnotes omitted).

¹³ Request for Bifurcation, ¶ 11.

¹⁴ Request for Bifurcation, ¶ 13.

¹⁵ Request for Bifurcation, ¶ 13.

¹⁶ Request for Bifurcation, ¶ 13.

¹⁷ Request for Bifurcation, ¶ 14.

- (iii) The Claimant's alleged investments fail to meet the requirement of "economic commitments for a sufficiently long period", absent proof that the Claimant intended to remain in Canada [REDACTED].
[REDACTED] The lack of any [REDACTED]
[REDACTED] reinforces the [REDACTED] of the Claimant's status as a [REDACTED].¹⁸
13. In terms of the remaining two Bifurcation Criteria, the Respondent argues that hearing its Objections *ratione personae* and *ratione materiae* in a separate phase could save significant time and cost because a finding in its favour "would dispose of the totality of the Claimant's case".¹⁹ It further contends that the proposed bifurcation would not lead to any prejudgment of the merits of the case, because determining whether the Claimant has standing and a qualifying investment would require only a "limited factual inquiry, one that is wholly separate and discrete from the facts relating to the merits of the underlying dispute".²⁰
14. For the foregoing reasons, the Respondent submits that "consistent with the presumption in favour of bifurcation established under the 1976 UNCITRAL Rules", hearing its Objections *ratione personae* and *ratione materiae* as preliminary questions would be "the fairest and most efficient method of proceeding in the arbitration".²¹
15. As regards the MFN Claim Objection, the Respondent argues that it warrants bifurcation on the following grounds:
- (i) The objection is *prima facie* serious and substantial because "[s]ubstantive obligations in other international investment treaties do not in themselves constitute 'treatment'" to which the MFN clause at issue applies.²² In any event, the Canada-Moldova BIT bars investor-state arbitration for claims under the two provisions the Claimant seeks to import (*i.e.*, Article 8(3) on Entry of Personnel and Article 12 on Transparency), meaning that the Claimant cannot "establish that it has been accorded less favourable treatment",²³
- (ii) If the Respondent prevails on this objection, it will dispose of the Claimant's MFN Claim

¹⁸ Request for Bifurcation, ¶ 15.

¹⁹ Request for Bifurcation, ¶ 17.

²⁰ Request for Bifurcation, ¶ 21.

²¹ Request for Bifurcation, ¶ 22.

²² Request for Bifurcation, ¶ 24.

²³ Request for Bifurcation, ¶ 24.

in its entirety, resulting in a significant reduction of the scope of the arbitration;²⁴ and

- (iii) The Tribunal's inquiry to determine this objection will be confined to questions of law only, which do not call for any examination of the facts or prejudgment of the merits.²⁵

16. In conclusion, the Respondent submits that its Objections justify bifurcation having regard to "fairness and efficiency for both disputing parties".²⁶

B. The Claimant's Position

17. In its Response, the Claimant objected to the Respondent's request for bifurcation and further requested that the Respondent be ordered "to pay all the Claimant's costs incurred in relation to objecting against the Request for Bifurcation".²⁷

18. *First*, the Claimant denies that the applicable UNCITRAL Rules and the *lex arbitri* contain a presumption in favour of bifurcation.²⁸ It argues that the Tribunal has "a wide discretion" to determine when to rule on jurisdictional objections under Article 10(2) of Singapore's International Arbitration Act, the *lex arbitri*.²⁹ Contrary to the Respondent's allegation that Article 21(4) of the UNCITRAL Rules 1976 contains a presumption in favour of bifurcation, the Claimant contends that no such presumption exists.³⁰ According to the Claimant, international tribunals have instead chosen to decide bifurcation requests at their discretion "guided by the paramount objective to conduct proceedings efficiently".³¹ It further argues that even in cases that acknowledged the existence of such a presumption, tribunals retained "full discretion" to determine whether to bifurcate based on the circumstances of each case.³²

19. *Second*, the Claimant submits that the Tribunal should not treat the three-pronged test the Respondent invokes as the Bifurcation Criteria as the "deciding factor" when resolving a bifurcation request. The Claimant says that these criteria "are subordinate to the primary consideration of efficient and fair resolution of the dispute".³³ It is the Claimant's case that a

²⁴ Request for Bifurcation, ¶ 25.

²⁵ Request for Bifurcation, ¶ 26.

²⁶ Request for Bifurcation, ¶ 27.

²⁷ Response, ¶ 109.

²⁸ Response, ¶ 4(a).

²⁹ Response, ¶ 9.

³⁰ Response, ¶¶ 11-13.

³¹ Response, ¶ 14, citing *Carlos v Mexico*, ICSID Case No. UNCT/20/2, PO No. 2 dated August 13, 2020 (CL-46).

³² Response, ¶ 15.

³³ Response, ¶ 21.

bifurcation request must fail if bifurcation “will protract the proceedings or will not sufficiently expedite them”.³⁴ In this regard, the Claimant notes that “non-bifurcated proceedings will require the same amount of time as the jurisdictional phase of the case only” pursuant to the tentative timetable set forth in Procedural Order No. 1.³⁵ This fact, coupled with the risk of parallel court proceedings to challenge the Tribunal’s jurisdictional decision, weighs against bifurcation in the Claimant’s view.³⁶

20. *Third*, the Claimant disagrees with the Respondent’s interpretation of the Bifurcation Criteria:³⁷

- (i) With respect to the “*prima facie* serious and substantial” prong, the Claimant rejects the non-frivolous-or-vexatious standard proposed by the Respondent as being too low a bar.³⁸ It argues that the Tribunal should apply a higher standard to determine whether the Respondent’s Objections are “sufficiently serious and substantial” to warrant bifurcation,³⁹ as “ultimately guided by the task to conduct an efficient and fair proceeding”,⁴⁰
- (ii) The Claimant disputes the Respondent’s contention that bifurcation is warranted where “the jurisdictional objection is not closely intertwined with the merits of the case”.⁴¹ It contends that “a risk of overlap between the objection and the merits of the case” is sufficient to render bifurcation inappropriate,⁴² because bifurcation would not achieve “procedural efficiency” in the event of such overlap,⁴³ and possible prejudgment of the merits entails “serious risks of violation of due process”,⁴⁴ and
- (iii) The Claimant argues that “a mere potential dismissal of *some* of the [Claimant’s] claims” would not weigh in favour of bifurcation.⁴⁵ It insists that the Respondent must demonstrate that prevailing on its Objections will dispose of “all, or at least the vast majority of” the

³⁴ Response, ¶ 21.

³⁵ Response, ¶ 26.

³⁶ Response, ¶¶ 27-28.

³⁷ Response, ¶ 20.

³⁸ Response, ¶ 31, citing *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-65), ¶51.

³⁹ Response, ¶ 32, quoting *Glencore Finance (Bermuda) Limited v Bolivia*, PCA Case No. 2016-39, PO No. 2 dated January 31, 2018 (CL-67), ¶¶ 42, 50-51.

⁴⁰ Response, ¶ 34, quoting *Red Eagle Exploration Limited v Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation dated August 3, 2020 (CL-66), ¶ 42.

⁴¹ Response, ¶ 81.

⁴² Response, ¶ 20(b).

⁴³ Response, ¶ 87.

⁴⁴ Response, ¶ 86.

⁴⁵ Response, ¶ 20(c) (emphasis in original).

Claimant's claims.⁴⁶

21. The Claimant submits that, applying the correct legal principles focused on efficient management of the arbitration, none of the Respondent's Objections meets the standard for bifurcation. Moreover, the Claimant says, the objections do not satisfy even the Bifurcation Criteria advanced by the Respondent, for the following reasons:

(i) The Respondent's Objections are "not substantial and serious enough to warrant bifurcation".⁴⁷

(a) In respect of the Objection *ratione personae*, the Claimant contends that its legal standing regarding [REDACTED] covers the Aircraft, which forms part of the investment.⁴⁸ Even if the Tribunal upholds the Respondent's Objection *ratione personae*, the Claimant's standing to raise claims regarding the rest of the assets constituting its investment, which the Respondent does not challenge, would remain unaffected.⁴⁹ Further, neither the Canada-USSR BIT nor arbitral jurisprudence bars a lessee from bringing a claim regarding the leased asset;⁵⁰

(b) With respect to the Objection *ratione materiae*, the Claimant argues that the criteria the Respondent invokes, which the Claimant says are drawn from jurisprudence under the ICSID Convention such as in the *Salini* case, find no support in the text of the Canada-USSR BIT.⁵¹ According to the Claimant, its [REDACTED] constitutes a qualifying investment under the Canada-USSR BIT.⁵² So do the Aircraft, the license and FAOC because they fall within the ambit of Articles I(b)(i) and I(b)(v) of the Canada-USSR BIT respectively.⁵³ The Claimant further contends that its investment, considered as a unity of assets, contracts, and know-how involved in providing air transportation services to and from Canada,

⁴⁶ Response, ¶ 20(c).

⁴⁷ Response, ¶ 35.

⁴⁸ Response, ¶ 37.

⁴⁹ Response, ¶ 38.

⁵⁰ Response, ¶ 39, citing *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002 (CL-69), ¶¶136-138; *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Award, 13 November 2019 (CL-70), ¶273; *Wena Hotels Limited. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 5 February 2002 (CL-6), ¶¶15, 134.

⁵¹ Response, ¶¶ 40-47.

⁵² Response, ¶ 47.

⁵³ Response, ¶ 47.

satisfy the Respondent’s proposed criteria for investments in any event⁵⁴, because (1) the Claimant made “significant contribution to Canada”⁵⁵ in various forms, including “valuable services and know-how”,⁵⁶ “tailor-made solutions for complicated projects”,⁵⁷ [REDACTED]⁵⁸ [REDACTED]⁵⁹ (2) the Claimant’s “venture involved significant risks”,⁶⁰ including those demonstrated by the sanctions imposed by Canada against several Russian entities since 2014, which “ultimately materialized” and led to the current dispute.⁶¹ The risk element is also met given the risk of [REDACTED]⁶², as well as the uncertainty of the overall success of the Claimant’s business in Canada;⁶³ and (3) the Claimant’s operations also meet the duration requirement for an investment, because the Claimant had operated in Canada for 25 years with [REDACTED] with Canadian companies that [REDACTED]⁶⁴. The Aircraft itself remained in the Canadian territory for [REDACTED] prior to its seizure, with the Claimant investing [REDACTED] into it during that period;⁶⁵ and

- (c) As regards the MFN Clause Objection, the Claimant submits that it has no substance because MFN clauses can be used to import substantive standards from other BITs.⁶⁶ It also disagrees with the Respondent’s contention that the importation of the standards in question are barred by the Canada-Moldova BIT’s exclusion of such claims from

⁵⁴ Response, ¶ 53.

⁵⁵ Response, ¶ 54.

⁵⁶ Response, ¶ 54.

⁵⁷ Response, ¶ 55.

⁵⁸ Response, ¶ 57.

⁵⁹ Response, ¶ 58.

⁶⁰ Response, ¶ 61.

⁶¹ Response, ¶ 63.

⁶² Response, ¶ 66.

⁶³ Response, ¶ 67.

⁶⁴ Response, ¶¶ 71-72.

⁶⁵ Response, ¶ 73.

⁶⁶ Response, ¶ 77 (footnotes omitted), citing *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010 (CL-88), ¶622; *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009 (CL-89), ¶155; *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (CL-90), ¶¶581, 591.

arbitration, arguing in any event that it can incorporate similar standards from other Canadian BITs which do not contain comparable exclusions.⁶⁷

(ii) The Tribunal will not be able to determine any of the Respondent's Objections without examining the merits of the case:⁶⁸

(a) Determining the Objection *ratione personae* will call for a review of the terms of the Aircraft's lease agreement, an exercise that is "potentially [] important at the merits stage of the arbitration to determine the compensation [REDACTED]

[REDACTED];⁶⁹

(b) Determining the Objection *ratione materiae* will require an assessment of "the nature of the Claimant's investment", an inquiry that "is likely to encroach upon the merits of this case";⁷⁰ and

(c) Determining the MFN Clause Objection "will essentially involve deciding whether the Respondent has breached the MFN clause of the BIT and is thus not separable from the merits".⁷¹

(iii) Even if the Tribunal upholds any of the Respondent's Objections, it would not "dispose of the entirety of the Claimant's case":⁷²

(a) The Objection *ratione personae* relates to the Aircraft only, which does not affect the Claimant's legal standing regarding its remaining investment. Upholding this objection therefore will not have a significant impact on the scope of the arbitration;⁷³

(b) Upholding the Objection *ratione materiae* will not dispose of the Claimant's case in its entirety either because the objection [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];⁷⁴

⁶⁷ Response, ¶ 79.

⁶⁸ Response, ¶ 94.

⁶⁹ Response, ¶ 95.

⁷⁰ Response, ¶ 96.

⁷¹ Response, ¶ 97.

⁷² Response, ¶ 103.

⁷³ Response, ¶ 104.

⁷⁴ Response, ¶ 105.

- (c) Likewise, sustaining the MFN Clause Objection will not result in a significant reduction of the scope of the case because it concerns “only a limited part” of the Claimant’s claims;⁷⁵ and
- (d) In view of the Respondent’s reservation of right to raise additional objections to jurisdiction and admissibility, bifurcating the arbitration at the current juncture “would disrupt efficient and fair resolution of the dispute”.⁷⁶

22. The Claimant accordingly requests that the Tribunal dismiss the Respondent’s bifurcation application.

IV. THE TRIBUNAL’S ANALYSIS AND DECISION

23. The UNCITRAL Rules 1976 provide powers to the Tribunal to “conduct the arbitration in such manner as it considers appropriate”⁷⁷ and to make “interim, interlocutory or partial award”⁷⁸. More specifically, when a plea as to the Tribunal’s jurisdiction has been raised, Article 21(4) of the UNCITRAL Rules 1976 provides as follows:

... 4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

24. The Respondent points out that the text of this provision was revised in the 2010 version of the UNCITRAL Rules, with the re-numbered provision – now Article 23(3) – reading as follows:

...3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

25. The Respondent therefore suggests that a tribunal under the 1976 Rules is under an obligation to first consider hearing and ruling on a plea as to jurisdiction as a preliminary question, while retaining its discretion not to do so. The Claimant rejects this argument and maintains that the use of “should” in Article 21(4) of the 1976 Rules ought not to be read as a mandatory “shall”. In its view, the first sentence of Article 21(4), which the Respondent characterizes as stating a presumption, is effectively negated by the second sentence which spells out the untrammelled

⁷⁵ Response, ¶ 106.

⁷⁶ Response, ¶ 107.

⁷⁷ Article 15(1), UNCITRAL Rules 1976.

⁷⁸ Article 31(1), UNCITRAL Rules 1976,

discretion of the tribunal to proceed with the arbitration and rule on a jurisdictional plea in the final award.

26. The Tribunal does not consider that it needs to determine whether Article 21(4) of the 1976 Rules establishes a presumption of bifurcation. Were there to be any such presumption in Article 21(4), it can but be limited. The reason is that the tribunal is given the discretion under the 1976 Rules to defer ruling on a plea concerning its jurisdiction until the hearing of the merits. This means that a tribunal may set the jurisdictional issues for later determination, if the circumstances are such that it believes that approach to be warranted.
27. In this regard, the Claimant's argument is that bifurcating the proceedings will necessarily lengthen the time to resolve the case on the merits, beyond the time that would be required if bifurcation were denied. In the Claimant's view, bifurcation in these circumstances is inefficient, costly and will necessarily protract the arbitration. The Claimant also puts forth arguments that the issues raised are "*not substantial and serious*" or wholly dispositive of the matters in dispute in this arbitration. It submits that the determination of the jurisdiction issues would require extensive examination of facts and evidence which also would have to be considered in determining the case on its merits.
28. The Parties are in agreement that the Tribunal, in exercising its discretion, should take into account the need for fairness and efficiency, while also fulfilling the Tribunal's duty under Article 15 of the 1976 Rules to ensure that "*parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case*".
29. The Tribunal notes that of the three jurisdictional objections raised by the Respondent, the issue of jurisdiction *ratione materiae* – if determined in favour of the Respondent – would dispose of the proceedings in their entirety. The issue of jurisdiction *ratione personae* will require, amongst other matters, an examination of whether the Respondent's interest as lessee permits it to put forth a claim with respect to the Aircraft that it had leased, alongside or as part of its argument of a unity of assets being its qualifying investment. The latter – if determined in favour of the Respondent – may likewise be fully dispositive of the claims if it is determined that the Claimant has no standing and is therefore not a qualifying investor. By contrast, the third issue of whether the MFN clause in the Canada-USSR BIT can be used to import substantive standards from another BIT on its face would not be sufficient to dispose of the dispute in its entirety. None of these objections could however in the Tribunal's view be considered as frivolous or vexatious.

30. The Tribunal observes that a consideration of the *ratione materiae* objection is likely to require more than treaty interpretation; it will require an examination of the extent and character of the economic activities that the Claimant is said to have undertaken in Canada over the last 25 years, to ascertain if these activities qualify as a protected “investment” within the meaning of Article I(b) of the Canada-USSR BIT. Similarly, the *ratione personae* objection, based on the Claimant’s interest as a lessee rather than the owner of the Aircraft, will likely require an examination of the extent of rights granted to the Claimant under the lease (interpreted in accordance with the law governing the Contract of Lease of the aircraft, viz, the laws of the Russian Federation)⁷⁹, potentially whether such rights are recognized as property interests under the law of the host State in question (Canada), and whether the Canada-USSR BIT, as interpreted under international law, qualifies such property interests as “investments” entitled to substantive protection under that BIT.
31. Counsel for the Claimant submits that these issues are “*severely intertwined with the merits of the case*”⁸⁰, and as such there is a real risk that in considering them for purposes of resolving the jurisdiction objections, the Tribunal may prematurely enter into the merits and potentially prejudice the case.
32. The Tribunal accepts that the jurisdictional issues raised by Canada do require serious and substantive consideration of certain factual issues, and accordingly a close examination of the evidence related to those issues. These are however sufficiently discreet and distinct from the factual issues and evidence which would be required to assess at the merits stage, in connection with the Respondent’s alleged breaches of the protections accorded under the Canada-USSR BIT. In this connection, the Claimant’s counsel had remarked that, if the Tribunal considered these predicate facts about the Claimant’s assets and activities at a bifurcated jurisdictional stage, “*there would not be much work for the Tribunal left*” to determine at the subsequent liability stage.⁸¹ If indeed that is so, such bifurcation should be described as contributing to efficiency rather than time-wasting or generating duplication of effort for the Parties or the Tribunal. If the result of the bifurcated jurisdictional stage is to establish the Claimant’s standing to assert claims under the Canada-USSR BIT with respect to certain qualifying investments, then what is left for later determination is whether the actions taken by Canada were in breach of the terms of the Canada-USSR BIT, whether any breaches thus established caused damage to the investments in question,

⁷⁹ Article 17.1, C-23.

⁸⁰ Transcript of Hearing on Bifurcation, 21 July 2025, page 76, lines 9-15.

⁸¹ Transcript of Hearing on Bifurcation, 21 July 2025, page 72, lines 2-15.

- and if so, to what quantifiable extent. These questions would not be duplicative of those addressed in a bifurcated jurisdictional phase, nor would the predicate issues resolve in the bifurcated stage need to be revisited in the merits phase, where issues of Canada's actions would be front and centre, rather than the standing of the Claimant. In this sense, any intertwining of the jurisdictional issues with that of the alleged breaches of the Canada-USSR BIT by Canada is likely to be limited.
33. In the course of the oral hearing, a question was raised about a potential alternative form of bifurcation, which would involve hearing jurisdiction and liability issues together but deferring questions of quantum until after determination on liability⁸². The Tribunal followed up on 28 July 2025⁸³ with an email inviting the Parties to address "*the possibility of an earlier consideration of all issues of jurisdiction and liability, and deferring any question of quantum that may arise, for later determination*". The Tribunal was informed on 1 August 2025 that the Parties could not reach agreement on that basis. The Respondent reiterated on 4 August 2025 that it maintained its request for bifurcation of the jurisdictional issues.
34. With no agreement having been reached, the Tribunal accepts that, on balance, the Respondent's Request for Bifurcation is sufficiently made out to justify a bifurcation of two jurisdictional issues for early consideration as preliminary issues, viz:
- i. Whether the Claimant has legal standing to raise the claims it has advanced in these proceedings;⁸⁴ and
 - ii. Whether the Claimant has an investment as defined in Article I(b) of the Canada-USSR BIT.
35. While the Tribunal does not accept that the MFN Claim Objection of itself would justify any bifurcation, it is nevertheless of the view that it would be convenient and more cost/time efficient to have this additional objection considered at the earlier stage together with the preliminary issues identified above.
36. For the reasons above, the Tribunal therefore directs that
- a. These proceedings shall be bifurcated into two phases such that –

⁸² Transcript of Hearing on Bifurcation, 21 July 2025, page 75, line 16 to page 77, line 1.

⁸³ Email from Tribunal to Parties, 28 July 2025 (timestamp 4:30 PM/SGT).

⁸⁴ Request for Bifurcation, ¶ 1.

Phase 1 (Jurisdiction) – For the determination of the Preliminary Issues of -

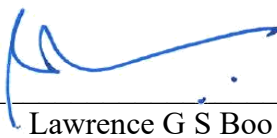
- Whether the Claimant has legal standing to raise the claims it has advanced in these proceedings;
- Whether the Claimant has a qualifying investment as defined in Article I(b) of the Canada-USSR BIT; and
- Whether the MFN clause in the Canada-USSR BIT would enable the Claimant to import two substantive protections from Canada-Moldova BIT, as the Claimant asserts.

Phase 2 (Liability and Quantum) – For the determination of any breaches of the Canada-USSR BIT allegedly committed by Canada and consequences thereof.

- b. The arbitration is to proceed in accordance with the scenario “*Should the proceedings be bifurcated*” as set out in the procedural calendar annexed to PO1.
- c. The costs of this application shall be deferred for later determination.

Date: 9 August 2025

Place of Arbitration: Singapore



Lawrence G S Boo
(Presiding Arbitrator)
On behalf of the Tribunal